HOUSE OF REPRESENTATIVES—*Monday, April 15, 1996*

The House met at 12:30 p.m. and was called to order by the Speaker pro tempore [Mr. BARTON of Texas].

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
April 15, 1996.

I hereby designate the Honorable JOE BARTON to act as Speaker pro tempore on this day.

NEWT GINGRICH,
Speaker of the House of Representatives.

SUNDRY MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Edwin Thomas, one of his secretaries, who also informed the House that on the following dates the President approved and signed bills and joint resolutions of the House of the following titles:

On March 7, 1996:

H.R. 2196. An act to amend the Stevenson-Wydler Technology Innovation Act of 1980 with respect to inventions made under cooperative research and development agreements, and for other purposes.

On March 12, 1996:

H.R. 927. An act to seek international sanctions against the Castro government in Cuba, to plan for support of a transition government leading to a democratically elected government in Cuba, and for other purposes.

H.R. 3021. An act to guarantee the continuing full investment of Social Security and other Federal funds in obligations of the United States.

On March 15, 1996:

H.J. Res. 163. Joint resolution making further continuing appropriations for the fiscal year 1996, and for other purposes.

On March 20, 1996:

H.R. 2778. An act to provide that members of the Armed Forces performing services for the peacekeeping efforts in Bosnia and Herzegovina, Croatia, and Macedonia shall be entitled to tax benefits in the same manner as if such services were performed in a combat zone, and for other purposes.

On March 22, 1996:

H.J. Res. 165. Joint resolution making further continuing appropriations for the fiscal year 1996, and for other purposes.

On March 26, 1996:

H.R. 2036. An act to amend the Solid Waste Disposal Act to make certain adjustments in the land disposal program to provide needed flexibility, and for other purposes.

On March 29, 1996:

H.J. Res. 170. Joint resolution making further continuing appropriations for the fiscal year 1996, and for other purposes.

H.R. 3136. An act to provide for enactment for the Senior Citizens' Right to Work Act of 1996, the Line Item Veto Act, and the Small Business Growth and Fairness Act of 1996, and to provide for a permanent increase in the public debt limit.

On April 1, 1996:

H.J. Res. 78. Joint resolution to grant the consent of the Congress to certain additional powers conferred upon the Bi-State Development Agency by the States of Missouri and Illinois.

H.R. 1266. An act to provide for the exchange of lands within Admiralty Island National Monument, and for other purposes.

H.R. 1787. An act to amend the Federal Food, Drug, and Cosmetic Act to repeal the saccharin notice requirement.

On April 4, 1996:

H.R. 2854. An act to modify the operation of certain agricultural programs.

On April 9, 1996:

H.J. Res. 168. Joint resolution waiving certain enrollment requirements with respect to two bills of the One Hundred Fourth Congress.

H.R. 2969. An act to eliminate the Board of Tea Experts by repealing the Tea Importation Act of 1897.

The message further announced that on the following dates the President approved and signed bills and a joint resolution of the Senate of the following titles:

On March 28, 1996:

S. 1494. An act to provide an extension for fiscal year 1996 for certain programs administered by the Secretary of Housing and Urban Development and the Secretary of Agriculture, and for other purposes.

On April 1, 1996:

S.J. Res. 38. Joint resolution granting the consent of Congress to the Vermont-New Hampshire Interstate Public Water Supply Compact.

On April 9, 1996:

S. 4. An act to give the President line-item veto authority with respect to appropriations, new direct spending, and limited tax benefits.

MORNING HOUR DEBATES

The SPEAKER pro tempore. Pursuant to the order of the House of May 12, 1995, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning hour debates. The Chair will alternate recognition between the parties, with each party limited to not to exceed 30 minutes, and each Member except the majority and minority leaders limited to not to exceed 5 minutes.

The Chair recognizes the gentleman from Guam [Mr. UNDERWOOD] for 5 minutes.

JAPAN FORCES REDEPLOYMENT

The SPEAKER pro tempore. Under the Speaker's announced policy of May 12, 1995, the gentleman from Guam [Mr. UNDERWOOD] is recognized during morning business for 5 minutes.

Mr. UNDERWOOD. Mr. Speaker, today President Clinton arrives in Asia on a trip designed to shore up the United States security relationship with Japan and Korea. Since the conviction of three marines on charges of raping a 12-year-old girl in Okinawa and the ensuing protests on the island, the future status of U.S. forces on Okinawa has been unclear.

Following the rape incident, other issues, such as the return of land used by U.S. forces on Okinawa, have boiled to the surface. Last week, landowners on Okinawa refused to renew land leases on which U.S. forces train. Pressure from Okinawan landowners has forced the Pentagon to reevaluate the future status of U.S. military bases on Okinawa.

A discussion of United States forces in Japan inevitably involves an evaluation of the United States presence in both Guam and the Asian Pacific region and the Pentagon's policy of forward deployment of 100,000 American forces in the region. I am pleased that the administration has stood firm on our security commitments and on maintaining the military forces necessary to support these commitments.

As recent incidents in the Taiwan Straits and North Korea's military provocations in the DMZ demonstrate, the United States must maintain the flexibility to respond quickly to threats in the region. In spite of technological advances which enable rapid deployment of forces from other U.S. bases to the Pacific, there is no substitute for a forward-deployed U.S. presence in the region. For 50 years, the U.S. presence in the Asia Pacific region has maintained the peace and made possible the economic prosperity the region and the United States have enjoyed.

Yesterday, Secretary of Defense William Perry announced that the U.S. military will give back to Okinawa about 20 percent of the island property it uses for training. Secretary Perry qualified this action by saying that "we are in no way backing off from our view that the United States military presence in Japan, in Okinawa, is critical to security in the region." While some of these forces are being transferred to other bases in Japan, the Secretary said the United States is now considering moving some military forces from Japan to other places in the region, including Guam.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Secretary Perry's thinking on this issue proves what Guam has been saying all along: Guam should be considered in the context of its role in Asia and not compared to domestic bases. It appears that Guam is Secretary Perry's fallback position. The Defense Department should make clear its intentions for Guam. This is only fair to Guam, which has been subjected to mixed signals from DOD—on the one hand we are enduring military cuts mandated by BRAC 95 while on the other hand we are told our island is DOD's fallback.

The problematic status of foreign basing should make the Pentagon reevaluate its timetable and pace of base closures on Guam. Guam and its U.S. citizens provides stability, and unlike foreign bases, the military does not have to deal with arduous political issues and international agreements.

The reliance on workers at foreign ship repair facilities undercuts the Pentagon's support on Guam. As a matter of principle, American workers on Guam deserve the benefits of forward deployment. As a matter of policy, the Pentagon would be prudent to guarantee an effective transition for the ship repair facility on Guam which was slated for closure by a recent BRAC decision. A prudent policy would be to keep the Military Sealift Command supply ships forward deployed on Guam while Guam transitions to a privatized SRF.

The successful transition to a privatized SRF-Guam depends on repair work from these supply ships. Keeping the supply ships on Guam for the foreseeable future is good policy for three reasons:

First, the supply ships will help Guam implement its privatization by providing SRF with a base load of work;

Second, this policy will provide support for American workers at an American shipyard;

And third, this policy will give the Navy a reliable ship repair facility that supports their forward presence in Asia unencumbered by changing international dynamics.

The Navy's national security concerns cannot be divorced from Guam's economic recovery. The Navy has long-term requirements on Guam, but it must also recognize the needs of its host. I am hopeful that the Pentagon will learn a lesson from its experience in Okinawa: unlike foreign bases, Guam is reliable.

A HISTORIC OPPORTUNITY TO VOTE ON A TAX LIMITATION CONSTITUTIONAL AMENDMENT

The SPEAKER pro tempore (Mr. HOBSON). Under a previous order of the House, the gentleman from Texas [Mr. BARTON] is recognized for 5 minutes.

Mr. BARTON of Texas. Mr. Speaker, this evening at approximately 9 p.m., this House is going to have a historic opportunity to vote on the tax limitation constitutional amendment to the Constitution of the United States. The wording of the pertinent paragraph of that article is to my left. It states "Any bill, resolution, or other legislative measure changing the internal laws shall require for final adoption in either House the concurrence of two-thirds of the Members present * * *."

Back in 1787, when our Founding Fathers wrote the original Constitution and sent it to the States for ratification, there were 7 requirements in it to require some sort of supermajority. A two-thirds vote was required to ratify treaties, a two-thirds vote was required to expel Members from Congress, a two-thirds vote was required to impeach Federal judges and so on. The Founding Fathers did not require a supermajority vote to raise taxes, but they were aware that the ability to raise taxes should be restrained in some way. So they gave the authority to introduce tax bills to one body, the House of Representatives, because in 1787 the only Federal institution that had to be directly elected by the people was the House of Representatives.

That limitation worked fine for 125 years, and then in 1913, the 16th amendment to the Constitution said an income tax was constitutional. I have a copy of the first 1040 form back in 1913 with me this morning. It shows that the tax was 1 percent on income up to $20,000, net income. Only one-tenth of 1 percent of all American citizens had to file a 1040 back in 1913. Since that time, though, there has been an explosion in Federal taxes.

I have with me a photocopy of my 1040 that I sent to Austin, TX, last week, and the instruction booklet that goes along with it.

The marginal tax rate on American citizens today is not 1 percent, it is 40 percent. That is an increase in marginal taxation on the American people of 4,000 percent, 4,000 percent in less than 90 years.

Enough is enough. It is now time to add an amendment to the Constitution that says there should be a supermajority vote required to raise taxes. Why a supermajority tax limitation amendment? Quite simply, as I have already said, it is necessary. More importantly, it works. There are 10 States that currently have some sort of supermajority requirement in their State constitutions. They are Arizona, Arkansas, California, Colorado, Delaware, Florida, Louisiana, Mississippi, Oklahoma, and South Dakota.

□ 1245

In those 10 States, there are four things that are true in every State: Taxes are lower than in States that do not have supermajority; taxes go up slower than in States that do not have supermajority; consequently, jobs increase faster; and the economic growth in that State goes up faster. So we know that in the 10 States, including the largest State, the State of California, including the State where our President is from, Arkansas, tax limitation works.

Interestingly, no State that has adopted tax limitation has repealed the constitutional amendment or the law that put it in place.

Tax limitation would require in this House and in the Senate, if adopted, that there be a consensus to raise taxes. It would not make raising taxes impossible. We could still raise taxes, but it would take a two-thirds vote, which would mean you would not have the kind of tax bill that we had 2 years ago or 3 years ago that passed the House by two votes, all Republicans voting against it, and some Democrats voting against it, and passed the Senate on a tie breaker vote by Vice President GORE. It would require consensus, which is what supermajorities are all about.

The bottom line on why we need to pass this amendment is not about Washington, DC and it is not about macroeconomics analysis. It is about real people. For example, my district representative, Linda Gillespie, is a divorced mother of two. Her oldest son is married now. He and his wife both work. Linda's daughter is going to college and works part time. Linda works for me, but on the weekends she did have a part-time job at a blue jeans store in Ennis, TX, until it went out of business, trying to make enough money to make ends meet for her family.

Tax limitation is important to Linda Gillespie and Billy Gillespie and Julie Gillespie, because they want to make their own way, and they are finding it more and more difficult to do so because of the tax burden today and the probability, if we do not pass the supermajority requirement for tax increases, of an increase in their tax burden in the future.

Mr. Speaker, I would hope that later this evening, when we have this vote, that all Members of the House will vote for the tax limitation supermajority amendment to the Constitution.

VETO ON LATE TERM ABORTIONS CORRECT

The SPEAKER pro tempore (Mr. HOBSON). Under the Speaker's announced policy of May 12, 1995, the gentlewoman from Colorado [Mrs. SCHROEDER] is recognized during morning business for 5 minutes.

Mrs. SCHROEDER. Mr. Speaker, I take the floor to talk a bit about my least favorite subject, but, nevertheless, to say this is a day I really want to thank President Clinton and thank him very sincerely. Because while we as Americans all say that we are all

different, but we are all equal, it is always hard to apply that. The President did apply that standard.

President Clinton listened carefully to women who had their pregnancies go off track late in the pregnancy, go terribly wrong, all sorts of awful things happening to them, and President Clinton, hearing them, had the courage to then veto the so-called partial birth abortion bill.

Now, the political thing to do was let it become law without signing it, do all sorts of things. But that would really be saying women are second class citizens. And why?

I think any woman would be horrified to know that this Congress wants to make a law that says that if your doctor considers what he thinks or she thinks is best for your health, they could become a criminal. We do not do that for any other area. We have never done this before.

There are probably people who could get very upset about organ transplants, about all sorts of things. But once we start entering the consultation room, where a doctor is told to take his best medical knowledge and push it aside because if he applies it he then is going to be subject to imprisonment, to fines, and to a felony, we really are entering a brave new world.

There has been so much distortion about this bill. The obstetric and gynecology groups, the American College of Obstetrics and Gynecology, have stood up and firmly said "This bill should not pass." The American Nurses Association has said the same thing. Yet we have got everbody all focused fetally. We have all these drawings that people have criticized and said doctors did not do those drawings, special interest groups did.

We go through all these grizzly things. Everybody knows that under Roe versus Wade, in the final trimester, abortions can be denied anywhere in this country except for the life and health of the mother. So what we will do if we try to override that veto is say we are changing that. Now the health of the mother does not count anymore. If she has one pregnancy and it goes wrong and the doctor says "This is the only procedure that will save your reproductive organs," too bad, she had her shot, she rolled the dice, she lost. She does not get another chance at parenthood, nor does her family, her husband, get another chance at parenthood.

I think if we could just get some calm and reason coming into this body, everyone would agree with the President that this is not where this body belongs, practicing medicine, entering the medical consultation room, saying that doctors cannot think about their patient, the woman, they cannot apply their medical training, they cannot think about what is best, because if they do we will punish them.

It does not say that they can impose their will; the woman, the family, her religious beliefs, anything allows them to say no. Never is this mandated. But to hear the rhetoric that this is going to allow abortion on demand is absolute baloney. This has nothing to do with abortion on demand. This has to do with what can you do, what tools are available, when everything goes wrong.

If we do this, we are going to be criminalizing a tool, a tool. I guess people feel they can play politics with this, because so very few people have ever needed this tool. Fortunately, by the time most pregnancies get to the third trimester, they are OK and they are going to reach the end. But how tragic it is that we are engaging in this very politically charged debate, and how fortunate as an American woman I feel today that I have a President that is protecting my right to my full medical care by my doctor looking at my health without being criminalized. I thank the President.

A PROPOSED SUPERMAJORITY

The SPEAKER pro tempore. Under the Speaker's announced policy of May 12, 1995, the gentleman from Arizona [Mr. SHADEGG] is recognized during morning business for 5 minutes.

Mr. SHADEGG. Mr. Speaker, today on the floor of this House, we will debate and I sincerely hope pass a constitutional amendment to the U.S. Constitution, a provision which will provide a necessary level of discipline to this body.

Ten States in the United States currently have a supermajority requirement for future tax increases. Why? They have this provision because it has turned out to be necessary in order to restrain the ever-growing demands of Government for additional spending.

What has been the effect and what has been the experience of those States? It is quite simple and it is quite straightforward. In the 10 States which have a supermajority requirement to raise taxes yet one more time, things, which we would expect would have indeed happened, spending has gone up less rapidly in those States with such a provision; taxing has gone up less rapidly than in States without such a provision; but, most importantly, Mr. Speaker, in those States which have done what this Congress has a chance today to do, and that is to require a supermajority for future tax increases, economic growth has increased at a faster pace than in those States without this restraint.

Mr. Speaker, what is the issue? The issue is a simple one. If we make it harder, somewhat harder as this constitutional amendment would do, to exact additional tax dollars from the people of this Nation, then this Congress and the Federal Government will spend the money which it has more judiciously.

Now, is that necessary? Indeed, it is. The record of this U.S. Congress in controlling spending and the record of preceding U.S. Congresses is abysmal. In 1950, the year after I was born, the average American family with children paid $1 out of $50 to the Federal Government in income taxes. They earned $1,500, they sent $2 to the Federal Government in income tax.

By 1993, that had become $1 out of $4, and today it is dangerously close to $1 out of $3. Earn $100, do not send $2 to the Federal Government in taxes, but rather send $33 to the Federal Government in taxes.

We will hear from the other side grave reservations, that we are tampering with the U.S. Constitution, that this violates the premise of majority rule. For those people who make those arguments, let me point out that the U.S. Constitution today requires a supermajority in 10 days.

In places where the Founding Fathers thought that restraint was necessary, and they should also be reminded when they harken to this premise of majority rule, that the fundamental purpose of a Constitution is to restrain the access of legislative majority.

Indeed, a legislative majority enabled this Congress in 1993 to enact the largest tax increase in U.S. history. Even in the U.S. Senate with a majority of the Members of the Senate, that tax increase was dead tied, 50-50, for and against, until Vice President AL GORE broke the tie and increased taxes.

For those who believe we ought to be concerned about minority rights, I would point out the experience in which, in the 1990 Omnibus Tax Reconciliation Act, we destroyed a major U.S. industry by imposing through a majority vote a mere, simple majority vote, an excessive burden on just one industry.

For those who say that tax limitation is a radical idea, let me point out that one-third of all Americans today reside in a State in which there is a constitutional supermajority requirement in their own constitution. The other argument we will hear is that this provision is unworkable. In point of fact, as rewritten by the House, it would allow revenue-neutral tax reform to go forward. What it would not do, however, is allow this Congress to reach into the pockets of Federal taxpayers already overburdened, and take yet one more time from those taxpayers.

The fundamental purpose of a constitutional amendment ought to be to seek to restore to the Constitution the founders' original intent. I would suggest that that is precisely what this amendment does. If we look at the history of this Nation over the past four decades, we will see that the Supreme

Court has read the commerce clause so expansively that the Government is vastly more powerful than it was in the past. This measure, this simple idea of saying to raise taxes yet once again we ought to have a supermajority, will provide needed restraint. I urge its adoption.

A PROPOSED CONSTITUTIONAL AMENDMENT

The SPEAKER pro tempore. Under the Speaker's announced policy of May 12, 1995, the gentleman from Colorado [Mr. SKAGGS] is recognized during morning business for 5 minutes.

Mr. SKAGGS. Mr. Speaker, as past Members who have addressed the House this morning have pointed out, later today we will take up an amendment to this Constitution of the United States. I want to address myself for the moment to the process by which this proposed amendment has been brought to the House.

Passing for the moment the fact that I believe it is a bad idea and bad constitutional law, even worse is how we consider it today under a process that insults the intelligence and responsibility of Members of the House, that contradicts any suggestion that this House is able to operate in a thoughtful and considered manner, and that demands and debases the very process of constitutional amendment itself.

The original proposal brought forward by the gentleman from Texas [Mr. BARTON], House Joint Resolution 159, received a single hearing before the House Committee on the Judiciary on March 6. It was then essentially removed from the committee and scheduled for a vote on the floor today. It was not marked up or approved by the Committee on the Judiciary. That committee, Mr. Speaker, is vested with the responsibility and authority under the rules of the House to give the kind of thoughtful consideration to a constitutional amendment that I believe the people of America think ought to obtain.

House Joint Resolution 159 was then replaced, or will be if the rule before the House later today is enacted, by an entirely new proposal, House Joint Resolution 169.

□ 1200

This version of this constitutional amendment was first introduced in the House on the evening of Thursday, March 28. It was considered by the Committee on Rules the next day. On the morning of March 29, and reported to the House. And then this House went on recess for 2 weeks, the entire intervening time between consideration in the Committee on Rules and today. So very few Members have had an opportunity even to see the text of this amendment, much less to study and understand its implications.

Again, this proposal has had no hearing at all in the Committee of jurisdiction, no markup, no regular deliberative process whatsoever. Let us stop and think about that for a second. Surely second only perhaps to the responsibility that we have in Congress in considering a declaration of war, second only to that, an amendment to the Constitution, an amendment to the Constitution ought to command the most serious and deliberate sort of legislative review, examination and analysis that we are capable of. It deserves better treatment than a rush job to meet a politically sexy vote deadline that the majority admits is a matter of symbolism. Symbolism in amending the fundamental document of this country.

Mr. Speaker, the Constitution should not be used to make political statements.

There are many, many issues that are raised by this proposal, and I will speak about those later on today. One has to do with the fundamental contradiction of the principle of majority rule on which this country is based. In fact, if this were to become part of the Constitution, 34 Senators, representing less than 10 percent of the people of the country, could hold power over this important area of legislation.

Mr. Speaker, it would lock us in, for all practical purposes, to whatever the current tax structure might be at the time of its ratification. It will get in the way of many, many of the necessary things we are going to have to do to get the budget balanced, especially in areas of entitlement reform. It may unintentionally, or intentionally, who knows, actually get in the way of tax cuts because, for instance, those who are the strongest advocates of a capital gains tax reduction argue that that will actually increase revenues, and under this provision, that would require a two-thirds vote. Why? Because it is not whether the tax rate goes up, but whether revenues go up that controls whether a two-thirds vote is to be required.

So, there are many, many issues here that have not been examined because this proposal has been rushed through in derogation of every single rule of procedural regularity that the House is supposed to adhere to. Of course, it is exactly to examine and understand issues such as those I've mentioned that we refer legislation, especially amendments to the Constitution, to committee. However, that was not done in this case.

Mr. Speaker, because of the extraordinary abuse of process involved in bringing this matter to the floor, I want to put my colleagues on notice that I reserve the right to exercise every procedural right to a vote on every procedural matter that may be involved in consideration of this issue.

□ 1300

1993 CLINTON TAX INCREASE

The SPEAKER pro tempore (Mr. HOBSON). Under the Speaker's announced policy of May 12, 1995, the gentleman from Texas [Mr. SAM JOHNSON] is recognized during morning business for 5 minutes.

Mr. SAM JOHNSON of Texas. Mr. Speaker, today is April 15, tax day, and this is the day when Americans send their tax dollars to Washington and when the IRS sends its agents out to audit Americans, and you know this day, believe it or not, on this day, Americans have to work 21 more days to pay all their Federal, State and local taxes. So it is not over today.

We have a chance to offer today some security to every American by making it harder for the Government to raise their taxes. Today we are going to vote on a constitutional amendment to require a two-thirds vote to raise taxes. You know, I thank the gentleman from Texas [Mr. BARTON], my good friend, for this hard work on behalf of the American people.

This amendment should have been adopted back in 1993 because that is when the President and his fellow Democrats passed the largest tax increase in the history of this Nation, and it squarely broke the backs of the American people. This amendment would have allowed Americans to keep more of their money for themselves, for their families, for their savings and for their future. That big Clinton tax increase meant that families and workers pay more every time they drive to work, or take their kids to soccer practice, or their family on a vacation. This is because the President increased the Federal gasoline tax by 4.3 cents. I bet most of my colleagues do not even know what their gasoline tax is. In the State of Texas, it amounts to 38½ cents a gallon. That is one-fourth of your total gasoline tax or gasoline bill and most pumps do not tell you that you that. That big Clinton tax increase meant seniors pay more on their social security benefits because that was raised, as well. So for seniors, the President's tax increase continues to mean slower growth, fewer jobs and a less competitive America.

The President used class warfare to justify his need to increase taxes, but in reality, his tax increase hit middle America the hardest, the people he claimed to protect. The President's income tax increase hit small businesses right in their pocketbook. It took more money out of their businesses, out of their pockets and out of their future, money which could have been used to expand or hire new workers. Even Senators KENNEDY and DORGAN, both Democrats, agreed.

Mr. Speaker, this is the major difference now between Republicans and Democrats. Democrats believe Americans should pay more taxes and that

the Government deserves more of your money. They believe in raising the minimum wage instead of allowing every American to keep more of what they earn. Democrats believe in big taxes, big Government. They deplore the entrepreneurial spirit, success and self-accomplishment. They believe that if you work harder every day of your life, your own hard work and determination produces results so that you become successful, you should be punished. That is why this administration raised taxes, because they honestly feel that the Government has the right to take what you earn and spend it. They believe they can spend your money better than you can.

Conservatives, on the other hand, believe in a smaller, less intrusive Government, lower taxes and the ability of the American people to succeed. Opportunity, hard work and the Republican ideal is the American dream. We feel that people should be rewarded for success and not punished. We believe that the money you earn is yours to keep. We know this works because Presidents Kennedy and Reagan proved that it does. Their tax cuts, their tax relief allowed people to grow the economy, create jobs and increase the living standard of every American.

Families should not be forced to pay more in taxes than they pay for food, clothing and shelter combined, which is the fact today. To me, that is unacceptable. While I applaud my friend for his amendment, my hope and desire is that we will follow through on another promise and replace the current tax system with one that promotes freedom: That is, F, free, fair and simple; reduces the role of government, R; E-E, by eliminating the IRS, encouraging savings and investment; driving the economy; opportunity for all; and the "m" in "freedom," put more money in the pockets of all Americans.

This is what the country deserves, and this is what we can begin to implement actually next week when I introduce a bill to repeal the 16th amendment to the Constitution, which is the income tax amendment. We must act as soon as possible and rid the Nation of the IRS now.

FIVE PROBLEMS WITH REQUIRING A TWO-THIRDS VOTE

The SPEAKER pro tempore. Under the Speaker's announced policy of May 12, 1995, the gentleman from Virginia [Mr. MORAN] is recognized during morning business for 5 minutes.

Mr. MORAN. Mr. Speaker, I have only five problems with the issue that was just discussed by the gentleman from Texas to require a two-thirds vote to raise taxes. Actually, the language that would be made part of the Constitution says to make any change in internal revenue law would require two-thirds of this body voting in favor of it. Let me mention the five problems I have with it.

The first is that it is a classic case of political posturing. The second is that it is bad public policy. The third is that it is fiscally irresponsible. The fourth is that it shows contempt for the wisdom of our Founding Fathers. And the fifth is that it is very badly written. But other than those five problems, it is a fine piece of legislation, I suppose.

Mr. Speaker, I have to say I think that this body would be shamed if we were to yield to the kind of political expediency that has brought it to the floor. Let me explain why it is such a classic case of political grandstanding. At the very beginning of this congressional session, when we began the Contract With America, there was a lot of hoopla over the fact that we, on the first day, passed a requirement that there would be a three-fifths vote requirement to raise income taxes. And those who voted for it took a lot of credit, of course, for doing so. But then when it was to apply to the legislation considered by this body, the majority got the Committee on Rules to waive that rule because they knew that those bills could not get three-fifths of the vote. So they did not let it apply to the so-called Tax Relief Act, to the Medicare Improvement Act, to the balanced budget resolution, or even to the health insurance reform legislation that we just recently passed.

All of those bills included some increases in income tax. So for convenience sake, we simply waived the rules because the majority could not get three-fifths of the vote.

But you cannot waive the Constitution. The fact is that none of the major bills that have gone a long ways toward addressing the Reagan debt that occurred during the 1980's because we kept cutting taxes and not cutting expenditures, we did the politically popular thing and not the politically unpalatable thing and created $3 trillion of debt. Well, almost all of those bills never would have come close to two-thirds vote. That is why I say it is political posturing.

They assume that on the Senate side there will be a sufficient level of responsibility not to pass it. Of course on the Senate side, you have got a very interesting situation. Seventeen States, the least populous who represent only 10 percent of the population, are represented by, of course, 34 Senators. There are two Senators for every State. So those 17 States are represented by 34 Senators, which is just exactly the number you need to block the majority's will. All you need is one-third plus one.

So those 34 Senators have within their power to stop any revenue changes to the tax law if this constitutional amendment were to pass. Ten percent can change the will of the majority of 90 percent. What kind of a situation is that in the world's greatest democracy? In fact, let me get to the issue with regard to recognizing the wisdom of our Founding Fathers.

Article IX of the Articles of Confederation required this kind of supermajority to increase revenue. It did not work. And so when they convened in 1787, the Constitutional Convention, James Madison and others had the courage to stand up and say, this is not what we meant by our democracy. When we have tough votes, they need to be majority votes. The minority should not be able to control or to void the will of the majority. That is what this kind of constitutional amendment would do.

Mr. Speaker, it is also very bad public policy. If you want to make the tax system fairer, if you want to deal with the corporate and individual tax loopholes, if you want to change it into an income tax code that emphasizes savings and investment, you cannot do any of those things under this bill. It is bad public policy. It is hypocritical. It is inconsistent with the Constitution. I would hope my colleagues will vote this legislation down today.

HOUSE REPUBLICANS

The SPEAKER pro tempore. Under the Speaker's announced policy of May 12, 1995, the gentleman from Washington [Mr. MCDERMOTT] is recognized during morning business for 5 minutes.

Mr. MCDERMOTT. Mr. Speaker, I include for the RECORD an editorial from the Seattle Times from April 12, 1996, the title of which is "A Republican Floor Show Only a Cynic Could Love." It is written by a woman named Terry Tang.

[From the Seattle Times, Apr. 12, 1996]

A REPUBLICAN FLOOR SHOW ONLY A CYNIC COULD LOVE

(By Terry Tang)

If the House Republicans intended people to tune them out as publicity-mad buffoons, they've done a terrific job.

The latest example of their effort is the upcoming vote on a constitutional amendment to require a two-thirds vote of Congress to increase taxes. A floor debate and vote will be staged on Monday, April 15, tax day. Don't be surprised if you've heard nothing about this. Neither have many members of Congress who've been on Easter break for the past two weeks.

The House Judiciary subcommittee held a hearing on an earlier version of the Tax Limitation Amendment last month. That version was so preposterously worded—it would have required a supermajority in Congress to alter the tax laws in any way and would have applied even to raising tariffs on foreign products—that the amendment's sponsors decided it had to be reworked.

So on March 29, the day before the Easter recess, the House Rules Committee cobbled together and approved a totally new amendment more opaque in meaning than the original.

No one expects a serious constitutional debate next Monday. But rest assured, there will be plenty of on-camera time for congressman with sagging poll numbers.

Well before Republican leaders had the amendment language in hand, they had decided that April 15 was the perfect time to call a pep rally. How better to resuscitate the Contract with America than with a floor show featuring a spanking new constitutional amendment as prop?

As part of the coordinated media blitz, the Gingrichities were told to hold anti-tax town meetings in their home districts. The campaign is as contrived as a Burger King-Pocahontas promo. Rep. Randy Tate of the 9th District, for example, dutifully held two town hall meetings this week with special guest star Grover Norquist, president of Americans for Tax Reform, an anti-tax group that has made the constitutional amendment its top priority.

There's no way to separate the fakery from the legislation. But who nowadays seriously expects Congress to place deliberation above crass symbolism?

The tax amendment would even obstruct the tax reforms that Republicans have embraced. The GOP leaders apparently are so cynical—about both the fate of the amendment (the Senate is expected to put on the brakes should the House approve the thing) and meaningful tax reform—that they have no trouble promoting two ideas that are pretty much mutually exclusive.

The amendment language requires a two-thirds vote of Congress on tax measures unless the act does not "increase the internal revenue by more than a de minimus amount." The hurdle would make routine tax legislation nearly impossible.

There is no definition given of "internal revenue." Arguably, the only things not covered by the term are foreign tariffs, all other taxes being internally generated. So increasing user fees based on sound freemarket principles—such as national park entrance fees or grazing fees—would be subject to the limitation, as would closing loopholes and shutting down tax shelters.

But these are minor objections compared to the conundrum that ought to stop supplysiders cold. The amendment would apply to any legislation that increases revenue to the federal government; it does not deal with increases in tax rates per se.

Yet, the first principle of Reaganomics (and the rationale at the core of flat-tax schemes) is that cutting taxes—be it capital-gains taxes or income taxes—unleashes entrepreneurial energies that increase economic growth and therefore increase government's total tax receipts.

One argument to cut capital-gains tax rates is precisely that a cut would increase revenues in the short run as investors rush to liquidate assets to capture their capital gains. In a perverse twist, such a tax cut would be subject to two-thirds approval of Congress also.

The House leadership is well aware that enforcing any supermajority requirement on tax matters is unworkable. On the first day of Congress last year, the House, in a fit of revolutionary fervor, adopted a rule requiring a three-fifth majority on any bill raising federal income-tax rates. The rule has turned out to be only a gimmick.

The Republicans publicly touted their anti-tax scheme as a promise kept—and then silently waived the rule whenever it proved inconvenient.

The House's Contract with America Tax Act inadvertently raised some tax rates while cutting others, and so needed a waiver. The budget reconciliation bill to cut the deficit raised a few rates, thus requiring another waiver.

The House's Medicare bill, by raising premiums on wealthy seniors, needed and got a waiver, as did the new health insurance reform act, which would impose a tax on some withdrawals from medical savings accounts.

The income-tax rule has nothing to do with governing, and everything to do with sloganeering. The proposed constitutional amendment is more of the same.

When the Republicans were the minority, reducing policy debates to bumper stickers came easily. They've yet to switch out of that mode. If they, as the party in power, don't care about the substance of legislation, who will? Somebody tell these people they're being paid to do more than pose for campaign spots and C-SPAN.

I say reading it when I got to my office today and thought somebody has got to talk about this issue.

Some weeks ago my son called me. He is in business school in California and asked me about something that was happening here in Washington, DC, and I proceeded to explain to him what I thought would happen. And he said, after I had finished, "Well, now I know what the cynics think."

□ 1315

Mr. Speaker, I objected to that. I said, "No, I am giving you a realistic view of what is going to happen here in the Congress," and he said, "Dad, don't get excited. There were the idealists in Greece who wanted things a certain way, and then there were the cynics who actually looked at things as they really were and dealt with them." He said, "Cynicism has gotten a bad name because it has come to mean that we do one thing and try and create the impression that something is happening when, in fact, something else is happening, and the people then get cynical about what's happened."

What is going to happen today is the height of political cynicism because of what will be created. In fact, they choose the exact time they are going to start to debate, when folks in California are able to get to their TV's. They are not going to do it here at this time of day when people are at work in California. They are going to wait until later in the day. The vote will be taken at 9 o'clock tonight, 6 o'clock, when everybody is sitting down and eating, in California. This is a timed debate put on simply to make the American people think that we are going to control taxes.

Mr. Speaker, nothing could be further from the truth. As my colleague, the gentleman from Virginia, [Mr. MORAN], simply pointed out, I am a member of the Committee on Ways and Means. When this House came into session under this leadership, they said we are going to put in a rule that requires a 60-percent vote every time we raise taxes. So, through our Committee on Ways and Means things would come, and we would raise our head and say, "Hey, how are you going to get the two-thirds vote for this out on the floor?"

And they said, "Well, we're going to waive the rule."

Three times, perhaps four times, I am not absolutely sure, they have waived that rule when they have brought things out here on the floor.

Now today they are going to come out and say we are going to pass a constitutional amendment that will prevent us from doing exactly what we have done in the last year and 3 months that the Republicans have controlled this House. They have no will to do what they believe. They simply want the people to cynically believe that they want that to happen. But they are never going to do it.

Now, cynicism is destructive in this society for one reason. People watching this debate are going to say to themselves why should I go and vote for that bunch of yahoos, whoever he is. I saw a bumper strip coming in from the airport last night that said, "Reelect nobody." Reelect nobody? Consider what that means. That means everybody on the floor of the House is going to be subject to people walking around thinking, well, if they were there under that kind of cynical baloney, I do not want them, and my view is that the American people are made cynical by this kind of behavior. There are some absolute realities that must be faced in this country if we are going to be serious.

Now, the first thing that this amendment, if it were to go into place, would say, is that all the cuts, anything that is going to happen in this country, is going to mean we have to reduce spending. We can never raise revenue, we cannot because two-thirds—we did not even get two-thirds on this floor when we were saving Social Security. Two-thirds of the Members did not vote to support Social Security. So all the old people who might be thinking about this, just remember, Mr. Speaker, they got to understand that we could not have saved Social Security on the floor of the House of Representatives in 1983 because there were not two-thirds of the Members who would vote for it.

So what we are saying here today is that we are going to cut things, and all the programs that people are now resting on, Social Security, Medicare, Medicaid, aid for student loans, all those things will be subject to a two-thirds vote. No matter what is going on in the world, no matter what the circumstances of our economy, no matter what happens, it will take two-thirds.

Now, as you heard the gentleman from Virginia [Mr. MORAN] say, that means the Senators from 17 States can block whatever is going on and the majority will no longer rule.

RECESS

The SPEAKER pro tempore (Mr. HOBSON). Pursuant to clause 12 of rule I, the House stands in recess until 2 p.m.

Accordingly (at 1 o'clock and 20 minutes p.m.), the House stood in recess until 2 p.m.

□ 1400

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore [Mr. EWING] at 2 p.m.

PRAYER

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

Open our ears, O God, to hear the majesty of Your whole creation, a creation of words and music and nature. May not the rush of each day and the multitude of voices that beckon us from one task to another, keep us from hearing Your message of beauty, of renewal, of hope, of healing, and of peace. Free us, O gracious God, from any isolation that keeps our hearts and minds apart from Your grace so we miss the words and sounds that resonate with our humanity and encourage us to be people You would have us be. Bless us this day and every day, we pray. Amen.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Ohio [Mr. TRAFICANT] come forward and lead the House in the Pledge of Allegiance.

Mr. TRAFICANT 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.

THE JOURNAL

The SPEAKER pro tempore. 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.

Mr. SKAGGS. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER pro tempore. The question is on the Chair's approval of the Journal.

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

Mr. SKAGGS. 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. Pursuant to clause 5 of rule I, further proceedings on this matter will be postponed until later today.

The point of no quorum is considered withdrawn.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair desires to announce that pursuant to clause 4 of rule I, the Speaker pro tempore signed the following enrolled bills on Tuesday April 2, 1996: H.R. 956, to establish legal standards and procedures for product liability litigation, and for other purposes; H.R. 1561, to consolidate the foreign affairs agencies of the United States; to authorize appropriations for the Department of State and related agencies for fiscal years 1996 and 1997; to responsibly reduce the authorizations of appropriations for United States foreign assistance programs for fiscal years 1996 and 1997, and for other purposes; H.R. 1833, to amend title 18, United States Code, to ban partial-birth abortions; and H.R. 2854, to modify the operation of certain agricultural programs.

APPOINTMENT AS MEMBER OF ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

The SPEAKER pro tempore. Pursuant to the provisions of section 3(a) of Public Law 86-380, and the order of the House of Friday, March 29, 1996, authorizing the Speaker and the minority leader to appoint commissions, boards, and committees authorized by law or by the House, the Speaker on April 2, 1996, did appoint the following Member of the House to the Advisory Commission on Intergovernmental Relations: Mr. PAYNE of New Jersey.

IT IS TIME TO GIVE WORKING AMERICAN FAMILIES A BREAK

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

Mr. CHABOT. Mr. Speaker, it is April 15, tax day. Today is the day that millions of Americans, as they struggle to file their tax forms all across this country on time, are reminded just how much they are being fleeced by the Federal Government. Every time taxes go up, the working people of this Nation get hurt.

But we will have an opportunity later this evening to help taxpayers, to put the brakes on the never-ending cycle of taxing and spending by voting for a constitutional amendment to prevent any Federal tax increase that does not have at least two-thirds of Congress supporting it.

Those of us who have cosponsored this amendment have a very simple objective: We want to make it harder for the Federal Government to take hard-earned dollars out of the pockets of working American families. For every 8 hours an American works, more than 3 hours go to pay taxes. If you work 5 days, Monday and Tuesday go to the Government; only Wednesday, Thursday, and Friday go to support your family.

Well, enough is enough. This has to stop, Mr. Speaker. It is time to give the American taxpayers a break. Let us do it today.

HAPPY TAX DAY

(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 Medicare trust fund had its first deficit in history, and the reason given was payroll taxes were less than expected.

Now, how could this be if there have been 8 million new jobs? Could it be that maybe these jobs are very suspect?

Check this out: Screw supervisor, nut former, ball sorter, needle straightener, bucket chucker, slitter, creaser, slaughter operator. Do not laugh. These are all jobs listed by the Department of Labor.

If that is not high-tech enough for you, how about sucker machine operator? How about carcass splitter. Just imagine, if we create more sucker machine operators and carcass splitters, we will balance the budget.

If anybody asks my opinion, I would have to say beam me up. I think these screw supervisors all work for the Internal Revenue Service. Happy Tax Day.

THE TAX LIMITATION AMENDMENT

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

Mr. BARTON of Texas. Mr. Speaker, later this evening we are going to have a historic vote, the first vote on a supermajority requirement to raise your taxes. The amend is to my left, and you will have an opportunity to read it.

When I was in the fourth grade at Travis Elementary in Bryan, TX, my fourth-grade teacher was Miss Andrews. That is where I learned fractions. I learned in the fall of 1960 that two-thirds is a higher fraction than one-half. If you can understand that concept, then you understand the tax limitation constitutional amendment.

Those of us that support it want to make it more difficult to raise your taxes. If you agree with that, then support the Congressmen who are going to vote for the Barton tax limitation amendment later on this evening on the floor.

SUPPORT THE D.C. ECONOMIC RECOVERY ACT

(Ms. NORTON asked and was given permission to address the House for 1

minute and to revise and extend her remarks and include extraneous material.)

Ms. NORTON. Mr. Speaker, this is taxpayers day. I have introduced a bill to make this tax reduction day for D.C. residents. I expect to have leadership support for the D.C. Economic Recovery Act, and I expect support and will seek support from my side of the aisle as well.

There are six reasons why this House should support this bill. One, the District is insolvent with no other revenue stream in sight.

Two, Congress has constitutional responsibility for this city, and no other, as this body constantly reminds me.

Three, this is the only city prevented by Congress from taxing commuters who use city services.

Four, this is the only city that pays for State, county, and municipal functions.

Five, this is the only city with no State to recycle income from wealthier areas.

Six, this is the only city that pays Federal income taxes. We are second per capita in the United States without voting representation in the Congress.

These are six good reasons to support the D.C. Economic Recovery Act.

SUPPORT THE TAX LIMITATION AMENDMENT

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

Mr. FUNDERBURK. Mr. Speaker, today is tax day. As I speak, literally millions of Americans are preparing their tax forms to meet today's deadline.

What many of them will discover is that they get to keep less while the Government gets to keep more. Since Bill Clinton took office, family income has flattened while taxes have gone up.

Today Members of this body will have an opportunity to do something about the over-taxation of the American people. Today we will vote on the Barton amendment to change the Constitution to require a two-thirds supermajority to raise taxes.

Considering the voracious appetite for taxes and spending habits of the Federal Government, I think this is a reasonable amendment. It is based squarely on the philosophy of limited Government espoused by the Founding Fathers. It is not time to put limits on the Federal Government. Support the tax limitation amendment.

GET REAL AND VOTE FOR REAL THINGS

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks and include extraneous material.)

Mrs. SCHROEDER. Mr. Speaker, I find this debate fascinating. Like it is really easy to get a majority to lift taxes here, like people just love to run out and vote to lift taxes. Well, that is absolutely ridiculous. That is the hardest vote ever.

What we really need to do is first have a budget here. I find it amazing that people are saying they are going to insist we have two-thirds to raise taxes. When we did not even get a majority to have a budget? And we are halfway through this fiscal year. Yes, we are on continuing resolution No. 12, halfway through this year.

And can you imagine a more inefficient way to run a government, a business, or anything? Every 2 weeks you have to come back here with your tin cup and rattle it, beg, tap dance, do whatever they ask you, to stay in business. We ought to be talking about doing something that we can do that is real. Until we get a budget for this year, I think it is interesting that we can throw all sorts of gimmicks around and say that is the solution. The solution is to get real and vote for real things.

SAY "NO" TO MASSIVE TAX INCREASES

(Mrs. SEASTRAND asked and was given permission to address the House for 1 minute and to revise and extend her remarks and include extraneous material.)

Mrs. SEASTRAND. Mr. Speaker, for the last 40 years, Congress has violated some basic economic principles on the way to creating a massive high tax, high regulation, big-spending welfare state. One of those principles violated is that you should live within your means.

Beginning with Arkansas in the 1930's, the States began to put constitutional limits on taxing and spending. This chart compares the growth in State spending in the 10 States that require a supermajority to raise taxes to those that do not.

Clearly, we can see that spending is more restrained in the supermajority States.

This is exactly what we need at the Federal level—a serious commitment to spending restraint and the ability to say "no" to massive increases in Federal spending, Federal programs, and Federal benefits.

Mr. Speaker, it is time to follow the lead of the 10 States that require a supermajority to raise taxes. And it's time for the Government to do what every American family does—live within its means.

TAX DAY 1996

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

Mr. SHADEGG. Mr. Speaker, on tax day 1996, today, we have a chance to amend the U.S. Constitution to require a supermajority to raise taxes. The last speaker on the opposite side of the aisle ridiculed the notion that it was difficult to raise taxes. In fact, she said that it is very hard to raise taxes, one of the most difficult of all votes.

Since 1980 this Congress has raised taxes six times. Each of those times it has increased the burden on the average American taxpayer. In my lifetime, that burden has been increased 1,200 percent. I do not know a constituent who believes they are getting 1,200 percent more out of the Federal Government today than they were in 1950.

The premise underlying this constitutional amendment is straightforward. It is one of fiscal responsibility. If you believe this Congress must be more responsible about spending the money it has, then you believe you must vote for this constitutional amendment, because by making it somewhat more difficult to take taxes out of the pockets of the American taxpayer, we will force ourselves to spend the money we have more prudently.

I urge passage of the amendment.

CONGRESS' SINGLE LARGEST MISTAKE

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

Mr. SAM JOHNSON of Texas. Mr. Speaker, in 1909, the Congress made the single largest mistake in the history of this country. It passed the 16th amendment to the Constitution, which allowed Congress to tax income. That single act succeeded in creating a tax system that is economically destructive, impossibly complex, overly intrusive, unprincipled, dishonest, unfair, and inefficient.

This country deserves a change. We need a tax system based on a vision of America that places the individual, not the government, at the center of society.

□ 1415

We deserve a system that will increase economic growth, create jobs, expand opportunities, and allow people to achieve the American dream. We need a system that promotes freedom.

Two things need to be done. One, we need to get this two-thirds vote to increase taxes; second, we must repeal the 16th amendment to the Constitution. Americans do not want, do not need, and do not deserve the IRS.

SPECIAL ORDERS

The SPEAKER pro tempore. (Mr. EWING). Under the Speaker's announced policy of May 12, 1995, and under a previous order of the House,

the following Members will be recognized for 5 minutes each.

SUPPORT THE TAX LIMITATION AMENDMENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. COX] is recognized for 5 minutes.

Mr. COX of California. Mr. Speaker, in Bill Clinton's first term, he and the liberals who then controlled the Congress passed and signed into law the largest tax increase in American history. Since that time, we have still had no relief. It is April 15 today, and many people feel this pain.

The President, Bill Clinton, vetoed the middle class tax cut passed by the new Congress, and as a result, even though last year the gross domestic product, the measure of our economy, grew by only 2 percent, individual income taxes collected by the Federal Government grew 8.5 percent. Taxes are growing and growing inexorably, year in and year out. Today, the average American has to spend 3 hours out of an 8-hour day working just to pay taxes.

Ask yourself this question: How much do you spend in total on your home mortgage, on your rent, on your electricity, on your telephone? How much do you spend on your suits and your dresses and your other clothes? How much do you spend on restaurants and groceries?

Over the whole year, add all of those things up, and if you are like the average American, whether you are rich or not, even if you are just a working American, you pay more in taxes than you pay on all of these things, food, clothing and shelter, combined; 35 percent more in taxes.

It has not always been this way. Our taxes have been growing at an amazing rate just within our lifetimes. Many people here are veterans of World War II. If you are not a veteran of World War II, almost certainly your father is. When Pearl Harbor was attacked, only one out of every nine Americans even had to file an income tax return. That is the America our parents knew.

I am 43 years old. When I was a kid growing up in the Midwest, the average American family like mine paid income tax at a rate of 3 percent. Today, April 15, 1996, most of our constituents can only pine for such days as their own rate of tax has grown more than 1,000 percent.

While the tax burden on ordinary Americans has been growing and growing over the last 40 years of liberal control of the Congress, so, too, has runaway deficit spending. All these higher taxes have not balanced the budget. That is for sure. They have only promised that we will have more spending. They have provided an excuse to spend still more.

In fact, according to the Congressional Joint Economic Committee, throughout the postwar period every dollar in higher taxes has provided an excuse for $1.59 in higher spending. In other words, the higher the taxes, the higher the spending.

To rein in higher spending, this House has given two-thirds approval to a constitutional amendment to balance the budget. But if we are going to amend the Constitution to require a balanced budget and the supermajority vote to break that budget, then we must also take care that this, the balanced budget amendment, does not provide a new excuse, a constitutional justification, to raise taxes.

Colleagues, our taxes are too high. Spending is too high. Those who contend otherwise or who say that merely greater institutional will is necessary stand athwart 40 years of liberal Congressional history.

For once in 40 years, liberals do not control this body. For once, we have the chance to add a balanced budget amendment to the Constitution. And for once we have a chance to add a tax limitation amendment to the Constitution at the same time.

For once, let us do the right thing. Let us do the right thing for our country, for our children, and for our grandchildren, and vote "aye" on the tax limitation amendment later this evening.

CONSTITUTIONAL AMENDMENT ON TAX INCREASES NEEDED

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona [Mr. SHADEGG] is recognized for 5 minutes.

Mr. SHADEGG. Mr. Speaker, today on this floor we will debate the issue of tax limitation. Many editorial pages across the country have criticized this concept. They say it is tampering with the Constitution. They suggest that it is dealing improperly with the sacred concept of majority rule. Indeed, they say and suggest it is a dangerous proposition.

I suggest to the contrary. Indeed, I think history proves to the contrary.

There are 10 States in this country which now have tax limitation amendments. My State, Arizona, is one of those States.

In Arizona, we added to our Constitution in 1992 a supermajority requirement very much like the one we will debate on this floor. It allows revenue neutral tax reform, but it says that when the Government seeks to raise taxes, to increase the Government tax bite out of the pockets of average citizens yet one more time, there ought to be not the narrowest of agreement on that idea, but a broad consensus. We ought not to foist down the throats of American taxpayers yet one more increase in taxes without first having developed a broad base of support for the belief that that increase in taxes is necessary.

Now, why? Where are we today? What has the history been? Well, the history is that Government is a growth industry, that throughout my lifetime this Government has grown and grown inexorably, taking an ever larger bite time and again out of the pockets of the American taxpayers.

Six times since 1980 alone we have raised taxes in this country. In that time period, we have enacted some 4,000 tax changes. But those six specific tax increases have been passed by this Congress. And on what basis?

Well, the most striking of them was the most recent, the 1993 tax increase, the single largest tax increase in this Nation's history. By what margin did it pass? By the barest of possible margins. Had simply one vote in this body switched, it would not have passed. We would have not exacted that largest tax increase in U.S. history from the taxpayers of this Nation, by the switch of one vote in the U.S. House of Representatives.

But the contrast is even starker when we look at our body across the way, the U.S. Senate. There this measure was in a dead heat, a 50–50 tie. Not even a simple majority of U.S.Senators agreed on that massive tax increase. So the Vice President stepped in and he broke the tie, and we enacted that massive tax increase.

Now, for those who say we ought not to do this, we ought not to go from a simple majority to raise taxes, 50 percent plus one, to two-thirds, because somehow it offends notions of majority rule or of constitutional sanctity, let me point out that at 10 different places in our current U.S. Constitution, a supermajority is required. But let me also point out that 3 of those 10 were not in the original requirement. Three times since the birth of this Nation, three times since the adoption of our Constitution, we have added provisions requiring a supermajority for approval.

Why? Because there can indeed be a tyranny by the majority of the minority. Indeed, if you reflect on the premise, if you think about the reason for the Constitution itself, it is to guarantee certain rights, but, most importantly, to guarantee to the minority rights that they not be run roughshod over by the majority.

Let me cite just one example of such an instance in the tax arena. In 1990 this Congress passed the so-called luxury tax on expensive boats and automobiles and airplanes. The idea was we will punish the rich; we will make them pay a larger share of the tax burden of this country.

Indeed, it passed by the barest of majorities without a supermajority. But what did it do? Did it punish the rich? It did not. It punished the poor. It punished working Americans. Go anywhere

in this Nation where we were leading the world in the manufacture of yachts, and you will discover skilled workers, skilled carpenters, skilled fiberglass layers, skilled people in the marine industry, who lost their jobs, whose jobs were wiped out because of the tyranny of the majority, which said we ought to enact a tax on those items.

Mr. Speaker, I urge the passage of this amendment. It is not radical, but, rather, it goes a significant way towards restoring the balance that the Founding Fathers envisioned in our U.S. Constitution.

DETERMINING TAXES A RESPONSIBILITY FOR POLITICIANS

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Colorado [Mrs. SCHROEDER] is recognized for 5 minutes.

Mrs. SCHROEDER. Mr. Speaker, welcome to Pander Theater. First of all, I want to say to people that the next hour is going to be a very thoughtful presentation that I hope every American citizen listens to. The gentleman from Colorado [Mr. SKAGGS] and the gentleman from Virginia [Mr. MORAN] are two of the most thoughtful Members here. Please, I hope you listen to it.

Look, I am leaving at the end of this term, so I can speak a lot more freely. What you are going to hear today is going to be absolutely incredible.

Let me just give you the rule of politics that everybody ought to understand. Whether you vote for more B-2 bombers or more Head Start, whether you vote for more agricultural subsidies or more environmental cleanup, whether you vote for more prisons or more student loans, whether you vote for more highways or more education funds, more, more, more, and all of those you know who you make happy. You know the groups you make happy when you tell them you did this, and that is how you get reelected.

Whenever you vote for more taxes, you make everybody mad; everybody mad. So if you like what Juan and Evita Peron did to Argentina, you are going to love what happens if we get this through today. We are taking the Argentine model, which is give something to everyone, let us vote for all of you to have presents, and it will take a two-thirds vote to ever get enough people to vote for to pay for it.

What this is about is get your credit card back out, the Congress is ready to go back into Reaganomics II. If we do not learn from history, we are condemned to repeat it.

You remember the Reagan program of 1980. They said we are going to increase defense, cut taxes, and balance the budget. We did two out of three. We increased defense, we cut taxes, and the budget went right through the ceiling. The deficit went right up.

Now, we on this side of the aisle have taken some very hard hits. Without one vote from that side of the aisle we bellied up to the bar and started paying some of this off. We have cut the deficit in half. I wish it were down to zero. I would do more. We have cut it in half. How did we do that? We had to have a little increase in the gasoline tax. I am sure all of you felt that. None of us liked that, a few cents in the gasoline tax.

But we got the deficit paid down by half, because we realized we had a huge party in the eighties. Everybody had a great time. And we left our children to be the poorer-scoopers behind the horses after the parade down the street.

□ 1430

That was not fair. So today, because it is tax day, we are going to have like a Hallmark card legislation day. This is tax day, so we are all going to vote on a very tough issue. Yes, sir, we are going to come down here and say it takes a two-thirds vote to raise taxes. Of course, it only takes 50 plus 1 to do spending.

So the game I have seen around here since I have been a Member of Congress is people vote for all the spending programs and then they vote against the taxes, and you are guaranteed to have asbestos underwear that will get you through every election from here on because you made everybody happy and you voted for the spending that each of these groups wanted. They are the only ones that track it, so you made all of the individual groups happy, and then you made all of the citizens happy because you vote against all the spending. The only people who are not happy are the people who are going to inherent the debt. Yes, blessed are the young for they shall inherit the national debt.

We are saying that because we are so prone to run down here and vote for taxes any time we get a chance, this body just cannot wait to vote for more taxes, that what we have to do today on tax day is lift the ceiling to two-thirds to be able to do it. Ladies and gentlemen, if you believe that this body wants to have a tax will every week, that we cannot wait to vote for it every week, that we are so politically stupid we honestly think that you cannot find out when we vote for tax increases and we are going to love voting for more and more and that we have to put this constitutional restraint upon ourselves, I do not know where you have been. That is absolutely not true. Not one of these votes is popular.

To add those few little cents to the gasoline tax to start bringing this debt down, it took arm twisting on this side like mad. We did not have one extra vote of what we needed, and it took the Vice President of the United States to get it through the other body. Now, that is how tough it is. But if you want a culture where we spend, spend, spend and then we put it on a credit card, if we want to go back to seeing the debt go back up before we got it all the way down, you are in great shape. That is why I pointed out when this body cannot even get 51 percent to agree to a budget for this year, they have a lot of nerve bringing this up, and I really hope we get some sense in this debate.

I thank the two gentlemen who will be leading this.

THOMAS DOLUISIO AND BILINGUAL EDUCATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Wisconsin [Mr. ROTH] is recognized for 5 minutes.

Mr. ROTH. Mr. Speaker, I appreciate being allowed to take this 5-minute opportunity that we have at this time during the day.

I want to tell you about a brave and dedicated school administrator, Thomas Doluisio, who is a State school superintendent in Bethlehem, PA. In his district, he has shown some real leadership in Bethlehem, and he has enjoyed a dramatic improvement in academic success and progress. It is very important, I think, that we not only talk about the negative things that happen in our country and many times in the school system, and also the positive.

Here is an example of a person who has taken tremendous individual initiative and brought up the test scores. What did Doluisio do? He led the fight against the bilingual education bureaucracy and made it possible for his district's Spanish-speaking students to be immersed in English speaking classrooms. Here is what happened. He noticed that the typical student in his district spent 7 years in bilingual education classes before being moved or the student was moved to a regular class being taught in English. Children in kindergarten spent entire days without hearing a word of English and yet administrators were somehow perplexed when these students later scored very poorly in English tests.

Doluisio knew that the system was broken and he knew how to fix it. Barely a year after the school district switched to immersion from bilingual education, improvements have already started to show. Margarita Rivas, a Bethlehem parent, is praising the school superintendent because she said, now our children can speak English and they are able to compete in America so they too can rise and advance on the ladder of opportunity in America.

Mr. Doluisio did what any good administrator does. He recognized a problem and he started to fix it. But he also had the courage to take on an entrenched bureaucracy, and he won. For that, he was officially condemned in

the 1994 convention for the National Association for Bilingual Education. He did, however, win the respect and admiration of Bethlehem parents, whose children are now better able to be prepared and to complete for jobs and pursue their share of the American dream. You know, I suspect that Thomas Doluisio will take that approbation and that approval and that endorsement over any endorsement from the National Association for Bilingual Education any day of the week.

The families of Bethlehem, PA, throughout the area are lucky to have a school superintendent that will fight the system in order to ensure that their children can learn the language of opportunity in America. It is time Congress takes up this fight by ending almost three decades of failed bilingual education programs and bring our educational focus back on teaching English again.

Whether it is Newsweek, whether it is a daily paper, no matter who has investigated this issue over the last 30 years, has said that changes have to be made. I am delighted now that we have a commitment that we are going to be addressing this issue in the near future here in Congress.

Let us help the brave men and dedicated men and women, like Thomas Doluisio, by passing H.R. 739, the Declaration of Official Language Act.

I thank the Speaker and the Members for yielding me this time.

PROPOSED CONSTITUTIONAL AMENDMENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Colorado [Mr. SKAGGS] is recognized for 60 minutes.

Mr. SKAGGS. Mr. Speaker, let me just say, I have discussed with the gentleman from Texas [Mr. BARTON], who I believe is scheduled to have the hour special order following this one, and I think the country will be well served by a real give-and-take kind of debate on this very important issue of amending the Constitution to require a two-thirds vote by both the House and the Senate.

So I expect we are going to be yielding back and forth a lot for some questions and answers on both my time and the time of the gentleman from Texas later on. I hope it will be a useful, enlightening and serious discussion about this proposal which is way past due, because we have not had a serious, enlightened and careful discussion of this before it gets to the floor later today. In fact, the procedures that the majority has followed in scheduling this matter for the floor on April 15 really makes a mockery of the regular order that ought to be followed in bringing something of this substance and moment to the House for a vote.

Mr. Speaker, I spoke about that a little bit earlier. I am not going to belabor it again now. I do want to remind my colleagues that I, because of the abuse of process that the majority has followed in bringing this up without any vote in committee, any markup in committee, any time for Members to really examine it, I really think all possible procedural rights ought to be exercised, at least at this point in the process. But let me just talk for a moment, then I want to invite the gentleman from Virginia [Mr. MORAN], to engage on this with me, as well, talk for a moment about what, for me anyway, is one of the most central matters raised by this proposal. That is our reliance or not on the fundamental principle of majority rule in this Republic of ours.

I do want to commend the sponsors of this proposal for one thing. They recognized that if we are going to require supermajority votes to deal with any particular kind of legislation, in this case taxes, then you have got to put it in the Constitution. I think, in effect, they concede that the attempt made by the House a year ago January to do this by a mere change in House rules is constitutionally improper.

But I oppose this amendment, as I say, primarily because it violates what James Madison, the principal architect of the Constitution, and of its defense during the debate on ratification, what he called the fundamental principle of free government, and that is the principle of majority rule.

The Constitution makes very few exceptions to that principle, and none of them has to do with the core ongoing responsibility of governance, which includes, among other things, of course, how we raise the revenues necessary to fund the responsibilities that the Federal Government has. I believe we should be very, very wary of extending any of the existing supermajority exceptions to other areas, especially if it would complicate the essential responsibilities and competency of the Government.

Mr. Speaker, I think we need to be particularly aware of the fact that it is a logical corollary of any time we require a supermajority to do anything that we are giving effective control on that issue to the minority. You cannot have it any other way. Under this proposed amendment, that majority could be comprised of as few as 34 Members of the U.S. Senate, representing less than 10 percent of the American people. They would have effective power to control the Government's revenue and tax policy.

Now, that is bad enough as a matter of basic democratic theory and philosophy, but I think, putting that to one side, if we really look at what is likely to happen were this proposal to get into the Constitution, we will be amazed at the absurdly impractical consequences that will flow from it, some intended, perhaps, I suspect many of them unintended.

Let me just take a look at some of those that seem to me to be most significant. First of all, if this were in the Constitution, it would for all practical purposes lock into law whatever the then-current tax structure of the country might be at the time of the amendment's ratification, because I would suggest to you that it will be extremely difficult to meet the two-third vote requirement necessary to make any significant overhaul of the tax system. There may be some tinkering around the edges that could command two-thirds.

So if you like the tax system the way it is now, or if you have supreme confidence that some future Congress is going to get it just right before this amendment might be ratified by the States, then sure, embrace this. I simply do not have that level of confidence, certainly in the way the tax laws now are, or in the supreme wisdom of some future Congress that may adopt some reform or overhaul of the Tax Code to have gotten it just right later. But we should be aware that we are really buying into whatever the then-state of affairs happens to be at the time of ratification.

I think another consequence of this proposal would be to greatly complicate our efforts to balance the budget, which ought to be the central goal that we unite behind right now, particularly complicate the efforts to balance the budget as it relates to changes that will reduce the growth in entitlement programs. We all know that is where the money really is, if we are ever going to get this deficit problem under control.

Another reason that I think we ought to think long and hard and then reject this proposal is that as with the current rule of the House requiring, except when it is waived, which is always, requiring a three-fifths vote whenever there is a tax increase, this constitutional proposal is vague and will almost certainly generate confusion and litigation and, I believe, basically put the validity of most future tax legislation on hold for whatever period of time it takes for the courts to go through and parse out the language of this proposed amendment, deciding what is meant by some "reasonable" act of a future Congress to define what is meant by "de minimis" and any number of other vagaries that are inherent in this proposal.

□ 1445

I have got a number of other points that I may get around to as the debate continues this afternoon, but my colleague from Virginia, Mr. MORAN, has really put in a great deal of time and effort in examining this proposal. I know he has a lot of things on his mind about this, and I would be pleased to yield at this time.

Mr. MORAN. I thank my very good friend from Colorado for yielding to me

and for his valiant efforts to resist the political temptation to vote for a constitutional amendment which is really little more than political grandstanding.

Now there are any number of reasons that Members could choose to vote this down. They could vote it down because we already have a rule that requires a three-fifths vote to increase taxes and every time that it has applied to legislation the Committee on Rules has waived that rule.

They could vote it down because it is bad public policy. It says essentially that whatever is in the Tax Code now stays because it is going to be almost impossible to change it. It is going to be impossible to close the corporate loopholes. Even things like capital gains reductions which are expected to increase revenue would be in violation of this legislation which says that—a piece of legislation that increases revenues by more than a de minimis amount requires a two-thirds vote.

They could vote it down because this debate has already occurred. This debate took place during the Constitutional Convention of 1787. Article IX of the Articles of Confederation required a supermajority vote to increase taxes, and it was found that it did not work. So they had to go back. They had to correct it because they realized that on a tough vote it is hard enough to get a majority of Members to do the courageous and right thing, let alone two-thirds of the body.

Mr. SKAGGS. Could I engage the gentleman just on that point because, you know, you stop to think of it, we would not have this Constitution to amend had it not been for the fact that a supermajority provision in the Articles of Confederation, just like the amendment that the proponents are proposing, was found to completely paralyze the then new National government of America. Is that not correct?

Mr. MORAN. It is absolutely correct. You know, I think that this amendment in some ways shows almost a contempt for the wisdom of our Founding Fathers. They tried to do what this does because they knew the political expediency of making it very difficult to increase taxes. But it brought our country into gridlock, and so that is why they had to go back in 1787 to say the only way we are going to move forward and realize our potential as a nation is if the majority rules; in other words, if every Representative has an equal vote. If you say that you require two-thirds, then the majority does not have an equal vote. The people who have a disproportionate vote are those in the minority because it only takes one-third plus one to prevent the will of the majority from becoming law.

Now this is particularly applicable in the Senate. In the Senate, as you know, every State, no matter how many people are in that State, have two Senators. There are 17 States that represent less than 10 percent of the American population. Those 17 States just happen to be represented by 34 Senators, one-third plus one. So that 10 percent has a disproportionate influence upon the course of legislation.

Now imagine, why should 10 percent of the people be represented by people who can thwart the bill of the majority of 90 percent of the population? That is not democracy, that is not equal representation. When you get into issues like a gas tax or any number of things that might affect rural areas more than urban areas, this becomes particularly apt.

Mr. SKAGGS. Let me interrupt the gentleman on this point as well, because I think it really bears looking at some concrete examples. As the gentleman has pointed out, a piece of legislation could pass the House, the body that directly represents people in this country, by an overwhelming majority, unlikely in the case of a tax bill because they are so difficult to pass, but let us say for the sake of example, and then be held hostage by 34 Senators even though 66 Senators might also agree that it is in the national interest. Or in a close case in the House, 146 of our colleagues here could stand in the way of the will expressed by 289 of our colleagues in the House, the one-third plus one that the gentleman points out.

Now is that really the kind of dramatic shift away from the fundamental principle of free government that Madison wrote about so persuasively over 200 years ago that is in the national interest? I fail to see the point.

Mr. MORAN. I think obviously the answer lies in the question. It is not. It is an aberration of what our Founding Fathers intended, and I think this is a terribly important point. You know, if I were a lobbyist for a corporation that was using a loophole to get billions of dollars of tax preferences, and we can name any number of them, I do not think we need to be specific, but we know that there are about $400 billion of tax preferences in our Tax Code where people can make a legitimate argument of uneven treatment. But if I were a corporation or a wealthy individual; for example, if I was one of these very wealthy individuals who decided that I did not want to pay taxes on gains I had made in this country, so I denounced my citizenship and decided I am going to claim my citizenship offshore, some island or whatever, and even though I can still live here 6 months, or 1 day less than 6 months, or whatever the law is, I would know the law, and in fact I do not have to change my standard of living or my annual vacation plans, I just decide I am no longer an U.S. citizen. I denounce my citizenship, I live someplace else and, thus, save billions of dollars in total on gains made in this United States.

We tried to get—and I will just finish this statement—we tried to get legislation through that would have saved $3.6 billion over 10 years just from a handful of wealthy families who denounced their American citizenship. We could not change that, we could not do the people's will to make them pay taxes on gains incurred in this country because all they would have to do is to go after those few folk over in the Senate, if they could not do it in the House, and, simply, they do not have to deal with the majority, with 67 percent. All they have to do is deal with one-third, and focus on them, and thwart the will of the majority.

Mr. SKAGGS. Well, certainly in my frame of reference $3.6 billion is not a, quote, de minimis, unquote, amount, which is the exception made on this proposed constitutional amendment. So, if I understand the gentleman, it would require the concurrence of two-thirds of both the House and the Senate even to get at such an egregious flaunting and flouting of fairness in our Tax Code as this expatriate tax break provision that you so well described.

You know, one of the other ironies in this is, because of the way this proposal is worded in talking about not raising internal revenues by more than a de minimis amount, rather than not raising tax rates or tax base, that we could end up being hung up over even passing a capital gains tax cut because certainly the advocates of a capital gains tax cut argue that it would increase revenues in some of the economic forecasting models that are used. So it seems to me that we are in the absolutely crazy situation in which it could even require two-thirds of the House and the Senate to adopt a cut in rates that the advocates claim would result in an increase in revenues.

Is that the way the gentleman reads this?

Mr. MORAN. It is exactly the way I read it, and it is the way that Mr. DREIER, who is one of the leaders on the Republican majority, reads it as well. In the Committee on Rules, consideration of this legislation said, well, what a minute, the way this is worded is that if you cut capital gains, and it does as we say that it does, we purport that it will substantially increase revenue in the first couple years, and that is probably true. As far as I am concerned, I think it probably does do that. In the outyears it may be a more problematic situation, but in the initial years people are going to sell their stocks and assets more quickly. It will raise revenue, but that means that you are going to have to get two-thirds of this body and two-thirds of the Senate to approve it because it increases revenue certainly by more than a de minimis amount.

Talk about the law of unintended consequences.

Mr. SKAGGS. If I may interrupt the gentleman again, as I mentioned at the outset, the gentleman from Texas, who is the principal sponsor of this proposal, and I agreed we would try to have a free exchange. I see he is on his feet. Perhaps he can enlighten us as to what that wonderful lawyer Latin phrase "de minimis" really means and how some future Congress will be able to make some sense out of this.

Mr. BARTON of Texas. I thank the distinguished gentleman from Colorado for yielding, and I am going to make two points, and then I am going to yield back since it is your time. I wanted to focus on this, the majority argument that you were speaking of, but before I do that I want to directly answer the question on de minimis. It is our intent that de minimis is equal or less, and in an economy that is $6 trillion, if you want to put a figure on it, in the implementation language and in the colloquy that we will have with the chairman of the Ways and Means Committee later this evening, we are going to say de minimis is one-tenth of 1 percent or less. So that is the number, but de minimis is defined as negligible, or minimal, or having little or no value.

Mr. SKAGGS. One-half of 1 percent of GDP or one-tenth of 1 percent of GDP—or of Federal revenues?

Mr. BARTON of Texas. One-tenth of 1 percent of the existing revenue that is being generated by the current tax system.

Mr. SKAGGS. But would the gentleman agree there is nothing to prevent some future Congress from coming up with whatever arbitrary definition of de minimis it might see fit to impose?

Mr. BARTON of Texas. That is certainly true. A future Congress could change the implementation standard.

Mr. SKAGGS. Or is that the case, because it talks about reasonable legislation. Are we going to have the courts deciding whether a Congress has reasonably exercised its judgment about what de minimis means?

Mr. BARTON of Texas. This constitutional amendment, as all constitutional amendments, are subject to court review, which as a strict constitutionist I know that the gentleman from Colorado would support that.

Mr. SKAGGS. But let me yield to the gentleman from Virginia.

Mr. MORAN. If I might suggest to my friend from Texas, the Constitution is not a rough working draft. You know, here we are, for the first time you are telling us what the words "de minimis" mean, which you want to put into the Constitution. Well, what you are saying is, as I calculate it, anything that is less than $1½ billion, $1,500,000,000 could be considered de minimis. Is that——

Mr. BARTON of Texas. That is over an extended period of time based on the existing Tax Code. But obviously the gentleman from Virginia can go to the Webster's Dictionary and—we picked the least offensive word that we could to put in. The intent is to, in a broad sense, keep the tax burden, the Federal tax burden, on the American people in 19 percent or less, which it has been historically.

Mr. SKAGGS. As someone who studied Latin for 4 years, I do not find de minimis offensive, I just find it vague and confusing as something to put into the U.S. Constitution.

Now would it not have been preferable for this to go through the committee process so that we can really examine exactly what these terms mean before we vote on putting them into the Constitution?

□ 1500

Mr. BARTON of Texas. Mr. Speaker, If the gentleman will continue to yield, I think there is some validity to that concern. We did have one hearing at the Committee on the Judiciary subcommittee. I certainly was not opposed to hearings at the full committee. For whatever reason, those hearings were not held.

I will point out, and the gentleman knows as well as I do, as part of the balanced budget debate, we have had debates on the House floor four times in which the tax limitation balanced budget amendment was one of the amendments that was voted upon. As has been pointed out in the opening statements of the two gentlemen in this special order, we did have a short debate on the three-fifths vote for an income tax increase as a rule change at the start of this Congress. It is not as if this subject has never been debated on the floor.

I would also point out, Mr. Speaker, and the gentleman knows this also, this is not physics and rocket science. The American taxpayer very quickly grasps that two-thirds is a higher fraction than one-half.

Mr. SKAGGS. Reclaiming my time, Mr. Speaker, if the gentleman is making the claim that yes, this has great symbolic value as a bit of political rhetoric, I will concede that. But why do we have to do this, making such a rush of what ought to be the normal deliberative process that the House should go through, especially when we are talking about amending the Constitution?

As the gentleman knows, the language that we are supposed to vote on later today has never been the subject of a committee hearing or markup. In fact, it was introduced on the Thursday night before we left town for 2 weeks on Friday a couple of weeks ago. Is that not an extraordinary rush to judgment on something as complex and serious as amending the Constitution? And is not in fact the reason that this did not go to committee that the Committee on the Judiciary was seen as unwilling to mark up and report a proposal like this out?

Mr. BARTON of Texas. Mr. Speaker, if the gentleman will continue to yield, I will concede the gentleman's point that more debate at the committee would have certainly been in order. I am not going to deny that. I will point out, though, that the day after the vote on the tax limitation balanced budget amendment, I believe in February 1995, the Speaker of the House said that we would have a vote on the tax limitation amendment as a stand-alone amendment on April 15 or near April 15, 1996, so the concept has been out there for a year.

We certainly have had numerous hearings on it in some of the think tanks and things of this sort, so it is not as if this is a brand new concept that people have trouble grasping.

Mr. SKAGGS. If I may, Mr. Speaker, is it not correct that this proposal, the one we will vote on in the U.S. House of Representatives later today, perhaps——

Mr. BARTON of Texas. Hopefully today.

Mr. SKAGGS. That this language never existed on paper until the Thursday before this 2-week break and has never been the subject of a hearing in any committee of the Congress, much less being marked up by the committee of jurisdiction, the Committee on the Judiciary? Is that not correct?

Mr. BARTON of Texas. That is not quite correct.

Mr. SKAGGS. What is wrong with that statement?

Mr. BARTON of Texas. It was the subject of a hearing in the Committee on Rules when we went to the Committee on Rules to ask for consideration today.

Mr. SKAGGS. That was the morning after it was first introduced, is that correct?

Mr. BARTON of Texas. That is not the Committee on the Judiciary. But if I could, I would like to talk about your principle of majority rule. I think you said that there were 10 States, or 10 percent of the population had 34 Senators. I am going to just read the presentment clause in the Constitution. It says: Every bill shall have passed the House of Representatives and the Senate before it becomes a law, be presented to the President of the United States. "Shall have passed." It does not say "shall have passed by a majority," or "shall have passed by a supermajority." It just says "shall have passed."

In the original Constitution there were 7 two-thirds supermajority requirements: Conviction in impeachment trials, article II, section 3, clause 6; expulsion of a Member of Congress, article I, section 5, clause 2; override of a Presidential veto, article I, section 7, clause 2, quorum of two-thirds of the

States to elect the President, article II, section 1, clause 3; consent to a treaty, article II, section 2, clause 2; proposing constitutional amendments which is what we are doing today, article V; and State ratification of the original Constitution, article VII.

Since that time, there have been 3 additional two-thirds supermajority vote requirements added to the Constitution, which brings the number to 10. The purpose of a supermajority requirement, in my opinion, and if you read the Federalist papers and some of the writings of James Madison, it was felt that if the issue was large enough that it needs more than a slim majority, that you really need consensus, you need a supermajority or a two-thirds vote.

Certainly in today's era, it is this gentleman's opinion that raising taxes any higher than they already are is one of those occasions that we need to amend the Constitution and require a supermajority.

Mr. SKAGGS. Let me just say, I believe the gentleman's recitation proves my point, because none of the examples that the gentleman cites for requiring supermajorities has anything to do with the presentment clause. None of those examples involves the presentment of legislation to the President for his approval or disapproval or veto. In fact, they all have to do with extraordinary matters in the course of conducting the business of the country. None of them has to do with the core legislative responsibilities of the Congress. And in fact, it is very clear from the fact that the framers, during the course of the Constitutional Convention, considered and rejected several times proposals to attach supermajority requirements to particular legislative matters, that it was not contemplated by them that the presentment clause could be some kind of excuse, covering the advisability of any supermajority requirement for regular legislative business.

So the gentleman's points are accurate as far as they go. They simply are irrelevant to the validity or not of the argument about the importance of majority rule as a central tenet of free government.

Mr. MORAN. Mr. Speaker, if the gentleman will continue to yield, I thank my friend for underscoring that point. In fact, it might strike one as the height of arrogance to think that after our Founding Fathers put together a Constitution that has withstood the test of time and made us the strongest country in the world economically, socially, and militarily and every other way, that after they debated this issue at length and decided several times that a supermajority would not work to come up with the revenue necessary to finance the expenses of our Government, now we want to come up, without committee hearings, and to second-guess, to change their decision. It strikes me, Mr. Speaker, as not particularly wise or, more importantly, consistent with the intent of our Founding Fathers.

Mr. Speaker, we may sometimes be in the posture of taking the less conservative approach. I think right now we are taking a very conservative approach. Do not treat our Constitution as a rough working draft. Recognize the wisdom that went into this Constitution.

My friend, the gentleman from Texas, has said that de minimis, the term de minimis was chosen because it was the least offensive term. I do not think that really ought to be the criteria by which we make legislation.

When we define it now, for the first time that I am aware of, as one-tenth of 1 percent of the Federal gross revenue, which is about $1.5 billion, I need to ask the gentleman, does this apply to that expatriate loophole where a few families can save themselves millions and millions of dollars by simply renouncing their American citizenship? That is a loophole that I would hope many of us would want and eventually will be able to close. Does that preclude us from being able to do that with a majority vote of this House?

Mr. BARTON of Texas. Mr. Speaker, if the gentleman will yield further, first of all we are not here to either praise Caesar or bury Caesar, Caesar being the current Tax Code; we are here to come up with an amendment to make it more difficult to raise taxes.

I guess what I might have said when I said "least offensive," we wanted to use a term that was as close to revenue neutrality as possible, without saying revenue-neutral, because it is physically impossible if you want to change the entire tax system or you want to monitor it or modify it in some way, to speculate down to the penny that the change is not going to increase taxes. So de minimis was as close to revenue-neutral in terms of terminology as we could get.

Mr. MORAN. If I could suggest to the gentleman, $360 million is not exactly getting down to the penny. That is the amount of money that we would recoup if we simply made people pay taxes on gains generated here in the United States, rather than being able to denounce their citizenship and claim another residence to avoid taxes. That is $360 million annually, $3.6 billion over 10 years. But you are saying that if it is less than $1.5 billion, it does not count, it is de minimis. I do not know a lot of American families that consider $1.5 billion de minimis.

We need to know how many of these tax loopholes are going to be precluded from being closed with your legislation.

Mr. BARTON of Texas. If the gentleman will continue to yield, this legislation does not preclude any tax loophole from being closed. This gentleman from Texas is not on the Committee on Ways and Means. I believe each of you two gentlemen is. I may be incorrect in that assumption. So you and the other members of the Committee on Ways and Means can do whatever you want. If you pass a tax law that has the effect of raising the tax burden on the American people more than a de minimis amount, it will take a two-thirds vote. If you want to change taxes, cut taxes, you want to lower revenues, you can do that with a simple majority vote.

Mr. SKAGGS. Mr. Speaker, let me look at another recent example in our collective experience here earlier in this Congress. When we took up the majority's reconciliation bill last fall, I believe as I recall, there was a significant revenue-raising component to that, including changes in the Medicare part B premium.

I happen to think that we are going to need to deal with that aspect of the Medicare Program in order to put it on a sound financial footing eventually. I was not one to criticize that very difficult political choice that the majority brought to us at that time. But the amount of money involved in that Medicare proposal, I think over whatever economic timeframe you want to look at, was significantly more than the expatriate tax loophole involves, some tens of billions of dollars. The reconciliation bill including that provision did not muster anything close to two-thirds vote.

I think therein lies the problem, and the responsibility that we have to examine the consequences of what you are proposing that we do, not merely to discuss this in terms of the abstract notion that we are fed up with high taxes, but is this workable?

If we are going to have a deal with entitlement reform fairly and sensibly, which by most accounts involves asking wealthier Americans to pay more for their health care if they are able to, we are doing to be facing, if this is in the Constitution, a requirement of getting two-thirds. We know how difficult it is to pass something like that, because it is the political third rail of American politics; how difficult it is to get a simple majority. If we have to get a supermajority to deal with the wealthy end of things, and we cannot, what will be the course of least resistance? It is going to be cutting the benefits on the poor, which we can do by a simple majority.

I invite the gentleman's response to that conundrum.

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

Mr. SKAGGS. I yield to the gentleman from Arizona.

Mr. SHADEGG. Mr. Speaker, the fundamental essence of the gentleman's question is, is this workable. I believe the answer is, indeed, clearly it is workable. I think the language or the

points that you make now highlight the difference between that language which is before this body today and the language of the rule, because what we have done is to let go of the original language proposed in the constitutional amendment introduced by the gentleman from Texas [Mr. BARTON] and indeed embraced a different concept.

That language would have said any increase in any tax rate or any increase in the base to which a tax is applied would require a supermajority; thus, the difficulty which you found in the language. Some would argue that, indeed, that is the preferable way to go, because it would mean that not only would we hold down increases but we would stop changing the Tax Code on a daily basis. Indeed, we made some 4,000 changes of one kind or another in the Tax Code in the last decade. But that is not the language that is before us today.

The language of the rule which you just raised, the language which, indeed, was constrained by rule, the legislation you referred to, is not the language that is before us today. The language that is before us today embraces the concept of revenue neutrality, and, indeed, that is the language which we put in the Arizona Constitution in 1992, and which has been placed in many other constitutions.

Mr. SKAGGS. Reclaiming my time, Mr. Speaker, I believe the gentleman from Arizona, who was just addressing the House, supported the majority's reconciliation bill, which included the significant adjustment in Medicare premiums, way more than a de minimis amount. Does the gentleman not agree that that is a difficult political hurdle to get over by a simple majority, much less by a two-thirds majority, and that if we are going to do fair entitlement reform, it is exactly the kind of tough choice that a future House is going to have to make? Yet you are making it next to impossible for us to do exactly what is best advised for fair entitlement reform.

Mr. SHADEGG. If I can make one quick point, and then I would like to allow my colleague, the gentleman from Texas, to be able to respond, first, the fundamental point here is that you could accomplish any of that with a simple majority provided it was tax-neutral. So were you to raise a premium, you could offset that by lowering a tax on some other location. I believe, however, as the gentleman from Texas [Mr. BARTON] will point out, it did not apply to this instance at all.

□ 1515

Mr. BARTON of Texas. On that specific point, as you know, Medicare consists of two different parts, part A and part B. Medicare part A is funded by a tax, and you have to pay it if you are working in this country. I believe it is 1.2 percent, but it is certainly a tax.

Medicare part B is not mandatory, it is voluntary. Admittedly 94 or 95 percent of the American senior citizens choose to participate in Part B, but it is voluntary. Those that choose understand if they so choose they have to pay part of the premium.

Under the resolution that is on the floor today, it would not take a two-thirds vote to change the medicare part B premium. It would take a two-thirds vote to raise the part A tax, unless at the same time you lower taxes on that part.

Mr. SKAGGS. Reclaiming my time, I beg to differ with the gentleman. The gentleman's proposed constitutional amendment talks about any increase in the internal revenues—it does not talk about Internal Revenue Code—the internal revenues by more than a de minimis amount, made by any change in the law.

Whether Medicare part B is voluntary or not, you are certainly talking about changes in the law that drive a major, not a de minimis, a major increase in internal revenue.

Mr. BARTON of Texas. I will stand by what I say. I believe that my explanation is correct.

Mr. SKAGGS. Here again, would the gentleman agree, this is the kind of discussion and debate that ought to have occurred in the Committee on the Judiciary, so we could have had appropriate refinements made to clear up what is a fundamental area of vagueness and therefore potential uncertainty and litigations? That is why we should not be voting on this out of the regular order as we are going to.

Mr. BARTON of Texas. I am not opposed to more debate on it.

Mr. SKAGGS. Would the gentleman join me in moving to send this back to the Committee on the Judiciary so it can be the subject of hearings and markup?

Mr. BARTON of Texas. I will certainly join the Member in having hearings. After we pass it this evening with a two-thirds vote, we can continue to have these hearings.

Mr. SKAGGS. So we are going to decide what we have done after we have already passed it. That is a terrific standing of things on their heads.

Mr. BARTON of Texas. Again, the concept is not one that you have to be a physics major to understand. If you would realize that two-thirds is a larger number than one-half, you have grasped the principle that we are trying to establish.

Mr. SKAGGS. Let me yield to the gentleman from Virginia.

Mr. MORAN. If I might suggest to my colleague from Texas, we are not suggesting that our colleagues need to be physics majors but they ought to be responsible legislators, particularly when we are attempting to change the Constitution of the United States. We ought to know the definition of some of the terms.

You just threw out the idea that de minimis means $1.5 billion. Does that mean annually, or does that mean if you raise $1.5 billion over 5 years or 7 years or 10 years? None of these answers are evident.

Also, user fees, we are talking about going to a system where we can have user fees for bridges and for roads and for national parks and the like. Are user fees included here? If you read the language of the legislation we were given, the constitutional amendment, certainly they are because that is internal revenue being generated.

I do not think we ought to be, as I suggested, treating the Constitution as some kind of working draft that we can amend as the notion comes to us, either on the floor of the House or even in committee or in any personal way. What we ought to be doing is enabling all the Members of this body to understand fully the consequences of their actions. We have that responsibility, and that is not the responsibility of a nuclear physicist but it certainly is the responsibility of a Member of the House of Representatives.

Mr. SKAGGS. Let me ask the gentleman from Texas, since he is the authoritative person in interpreting this language, what does the amendment contemplate by the phrase "internal revenues"? Is that as distinguished from external revenue, tariffs and excises?

Mr. BARTON of Texas. Internal revenue is certainly the internal income tax system, the internal revenue system of this Nation, and it is taxes that have to be paid by the American people. To the gentleman from Virginia, when he talked about user fees, you could certainly raise the user fee to the national parks by a majority vote. That is not part of the Internal Revenue Code of this Nation.

We will have the chairman of the Committee on Ways and Means on the House floor sometime this evening, and the chairman and I will engage in a colloquy in which just those kinds of questions are asked and answered.

Mr. SKAGGS. If I can reclaim my time, if the gentleman meant raising income taxes by more than a de minimis amount, why did the gentleman not use that term in the constitutional amendment rather than the term internal revenue, which has a much broader connotation to it than income taxes do?

Mr. BARTON of Texas. Well, there are some other broad-based taxes.

Mr. SKAGGS. Well, then, what would those be?

Mr. BARTON of Texas. The Social Security tax as a payroll tax is one.

Mr. SKAGGS. Why not the Medicare tax?

Mr. BARTON of Texas. The Medicare part A is a payroll tax.

Mr. SKAGGS. Why not the Medicare part B?

Mr. BARTON of Texas. Because that is voluntary. That is not a tax.

Mr. SKAGGS. But that is part of the Internal Revenue Code.

Mr. BARTON of Texas. That is a premium.

Mr. SKAGGS. It is part of the Internal Revenue Code, is it not?

Mr. BARTON of Texas. You can choose not to pay that. That is voluntary.

Mr. SKAGGS. Is it part of the Internal Revenue Code?

Mr. BARTON of Texas. Is the gentleman from Colorado paying that premium right now?

Mr. SKAGGS. The gentleman is not over 65, despite my appearance.

Mr. BARTON of Texas. You are not.

Mr. SKAGGS. Is it not part of the Internal Revenue Code?

Mr. BARTON of Texas. But you are paying the part A tax now.

Mr. SKAGGS. Right.

I submit that this is a very artful redefinition on the fly of these terms in a proposed amendment to the fundamental charter of the country, and we do not know what we mean.

Mr. BARTON of Texas. It is the gentleman's time and he has been very gracious and I think this is helpful. I do not want to abuse his time. But as in any constitutional amendment if we pass it, and in my opinion it is not if we pass it, it is when we pass it, there will be obviously implementation language, implementation law, legislation, as in any constitutional amendment. These types of questions will be extensively debated in the committee, on the floor, in conference with the Senate, in conjunction with the President and the Cabinet officers involved in the particular debate and I am absolutely confident that the democratic process will yield satisfactory answers to these questions.

The basic principle, once again, is making it more difficult to raise revenue, the tax burden of the American taxpayer, and I do not think there is any misunderstanding about that between the two distinguished gentlemen on the Democratic side, or certainly myself and the gentleman from Arizona [Mr. SHADEGG] on the Republican side. That is the principle that we are debating.

Mr. SKAGGS. Reclaiming my time, I submit that there is a fundamental disagreement about what we mean. What the gentleman is saying is that, "Well, we may not know what we mean today when we're amending the Constitution, but we'll figure it out some later time."

I think that is really getting things backward. We need as much as we possibly can, and I think our discussion reveals that we do not yet have as clear an understanding as we possible can of the import of the gentleman's words in this proposed amendment.

Certainly most provisions of the Constitution have been subject to some litigation. We should not, however, go out of our way to leave terminology so vague and confusing as to unnecessarily invite a plethora of litigation and uncertainty in this area which ought to have, as much as we possibly can, some sense of precision and certainty.

Let me yield to my friend from Virginia again.

Mr. MORAN. I would underscore the point that my friend from Colorado has been making. We ought not be flying blind on legislation to amend the Constitution of the United States, not even knowing what the terms mean, not even getting it out of subcommittee or having consideration by the full committee, bringing it to the floor.

A lot of concepts have been around for a long time, but most of them the majority would never consider bringing to the floor without having full consideration by people, both Members and staff, to be able to look at this legislation, to understand what these terms mean, to be able to inform the Members so that they know what they are voting on. That is the first flaw.

This morning I had a little debate on a morning news show with Grover Norquist, head of Americans for Tax Reform, who came up with this idea and has been promoting it, and he made the same point that our colleague from Arizona, Mr. SHADEGG, has made with regard to the number of States, and the gentleman from Texas, Mr. BARTON, I know, has made it, who have these kinds of supermajority requirements.

But let me suggest there are some differences between those State budgets and the constraints they are under and the Federal budget. For one thing, States can borrow money, and most States do. Most States are able to get their capital money through long-term indebtedness. We cannot do that. We are on a pay-as-you-go basis. We have a current cash accounting system.

Another thing that States can do that we cannot do is go to the Federal Government as a funder of last resort. Look what happened in California, and I think Arizona was involved, any number of other States have been involved actually this year in any number of natural disasters. Florida. I will not list the whole number of States, but a great many States were victims of natural disasters this year.

They did not have the money in their budget. With some of them they did not have the money because it would have been too difficult to raise the revenue necessary, so they turned to the U.S. Government to fund the costs of repairing and rebuilding.

We have no one to turn to. In fact, I understand there is an exception: If war has been declared, then you can raise money. But there are any number of other things that could happen to this country that would necessitate us raising substantial revenue for the public good, the common good of this country.

We do not know what is going to happen in the future, and it may be a whole lot of these disasters that might occur at the same time. It may necessitate us raising revenue. But to think that 17 States that represent 10 percent of the population have the ability to thwart our responsibility to fund the needs of this country, those States may very well not experience a natural disaster, so it would be in the interest of those particular Senators and Members of Congress not to vote for that revenue raising.

But certainly if a majority of this body and the Senate thinks that it is necessary and is willing to show the political courage to vote to raise revenue for the common good of this country, then they ought to be able to do so and should not be thwarted, should not have their vote minimized, de minimized, if you would, by this legislation. That is exactly what this constitutional amendment would do.

Mr. BARTON of Texas. Mr. Speaker, will the gentleman yield?

Mr. SKAGGS. I yield to the gentleman from Texas.

Mr. BARTON of Texas. Mr. Speaker, I have great sympathy for the gentleman from Virginia when he talks about a certain number of States with a small percent of the population thwarting the will of the majority. Texas and Colorado were not in the original 13 Colonies. Virginia was. It was one of the big States, but it lost on that issue. It was called the great compromise. The House was the representative of the people, the Senate representative of the States. I can be sympathetic with you, but we lost that fight 200 years ago.

Mr. SKAGGS. Let me, if I may, pose another question to the gentleman about his language in this proposed amendment, and the gentleman from Virginia was touching on this. It provides that a majority could raise revenue either if there is a declared war, which we of course know happens rarely, or if the country is engaged in military conflict.

Mr. BARTON of Texas. Serious military conflict.

Mr. SKAGGS. Is it correct to interpret the military conflict language as involving a shooting conflict of some kind?

Mr. BARTON of Texas. Yes. It would not apply to the gentleman from Virginia's comments about floods and droughts.

Mr. SKAGGS. So it would not apply to the circumstance that the country endured for the better part of 40 years, namely, the cold war?

Mr. BARTON of Texas. It would not, no, sir. Unless you did it with a two-thirds vote.

Mr. SKAGGS. So if I understand this phrase correctly, if we were facing

again that kind of dire threat to the national security but one that, God willing, does not get to the point of a shooting war, but nonetheless demanded the preparation of our military defenses in a way that required raising more money, it would take two-thirds to do that.

Mr. BARTON of Texas. That is correct.

□ 1530

Mr. SKAGGS. Mr. Speaker, I am sure the gentleman is aware of the fact that on the eve of the prior two World Wars, we could barely muster a majority of this body to start facing up to that challenge to our own national security.

Mr. BARTON of Texas. On the eve of what we now call the First World War is when we got the 16th amendment that made the income tax constitutional. On the eve of the second war, which we now call World War II, we were in the throes of the Great Depression, and not only were we not spending much on military preparedness, we were not spending much on anything.

Mr. SKAGGS. The gentleman is well aware that the then sitting Congresses were sharply divided and we could barely muster a majority vote to start the preparations that were ultimately necessary for this great Nation to fulfill its international responsibilities and to protect itself. That is exactly the kind of corner this language is likely to put this country in in some future difficulty if it were to become part of the Constitution.

Mr. BARTON of Texas. But, of course, the response to that is that living in the future, living in the present, we are the world's greatest military power. No one questions that. We spend a higher percentage of our GNP today on military preparedness than we did before World War I or World War II. We are not in the dismal shape that we were in terms of military defenses.

Mr. SKAGGS. As the gentleman knows, if we put this in the Constitution, it is likely to be there for all time.

Mr. BARTON of Texas. We hope.

Mr. SKAGGS. Maybe the gentleman's crystal ball is clearer than mine in understanding now what lies ahead. If I can inquire of the Chair how much time remains.

The SPEAKER pro tempore (Mr. EWING). Six minutes remain.

Mr. SKAGGS. The gentleman from Virginia.

Mr. MORAN. I might remind the gentleman from Texas that one of the reasons why we are the strongest military power is that we spent money that we did not have, particularly during the 1980's.

But what I think is more important to remind the gentleman is that none of the budget reconciliation measures proposed by President Reagan would have passed during the 1980's. None of them got two-thirds of a vote.

There is only one budget reconciliation measure, which was a minor one, in 1989 that passed with more than two-thirds. But it passed because it was minor. It was an easy vote. These others were not easy votes. It is never an easy vote to balance the budget, to come even closer to balancing the budget than we are doing today.

It certainly was not an easy vote to vote for the budget reconciliation measure in 1993, even though it raised money from the top 1.2 percent of Americans and, in fact, through any number of other measures actually reduced our deficit for 3 years in a row, generated over $500 billion of deficit reduction. That passed, as was suggested. If one Member of Congress had switched their vote, it would not have passed.

Now if you think that any responsible budget balancing measure is going to get through this House with a two-thirds requirement, you do not understand the dynamics of politics in America today. But that does not mean that we should not try to be, to propose votes that will require political courage, to try to continue to work to balance our budget, to reduce the amount of indebtedness, to reduce that interest.

If it was not for the interest on the debt created during the 1980's—because we cut taxes and did not cut expenditures, if it were not for the interest accumulated during that period of time—we would have a surplus in the budget today. We cannot raise taxes. We can cut them very easily. We can do it at the drop of an eyelid, and this is the kind of easy vote, to vote against the possibility of the Congress acting responsibly on budgetary and tax matters. But that is why it is wrong. It would be the irresponsible thing for the Members of this Congress to vote for today.

Mr. SKAGGS. You know, we look at history not just because it is fascinating to know where we have come from, but because it is also often instructive about the present and the future. And I think it is very useful to again go back to the debates in the Constitutional Convention about just this sort of provision, when the Framers seriously deliberated on the question of whether certain legislative subjects should be, should have a requirement of supermajorities to legislate. They understood because of their experience under the Articles of Confederation that this was a prescription for gridlock and paralysis. That is why we had a Constitutional Convention, to get us out of that problem.

One thing I believe we can always be sure of, we cannot predict the future. We do not know on April 15, 1996, what a Congress in April 2096 is going to be facing. And yet we are basically saying we do not trust them to have the tools that they are going to require to be good stewards of this Nation's future, that we are so arrogant this year that we will deprive them of the fundamental tools of governing this country by virtue of passing an amendment such as this.

I think it is extraordinarily ill-advised, even if we understood, which clearly from the debate over the last hour we do not understand, the meaning of the specific words being proposed to be put into the Constitution.

But even if we did, it is clear that this is impractical, ill-advised, and would be an extremely foolish and, as the gentleman has pointed out, really an irresponsible act for this Congress to take.

I yield to the gentleman from Virginia.

Mr. MORAN. The only remaining remark I have to make is that we do not act independently here. We have a responsibility to act in the best interests of our constituents. The worst thing this legislation does is to take away the equal representation of our constituents, the American people. The vast majority of the American people will lose the right, the power to determine the legislation of this land. The vast majority of people, two-thirds of the American population, will not have equal representation if this legislation passed because one-third plus one will have the controlling power over what this body, this body of Representatives of the American people, is able to do with regard to tax policy, with regard to balancing the budget, with regard to funding the necessary means of conducting our activities in whatever sphere we are talking about. It is irresponsible. And it is unfair to the vast majority of the American people to pass this today.

THE CONSTITUTIONAL AMENDMENT TO REQUIRE A TWO-THIRDS MAJORITY VOTE TO RAISE TAXES

The SPEAKER pro tempore. Under the Speaker's announced policy of May 12, 1995, the gentleman from Texas [Mr. BARTON] is recognized for 60 minutes as the designee of the majority leader.

Mr. BARTON of Texas. Before I start my special order, I want to commend the gentleman from Colorado and the gentleman from Virginia for yielding time in this special order and once we give our opening statements we will be happy to reciprocate in the spirit and to the level that you did in your special order.

Mr. Speaker and members of the House, we are engaged in a serious debate. It is serious business to determine you should amend the Constitution of the United States. I would point out our Founding Fathers allowed for such amendment, and it has been amended, I believe, 27, perhaps 28 times, since the original Constitution was ratified in 1787.

If you go back to that time period when our Founding Fathers were debating the same issues that we are debating on the floor of the House this afternoon, you find some interesting facts. First of all, there was no such thing as an income tax anywhere in the world. There were obviously taxes, but those taxes were normally head taxes, property taxes, excise taxes, transaction taxes, duties, fees, tariffs, but there was no income tax because very few people in the world, certainly in the United States, had any income. We were an agrarian economy. Most Americans lived on farms or in small communities and there simply was not a resource there to be taxed. Even then, over 200 years ago, the Founding Fathers were very aware of the sensitivity of the tax burden on the American people. So while they did not require a super majority vote to raise taxes, they did require that the House of Representatives, which was the only body directly elected by the people and the body most responsible to the people, be the body where all tax bills originated.

For 125 years that limitation that all tax bills originate in the House of Representatives worked very well. We did not have an explosion in growth of the Federal Government. In 1913, we had the 16th amendment to the Constitution of the United States that said specifically that an income tax was constitutional. In 1913, 83 years ago, the first tax form, the first 1040, was passed out in 1913. This is a photocopy, a blown-up photocopy of the original 1040 form back in 1913.

Those of you that can read it, you find out some very startling information. First of all, the normal tax, the normal tax that most Americans who even had to pay an income tax paid, was 1 percent on net income up to $20,000. Less than one tenth of 1 percent of the American population had to pay that normal tax of 1 percent.

The richest American, an American who made over $500,000 in 1913, had to pay 6 percent. But most Americans paid no income tax, or paid 1 percent.

By 1949, the year that I was born, the tax burden had grown to 5 percent on the American taxpayer, and today the average tax burden is 40 percent. The marginal tax rate on the average taxpayer in America today is 40 percent. If you want to calculate percent increase from 1913, and 1 percent to 1996 and 39.8 percent or 40 percent, it is 4,000-percent increase 4,000 percent. That is too much.

The debate today is about making it more difficult to raise taxes on the American people in the future. It is not about whether we had the appropriate number of hearings in the Committee on the Judiciary. It is not about the exact definition of de minimis in Webster's Dictionary, it is all about the basic principle of making it more difficult to raise taxes than it is under the current simple majority tax increase vote requirement.

It is a very simple concept. Two-thirds as a fraction is a higher number than one-half as a fraction. In fact, it is a higher number by 16 and two-thirds percent, one-sixth, 16.67. Translated into votes in the House, you would go from 218 votes needed to 290 votes. In the Senate you would go from 50 votes or 51 votes needed to 67 votes needed. So that is what we are debating this evening.

There are some States that have tax limitations on their books today. There are 10 States. These States range from the largest State in the Union, the State of California, to the State where President Clinton was Governor, the State of Arkansas. And you can see the other 8 States.

There are four things that are true in every State in the Union that has tax limitation. The first thing that is true is that taxes go up more slowly. In States that have some sort of supermajority requirement for increasing taxes, taxes do not not go up. They do go up. In fact, they have been going up, 102 percent between 1980 and 1992. In the States that do not have a supermajority requirement, taxes have gone up 121 percent. That difference of 19 percent, if you calculated it on the Federal tax rate, you would have lower taxes in the Federal Government this year of around, I believe $160 billion.

□ 1545

So the first thing in all 10 States is that taxes go up more slowly than they do in States that do not have tax limitations.

The second thing we find out is that, since taxes are not going up as fast in tax limitation States, spending is not going up as fast. Again, between 1980 and 1992, in the supermajority tax increase States, their spending went up about 132 percent. But in States that do not have a supermajority requirement to raise taxes, their spending went up 141 percent. So that is a 9-percent savings in spending.

Mr. Speaker, if we calculate 9 percent of $1.6 trillion we are spending here at the Federal Government this year, that is about $145 billion savings in spending.

Now, since taxes are not going up as rapidly and spending is not going up as rapidly in those States, some good things begin to happen. The first thing that happens is that employment does grow more rapidly. In States that have a supermajority requirement, the average number of people working went up about 26 percent. In States that do not have a supermajority requirement, employment grew, but only 21 percent. So you have a 5-percent differential there.

Last but not least, since there are more people working in States with a supermajority requirement for a tax increase, the economy in those States grew more rapidly, 43 percent versus 35 percent in the nonsupermajority States.

So those four things are true in every State. Taxes do not go up as rapidly, therefore spending does not go up as rapidly, therefore you create more jobs, and you create more wealth in the State. So the way I say this is a simplified fashion, taxes go up lower, taxes are lower, therefore spending goes up slower in States that have the supermajority requirement. And therefore the taxpayers are not left high and dry like they are in States without the supermajority requirement.

Mr. Speaker, I am a lower, slower guy. I am not a higher, dryer guy.

The last thing I would say on these 10 States, not one State that has passed supermajority has repealed it. In some of these States, the supermajority requirement for a tax increase has been on the books for decades.

With that, I would be happy to yield to my friend from Arizona for such time as he may wish to consume.

Mr. SHADEGG. Mr. Speaker, I thank the gentleman from Texas and join him in calling for the passage of this amendment.

Let me talk about why. On the list of States which my colleague put up which have enacted a supermajority requirement, you will find the first State is my home State, the State of Arizona. We enacted that requirement in 1992. It compels the State legislature there to assemble a two-thirds majority before yet once again raising taxes.

Now, why? The reason for that is that we had had a spiralling increase in taxes in our State year after year after year, and the consequences were devastating.

Mr. Speaker, I think the gentleman did a great job of showing exactly how that comes about. I want to focus on just one of those charts.

This chart alone says it all. For my colleagues in the Congress, I urge them to study this one chart. It says a very simple premise: Where taxes are high, where they are raised time and again, over and over, there is a consequence to be paid for that. In Arizona it was that we had gone from a high growth State with low taxes and a booming economy to years of tax increases, and we had become a low growth State. We had injured our economy. So we put an issue on the ballot, an initiative drive which I helped head, which the people had a chance to vote on. By a margin of 72 percent of those voting, we enacted a supermajority tax limitation.

Those words are kind of confusing, supermajority tax limitation. What it says is simply this: Where today in this Congress we can raise taxes with a simple majority, 50 percent plus one, we would change that standard and make it not impossible but slightly more difficult to raise taxes yet one more time.

Mr. Speaker, we are not cutting taxes, we are just saying that the bar

over which we should have to climb to raise taxes yet again ought to be slightly higher.

In my lifetime we have raised taxes in this Nation, income taxes in this Nation, on the average American family by 1,200 percent. The consequence is we are doing to the national economy what the non-supermajority States have done to themselves. That is, if you look at States where it is slightly higher and slightly harder to raise taxes, the supermajority States, you will see economic growth is significantly higher than in those States where there is no supermajority and where, accordingly, it is slightly easier to raise taxes.

The premise which this amendment raises is a straightforward issue of fiscal responsibility. Should Congress be more responsible about spending the hard-earned dollars earned by the citizens of this great country? If you believe it should, then you must vote for this amendment, because by making it slightly harder to raise taxes in America, we will force this Congress to have discipline.

Indeed, Mr. Speaker, the record of this Congress and of past Congresses on controlling spending is abysmal. We have failed time and again to control spending. Thus, we need a supermajority requirement, a discipline on our ability to raise taxes, because that will force us to spend the money we have more wisely.

As the gentleman indicated, there are 10 states that now require this. It is not a radical reform. I would like to point out that some of those who have considered it view it as indeed a rather prudent reform.

George Will recently writing said, "The proper reverent reason for amending the Constitution is to revive those of the framers' objectives that have been attenuated by political developments since the framers left Philadelphia."

What indeed has happened in America is that we have lost many of the first principles established in our U.S. Constitution. The U.S. Supreme Court has as of today so expansively read the commerce clause that this Congress has vastly more power than it did a decade or two or three decades ago. Indeed, it has the power to reach into the pockets of Americans time and time again, to spend that money on almost anything it will.

Six times since 1980 we have raised taxes. On one of those occasions, we had the two-thirds majority. On all of the others, we did not. Yet we raised taxes over and over again.

The 1993 tax increase, the largest in American history, would not have passed this body if one vote had switched. It would not have passed the Senate had the vice president not broken a tie.

Let me conclude by pointing out the words of two scholars who have looked at this issue. John McGuinness of the Yeshiva University's Cardoza Law School and Michael Rappaport of the University of San Diego Law School have said about this amendment that the amendment should be seen as an attempt to revive the original values of our Constitution, rather than as a radical innovation.

The opponents of this amendment will argue that it offends the notion of majority rule; that whenever the majority wants to do something, they ought to be able to do that. Regrettably, they ignore that the first premise of a constitution is to protect the rights of a minority.

Indeed, in this instance, it is critically important that in the area of taxation, we protect the rights of the minority. That is why a constitutional amendment is the proper device. It is indeed not a radical innovation, but rather an idea that will restore the Founders' intent.

I would invite the other gentleman to join us here.

Mr. BARTON of Texas. I want to compliment the gentleman from Arizona on his leadership. He is one of the named sponsors, and is doing an outstanding job.

I would like to yield to the gentleman from Arkansas [Mr. HUTCHINSON] at this point in time.

Mr. HUTCHINSON. I thank the gentleman for yielding time and compliment Mr. BARTON from Texas for his leadership on the balanced budget amendment and on this constitutional amendment we will be debating and voting on today.

As Americans hasten to file their Federal income tax returns by midnight tonight, many families will again remember how much of their family budget is paid to the Federal Government every year. Today they will be reminded and we will be reminded that the average American family pays $1 out of every $4 it earns to the Federal Government. We will be reminded that the average American family spends more on taxes than on food, on clothing, and on shelter combined.

Sadly, we will also be reminded that the average American family can expect to work at least until May 6 before being able to dedicate any of the earnings to anything other than Federal, State, and local taxes. The average worker today spends the first 3 hours when he gets to work each morning just paying his debt to the Federal Government, State government, and local government before he can ever begin to labor for himself or for his family.

With approximately 38 percent of the average family's budget being used to meet their total tax burden, it is high time that the U.S. Congress take action to make further tax increases more difficult.

Our country has run chronic budget deficits for 25 years. We have pretended that we were going to do deficit reduction by raising taxes in the omnibus budget laws described as deficit reduction acts, and yet spending continues more and more.

A perfect example for the necessity of such an amendment can be found in the middle class tax cut that was the centerpiece of President Clinton's 1992 campaign for President. Despite his record in Arkansas of having raised taxes and fees 128 times during his tenure as Governor of my home State of Arkansas, the American people still trusted him to make good on his promise. Just 1 month into his Presidency, however, the President betrayed that trust and traded his promise of a middle class tax cut for the largest tax increase in history. This record tax increase was pushed through Congress in 1993 and was approved by a 51-to-50 vote in the Senate and a 218-to-216 vote in the House. A single vote switch in either body would have killed the legislation. A supermajority requirement easily would have saved our economy from yet another oppressive tax increase.

It is clear that increasing taxes is not the answer to our deficit problems, that increasing taxes is not the way we are going to deal with the growth of the national debt. Every time in the last 40 years this Congress has raised taxes $2, we have increased spending $3. Raising taxes is not the answer. We simply must make it more difficult for this Congress and future Congresses to raise taxes.

If that was not enough, our President vetoed the middle class tax cut that this Congress passed and gave to him this past December 6. That is why there will be no tax cut this April for hard working families.

In one stroke of the pen, the President denied tax cut benefits to 28 million families and 59 million children in our $500 per child tax credit. We will not see capital gains tax relief, we will not see the job creation that would have accompanied it, the relief from the marriage penalty, the estate tax, and on and on. We would have done that and much, much more. But, instead, the temptation is going to be there in the future for Congress to start raising taxes again. That is the temptation, to try to solve deficits by raising taxes, and is simply will not work.

It is time to make Washington start working for families, instead of making families work for Washington. That is why I rise in strong support of this supermajority rule as a necessary component strategy, to shrink the size and power of the Federal Government and limit the power of Congress to tax the American people.

Mr. BARTON of Texas. Before I recognize another gentleman, I would like to ask the gentleman a question: My understanding is you do represent the great State of Arkansas.

Mr. HUTCHINSON. That is correct.

Mr. BARTON of Texas. It is my understanding that Arkansas has had a tax limitation on amendment on the books for several decades. It requires a three-fourths vote; not a two-thirds, but even a higher standard of three-fourths. Could you comment on how that has worked in Arkansas?

Mr. HUTCHINSON. We have a supermajority requirement, a three-fourths requirement, to raise the income tax in Arkansas. The evidence is very clear that the legislature has been more reluctant to raise the income tax levels for hard-working Arkansans.

Now, we have a lower threshold for raising the sales tax, which many believe is a more regressive tax. The fact is they have fallen back many times on that regressive sales tax, which hurts poor people more than affluent individuals. I believe the supermajority across the board, whether it was a two-thirds or three-fourths, would make a lot more sense. But Arkansas today has one of the lower tax levels and one of the lower tax burdens in the United States. That is why people are moving to Arkansas. That is why our economy is good in Arkansas.

□ 1600

In my particular district, we have got unemployment down around 3 percent, virtually full employment in my district, companies moving in, people doing well, because the tax burden, heavy as it is on the Federal level, has not been that onerous on the State level, partly because of that super majority provision.

Mr. BARTON of Texas. Is there any move in Arkansas to repeal the three-fourths requirement?

Mr. HUTCHINSON. None whatsoever. I think the American people would rise up in arms, the people of Arkansas would rise up in arms if that were to occur. Quite to the contrary, as is happening in the antitax movement across this country, there are initiatives efforts, there is lots of talk about actually putting on the ballot a requirement to put all tax increases to a vote of the people. I do not necessarily support that. What I am saying is there is certainly no sentiment at all to repeal our supermajority tax issue.

Mr. BARTON of Texas. The tax limitation works, the supermajority vote for tax increases works in Arkansas.

Mr. HUTCHINSON. It worked in Arkansas. It worked when President Clinton, then governor of Arkansas. I certainly believe it will work for our country.

Mr. BARTON of Texas. I thank the gentleman from Arkansas.

I would like to yield to the gentleman from Kentucky [Mr. LEWIS].

Mr. LEWIS of Kentucky. Mr. Speaker, I rise today in support of the two-thirds tax limitation amendment to the Constitution. Mr. Speaker, a typical family of four pays nearly 40 percent of its income in Federal, State and local taxes. When you consider sales and a variety of other taxes that a family is often paying nearly half of their hard-earned money in taxes. Is there any wonder why so many folks are struggling to make ends meet? We have learned over the past four decades that too many politicians would rather raise taxes than reduce spending or even the growth of spending. Incidentally, that is not just true in Washington.

An article published in Kentucky papers across the State this weekend showed my home State of Kentucky, that the taxes there are a burden on the lower income people more heavily than any State in the Nation. That is according to the Center on Budget and Policy Priorities. We can make a statement on this tax day in the House of Representatives.

We can tell the folks back home that they matter more than big Government, that Congress can make the occasional tough spending decisions without asking hard working men and women to contribute more.

Mr. Speaker, 3 months ago, President Clinton ripped out a page from the Republican playbook by saying the era of big Government is over. We can help him keep his word today by passing House Joint Resolution 159. It is a good start toward ensuring the era of big Government will truly be over.

Over the past three decades, there have been 16 major votes to increase taxes. Just half of those would have become law if there has been a two-thirds requirement. We may not be able to stop President Clinton from vetoing our tax cuts for working families, but we can help make sure that a one-vote margin in the House or the Senate does not allow another massive tax increase like the 1993 Clinton tax hike.

Mr. Speaker, let us tell the American people that enough taxes are enough.

Mr. BARTON of Texas. I thank the gentleman from Kentucky.

I yield to the gentleman, Mr. HALL of Texas, one of the named sponsors, the distinguished gentleman from Rockwall, the fourth district of Texas.

Mr. HALL of Texas. Mr. Speaker, today, of course, is tax day for millions of Americans. It is also tax day for Congress. I think what we do in the next few hours will send a message to all the hard-working Americans all across the country. It will either give Americans some hope for the future, some hope for tax relief, or it will give them nothing but the status quo.

In the next few hours, we will have an opportunity to vote in support of House Joint Resolution 159, the tax limitation amendment to the Constitution. This amendment would require a two-thirds, a supermajority vote in the House and Senate for any bill that would raise Federal taxes. If a two-thirds requirement had been in place over the past 15 years, major tax increases in the years 1982, 1984, 1987, 1990, and 1993 would have failed. It does not mean we would not have had a tax bill, but it would have been a more sensible tax bill. It would have been sent back and reworked and we would have had more cuts in spending and less taxes on the backs of the American people.

This is a much higher standard than a simple majority vote and a standard that would be far more representative of the wishes of the American people.

Most of us here in Congress, like most Americans, support efforts to balance the Federal budget, and last year Members of the House went on record to pass a balanced budget amendment to the Constitution. Now today we have another opportunity to show where we stand on an issue that will affect everyone in this country.

Most of us, like most Americans, most of us Members of Congress believe that taxes are either too high or they are high enough, and today we have an opportunity to vote on a bill that would offer some protection to the American taxpayer by making it more difficult to raise Federal taxes. Hopefully the balanced budget amendment will pass the Senate this year and go all the way to the statehouse and to the States for ratification. Following ratification of the amendment, Congress would be obligated to produce balanced budgets.

Now if the vote falls short, which some people predict that it might do and we have to know that anything can happen on the floor of this house, if we do not have enough contact from the people of America to those who stand on this floor and represent them here as their Member of Congress, it is possible that we will not pass this day, this time this bill. But I think we will accept the lessons of history and consider this another step in the right direction. If I know the gentleman from Texas, Mr. BARTON, and the gentleman from Texas, Mr. PETE GEREN, and the gentleman from Arizona, Mr. SHADEGG, as well as I know them, they will be back again and again. It took 13 years for the balanced budget amendment and the line item veto, but it is here and this will follow.

Mr. Speaker, I believe that we can pass it this day. I think if history is any indication and if we listen to the people, that is exactly what we ought to do. So on this historic day, Mr. Speaker, I am pleased to be an original cosponsor of the tax limitation amendment, along with Mr. BARTON, Mr. SHADEGG, and Mr. PETE GEREN. They have worked tirelessly. I do not know of anyone who has worked harder than those men and their staffs throughout this legislation. The grassroots response have been enormous.

On this historic tax day, I think Americans are watching to see where

Congress stands on this important issue. I think we need to show the American people that we stand with them. I urge my colleagues to join me in support of House Joint Resolution 1759, the tax limitation amendment.

Mr. Speaker, I thank the gentleman.

Mr. BARTON of Texas. I thank the distinguished gentleman from Texas. Before I yield to the gentleman from Texas, Mr. PETE GEREN, I yield to the chairman of the Committee on Economic and Educational Opportunities, the distinguished gentleman from Pennsylvania, Mr. GOODLING.

Mr. GOODLING. Mr. Speaker, I can sum up the most important reason to pass this legislation in one illustration. Thirty-eight percent of what the average American family earns they pay in taxes. Anybody have any idea how much they spend on food, clothing and shelter combined? Twenty-eight percent, which is 10 percent less than they have to spend on taxes.

I was having a meeting this morning and the one gentleman said, I had to pay my taxes today. He has two little children. He said, very, very difficult. I said, yes, because the President vetoed a package that would have given you the kind of relief you would have needed. It would have given you $500 for each child. It would have given you a $500 credit for home care. It would have given you a $1,000 credit toward long-term insurance. It would have given you an IRA for the parent that stays at home.

These are the kinds of things we should be doing to try to help American families stay together, not take their money and bring it to Washington, DC, to waste. So I would call on all of my colleagues, support this legislation. We get a balanced budget and we make sure that we stop spending more than we take in and we will give hope to the future. We will give hope to the children and the grandchildren that are out there now wondering whether there will be a tomorrow like we were fortunate enough to have.

I thank the gentleman for yielding me this time.

Mr. BARTON of Texas. I thank the gentleman, Mr. GOODLING, for those remarks. Would the chair indicate how much time is remaining in our special order?

The SPEAKER pro tempore. The gentleman has 28 minutes remaining.

Mr. BARTON of Texas. I yield to another of our original sponsors, Mr. PETE GEREN of the 12th District of Texas, who unfortunately will be leaving us at the end of this Congress to return home to Fort Worth.

Mr. PETE GEREN of Texas. I want to thank the gentleman, Mr. BARTON, and commend him, the leadership on this issue, the leadership that he has brought to bear.

From the first day he stepped on the floor of the Congress, he has been pushing this, and his dogged determination has brought us to where we are today. I must say it has been with some reluctance that I have come to the conclusion that it is necessary that we pass this resolution that would amend the Constitution to require a supermajority vote of two-thirds in order to increase tax revenues. However, I believe that if we ever are to control the growth of Government, limit its insatiable ambitions, then this limitation is necessary.

The growth of Government, and with it the increase in taxes and increase in the deficit, have become a constant in this country. Regardless of who is in the White House, regardless of what party controls Congress, Government has remained and will continue to remain a growth industry. In terms of 1983 dollars, from 1969 to much of 1996, the size of Government measured in terms of its spending, it has nearly doubled. These are in constant dollars. The Government has grown from $593 billion in 1969 to $1.1 trillion in 1996.

I commend President Clinton for his statement that the era of big Government is over. I wish that were true. In spite of those words, the size of Government continues to grow and according to all projections, to all projections, it will grow as far as the eye can see and younger generations will bear the brunt and cost of our mushrooming growth in taxes paid and in freedom lost.

According to the General Accounting Office, a child born in 1992, to fund Government on its current growth path, a child born in 1992 will pay 82 percent of his or her future earnings in taxes. Eighty-two percent of his or her future earnings in taxes. The Government itself has become the most powerful political force in America, not the people that pay the bills but the people that live off of those who pay the bills.

When faced with cuts in spending, Government programs are able to rally their individual constituencies to bring overwhelming pressure to bear on the legislative process. The tax limitation amendment is needed to offset this pressure. I do not think our Founders ever imagined that we would have a Federal Government that would be telling us where to place curb cuts in the step of Cleburne or a Federal Government that is spending over 20 percent of the gross national product.

They could not have imagined that when they drafted our Constitution, and I am confident if they had, this limitation amendment would have been put in the original Constitution. This is not a new initiative. It is a tested initiative. It has been tested in the laboratories of our individual States, as our Founders intended.

Currently 10 States have supermajority requirements to raise taxes. They include Arkansas, Arizona, California, Colorado, Delaware, Florida, Louisiana, Mississippi, Oklahoma, and South Dakota, geographically spread across the entire Nation. In States with no tax limitation, taxes have climbed 120 percent per capita from 1980 to 1992, while they increased only 102 percent in States with supermajority requirements. Even with the supermajority requirement, the government has found a way to grow. Supermajority States have enjoyed a 43-percent growth rate from 1980 to 1992, while other States without this limitation have grown by only 35 percent. Employment growth averaged 26 percent in supermajority States but only 21 percent in States without the supermajority requirement. Using data from 50 States, Dr. Richard Vedder, in a study for the Joint Economic Committee, has concluded and I quote:

> The economic performance of States is negatively relative to the overall amount of taxation: Higher taxes mean lower growth, lower taxes mean higher growth.

This amendment is not artful. It is not pretty. It is not the sort of provision that will ever thrill constitutional scholars. It is a blunt instrument, and it is unfortunate that it is necessary, but it is necessary. As legislators, we have either been unwilling or unable to put restraints on the growth of government.

In the so-called antitax era that we have all lived through in the last 15 years, we have still seen Government grow. The 1980's were famously antigovernment, antitax, yet taxes grew 20 percent during that decade, the size of Government growing in excess of that. There is a bias in our system toward growing Government. It is a bias that grows stronger every day as Government grows more and more and more intrusive in our lives. This amendment is necessary to counteract this bias and force the Government back into a role that respects that the genius and miracle of our experiment in democracy lies not in Washington, DC, but with the people.

Mr. Speaker, I thank the gentleman, Mr. BARTON, for yielding me this time, and I commend you for your leadership on this effort.

Mr. BARTON of Texas. Well, if the gentleman would remain at the podium, I have got a few questions that I would like to ask.

My first question is, I believe that you are a member of the Democratic Party, is that not correct?

Mr. PETE GEREN of Texas. Certainly am.

Mr. BARTON of Texas. I know that some Members of this body have said that this is some sort of a Republican policy gimmick. But you are not a Republican, obviously. I think you are very proud to be a Democrat.

Mr. PETE GEREN of Texas. No, and I expect that we will have a considerable number of Democrats join us in

voting for this. I think the experience that we have seen in the 10 States that have tried this belies the accusation that this is some partisan gimmick by either party. Arkansas, a State that has been controlled by Democrats. Legislature, the Governor's office, I guess since Reconstruction, they have this provision.

□ 1615

California, very strong Democratic legislature, they have had Republican and Democratic Governors; they have this limitation under Willy Brown, one of the leading Democrats in the entire country. This provision came out of the legislature in which he presided as the speaker.

So anybody that tries to dismiss this as a partisan gimmick I think is ignoring the fact that 10 States, some of the States in heavily Democratic—with heavily Democratic majorities in every area of government—have this problem. So for those to try to dismiss it with that sort of criticism I think are ignoring the reality of experience with this provision.

Mr. BARTON of Texas. I am sure that you have seen this study, but you might not have had a chance to really study it in detail, but March 19 through March 21 there was a national poll conducted by Americans for Tax Reform. They polled 1,205 registered voters throughout the country about the tax limitation amendment, and I know that you will find this very gratifying to know that of those poll respondents that identified, self-identified, themselves as Democrats, 64 percent said they supported the two-thirds tax limitation amendment; 80 percent of people that identified themselves as Independents and 80 percent that identified themselves as Republican. So the support is slightly higher for Republicans and Independents, but for Democrats around the country 64 percent of the respondents in this 1,200-person poll that said they were Democrats said they supported the amendment.

And I know as a Democrat you will also be delighted to know that when they asked the poll respondents to identify themselves by socioeconomic status, low, middle class, or high income, of those that identified themselves as low-income wage earners, 80 percent supported two-thirds vote for tax limitation; middle income, self-identified, 77 percent supported tax limitation; and high income, 64 percent. And finally, certainly last but not least, when asked the one political question in this survey, and again these are 1,200 people, March 19 through 21, national poll, plus or minus 2.8 percent variance—when asked would you be more likely or less likely to vote for your Member of Congress if you knew that they voted for the two-thirds tax limitation amendment, by party identification 76—no, 68 percent of self-identified Democrats, said that they would be more likely to vote for their Member of Congress if they knew that he or she had voted for the two-thirds tax limitation constitutional amendment.

Does the gentleman from Texas have any comments on those poll numbers?

Mr. PETE GEREN of Texas. Well, I think that this reflects accurately where Americans are, regardless of party affiliation, and also explains why in many States with a strong, strong Democratic tradition and control of their State governments, have enacted a provision of this sort.

This is a bipartisan initiative. We are not going to have as many people on my side of the aisle supporting it as I would like to see, but I think that poll shows that this is an initiative that enjoys bipartisan support or nonpartisan support, including strong support in the Independent base, and I would expect that—I mean, you look at the States that have it, Florida all the way to California, Louisiana, Arkansas; these are States that have very different economies, they have different political traditions, but joined in a recognition and understanding of the need to check this bias in favor of growing government.

Mr. BARTON of Texas. Well, I think it is interesting that when you really look at the facts and you look at the data that is out there, every State that has it, it works. We pointed out, you pointed out, the gentleman from Texas [Mr. HALL] pointed out, that taxes are lower, they grow slower, and that the economy, therefore, grows faster and more jobs are created. We point out that regardless of what your party affiliation is, it is supported anywhere from 80 to 64 percent. Regardless of your socioeconomic status, low, middle, or high, it is supported.

More States are adding this tax limitation provision to their State constitutions every year. Voters of Nevada have already passed it once. Their constitution requires two separate votes. they are going to vote on it again this fall. We think they will ratify it and they will be the eleventh State to put it in the constitution.

There are some dozen, dozen and a half, States that have got initiatives underway, so we are simply doing what is already being done and continuing to be done in the States, and I think that with your support and the support of the gentleman from Texas [Mr. HALL] we have an excellent chance to get enough Democrat support to pass it by two-thirds on the floor this evening.

Mr. PETE GEREN of Texas. Let me just highlight one point that you made, the economic growth.

If anyone were seeking to find an explanation why 68 percent of Democrats across the country support this, it is one simple word. It is jobs, economic growth. You look through the history of Democratic platforms, and you will see the word "jobs" repeated over and over and over for the last 100 years, and the States that have tried this have been proven job creators.

This is an initiative that will create jobs, as it has in California, as it has in Arkansas. This is an opportunity to extend that job creation across the 50 States of this country.

Mr. BARTON of Texas. Be happy to yield to the gentleman from Texas [Mr. HALL] and then——

Mr. HALL of Texas. I think also, Mr. Speaker, that it might be pointed out: I think that same poll that was conducted indicated not just people that are out of work or that are looking for work, Democrats or Republicans, support this. I think that same poll showed that among Federal employees who already have a job, that 68 percent of those supported the supermajority, and I think it also should be pointed out that union members, who historically have voted Democratic, have indicated that 71 percent of the union members polled supported the supermajority.

So while we up here on the floor of Congress try to shoot an arrow that hits the taxpayer and misses the voter, let me tell you we are hitting both of them and this is a chance for the voters and the taxpayers to have a shield, and I think the gentleman from Fort Worth probably agrees with that.

Mr. PETE GEREN of Texas. Absolutely.

Mr. BARTON of Texas. I thank both my two good friends for supporting this.

I would like to continue some of the comments that I made earlier. This is about making it more difficult to raise taxes, but not making it impossible. When my good friend from Arizona gets back, we are going to go through a colloquy on some of the tax increases that have passed the House in the last 10 to 15 years.

One very good thing about our amendment: It would take bipartisan support to pass any additional tax increases because it is very unlikely that either political party is going to have 67 percent of the House and the Senate at the same time in the modern era, and as has been pointed out numerous times during the debate this afternoon, the last major tax increase that we had 2½ years ago passed by two votes in the House, with no Republican voting for it, and by a tie breaker vote the Vice President, Mr. GORE, voting for it in the Senate. That is not bipartisanship, that is one political party with a very slim majority forcing a massive tax increase, in this case the largest tax increase in American history, down the throats of the American people.

I would now like to engage in a colloquy with the gentleman from Arizona about some of the more recent major tax increases that have been before the House and the Senate.

Mr. SHADEGG. I would just like to commend the gentleman from Texas, actually all three gentleman from Texas, Mr. BARTON, Mr. PETE GEREN, and Mr. HALL, who have shown great leadership here. I think I heard Mr. HALL recite that whether we passed it today or not, if in the unlikely chance we do not pass this measure today, he had great confidence that we would be here carrying this fight forward in the future, and, for the reasons that Mr. PETE GEREN pointed out, I indeed, so long as I am a Member of this body, until we are successful in this effort, will be here to fight for it precisely for the reason he pointed out, and it is the reason shown on the chart just to your side, and that is job creation.

This measure will aid the American economy. It is wonderful that we have 10 States to look to which have had experience with a supermajority for tax increases; that is, with making it slightly harder to raise our taxes again. And that experience teaches us; it teaches us that the economy and those States where they have made it a little harder to raise taxes, as we propose to do here today for the Nation, have grown at a significantly faster pace, over 40 percent versus under 30 percent.

Now, in the discussion beforehand, and the gentleman might recall that our colleague from Virginia, Mr. MORAN exercised some great concern about whether or not it would be possible to ever muster the two-thirds majority that this measure would require for a tax increase. Well, the history shows that while it may indeed be and should be somewhat more difficult, our goal is not here today to make it impossible to raise taxes, and I would just like to point out that on at least four recent occasions more than a two-thirds majority has been mustered for a tax increase, both here in the House and also in the Senate.

The Tax Adjustment Act of 1966 got 74 percent of the Members of the House in its support and 94 percent of the Members of the Senate. The Interest Equalization Tax Extension Act of 1967 got 73 percent of the Members of the House to support it and a similar number in the Senate. In 1989 the Senate passed by a vote of 93 percent of the Members and the House passed by a vote of 58 percent of the members the Omnibus Budget Reconciliation Act of 1989. But the most compelling example of where a supermajority was accorded is what is now the infamous or famous Tax Reform Act of 1986. That probably is one of the best known tax revisions in this Nation's history, and that measure in its final version passed this Congress in 1986 by a vote of 292 to 136 in the House and by a vote of 74 to 23 in the Senate.

So for those who say that a two-thirds barrier is too high, is too extreme, I would call these examples to their attention, and I would simply like to reiterate. The gentleman was asked before, the average American family today spends more on taxes, according to the figures we have been provided, than on food, clothing and shelter combined. When we have reached the point in this Nation where we spend more on taxes as an individual family than on food, clothing and shelter combined, indeed I believe it is time for reform, and the reform we bring here is not a radical one. It is a logical one, not a rightful cut in taxes, but simply a provision that says the next time we try to raise taxes again we ought to have to do it with a two-thirds rather than a 50 percent majority.

Mr. BARTON of Texas. My understanding is the gentleman speaking is from the great State of Arizona and that you have a two-thirds or three-fourths requirement for all tax increases in your State and that has been in effect since 1992.

Is that correct?

Mr. SHADEGG. We do indeed have a two-thirds majority for all tax increases.

Mr. BARTON of Texas. And how has this worked in Arizona the 3 years it has been on the books?

Mr. SHADEGG. Well, as having been the chairman of the initiative drive who put it on the ballot and then pushed it over with the vote of 72 percent of the legislature supporting it, it has worked extremely well. Where we had seen a spate of 9 successive tax increases in a row, we have not seen a general tax increase since that measure was enacted.

I would point out that the measure enacted in Arizona is much like the one we are proposing here; that is, it allows revenue neutral tax reform, so that if we want to change the code in some respect we can, so long as it is not a tax increase. And whenever in Arizona a tax increase is required, that is when the supermajority, two-thirds, is triggered, just as the language we are proposing here today would do.

Mr. BARTON of Texas. I think that is a very basic point that we need to emphasize as often as possible. Under the language that is going to be voted on this evening, we could change from a national income tax, graduated system that we have today, to the flat tax or the national sales tax, as some people propose, with a majority vote so long as the revenue impact was de minimis, was neutral or less.

□ 1630

Mr. SHADEGG. Mr. Speaker, our goal is to allow and to continue to go forward with revenue-neutral tax reform. Should we shift from the income tax to a sales tax to a VAT tax, whatever we deem is necessary, provided it is revenue-neutral, it can be accomplished with a simple majority. That provides the flexibility that our colleagues on the opposite side of the aisle are so deeply concerned about.

Mr. BARTON of Texas. Mr. Speaker, I think one of the other concerns under the current tax code, most Republicans and far-thinking Democrats support a rate reduction in the capital gains tax. What is the gentleman's understanding of what we could do with capital gains, if our amendment were to become part of the Constitution?

Mr. SHADEGG. Mr. Speaker, as the scoring by CBO is currently performed, we could easily enact a capital gains tax cut, and would not require a supermajority to do that. Some of us, though, would argue that CBO ought to embrace the concept of dynamic scoring, which might change that analysis.

But as the measure would currently be scored, a change in our capital gains tax rates to lower those tax rates could be accomplished by a simple majority vote, which means that a lot of arguments we have heard already today and a lot of arguments we will hear tonight about how the rule adopted here on the House has had to be waived simply does not have any application to this debate, because the language of the amendment differs from the language of the rule which we adopted on the first day of this Congress.

Mr. BARTON of Texas. Mr. Speaker, I see the distinguished chairman of the Committee on Rules, the gentleman from the great State of New York [Mr. SOLOMON], on the floor. Would he like to engage in the debate?

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

Mr. BARTON of Texas. I yield to the gentleman from New York.

Mr. SOLOMON. I would. Mr. Speaker, I thank both of the gentlemen. I happen to come from the State—that State is New York—which always is either the first or second highest-taxed State in the Nation. Let me tell you, we have seen hundreds of thousands of manufacturing jobs leave our State almost for that reason alone; that, plus the fact that we are the most overregulated State.

Let me just tell you, we go back to 1993 when this Congress enacted the largest tax increase in the history of this entire Government body, the largest tax increase. Yet, we did not cut the deficit by the amount of the tax increase. That meant by increasing taxes, you actually are giving an incentive to this Congress to increase spending. That is why we should never, never increase taxes in order to bring down the deficit, because it just does not work.

This in itself is going to do more to straighten out the fiscal mess of this Congress and this Government than anything else we could do, because it is going to be a disincentive to this body to spend money. That is what we need

to get at this sea of red ink that is literally killing my children, my grandchildren, and yours, and the others around this country.

I commend both of you. Let us get this thing on the floor and let us pass it, and the American people are going to thank us from the bottom of their hearts.

Mr. SHADEGG. Mr. Speaker, if the gentleman will continue to yield, the gentleman raised the question of whether or not tax increases have solved the deficit problem.

I am sure the gentleman is aware that the history is, as he points out, the opposite. Each time we have increased taxes by a dollar, studies show we have further increased spending by not $1, not an equal amount, but by $1.59. So we have driven ourselves with each new tax increase to solve our deficit problem, not taken ourselves out of debt, but put ourselves further into debt.

Mr. SOLOMON. The gentleman is so right. Again, I want to thank both of you for the job that you have done to get this on the floor. Sometime around 9 o'clock tonight is going to come the critical vote. I would urge all of you, to the people back in your districts, to get those phones ringing and let us get these Members of Congress to come over here and vote for this vital piece of legislation.

Mr. BARTON of Texas. Mr. Speaker, that phone number is 202-225-3121, for those who wish to call the House switchboard.

Mr. HALL of Texas. Mr. Speaker, will the gentleman yield?

Mr. BARTON of Texas. I yield to the gentleman from Texas.

Mr. HALL of Texas. Mr. Speaker, I would say to the gentleman from Texas [Mr. BARTON], the leader and the original sponsor of this amendment, that we need to reduce this down to its easiest terms to understand. It is not tough. It is really simple. It is just, simply, do you want half the Members on this floor to be able to raise your taxes, or do you want it to require two-thirds. We have de minimis and all these other one-way roads and explanations and diversions and questionings, and we will have speeches about it later in the day, but it narrows right down to whether or not we want half the people to be able to put taxes on us to where they can have more spending, or we want it to require two-thirds.

The gentleman from New York [Mr. SOLOMON] and I were here when they passed the so-called Tax Reform Act of 1986. It was an act that he simply wanted, the President, President Reagan wanted an act. He wanted a Tax Reform Act. The Committee on Ways and Means chairman wanted a Tax Reform Act. They got together on a Tax Reform Act. We passed it. I think of the two, only one of them really understood it. I am sorry to say that was not President Reagan.

We got the sorriest act that has ever been passed on the floor of this Congress, that set this country back so far. That would not have happened if your amendment, I would say if the gentleman from Arizona [Mr. SHADEGG] had been here, and the gentleman from Texas [Mr. BARTON], if his amendment had been passed, that would not have taken place. It took place right at the break of day when people were trying to go home. This protects people against those of us who are trying to go home; stay here and work, and require a two-thirds majority. I thank the gentleman for his tenacity and the tenacity he will set forth in the future if we fail today.

Mr. BARTON of Texas. Mr. Speaker, I yield to the gentleman from Arizona.

Mr. SHADEGG. Mr. Speaker, I thank the gentleman for his leadership. I simply want to conclude my remarks as a part of this special order by saying we in the Congress have a tremendous opportunity today to deliver to the American people on a promise we made a year ago. On this day when we exact their tax return from them, when we reach into their pockets one more time, we have a chance to tell them that we are going to impose the discipline of a supermajority requirement in the U.S. Constitution. I urge my colleagues not to miss this opportunity to support this amendment.

Mr. BARTON of Texas. Mr. Speaker, I want to conclude very quickly by stating that this is about helping us to get to a balanced budget. The last balanced budget of the U.S. Government was in 1969. My son was born in 1970. He is now about to enter graduate school. He has never lived in a year that we have balanced the Federal budget.

There are two ways to balance the budget. You can cut spending or raise taxes. We think, those of us who support this amendment, we should do it by emphasizing spending cuts, not tax increases. Federal revenues have grown every year since 1964. The 10 years that I have been in the Congress, they have grown an average of $59 billion a year, $59 billion a year. The problem is that spending has grown more rapidly than revenues.

The tax limitation amendment is simply a mechanism to make it more difficult to raise taxes and, therefore, easier to focus on spending reduction or spending limitation, which is what we should do in order to balance the budget. This House and this Senate sent to the President of the United States a 7-year comprehensive budget that would have balanced in 7 years with no tax increases. The President vetoed the Balanced Budget bill we sent him. If we get a supermajority requirement into our Constitution, future Congresses will be able to work with future Presidents and focus on spending limitation, not on tax increases, as a way to balance the budget.

PROVIDING FOR CONSIDERATION OF HOUSE JOINT RESOLUTION 159, CONSTITUTIONAL AMENDMENT RELATING TO TAXES

Mr. MCINNIS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 395 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 395

Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the joint resolution (H.J. Res. 159) proposing an amendment to the Constitution of the United States to require two-thirds majorities for bills increasing taxes. An amendment in the nature of a substitute consisting of the text of House Joint Resolution 169 shall be considered as adopted. The previous question shall be considered as ordered on the joint resolution, as amended, and on any further amendment thereto to final passage without intervening motion except: (1) three hours of debate on the joint resolution, as amended, which shall be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary; (2) one motion to amend, if offered by the minority leader or his designee, which shall be considered as read and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit with or without instructions.

The SPEAKER pro tempore (Mr. EWING). The gentleman from Colorado [Mr. MCINNIS] is recognized for 1 hour.

Mr. MCINNIS. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts [Mr. MOAKLEY], pending which I yield myself such time as I may consume. During the consideration of this resolution, all time yielded is for purposes of debate only.

Mr. Speaker, House Resolution 395 is a very simple resolution. The proposed rule is a modified closed rule providing for 3 hours of general debate divided equally between the chairman and ranking minority member of the Committee on the Judiciary. Upon adoption of this rule an amendment in the nature of a substitute consisting of House Joint Resolution 169 shall be considered as adopted. Additionally, the rule provides for an amendment by the minority leader, or his designee, which would be separately debatable for 1 hour. Finally, Mr. Speaker, the rule provides one motion to recommit with or without instructions.

Mr. Speaker, we should not view a proposed amendment to the Constitution of the United States lightly. However, the participants at the constitutional convention were acutely aware of the need to allow for the amendments to the Constitution. During the Constitutional Convention, Colonel Mason urged the necessity of an amendment process claiming that "the plan now formed will certainly be defective, as the Confederation has been

found to be. Amendments therefore will be necessary, and it will be better to provide for them, in an easy, regular and Constitutional way than to trust chance and violence."

Likewise, Thomas Jefferson stated "I am not an advocate for frequent changes in laws and constitutions. But laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change. With the change of circumstances, institutions must advance also to keep pace with the times."

The Framers with their infinite wisdom included Article V within the Constitution of the United States. Article V has not been overused. During the course of our history, in addition to the 27 amendments that have been ratified by the required three-fourths of the States, six other amendments have been submitted to the States but not ratified by them. At times the ratification process moves slowly. For example, the 27th amendment to the Constitution was proposed on September 25, 1789, and it was declared ratified on May 18, 1992, nearly 203 years later. Ultimately, this House, the Senate, and the various State legislatures will have thoroughly debated the merits of the supermajority requirement prior to ratification, or rejection, of this proposal.

Mr. Speaker, in my opinion, requiring a supermajority for tax increases is a good idea. My State of Colorado requires a three-fourths supermajority for tax increases by the legislature, and the State of Colorado is doing fine. One-third of all Americans live in States that have tax limitations in their constitutions, and they have curbed the growth of both taxes and debt.

Today, the average American, who works an 8-hour day, will spend the first 2 hours and 46 minutes paying his tax liability. This year, the average American family will pay more in taxes than housing, transportation, recreation, and clothing combined. I do not believe that we should continue to increase the average person's tax burden unless there is broad bipartisan consensus as to the increase being necessary. Any tax measure that could garner the required two-thirds vote would obliviously enjoy wide support from all political parties, and among the people generally. I urge my colleagues to support this rule and the underlying legislation.

Mr. Speaker, I include for the RECORD documents detailing a comparison of the amendment process between the 103d Congress and the 104th Congress.

The information referred to is as follows:

THE AMENDMENT PROCESS UNDER SPECIAL RULES REPORTED BY THE RULES COMMITTEE,[1] 103D CONGRESS V. 104TH CONGRESS

[As of April 12, 1996]

Rule type	103d Congress		104th Congress	
	Number of rules	Percent of total	Number of rules	Percent of total
Open/Modified-open[2]	46	44	60	59
Modified Closed[3]	49	47	26	25
Closed[4]	9	9	16	16
Total	104	100	102	100

[1] This table applies only to rules which provide for the original consideration of bills, joint resolutions or budget resolutions and which provide for an amendment process. It does not apply to special rules which only waive points of order against appropriations bills which are already privileged and are considered under an open amendment process under House rules.

[2] An open rule is one under which any Member may offer a germane amendment under the five-minute rule. A modified open rule is one under which any Member may offer a germane amendment under the five-minute rule subject only to an overall time limit on the amendment process and/or a requirement that the amendment be preprinted in the Congressional Record.

[3] A modified closed rule is one under which the Rules Committee limits the amendments that may be offered only to those amendments designated in the special rule or the Rules Committee report to accompany it, or which preclude amendments to a particular portion of a bill, even though the rest of the bill may be completely open to amendment.

[4] A closed rule is one under which no amendments may be offered (other than amendments recommended by the committee in reporting the bill).

SPECIAL RULES REPORTED BY THE RULES COMMITTEE, 104TH CONGRESS

[As of April 12, 1996]

H. Res. No. (Date rept.)	Rule type	Bill No.	Subject	Disposition of rule
H. Res. 38 (1/18/95)	O	H.R. 5	Unfunded Mandate Reform	A: 350–71 (1/19/95).
H. Res. 44 (1/24/95)	MC	H. Con. Res. 17	Social Security	A: 255–172 (1/25/95).
		H.J. Res. 1	Balanced Budget Amdt	
H. Res. 51 (1/31/95)	O	H.R. 101	Land Transfer, Taos Pueblo Indians	A: voice vote (2/1/95).
H. Res. 52 (1/31/95)	O	H.R. 400	Land Exchange, Arctic Nat'l. Park and Preserve	A: voice vote (2/1/95).
H. Res. 53 (1/31/95)	O	H.R. 440	Land Conveyance, Butte County, Calif	A: voice vote (2/1/95).
H. Res. 55 (2/1/95)	O	H.R. 2	Line Item Veto	A: voice vote (2/2/95).
H. Res. 60 (2/6/95)	O	H.R. 665	Victim Restitution	A: voice vote (2/7/95).
H. Res. 61 (2/6/95)	O	H.R. 666	Exclusionary Rule Reform	A: voice vote (2/7/95).
H. Res. 63 (2/8/95)	MO	H.R. 667	Violent Criminal Incarceration	A: voice vote (2/9/95).
H. Res. 69 (2/9/95)	O	H.R. 668	Criminal Alien Deportation	A: voice vote (2/10/95).
H. Res. 79 (2/10/95)	MO	H.R. 728	Law Enforcement Block Grants	A: voice vote (2/13/95).
H. Res. 83 (2/13/95)	MO	H.R. 7	National Security Revitalization	PQ: 229–100; A: 227–127 (2/15/95).
H. Res. 88 (2/16/95)	MC	H.R. 831	Health Insurance Deductibility	PQ: 230–191; A: 229–188 (2/21/95).
H. Res. 91 (2/21/95)	O	H.R. 830	Paperwork Reduction Act	A: voice vote (2/22/95).
H. Res. 92 (2/21/95)	MC	H.R. 889	Defense Supplemental	A: 282–144 (2/22/95).
H. Res. 93 (2/22/95)	MO	H.R. 450	Regulatory Transition Act	A: 252–175 (2/23/95).
H. Res. 96 (2/24/95)	MO	H.R. 1022	Risk Assessment	A: 253–165 (2/27/95).
H. Res. 100 (2/27/95)	O	H.R. 926	Regulatory Reform and Relief Act	A: voice vote (2/28/95).
H. Res. 101 (2/28/95)	MO	H.R. 925	Private Property Protection Act	A: 271–151 (3/2/95).
H. Res. 103 (3/3/95)	MO	H.R. 1058	Securities Litigation Reform	
H. Res. 104 (3/3/95)	MO	H.R. 988	Attorney Accountability Act	A: voice vote (3/6/95).
H. Res. 105 (3/6/95)	MO			A: 257–155 (3/7/95).
H. Res. 108 (3/7/95)	Debate	H.R. 956	Product Liability Reform	A: voice vote (3/8/95).
H. Res. 109 (3/8/95)	MC			PQ: 234–191 A: 247–181 (3/9/95).
H. Res. 115 (3/14/95)	MO	H.R. 1159	Making Emergency Supp. Approps	A: 242–190 (3/15/95).
H. Res. 116 (3/15/95)	MC	H.J. Res. 73	Term Limits Const. Amdt	A: voice vote (3/28/95).
H. Res. 117 (3/16/95)	Debate	H.R. 4	Personal Responsibility Act of 1995	A: voice vote (3/21/95).
H. Res. 119 (3/21/95)	MC			A: 217–211 (3/22/95).
H. Res. 125 (4/3/95)	O	H.R. 1271	Family Privacy Protection Act	A: 423–1 (4/4/95).
H. Res. 126 (4/3/95)	O	H.R. 660	Older Persons Housing Act	A: voice vote (4/6/95).
H. Res. 128 (4/4/95)	MC	H.R. 1215	Contract With America Tax Relief Act of 1995	A: 228–204 (4/5/95).
H. Res. 130 (4/5/95)	MC	H.R. 483	Medicare Select Expansion	A: 253–172 (4/6/95).
H. Res. 136 (5/1/95)	O	H.R. 655	Hydrogen Future Act of 1995	A: voice vote (5/2/95).
H. Res. 139 (5/3/95)	O	H.R. 1361	Coast Guard Auth. FY 1996	A: voice vote (5/9/95).
H. Res. 140 (5/9/95)	O	H.R. 961	Clean Water Amendments	A: 414–4 (5/10/95).
H. Res. 144 (5/11/95)	O	H.R. 535	Fish Hatchery—Arkansas	A: voice vote (5/15/95).
H. Res. 145 (5/11/95)	O	H.R. 584	Fish Hatchery—Iowa	A: voice vote (5/15/95).
H. Res. 146 (5/11/95)	O	H.R. 614	Fish Hatchery—Minnesota	A: voice vote (5/15/95).
H. Res. 149 (5/16/95)	MC	H. Con. Res. 67	Budget Resolution FY 1996	PQ: 252–170 A: 255–168 (5/17/95).
H. Res. 155 (5/22/95)	MO	H.R. 1561	American Overseas Interests Act	A: 233–176 (5/23/95).
H. Res. 164 (6/8/95)	MC	H.R. 1530	Nat. Defense Auth. FY 1996	PQ: 225–191 A: 233–183 (6/13/95).
H. Res. 167 (6/15/95)	O	H.R. 1817	MilCon Appropriations FY 1996	PQ: 223–180 A: 245–155 (6/16/95).
H. Res. 169 (6/19/95)	MC	H.R. 1854	Leg. Branch Approps. FY 1996	PQ: 232–196 A: 236–191 (6/20/95).
H. Res. 170 (6/20/95)	O	H.R. 1868	For. Ops. Approps. FY 1996	PQ: 221–178 A: 217–175 (6/22/95).

SPECIAL RULES REPORTED BY THE RULES COMMITTEE, 104TH CONGRESS—Continued

[As of April 12, 1996]

H. Res. No. (Date rept.)	Rule type	Bill No.	Subject	Disposition of rule
H. Res. 171 (6/22/95)	O	H.R. 1905	Energy & Water Approps. FY 1996	A: voice vote (7/12/95).
H. Res. 173 (6/27/95)	C	H.J. Res. 79	Flag Constitutional Amendment	PQ: 258–170 A: 271–152 (6/28/95).
H. Res. 176 (6/28/95)	MC	H.R. 1944	Emer. Supp. Approps	PQ: 236–194 A: 234–192 (6/29/95).
H. Res. 185 (7/11/95)	O	H.R. 1977	Interior Approps. FY 1996	PQ: 235–193 D: 192–238 (7/12/95).
H. Res. 187 (7/12/95)	O	H.R. 1977	Interior Approps. FY 1996 #2	PQ: 230–194 A: 229–195 (7/13/95).
H. Res. 188 (7/12/95)	O	H.R. 1976	Agriculture Approps. FY 1996	PQ: 242–185 A: voice vote (7/18/95).
H. Res. 190 (7/17/95)	O	H.R. 2020	Treasury/Postal Approps. FY 1996	PQ: 232–192 A: voice vote (7/18/95).
H. Res. 193 (7/19/95)	C	H.J. Res. 96	Disapproval of MFN to China	A: voice vote (7/20/95).
H. Res. 194 (7/19/95)	O	H.R. 2002	Transportation Approps. FY 1996	PQ: 217–202 (7/21/95).
H. Res. 197 (7/21/95)	O	H.R. 70	Exports of Alaskan Crude Oil	A: voice vote (7/24/95).
H. Res. 198 (7/21/95)	O	H.R. 2076	Commerce, State Approps. FY 1996	A: voice vote (7/25/95).
H. Res. 201 (7/25/95)	O	H.R. 2099	VA/HUD Approps. FY 1996	A: 230–189 (7/25/95).
H. Res. 204 (7/28/95)	MC	S. 21	Terminating U.S. Arms Embargo on Bosnia	A: voice vote (8/1/95).
H. Res. 205 (7/28/95)	O	H.R. 2126	Defense Approps. FY 1996	A: 409–1 (7/31/95).
H. Res. 207 (8/1/95)	MC	H.R. 1555	Communications Act of 1995	A: 255–156 (8/2/95).
H. Res. 208 (8/1/95)	O	H.R. 2127	Labor, HHS Approps. FY 1996	A: 323–104 (8/2/95).
H. Res. 215 (9/7/95)	O	H.R. 1594	Economically Targeted Investments	A: voice vote (9/12/95).
H. Res. 216 (9/7/95)	MO	H.R. 1655	Intelligence Authorization FY 1996	A: voice vote (9/12/95).
H. Res. 218 (9/12/95)	O	H.R. 1162	Deficit Reduction Lockbox	A: voice vote (9/13/95).
H. Res. 219 (9/12/95)	O	H.R. 1670	Federal Acquisition Reform Act	A: 414–0 (9/13/95).
H. Res. 222 (9/18/95)	O	H.R. 1617	CAREERS Act	A: 388–2 (9/19/95).
H. Res. 224 (9/19/95)	O	H.R. 2274	Natl. Highway System	PQ: 241–173 A: 375–39–1 (9/20/95).
H. Res. 225 (9/19/95)	MC	H.R. 927	Cuban Liberty & Dem. Solidarity	A: 304–118 (9/20/95).
H. Res. 226 (9/21/95)	O	H.R. 743	Team Act	A: 344–66–1 (9/27/95).
H. Res. 227 (9/21/95)	O	H.R. 1170	3-Judge Court	A: voice vote (9/28/95).
H. Res. 228 (9/21/95)	O	H.R. 1601	Internatl. Space Station	A: voice vote (9/27/95).
H. Res. 230 (9/27/95)	C	H.J. Res. 108	Continuing Resolution FY 1996	A: voice vote (9/28/95).
H. Res. 234 (9/29/95)	O	H.R. 2405	Omnibus Science Auth	A: voice vote (10/11/95).
H. Res. 237 (10/17/95)	MC	H.R. 2259	Disapprove Sentencing Guidelines	A: voice vote (10/18/95).
H. Res. 238 (10/18/95)	MC	H.R. 2425	Medicare Preservation Act	PQ: 231–194 A: 227–192 (10/19/95).
H. Res. 239 (10/19/95)	C	H.R. 2492	Leg. Branch Approps	PQ: 235–184 A: voice vote (10/31/95).
H. Res. 245 (10/25/95)	MC	H. Con. Res. 109	Social Security Earnings Reform	PQ: 228–191 A: 235–185 (10/26/95).
		H.R. 2491	Seven-Year Balanced Budget	
H. Res. 251 (10/31/95)	C	H.R. 1833	Partial Birth Abortion Ban	A: 237–190 (11/1/95).
H. Res. 252 (10/31/95)	MO	H.R. 2546	D.C. Approps.	A: 241–181 (11/1/95).
H. Res. 257 (11/7/95)	C	H.J. Res. 115	Cont. Res. FY 1996	A: 216–210 (11/8/95).
H. Res. 258 (11/8/95)	MC	H.R. 2586	Debt Limit	A: 220–200 (11/10/95).
H. Res. 259 (11/9/95)	O	H.R. 2539	ICC Termination Act	A: voice vote (11/14/95).
H. Res. 261 (11/9/95)	C	H.J. Res. 115	Cont. Resolution	A: 223–182 (11/10/95).
H. Res. 262 (11/9/95)	C	H.R. 2586	Increase Debt Limit	A: 220–185 (11/10/95).
H. Res. 269 (11/15/95)	O	H.R. 2564	Lobbying Reform	A: voice vote (11/16/95).
H. Res. 270 (11/15/95)	C	H.J. Res. 122	Further Cont. Resolution	A: 229–176 (11/15/95).
H. Res. 273 (11/16/95)	MC	H.R. 2606	Prohibition on Funds for Bosnia	A: 239–181 (11/17/95).
H. Res. 284 (11/29/95)	O	H.R. 1788	Amtrak Reform	A: voice vote (11/30/95).
H. Res. 287 (11/30/95)	O	H.R. 1350	Maritime Security Act	A: voice vote (12/6/95).
H. Res. 293 (12/7/95)	C	H.R. 2621	Protect Federal Trust Funds	PQ: 223–183 A: 228–184 (12/14/95).
H. Res. 303 (12/13/95)	O	H.R. 1745	Utah Public Lands	
H. Res. 309 (12/18/95)	C	H.Con. Res. 122	Budget Res. W/President	PQ: 230–188 A: 229–189 (12/19/95).
H. Res. 313 (12/19/95)	O	H.R. 558	Texas Low-Level Radioactive	A: voice vote (12/20/95).
H. Res. 323 (12/21/95)	C	H.R. 2677	Natl. Parks & Wildlife Refuge	Tabled (2/28/96).
H. Res. 366 (2/27/96)	MC	H.R. 2854	Farm Bill	PQ: 228–182 A: 244–168 (2/28/96).
H. Res. 368 (2/28/96)	O	H.R. 994	Small Business Growth	
H. Res. 371 (3/6/96)	C	H.R. 3021	Debt Limit Increase	A: voice vote (3/7/96).
H. Res. 372 (3/6/96)	MC	H.R. 3019	Cont. Approps. FY 1996	PQ: voice vote A: 235–175 (3/7/96).
H. Res. 380 (3/12/96)	MC	H.R. 2703	Effective Death Penalty	A: 251–157 (3/13/96).
H. Res. 384 (3/14/96)	MC	H.R. 2202	Immigration	PQ: 233–152 A: voice vote (3/21/96).
H. Res. 386 (3/20/96)	C	H.J. Res. 165	Further Cont. Approps	PQ: 234–187 A: 237–183 (3/21/96).
H. Res. 388 (3/20/96)	C	H.R. 125	Gun Crime Enforcement	A: 244–166 (3/22/96).
H. Res. 391 (3/27/96)	C	H.R. 3136	Contract w/America Advancement	PQ: 232–180 A: 232–177, (3/28/96).
H. Res. 392 (3/27/96)	MC	H.R. 3103	Health Coverage Affordability	PQ: 229–186 A: Voice Vote (3/29/96)
H. Res. 395 (3/29/96)	MC	H.J. Res. 159	Tax Limitation Const. Amdmt.	
H. Res. 396 (3/29/96)	O	H.R. 842	Truth in Budgeting Act	

Codes: O-open rule; MO-modified open rule; MC-modified closed rule; C-closed rule; A-adoption vote; D-defeated; PQ-previous question vote. Source: Notices of Action Taken, Committee on Rules, 104th Congress.

Mr. McINNIS. Mr. Speaker, I reserve the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, my Republican colleagues ought to be ashamed of this rule and this constitutional amendment.

The Constitution of the United States is one of the most carefully crafted and well-respected documents ever created. It's the foundation for the greatest Government on Earth. It is the protection of our freedoms. And it's no place for political theater. But that's what's happening today, Mr. Speaker.

Today my Republican colleagues are staging a legislative fiasco, or, as the New York Times put it, "Staging a vote on an irresponsible measure"—and just in time for tax day. And they know it will go nowhere. Because this ridiculous amendment needs 290 votes to pass the House and luckily that won't happen. So, today's bill is showboating pure and simple and the American people deserve more from their Congress.

They deserve a constitutional amendment that at least has been reported out of a congressional committee, and this bill, House Joint Resolution 169, has never been the subject of a full committee hearing nor has it been reported out.

Mr. Speaker, amending the Constitution is serious business and we should at least know what we are doing.

Mr. Speaker, this issue, the issue of getting a supermajority to raise taxes, has come up three times this Congress. In the beginning of the Congress my Republican colleagues changed the rules to require a three-fifth vote for tax increases. But, every single time that rule came up, my Republican colleagues voted against it.

They ignored it on the so-called Medicare Preservation Act, they ignored it on the Budget Reconciliation Act, and they ignored it on health insurance reform.

If my Republican colleagues think this supermajority idea is so wonderful, why didn't they do it the first three times they had the chance?

Mr. Speaker, they had three times to show they were serious and three times they showed they weren't. They didn't impose on themselves this supermajority that they now want to impose on the Constitution of the United States.

And I would say to my colleagues that it is a lot easier and a lot less dangerous to change the House rules than to change the Constitution of the United States of America.

This amendment, Mr. Speaker, like a lot of other legislation we've seen this Congress, will help the very rich at the expense of lower income working American families.

This amendment to our Constitution will lock in corporate welfare and tax breaks for the very rich at the expense of middle and lower income families.

This amendment will not prevent tax increases on working families. In fact, my Republican colleagues have given

themselves a big loophole. They can still increase taxes on working families as long as they also decrease taxes on the very rich.

That means the Republican budget is a-OK. That means that this amendment allows the budget that will give the richest 1 percent of Americans a $15,000 tax break while it raises the taxes on families earning $27,000 a year.

And finally, this rule, Mr. Speaker, is one more restrictive rule in a year of 100 percent restrictive rules.

I urge my colleagues to defeat this rule.

□ 1645

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

Mr. MCINNIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I should just very briefly point out to the gentleman from Massachusetts that according to the study put out by the National Taxpayers Union, more than 25 percent of the revenue the IRS got in 1992 came from 1 percent of the taxpayers. One percent of the taxpayers, the very wealthiest in the country, pay 25 percent of the burden. So this certainly clarifies the confusion on that side of the aisle about what this rule does.

With that, Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. SOLOMON], the chairman of the Committee on Rules, a gentleman who is well versed. Certainly it is appropriate for him to address some of the issues that have been brought up by the ranking minority member.

Mr. SOLOMON. I certainly thank my colleague from the Rules Committee, a very valuable member of that committee from Colorado.

Mr. Speaker, my good friend from Massachusetts says we ought to know what we are doing before we vote on this bill. Let me tell my good friend from Massachusetts and everybody else within listening ear here, we know exactly what we are doing. We are making it difficult for this Congress to raise taxes on the American people. That is exactly what we are doing.

Let me call attention right at the outset of this debate, and the 3 hours that we will go after this, I want you to watch the people who stand up and oppose this constitutional amendment. I have here a list, a brand new list from the National Taxpayers Union, and I guarantee you that everybody on that side of the aisle that stands up to oppose this will appear as the biggest spenders in the entire Congress.

So keep that in mind: The people that oppose this constitutional amendment are the big spenders that want to continue to stick it to the American people. And those of us that want to make it difficult to raise taxes are those that have the lowest record for voting for big spending programs in this Congress. Now that we have set the parameter, I want all of you to pay attention and keep track as they stand one by one on each side of the aisle.

Now, having said all that, I am rising to support this legislation, Mr. Speaker.

Attempting to amend the Constitution of the United States is a serious and a very historic undertaking. We would not suggest that this approach is any way easy at all, but as future Congresses are forced to deal with budget realities, the bottom line is that there are limited options to reach a balanced budget.

One is to cut spending, and that is the way we ought to be doing it. The other is to raise revenue, either by raising taxes, which we should never do, or improving economic growth. That is the only way that you get new revenues coming into the Federal budget.

A proposed constitutional amendment before the House today is designed to discourage future Congresses from imposing large tax increases unless there is a two-thirds consensus that this is necessary. That is very simple.

Mr. Speaker, the opponents of this constitutional amendment may try to portray it as some sort of unworkable scheme, but we should keep in mind that 10 States that I know of, and maybe there are more, with one-third of the Nation's population already have some sort of supermajority voting requirement regarding taxation, and those States seem to be managing nicely. They do not have any problem. It just takes an overwhelming need to raise taxes before they will vote for it.

Other opponents may argue that in a democracy all votes should be by a simple majority. That sounds nice, but our own U.S. Constitution already provides for two-thirds votes on a number of issues. For example, this proposed amendment to the Constitution, like all constitutional amendments originating in the Congress, will require a two-thirds vote in each House. So that is already a part of the Constitution, and that is what we are proposing to extend here today.

The Constitution also requires a two-thirds vote by each House of Congress to pass any bill over the President's veto. There is another two-thirds requirement. And the Constitution also requires that there be a two-thirds vote to expel a Member. So everywhere in our rules and in the Constitution we have the two-thirds proviso.

Mr. Speaker, the opponents also may argue that the two-thirds vote requirement is only provided in cases of special significance, and that is true. We all admit that. But as Chief Justice John Marshall stated in the case of McCulloch versus Maryland in 1819, listen to this now, "The power to tax involves the power to destroy."

Let me tell you something: We have all but destroyed the American family in this country. When people with incomes of $30,000 and $40,000 and $50,000 or less or more have to work 3 out of every 8 hours of their day just to pay the taxes for the Federal, State, and local governments, let me tell you, that is the power to destroy. That is what we are trying to prevent from happening in the future.

Mr. Speaker, the increasing of the overall tax burden on the American population is a situation of special significance. It is at least as significant as the ratification of a treaty, for example, and the Constitution already requires a two-third vote in the Senate to approve any treaty at all.

Writing in support of this specific constitutional amendment is someone that I admire and respect very much. Columnist George Will wrote last week that "the properly reverent reason for amending the Constitution," and listen to this, "is to revive those of the Framers' objectives that have been attenuated by political developments since the Framers left Philadelphia" way back when. George Will concluded that this proposed constitutional amendment meets that test.

He cites two supporters of the supermajority requirement, John McGinnis of the prestigious Yeshiva University's Cardozo Law School and Michael Rappaport of the University of San Diego Law School, as saying the amendment should be seen as an attempt to revive the original values of the Constitution rather than as a radical innovation.

Mr. Speaker, that is true. The Framers of our Constitution designed a system to "temper simple majoritarianism" with Federalism and the separation of powers, and to protect "that which taxation can threaten—the right to enjoyment of property that results from enterprise."

We do not want to take money away from people, and that is exactly what we have been doing. And yet those values have been undermined by the Supreme Court's expansive interpretation of the commerce clause and by the rules and regulations of the administrative state that have substantially compromised property rights, which is what we all cherish so much, property rights, our own property.

George Will quotes the two legal scholars to the effect that if the supermajority requirement for raising taxes "forces Congress to finance spending with larger deficits that are even more unpopular than higher taxes," what does that mean? "This will induce Congress to spend less than it otherwise would."

Let me repeat that, because that is really what this debate is all about. "This will induce Congress to spend less than it otherwise would." That is what it is all about. George Will echoes

these sentiments by saying that "by making tax increases most difficult, a supermajority requirement would force the political class to look to economic growth to raise revenues," and that is where we should be looking.

George Will concludes, and I quote, "Some such amendment could represent reverent restoration of the values embodied in what the Framers did at Philadelphia."

Mr. Speaker, I have to go back to my hero, Ronald Reagan, because in 1981 we rammed through the Reagan revolution. We made such a great beginning.

But in 1982 there were some deficits that were appearing, and the liberals that controlled this Congress back in 1982 went to Ronald Reagan and to me and others and they said, "Mr. Reagan, if you will give us $1 in tax increase, we will guarantee you $2 in spending cuts." Ronald Reagan, being a new kid on the block, bought that. He bought that deal.

And do you know what? He actually signed a tax increase over my objection, but what do you think happened? We did not get a nickel's worth of spending cuts at all. As a matter of fact, we spent $1.29 more than we got in tax revenues coming in. That is what this debate is all about.

If we are ever going to stop this sea of red ink, we are going to make it as difficult as we possibly can in raising taxes on the American people, and that is why I hope everyone comes over here and votes for this rule and then votes for this very important constitutional amendment. Because if we do, and we give the two-thirds vote, that means that the people themselves through their representatives in the State legislatures across this country are going to have a chance to then speak and be heard about ratifying this proposal. Let us give the American people that choice by passing this today.

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

Mr. SOLOMON. I yield to the gentleman from Massachusetts.

Mr. MOAKLEY. I thank the gentleman for yielding. But if he is so intent in passing the supermajority, why did his party three times this year waive the supermajority that they put in themselves in changing the rules? Could the gentleman please answer that question?

Mr. SOLOMON. As the gentleman knows, he has some people on his side of the aisle that would liked to have raised a point of order and the point of order would not have stood but it would have taken up several hours of this body's time. That is the only reason. It did not raise taxes and the gentleman knows it.

Mr. FRANK of Massachusetts. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. I hope I have better luck getting a straight answer.

When the gentleman said that it was the liberals who controlled Congress in 1982 that forced Ronald Reagan to have a tax increase, does he include in that the man who was then chairman of the Republican-controlled Senate Finance Committee, ROBERT DOLE?

The tax bill he is talking about in 1982 was passed by a Democratic House and a Republican Senate with ROBERT DOLE as chairman of the Finance Committee.

Was ROBERT DOLE who passed that tax bill one of those liberals the gentleman is complaining about?

Mr. SOLOMON. No. ROBERT DOLE was asked by Ronald Reagan to go along with that bill because Ronald Reagan thought he could trust the liberals. He found out he could not, and BOB DOLE regrets it to this day.

Mr. MOAKLEY. Mr. Speaker, I yield 10 minutes to the gentleman from California [Mr. BEILENSON].

Mr. BEILENSON. I thank my good friend from Massachusetts for yielding time to me.

Mr. Speaker, I rise in strong opposition to the rule and to the proposed constitutional amendment it makes in order, which would require two-thirds majorities for passage of bills increasing revenues.

□ 1700

Mr. Speaker, many of us believe that the tax limitation constitutional amendment is a foolish idea, but even Members who support it ought to be very troubled by the manner in which the House of Representatives is being asked to consider it today.

Amendments to the U.S. Constitution are the most serious and important measures Congress ever considers, because they propose to change the document that is the very foundation of our Government. Yet this proposed constitutional amendment has not gone through even the minimal preliminary step of being reported by the committee of jurisdiction—the Judiciary Committee—before being brought to the House floor. And, because the amendment has not been reported, there is no committee report available discussing the reasons for the legislation.

In fact, only one hearing was held on this subject in the Judiciary Committee—in one of its subcommittees—and that was on a measure that was significantly different from the one that we are to consider today. This new proposal was introduced on March 28, just 1 day before the House recessed for 2 weeks; and its only airing was in the Rules Committee the following day, as Members were preparing to leave Washington for their home districts.

Even worse, this amendment will be debated at a time when Members are just returning from their districts after the 2-week recess, and have not yet had a chance to focus on this proposal, and to consider the merits of the arguments on both sides.

Why is so important a measure as this being debated under such circumstances? For one simple reason: because its proponents believe they will get some public-relations benefit by holding this vote on April 15, the day many Americans identify with paying taxes.

The Republican leaders are so intent on holding this vote on April 15, to get publicity as part of today's tax-related news stories, that they are willing to violate the normal legislative process to do so.

And, the Republican leadership is holding this debate today knowing full well that they will not come close to obtaining the two-thirds vote necessary to pass this measure.

This is a cynical strategy that demeans the U.S. Congress by using the floor of the House of Representatives as a stage for a public-relations stunt, and the debases the U.S. Constitution by using a proposed amendment to it as a stage prop. That is a disgraceful misuse of the legislative process.

It is also more different than anything could be from the careful, thoughtful debate of 1787–1788 of the authors of the Constitution. If more members had read any of their debates, we would never dishonor them by attempting to overthrow what they had one in such an arrogant and thoughtless manner.

If we care at all about the Constitution we all swore to uphold, we would never consider bringing such an important proposal to the floor in the slipshod and disgraceful way that has been followed here. I cannot conceive of anyone being so disrespectful of the men who devoted themselves to creating the great document that has bound us all together so successfully now for more than 200 years than the very manner in which this matter has been thus far considered—and is being presented to the entire House for its final consideration here today.

Beyond the circumstances under which this amendment is being considered, the proposal itself is extremely unwise, which perhaps explains why the committee of jurisdiction refused to act on it.

The primary reason we ought to reject this amendment is that it violates the principle of majority rule, which is at the heart of our democratic form of government. By requiring two-thirds of each House to agree on bills that increase revenues, it would hand control over tax policy—one of Congress's most important responsibilities—to a one-third minority in each House.

Currently, the Constitution requires two-thirds majorities for only five kinds of measures: Presidential impeachment, expulsion of House or Senate Members, ratification of treaties, overriding a veto, and amending the

Constitution. This amendment would for the first time require two-thirds majority for passage of ordinary, regular legislation.

Since the committee did not take the time to look carefully at the issue which is being presented to us today, perhaps it might be useful and of some benefit to Members if we were to consider that those who wrote our Constitution, and fought to have it adopted, thought about this very matter.

Mr. Speaker, let me read just very briefly, if I may, from two of the issues of the Federalist, the first being No. 22, written by Mr. Hamilton, published in December of 1787, in part, to give a minority a negative upon the majority, which is always the case where more than a majority is requisite to a decision is in its tendency to subject the sense of the greater number to that of the lesser. This is one of those refinements which, in practice, has in effect the reverse of what is expected from it in theory, the necessity of unanimity in public bodies or of something approaching towards it has been founded upon a supposition that it would contribute to security but its real operation is to embarrass the administration, to destroy the energy of the government and to substitute the pleasure, caprice, or artifices of an insignificant, turbulent or corrupt junto to the regular deliberations and decisions of a respectable majority. In those emergencies of the Nation in which the goodness or badness or weakness or strength of the government is of greatest importance, there is commonly a necessity for action. The public business must in some way or other go forward.

If a pertinacious minority can control the opinion of a majority respecting the best mode of conducting it, the majority in order that something may be done, must then conform to the views of the minority. Thus the sense of the smaller number will overrule that of the greater and give a tone to the national proceedings different from that of the majority. Hence tedious delays, continual negotiations and intrigue, contemptible compromises of the public good.

Secondly, from Federalist paper No. 58, published in February 1788, attributed to both Mr. Hamilton and to Mr. Madison, but which scholars now seem to believe was most likely written by Mr. Madison, here too, Mr. Speaker, I read just a small part. I quote: If has been said that more than a majority ought to have been required for a quorum; in particular cases, if not in all, more than a majority of a quorum for a decision. That some advantages might have resulted from such a precaution cannot be denied. It might have been an additional shield to some particular interests and another obstacle generally to hasty and partial measures, but these considerations are outweighed by the inconveniences in the opposite scale in all cases where justice or the general good might require new laws to be passed or active measures to be pursued, the fundamental principle of free government would be reversed. It would no longer be the majority that would rule. The power would be transferred to the minority, where the defensive privilege limited in particular cases, an interested minority might take advantage of it to screen themselves from equitable sacrifices to the public wheal or in particular emergencies to extort unreasonable indulgences.

Mr. Speaker, two additional comments, if I may, which I believe are relevant:

No. 1, it is useful to recall that the reluctance of the Framers of the Constitution to including supermajority provisions in the Constitution was largely due to the ineffectiveness of the Articles of Confederation which they were drafted to replace. The articles required a supermajority for both taxing and spending, and the fact that it was so difficult to pay off debts from the Revolutionary War and to pay for the regular national expenditures thereafter was the main reason for the downfall of the Articles of Confederation. For that reason, the Philadelphia Convention chose to reject proposals to impose supermajorities in legislative fields of even special sensitivity and concern, reserving them for the five specific and special areas we have heretofore mentioned.

No. 2, the Founding Fathers were willing to accept the fact that Congresses in the future might use poor judgment at times and pass harmful laws by a majority vote—but they believed so deeply in the principle of majority rule, that they placed that principle above whatever personal concerns they had that the majority at times would act in a manner contrary to their own feelings.

And, finally, in Federalist No. 30, Hamilton argued that taxation is a necessity "in one shape or another," and that any effort to weaken the power to tax is to minimize what he referred to as "the most important of the authorities" of government.

For these reasons and many others which I will submit in the form of extended remarks, Mr. Speaker, I strongly oppose this proposal. I urge Members to vote down the rule. That is not the way to bring a constitutional amendment before this body.

Mr. MCINNIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would say to the gentleman from California, put this in real simple terms. We are talking about taxes, taxes, and taxes. You know, taxes do not need rain. Taxes do not need fertilizer to grow. All they need are politicians.

What we are trying to do with this two-thirds, which I live in a State which exercises that, what we are trying to do is put a speed bump in front of politicians that want to continue to increase taxes in this country. It is not going to stop the opportunity from funding the Federal Government. Obviously, that is important. It is going to make you slow down before you hit that speed bump. If you go over it at the proper speed, you are going to get through it. If you do not go over it at the proper speed, it means you are raising taxes too much.

I think April 15 is a very appropriate time for people to be considering, gosh, how much further are we going to let the Federal Government go, how much deeper into our pockets are we going to let them get. This proposal we have today was called by the gentleman from California a stage prop, sinful, slipshod.

You know, what we are attempting to do, one thing, we are attempting to give this to the States, every State in the Union, that is what this Constitution says, they are entitled to debate it. One debate took 203 years. We want every State, we want thousands of elected officials to debate this with the constituents they represent. That is all we are trying to do today. This does not automatically put a two-thirds limitation on the United States of America. It says to the States of the United States of America, here, States, we want you to debate this, here States, here is the opportunity under this Constitution, under Jefferson and so on, to debate it.

Mr. Speaker, I yield 3 minutes to the gentleman from Texas [Mr. BARTON], who is well versed in this area.

Mr. BARTON of Texas. Mr. Speaker, I thank the gentleman for yielding me this time.

I rise in strong support of the rule to bring up the tax limitation amendment this evening for floor consideration.

I would like to point out, under the rule the minority party has an opportunity to offer a substitute if they so wish. So, if they have a problem with specific language in the amendment, they will be given an opportunity to offer their own language. It is my understanding they are not going to do so.

The distinguished member, the ranking member of the Committee on Rules, Mr. MOAKLEY, said in his remarks earlier that this is irresponsible. I would take exception to that and say, Mr. Speaker, that this is the most responsible thing we could do on tax day, 1996.

For over 125 years of this Nation's history, we had tax limitation in the Constitution. It was not a supermajority vote requirement, it was a requirement that all tax bills had to originate in the House of Representatives, that are the people's body most closely related to the people and elected for 2-year terms. Unfortunately, in 1913 we

passed the 16th amendment to the Constitution that said an income tax was constitutional.

The marginal tax rate in that first income tax bill in 1913 was 1 percent. Today it is 39.8 percent. That is an increase of 4,000 percent in the marginal tax rate on the American people. In 1913, less than 1/10th of 1 percent of the American people had to pay ever 1 percent. Today, literally every American working has to pay some sort of income tax, and as we speak on the floor, 10 minutes after 5, April 15, 1996, it is 10 after 4 in Texas, 10 after 3 in Colorado, 10 after 2 in California, there are millions of American taxpayers, one-third of all American taxpayers do not file their tax return until the last 2 weeks. There are millions of Americans as we speak scrambling to fill out their taxes, to file an extension, to understand the Tax Code, and every one of those, I think, with almost no exception, is saying my taxes are too high. Sixty percent of working families in this country, both spouses have to work. Of those that are single-parent families, over half of them have to have two jobs. Is it not time to say enough is enough? A 4,000 percent increase on working Americans in their marginal tax rate should be enough for even the biggest-spending liberal in this body.

Let us vote for the two-thirds tax limitation later this evening, send it to the Senate, send it to the States, where three-fourths of them are necessary to ratify it, and begin to focus where we should have focused on all along, and that is on spending limitation, not on tax increases.

Mr. MOAKLEY. Mr. Speaker, I yield 3 minutes to the gentleman from New York [Mr. RANGEL].

□ 1715

Mr. RANGEL. Mr. Speaker, not too long ago, when there was a different majority, we used to have a little pamphlet called How to pass a law. I know the freshmen had a chance to read it before they took it off. But it used to go something like this: A Member introduces a bill. It is forwarded to a committee. The committee assigns the bill to a subcommittee. They have hearings on the bill and people who are for it and against it, they listen to the testimony. Then the committee members amend it, they change it. But when they pass it, they take it up to the full committee.

The full committee, they too sometimes have hearings, and they have people to listen to it, to see whether it makes sense. Then they amend it and they report it to the floor. And that is the way it used to be, before the new rules come in.

Nothing goes to the committees anymore. You can sit on the subcommittee, the full committee, and all you have to do is be in the back room with the Speaker and let someone have a great idea and pass it to my dear friend, the gentleman from New York, Mr. SOLOMON, and Mr. SOLOMON brings it to the floor.

I do not mind that. When you lose, you are entitled to be subjected to this type of legislative oppression. I never complain. But do not mess with my Constitution. Do not do that to the American people. Do not send it to a public relations firm on the day that we are supposed to pay taxes, and to believe that this document that allowed our country to survive for 200 years can now be distorted just because you are down in the polls and you are trying to make a couple of points.

No, no, no, no. The Committee on the Judiciary has jurisdiction over this, and the chairman of the Committee on the Judiciary should be entitled to have hearings with scholars, with judges, and with those people who hold this document precious.

Mr. Speaker, oh, it is a good gimmick. I would use it if I could. But the thing is that I would not use it on the floor, not to be a hoaxer to the American people to believe that this is going to become law and we are going to change the Constitution.

We can take a lot of tomfoolery, we can take a lot of jokes, a lot of hoax, a lot of hypocrisy, but somewhere in your hearts you know that, when you want to amend that precious and sacred document called the U.S. Constitution, that at least the committee of jurisdiction should hear it, should have hearings, and report back to the House.

Mr. Speaker, I know it is an election year. I know it has been done before. We like to have flat taxes. We like to have fair taxes; we like to make certain that everyone pays an equal amount. But when the time comes, since you have the votes to put in a bill, to have hearings on the bill and to vote if you want the flat tax, vote for it. You have the votes to pass anything you want in taxes. But I warn you, do not mess with our Constitution. Do not do that to this Congress or to the American people.

Mr. MOAKLEY. Mr. Speaker, I yield 6 minutes to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. Mr. Speaker, I am honored to follow the gentleman from New York, because he laid out what we are talking about: A political trick being played with the Constitution as a prop, and that ought to be beyond the pale.

Mr. Speaker, what we have here is the most outrageous abuse of the procedures I have seen in 16 years. Here is what happened.

This constitutional amendment was presented in a hearing to the Judiciary subcommittee on which I sit. At the hearing, the chairman of the full Committee on the Judiciary, the gentleman from Illinois [Mr. HYDE], was unable to conceal his lack of belief in this amendment. He was quite critical of it.

As the hearing proceeded, this was the original amendment which is still the one they plan to vote on in the Senate, it became clear under the amendment they originally presented, to go to a flat tax in the income tax, or to go to a sales tax, or to give the President the power to impose a countervailing tariff on a Nation discriminating against our project, all of those would have required two-thirds. There was some disagreement among the sponsors, but they agreed to that.

So what happened then? Well, it was clear from listening to several of the Republicans on the subcommittee that they did not have the votes to get it out of subcommittee. So there was no markup on this in subcommittee, there was no markup in committee. Instead, a private conference was held with the chairman of the Committee on Ways and Means, who to his credit thought the original amendment was really stupid. And it was.

Mr. Speaker, the hearing showed it to be stupid. It did all kinds of things, and I mean stupid in that it did all kinds of things the original sponsors did not mean it to do. So it has been totally changed.

We now have an amendment before us which is wholly different than the one that was originally introduced. This amendment has had no hearings, because we had one hearing which showed a great flaw in the original amendment. They were so embarrassed and the chairman of the Committee on Ways and Means said they cannot do this, so they came up with a whole new one. They did not learn from their mistakes. They learned if you are going to have a stupid amendment, do not have a hearing on it. Because this one did not have a hearing.

They could not defend the original one in the hearing, so they bring this one forward, and it had no hearing, no markup, nothing. It came out of the private set of conversations.

I talked to one of the sponsors of the bill today after it had been rewritten. He said I have not seen it yet.

The chairman of the Committee on Rules quoted George Will. George Will wrote in his column supporting this amendment that the language of this version is problematic. George Will asks us to vote for a constitutional amendment that is problematic.

Now, George Will, with whom I disagree, does not want to put problematic language into the Constitution. Obviously he thinks this is a good political gimmick and that is why he talks about it. Why else would he say pass something that is problematic?

Here is one of the things problematic about it. It would require, according to the majority's own views, two-thirds to cut the capital gains tax. I heard a little colloquy before in which one of the

sponsors of the amendment said, well, not necessarily. The Congressional Budget Office does not score it that way.

Mr. Speaker, that was not an answer. Let me put this within the rules. That was not an answer consonant with the reality of the facts of the situation. The facts of the situation are that this amendment does not give CBO that authority. CBO is irrelevant. This amendment says by a method to be determined, we will require two-thirds if that method says that has got a reasonable chance of raising revenues more than de minimis.

Never have we seen such imprecise language in the Constitution. I have more respect for my friends than to think they are serious about putting this kind of sloppiness into the Constitution. But it does show what a political game this is.

But what they say is that, if it raises the revenues, well now, they believe every single sponsor of this believes that cutting the capital gains tax raises revenues. If you put up a board that reflected their views, that board would rule that it needed a two-thirds vote to reduce the capital gains tax.

Now, I guess their view is this: They will be in control, a group that believes that reducing the capital gains tax will raise revenue will be in control, they will propose such a thing, and then they will set up a board which will rule contrary to their rule that it will cut the revenues. Obviously it will not happen.

The reference to CBO was not a legitimate intellectual response, because CBO has no role under this amendment and the people who will be in control at the time that a tax bill is proposed will be the ones to deal with it.

The fundamental problem we have is this: The right wing group that has taken over the Congress, because they are a majority of the minority, or a minority of the majority, but a very intense one, they have control; the ideological right wing group that has taken over has recognized that their viewpoint is not supported by the majority.

The majority does not like their attacks on Medicare, their attacks on Medicaid, their attacks on the environment. It does not like those. The majority did not even like their tax cut. If you poll them, they said we are serious about balancing the budget, unlike some who want to use it as a game.

What they are trying to do is change the rules, if they are successful, so the temporary majority they got in 1994 would continue to govern long after it has been repudiated at the polls. What this says is if the majority of the American people decide 10 years from now they would like to spend more money on the higher education, the environment, defense, or anything, tough. Because we, having gotten control now, will change the rulings.

But even on those terms, they had a hard time coming up with an amendment. And this amendment, which has never had a hearing and never had a committee vote, which is problematic in its language, according to George Will, which would require you to get a two-thirds vote to cut the capital gains tax, is a disgrace.

Mr. McINNIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, while it is interesting to hear the gentleman from Massachusetts refer to the right wing, I would remind the gentleman from Massachusetts that this concept is supported by 68 percent of the Federal employees, that this concept is supported by 71 percent of the union workers.

Now, the gentleman from Massachusetts makes a very eloquent speech about how this is not getting a fair hearing. If the gentleman from Massachusetts wants to get this proposal a fair and a complete hearing, he will vote for this. You know why? Because if he votes for it and we get the necessary votes, we can send it to the 50 States.

If you want a fair hearing, if the gentleman from Massachusetts really wants a complete hearing, he will get it out here to every State in the Union, in which, during the process of ratification, thousands and thousands of elected officials will have the opportunity to listen to their constituents, who frankly think their taxes are awful high.

Mr. Speaker, I yield 3 minutes to the gentleman from Arizona [Mr. SHADEGG].

Mr. SHADEGG. Mr. Speaker, I thank my colleague from Colorado for yielding me time.

Mr. Speaker, I rise in strong support of this constitutional amendment. It is an amendment whose time has come. It has well embodied the principle that enough is enough. Six times since 1980 this Congress has raised taxes on the American people. In 1993, the largest of those tax increases passed with the barest of majorities.

There is a simple premise behind this constitutional amendment, a premise embraced by 73 percent of all Americans, a premise adopted by the 10 States that already have a constitutional amendment requiring a supermajority, indeed, the 10 States whose population represents one-third of all Americans, and that is the premise that the U.S. Congress needs to be more responsible about spending the tax dollars it takes from American taxpayers.

If you believe in that premise, then you should not oppose this amendment, but support it. Because by making it somewhat more difficult to raise taxes yet again, we will force on this Congress a level of fiscal discipline which has been missing. Indeed, if you look at this Congress and the past Congresses, our record of fiscal discipline, of spending cuts, is abysmal.

The gentleman earlier on the other side referred to George Will and implied that Mr. Will had criticized the language of this amendment. But he omitted the conclusion of Mr. Will. And the conclusion of Mr. Will at several of the different points in his article was that this was indeed a good amendment. He said:

> The properly reverent reason for amending the Constitution is to revive those of the framers' objectives that have been attenuated by political developments since the framers left Philadelphia.

Mr. Will continues:

> Such am amendment will be voted on by the House on Monday April 15, tax day. Such an amendment could represent a restoration of the values embodied in what the framers did in Philadelphia.

This is indeed not an extreme amendment. I would cite the words of a professor from Cardozo Law School and the University of San Diego Law School who said:

> The amendment should be seen as an attempt to revive the original values of the Constitution, rather than as a radical innovation.

In a Nation where the average American family spends more on taxes than on food, clothing and shelter combined, this is not a radical amendment of the extreme right. It is an amendment supported by labor, it is an amendment supported by rank and file Democrats, it is an amendment whose time has come, and I urge its passage.

Mr. MOAKLEY. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. Mr. Speaker, the concept is popular, but the problem Members cannot seem to get through their heads there is we do not deal just in concepts. We have to deal in reality. We are amending the Constitution of the United States. We are creating litigation, we are creating rights, we are dealing with the basic law.

I did not imply that George Will was critical. I quoted George Will. He said the language was problematic. That is in response to the gentleman from Colorado, who says, and of all the silly arguments, I think this is the silliest we get today, oh, vote on the constitutional amendment; and you should vote yes, even if you disagree with it, because you leave it to the people.

Of course, when we vote on the Equal Rights Amendment, that argument disappears. When we vote on a lot of others, that argument disappears. No, you are supposed to vote on it, whether you agree with it or not.

Here is the problem: It will not get a fair hearing in the States because they cannot change it. The point I am making is on its own terms, it is stupid. It does not do what the gentleman wanted it to do. If we had a markup and a

hearing we might be able to do that. The States cannot change it.

Mr. BARTON of Texas. Mr. Speaker, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Texas.

Mr. BARTON of Texas. Mr. Speaker, my question is, If you do not agree with the language but you agree with the concept, is there going to be alternative language offered by the Democrat minority?

Mr. FRANK of Massachusetts. Mr. Speaker, reclaiming my time, I would say no, because we have not had the time to do that. We have not had a markup. You know, these rules that we have of hearings, and we have had no hearings on this language, of markups, these are not games. There is a reality to them. People that care about something come together and talk and bounce it off.

I am not going to play the kind of game you play. No, there was not in the 2 weeks, all of which was recessed, during which we could see the new language, which replaced your original wholly inadequate language, your original language was repudiated on your side, so they had to come up with whole new language, it has similar kinds of problems, and you have studiously avoided subjecting any of this language to any of the legislative procedures that would test it.

So, no, we are not going to be able to in this short period of time under this gun play that kind of game with the Constitution.

□ 1730

Mr. MCINNIS. Mr. Speaker, I ask for a report on the balance of time remaining.

The SPEAKER pro tempore (Mr. EWING). The gentleman from Colorado [Mr. MCINNIS] has 6½ minutes remaining, and the gentleman from Massachusetts [Mr. MOAKLEY] has 5 minutes remaining.

Mr. MOAKLEY. Mr. Speaker, I yield 2 minutes to the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Speaker, I thank the gentleman for yielding me time, and I am reluctant to get into this high-powered debate. But I do sit on the Committee on the Judiciary, and I sit on the Subcommittee on the Constitution of the Committee on the Judiciary, and I will tell my colleagues that this bill has not come to either one of those committees for hearings or consideration. It was simply brought to the floor so that we could deal with it on April 15, tax day, so that it could be the backdrop for a political debate on an issue that really needs substantive deliberate consideration.

Mr. Speaker, Members may think that we are playing games when we talk about representation and majority rule, but that is what the entire concept of our country is based on. Each one of us, as Members of this body, is sent here to represent a different constituency, to bring our input to bear from that constituency on every problem that comes to America. When we talk about doing away with the concept of majority rule, what we are doing is undermining the basic fabric and principle of the Constitution and the democracy that we are sent here to represent. So this whole notion that we can take one-third or one-fourth of our Members and tie up the whole process and make them a majority is counter democratic.

Mr. Speaker, I have been arguing with my colleagues all this term that this whole concept of undermining the Constitution is not a conservative concept. Conservative government is based on the Constitution, and not withstanding that, these revolutionaries who call themselves conservatives have four times, during the course of this Congress, come to us and said let us do away with the Constitution that we believe in so dearly, that we are sent here to preserve.

Mr. Speaker, I think we ought to vote down this rule and vote down the bill and send it back for a proper consideration and deliberation.

Mr. MCINNIS. Mr. Speaker, I yield 1 minute to the gentleman from Wisconsin [Mr. ROTH].

Mr. ROTH. Mr. Speaker, I thank the gentleman from Colorado [Mr. MCINNIS] for yielding me the time.

Nowadays when you speak up for something the American people want, they call you a revolutionary. I do not think that is a pejorative. I think that is a praiseworthy word now. We need to, I think, focus on the issue. The real issue today is April 15 and it is tax day.

The Federal Government's bite has grown larger and more painful over the years. Today, the average American has to work from January 1 to May 6 just to earn money to pay his or her taxes. That is not fair. Today the average American family has to pay nearly 40 cents out of every dollar it earns for taxes. That is up in the Federal Government by some month more than it was just 10 years ago. What is interesting to me, I read in the paper over the weekend that our Committee on Ways and Means, some 40 people only 6 fill out their own taxes, some 15 percent. That means our tax system is too complicated. If the people who write the taxes here, legislation here in Congress, if this legislation is too complicated for the people in the Congress, can you imagine what it must be for the American people?

Mr. Speaker, this is a vote whose time has come and today is the appropriate day, and I appreciate the Committee on Rules bringing this legislation up so we can vote on it for the American people.

Mr. MCINNIS. Mr. Speaker, I yield 1 minute to the gentleman from Arizona [Mr. HAYWORTH].

Mr. HAYWORTH. Mr. Speaker, I thank the gentleman from Colorado for yielding me the time.

Mr. Speaker, I rise in strong support of this rule and in strong support of this proposed constitutional amendment, because there is nothing extreme about allowing the American people to hang on to more of their hard-earned money, and there is nothing nonsensical about requiring a supermajority to raise taxes. Indeed, history has proven all too eloquently in recent years that this institution has raised taxes time and again to the point that over the past few years, for every dollar raised in new taxes, Congress spends $1.59.

Mr. Speaker, this is a great idea whose time has come. Just as Arizona and several other States of the Union have put provisions such as this in their respective State constitutions, I rise in full support of doing the same thing in our Federal Constitution. As we have seen the cost of government grow 13,500 percent since enactment of the 16th amendment, we stand on the rights of taxpayers. We stand on the rights of the American people. We stand for this rule. And we stand for this amendment.

Mr. MOAKLEY. Mr. Speaker, every single rule the House has adopted this session has been a restrictive rule; you heard that correctly, the Republican House has so far adopted 100 percent restrictive rules in this session. And if it is adopted, the rule before us will leave that 100 percent purely restrictive rules record intact.

This is the 66th restrictive rule reported out of the Rules Committee this Congress.

In addition 73 percent of the legislation considered this session has not been reported from committee—11 out of 15 measures brought up this session have been unreported.

Mr. Speaker, I include the following extraneous material for the RECORD.

FLOOR PROCEDURE IN THE 104TH CONGRESS; COMPILED BY THE RULES COMMITTEE DEMOCRATS

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; PQ	2R; 4D.

FLOOR PROCEDURE IN THE 104TH CONGRESS; COMPILED BY THE RULES COMMITTEE DEMOCRATS—Continued

Bill No.	Title	Resolution No.	Process used for floor consideration	Amendments in order
H. Res. 43	Committee Hearings Scheduling	H. Res. 43 (OJ)	Restrictive; considered in House no amendments	N/A.
H.R. 101	To transfer a parcel of land to the Taos Pueblo Indians of New Mexico.	H. Res. 51	Open	N/A.
H.R. 400	To provide for the exchange of lands within Gates of the Arctic National Park Preserve.	H. Res. 52	Open	N/A.
H.R. 440	To provide for the conveyance of lands to certain individuals in Butte County, California.	H. Res. 53	Open	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.
H.R. 7*	National Security Revitalization Act	H. Res. 83	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference; PQ	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; PQ.	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. 105	Restrictive; 8 hr. time cap on amendments; Pre-printing gets preference; Makes in order the Wyden amendment and waives germaneness 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; PQ.	8D; 7R.
H.R. 1158	Making Emergency Supplemental Appropriations and Rescissions	H. Res. 115	Restrictive; Combines emergency H.R. 1158 & nonemergency 1159 and strikes the abortion provision; makes in order only pre-printed amendments that include offsets within the same chapter (deeper cuts in programs already cut); waives points of order against three amendments; waives cl 2 of rule XXI against the bill, cl 2, XXI and cl 7 of rule XVI against the substitute; waives cl 2(e) od rule XXI against the amendments in the Record; 10 hr time cap on amendments. 30 minutes debate on each amendment.	N/A.
H.J. Res. 73*	Term Limits	H. Res. 116	Restrictive; Makes in order only 4 amendments considered under a "Queen of the Hill" procedure and denies 21 germane amendments from being considered.	1D; 3R.
H.R. 4*	Welfare Reform	H. Res. 119	Restrictive; Makes in order only 31 perfecting amendments and two substitutes; Denies 130 germane amendments from being considered; The substitutes are to be considered under a "Queen of the Hill" procedure; All points of order are waived against the amendments.	5D; 26R.
H.R. 1271*	Family Privacy Act	H. Res. 125	Open	N/A.
H.R. 660*	Housing for Older Persons Act	H. Res. 126	Open	N/A.
H.R. 1215*	The Contract With America Tax Relief Act of 1995	H. Res. 129	Restrictive; Self Executes language that makes tax cuts contingent on the adoption of a balanced budget plan and strikes section 3006. Makes in order only one substitute. Waives all points of order against the bill, substitute made in order as original text and Gephardt substitute.	1D.
H.R. 483	Medicare Select Extension	H. Res. 130	Restrictive; waives cl 2(1)(6) of rule XI against the bill; makes H.R. 1391 in order as original text; makes in order only the Dingell substitute; allows Commerce Committee to file a report on the bill at any time.	1D.
H.R. 655	Hydrogen Future Act	H. Res. 136	Open	N/A.
H.R. 1361	Coast Guard Authorization	H. Res. 139	Open; waives sections 302(f) and 308(a) of the Congressional Budget Act against the bill's consideration and the committee substitute; waives cl 5(a) of rule XXI against the committee substitute.	N/A.
H.R. 961	Clean Water Act	H. Res. 140	Open; pre-printing gets preference; waives sections 302(f) and 602(b) of the Budget Act against the bill's consideration; waives cl 7 of rule XVI, cl 5(a) of rule XXI and section 302(f) of the Budget Act against the committee substitute. Makes in order Shuster substitute as first order of business.	N/A.
H.R. 535	Corning National Fish Hatchery Conveyance Act	H. Res. 144	Open	N/A.
H.R. 584	Conveyance of the Fairport National Fish Hatchery to the State of Iowa.	H. Res. 145	Open	N/A.
H.R. 614	Conveyance of the New London National Fish Hatchery Production Facility.	H. Res. 146	Open	N/A.
H. Con. Res. 67	Budget Resolution	H. Res. 149	Restrictive; Makes in order 4 substitutes under regular order; Gephardt, Neumann/Solomon, Payne/Owens, President's Budget if printed in Record on 5/17/95; waives all points of order against substitutes and concurrent resolution; suspends application of Rule XLIX with respect to the resolution; self-executes Agriculture language; PQ.	3D; 1R.
H.R. 1561	American Overseas Interests Act of 1995	H. Res. 155	Restrictive; Requires amendments to be printed in the Record prior to their consideration; 10 hr. time cap; waives cl 2(1)(6) of rule XI against the bill's consideration; Also waives sections 302(f), 303(a), 308(a) and 402(a) against the bill's consideration and the committee amendment in order as original text; waives cl 5(a) of rule XXI against the amendment; amendment consideration is closed at 2:30 p.m. on May 25, 1995. Self-executes provision which removes section 2210 from the bill. This was done at the request of the Budget Committee.	N/A.
H.R. 1530	National Defense Authorization Act FY 1996	H. Res. 164	Restrictive; Makes in order only the amendments printed in the report; waives all points of order against the bill, substitute and amendments printed in the report. Gives the Chairman en bloc authority. Self-executes a provision which strikes section 807 of the bill; provides for an additional 30 min. of debate on Nunn-Lugar section; Allows Mr. Clinger to offer a modification of his amendment with the concurrence of Ms. Collins; PQ.	36R; 18D; 2 Bipartisan.
H.R. 1817	Military Construction Appropriations; FY 1996	H. Res. 167	Open; waives cl. 2 and cl. 6 of rule XXI against the bill; 1 hr. general debate; Uses House passed budget numbers as threshold for spending amounts pending passage of Budget; PQ.	N/A.
H.R. 1854	Legislative Branch Appropriations	H. Res. 169	Restrictive; Makes in order only 11 amendments; waives sections 302(f) and 308(a) of the Budget Act against the bill and cl. 2 and cl. 6 of rule XXI against the bill. All points of order are waived against the amendments; PQ.	5R; 4D; 2 Bipartisan.
H.R. 1868	Foreign Operations Appropriations	H. Res. 170	Open; waives cl. 2, cl. 5(b), and cl. 6 of rule XXI against the bill; makes in order the Gilman amendments as first order of business; waives all points of order against the amendments; if adopted they will be considered as original text; waives cl. 2 of rule XXI against the amendments printed in the report. Pre-printing gets priority (Hall) (Menendez) (Goss) (Smith, NJ); PQ.	N/A.
H.R. 1905	Energy & Water Appropriations	H. Res. 171	Open; waives cl. 2 and cl. 6 of rule XXI against the bill; makes in order the Shuster amendment as the first order of business; waives all points of order against the amendment; if adopted it will be considered as original text. Pre-printing gets priority.	N/A.
H.J. Res. 79	Constitutional Amendment to Permit Congress and States to Prohibit the Physical Desecration of the American Flag.	H. Res. 173	Closed; provides one hour of general debate and one motion to recommit with or without instructions; if there are instructions, the MO is debatable for 1 hr; PQ.	N/A.
H.R. 1944	Recissions Bill	H. Res. 175	Restrictive; Provides for consideration of the bill in the House; Permits the Chairman of the Appropriations Committee to offer one amendment which is unamendable; waives all points of order against the amendment; PQ.	N/A.
H.R. 1868 (2nd rule)	Foreign Operations Appropriations	H. Res. 177	Restrictive; Provides for further consideration of the bill; makes in order only the four amendments printed in the rules report (20 min. each). Waives all points of order against the amendments; Prohibits intervening motions in the Committee of the Whole; Provides for an automatic rise and report following the disposition of the amendments; PQ.	N/A.

FLOOR PROCEDURE IN THE 104TH CONGRESS; COMPILED BY THE RULES COMMITTEE DEMOCRATS—Continued

Bill No.	Title	Resolution No.	Process used for floor consideration	Amendments in order
H.R. 1977 *Rule Defeated*	Interior Appropriations	H. Res. 185	Open; waives sections 302(f) and 308(a) of the Budget Act and cl 2 and cl 6 of rule XXI; provides that the bill be read by title; waives all points of order against the Tauzin amendment; self-executes Budget Committee amendment; waives cl 2(e) of rule XXI against amendments to the bill; Pre-printing gets priority; PQ.	N/A.
H.R. 1977	Interior Appropriations	H. Res. 187	Open; waives sections 302(f), 306 and 308(a) of the Budget Act; waives clauses 2 and 6 of rule XXI against provisions in the bill; waives all points of order against the Tauzin amendment; provides that the bill be read by title; self-executes Budget Committee amendment and makes NEA funding subject to House passed authorization; waives cl 2(e) of rule XXI against the amendments to the bill; Pre-printing gets priority; PQ.	N/A.
H.R. 1976	Agriculture Appropriations	H. Res. 188	Open; waives clauses 2 and 6 of rule XXI against provisions in the bill; provides that the bill be read by title; Makes Skeen amendment first order of business, if adopted the amendment will be considered as base text (10 min.); Pre-printing gets priority; PQ.	N/A.
H.R. 1977 (3rd rule)	Interior Appropriations	H. Res. 189	Restrictive; provides for the further consideration of the bill; allows only amendments pre-printed before July 14th to be considered; limits motions to rise.	N/A.
H.R. 2020	Treasury Postal Appropriations	H. Res. 190	Open; waives cl. 2 and cl. 6 of rule XXI against provisions in the bill; provides the bill be read by title; Pre-printing gets priority; PQ.	N/A.
H.J. Res. 96	Disapproving MFN for China	H. Res. 193	Restrictive; provides for consideration in the House of H.R. 2058 (90 min.) And H.J. Res. 96 (1 hr). Waives certain provisions of the Trade Act.	N/A.
H.R. 2002	Transportation Appropriations	H. Res. 194	Open; waives cl. 3 0f rule XIII and section 401 (a) of the CBA against consideration of the bill; waives cl. 6 and cl. 2 of rule XXI against provisions in the bill; Makes in order the Clinger/Solomon amendment waives all points of order against the amendment (Line Item Veto); provides the bill be read by title; Pre-printing gets priority; PQ. ***RULE AMENDED***.	N/A.
H.R. 70	Exports of Alaskan North Slope Oil	H. Res. 197	Open; Makes in order the Resources Committee amendment in the nature of a substitute as original text; Pre-printing gets priority; Provides a Senate hook-up with S. 395.	N/A.
H.R. 2076	Commerce, Justice Appropriations	H. Res. 198	Open; waives cl. 2 and cl. 6 of rule XXI against provisions in the bill; Pre-printing gets priority; provides the bill be read by title.	N/A.
H.R. 2099	VA/HUD Appropriations	H. Res. 201	Open; waives cl. 2 and cl. 6 of rule XXI against provisions in the bill; Provides that the amendment in part 1 of the report is the first business, if adopted it will be considered as base text (30 min.); waives all points of order against the Klug and Davis amendments; Pre-printing gets priority; Provides that the bill be read by title.	N/A.
S. 21	Termination of U.S. Arms Embargo on Bosnia	H. Res. 204	Restrictive; 3 hours of general debate; Makes in order an amendment to be offered by the Minority Leader or a designee (1 hr); If motion to recommit has instructions it can only be offered by the Minority Leader or a designee.	1D.
H.R. 2126	Defense Appropriations	H. Res. 205	Open; waives cl. 2(l)(6) of rule XI and section 306 of the Congressional Budget Act against consideration of the bill; waives cl. 2 and cl. 6 of rule XXI against provisions in the bill; self-executes a strike of sections 8021 and 8024 of the bill as requested by the Budget Committee; Pre-printing gets priority; Provides the bill be read by title.	N/A.
H.R. 1555	Communications Act of 1995	H. Res. 207	Restrictive; waives sec. 302(f) of the Budget Act against consideration of the bill; Makes in order the Commerce Committee amendment as original text and waives sec. 302(f) of the Budget Act and cl. 5(a) of rule XXI against the amendment; Makes in order the Bliely amendment (30 min.) as the first order of business, if adopted it will be original text; makes in order only the amendments printed in the report and waives all points of order against the amendments; provides a Senate hook-up with S. 652.	2R/3D/3 Bipartisan.
H.R. 2127	Labor/HHS Appropriations Act	H. Res. 208	Open; Provides that the first order of business will be the managers amendments (10 min.), if adopted they will be considered as base text; waives cl. 2 and cl. 6 of rule XXI against provisions in the bill; waives all points of order against certain amendments printed in the report; Pre-printing gets priority; Provides the bill be read by title; PQ.	N/A.
H.R. 1594	Economically Targeted Investments	H. Res. 215	Open; 2 hr of gen. debate. makes in order the committee substitute as original text	N/A.
H.R. 1655	Intelligence Authorization	H. Res. 216	Restrictive; waives sections 302(f), 308(a) and 401(b) of the Budget Act. Makes in order the committee substitute as modified by Govt. Reform amend (striking sec. 505) and an amendment striking title VII. Cl 7 of rule XVI and cl 5(a) of rule XXI are waived against the substitute. Sections 302(f) and 401(b) of the CBA are also waived against the substitute. Amendments must also be pre-printed in the Congressional Record.	N/A.
H.R. 1162	Deficit Reduction Lock Box	H. Res. 218	Open; waives cl 7 of rule XVI against the committee substitute made in order as original text; Pre-printing gets priority.	N/A.
H.R. 1670	Federal Acquisition Reform Act of 1995	H. Res. 219	Open; waives sections 302(f) and 308(a) of the Budget Act against consideration of the bill; bill will be read by title; waives cl 5(a) of rule XXI and section 302(f) of the Budget Act against the committee substitute. Pre-printing gets priority.	N/A.
H.R. 1617	To Consolidate and Reform Workforce Development and Literacy Programs Act (CAREERS).	H. Res. 222	Open; waives section 302(f) and 401(b) of the Budget Act against the substitute made in order as original text (H.R. 2332), cl. 5(a) of rule XXI is also waived against the substitute. provides for consideration of the managers amendment (10 min.) If adopted, it is considered as base text.	N/A.
H.R. 2274	National Highway System Designation Act of 1995	H. Res. 224	Open; waives section 302(f) of the Budget Act against consideration of the bill; Makes H.R. 2349 in order as original text; waives section 302(f) of the Budget Act against the substitute; provides for the consideration of a managers amendment (10 min.) If adopted, it is considered as base text; Pre-printing gets priority; PQ.	N/A.
H.R. 927	Cuban Liberty and Democratic Solidarity Act of 1995	H. Res. 225	Restrictive; waives cl 2(L)(2)(B) of rule XI against consideration of the bill; makes in order H.R. 2347 as base text; waives cl 7 of rule XVI against the substitute; Makes Hamilton amendment the first amendment to be considered (1 hr). Makes in order only amendments printed in the report.	2R/2D.
H.R. 743	The Teamwork for Employees and managers Act of 1995	H. Res. 226	Open; waives cl 2(l)(2)(b) of rule XI against consideration of the bill; makes in order the committee amendment as original text; Pre-printing get priority.	N/A.
H.R. 1170	3-Judge Court for Certain Injunctions	H. Res. 227	Open; makes in order a committee amendment as original text; Pre-printing gets priority	N/A.
H.R. 1601	International Space Station Authorization Act of 1995	H. Res. 228	Open; makes in order a committee amendment as original text; pre-printing gets priority	N/A.
H.J. Res. 108	Making Continuing Appropriations for FY 1996	H. Res. 230	Closed; Provides for the immediate consideration of the CR; one motion to recommit which may have instructions only if offered by the Minority Leader or a designee.	
H.R. 2405	Omnibus Civilian Science Authorization Act of 1995	H. Res. 234	Open; self-executes a provision striking section 304(b)(3) of the bill (Commerce Committee request); Pre-printing gets priority.	N/A.
H.R. 2259	To Disapprove Certain Sentencing Guideline Amendments	H. Res. 237	Restrictive; waives cl 2(l)(2)(B) of rule XI against the bill's consideration; makes in order the text of the Senate bill S. 1254 as original text; Makes in order only a Conyers substitute; provides a senate hook-up after adoption.	1D.
H.R. 2425	Medicare Preservation Act	H. Res. 238	Restrictive; waives all points of order against the bill's consideration; makes in order the text of H.R. 2485 as original text; waives all points of order against H.R. 2485; makes in order only an amendment offered by the Minority Leader or a designee; waives all points of order against the amendment; waives cl 5© of rule XXI (⅗ requirement on votes raising taxes); PQ.	1D.
H.R. 2492	Legislative Branch Appropriations Bill	H. Res. 239	Restrictive; provides for consideration of the bill in the House	N/A.
H.R. 2491	7 Year Balanced Budget Reconciliation Social Security Earnings Test	H. Res. 245	Restrictive; makes in order H.R. 2517 as original text; waives all pints of order against the bill; Makes in order only H.R. 2530 as an amendment only if offered by the Minority Leader or a designee; waives all points of order against the amendment; waives cl 5© of rule XXI (⅗ requirement on votes raising taxes); PQ.	1D.
H. Con. Res. 109	Reform.			
H.R. 1833	Partial Birth Abortion Ban Act of 1995	H. Res. 251	Closed	N/A.
H.R. 2546	D.C. Appropriations FY 1996	H. Res. 252	Restrictive; waives all points of order against the bill's consideration; Makes in order the Walsh amendment as the first order of business (10 min.); if adopted it is considered as base text; waives cl 2 and 6 of rule XXI against the bill; makes in order the Bonilla, Gunderson and Hostettler amendments (30 min.); waives all points of order against the amendments; debate on any further amendments is limited to 30 min. each.	N/A.
H.J. Res. 115	Further Continuing Appropriations for FY 1996	H. Res. 257	Closed; Provides for the immediate consideration of the CR; one motion to recommit which may have instructions only if offered by the Minority Leader or a designee.	N/A.
H.R. 2586	Temporary Increase in the Statutory Debt Limit	H. Res. 258	Restrictive; Provides for the immediate consideration of the CR; one motion to recommit which may have instructions only if offered by the Minority Leader or a designee; self-executes 4 amendments in the rule; Solomon, Medicare Coverage of Certain Anti-Cancer Drug Treatments, Habeas Corpus Reform, Chrysler (MI); makes in order the Walker amend (40 min.) on regulatory reform.	5R.
H.R. 2539	ICC Termination	H. Res. 259	Open; waives section 302(f) and section 308(a)	

FLOOR PROCEDURE IN THE 104TH CONGRESS; COMPILED BY THE RULES COMMITTEE DEMOCRATS—Continued

Bill No.	Title	Resolution No.	Process used for floor consideration	Amendments in order
H.J. Res. 115	Further Continuing Appropriations for FY 1996	H. Res. 261	Closed; provides for the immediate consideration of a motion by the Majority Leader or his designees to dispose of the Senate amendments (1hr).	N/A.
H.R. 2586	Temporary Increase in the Statutory Limit on the Public Debt	H. Res. 262	Closed; provides for the immediate consideration of a motion by the Majority Leader or his designees to dispose of the Senate amendments (1hr).	N/A.
H. Res. 250	House Gift Rule Reform	H. Res. 268	Closed; provides for consideration of the bill in the House; 30 min. of debate; makes in order the Burton amendment and the Gingrich en bloc amendment (30 min. each); waives all points of order against the amendments; Gingrich is only in order if Burton fails or is not offered.	2R.
H.R. 2564	Lobbying Disclosure Act of 1995	H. Res. 269	Open; waives cl. 2(l)(6) of rule XI against the bill's consideration; waives all points of order against the Istook and McIntosh amendments.	N/A.
H.R. 2606	Prohibition on Funds for Bosnia Deployment	H. Res. 273	Restrictive; waives all points of order against the bill's consideration; provides one motion to amend if offered by the Minority Leader or designee (1 hr non-amendable); motion to recommit which may have instructions only if offered by Minority Leader or his designee; if Minority Leader motion is not offered debate time will be extended by 1 hr.	N/A.
H.R. 1788	Amtrak Reform and Privatization Act of 1995	H. Res. 289	Open; waives all points of order against the bill's consideration; makes in order the Transportation substitute modified by the amend in the report; Bill read by title; waives all points of order against the substitute; makes in order a managers amend as the first order of business, if adopted it is considered base text (10 min.); waives all points of order against the amendment; Pre-printing gets priority.	N/A.
H.R. 1350	Maritime Security Act of 1995	H. Res. 287	Open; makes in order the committee substitute as original text; makes in order a managers amendment which if adopted is considered as original text (20 min.) unamendable; pre-printing gets priority.	N/A.
H.R. 2621	To Protect Federal Trust Funds	H. Res. 293	Closed; provides for the adoption of the Ways & Means amendment printed in the report. 1 hr. of general debate; PQ.	N/A.
H.R. 1745	Utah Public Lands Management Act of 1995	H. Res. 303	Open; waives cl 2(l)(6) of rule XI and sections 302(f) and 311(a) of the Budget Act against the bill's consideration. Makes in order the Resources substitute as base text and waives cl 7 of rule XVI and sections 302(f) and 308(a) of the Budget Act; makes in order a managers' amend as the first order of business, if adopted it is considered base text (10 min).	N/A.
H.Res. 304	Providing for Debate and Consideration of Three Measures Relating to U.S. Troop Deployments in Bosnia.	N/A	Closed; makes in order three resolutions; H.R. 2770 (Dorman), H.Res. 302 (Buyer), and H.Res. 306 (Gephardt); 1 hour of debate on each.	1D; 2R.
H.Res. 309	Revised Budget Resolution	H. Res. 309	Closed; provides 2 hours of general debate in the House; PQ	N/A.
H.R. 558	Texas Low-Level Radioactive Waste Disposal Compact Consent Act	H. Res. 313	Open; pre-printing gets priority	N/A.
H.R. 2677	The National Parks and National Wildlife Refuge Systems Freedom Act of 1995.	H. Res. 323	Closed; consideration in the House; self-executes Young amendment	N/A.
			PROCEDURE IN THE 104TH CONGRESS 2D SESSION	
H.R. 1643	To authorize the extension of nondiscriminatory treatment (MFN) to the products of Bulgaria.	H. Res. 334	Closed; provides to take the bill from the Speaker's table with the Senate amendment, and consider in the House the motion printed in the Rules Committee report; 1 hr. of general debate; previous question is considered as ordered. ** NR; PQ.	N/A.
H.J. Res. 134 H. Con. Res. 131	Making continuing appropriations/establishing procedures making the transmission of the continuing resolution H.J. Res. 134.	H. Res. 336	Closed; provides to take from the Speaker's table H.J. Res. 134 with the Senate amendment and concur with the Senate amendment with an amendment (H. Con. Res. 131) which is self-executed in the rule. The rule provides further that the bill shall not be sent back to the Senate until the Senate agrees to the provisions of H. Con. Res. 131. ** NR; PQ.	N/A.
H. R. 1358	Conveyance of National Marine Fisheries Service Laboratory at Gloucester, Massachusetts.	H. Res. 338	Closed; provides to take the bill from the Speakers table with the Senate amendment, and consider in the house the motion printed in the Rules Committee report; 1 hr. of general debate; previous quesetion is considered as ordered. ** NR; PQ.	N/A.
H.R. 2924	Social Security Guarantee Act	H. Res. 355	Closed; ** NR; PQ	N/A.
H.R. 2854	The Agricultural Market Transition Program	H. Res. 366	Restrictive; waives all points of order against the bill; 2 hrs of general debate; makes in order a committee substitute as original text and waives all points of order against the substitute; makes in order only the 16 amends printed in the report and waives all points of order against the amendments; circumvents unfunded mandates law; Chairman has en bloc authority for amends in report (20 min.) on each en bloc; PQ.	5D; 9R; 2 Bipartisan.
H.R. 994	Regulatory Sunset & Review Act of 1995	H. Res. 368	Open rule; makes in order the Hyde substitute printed in the Record as original text; waives cl 7 of rule XVI against the substitute; Pre-printing gets priority; vacates the House action on S. 219 and provides to take the bill from the Speakers table and consider the Senate bill; allows Chrmn. Clinger a motion to strike all after the enacting clause of the Senate bill and insert the text of H.R. 994 as passed by the House (1 hr) debate; waives germaneness against the motion; provides if the motion is adopted that it is in order for the House to insist on its amendments and request a conference.	N/A.
H.R. 3021	To Guarantee the Continuing Full Investment of Social security and Other Federal Funds in Obligations of the United States.	H. Res. 371	Closed rule; gives one motion to recommit, which if it contains instructions, may only if offered by the Minority Leader or his designee. ** NR.	N/A.
H.R. 3019	A Further Downpayment Toward a Balanced Budget	H. Res. 372	Restrictive; self-executes CBO language regarding contingency funds in section 2 of the rule; makes in order only the amendments printed in the report; Lowey (20 min), Istook (20 min), Crapo (20 min), Obey (1 hr); waives all points of order against the amendments; give one motion to recommit, which if contains instructions, may only if offered by the Minority Leader or his designee. ** NR.	2D/2R.
H.R. 2703	The Effective Death Penalty and Public Safety Act of 1996	H. Res. 380	Restrictive; makes in order only the amendments printed in the report; waives all points of orer against the amendments; gives Judiciary Chairman en bloc authority (20 min.) on enblocs; provides a Senate hook-up with S. 735. ** NR.	6D; 7R; 4 Bipartisan.
H.R. 2202	The Immigration and National Interest Act of 1995	H. Res. 384	Restrictive; waives all points of order against the bill and amendments in the report except for those arising under sec. 425(a) of the Budget Act (unfunded mandates); 2 hrs. of general debate on the bill; makes in order the committee substitute as base text; makes in order only the amends in the report; gives the Judiciary Chairman en bloc authority (20 min.) of debate on the en blocs; self-executes the Smith (TX) amendment re: employee verification program; PQ.	12D; 19R; 1 Bipartisan.
H.J. Res. 165	Making further continuing appropriations for FY 1996	H. Res. 386	Closed; provides for the consideration of the CR in the House and gives one motion to recommit which may contain instructions only if offered by the Minority Leader; the rule also waives cl 4(b) of rule XI against the following: an omnibus appropriations bill, another CR, a bill extending the debt limit. ** NR.	N/A.
H.R. 125	The Gun Crime Enforcement and Second Amendment Restoration Act of 1996.	H. Res. 388	Closed; self-executes an amendment; provides one motion to recommit which may contain instructions only if offered by the Minority Leader or his designee. ** NR.	N/A.
H.R. 3136	The Contract With America Advancement Act of 1996	H. Res. 391	Closed; provides for the consideration of the bill in the House; self-executes an amendment in the Rules report; waives all points of order, except sec. 425(a)(unfunded mandates) of the CBA, against the bill's consideration; orders the PQ except 1 hr. of general debate between the Chairman and Ranking Member of Ways and Means; one Archer amendment (10 min.); one motion to recommit which may contain instructions only if offered by the Minority Leader or his designee; Provides a Senate hookup if the Senate passes S. 4 by March 30, 1996. **NR.	N/A.
H.R. 3103	The Health Coverage Availability and Affordability Act of 1996	H. Res. 392	Restrictive: 2 hrs. of general debate (45 min. split by Ways and Means) (45 split by Commerce) (30 split by Economic and Educational Opportunities); self-executes H.R. 3160 as modified by the amendment in the Rules report as original text; waives all points of order, except sec. 425(a) (unfunded mandates) of the CBA; makes in order a Democratic substitute (1 hr.) waives all points of order, except sec. 425(a) (unfunded mandates) of the CBA, against the amendment; one motion to recommit which may contain instructions only if offered by the Minority Leader or his designee; waives cl 5(c) of Rule XXI (requiring 3/5 vote on any tax increase) on votes on the bill, amendments or conference reports.	N/A.
H.J. Res. 159	Tax Limitation Constitutional Amendment	H. Res. 395	Restrictive; provides for consideration of the bill in the House; 3 hrs of general debate; Makes in order H.J. Res. 169 as original text; allows for an amendment to be offered by the Minority Leader or his designee (1 hr) ** NR.	1D.

* Contract Bills, 67% restrictive; 33% open. ** All legislation 1st Session, 53% restrictive; 47% open. *** All legislation 2d Session, 95% restrictive; 5% open. **** All legislation 104th Congress, 66% restrictive; 34% open. ***** NR indicates that the legislation being considered by the House for amendment has circumvented standard procedure and was never reported from any House committee. ****** PQ Indicates that previous question was ordered on the resolution. ******* Restrictive rules are those which limit the number of amendments which can be offered, and include so-called modified open and modified closed rules as well as completely closed rules and rules providing for consideration in the House as opposed to the Committee of the Whole. This definition of restrictive rule is taken from the Republican chart of resolutions reported from the Rules Committee in the 103d Congress. N/A means not available.

Mr. MOAKLEY. Mr. Speaker, I yield the balance of my time to the gentleman from Colorado [Mr. SKAGGS].

The SPEAKER pro tempore. The gentleman from Colorado [Mr. SKAGGS] is recognized for 3 minutes.

Mr. SKAGGS. Mr. Speaker, I thank the gentleman for yielding me the time.

Earlier in this debate, I asked the distinguished chairman of the Committee on Rules if he might yield, and he indicated that I should await my time, which has now come. The gentleman knows the rules, because he followed the rules in bringing the flag desecration amendment to this House. That was, as I recall, properly considered in the Committee on the Judiciary, was the subject of hearings and markup, then was brought to the Committee on Rules.

The gentleman from New York, earlier in this hour, observed that this is important and serious business, amending the Constitution of the United States. And I would simply ask the distinguished Chairman of the Rules Committee, would it not have been proper and better procedure for this proposal to have at least had a hearing in the Committee on the Judiciary, so that the implications of these words, which have otherwise received no hearing other than your Rules Committee hearing on March 29, so that we could have had a careful examination of this proposal, as we did of the gentleman's proposal to amend the Constitution to protect the flag? Would that not have been better procedure?

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

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

Mr. SOLOMON. Mr. Speaker, I just say to the gentleman that it could have been, the same as in three previous Congresses we have considered balanced budget amendments that never went through the proper process, either. The gentleman makes a point.

Mr. SKAGGS. Mr. Speaker, reclaiming my time, I know the gentleman knows better, because he has shown that he knows better than to follow or to be a party to an abuse of the Rules of the House in considering an amendment to the fundamental charter of this country, as we are experiencing here this evening.

This is a sad, sad occasion, to have completely run roughshod over the basic guarantees of serious, deliberate action on something as fundamental as our Constitution. It is a shameful demonstration of the priority being given to political theater, to symbolism over our responsibilities as legislators for this country to look carefully before we act on an amendment to the Constitution. Because the process that has brought us to this point has been such an insult to the intelligence and responsibility of the Members, I regretfully will need to make sure that we have every opportunity to vote on every conceivable procedural point for the rest of this evening.

Mr. McINNIS. Mr. Speaker, I yield such time as he may consume to the gentleman from Florida [Mr. GOSS].

Mr. GOSS. Mr. Speaker, I rise in strong support of this rule and the purpose for it.

Mr. Speaker, as the American people endure yet another April 15, it is appropriate to note the direct relationship between higher taxes and higher government spending. While incomes have stagnated for many Americans over the last 20 years, the actual take-home pay for Government rose 58 percent and Government spending increased even faster. In fact, the Federal Government spent 80 percent more in inflation adjusted terms in 1995 than in 1973.

The rationale for the last two major tax hikes was deficit reduction. The deal was this—give us more of your money and, trust us, we will get serious about cutting spending. However, while the American taxpayer kept his end of the bargain, prior to this Congress the Federal Government maintained its reckless spending habits. Spending did not slow down, it accelerated. Adjusting for inflation, nondefense discretionary spending was 23 percent higher in 1995 than 1990. The American people are not selfish and they certainly do not mind paying their fair share, but they are not stupid either—they recognize when their Government has sold them a bill of goods.

Mr. Speaker, we have all heard the same disheartening facts. Every year, the average American works until May 5 just to pay his or her taxes. Put another way, this means that 3 hours out of every work day are dedicated solely to sustain Government spending.

This Congress has worked to reduce this oppressive tax burden. We have sent President Clinton a variety of tax relief measures, from middle-class tax relief to increasing the Social Security earnings limit, making it clear that we intend to keep our word with the American taxpayer. We have also begun examining long-term alternatives to our current tax system, that would increase fairness and simplicity. I commend Representatives BARTON and SHADEGG for their hard work to provide long-term protection for American taxpayers through the bill before us today.

Mr. McINNIS. Mr. Speaker, I yield 30 seconds to the gentleman from Arizona [Mr. HAYWORTH].

Mr. HAYWORTH. Mr. Speaker, I thank the gentleman from Colorado for yielding me the time.

Listening to my colleague across the aisle from Colorado talk about this process being an insult, I would just simply remind all of us that article V of the Constitution simply says in its opening clause: "The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution."

It does not provide for any other folderol where there are urgent questions of action to be taken. It is incumbent upon this Congress to take those actions, so it is not insult. It is proper to move forward in this fashion to amend the Constitution of the United States.

Mr. McINNIS. Mr. Speaker, I yield myself the balance of my time.

The SPEAKER pro tempore. The gentleman from Colorado [Mr. McInnis] is recognized for 4 minutes.

Mr. McINNIS. Mr. Speaker, I find it awfully interesting that one would be able to stand up and talk about the word shameful and so on. This is 2 years after this country experienced the largest tax increase in the history of this country. And by the way, some may argue, well, that tax increase really was to try and get the wealthy people of this country and it did not impact the average working Joe or the working Jane out there. It sure as heck did.

Anybody that buys a gallon of gasoline pays four cents more per gallon because this Congress passed a tax increase on them. Some time take a look, and this is a good day to do it, on April 15, take a look at what you have to pay in taxes. Not just what you send in to the Federal Government. Not just what you send in to the State government, but stop and buy a gallon of gasoline. And after that, if you get really depressed, stop by the liquor store and buy a fifth of whiskey, and see what you pay on a fifth of whiskey in taxes. Then go to the store and see what you pay in sales tax to buy a lawn mower to mow your grass.

Taxes, taxes, taxes. Around here, that is the fuel that feeds this fire in the U.S. Congress. And it seems that the U.S. Congress wants to get the biggest bonfire it can ever have. Well, you know what it has led to? It has led to this. It has led to a concept where we have got to put a speed bump in the way of these people that love to raise your taxes, and raise you taxes, and raise your taxes.

Right now, just in this proposal of this concept, 73 percent of the American people are saying do it. An interesting number here, 68 percent of the Federal employees say do it. Seventy-one percent of the union members say do it. In the Democrats, 64 percent of the Democrats as polled say do it. It is time that we bring a conscience to this country.

Now, some people say, well, you are not giving an opportunity for debate. That is exactly what this concept does. That is why it so carefully follows the Constitution of the United States. What it does is it allows this to go to every State, all 50 States, all of the elected State legislators in those States, which, by the time this debate was thoroughly finished, by the time it got ratified or did not get ratified, you would have thousands and thousands of locally, not in Washington, but locally elected officials who were engaged in this debate of whether or not we should require a supermajority to go out to

the working people of this country and raise their taxes.

Mr. Speaker, I think that this rule is fundamentally fair, and I think that this concept is fundamentally necessary for the positive growth and the future of this country.

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

The previous question was ordered.

The SPEAKER pro tempore. The question is on ordering the previous question.

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

Mr. SKAGGS. 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 adoption of the resolution.

The vote was taken by electronic device, and there were—yeas 232, nays 168, not voting 31, as follows:

[Roll No. 111]

YEAS—232

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Camp
Campbell
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Cooley
Cox
Crane
Crapo
Cubin
Cunningham
Davis
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Greene
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (KY)
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Montgomery
Moorhead
Morella
Myers
Myrick
Nethercutt
Neumann
Norwood
Nussle
Packard
Parker
Paxon
Petri
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Skaggs
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stump
Talent
Tate
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Torricelli
Traficant
Upton
Vucanovich
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NAYS—168

Abercrombie
Ackerman
Andrews
Baesler
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Boucher
Brewster
Browder
Brown (OH)
Bryant (TX)
Cardin
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Condit
Conyers
Costello
Coyne
Cramer
Danner
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Durbin
Edwards
Eshoo
Evans
Farr
Fazio
Filner
Flake
Foglietta
Frank (MA)
Furse
Gejdenson
Gephardt
Gibbons
Gonzalez
Green
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson (IL)
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Miller (CA)
Minge
Mink
Moakley
Mollohan
Moran
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Peterson (FL)
Peterson (MN)
Pickett
Pomeroy
Poshard
Rahall
Rangel
Reed
Richardson
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Sisisky
Skelton
Slaughter
Spratt
Stark
Stenholm
Stokes
Studds
Stupak
Tanner
Tejeda
Thompson
Thurman
Torres
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Woolsey
Wynn
Yates

NOT VOTING—31

Borski
Brown (CA)
Brown (FL)
Calvert
Chapman
Cremeans
de la Garza
Engel
Fattah
Fields (LA)
Fields (TX)
Ford
Frost
Gallegly
Hunter
Jackson-Lee (TX)
Kasich
Lewis (CA)
Lightfoot
Lipinski
Ney
Ortiz
Oxley
Pelosi
Stockman
Tauzin
Thornton
Towns
Williams
Wilson
Wise

□ 1803

Mr. WYNN changed his vote from "yea" to "nay."

Mr. GORDON and Mr. CHAMBLISS changed their vote from "nay" to "yea."

So the previous question was ordered.

The result of the vote was announced as above recorded.

MOTION OFFERED BY MR. SKAGGS

Mr. SKAGGS. Mr. Speaker, I offer a motion.

The SPEAKER pro tempore (Mr. EWING). The Clerk will report the motion.

The Clerk read as follows:

Mr. SKAGGS moves to reconsider the vote whereby the House ordered the previous question on House Resolution 395.

MOTION TO TABLE OFFERED BY MR. MCINNIS

Mr. MCINNIS. Mr. Speaker, I offer a motion.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Mr. MCINNIS moves to lay the motion to reconsider on the table.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Colorado [Mr. MCINNIS] to lay on the table the motion to reconsider offered by the gentleman from Colorado [Mr. SKAGGS].

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

Mr. SKAGGS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This will be a 15-minute vote, followed by a 5-minute vote on the adoption of the rule.

The vote was taken by electronic device, and there were—yeas 232, nays 169, not voting 30, as follows:

[Roll No. 112]

YEAS—232

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Camp
Campbell
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Crane
Crapo
Cubin
Cunningham
Davis
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell

Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Greene
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (KY)
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Montgomery
Moorhead
Morella
Myers
Myrick
Nethercutt
Neumann
Norwood
Nussle
Packard
Parker
Paxon
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
Stump
Talent
Tate
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Torricelli
Traficant
Upton
Vucanovich
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NAYS—169

Abercrombie
Ackerman
Andrews
Baesler
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Boucher
Brewster
Browder
Brown (OH)
Bryant (TX)
Cardin
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Cramer
Danner
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Durbin
Edwards
Eshoo
Evans
Farr
Fazio
Filner
Flake
Foglietta
Frank (MA)
Furse
Gejdenson
Gephardt
Gibbons
Gonzalez
Green
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson (IL)
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Miller (CA)
Minge
Mink
Moakley
Mollohan
Moran
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Peterson (FL)
Peterson (MN)
Pickett
Pomeroy
Poshard
Rahall
Rangel
Reed
Richardson
Rivers
Roemer
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Sisisky
Skaggs
Skelton
Slaughter
Spratt
Stark
Stenholm
Stokes
Studds
Stupak
Tanner
Tejeda
Thompson
Thurman
Torres
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Woolsey
Wynn
Yates

NOT VOTING—30

Borski
Brown (CA)
Brown (FL)
Calvert
Chapman
Cremeans
de la Garza
Engel
Fattah
Fields (LA)
Fields (TX)
Ford
Frost
Hunter
Jackson-Lee (TX)
Kasich
Lewis (CA)
Lightfoot
Lipinski
Ney
Ortiz
Oxley
Pelosi
Stockman
Tauzin
Thornton
Towns
Williams
Wilson
Wise

□ 1820

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. EWING). The question is on the resolution.

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

RECORDED VOTE

Mr. SKAGGS. 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 234, noes, 162, not voting 35, as follows:

[Roll No. 113]

AYES—234

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Camp
Campbell
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cubin
Cunningham
Davis
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Greene
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (KY)
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Montgomery
Moorhead
Morella
Myers
Myrick
Nethercutt
Neumann
Norwood
Nussle
Packard
Parker
Paxon
Petri
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Skaggs
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stockman
Stump
Talent
Tate
Taylor (NC)
Thomas
Thornberry
Torkildsen
Torricelli
Traficant
Upton
Vucanovich
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—162

Abercrombie
Ackerman
Andrews
Baesler
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Boucher
Brewster
Browder
Brown (OH)
Bryant (TX)
Cardin
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Costello
Coyne
Danner
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Durbin
Edwards
Engel
Eshoo
Evans
Farr
Fazio
Filner
Flake
Foglietta
Frank (MA)
Furse
Gejdenson
Gephardt
Gibbons
Gonzalez
Green
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson (IL)
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McNulty
Meehan
Meek
Menendez
Miller (CA)
Minge
Mink
Moakley
Mollohan
Moran
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Peterson (FL)
Peterson (MN)
Pickett
Pomeroy
Poshard
Rahall
Rangel
Reed
Richardson
Rivers
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Sisisky
Slaughter
Spratt
Stark
Stenholm
Stokes
Stupak
Tanner

Taylor (MS)
Tejeda
Thompson
Thurman
Torres
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Woolsey
Wynn
Yates

NOT VOTING—35

Borski
Brown (CA)
Brown (FL)
Calvert
Chapman
Conyers
Cremeans
de la Garza
Fattah
Fields (LA)
Fields (TX)
Ford
Frost
Hunter
Jackson-Lee (TX)
Kasich
Lewis (CA)
Lightfoot
Lipinski
McKinney
Ney
Ortiz
Oxley
Pelosi
Rose
Scarborough
Studds
Tauzin
Thornton
Tiahrt
Towns
Waxman
Williams
Wilson
Wise

□ 1829

The Clerk announced the following pairs:

On this vote:

Mr. Calvert for, with Ms. Jackson-Lee of Texas against.

Mr. Lightfoot for, with Mr. Towns against.

So the resolution was agreed to.

The result of the vote was announced as above recorded.

MOTION OFFERED BY MR. SKAGGS

Mr. SKAGGS. Mr. Speaker, I offer a motion to reconsider.

The SPEAKER pro tempore (Mr. EWING). The Clerk will report the motion.

The Clerk read as follows:

Mr. SKAGGS moves to reconsider the vote whereby the House adopted House Resolution 395.

MOTION TO TABLE OFFERED BY MR. MCINNIS

Mr. McINNIS. Mr. Speaker, I move that the motion to reconsider be laid on the table.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Colorado [Mr. McINNIS] to lay on the table the motion to reconsider offered by the gentleman from Colorado [Mr. SKAGGS].

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

RECORDED VOTE

Mr. SKAGGS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken be electronic device, and there were—ayes 233, noes 164, not voting 34, as follows:

[Roll No. 114]

AYES—233

Allard
Andrews
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Camp
Campbell
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
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
Gordon
Goss
Graham
Greene
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (KY)
Linder
Livingston
LoBiondo
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
Packard
Parker
Paxon
Petri
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Schaefer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stockman
Stump
Tate
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Traficant
Upton
Vucanovich
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—164

Abercrombie
Ackerman
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Bevill
Bishop
Bonior
Boucher
Brewster
Browder
Brown (CA)
Brown (OH)
Bryant (TX)
Cardin
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Danner
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Durbin
Edwards
Engel
Eshoo
Evans
Farr
Fazio
Filner
Flake
Foglietta
Frank (MA)
Furse
Gejdenson
Gephardt
Gibbons
Gonzalez
Green
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson (IL)
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McNulty
Meehan
Meek
Menendez
Miller (CA)
Minge
Mink
Moakley
Mollohan
Moran
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Peterson (FL)
Peterson (MN)
Pickett
Pomeroy
Poshard
Rahall
Rangel
Reed
Richardson
Rivers
Roemer
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Sisisky
Skaggs
Slaughter
Spratt
Stark
Stenholm
Stokes
Studds
Stupak
Tanner
Tejeda
Thompson
Thurman
Torres
Torricelli
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Woolsey
Wynn
Yates

NOT VOTING—34

Baesler
Bateman
Berman
Borski
Brown (FL)
Calvert
Chapman
Clinger
de la Garza
English
Fattah
Fields (LA)
Ford
Frost
Hunter
Jackson-Lee (TX)
Lewis (CA)
Lightfoot
Lipinski
McKinney
Ortiz
Oxley
Pelosi
Rose
Scarborough
Schiff
Talent
Tauzin
Thornton
Towns
Waxman
Williams
Wilson
Wise

□ 1847

Mr. GIBBONS changed his vote from "aye" to "no."

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

Mr. CANADY of Florida. Mr. Speaker, pursuant to the provisions of House Resolution 395, I call up the joint resolution (H.J. Res. 159) proposing an amendment to the Constitution of the United States to require two-thirds majorities for bills increasing taxes, and ask for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

Mr. SKAGGS. Mr. Speaker, I raise the question of consideration of House Joint Resolution 159.

The SPEAKER pro tempore (Mr. EWING). The question is: Will the House now consider House Joint Resolution 159, as amended.

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

RECORDED VOTE

Mr. SKAGGS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 241, noes 157, not voting 33, as follows:

[Roll No. 115]

AYES—241

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bono
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Camp
Campbell
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler

Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
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
Gordon
Goss
Graham
Greene
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hutchinson
Hyde
Inglis
Istook
Jacobs
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (KY)
Linder
Livingston
LoBiondo
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
Packard
Pallone
Parker
Paxon
Petri
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Skaggs
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stockman
Stump
Talent
Tate
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Torricelli
Traficant
Upton
Vucanovich
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—157

Abercrombie
Ackerman
Andrews
Baesler
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Boucher
Brewster
Brown (CA)
Brown (OH)
Bryant (TX)
Cardin
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Danner
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Durbin
Edwards
Engel
Eshoo
Evans
Farr
Fazio
Filner
Flake
Foglietta
Frank (MA)
Furse
Gejdenson
Gephardt
Gibbons
Gonzalez
Green
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson (IL)
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
Lantos
Levin
Lewis (GA)
Lincoln
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Mascara
Matsui
McCarthy
McDermott
McHale
McNulty
Meehan
Meek
Menendez
Miller (CA)
Minge
Mink
Moakley
Mollohan
Moran
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Orton
Owens
Pastor
Payne (NJ)
Payne (VA)
Peterson (FL)
Peterson (MN)
Pickett
Pomeroy
Poshard
Rahall
Rangel
Reed
Richardson
Rivers
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Sisisky
Slaughter
Spratt
Stark
Stenholm
Stokes
Studds
Stupak
Tanner
Tejeda
Thompson
Thurman
Torres
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Woolsey
Wynn
Yates

NOT VOTING—33

Bonilla
Borski
Brown (FL)
Calvert
Chapman
Clay
Clinger
de la Garza
DeFazio
Fattah
Fields (LA)
Ford
Frost
Hunter
Jackson-Lee (TX)
LaFalce
Lewis (CA)
Lightfoot
Lipinski
Martinez
McKinney
Ortiz
Oxley
Pelosi
Rose
Scarborough
Tauzin
Thornton
Towns
Waxman
Williams
Wilson
Wise

□ 1906

So the House agreed to consider House Joint Resolution 159.

The result of the vote was announced as above recorded.

MOTION OFFERED BY MR. SKAGGS

Mr. SKAGGS. Mr. Speaker, I offer a motion to reconsider the previous vote.

The SPEAKER pro tempore (Mr. EWING). The Clerk will report the motion.

The Clerk read as follows:

Mr. SKAGGS moves to reconsider the vote whereby the House agreed to consider House Joint Resolution 159.

MOTION TO TABLE OFFERED BY MR. CANADY OF FLORIDA

Mr. CANADY of Florida. Mr. Speaker, I move to lay the motion to reconsider the vote on the table.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. CANADY] to lay on the table the motion to reconsider the vote offered by the gentleman from Colorado [Mr. SKAGGS].

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

RECORDED VOTE

Mr. SKAGGS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were ayes 236, noes 157, not voting 38, as follows:

[Roll No. 116]

AYES—236

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bono
Brewster
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Camp
Campbell
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Greene
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (KY)
Linder
Livingston
LoBiondo
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
Packard
Pallone
Parker
Paxon
Petri
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stump
Talent
Tate
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Torricelli
Traficant
Upton
Vucanovich
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—157

Abercrombie
Ackerman
Andrews
Baesler
Baldacci
Barcia
Barrett (WI)
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Boucher
Browder
Brown (CA)
Brown (OH)
Bryant (TX)
Cardin
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Danner
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Durbin
Edwards
Engel
Eshoo
Evans
Farr
Fazio
Filner
Flake
Foglietta

Frank (MA)	Luther	Rangel
Furse	Maloney	Reed
Gejdenson	Manton	Richardson
Gephardt	Markey	Rivers
Gibbons	Mascara	Roybal-Allard
Gonzalez	Matsui	Rush
Green	McCarthy	Sabo
Gutierrez	McDermott	Sanders
Hall (OH)	McHale	Sawyer
Hamilton	McKinney	Schroeder
Harman	McNulty	Scott
Hastings (FL)	Meehan	Serrano
Hefner	Meek	Sisisky
Hilliard	Menendez	Skaggs
Hinchey	Miller (CA)	Slaughter
Holden	Minge	Spratt
Hoyer	Mink	Stark
Jackson (IL)	Moakley	Stenholm
Jacobs	Mollohan	Stokes
Jefferson	Moran	Studds
Johnson (SD)	Murtha	Stupak
Johnson, E. B.	Nadler	Tanner
Johnston	Neal	Tejeda
Kanjorski	Oberstar	Thompson
Kaptur	Obey	Thurman
Kennedy (MA)	Olver	Torres
Kennedy (RI)	Orton	Velazquez
Kennelly	Owens	Vento
Kildee	Pastor	Visclosky
Kleczka	Payne (NJ)	Volkmer
Klink	Payne (VA)	Ward
Lantos	Peterson (FL)	Watt (NC)
Levin	Peterson (MN)	Woolsey
Lewis (GA)	Pickett	Wynn
Lincoln	Pomeroy	Yates
Lofgren	Poshard	
Lowey	Rahall	

NOT VOTING—38

Becerra	Ford	Oxley
Bonilla	Frost	Pelosi
Borski	Hayes	Rose
Brown (FL)	Hunter	Schumer
Calvert	Jackson-Lee (TX)	Stockman
Chapman	LaFalce	Tauzin
Clay	Laughlin	Thornton
Clinger	Lewis (CA)	Towns
de la Garza	Lightfoot	Waters
DeFazio	Lipinski	Waxman
Fattah	Martinez	Williams
Fawell	Ortiz	Wilson
Fields (LA)		Wise

□ 1923

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Ms. JACKSON-LEE of Texas. Mr. Speaker, during rollcall votes Nos. 111, 112, 113, 114, 115, and 116, I was unavoidably detained, out of town at a meeting with my constituents.

Had I been present, I would have voted "no" on 111, "no" on 112, "no" on rollcall 113, "no" on 114, "no" on 115, and "no" on 116.

Mr. LIGHTFOOT. Mr. Speaker, because I was unavoidably detained, I missed the procedural rollcall votes Nos. 111, 112, 113, 114, 115, and 116. Had I been present, I would have voted "yea" on each of these votes.

The SPEAKER pro tempore (Mr. RIGGS). Pursuant to House Resolution 395, an amendment in the nature of a substitute consisting of the text of House Joint Resolution 169 is adopted.

The text of House Joint Resolution 159 is as follows:

H.J. RES. 159

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), 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. Any bill to levy a new tax or increase the rate or base of any tax may pass only by a two-thirds majority of the whole number of each House of Congress.

"SECTION 2. The Congress may waive section 1 when a declaration of war is in effect. The Congress may also waive section 1 when the United States is engaged in military conflict which causes an imminent and serious threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law. Any provision of law which would, standing alone, be subject to section 1 but for this section and which becomes law pursuant to such a waiver shall be effective for not longer than 2 years.

"SECTION 3. All votes taken by the House of Representatives or the Senate under this article shall be determined by yeas and nays and the names of persons voting for and against shall be entered on the Journal of each House respectively.".

The text of House Joint Resolution 159, as amended, is as follows:

H.J. RES. 169

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), 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. Any bill, resolution, or other legislative measure changing the internal revenue laws shall require for final adoption in either House the concurrence of two-thirds the members present, unless that bill, resolution, or measure is determined at the time of adoption, in a reasonable manner prescribed by law, not to increase the internal revenue by more than a de minimis amount.

"SECTION 2. The Congress may waive section 1 when a declaration of war is in effect. The Congress may also waive section 1 when the United States is engaged in military conflict which causes an imminent and serious threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law. Any provision of law which would, standing alone, be subject to section 1 but for this section and which becomes law pursuant to such a waiver shall be effective for not longer than 2 years.

"SECTION 3. All votes taken by the House of Representatives or the Senate under this article shall be determined by yeas and nays and the names of persons voting for and against shall be entered on the Journal of each House respectively.".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. CANADY] and the gentleman from Michigan [Mr. CONYERS] each will control 1½ hours of general debate time.

The Chair recognizes the gentleman from Florida [Mr. CANADY].

GENERAL LEAVE

Mr. CANADY of Florida. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on House Joint Resolution 159.

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

There was no objection.

Mr. CANADY of Florida. Mr. Speaker, I yield 45 minutes to the gentleman from Texas [Mr. ARCHER], and I ask unanimous consent that he may be permitted to yield blocks of time to other Members.

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

There was no objection.

Mr. CONYERS. Mr. Speaker, I ask unanimous consent to yield 45 minutes to the distinguished past chairman of the Committee on Ways and Means, the gentleman from Florida [Mr. GIBBONS], and I ask that he be recognized to yield blocks of time.

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

There was no objection.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Florida [Mr. CANADY].

Mr. CANADY of Florida. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today, the millions of Americans rushing to meet the midnight deadline to file their Federal income tax return are asking themselves—why is it that every year more and more of my family's income goes to pay Federal taxes, leaving me with less and less to meet my needs and the needs of my children? As they write that painful final check to the IRS or review the bottom line of their tax liability, they are asking themselves—is there any relief in sight? Will Congress ever be weaned from imposing higher and higher taxes? Will Washington ever get its spending habits under control? To the American people I say, today's vote should give you a glimmer of hope.

Today, we are again considering a mechanism that will bring relief to the American taxpayers. We will be debating and voting on a constitutional amendment to require a two-thirds vote of each House of Congress for any bill that increases revenue by more than a de minimis amount.

Members voted on a similar provision that was part of House Joint Resolution 1, the balanced budget constitutional amendment of the Contract With America in January 1995. In the 1st session of the 104th Congress, the Subcommittee on the Constitution held hearings and the Full Judiciary Committee favorably reported the balanced budget constitutional amendment which included a supermajority requirement for raising tax revenue.

On January 26, 1995, the House voted 253 to 173 in favor of the balanced budget constitutional amendment that had been reported by the Committee on the Judiciary. That version of the amendment, which was sponsored by Congressman BARTON, would have required a three-fifths majority of the entire House and Senate to increase tax revenue and would have allowed a simple majority to waive the requirement in times of war, or in the face of a serious military threat. The balanced budget amendment ultimately adopted by the House did not, however, include the Barton supermajority tax limitation provision.

When the House passed a balanced budget amendment without the Barton supermajority requirement, Speaker GINGRICH promised to schedule another vote on the supermajority tax limitation amendment in the 104th Congress. Today's vote fulfills that promise.

On March 6, 1996, the Subcommittee on the Constitution held an additional hearing on the Barton tax limitation constitutional amendment. House Joint Resolution 159 was criticized as being too broad. For example, as originally drafted House Joint Resolution 159 would have required a two-thirds majority of each House to close a tax loophole or make revenue neutral changes to the Tax Code. Under the Barton substitute amendment made in order under the Rule, such actions would not require a supermajority vote as long as the legislation as a whole was revenue-neutral or resulted in only a de minimis increase in revenue.

The amendment before us this evening requires a two-thirds vote of each House for any bill that is not revenue neutral. Congress may waive this requirement when a declaration of war is in effect, or by adopting a joint resolution upon finding that the United States in engaged in military conflict which causes an imminent and serious threat to national security. The amendment requires that all votes be taken by rollcall.

This substitute amendment is in keeping with the supermajority requirement that was approved by the Committee on the Judiciary and the House in January 1995 as part of the Contract With America.

In addition, the House Rules as adopted at the beginning of this Congress require a three-fifths majority vote to pass a Federal income tax rate increase. However, the House Rule cannot bind future Congresses and can be waived by the Rules Committee as had been done at least once this past year—yet another reason why we need the permanence and certainty of a constitutional amendment.

Members should be aware that the language of the constitutional amendment we are voting on today differs significantly from the House Rule. The constitutional amendment, unlike the House Rule, does not apply to bills that cut taxes or that are roughly revenue neutral. It will make it harder for Congress to raise taxes, yet allows flexibility to make revenue neutral changes to the tax laws.

The National Commission on Economic Growth and Tax Reform, headed by former Congressman Jack Kemp, recently recommended requiring a two-thirds supermajority vote to raise the tax rate. The Kemp Commission recommended substantial changes to the Tax Code and argued that such changes should be held in place by requiring a supermajority vote to raise taxes. The Commission report stated "a two-thirds supermajority vote of Congress will earn Americans' confidence in the longevity, predictability, and stability of any new tax system."

The Framers of our Constitution understood the need for requiring supermajority votes for certain fundamental decisions. The Constitution currently includes ten supermajority requirements for decisions of importance including the requirement of a two-thirds vote to send a constitutional amendment to the States for ratification. I submit that under our current system it is too easy for us to add to the already onerous tax burden Congress has placed upon the American people. The adoption of a supermajority provision can only help us give careful consideration to proposals to raise taxes, and will require us to reach broad consensus in order to do so.

I urge my colleagues to support this important measure and I reserve the balance of my time.

□ 1930

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

Mr. GIBBONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as one distinguished Republican told me as we were coming over here, "And to think we gave up a whole day of vacation for this debate." I think he put his finger right on the issue here. Everybody in this Chamber and everybody within the sound of my voice knows that what we are doing tonight is show business; not very good show business, but show business.

The gentleman from Texas [Mr. BARTON] sent us a Dear Colleague letter numbering some 20 pages. As I read it and studied it, it reminded me of a quotation that a distinguished Supreme Court Justice made about 100 years ago: Taxes are what we pay for civilization. Taxes are what we pay for civilization.

How well have Americans done? The Organization for Economic Cooperation and Development, which keeps statistics on all of the industrialized countries on Earth, tells us that there are 24 industrialized countries on Earth. Of those 24 industrialized countries on Earth, the United States has the lowest tax rate of any of those 24 countries. This is not ancient history, this is today's history, compiled by the OECD. They are not an American organization. The United States is a member of the OECD, but the headquarters of it is in Europe. It rates all of the industrialized nations.

Of all of the industrialized nations, the United States of America, this Federal Government, has the lowest tax rate of any of them. Do any of you in this Chamber dispute what I have just said? I would ask the gentleman from Texas [Mr. BARTON], does he dispute what I have just said?

In fact, in the 20-some page letter of the gentleman from Texas [Mr. BARTON], he included in his Appendix E on page 20 a list of all of the industrialized nations that had tax limitations in their procedures. I do not think the gentleman from Texas even read this himself or he never would have sent it to us. Of all the nations in this chart that have tax limitations, guess what? Every single one of them has a higher tax rate than the United States of America.

Mr. Speaker, I would ask the gentleman from Texas, did he know that when he sent this to us?

Mr. BARTON of Texas. Mr. Speaker, will the gentleman yield?

Mr. GIBBONS. I yield to the gentleman from Texas.

Mr. BARTON of Texas. Mr. Speaker, I would tell the gentleman from Florida [Mr. GIBBONS], I did read that memo.

Mr. GIBBONS. It did not sink in then, though, did it?

Mr. BARTON of Texas. Mr. Speaker, I will be happy to debate it if the gentleman wishes to.

Mr. GIBBONS. I just wondered if the gentleman had read it. He is arguing for a tax limitation by constitutional amendment. He sent us a chart listing all the other countries on Earth that have tax limitations. Every one of them has a higher tax rate than the United States of America.

Mr. Speaker, taxes are the dues of civilization. It is what we pay for civilization. The tax rate in America, being the lowest of the 24 industrialized countries, has remained remarkably stable for about the last 50 years. The tax rate for the 1950's comes out at 17.62 percent. That was the tax rate for the 1950's. The tax rate for the 1960's comes out at 18.31 percent. We have to remember that we were fighting the Vietnam war at that time. The tax rate for the 1970's comes out at 18.47 percent. The tax rate for the 1980's comes out at 18.97 percent. For the first 5 years of 1990, the tax rate has dropped to 18.75 percent.

Mr. Speaker, the ridiculous thing about this amendment is its unintended consequences that will occur. If this amendment ever became law, we would first of all have to declare war

on some unsuspecting country, so that for 2 years we could handle the ordinary and necessary business of this country, which from time to time requires us to make certain adjustments in the Tax Code. After 2 years we would have to find some other unsuspecting country and declare war on it, or maybe we can declare war on somebody in outer space. As long as we declare war, we can waive all of this.

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

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

Mr. STARK. Mr. Speaker, the gentleman just stated some interesting statistics of 17 percent and 18 percent tax rates. I suspect the gentleman was referring to the percentage of gross domestic product.

Mr. GIBBONS. That is correct. That is the only way you can measure tax rates.

Mr. STARK. That is the only effective way to measure it?

Mr. GIBBONS. That is the only way you can measure tax rates.

Mr. STARK. I thank the gentleman for clarifying that.

Mr. GIBBONS. I thank the gentleman for bringing up that question and letting me clarify it.

Mr. Speaker, there are so many other reasons why this is just a ridiculous piece of show business here today, but Mr. Speaker, at this time I will go back and yield time to other Members so they can participate in the debate.

Mr. Speaker, I include for the RECORD the following document:

CENTRAL-GOVERNMENT TAXES AS PERCENTS OF GDP, 1992: AN INTERNATIONAL COMPARISON

Country	Rank	Percent GDP
Netherlands	1	45.2
Luxembourg	2	43.1
Belgium	3	42.5
Italy	4	41.0
Greece	5	39.7
France	6	39.3
Finland	7	37.3
Norway	8	37.0
Ireland	9	35.2
Austria	10	34.1
New Zealand	11	33.7
Denmark	12	33.6
United Kingdom	13	33.5
Sweden	14	32.9
Spain	15	31.4
Portugal	16	31.2
Germany	17	28.1
Iceland	18	26.6
Japan	19	22.0
Australia	20	21.8
Turkey	21	21.2
Canada	22	20.8
Switzerland	23	20.2
United States	24	19.9

Note: Of the 24 countries for which the OECD keeps statistics, the United States ranks lowest in terms of tax burden.

Source: Committee on Ways and Means Democratic Staff based on information from the Organization for Economic Cooperation and Development [OECD]. Prepared April 15, 1996.

Total U.S. Federal revenue as percents of GDP, 1950–95

Fiscal year	*Total receipts*
1950	14.8
1951	16.5
1952	19.4
1953	19.1
1954	18.9
1955	17.0
1956	17.9
1957	18.3
1958	17.8
1959	16.5
Average, 1950's	17.62
1960	18.3
1961	18.3
1962	18.0
1963	18.2
1964	18.0
1965	17.4
1966	17.8
1967	18.8
1968	18.1
1969	20.2
Average, 1960's	18.31
1970	19.6
1971	17.8
1972	18.1
1975	18.5
1976	17.7
1977	18.5
1978	18.5
1979	19.1
Average, 1970's	18.47
1980	19.6
1981	20.2
1982	19.8
1983	18.1
1984	18.0
1985	18.5
1986	18.2
1987	19.2
1988	18.9
1989	19.2
Average, 1980's	18.97
1990	18.8
1991	18.6
1992	18.4
1993	18.4
1994	19.0
1995	19.3
Average, 1990–95	18.75

Note: Federal Revenue has hovered at 18–19 percent of GDP for all of our Post-WWII history.

Source: Committee on Ways and Means Democratic Staff based on information from the Organization for Economic Cooperation and Development (OECD). Prepared April 15, 1996.

DISTRIBUTION OF THE CURRENT FEDERAL TAX BURDEN

[Projected 1996 income levels]

Income range	Number of families (in millions)	Average income (in dollars)	Effective tax rate (in percent)
Less than $10,000	14.6	$6,009	6.7
$10,000–$20,000	18.5	14,794	10.4
$20,000–$30,000	16.6	24,941	16.5
$30,000–$40,000	13.5	34,841	19.4
$40,000–$50,000	10.8	44,808	21.7
$50,000–$75,000	17.7	61,278	23.6
$75,000–$100,000	8.6	85,637	25.4
$100,000–$200,000	7.0	129,788	26.7
$200,000 or more	1.9	486,031	31.9
All	110.8	48,165	23.8

Source: Committee on Ways and Means Democratic Staff based on June 1995 information from the Congressional Budget Office.

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

Mr. BARTON of Texas. Mr. Speaker, I yield 5 minutes to the gentleman from Texas [Mr. ARCHER], the distinguished chairman of the Committee on Ways and Means.

Mr. ARCHER. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, let me quickly say that the percentage of GDP is not the only way to determine the tax burden on Americans. GDP and its percentage relative to taxes means very little to the worker. What is important to the worker is how much comes out of his or her paycheck, not what percentage of GDP.

We can talk in those glossary terms inside the beltway, but the American people who are out there producing understand that what they have left in their paycheck is not as much as it should be. That is why I rise in strong support of this constitutional amendment that will serve as a barrier to those who seek to raise taxes and increase the Federal Government's role in our lives, because that is what this debate is all about. That is what the balanced budget debate is all about: How big will the Federal Government be, and how much will it take out of our hard-earned pay?

Taxes in this country are too high, irrespective of what they are in other places around the world. That is because too often Congress has found it easier to raise taxes than to say no to new spending. A constitutional limitation on tax increases will rectify that unfortunate bias. It is time to tilt tax and spending decisions in favor of working Americans who pay the taxes. This proposed constitutional amendment does exactly that.

I have made no secret of my desire to tear our current income tax out by its roots and replace it with a consumption tax on the purchase of goods and services; so simple, because it will remove the IRS completely and totally from every American's individual lives. Accordingly, the amendment's sponsor and I have worked hard to come up with language that would require a supermajority vote for tax increases without making it harder to replace the current income tax system. This revised language accomplishes these twin objectives.

Mr. Speaker, I would like to have a brief colloquy with the sponsor, the gentleman from Texas [Mr. BARTON], about how the amendment will work in practice.

Mr. Speaker, as I read the proposed constitutional amendment, the two-thirds requirement would not apply to tax legislation that is a net tax cut or that is revenue-neutral overall.

Mr. BARTON of Texas. Mr. Speaker, will the gentleman yield?

Mr. ARCHER. I yield to the gentleman from Texas.

Mr. BARTON of Texas. Mr. Speaker, I would tell the gentleman, that is correct.

Mr. ARCHER. Accordingly, the supermajority requirement would not have applied to the Balanced Budget Act of 1995 or the Contract With America Tax Relief Act of 1995, since those bills provided a net tax cut, is that correct?

Mr. BARTON of Texas. That is correct, Mr. Speaker.

Mr. ARCHER. It would also not apply to legislation that replaces one tax system with another, as long as that replacement is revenue-neutral; for example, if we were successful in tearing the income tax out by its roots and replacing it with a broad-based consumption tax, that legislation would be subject to a simple majority vote, is that correct?

Mr. BARTON of Texas. If the replacement tax raised the same amount or less revenue than the current tax, then the answer is yes.

Mr. ARCHER. Also, the supermajority requirement does not apply to tax legislation that raises a de minimis amount of revenue. Am I correct in assuming that a bill that increases Federal tax revenue by less than one-tenth of 1 percent would be considered de minimis?

Mr. BARTON of Texas. That is correct.

Mr. ARCHER. Therefore, H.R. 831, which increased and extended the health insurance deduction for the self-employed, H.R. 2778, which provided tax relief to our troops in Bosnia, and H.R. 3103, the Health Coverage Availability and Affordability Act of 1996, would not have required a two-thirds vote. Is that correct?

Mr. BARTON of Texas. Mr. Speaker, the gentleman is correct. Those bills would have met the de minimis exception.

Mr. ARCHER. I thank the gentleman for the clarification. I would also like to point out that the amendment allows Congress to establish procedures that would provide certainty at the time of passage as to whether the two-thirds requirement applies.

I want to address one spurious criticism. Some opponents of House Joint Resolution 159 have argued that it poses problems similar to those alleged with the current House rule that requires a supermajority vote for Federal income tax rate increases.

□ 1945

Anyone who makes that argument clearly has not read the amendment.

The amendment and the House rule are fundamentally different. Indeed the wording of the constitutional amendment reflects the lessons that we have learned from our experiences in dealing with the House rule. The House has not passed any bill containing a Federal income tax rate increase.

Mr. GIBBONS. Mr. Speaker, I yield 4 minutes to the gentleman from New York [Mr. RANGEL].

Mr. RANGEL. Mr. Speaker, everyone knows that this is April 15, the time that we are supposed to pay taxes. But some of my colleagues think it is April 1, that is, April Fool's Day, because the whole idea of passing a constitutional amendment has been aborted.

Normally a bill would go to the committees that have jurisdiction so that we could really find out the impact of this bill on the American people and especially the American taxpayer. But my dear friend from Texas, Mr. BARTON, did not ask for the House Judiciary Committee that is headed by Chairman HYDE who everyone knows is an expert on the Constitution, he just went to his friend James Perry of the Americans for Tax Reform. I see that 17 pages was sent in support of the Barton amendment. There is nothing here from the Committee on the Judiciary because they never had hearings.

My distinguished chairman, at least chairman for the rest of this year, BILL ARCHER, was here, and this really talks about how this thing is supposed to work, and there is an asterisk next to Mr. Perry's name, but no place here does it say who he is. But it is not important. I would rather have seen something from the Committee on Ways and Means that would just answer certain questions.

Under this amendment if we wanted to protect the Social Security system or to protect the Medicare system and if we had to increase the premium, we would need a two-thirds vote in order to do that. On the other hand if we wanted to raise taxes for education or health care or Social Security or anything, we would need a two-thirds vote for that. But suppose we wanted to close the loopholes, because I refer to this as a lobbyist amendment, not a constitutional amendment. Suppose those people were supporting corporate welfare or wanted to strike it out, close the loopholes. That would mean an increase in taxes. And we would need a two-thirds vote or lock in the lobbyists who are protecting the corporations.

On the other hand, it seems to me that when the majority party decided it was going to increase the taxes of the earned-income tax, the benefits that we give to the lowest, the poorest working people we have in the United States, they just waived a provision that they have in the rules.

Someplace they would say this to the taxpayers as they said, and let me read this section here from this paper that the gentleman from Florida [Mr. GIBBONS] has given to me. This is not a committee report, this is not a Ways and Means report. This is not a Judiciary report. This is a report from Americans for Tax Reform and this is how they open this debate.

That millions of Americans while they are standing out there in front of the post offices paying their taxes, for the first time would see these Republicans on the floor on TV, drive-time radio talk shows will offer live coverage as the votes and hearings proceed. What hearings? As the vote proceeds, and for the first time this resolution will give guaranteed live media coverage.

And so, my friends, enjoy your gimmick, enjoy your public relations, but let us not treat the Constitution that way, and you should have more respect for the American taxpayers than to do this gimmick on this particular day.

Mr. CANADY of Florida. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio [Mr. HOKE], a member of the Committee on the Judiciary.

Mr. HOKE. I thank the chairman for yielding the time.

Mr. Speaker, in 1950, the average income family in America had 2 percent of its income paid to the Government in taxes. In 1996, that number has gone up to about 25 percent. We have had, you could say, a 12 times, a 1,200 percent increase in the percentage of taxes that the average American family is paying to the Government. We have seen that increase in taxation that falls directly on the backs of working men and women fuel the explosion in growth in government in the past 45 years. That is what has fueled it.

What I would ask the gentlemen and gentlewomen on the other side of the aisle is do you think that would have been possible if this tax limitation amendment had been in place? I would suggest to you that it would not have been possible and that today what we are fighting and what is a fundamental problem that faces our society and our economy is that families cannot make it on one income, and the reason that they cannot make it on one income is not because it is not enough money to actually raise children with one person staying at home, and it makes no difference to me whether it is the mother or the dad staying at home, but they cannot make it because too much money is being kept out of the paychecks and given to the Government. That is the fundamental problem. When you go from 2 percent in 1950 to 25 percent in 1996, and we are not talking about the rich people, upper-class people, we are talking about the average income family in America. That is the fundamental problem. That is the fundamental problem that tears at the social fabric. That is the fundamental reason that we have been able to fuel this tremendous growth in government, this explosion in the size of government.

The other thing that I wanted to address, and I would draw to your attention, particularly the gentleman from Florida, the senior Member who is retiring this year, this is an article that just appeared in this week's, or I guess last week's Time magazine. It says "Europe's Job Crunch."

You draw attention to the fact that other economies, other countries have got higher tax rates. I want to just read a little bit about what they say because what we do know is that in other countries, there is tremendous stagnation. They say:

> Call it Eurosclerosis, the combination of a staggering tax burden and a blanket of regulations that smother new businesses and entrepreneurship. The symptoms. Europe's unemployment rate of 11 percent is twice as

high as the United States and its job creation chart is a flat line. Over the past 3 years the U.S. has created 8.4 million new jobs. Europe none. Significantly many of those new American jobs pay higher than average wages and as many as 60 percent are managerial or professional.

Spain has got a 20-percent unemployment rate; Italy 12; we have got 11 percent in Germany; and France has got 12 percent. This is exactly what you get when you have higher and higher and higher taxes. It is not what created the American success story. It is not what holds the potential of the American dream. We ought to pass this. It will really slow down the growth of government.

Mr. GIBBONS. Mr. Speaker, I yield 3 minutes to the gentleman from Virginia [Mr. MORAN].

Mr. MORAN. Mr. Speaker, there are at least five very good reasons to vote "no" on this ill-advised constitutional amendment.

The first is that it is a classic example of pure political posturing. At the very beginning of this session of Congress we passed legislation, a rule that said that we would require three-fifths votes to raise taxes, and every single time that rule was to apply, the majority had the rule waived. So we cannot even abide by the rule that exists now, and we want to make it into a constitutional amendment so that we cannot even waive the rule.

Imagine what would have happened with all of the tax legislation that passed for the last 20 years if we had had this rule. There was only one minor piece of legislation that would have passed.

Second, it is fiscally irresponsible. It makes it almost impossible to raise revenue to reduce the deficit, whether it is to cut capital gains taxes, which would increase revenue in the initial years, or particularly to close corporate and individual tax loopholes. We cannot do that under this legislation.

Third, it really shows contempt for the wisdom of the Founding Fathers. They debated this many times and they decided that the Articles of Confederation, article 9, which required a supermajority to increase revenue, was not working, that the minority was thwarting the will of the majority. And so in 1787 at the Constitutional Convention they decided, they voted that they had to have a pure political majority for this democracy to work.

The Constitution is not some rough working draft. It is a body of law that has served this Nation better than any Constitution has served any nation in the history of mankind. For 200 years it has made us the most democratic, the strongest nation on Earth, and now we want to mess around with it, with this kind of constitutional graffiti.

Fourth, it shows a contempt for the legislative process. This language was not even considered by the subcommittee or the full Committee on the Judiciary. We bring it out here and we look at it here on the floor. By the seat of the pants we are coming up with definitions that we want to put into the Constitution.

For example, what does "de minimis" mean? We say, well, how about 0.1 percent of the Federal budget? What kind of constitutional definition is that? We do not even know how many years we should measure whether the revenue is de minimis or not, or whether user fees would apply.

There are all kinds of issues that have not even been adequately considered. The fact is that this is just pure political grandstanding. We are making politically expedient points at the cost of the integrity of this body. This is a bad amendment. we all ought to vote "no" on it.

Mr. BARTON of Texas. Mr. Speaker, I yield 4 minutes to the gentleman from New Jersey [Mr. SAXTON], the distinguished chairman of the Joint Economic Committee.

Mr. SAXTON. Mr. Speaker, I am very pleased to rise today in support of the tax limitation amendment requiring a supermajority to raise taxes, and I commend the gentleman from Texas [Mr. BARTON] for his hard work and determination in bringing this amendment to the floor tonight.

I am also proud to say that in 1991, along with my colleague from Texas, I was one of the first Members to bring this supermajority voting requirement to the American people's attention. Tonight we bring it to the attention of the American people once again, this time in anticipation of passing the measure.

For many years we have known that a fundamental change in the way Congress does business is needed, and this is an example of the kind of change that we sincerely believe is needed. Currently it is much easier to raise taxes on the hard-working American people than it is to cut spending, and so we have seen year in and year out as the budget went up, and 1990 is a good example, we increased taxes. In 1993 once again the majority increased taxes, and still we have a deficit.

Let me just say what I think the real issue is here. It is demonstrated by this chart on my left. Today there are 10 States that have supermajority requirements for raising taxes. They happen to be Arizona, Arkansas, California, Colorado, Delaware, Florida, Louisiana, Mississippi, Oklahoma, and South Dakota. Four of those States have a two-thirds supermajority requirement, 3 have a three-fifths, and 3 have a three-fourths requirement.

This chart demonstrates quite clearly that in the States on average that have a supermajority requirement, that growth is much lower in government than in States that have no supermajority requirement, that is, growth in spending.

So, of course, that makes us believe that the same pattern would hold true within the Federal Government. If we went on the street today and asked almost any American, the great majority would say that government is too big, it is too burdensome, it is growing too fast, it is too overwhelming on the American people, and taxes are too high.

So this provision creates a situation in which both parties will realize a major objective that we promise the American people every year, lower taxes.

How does this work? It is very simple. We are trying to restore some balance to the way we operate here in the Congress, the pressures for spending. Just take, for example, a State that wants to build a highway or a series of highways.

□ 2000

There is a very focused effort by a number of special interest groups to get those highways built. There are people who want to get quicker from point A to point B, and that is very important for them for their morning and afternoon commute to and from work. They are focused on those projects. There are labor unions who want jobs; they are focused on those jobs. There are contractors and business people who will make a profit, and they are focused on those projects.

So an intense lobbying effort takes place because of that focus. Now, nobody wants higher taxes. But how deeply do the American people have an opportunity to lobby for lower taxes? Only on the surface, only at election time. They do not have lobbyists in this town, like the special interest groups. And so it seems to me that by requiring a larger vote known as a supermajority, we put some balance back in the system to achieve what these 10 smart-minded States have been able to accomplish. That is slower growth in their governments, and slower growth is what both parties have promised the American people in this House.

Mr. GIBBONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, leave that chart there just a minute. Do not move that chart. That chart is as phony as a $3 bill.

He has got California and Florida in that supermajority States. Florida requires a supermajority for increase in corporate income tax. But you can increase the Florida sales tax, which collects 90 percent of the revenue. California you listed as a supermajority State, and California only applies to property taxes. But you can increase the income tax and the sales tax and everything else. I do not know how many other phony things you have got in that, but that chart is no good.

Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. STARK].

Mr. STARK. Mr. Speaker, I thank the distinguished gentleman for yielding me this time.

Mr. Speaker, this amendment proposal is really nothing more than political sham, phony or not, and we all know it.

These proceedings, which will amount to 5 or 6 hours, are a pathetic political circumstance, staged by the radical Republican leadership of the House, to hopefully be broadcast at prime time on today's tax day.

At this moment in our history, a brief moment, the House happens to be under the control of a misguided vanguard who are ideologically opposed to any tax increases whatsoever. That does not mean we should pervert our Constitution, which has served us so well and supports the longest lasting system of democratic government in modern history.

That is right. This is just another cheap publicity stunt. Remember the Contract With America? That bunch of stupid ideas that sounded so good? Now the Republicans are using that constitutional amendment as a prop and a shallow scheme to convince the public that new majority is working in the best interests of average Americans.

The same radical zealots who said they would save Medicare when they actually wanted to destroy it and handed out tax breaks to the rich are trying to trick us again. Just as Americans file their tax forms, we have the promise of a constitutional amendment to require a two-thirds vote. But the absurdity of this proposal goes much deeper. Any major government initiative requires funding.

Think of it, if this law had been in effect, you would not now have Social Security or you would not now have Medicare. And somebody earlier mentioned family values. Well, that would be fine, except there would be no highway system for the families to go anywhere and you would not be able to vaccinate your children, because we pay for those childhood vaccines with a tax.

All of that would not be here today if this amendment were to pass, and that is not how it is supposed to be done. Amending the Constitution is a serious matter, and this resolution has been rushed through without any discussion or deliberation at the committee level, without any public debate, simply so it could be here tonight on tax day. This is no way to run a country, and my colleagues on the other side of the aisle who support this proposal should be ashamed.

Mr. CANADY of Florida. Mr. Speaker, I yield 5 minutes to the gentleman from Tennessee [Mr. WAMP].

Mr. WAMP. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I must say, as a freshman Member of this body, it disappoints me to see the kind of name-calling, shallow partisan rhetoric that seems to always seep its way into this debate, particularly by senior Members that have brought distinction to this institution for a long period of time. And now it seems like the same angry, hostile words are used over and over again as if the American people do not know better.

I am not much for partisan rhetoric and shallow words, and I do not come down here on a regular basis to say that Republicans are always right, Democrats are always wrong. I come down here tonight because I do think this is a fundamental issue in 1996. It is the litmus test of this whole process today, and that is the size and scope of the government and the difference in the two parties and their positions and their record on this issue. The barometer of the issue of the size and scope of the Federal Government is taxes. The government is going to grow as the Congress taxes the American people. The government is going to shrink which the American people would like as we reduce taxes on the American people.

Our party, the party of Lincoln, clearly today stands for less government and lower taxes. The Democratic Party, as you have seen tonight, is still Congress coming down here in defense of big government, in defense of higher taxes, even stating that maybe we should or inferring that we should have higher taxes like other countries in other parts of the world where I personally do not want to live. I want to live here, and we want our country to have lower taxes.

Let us look for a moment where we have been: $2,286 per person was paid in 1980, just a few short years ago. I remember that year very well—1980, per person to the Federal Government, $2,286. Last year, that figure was $4,996, almost $5,000. We have gone from $2,286 per person to almost $5,000, well over doubled in those few short years the amount the average American is paying to the Federal Government.

I tell you, the reference was made to our Framers of our Constitution and our Founding Fathers. Obviously they cannot report to us tonight, but here is what I think they are doing tonight, they are rolling over in their graves, screaming we told you so, we warned you time and time again about the government. You know, think about this, a balanced society would have government, business, religion, and family, all four at the same level in a healthy balance.

Do we not realize that the government is way above the line? The family is now way below the line, our religious institutions are way below the line, business is now way below the line, because the government has sucked off the responsibilities of those other four institutions. In order to bring it down, we have got to reduce the tax burden and balance out our society.

We had the gentleman from Ohio [Mr. HOKE] report that in 1950 we paid 2 percent of our dollars in revenues to the Federal Government; now that figure is 25 percent. I have a 9-year-old son and a 7-year-old daughter. My question is, at this pace, what are they going to be paying or will they have anything at all left from the dollars that they make? Because I suspect that they will not unless we draw a line in the sand tonight.

Ladies and gentlemen, people of America, this is about drawing a line in the sand and saying we are not, as a responsible Congress, going to raise your taxes anymore. We are going to have to learn to do with less. We need to limit Congress' ability to raise taxes. It happened in 1993. I think that one vote was the defining vote of the election of 1994 if there was one vote you could turn to. This is something we need to do.

I come from east Tennessee. I consider east Tennessee the center of the universe. The hills and valleys of east Tennessee, the people are honest and straightforward. They believe very passionately that the government is too big, that taxes are too high. They want me to do something about it. And I am.

Mr. GIBBONS. Mr. Speaker, I yield 2 minutes to the gentlewoman from Connecticut [Mrs. KENNELLY].

Mrs. KENNELLY. Mr. Speaker, I rise in strong opposition to this constitutional amendment. The amendment is not what it appears. This amendment is more than mischievous it will bring the definition of the word "gridlock" to new highs.

This constitutional amendment could add to the deficit. Normally when revenue raisers and spending provisions are matched to assure that legislation is paid for they do not match exactly but rather yield slight differences that are used to reduce the deficit. This amendment would seem to preclude that, meaning that the authors of bills will adjust their spending upward so as to avoid a super majority requirement. This simply makes no sense.

This constitutional amendment is being considered without hearings and without ever being considered by the Judiciary Committee. Constitutional amendments are serious matters and they deserve the most careful consideration. The handling of this amendment on this particular day is more suitable to a publicity stunt than to a change to the Constitution.

This amendment would require a super majority to close down egregious tax shelter or corporate welfare if the proceeds went to deficit but not if the proceeds went to fund tax cuts or other corporate welfare. Again, this simply does not make sense: We should not have a constitutional bias against deficit reduction.

Ordinary reauthorizations of popular programs would require super majorities under the amendment.

The only tax bill enacted last year would have violated the proposed amendment. The Congress last year enacted legislation to extend the health insurance deduction for the self insured and paid for it by closing down a tax loophole after press reports about its abuse by one corporation. Under the terms of the amendment, however, a super majority would have been required—since shutting down a loophole would meet the definition of a tax increase.

Finally, the majority has already waived a similar House rule three times. They waived it for consideration of their big tax cut bill because it would have increased taxes on working American families by $36.45 billion to help pay for tax cuts for better off families. They waived it for consideration of the Medicare bill because the premium increase could be construed as an income tax rate increase. And they waived it on the recently passed health insurance reform bill.

If the majority can not live under its own rule, they clearly can not be serious about a constitutional amendment. I believe our Constitution and the American taxpayer deserves better treatment.

Mr. BARTON of Texas. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Texas [Mr. STOCKMAN].

Mr. STOCKMAN. Mr. Speaker, I am really shocked. In fact, as you are in Texas right now, 7:15, filling out your taxes, you heard on the House floor tonight that it is radical to allow you to keep your money. Listen to what I am saying. They say it is radical for you to keep your money.

Now, I do not know about you, but I find that a radical thought and a little bit shocking that you are so stupid that we need to take your money and bring it up here in Washington and make your State of Texas weaker and make us stronger.

I believe in you. They obviously, on the other side, do not. They want to take more of your money. The gentleman from Ohio, very articulate gentleman, said that the unemployment rate in Europe is 12 percent, and so since they are doing what they are doing and the gentleman suggests we should follow them, then the logic says maybe we should make our unemployment rate 12 percent. Let me finish.

POINT OF ORDER

Mr. RANGEL. Mr. Speaker, I have a point of order.

Mr. STOCKMAN. Mr. Speaker, I think it is radical for them to deny you your money as you are going to file your income tax.

The SPEAKER pro tempore (Mr. RIGGS). The gentleman from Texas will suspend so the gentleman from New York can be heard on his point of order.

Mr. RANGEL. Mr. Speaker, the gentleman in the well has made it abundantly clear that he is addressing his constituents in Texas somewhere and his eyes are directed at the camera so that it is difficult for me really to know whether he is talking to me or making a political address to his constituents. I thought that violated the rules of the House.

Mr. STOCKMAN. Mr. Speaker, I will address that through the Chair.

The SPEAKER pro tempore. The point or order offered by the gentleman from New York is well taken. The Chair will remind all Members to address their remarks only to the Chair.

Mr. STOCKMAN. Mr. Speaker, I have to tell you your money tonight is going to be spent by Washington, and, Mr. Speaker, I have to tell you that I am going to stand here in the well and say we are going to defend every American's right to keep their money regardless of the demagoguery and to me a very offensive rhetoric on the other side. We believe in the American people, and we think the money does not belong here in Washington but indeed it belongs in your pockets across America, and remember, 12 o'clock, when you are filing that check, they want more of it.

□ 2015

POINT OF ORDER

Mr. RANGEL. Mr. Speaker, I rise to a point of order.

The SPEAKER pro tempore (Mr. RIGGS). The gentleman will state his point of order.

Mr. RANGEL. Mr. Speaker, cleverly the gentleman has wound up his speech once again addressing his taxpayers back home.

Mr. Speaker, I withdraw my point of order.

Mr. GIBBONS. Mr. Speaker, I yield 5 minutes to the gentleman from Indiana [Mr. JACOBS].

Mr. JACOBS. Mr. Speaker, I ask my friends and colleagues to recognize something that has occurred tonight in this debate, and that is a betrayal of an inclination to suggest that there is no connection between taxes and spending. It is said that if taxes are curtailed, spending will be curtailed. In my nearly 30 years in Congress, I have not found that to be the case.

In 1976 I began the movement for a balanced budget amendment to the Constitution. By the way, mine was called the Payment Book Amendment. After the balance was achieved, then 5 percent of the national debt, which then was $750 billion, had to be retired each year by a surplus equal to the 5 percent.

I do not mean to pick out any particular President, but as a good example, almost never has the Congress appropriated as much money as a President requests. President Reagan's budgets increased spending in his first 4 years in office by $1 trillion and cut taxes in 1981 by $750 billion, restoring some of that the following year by a reguessive tax increase.

One night when "I pondered weak and weary" and could not sleep, I turned on a TV interview program, on which a prominent Member of the Congress was advocating a $40 billion increase in spending on a new space program. The interviewer was thoughtful enough to ask, "Would you offer an increase in taxes by $40 billion to pay for the increased spending?"

The Member of Congress replied, "Mr. Rose, this country spends $40 billion a year on dog food."

Mr. Rose did not ask the logical follow-up question, which, of course, was, "which dog are you going to ask to give up his food?" The mere fact that people spend a certain amount on dog food does not mean you can increase spending in the Government without increasing taxes to pay for it.

If you really want to curtail spending constitutionally, forbid the Government from borrowing. The easiest thing in the world is to whip out the U.S. Government credit card, and that is exactly what has been done in a bipartisan manner as long as I have served in the Congress.

As for complaints about making car payments or paying the electric bill or any of the other things that are necessities in life, and I do not say that all the increased spending in the eighties was a necessity—I cast my district's vote against much of it—but I do say the necessity is to get cracking and pay for it and stop paying interest on it.

People have not only recently complained about paying taxes. I do not like to pay taxes. I do not like to pay any of my bills, and I do not like it if someone else runs up bills that I have to pay. Will Rogers said, "It is a great country, but you can't live it in for nothing."

Some of the greater patrioteers I would say in this country swear their allegiance and undying love, "patrioticer" than thou. They do not serve in the military, they do not go out and sweep the streets. There is one way they can show their love for the country, and the only way is not to complain about the taxes. But do they ever.

And it is human nature to avoid distastful duty. It is poor state craft indeed to have an arrangement where it is easier to run up the bills than to pay them. A constitution is supposed to restsorum the more foolish aspects of human nature, not view force and encourage them.

Finally, if I have time, I want to disabuse people of a couple of myths. One myth is that the 1993 tax act was the largest increase in history. That is not true. Neither was the 1982 act—the Reagan tax increase—the largest in history.

In World War II, there were all sorts of increases that dwarfed both of them.

Between the two, however, the Reagan tax increase in 1982 was $340 billion in 1993 dollars, the only fair comparison, adjusted for inflation, and the Clinton tax increase was $249 billion. And the myth has gone on for decades that John F. Kennedy was elected President because they stole it in Chicago and Illinois went for Kennedy. The fact is that at 3:33 on the morning following the election, Michigan went over to Kennedy and elected him. Illinois was surplusage. These are two myuths which have been asserted so certainly and so often, that most people have come to believe them. "Truth crushed to earth * * *"

Mr. CANADY of Florida. Mr. Speaker, I yield 2 minutes to the gentleman from Iowa [Mr. GANSKE].

Mr. GANSKE. Mr. Speaker, I rise today in strong support of this joint resolution. Today the people in my home State of Iowa are filing their tax returns. The average Iowan is sending more of their hard-earned money to Washington than they spent on food, shelter, and clothing combined.

For the last 40 years, liberals in Congress have been incapable of restraining the urge to spend and spend and spend. I am glad that my colleague just recently mentioned a credit card, because it is as easy for a Member of this Congress to pull out their congressional credit card, their congressional voting card, slip it into the slot and push a yes button, and you have just spend billions of dollars.

Iowans are frustrated, because instead of working for their families, they have been working to support the spending habits of past liberal Congresses. A minister's wife told me just the other day, "I went back to work part-time. The extra income that we made for our family bumped us up into the next tax bracket. I basically went back to work to pay our family's taxes."

One of the things we can do to put a halt to this madness, this raising of taxes time and time again, is to pass this resolution.

The problem is not that Americans do not pay enough taxes; the problem is that Congress spends too much. By making it harder to raise taxes, we can accomplish two goals: First, more money stays where it should, in the families; second, it mades reducing spending even more necessary.

If liberals in Congress have a tougher time raising taxes, maybe they will be forced to quit spending more money that we have. They have spent too much for too long, and the American people are tired of paying for it. I urge my colleagues to vote "yes" on this joint resolution.

Mr. GIBBONS. Mr. Speaker, I yield 4 minutes to the gentleman from Georgia [Mr. LEWIS].

Mr. LEWIS of Georgia. Mr. Speaker, this amendment is the essence of nonsense. Just look at it—read it.

But we are not here because this is a well-written, well-reasoned amendment. this amendment isn't even a good idea. We are here because it is April 15, tax day—it is time to score political points—the Constitution be dammed.

Two fundamental truths underlie our Government—majority rule, and the Constitution. This amendment is contrary to both. It is ill-conceived, ill-constructed, and ill-advised.

Our Constitution is a sacred document. It is the foundation of the greatest democracy on Earth. Since the adoption of the Bill of Rights over 200 years ago, the people have seen fit to amend it only 17 times. That is because the Constitution is not merely law—it is the foundation of our Nation. It is liberty. It is the separation of powers—checks and balances. It is the essence of democracy.

I revere the Constitution. We must not amend it lightly. Welfare reform—Government spending—tax policy—these are the province of laws. We must not clutter our Constitution with such matters. We must not cheapen the foundation of this great Nation.

It appears that many of my colleagues disagree.

In the past 16 months, the Republican leadership has brought four constitutional amendments to the floor of the House. This is nothing less than an assault on our Constitution—on our democracy. Republicans would restrict the right of voters to choose their Member of Congress. They would limit free speech. They would deny majority rule—deny democracy.

If this amendment had been part of our original Constitution, there would be no Social Security. There would be no Medicare. You see, Republicans voted against Social Security and Medicare. They did not want these programs. They do not want these programs today. Republicans want Medicare to wither on the vine. You have even heard the Senate majority leader brag about his "no" vote.

Democrats—the majority of Congress—the majority of America—supported Social Security. They supported Medicare and they won. Republicans lost—they could not stop the will of the people. With this amendment, they could. No majority rule. No one man—one person—one vote. So much for fundamental truths. So much for our Constitution.

Mr. Speaker, I am saddened that I, as a Member of this House, have been reduced to voting on such a terrible and unwise amendment. I am embarrassed. There have been no hearings. This amendment was born in darkness and conceived in a den of inequity. It is a vague, overly broad, political stunt. It is silly.

Our Constitution is not silly. Democracy is not silly. This amendment is not worthy of the U.S. Constitution, of majority rule, or of this body. Do not demean, do not cheapen—the Constitution of the greatest nation on Earth.

This amendment does not belong here—it certainly does not belong in the Constitution. Get this amendment out of here. Get if off of the floor, out of this House. It is a waste of paper. It is trash. It belongs in the garbage—the waste heap of political stunts.

I urge my colleagues to oppose this amendment.

Mr. BARTON of Texas. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, I must address the remarks of the distinguished gentleman from Georgia [Mr. LEWIS].

Mr. Speaker, the den of iniquity that the gentleman referred to where this specific language was actually drafted was a Committee on Ways and Means hearing room right across the hall. There have certainly been some shady deals discussed in that room over the past, but this is not one of them.

Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania [Mr. FOX].

Mr. FOX of Pennsylvania. Mr. Speaker, I thank the gentleman for his leadership on this issue and for bringing it forward.

Mr. Speaker, the tax limitation balanced budget amendment will ensure that, like American families, the Government spends only within its means. The tax limitation balanced budget amendment will prevent the Congress from balancing governmental books on the backs of working Americans. The tax limitation balanced budget amendment is necessary because Congress has repeatedly failed to control its spending.

When Gramm-Rudman would have forced budget cuts in 1987, Congress revised the act to put off a balanced budget. Congress' inability to cut the deficit and pay down the debt demonstrates the need for this legislation. A balanced budget amendment is the best approach to eliminate the deficit while protecting the fruits of the American worker's labor.

Had this measure been in effect, Mr. Speaker, during 1993, the largest tax increase in history would have needed 290 votes, rather than 218. Instead of passing by only one vote with the support of only one party, a clear bipartisan consensus would have been required.

If you believe that Americans are undertaxed and passing tax increases ought to be as easy as possible and the quick-fix solution to our fiscal problems, do not vote for this measure. On the other hand, if you do not want to hold your constituents' hard-earned tax dollars hostage, you will vote for this reform.

□ 2030

Mr. GIBBONS. Mr. Speaker, I yield myself 30 seconds to ask the gentleman

from Texas [Mr. BARTON], I heard him take that cheap shot at the Committee on Ways and Means. The gentleman is not inferring that we had anything on the Committee on Ways and Means to do with this joke of yours, is he?

Mr. BARTON of Texas. Mr. Speaker, will the gentleman yield?

Mr. GIBBONS. I yield to the gentleman from Texas.

Mr. BARTON of Texas. Mr. Speaker, I am not referring to anything.

Mr. GIBBONS. The gentleman is not saying the Committee on Ways and Means took any action on this.

Mr. BARTON of Texas. Mr. Speaker, the gentleman from Georgia [Mr. LEWIS] used the term of "den of iniquity" and the room is the Committee on Ways and Means where we drafted this language. That was the only point I was trying to make. I did not refer to that as the den of iniquity.

Mr. GIBBONS. Well, it was a cheap shot.

Mr. Speaker, I yield 3 minutes to the gentleman from Virginia [Mr. PAYNE].

Mr. PAYNE of Virginia. Mr. Speaker, I rise in opposition to this ill-conceived amendment. And while I can certainly agree with those Members who are attempting to find ways to cut spending and to reduce the size and the scope of the Federal Government, I strongly oppose their use of this mechanism to accomplish that goal.

Mr. Speaker, while my colleagues on the other side of the aisle would like to convince us that the debate on this amendment is about whether or not we believe it should be easier or harder to raise taxes, in reality, the real issue at stake here is very different. This amendment does not make it harder to raise taxes so long as the tax money raised is immediately spent on something through the Tax Code. That is the part of this bill that its sponsors are not making clear.

Under the language of the resolution, Congress can raise taxes on anyone by a majority vote: The rich, the poor, the middle class, corporations, large ones, small ones, foreign or domestic, anyone, so long as we immediately spend the money we raise on someone else through the Tax Code. The only ones we cannot spend this money on are our children and grandchildren, because tax bills which raise money for deficit reduction are the only bills that will be subject to this supermajority vote. This means that we cannot close corporate loopholes, even those considered inadvertent or egregious, and dedicate the money to deficit reduction unless we can get a supermajority of the Congress to agree. However, it will only take a simple majority of the Members to close those same loopholes and spend the money, creating new loopholes for a different group which just might happen to be more popular in some future political climate.

Since my election to Congress, I have spent many hours working on various proposals to balance the Federal budget. I have done this because I believe that budget deficits hurt our economy and represent a legacy of fiscal irresponsibility that we then pass on to future generations. But despite my efforts and the efforts of many other Members on both sides of the aisle, those who have worked to produce a balanced budget that is fair and responsible and acceptable to the majority of Congress and the American people, this goal has not been achieved, and I cannot in good conscience support an amendment to the Constitution which will make the task of balancing our budget even more difficult in the future.

I urge my colleagues to vote against this amendment.

Mr. CANADY of Florida. Mr. Speaker, I yield 2 minutes to the gentlewoman from Connecticut [Mrs. JOHNSON].

Mrs. JOHNSON of Connecticut. Mr. Speaker, I rise in opposition to this constitution amendment.

The greatest sin against our children is the sin of the deficit, spending more than we are willing to raise in tax revenue. It will impose a paralyzing burden on our children, crippling government in their adulthood, robbing it of the resources necessary to provide even essential services. The deficit is the greatest threat we face. It destroys the lifeblood of economic growth, robbing our neighbors of their jobs and our kids of a strong, vital economy.

We must cut the rate of growth in spending. We must reform entitlements to address real, not imagined, need. But if we fail, we must pay for the services we are enjoying. High taxes have finally elected a Republican majority that is finally discipling spending, providing important public services in a more efficient, cost-effective way. That is the real answer. That is the right answer in a democracy, disciplined spending, balancing the budget.

I am proud as a Republican that we have had the courage to offer and to pass a balanced budget to cut spending, to wipe out the annual deficit over 7 years, but I leave each generation free to establish that balance between taxing and spending that they believe is in their interest. Democracy is about taking responsibility. Responsibility to identify and serve society's needs, to appropriate and to tax, that is democracy, and I am for it. I oppose this amendment.

Mr. GIBBONS. Mr. Speaker, I yield 4 minutes to the gentleman from Massachusetts [Mr. NEAL].

Mr. NEAL of Massachusetts. Mr. Speaker, today is a day that is dreaded by most Americans for one reason or another. Today, April 15, is commonly known as Tax Day. Anxiety is high and many Americans are scrambling to meet the deadline. People across America are concerned if they have to pay or if they did their taxes right. Today, the House is participating in a publicity stunt to try to ease the anxiety and fear about our current tax system.

Tonight, we are debating an amendment to the Constitution. Any time we amend the Constitution it should be done in a serious manner. Amending the Constitution should not be taken lightly.

As a former history teacher, I value the Constitution and I have tried to pass this on to my students. Currently, the Constitution requires a two-thirds majority vote in the House in only three instances—overriding the President's veto, submission of a constitutional amendment to the States, and expelling a Member from the House. These instances differ substantially from the issue before us today.

The issue of requiring a two-thirds majority is not a new issue. This issue plagued our Founding Fathers. This proposed amendment would gravely weaken the principle of majority rule that has been at the heart of our system for more than 200 years. The Constitutional Convention rejected requiring a super-majority approval for basic functions such as raising taxes. James Madison associated majority rule with "free government." He believed a person whose vote is diluted by super-majority rules is not an equal citizen and his freedom is not fully enjoyed. The arguments of James Madison still hold true today. With the adoption of this amendment, power would be transferred to the minority. A minority would be able to prevent passage of important legislation. Our Founding Fathers recognized the difficulty of operating under a two-thirds majority. The Articles of Confederation required the vote of nine of the thirteen States to raise revenue. We should learn from the wisdom of our Founding Fathers.

The proposed Constitutional Amendment would change how the House currently functions. This amendment would require any bill closing loopholes for deficit reduction to require a two-thirds majority. However, the amendment would permit tax increases on one group of taxpayers to pay for a tax break for another group of preferences.

This proposed amendment would require a two-thirds majority to reinstate funding of the Superfund program. A supermajority would be required to reinstate the trust fund for the airport and safety and improvement program.

Deficit reduction should be our primary focus and this proposed amendment would make it harder to enact deficit reduction. The coalition budget which was a responsible balanced budget would require a two-thirds majority by closing unnecessary tax preferences.

We should take a hard look at the action we about to take today. Last week

the Washington Post ran an editorial entitled "False Promises." This editorial hit the nail on the head. It reminds us that damage done to the Constitution cannot be undone. We simply cannot waive the Constitution.

We are all in election mode and we should realize that we are elected to make hard decisions. A majority of major legislation passes with less than a two-thirds margin. Our job would be easier here if two-thirds of us could always agree this is not supposed to be an easy job. We have to make tough decisions which often result in close votes.

Between 1982 and 1993, five bills that raised significant revenue were enacted. President Reagan signed three and the other two were signed by President Bush and President Clinton. All five of these bills did not receive a two-thirds vote on the House Floor.

I cannot predict the future, but based on past precedents, I believe it will be extremely difficult for any President to have a budget pass Congress if this amendment is enacted. So many of us hear the complaints from our constituents about gridlock. This amendment could add to the gridlock. We would not be able to pass the budget deals of the past without a supermajority. We should all know from this year's budget battle how difficult this could be.

We will hear today that this amendment is important because it will help reduce our taxes. If we really want to help the American taxpayer can do better than this legislation today. Our energy should be focused on deficit reduction. This amendment would make deficit reduction more difficult.

We all want to make our tax system more fair and simpler. This amendment will not help reach that goal. We have not studied the effects of this amendment closely enough. The wording of this amendment is not clear and could result in years of litigation. The resolution is not specific enough to address questions such as the length of the budget window or what constitutes a tax or a fee.

I urge you not to support this proposed amendment. We do not know enough about its effects. Tomorrow, we have on the schedule the Taxpayer Bill of Rights and this an example of legislation that will really help the individual taxpayer. Just because it is Tax Day, we would not support a constitutional amendment that sounds good at first. In reality, this amendment will create numerous problems and will change the concept of majority rule. With this amendment, we are turning back the clock of history and not moving forward.

I offer a suggestion tonight, Mr. Speaker, that we reject this foolhardy proposal.

Mr. BARTON of Texas. Mr. Speaker, I yield 2 minutes to the gentlewoman from California [Mrs. SEASTRAND].

Mrs. SEASTRAND. Mr. Speaker, I rise in strong support of this constitutional amendment requiring a supermajority to increase our Federal taxes.

The average American family of four already spends 38.2 percent of their income to government in taxes. We need to pass this amendment so that we can have two-thirds of this body's vote to help cement a pattern we have advanced in this Congress, that pattern being that when we face a problem of deficit spending, we address it by reducing spending and not taxing our citizens of these United States, taxing them out of a job or making a decent living.

I have heard liberal opponents of this measure describe it as fiscally irresponsible, and I want to throw out a few statistics to counter those claims. For instance, the States that have a supermajority for tax increases have incurred 13 percent less debt than those States with a simple majority. Second, a supermajority does not exclude government from raising taxes in the event of fiscal hardships. It just ensures that the legislators, those elected officials, will scrutinize their options and provide added projections to the average taxpayer.

I heard earlier this evening the gentleman from Florida, the ranking Member, making comments about California, and I want to say that I served in the State assembly in California, and I want everyone to know that you need a supermajority, two-thirds, to raise taxes. In fact, as a member, I opposed a measure about 5 years ago that increased taxes on the citizens of California. However, my point is that still we were able, that body was able to increase taxes even with a supermajority.

Last, Mr. Speaker, statistics show that the States that live under the supermajority tax increase requirement have smaller tax and spending increases, grow faster, create more jobs and accumulate less debt. I urge Members to back this supermajority for tax increases.

Mr. Speaker, I heard a lot of comments about cheap shots and publicity stunts, but I will tell you, my 26-year-old who is just entering the job market, my daughter who is 24, are anxious, like your children and grandchildren, are anxious for us to do this tonight.

Mr. GIBBONS. Mr. Speaker, I yield 3 minutes to the gentleman from Maryland [Mr. HOYER].

Mr. HOYER. Mr. Speaker, I thank the gentleman from Florida for yielding me the time.

This is a sad day in the House of Representatives. Amending the Constitution of the United States is a very serious matter. I have voted to amend the Constitution of the United States on a number of occasions. I believe we ought to have a requirement that we will be constrained by our revenues in our expenditures. I believe that deficits eat at our economy and place at risk the next generation. But tonight, in my opinion, is the theater of the irresponsible. I do not see senior Members who have given thoughtful consideration to this speaking very much on this floor on behalf of this amendment. I do not see the distinguished chairman of the Committee on the Judiciary on the floor as a proponent of this amendment. I did see a distinguished senior member of the Committee on Ways and Means, the gentlewoman from Connecticut [Mrs. JOHNSON], say that she believed in democracy, she believed in our Constitution, and unlike many documents, it gave to the people the right to choose.

Perhaps the people sometimes make mistakes, as each of us do, but it gave them that right. It did so for the most part by majority vote. This House, under this leadership, does not trust the people, no matter what it may see, and let me give the examples. We adopted a rule. It said that we could not raise taxes except by a three-fifths vote. We have waived that rule, of course, on a number of occasions when it suited the fancy of the leadership of this House.

□ 2045

Seventy-three percent of the bills that have come to this floor have come without a hearing in the substantive committees, out of the Committee on Rules. That shuts the American public out of the decisionmaking process.

One hundred sixty-five legislative riders have been added to appropriations bills without a single hearing on any of those riders.

Term limits. Term limits is a classic "we don't trust the people." We do not trust them to elect the right people. Every 2 years they have that opportunity to choose in a democracy, to send us back or to retire us. But there are some in this body who believe that, no, we do not trust the people to make that decision.

We started this Congress by disenfranchising in the Committee of the Whole the representatives of American citizens from Puerto Rico, from Guam, American Samoa, the District of Columbia. Perhaps we did not trust those people as well.

We passed an amendment through this House, which I opposed, sponsored by the gentleman from Maryland [Mr. EHRLICH] and the gentleman from Oklahoma [Mr. ISTOOK], which said, "That if you get Federal money to propose a program, if you get money, you cannot spend your own money to advocate issues before the Congress or other political bodies."

Why does this leadership not trust the people?

The line-item veto was essential, I have been told, over the years, and my friend from Texas, Mr. STENHOLMand I agreed that there was a necessity for a process. But it kept even the relationship between the Executive and the Legislature. The line-item veto was essential, but not until January, not in this budget process, my colleagues. The line-item veto would go into effect next year.

My colleagues, Warren Rudman was mentioned. Warren Rudman is a distinguished Republican, a Senator from New Hampshire, not known as a profligate fiscal State. Warren Rudman opposes this amendment. Why does he oppose this amendment? Because he believes, as the gentlewoman from Connecticut [Mrs. JOHNSON] believes, that it will undermine, not enhance, the ability of this Nation to democratically and fairly balance the budget, which is our objective and our responsibility.

Mr. CANADY of Florida. Mr. Speaker, I yield 2 minutes to the gentleman from Delaware [Mr. CASTLE].

Mr. CASTLE. Mr. Speaker, I thank the gentleman for yielding this time to me.

I rise in support of this constitution amendment which we are talking about, and it has been stated here several times that amending the Constitution is a serious matter. Well, raising people's taxes is also a serious matter, and taxes are high in the United States of America, particularly if we look at the range of about $30,000 to $60,000, and we consider Social Security taxes, Medicare taxes, personal income taxes and all the local taxes which, after all, are part of the taxation that people face. The important thing here is it is the taxpayers' money we are talking about, and for that reason I believe that we should have a higher standard before we appropriate the taxpayers' money by passing tax legislation in the Congress of the United States.

The history of this Congress is to spend too much, and then in later years to tax to try to make up for that. We had the same problems in my State of Delaware. Back in 1980 we had 19.8 percent personal income taxes. we had businesses leaving the State, we were not balancing our budget, and we came along and we said we have got to do something about it, and we passed a balanced budget amendment, and we passed a supermajority to increase our taxes, and we passed a line-item veto, and since that time we have balanced our budget 19 times, we have cut taxes 6 times, we lowered poverty more than any other State in the United States of America. We have one of the lowest unemployment rates in the entire United States of America. It has worked, and it has worked well.

A tax limitation amendment is not a magic solution to our fiscal problems, but like the balanced budget amendment and the line-item veto, it will make a real contribution to putting the Federal Government on a permanent path to fiscal responsibility. Without a constitutional mandate, we may have some short-term success in limiting the growth of government, but we will never change the fundamental problems that lead to continued growth in Federal programs and spending. The only way to change business as usual in Washington is to make it more difficult for this Government to raise taxes and continue deficit spending. We owe it to the people of this country to send this amendment to them for ratification.

The easy decision is to vote no. The tough decision and the right one is to vote yes.

Mr. Speaker, I urge its passage.

Mr. GIBBONS. Mr. Speaker, I yield 3 minutes to the gentleman from Michigan [Mr. LEVIN].

Mr LEVIN. Mr. Speaker, it is said that the Republican majority has returned and showed they have not learned a thing during this break. The public has legitimate concerns about taxes, but I think the message from the public, these last months, has been do not play games with these concerns.

I wish the Republican majority has gone back, as I did, and read the transcript of proceedings in 1982 over that tax bill. Here is what was said by the Senate manager:

> The bill would increase revenues of about $99 billion over 3 years. Confronted with the need to raise revenues, our committee sought to emphasize eliminating or cutting back on justified preferences in the Tax Code.

And then he went on to say:

> Some of my colleagues, some of my Republican colleagues, some of the pure supply-siders, though there are not as many as there were, would say why are you raising revenues,

and this is what he continues to say on page 6907:

> As I said earlier, I do not know what choice we had. The bill can help eliminate much taxpayer resentment over the perceived unfairness of our tax system by cutting back on tax shelters that benefit the wealthy, who can afford sophisticated tax planning.

Then a month later in the conference that same gentleman from the Senate said this:

> I would say that those who talk about tax increases where you have not paid taxes at all, but now you have to start paying taxes because of tax compliance. That is not a tax increase. It seems to me, when you properly consider that, then I suggest we have a pretty good bill. Call it a tax bill, call it a tax increase, call it tax reform, call it anything you want, but vote for it. Vote for it because it is good policy.

That was ROBERT DOLE in 1982. What is he going to do now with this proposal? That bill in 1982, the conference report carried only 226 to 207 in the House. It would have been defeated under this legislation. Is ROBERT DOLE going to give in to the irresponsibles in the House majority?

This proposal will defend tax loopholes. What our colleagues' bill should be called is the Tax Loophole Preservation Act of 1996. I urge its defeat. It is going to die in the Senate. It is clearly playing game with legislative concerns of the American people. They have had enough of that from our colleagues. Too much.

Mr. BARTON of Texas. Mr. Speaker, I yield myself 30 seconds.

The gentleman from Maryland [Mr. HOYER] talked about the lack of senior Members speaking on behalf of this amendment. So far today we have had the chairman of the Committee on Economic and Educational Opportunities, the gentleman from Pennsylvania, Mr. GOODLING, speak in favor; the chairman of the Committee on Rules, the gentleman from New York, Mr. SOLOMON, speak in favor; the chairman of the Committee on Ways and Means, the gentleman from Texas, Mr. ARCHER, speak in favor; the chairman of the Joint Economic Committee, Mr. SAXTON, speak in favor. We expect to have the chairman of the Republican Policy Committee speak in favor later this evening.

Mr. Speaker, I yield 2½ minutes to the gentleman from Arizona [Mr. HAYWORTH].

Mr. HAYWORTH. Mr. Speaker, I thank my friend from Texas for yielding me this time.

There are two documents to which we should pay great attention this evening, Mr. Speaker. One, of course, the document which is the foundation of our constitutional republic, the Constitution of the United States, and I have listened with great interest, the spontaneous historical revisionism which has gone on during the course of this debate, for it is worth noting and worth asking: If a personal income tax were so desirable, if a personal income tax were so laudable, why did not our Founders spell that out by levying a personal income tax in the main body of this document, the Constitution of the United States?

Now history shows us that it was a constitutional amendment that gave us a personal income tax, the 16th amendment, ratified in 1913, which leads me, Mr. Speaker, to the second document here, and unfortunately, Mr. Speaker, it is a document with which Americans come into more contact on an annual basis, unfortunately, than I dare say the Constitution of the United States. Form 1040. This is the first.

Mr. Speaker, the Center for Small Business Survival conducted a study, which I think is incredibly illuminating, for it went back to the initial tax tables and the tax code levied or instituted in 1913 and projected that into real dollars in 1990, and the statistics and the findings are nothing short of amazing. If we applied the tax tables of 1913 to the American people today, in real dollars today, a single filer would be exempt on his first $46,000 of income.

Simply noted, it is this. I can show my colleagues the tables, and I will do it during a special order. But the fact is even adjusting for inflation, since the institution of this income tax, the spending of Government has increased by 13,500 percent, and if we are so quick to riase taxes, our Founders did give us

a mechanism to correct that. It is a constitutional amendment, and the only game being played is the increased transference of wealth from the American people to the shores of the Potomac.

Mr. Speaker, I stand in support of this amendment, and the American people know it is the right thing to do.

Mr. GIBBONS. Mr. Speaker, I yield 2 minutes to the gentleman from Oregon [Mr. DEFAZIO].

Mr. DEFAZIO. Mr. Speaker, if my colleagues think the current tax system is fair and equitable, then they will love this amendment. If they like the loopholes and tax giveaways in our Tax Code, they should embrace this constitutional amendment.

Why? Because it will let the special interests and foreign corporations who are now getting a free ride under our loophole-ridden Tax Code stop any reforms from moving through Congress.

Seventy-three percent of the foreign corporations doing business in the United States pay absolutely no Federal corporate income tax. This is a scandal, and the authors of this legislation want to keep it that way. They say that a minority of either the House or Senate should be able to stop tax reform that places a fair tax on foreign corporations doing business in the United States.

Every year foreign corporations mine millions dollars of gold on Federal lands. They pay no royalties to the U.S. Treasury. This bill allows a minority of Members of the House or Senate to stymie any legislation placing a reasonable royalty on mining operations on Federal lands.

The oil and gas industry seems to be doing just fine. Prices are rising at the gas pumps. Profits are up, stocks are increasing in value. Do they really need a $1.5 billion a year Federal tax subsidy? Do we need a constitutional amendment that protects their subsidies? They majority thinks so.

This amendment has been cynically sold as tax relief for average Americans. Nothing could be further from the truth. This legislation makes certain that Members of Congress, whose campaigns are fueled by contributions from the oil industry and a host of other special interests, can protect their tax breaks, subsidies, and loopholes those special interests receive.

□ 2100

Make no mistake about it, every dollar that the U.S. Tax Code dishes out in corporate tax loopholes comes straight out of the pockets of working people in this country. This cynical legislation ought to be called the Special Interest Tax Loophole and Corporate Welfare Protection Act. It is a desperate attempt to defend the status quo and make sure that working Americans pay while foreign corporations and special interests play.

Mr. CANADY of Florida. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan [Mr. CAMP].

Mr. CAMP. Mr. Speaker, I rise in support of the tax limitation amendment. Americans today work almost 3 hours out of every 8-hour day just to pay their taxes. That is unacceptable. Our taxes are heavy burdens. They are hurting families and causing us to lose jobs. It has been far too easy to raise taxes, far too easy.

Just recently, in 1993, we saw the tax burden increase by almost $250 billion by just a single vote. It should not be that easy to place additional financial burdens on the backs of America's working families. The tax limitation amendment would require a two-thirds majority vote to increase taxes. That means any future tax hike would be supported by a large majority in Congress, not just a single vote.

I know, while I have not been in Congress as long as some of those on the other side who have come to the well in opposition to this amendment, I have been here long enough to know that we need change. My friends on the other side had it their way for 40 years. We can point fingers wherever we want, but let us look at the facts. This country is $5 trillion in debt. A child born last year owes $187,000 just in interest on the debt. How can we expect any American to realize the American dream under those circumstances?

Will this solve all of our problems? Probably not. But it is another tool to reduce the size and scope of the Federal Government, a Federal Government that has grown too large. Let us make the decision. Let American working families keep more of what they earn. Vote for the tax limitation amendment.

Mr. BARTON of Texas. Mr. Speaker, I am happy to yield 2 minutes to the distinguished gentleman from Arizona [Mr. SALMON].

Mr. SALMON. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I did listen when I was back home in the district over the last couple of weeks. I listened to people who said they were tired of the liberals with their fingerprints on their wallets and their footprints on their backs, and that they are sick and tired of paying $1 out of every $4 of their income in taxes. They are sick and tired of having to have both spouses in a family work, one of those spouses just to pay the tax bill for the family.

I do not know if any of the Members have read the recent article in Readers Digest where it talked about the poll they did among Americans, an equally divided poll among Republicans, Democrats, and Independents, some that called themselves conservatives, many that called themselves liberals.

One thing they all agreed on across all classes of our society here in these United States was that they felt no family should be paying more than 25 percent of their income in their total tax burden. But what is the average family of four's tax burden? It is at 39 percent, when you include the 24 percent of their income that goes to the Federal Government, with little to show for it.

In fact, in 1950, middle-class couples with two children sent $1 out of every $50 to Washington. Today they send $1 out of $4. What more do they have to show for it? Of the last 16 major votes to increase taxes, only half of them would have passed by the two-thirds vote. In the 1980's alone, we would have saved the taxpayer $666 billion, had this measure been in effect.

If this is some cruel joke being perpetrated upon the American public, then I fail to see the humor in it. The cruel joke is Americans are working more and they are taking home less. More is coming here to spend, spend on whatever. But they do not have anything to show for it.

I remember I heard a respondent that listened to President Clinton talking about the 4 million jobs he took credit for. His comment was, "That's great. I have three of them." The fact is, maybe Americans are making more, but they are taking home less. It is time we stand up for them. This cruel joke has been perpetrated on the American taxpayer for long enough. Let us stand up for them and get rid of this smokescreen of doublespeak for "Let's stick it to the taxpayer one more time."

Mr. GIBBONS. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Georgia [Ms. MCKINNEY].

Ms. MCKINNEY. Mr. Speaker, I rise in opposition to this Republican publicity stunt, masquerading as public policy. We are having a hard enough time as it is, trying to scale back some of the special interest tax breaks in our tax code with just a simple majority vote. If adopted, however, this constitutional amendment would make it virtually impossible to reduce corporate welfare. What will this mean for middle-class families? It will mean that Social Security, Medicare, education, and the environment will all be on the chopping block, while corporate tax subsidies are forever locked in place because of a two-thirds vote requirement in the Constitution.

Mr. Speaker, this amendment is designed to allow tax increases on middle-class families just as long as those increases are offset by tax cuts for the wealthy. Is that not convenient?

Mr. Speaker, I urge my colleagues to defeat this tax day publicity stunt.

Mr. CANADY of Florida. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. CUNNINGHAM].

Mr. CUNNINGHAM. Mr. Speaker, I heard the excuse that, well, we have not had hearings. I do not think you

have to have a hearing, to go in your district, to have people feel that they are taxed too high. You can go into any district across this country and people will say that they are taxed too high. But the Democrats will give you every excuse in the world why we should limit Democrats from increasing taxes. Why? Because everything that we have been fighting for on these budget debates is about the ability of the Federal Government to spend money, to spend money to their constituents so they can get reelected, so they got the power to start with, whether it is Medicare, Medicaid, education, the environment, welfare. It is about the flow of dollars that are going out of the Federal Government.

It is like they are talking about free money. Mr. Speaker, it is not free money. They have to take it from their constituents in the first place, send it to Washington, DC, feed a big bureaucracy, and get very little of the money back to the areas which they are trying to help: for example, welfare, where you only get about 30 cents on a buck back; education, 760 programs in education, where you only fund about 6 percent of the total education revenue; 760 programs, where you only get 23 cents on every dollar back into the classroom, because of the spending.

Mr. Speaker, they say, "Well, we all want a balanced budget." I submit that that is not true, Mr. Speaker. The President submitted four budgets that increased the deficit $200 billion a year. When he was finally forced and cornered into producing a balanced budget scored by CBO in 7 years, what did he do? He put off 90 percent of the discretionary cuts until years 6 to 7, when he would not even be here, if he is elected to a second term, and then increase taxes during that time and increase spending. Mr. Speaker, a balanced budget amendment takes the power away from the Democrats. That is what they are fighting.

Mr. GIBBONS. Mr. Speaker, I yield the remainder of my time to the gentleman from New York, [Mr. ENGEL].

The SPEAKER pro tempore. (Mr. RIGGS). The gentleman from New York [Mr. ENGEL] is recognized for 1½ minutes.

Mr. ENGEL. Mr. Speaker, I think we ought to look at this proposed amendment and call it for what is. It is a Republican election year publicity stunt. They want to require a simple majority to go to war, but want to require a two-thirds majority to correct a tax loophole to end corporate welfare. That makes no sense to me whatsoever.

Mr. Speaker, at the beginning of this Congress the Republican majority passed a much-heralded House rule requiring a three-fifths vote to raise taxes, and every time we have raised taxes in this Chamber with Republican votes and Republican majorities, they have waived that rule, that house rule, three times. So who is kidding who? The House rule was supposed to prevent taxes being raised without a three-fifths majority. Each time the Republicans found it convenient to raise taxes, they just waived it.

So with the same publicity at the beginning of this Congress that they put in to look good, this is the same kind of election year publicity stunt that they are putting in right now: a simple majority to go to war, a two-thirds majority to correct a tax loophole to end corporate welfare.

One can only conclude from this that they like the corporate welfare, they like the special interests, they like catering to the special interests, and it is the middle class once again under the Republican plans that get kicked in the teeth. Americans should understand what this is all about. This is to protect corporate welfare. It is a cynical election-year publicity stunt. It hurts the middle class and ought to be defeated.

Mr. BARTON of Texas. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from South Carolina [Mr. GRAHAM.]

Mr. GRAHAM. Mr. Speaker, if there is something wrong with our corporate code, and there may be, and if foreign corporations are getting away with tax murder, we need to change it. But I would suggest that the party that has been in control for 40 years has some blame to accept that that is true.

Let us stop blaming each other and try to fix the problem. What is the problem? It may make the gentleman feel better that this is an election year, but I ran on the same concept in the election year 1994. This is not a new thought to Congress. I believe very deeply that there should be a wall between your pocketbook and the U.S. Congress' ability to take money out of it.

One thing we have learned is that if you leave Congress to its own devices, you lose. What would the Founding Fathers say about this debate? They would want to know, how is the country doing? If you tell them they are in 5 trillion dollars' worth of debt, they would say, "What is $1 trillion?" We have created new money amounts.

I do believe it is time to change the way we do business in Washington, and this is a start. I do not trust the Republican Party enough to leave it unhindered. I want to change America for the sake of the people who earn the money and have to pay the taxes.

Let us have the line-item veto and give it to a Republican and Democratic President to regulate the way we spend. Let us have a balanced budget amendment that regulates both parties' conduct, so we cannot leave here with a deficit. Let us have term limits so Congressmen will come here with a different view of how to serve the public. Let us change America and be serious about it before it is too late.

Some say it is too late. I do not believe that. The two-thirds supermajority vote requirement to raise taxes is long overdue. It is needed, because we in America, in Congress, have been irresponsible. Do not trust party rhetoric, do not trust political rhetoric. Change the rules of how Congress taxes you, how it spends money. If we do not do that, nothing in America is going to change.

This is a great debate to be having, and there is going to be a vote pretty soon, and you will find out who is with you and who is against you. If you believe this is corporate welfare, a way of protecting it, then you can punish me if you thing that is true. If you believe this is a good rule to limit congressional spending long overdue, you can punish the people who voted the other way. This is a great debate to be having. It is one of many we have had. I am proud to be part of it.

Mr. CONYERS. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. MILLER].

Mr. MILLER of California. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, this constitutional amendment on taxes is a cynical, back door attempt by NEWT GINGRICH and his followers to appear to favor cutting taxes for average Americans while actually preserving tax breaks for their special interest and big business supporters.

Were it to become law—which all of us know it will not—average Americans will continue to pay a high price for tax loopholes and special interest giveaways.

Despite their rhetoric, Republicans under NEWT GINGRICH have been working against family interests since they took over the Congress.

If they were serious about helping America's families, GINGRICH and his followers would not have voted to raise taxes on the working poor by cutting the earned income tax credit. They would not have voted to cut funds for education.

If Republicans were serious about helping American families they would stop blocking a vote to increase the minimum wage, and they would not allow companies to raid the pensions of hardworking Americans.

But they are not serious about helping American families get ahead. They are cynical, and I think it is safe to say that one thing we don't need more of in this country is cynicism.

Today's vote is a transparent gimmick intended to shield Republicans from their lengthy antifamily record.

We all understand how it works. The Republicans say this vote will make it harder to raise your taxes, and if you vote against them, they will say you voted to raise taxes. Pretty neat. But wrong on all accounts.

In fact, if you vote for this amendment, you will make it harder to balance the budget. You will make it

harder to resolve the crisis in Medicare and Social Security. You will make it harder, if not impossible, to make responsible budget choices for the future.

By making it nearly impossible to vote to end a tax loophole—because the Republicans will say it is a tax increase—this amendment will preserve the fundamentally unfair tax structure we have today.

Consider this: In 1952 corporate income taxes were 32 percent of Federal revenues. By 1992, corporate income taxes had fallen to just 9 percent of Federal revenues because of tax loopholes and favorable, but unjustified treatment.

This amendment will protect those special interest tax breaks, such as the tax shelter for money hidden in foreign subsidiaries, or the ability of businesses to deduct today capital depreciation that occurs in the far off future.

It is tax loopholes like these and many others that allowed at least 130 large companies in the 1980's to avoid paying any Federal taxes at all even though they had large profits.

The Democratic majority in the 1980's enacted the alternative minimum tax to require these large profitable corporations to pay Federal taxes.

Well guess what? Not only does the Republican majority want to preserve tax loopholes, they want to repeal the alternative minimum tax too. They want to help profitable corporations pay no taxes.

Think about that as you file your own tax returns.

So this amendment is really about locking in an unfair tax system—not making the tax system more fair. It is about preserving what is wrong with America and making the middle class and low-income Americans pay the price. It is about selling the Constitution for a short-term and short-sighted political gain.

Well, Mr. Speaker, guess what?

The constitution is not for sale. And I have enough faith in the intelligence of the American voters that they will see that you are trying to sell a piece of the Constitution that you swore to uphold to buy a little air time for the November election.

My colleagues, clear your eyes. Summon your courage. Cast the right vote tonight against this amendment and know that in doing so you are standing up for what's right. Isn't that what the American people sent us here to do?

Vote no tonight on the latest and most cynical ploy by the most cynical man in American politics today.

□ 2115

Mr. CANADY of Florida. Mr. Speaker, I yield 1 minute to the gentleman from Florida [Mr. WELDON].

Mr. WELDON of Florida. I thank the gentleman for yielding me the time.

Mr. Speaker, in 1988 we had a presidential candidate who pledged no new taxes and then in 1990 taxes were raised. Then in 1992 we had another candidate who campaigned on a middle-class tax cut and in 1993 he raised taxes. It should be no surprise to the minority Members in this room that now there are a new group of people in this Congress who want to actually require a three-fifths majority to raise taxes.

I am told that if this law were in place, the majority tax increases over the past 15 years of 1982, 1984, 1987, as well as 1990 and 1993, would not have gone through. I think it is good to have a firewall of protection between the people's wallet and the Government of the United States. I support this amendment. I encourage all of my colleagues to support the amendment. We need this protection for the working people in the United States.

Mr. CONYERS. Mr. Speaker, I yield 5 minutes to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. Mr. Speaker, I do want to repeat, because the outrageous tactics being used here need to be underlined

This is an amendment to the Constitution of the United States, the text of which has never had a public hearing, has in fact been in existence for barely 2 weeks, during almost all of which time we were out of session. It is being rushed through late tonight just for the symbolic version of it being on April 15. It really shows a fundamental disrespect to democracy.

There has been zero pubic hearing on the text of this amendment. We had a hearing on the text of the earlier amendment they introduced, and it was so shabby that they had to withdraw it. They come up with a new one and they learned they better not expose it to the light of day. But this amendment shows a disrespect for democracy in another way.

The question here is not the substantive one of whether or not taxes should be increased. Sometimes taxes are increased unnecessarily. When Ronald Reagan and the then Senate Finance chairman ROBERT DOLE and the Democrats in the House collaborated in 1982 for a tax increase, I voted "no."

In 1982, with a Republican Senate and Ronald Reagan as President, we did a tax increase. I thought it was a mistake. A year later when Ronald Reagan and ROBERT DOLE and Tip O'Neill came together to raise taxes again for Social Security, I thought that was a mistake a I voted "no." I thought they made a mistake.

The Reagan-Dole-O'Neill tax increase of 1982 and the Reagan-Dole-O'Neill tax increase of 1983, I voted against both of them. But I did not think that I had the right to have them defeated when I could not get a majority on my side. We are not talking substance here. We are talking about majority rule.

As of now, there does not appear to be much public sentiment for significant tax increases, nor does there appear to be a lot of sentiment for tax decreases. At this point the general public's sentiment appears to be, let us do deficit reduction. But 8 years from now, 12 years from now, should the majority of the American voters have a right to decide then by majority rule that we need to increase taxes some? Yes, I think they should.

As a matter of fact, one of the problems you will have with this poorly drafted amendment, this keep it in the dark and let's not have a public hearing amendment, is that you may make it harder for people to lower taxes in the future, because in a rational world under the right circumstances, we might decide to reduce taxes. But under this amendment, if we were to reduce taxes 1 year and then 4, 5, 7 years later decide that we erred or that for unforeseen reasons things did not work out as we thought and we needed more revenue to defend the United States, to protect the environment, to protect Social Security, we should need two-thirds to do it.

In 1981 Ronald Reagan and Senator DOLE and Tip O'Neill collaborated, that time they fought. There was a tax cut in 1981. Apparenly it was the Republican view, the Reagan-Dole view in 1981 was that they cut taxes by too much. So they raised taxes back in 1982 to offset some of that they had done in 1981. They said they overshot in 1981.

You would make it impossible for them to to do this. Make it impossible for people to correct errors, and you make it less likely they will act in the first place.

I talked about Social Security. We have a problem with Social Security. One possible solution might be right now, Social Security taxes stop at $62,000 of income, making it by far the most regressive tax we have. Medicare used to stop, and we raised the amount of income that is subject to the Medicare tax.

I think a reasonable thing to do might be to say from $60,000 to $90,000 you have got to pay half a percent to Social Security, and from $90,000 to $200,000 you pay 1 percent, and above $200,000 you pay 1.5 percent. That would be one way to help protect Social Security.

But you would make that impossible, or at least require a two-thirds, which makes it very difficult. So any possibility that we might want to raise taxes on people who make $60,000 or more to help protect the Social Security system, that is what you are aiming at.

Are there bad tax increases that would be hurt by this? Yes, the Reagan-Dole-O'Neill tax increases of 1982 and 1983 that I voted against would not have become law. But I do not want to change the rules. I want to have to go by majority rule.

What this amendment says is, "No, no, we don't like this majority rule stuff." That might have been all right

for a while ago. Maybe that is OK for France or Sweden or Belgium, but this is America. We do not have majority rule anymore.

Those of us currently in power will change the rules and we will take our substantive preference, and right now what they are saying is, "We don't like government, we think government is too big, so we want to change the rules so that a majority in the future that disagrees with our position and thinks we need more aid to education and more environmental protection but doesn't want to cut the military, that they won't be able to do that without getting two-thirds."

By the way, what we are having here now is a fundamental distortion of the democratic process to try and freeze in the views of a temporary majority.

Mr. BARTON of Texas. Mr. Speaker, I yield 1½ minutes to the distinguished gentleman from Florida [Mr. STEARNS].

Mr. STEARNS. Mr. Speaker, whenever you follow the good Representative from Massachusetts, you want to spend your time replying to some of his preposterous arguments.

I submit on this House floor that disrespect to democracy has been greatest with the $5 trillion debt, and what we need to do is bring that debt down. We have had so many taxes on this House floor with 40 years of Democrat rule that we have not had the opportunity to control this budget, and now we do with this great House joint resolution.

Mr. FRANK of Massachusetts. Mr. Speaker, will the gentleman yield?

Mr. STEARNS. I will not yield.

Let me just say that going back 220 years, our Founding Fathers had the foresight to mandate a two-thirds majority vote on certain priority issues. This is something not brand new we are bringing to the Congress here in April 1996. Alexander Hamilton and James Madison and John Jay would be turning over in their graves if they saw that we had a $5 trillion debt in this country.

James Madison, a vocal supporter of majority rule, argued that the greatest threat to liberty in a republic came from unrestrained majority rule, and that is why they proposed two-thirds majority for conviction in impeachment trials, expulsion of a Member of Congress, override a Presidential veto, quorum of two-thirds of the States to elect a President, consent to a treaty, proposing constitutional amendments. There were seven of these that were already in the Constitution when they wrote the document, and since then three more.

I submit that to prevent any further debt, we must pass this resolution.

Mr. CONYERS. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts [Mr. FRANK] because the gentleman's name was mentioned but he was not yielded to.

Mr. FRANK of Massachusetts. Mr. Speaker, typical of the hit-and-run tactics of the gentleman, to make abusive remarks and then refuse to yield so I could respond.

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

Mr. FRANK of Massachusetts. No, no longer than he would to me.

Mr. STEARNS. Will the gentleman yield?

Mr. FRANK of Massachusetts. No, I follow the gentleman's example, and I ask the Chair to please restrain the gentleman. The gentleman gets up, makes insulting remarks, refuses to yield and then tries to interrupt me when I am speaking. I am simply responding as he did under his rule.

I would say this. First he talked about Democratic tax increases. The disrespect for facts is glaring.

Mr. STEARNS. Will the gentleman yield?

Mr. FRANK of Massachusetts. Regular order, Mr. Speaker. Please instruct the gentleman who refused to yield that he may not interrupt.

The SPEAKER pro tempore (Mr. RIGGS). The gentleman from Massachusetts will withhold so that the Chair can admonish the gentleman from Florida that the House will proceed in regular order, and that the gentleman from Massachusetts controls the time and may proceed as he sees fit.

Mr. FRANK of Massachusetts. I thank the Chair.

I would have been prepared to engage in a colloquy. The gentleman made insulting remarks, refused to yield. Now what he is trying to do is to prevent me from responding by deliberately flouting the rules of the House. It is not worth further discussion.

What is worth further discussion is his blatant misrepresentation of the facts of the situation when he talked about Democratic tax increases. The tax increase of 1982 was a Reagan-Dole-O'Neill tax increase. So was the one of 1983. In fact, these tax increases came asked for, not just signed but asked for by Ronald Reagan.

The notion that you are justified in making it harder to raise revenue because you want to reduce the debt is bizarre. As a matter of fact, when we were trying to save the Social Security system, we raised revenues in part for Social Security. I suppose you could have reduced expenditures to Social Security. I was not in favor of doing that. Maybe the gentleman is. But that is how you deal with it in this situation.

Finally, the silliest thing I have heard today is to say that because the Founding Fathers required two-thirds in a couple of extraordinary circumstances, that must have meant that they wanted two-thirds in this one. Yes, it shows that they were perfectly capable of understanding when we required two-thirds, what extraordinary circumstances required two-thirds and when the general principle of majority rule ought to apply.

They felt that for raising the revenues of the United States, majority rule ought to apply. That does not mean we cannot change it. We have a right to amend the Constitution. But to invoke the Founding Fathers so that you can say that they were mistaken seems very, very unfortunate. They decided we did not need two-thirds. The current Republican majority does not trust democracy, and therefore they want to make the amendment.

Mr. CANADY of Florida. Mr. Speaker, I yield 1½ minutes to the gentleman from California [Mr. BILBRAY].

Mr. BILBRAY. Mr. Speaker, April 15 is a very important date in my family because my mother was a tax consultant. My family has been involved in income tax for 45 years and my wife now runs a business.

While I keep hearing this discussion about the constitutional issue, let me remind you, the Founding Fathers not just once but twice specifically in the Constitution said the income tax should not be allowed. Twice in article 1.

The first thing they did is they said you make sure you have fair apportionment of representation in the House of Representatives and a fair apportionment of taxes.

So when someone brings up the founding Fathers, let us go back to the Founding Fathers' constitutional document and the 16th amendment was the only amendment that specifically reversed the direction of the Founding Fathers. It should have included a supermajority at the time the 16th was passed.

Mr. Speaker, my family has listened to working-class people talk about being taxed too much and every time I hear people on the other side of the aisle say, "We're only raising the taxes on the rich," go ask the middle-class people in my community in Imperial Beach and in San Diego and whenever you are going to lower the taxes, "Oh, it's only going to be lowered on the rich."

Let us be frank and open about it. That is what it is all about. You want more money to increase spending so you get more power in Washington and less freedom as individuals. I am telling you as somebody who has worked in the communities as a working class, you taxes are not on the rich, they are bearing down on the middle class, and they are sick and tired of it. They want the original Founding Fathers' intention that taxes should be fair and equitable and this amendment will help to do that.

□ 2130

Mr. CONYERS. Mr. Speaker, I yield 3 minutes to the gentleman from Virginia [Mr. SCOTT], a member of the committee.

Mr. SCOTT. Mr. Speaker, I rise to oppose this late-night attack on the Constitution. We all know that this initiative will not become law. It is nothing

more than a public relations ploy which panders to voters on April 15. Perhaps some will think that the American people on April 15 will forget that the big fat tax cut for the wealthy that was part of the Republican budget was funded by cutting Medicare, education, and environmental protection programs.

Mr. Speaker, much has been said tonight about fiscal responsibility. Mr. Speaker, this amendment does nothing to reduce spending. In fact, it continues to allow spending money by majority vote whereas paying the bills will require a two-thirds vote. It does not take a rocket scientist to figure out what will happen to the deficit if this amendment is adopted. Earlier this evening, we heard a list of taxes which would not have been adopted if this amendment had been in effect, but all of the prior spending would have still been adopted.

Shamefully, Mr. Speaker, this amendment will also have the effect of requiring a two-thirds vote to eliminate special interest tax breaks and cutting corporate welfare.

Mr. Speaker, we need to get serious about facing our budget problems. This amendment will do nothing to curb spending. It will make it more difficult to pay the bills we run up, and at the same time it will shamefully protect corporate welfare and current special interest loopholes.

We should defeat this resolution.

Mr. BARTON of Texas. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Speaker, the tax man cometh tonight, and if there was ever a more abominable tax system than the American income tax system, we have yet to see it on the face of the planet. It came to use by a two-thirds vote. It did not come to this Chamber, to this body, to the American public except through a constitutional amendment that required a two-thirds vote.

The first attempt to pass an income tax was declared unconstitutional because our Constitution prohibited an income tax system in our country as it was first written. So what is wrong with requiring that changes should come only with a two-thirds vote? We are not saying taxes cannot be raised in America. We are simply saying they should not be easily raised, no more easily than the American public was first inflicted with this system with a two-thirds vote when the 16th amendment was proposed and later adopted.

I wish we were debating the repeal of the income tax system tonight. We have such a bill before this body, House bill 3039, a bill to establish an alternative tax system for America. This system taxes Americans twice on the same money, once when you earn it and again when you spend it, when you pay all the business taxes, when you consume American products. It taxes only American products, not products made from overseas and imported here. It is a lousy system. It costs small businesses $4 to conform to the Code for every dollar they send in tonight, and we are paying all of that cost. We are told $300 billion worth of manhours is spent in complying with this Tax Code. We ought to get rid of it.

But at least we ought not raise taxes more easily than this country was inflicted with income taxes, and that was with a two-thirds vote of the Congress and a confirmation by the legislatures of the 16th amendment.

I remind you, the income tax was declared unconstitutional once. It was repealed in prior history in this country by Congress. Americans hate it. They have a right to hate it. It is a lousy system, and we ought to at least make it more difficult to raise taxes under that system in America.

Mr. CONYERS. Mr. Speaker, I yield 3 minutes to the gentleman from North Carolina [Mr. WATT], a distinguished member of the Committee on the Judiciary.

Mr. WATT of North Carolina. Mr. Speaker, I left this body earlier and I went and watched these proceedings on television for a while to try to get a flavor of what was going on here. And as I listened, I heard my colleagues on the Republican side come to the floor and say that this is about taxes, taxes, taxes.

I think they are missing the point. We can debate taxes when we talk about whether to raise taxes or lower taxes. This is about whether to amend the Constitution of the United States. This is about fundamental fairness. Lord knows, I have been in on the losing end of a lot of votes since I have come to this House, both when we were in the majority and during this term when we are now in the minority. But on every single one of those votes, almost without exception, it has been by majority rule, because that is the basis on which our constitutional democracy is founded. It is one person, one vote.

Every single Member of this House gets sent to this body by the same number of people. That is why we redistrict the country every 10 years after every census, to guarantee that each individual citizen in this country, in this body, the people's body, has one individual who represents their interests and that individual's vote is equivalent to the vote of every other individual in this body.

So, this is not about taxes, taxes, taxes, my friends. This is about the fundamental rights and belief in democracy. This is about majority rule. And you all seem to have missed that point.

You say that you believe in conservative values. But four times during this session of Congress you have come in to attack the Constitution. I am beginning to believe that you do not believe in the Constitution at all.

We should defeat this insane amendment to the Constitution and to the fundamental rights that we all should believe in and support.

Mr. BARTON of Texas. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Nebraska [Mr. CHRISTENSEN].

Mr. CHRISTENSEN. Mr. Speaker, the only point anyone has missed in this whole debate is the fact that the American people are frustrated and fed up. The last 30 years their taxes have been raised and raised and raised every time. This amendment today would reassure taxpayers that they are entitled to the money that they work so hard to earn and the taxes will only be raised when absolutely necessary.

I am convinced that you can never satisfy the appetite of certain Members of this body to tax and to spend the earned incomes of our working families. While we may not be able to cure their appetite, this supermajority amendment would put a hurdle in the system that Washington's big spenders would have to jump before they could get into our wallets.

President Clinton recently declared that the era of big government is over. And he is right. By passing this amendment, we will put a needed restraint on the politicians who want to keep raising taxes to pay for more big government programs.

I urge my colleagues to support passage of this important amendment to the Constitution of the United States and to restore some economic sanity back to the people who sent us here.

Mr. CONYERS. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. WALSH].

Mr. WALSH. Mr. Speaker, I thank the gentleman for yielding me this time.

I rise today in opposition to H.J. Res. 159, the proposed amendment to the Constitution to require two-thirds majorities for bills increasing taxes. Those who support this concept are well-intended and probably, like many of us, frustrated at not being able to cut taxes for hard-working American families across the country.

The Constitution is alive and well today after 220 years. It granted Congresses the power to levy taxes. To change this very special document in this manner is inappropriate. The framers of the Constitution had wisdom far beyond their years. They felt the strength of the Nation, with few exceptions, was based upon majority, not supermajority, rule. Let us stick to that concept. The surest way for this Nation to ensure itself against higher taxes is to retain and indeed expand the Republican majority.

Mr. CANADY of Florida. Mr. Speaker, I yield 2 minutes to the gentleman from Georgia [Mr. KINGSTON].

Mr. KINGSTON. Mr. Speaker, I thank the gentleman for yielding this time to me.

First of all, I want to say to some of the previous speakers, here is a copy of the Constitution that talks, in article 5, about the amendment procedure. Clearly, it would not be in there unless our forefathers anticipated the need to amend it.

I also recommend to you something else you probably have not read, the bill itself, which talks about how you can close a corporate loophole. I am going to put both of these here if you want to take the time to read them tonight before you vote on these and find out how absurd some of the arguments are.

Here is why I support this thing. Forty-five percent of the income, the household income of the middle class family, goes to taxes now. Two-income families all over America, you know what that means, it means the second employee, one spouse is working for the Government. You can say, no, no, no, not my husband, not my wife. He is a real estate agent, she sells clothes, he is a barber. That is not true. They are working for the Government. They might be getting their paycheck through the private sector. That money goes straight to the Government. These people are government employees.

The middle class has had enough of this. I was here in 1993 when the big Clinton tax increase came through here, and that 15 minutes, which is the traditional voting stance, the 15 minutes came and the majority was not there. So, what happened? The Democratic Speaker, the Democrat Majority Leader, the Democrat Whip went around the House, and this place looked like a beehive, all the buzzing around, because you want a road, you want a bridge, you want a highway, you want a new committee assignment.

The clock kept going, 20 minutes, 25 minutes, 30 minutes, squeezing out that last vote, giving away that last bridge, that last committee assignment or whatever it took to get it just over the hump. And, of course, the votes where there, and the tax increase went by two votes. And what happened as a result of it? The government got bigger, bigger. Yes, the deficits went down, the government got bigger. What would have happened without it? the deficit would have gone down. The government would have got smaller. That upsets a lot of people who like agencies, commissions, bureaucracies, red tape, micromanagement out of Washington. But for John and Sue, middle class, they want less taxes, not more government.

Support this. It is good legislation.

Mr. CONYERS. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. FILNER].

Mr. FILNER. Mr. Speaker, I rise today in opposition to House Joint Resolution 159, the supermajority bill, because I am convinced it is really a super loophole bill.

This bill will require a two-thirds vote—a "supermajority"—for any legislation that increases revenue. While this may sound like a good idea it is, in fact, a terrible idea for our country. Closing existing tax loopholes will also raise revenue, therefore this legislation will require supermajority votes to close tax loopholes. Closing tax loopholes should not require a supermajority—it is not fair, it is not right, and it is not constitutional.

I introduced H.R. 1497, the Insurance Tax Fairness and Small Insurance Company Economic Growth Act, to close a tax loophole in the life insurance industry. By closing a huge loophole in Section 809 of the tax code, my legislation will level the playing field in the life insurance industry, provide tax relief for small life insurance companies and raise nearly $2 billion annually for the U.S. Treasury.

However, if this supermajority amendment is approved, a minority of this House could prevent closing this or any other tax loophole. Protected by the supermajority requirement, loopholes will continue to ensure tax unfairness and inequality—the "super loophole" is born.

Legislation like mine, which targets nearly $2 billion in unpaid taxes, demonstrates the financial irresponsibility of supermajority constitutional amendment. My bill is about fairness and equality; this amendment is about neither.

By requiring a supermajority vote on loophole closings and other tax corrections, this bill will tie our legislative hands and prevent us from taking the necessary actions to make our tax system fairer. Legislation such as H.R. 1497, should be addressed individually by Congress and not be made inconsequential by this proposed constitutional amendment.

For more than 200 years, the U.S. Constitution has guaranteed certain rights, privileges and protections. It has never guaranteed nor protected the right to a tax loophole—and now is not the time to start doing so. Oppose the supermajority, defeat this bill and prevent super loopholes.

□ 2145

Mr. BARTON of Texas. Mr. Speaker, I yield 1 minute to the distinguished gentlewoman from Idaho [Mrs. CHENOWETH].

Mrs. CHENOWETH. Mr. Speaker, this whole debate sort of revolves around what Thomas Jefferson once said, and that is that it is time we chain the government and free the people. That is what this debate is about, because we have operated in a policy of absolute unrestrained Federal Government. The more money we give the Federal Government, the more power this Federal Government has.

We have gotten to the point where nearly 50 percent of our ability to see, our time, energy and intelligence, which we invest in our workplace, we see almost 50 percent of that taken by the Federal Government.

So it is time we put the restraints on the Federal Government. John Marshall, our Supreme Court Justice back in 1819, said the power to tax involves the power to destroy. The power to destroy may defeat and render useless the power to create. These are propositions not to be denied.

In 1996, that is what we are facing, and that is what we are dealing with now in the Federal Government.

Mr. CONYERS. Mr. Speaker, I yield 2 minutes to the gentleman from Colorado [Mr. SKAGGS], a Member who has been on the floor a lot tonight.

Mr. SKAGGS. Mr. Speaker, I thank the gentleman very much for the time.

Mr. Speaker, I guess I am just an old-fashioned conservative. I believe in majority rule. I think it is dangerous when we give over power over a substantial responsibility of this Government to 34 Senators representing as few as 10 percent of the people.

I am also pretty conservative about the way this House ought to operate. I think for some reason it is important that on a constitutional amendment perhaps we have some serious deliberation and examination, even in the Committee on the Judiciary. It is ironic, I think, that the chairman of that committee is not here controlling debate on this matter.

Mr. Speaker, we are the stewards of an incredible legacy in this Constitution. It is astounding to me to see what we are about this evening.

I suggest to my colleagues that we envision perhaps standing over here in the well James Madison, and back there John Jay, and over here, Alexander Hamilton, looking down on us and the way we are tending their grand legacy of constitutional government.

I think that they would be ashamed of our performance here tonight, absolutely ashamed.

Mr. Speaker, I oppose this proposed amendment to the Constitution to require the vote of two-thirds of both Houses of Congress to approve certain changes to Federal revenue laws.

This proposed amendment is a bad idea and bad constitutional law. Even worse, we consider it today in this body under a process that insults Members' intelligence and responsibility, that contradicts any suggestion that this House is a thoughtful body, and that demeans and debases the very amendment process itself.

Mr. Speaker, let me say a word about the process that has brought this measure to the House today. The original proposal put forward by Representative BARTON, House Joint Resolution 159, received one hearing in the House Committee on the Judiciary on March 6, 1996. It then was removed from that committee and scheduled for a vote on the floor.

It was not marked up or approved by the Judiciary Committee. House Joint Resolution 159 was then replaced by a second proposal, House Joint Resolution 169, which is being considered here today. This version of the amendment was introduced on March 28, 1996, considered by the Rules Committee on March 29, 1996, and reported to the House. We then went into recess for 2 weeks. So, very few Members have even seen the text of this amendment, much less studied it. This proposal has had no hearing at all in the committee of jurisdiction.

Second only, perhaps, to an act of Congress declaring war, an amendment to the Constitution ought to command the most serious and deliberate sort of legislative review, examination, and analysis we are capable of. It deserves better treatment than a rush job to meet a politically sexy vote deadline that the majority admits is a matter of symbolism. The Constitution shouldn't be used to make political statements.

I would, however, like to commend the sponsors of this bill on one point. They recognize that a change in the U.S. constitution is necessary in order to require a supermajority to pass legislation on this subject. In effect, they concede that the attempt by the House in January, 1995 to simply pass a rule requiring a supermajority is not the proper procedure.

I oppose this proposed constitutional amendment on a number of grounds. It violates what Madison called the fundamental principle of free government, the principle of majority rule. The Constitution makes very few exceptions to that principle, none having to do with the core, on-going responsibilities of Government. We should be extremely wary of any further exceptions, especially if it would complicate the essential responsibilities and competency of the government.

We have to be mindful that the logical corollary of supermajority rule is minority control. And under this proposed amendment, 34 Senators representing less than 10 percent of the American people would have the power to control the Government's revenue and tax policy.

I also oppose this proposed amendment because of its almost absurdly impractical consequences—intended and unintended.

One such consequence would be for all practical purposes to lock into law whatever was the then current tax structure at the time of this amendment's ratification. If you like the tax system the way it is now, or if you have supreme confidence that some future Congress will have gotten it fixed just right before ratification, you ought to love this proposal.

Another related consequence of this proposal would be to complicate efforts to balance the budget, particularly as they entail reducing the growth of entitlement programs.

Finally, I'm opposed to this proposed amendment because, like the current House three-fifths rule, it is vague and will generate confusion and litigation.

I know the authors of this proposal feel strongly about taxes. But simply having strong feelings about an issue is not sufficient reason to cede power over all future changes to an important area of national law to a small minority. In addition to the tax issue, Members of Congress will typically have very strong feelings on a number of issues—civil rights or trade or the deployment of U.S. troops abroad. In none of these areas does it serve the long-term national interest to undermine the principle of majority rule. In short, my opposition to this proposal is primarily grounded in the fundamental principle that is at stake, the principle of majority rule—the fundamental principle of free government.

Wiser lawmakers than we have considered the question of whether to require a supermajority for passage of certain kinds of legislation. At the Constitutional Convention, the Framers of the Constitution specifically considered—and rejected—proposals to require a supermajority to pass legislation concerning particular subjects such as navigation and commerce. They rejected various legislative supermajority proposals largely because of their experience under the Articles of Confederation and the paralysis caused by the Articles' requirement of a supermajority to raise and spend money. In other words, we have a Constitution because it was impossible for the country to function under a constitutional law such as is being proposed here.

The Framers' judgment on this matter, including whether to retain the Articles' supermajority to raise revenues, should give us all cause to reflect on the wisdom of the proposals before the House today.

In those cases in which the Framers did impose supermajority requirements, none deals with topics of regular legislative business central to the on-going operation and management of the Federal Government, such as taxes and revenues.

In those cases in which the Framers did impose supermajority requirements, only two require action by both bodies, namely, the override of a Presidential veto and the referral of a proposed amendment to the States. Both are extraordinary matters.

In sum, this proposal would go far beyond any existing constitutional precedent. It would effectively paralyze the ability of future Congresses to deal with one of the most nuanced of all legislative issues—revenues and taxes, allowing a small minority to control national policy.

The Presidential primary election season brought forward a number of innovative ideas regarding the Federal tax system. Were it now in the Constitution, this new amendment would likely serve to thwart these ideas or other reforms. This amendment would certainly apply to flax tax proposals which proponents claim would increase economic growth and, therefore, federal revenues. This proposed amendment would likely require a two-thirds vote on legislation implementing the consumption tax or Value-Added Tax [VAT] proposed by some, which again proponents believe would increase economic activity and Federal revenues. There's been a lot of talk on both sides of the aisle about getting rid of corporate welfare. Many want to end corporate welfare by closing tax loopholes—and that, of course, would likely bring in additional tax revenue from affected corporations and so would require a two-thirds vote under this proposal. And what about a capital gains tax cut? Its advocates usually argue the effect will be to raise revenue. Does that mean the two-thirds requirement would kick in?

But let's say we tried one of these ideas out before the amendment took effect. Is anyone certain enough that one of them is the correct solution to the tax reform problem that you wish to make repeal or revision next to impossible?

And if this proposed amendment were part of the Constitution, it would probably make it more difficult to reduce taxes. If at some point in the future, Congress judges the budget and economy healthy enough to reduce taxes, how likely is it that a responsible Congress would go ahead and do so knowing that it would be almost impossible to raise rates again in the event circumstance required it?

If now in the Constitution, this proposed amendment would certainly make the current efforts to balance the budget a lot more difficult. Whether adjusting the Consumer Price Index [CPI], or reducing business and tax subsidies, or taxing the income of expatriates, or limiting the use of section 936 tax credits for business activities in Puerto Rico, or narrowing the EITC, or means testing Medicare Part B premiums, or limiting the amount of profits companies can shift to overseas subsidiaries—all would have to be passed by two-thirds.

It is important to realize that the proposal being considered here today is not really a tax amendment at all. The word 'tax' does not appear in the text, nor does 'income tax,' 'tax rate,' or 'new tax.' It is a "revenue" amendment. The only legislation requiring a two-thirds vote under this proposal is that which has the effect of increasing "internal revenues."

There is no technical definition of "internal revenues" except perhaps as distinguished from revenues from "external" sources, such as import duties. All other sources of Federal revenue are presumably included under this proposed amendment. So any legislation to increase any Federal fee or charge or fine would be subject to a two-thirds vote if it results in more than a "de minimis" increase in revenues. So would any proposal to sell Federal assets—another frequent component of budget balancing and privatization plans. And according to the proposed amendment, de minimis is to be defined by Congress at some later time. Or quite conceivable, at each time a revenue bill is considered, inviting an exercise in manipulative definition whenever the prospect of winning two-thirds approval was dim.

On the other hand, it's arguable that this proposal would not necessarily require approval of two-thirds for a tax increase. Some tax increases can actually reduce or, at least, not increase revenues. For example, the luxury tax on certain boats an cars that was repealed in 1993 is said to have actually reduced sales so dramatically that associated revenues actually declined. Some even argue that most tax increases on business activity actually reduce Federal revenues by depressing economic growth. What economic theory, interpreted by which expert, will therefore determine the application and effect of this amendment if it were adopted?

So, once you consider how this amendment might be interpreted, many absurd consequences come to mind.

In the context of deficit reduction, we should also consider the fairness and equity implications of this amendment. Most Federal benefits to lower and middle income Americans come from programs that depend on direct expenditures. The benefits of upper income Americans and corporations often come through various kinds of tax breaks. Since this amendment would require a simple majority to cut programs benefiting lower- and middle-income Americans, but a supermajority to reduce tax benefits to wealthy Americans and corporations, it would unfairly bias deficit reduction and create a path of least resistance that would disproportionately hurt middle and lower income citizens.

Of course, it is to examine and understand exactly these sorts of things that we usually refer legislation, especially amendments to the Constitution, to committee. There, these and other questions can be asked and answered and necessary refinements and revisions to a proposal can be crafted. Sadly, no, shamefully none of this regular order has been followed in the House. We should not be surprised at the logical incoherence of the proposal which we are considering today.

In evaluating this proposed amendment, it's also helpful to examine some recent experience in the House. In the 104th Congress, the House pretended to operate under a new rule requiring a three-fifths vote to pass any increase in a Federal income tax rate. Obviously, the amendment before the House today would go much further.

The short history accumulated on the application of he New House rule is instructive about the problems that would likely rise under this proposed constitutional amendment. In the 14 months that the three-fifths rule has been in effect, it has been waived during consideration of the majority party's budget reconciliation bill H.R. 2491, the Contract With American tax bill H.R. 1215, the majority's Medicare bill H.R. 2425, and, recently, the House version of the Kennedy/Kassebaum health care bill H.R. 3103. These waivers have been accompanied by dispute and confusion as to the meaning of the rule.

The amendment we are considering is far more problematic because the Constitution can't be waived for convenience sake when questions arise. And you can be certain that similar questions about the meaning of this amendment will arise in great number. The net effect would probably be for almost any future tax bill that passed by less than two-thirds under some claimed exemption from this amendment to be subject to protracted litigation, creating an outcome we ought to avoid in tax law—uncertainty and confusion.

Much of the criticism I have offered about the amendment being voted on today in the House—House Joint Resolution 169—can also be made of the original version—Senate Joint Resolution 49—which addresses any new tax or increase in a tax rate or base, as opposed to an increase in internal revenues. While the original version directly addresses the issue of taxes, instead of the vague concept of internal revenue, it would also obstruct many proposed approaches to tax reform and interfere with efforts to balance the budget. It would require a two-thirds vote on flat tax proposals which would increase the tax base as they reduce the tax rate, on legislation implementing the new consumption tax or value added tax [VAT] proposed by some Members of Congress, and on closing tax loopholes that also necessarily increase the tax base. Instructively, if the original version of the proposed amendment were already a part of the Constitution, the new majority in this Congress could not have passed its budget bill, which effectively increased taxes on Americans eligible for the earned income tax credit.

One thing we can be sure of. We don't know the future. Why would we wish to deprive our successors in Congress of the tools and ability to deal with the problems they will face? To our successors we are in effect saying, "We don't care what the particular circumstances may be in 10 or 50 years; we don't trust you, and you're stuck with our expectations of your incompetence." What arrogance.

I urge the Members from both sides of the aisle to take a close look at this proposed constitutional amendment in the light of the wisdom and experience of the framers, its stifling and absurd effects, and the history of the House of Representatives' three-fifths rule. Treat it for what it is, a political statement—and one better made on the floor of the House than put into the U.S. Constitution.

Mr. CANADY of Florida. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. FORBES].

Mr. FORBES. Mr. Speaker, I thank the gentleman for yielding me time.

Let us talk about being ashamed, $5 trillion worth of shame. And who pays? The auto mechanic and the nurse who works at Brookhaven Memorial Hospital who are sitting at their kitchen table as we sit here. They are sitting at their kitchen table trying to figure out how they are going to feed the spending monster in Washington.

Mr. Speaker, who should be ashamed? We should be ashamed. For 40 years this body has taken upon itself to spend and spend and spend. Most recently in 1982, 1984, 1987, 1990, and 1993, this body has said, "We are going to just get more money from the average working people," average working people, who are out at home trying to make hard-earned dollars as we sit here in Washington trying to take those hard-earned dollars and redistribute them to our own political constituencies.

Who pays? They are paying. The American people are paying, and they are tired of it. They are tired of a Congress that just willy-nilly over 40 years has raised the burden on average working families. If we care about those families, we will support this super majority so that we can put the brakes on spending, so that we can put the brakes on raising taxes on people who are home right now racing to the deadline of the annual day of reckoning, April 15.

If we care about average working people back home, we will support the brakes that we need to put on the raising of taxes on average working people in America.

Mr. CONYERS. Mr. Speaker, I yield myself 30 seconds to remind my Republican colleague whose voice was raised pretty loudly about the $5 trillion debt that it was initiated under the administration of Republican Presidents, sir. It was under the Democratic administrations that we have been able to make a dent in this debt. So the gentleman's fulminations are appropriate for April 15, but factually they are seriously inaccurate.

Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from Ohio [Ms. KAPTUR].

Ms. KAPTUR. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I rise in strong opposition to this amendment to slice another part out of the precious heritage of our Constitution. This is in fact the fourth attempt by this Republican leadership in the 104th Congress to rip apart the Constitution of the United States, a document that has only been amended 17 times, excluding the Bill of Rights in our 207 year history as a nation.

Now they are trying to rid it of majority rule, enshrined in the Constitution since the beginning of this Republic. We are being asked to undermine the delicate checks and balances between the executive and legislative branches on the important issue of revenues. Other equally weighty issues, such as borrowing or coining money or even declaring war, itself could eventually become subject to the same supermajority threshold.

Reread article I, sections 5 and 7. It specifically defines how decisions are to be made between this legislative branch and the executive branch. It does provide for a two-thirds override in the event of a veto by the President, but majority rule is enshrined in this Chamber.

In 1779 the emerging republic that was to call itself the United States of America threw off the shackles of monarchy and gave voice to the people by vesting all their legislative powers in those they elected here, and they did it by majority rule, bound by the Constitution that has kept us free.

Frankly, this amendment is a cheap shot against a sacred document during a week that most Americans would like to forget: tax filing time. But this Member is one that is unwilling to unravel the Constitution and its environment of majority rule for the sake of a few well-timed press releases at tax time. For shame.

Mr. BARTON of Texas. Mr. Speaker, I yield 3 minutes to the honorable gentleman from Texas [Mr. HALL], one of our chief sponsors of this legislation.

Mr. HALL of Texas. Mr. Speaker, this is not a difficult issue at all. It is rather simple actually. It just gets down to this, as to whether or not in order to raise people's taxes, we want a simple majority to do it, or do we want

to make it a little bit tougher and require two-thirds?

I think most Americans filing their tax returns today firmly believe that they are paying too much in taxes at all levels of government. These hard-working Americans are tired of a tax and spend Federal Government. They want some financial accountability.

Let me issue a challenge to every Member of this body: When you go home, look into the face of the first 15 of your constituents you see, and ask them a simple question: Would you like me to make it a little tougher for those folks up there to raise your taxes or not.

I challenge you to do that. I assure you that you will get 15 out of 15 that will tell you, Yes, I would. We are paying too much taxes. We want more return for your tax dollars. We don't want higher taxes.

Mr. Speaker, that is why I rise today as a cosponsor, along with the gentleman from Texas, Mr. BARTON, the gentleman from Texas, Mr. PETE GEREN, and the gentleman from Arizona, Mr. SHADEGG, in support of this.

A year ago we announced the sponsorship of this legislation, and the leadership made good on its promise to allow us a vote on this bill on tax day. Today we have an opportunity I think to show the American taxpayer where we stand on this issue. For the first time in many year this Congress has focused on efforts to achieve a balanced budget and decrease taxes at the same time. These are goals that many of us have worked on forever since we have been elected to Congress.

Last year the House passed an historic balanced budget amendment to the constitution, and now we are asking our colleagues' support of the tax limitation amendment, which will further ensure fiscal responsibility and accountability in Federal Government. This amendment will help make sure that future Congresses continue to focus on slowing the government and slowing the spending at the Federal Government, rather than increasing taxes as the means to balance the budget.

If history teaches us anything, Congress will always be tempted to raise taxes, especially if a balanced budget becomes a constitutional mandate. While raising taxes may eventually be necessary, this important issue should not be resolved by a simple majority vote. The tax limitation amendment would not make it impossible to raise taxes, it would simply make it more difficult. Each of those 15 constituents that you talk to and ask whether or not they want it to be more difficult for us to raise their taxes, they are going to tell you yes, make it as difficult as you possibly can.

A two-thirds vote, 290 votes in the House and 67 in the Senate, is a lot higher standard, one that would afford more protection for the American taxpayer. I think certainly, as has been noted, the two-thirds requirement can be waived in the event of a declared war or military conflict that threatens national security.

Mr. Speaker, fairness in taxation is an issue upon which this Nation was founded. The tax limitation amendment would help restore this fairness. We can go to the polls if we want to. Seventy-three percent of registered voters support a two-thirds supermajority; 72 percent believe there is no need to raise taxes. Sixty-four percent of the Democrats said support the supermajority. Sixty-eight percent of the Federal employees and 71 percent of union workers said support this amendment.

Mr. CANADY of Florida. Mr. Speaker, I yield 1 minute to the gentleman from Mississippi [Mr. TAYLOR].

Mr. TAYLOR of Mississippi. Mr. Speaker, I thank the gentleman for yielding me 1 minute.

Mr. Speaker, I rise in defense of what they are trying to do. I would say to the gentleman from Florida [Mr. CANADY], I would feel a lot better if in speaking to the Senate the gentleman would try to amend this to also call for a two-thirds vote to raise the debt limit for this country.

You see, there is something equally as evil as tax and spend, in fact something even more evil, and it is called borrow and spend. Tax and spend, you at least ask this generation to pay for something. Borrow and spend, we ask the next generation to pay for something.

Just 2 weeks ago this body by a fairly large margin voted to raise the debt limit by $600 billion.

□ 2200

And for those of you who are not following this, we now spend 30 times more money on interest on the national debt than we do on foreign aid, more money on interest on the national debt than Medicade and Medicare combined, more money on the interest on the national debt than we do on defending this Nation.

I will vote for the bill of the gentleman from Florida [Mr. CANADY] but I sure as heck hope he would use this learning experience to turn right around and call for a constitutional amendment that calls for a two-thirds vote to raise the debt limit. And then turn right around and let us pressure the other body to pass the constitutional amendment to require the balanced budget that this House passed about a year ago today.

Mr. BARTON of Texas. Mr. Speaker, I yield 3 minutes to the gentleman from Texas [Mr. DELAY], distinguished whip, who is operating at reduced power because of an accident rollerblading in Sugar Land.

The SPEAKER pro tempore (Mr. RIGGS). The Chair did recognize the distinguished majority whip's foot attire, but was not going to bring attention to that.

The gentleman from Texas [Mr. DELAY] is recognized for 3 minutes.

Mr. DELAY. Mr. Speaker, I appreciate the sympathy expressed about my foot attire.

I just want to commend my Texas colleagues, Mr. BARTON and Mr. ARCHER, on their fine work in developing this balanced budget initiative alternative. I can give you one simple reason this tax limitation balanced budget amendment is necessary: Bill Clinton. Bill Clinton wants to raise taxes to pay for more spending. He did it in the first half of his term in office when he signed the largest tax increase in history. If Republicans did not control the Congress in the second half, I believe he would have raised taxes then, too. Even today, Bill Clinton is trying to raise taxes to pay for more spending.

Mr. Speaker, the American people contribute more to government spending than they do to family spending. In fact, the government now takes more money from families, 52 percent, than families are allowed to spend on their own. The government takes 52 cents out of every hard-earned dollar that the American family makes today. Mr. Speaker, I just think this is outrageous.

According to the latest polls, 66 percent of the American people believe they are being taxed too much, while 1 percent believe they are being taxed too little. It is time to bring our tax rates in the line with what the American people want, not what Washington politicians want.

The current budget impasse is being fought over the principle of Washington spending. The President wants Washington bureaucrats to spend more of the American people's money. We believe that the American people would rather spend their own money for themselves. This battle of principle is what this tax limitation balanced budget amendment is all about and that is why I support it.

Mr. Speaker, it is time to get responsible about Washington spending. So I urge my colleagues to vote for this legislation and send it to the Senate.

Mr. CONYERS. Mr. Speaker, I yield 3 minutes and 30 seconds time to the gentleman from Missouri [Mr. VOLKMER], a Member who was once the speaker of the statehouse in Missouri.

Mr. VOLKMER. Mr. Speaker, I do not know if I will take the full 3 minutes because it is hard to find very much to say about this radical piece of legislation from the radical right that is bound and determined to shift the tax burden of the American public, to shift it from a progressive tax to a regressive tax. And why do I know the cat is out of the bag? I listened to the gentleman from Texas [Mr. ARCHER] earlier in this debate. He said that under

this proposed constitutional amendment with a majority vote, he could pass a consumption tax, which would be a national sales tax. That is the consumption tax, the most regressive tax that we can find, and he can do it on majority vote. At the same time, he can lower the high tax rate from 39, 36, eliminate them altogether, make the highest tax rate around 25 percent, so that a millionaire will only pay 25 percent. Then he would pay the national sales tax of 20 percent maybe of what he buys only, and that is all.

Then the poor person out here that is making $20,000 a year, got a wife and two kids, is going to pay that same 20 percent sales tax that the millionaire pays, the same rate that the millionaire pays for necessities. The cat is out of the bag, folks. That is what this is all about: Who pays? Who pays? Who suffers the burden?

The Republican radical right under NEWT GINGRICH wants to shift that burden. They proved it with their tax cut proposal last year. It is again here right in this constitutional amendment, to shift the burden from a progressive tax that basically says the more you earn, the more you get from unearned income, either way, the more you pay. I believe in that. I have always believed in that. I have been thankful for it.

I would like to pay $1 million in taxes next year. I would love to pay $1 million in taxes next year, because that means that I got to make at least 2 million, and I get to keep the other 1 million. Now that is not too bad.

I got everybody in my district almost, 99 percent, going to take that any day. They would love to pay more and make more. And I heard the gentleman over here, the minority whip, talk about this 52 percent. He ought to come to my district.

There are not very many people in my district paying that amount of taxes to the Federal Government. I do not know of any in his district that are paying that kind of money to the Federal Government. They are not, because that is not the top tax rate.

But the story is, we need to kill this monster. That is what it is. It is in disguise, a snake in disguise, to shift the tax burden from the wealthy to the middle-income to the poor. Vote it down.

Mr. CANADY of Florida. Mr. Speaker, I yield 4 minutes to the gentleman from Texas, Mr. PETE GEREN.

Mr. PETE GEREN of Texas. I thank my friend for yielding me the time.

Mr. Speaker, I have listened to this debate tonight. One thing I have heard over and over is that this process has been hasty, that we have had few hearings rather than several.

Mr. Speaker, I contend that this system has worked as it should, as the founders intended. Our States have been a laboratory to test this initiative. With all due respect to the committee process, a real-world test that has been underway for several years involving 70 million Americans in 10 States gives a better understanding of the impact of this initiative than all the hearings that could ever be held.

What has the test shown? It has proven that this initiative works as advertised, more jobs, more economic growth, less government and lower taxes. Critics say that the supporters of this measure do not trust the American people because of the supermajority. Surveys of the American people show that an overwhelming majority of Americans support this initiative, over 75 percent do, and nearly 68 percent of Democrats support it. It is an initiative that is spreading from State to State with broad and bipartisan support. It has received overwhelming support at the ballot box.

But if the critics are right, the ratification process will prove the undoing of this initiative, for this is just the first step. The Senate would be next. Then it would go to the people, requiring three-quarters of the States to say yes before it became part of the Constitution. I say that those who vote no do not trust the American people with this matter. Those who vote yes trust the American people to make this decision.

Mr. Speaker, critics contend that this initiative empowers the minority at the expense of the majority. My colleagues, the current system has empowered a minority at the expense, literally and figuratively, of the majority. The Federal Government, representing 20 percent of our GNP, has become the most powerful political force in America. The full force of the government is used in the political process to block efforts to cut or reduce the growth of government. That majority has become the tail that wags the dog in this great experiment in democracy.

In the real world of politics today, it is easier to raise taxes than reform Medicare, even though we must do it. Politically it is easier to raise taxes than reform Social Security. Politically it is easier to raise taxes than reform the VA health care system, and on and on and on. Rather than do what we know we must do, we raise taxes because it is easier. Perhaps if the bar were raised, if it were a little harder to raise taxes, we might tackle Medicare, we might tackle the other issues that are considered political untouchable in this political climate.

As far as the intent of the founders, the founders would never recognize what has become of our government. Telling cities and States how to run local government, telling school boards how to run their schools, and involving itself in the most minute details of American daily life. It is a government that controls so much of American life that it has become the biggest force in American politics. It has learned to manipulate the system so that it feeds itself and grows in good times and in bad times. It grows in the antigovernment Reagan years, just as it does in the pro-government years. During the so-called antitax, antigovernment decade of the 1980's, the size of our government grew by over 25 percent. It did not shrink even then. No matter who controls the Congress, who controls the White House, government grows. The record is clear.

This amendment, if passed tonight, approved by the Senate, and only after being passed by three-fourths of the states, that would slow that growth, will make the growth of government more judicious. It will give the force of government, the political juggernaut that it has become, a higher hurdle to clear before it indulges its ambitions, is a higher hurdle to clear before it takes resources from the people.

Over the 200 years of this experiment in democracy, those institutions that get their funds from the political process have figured out the political process. Those who pay the bills are no match for those whose livelihood depends on growing government. This initiative will put the political process back where it was when our Constitution was ratified. It will level the playing field for those who pay the bills.

This initiative is not elegant. It will never thrill the academics. It is a blunt instrument to check the brute political power of a government with an insatiable appetite to grow, to control more of American life. It is a blunt instrument whose time has come.

Mr. CONYERS. Mr. Speaker, I yield 1 minute to the gentlewoman from New York [Mrs. LOWEY].

Mrs. LOWEY. Mr. Speaker, this is the fourth amendment to the Constitution that the Republican leadership has forced the House to vote on in the past 16 months. This radical assault on our Nation's most sacred document is an outrage, and I rise in defense of our Nation's Constitution and against this resolution.

This resolution before us is the product of a poll and a focus group. It is election-year political theater at its worst. Our Constitution is the greatest political document ever written, yet Speaker GINGRICH is convinced he can do better. Does the Speaker really think he can improve upon the work of Madison and Hamilton?

Congress ought to be approaching the Constitution with reverence and humility. Instead, the Republican leadership is treating the Constitution as a rough draft. This amendment flies in the face of the principle of majority rule that has guided this Nation since its founding. It would vest unprecedented power in the hands of a small minority and prevent the majority from enacting the will of the American people. If the

principle of majority rule was good enough for James Madison, it should be good enough for NEWT GINGRICH and the Congress.

Mr. Speaker, I urge a "no" vote on this resolution.

Mr. BARTON of Texas. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Oklahoma [Mr. COBURN] in whose State there is a supermajority tax limitation amendment for that State.

Mr. COBURN. Mr. Speaker, it is interesting coming from Oklahoma, being a new Member of this body, the arrogance of this body. What we hear tonight is arguments based on class envy. What we hear tonight is arguments that the people in the States are not adequate to make decisions about their own well-being. The very idea that our Framers of our Constitution had in mind was that we should send to the States to be decided amendments to the Constitution. By us precluding that, based on what we think, not with prudence, but based on what we think that they should not have the opportunity to decide that, that in the face that the vast majority of people in this country when asked, do you think we should change this system, do you think that we should make it more difficult to raise taxes, would agree.

□ 2215

So once again Washington collectively, Washington in its arrogance, in its ego, has decided that we know better. Well, that is just not the truth. It is arrogant, it is careerism, it is elitism at its worst, and it is impossible for this country to survive with that kind of thinking continuing.

The other thing that I hear tonight is that this bill would not allow tax reform. That is not true. It does allow tax reform.

Finally, this is what this new Congress is all about, trying to put us back in a redirection, trying to reform this institution, trying to give it the self-discipline that it needs because it has obviously not had it over the past 30 years.

Mr. Speaker, I support this bill. The people of Oklahoma support this bill. This is something that we should and must do for the next generation.

Mr. CONYERS. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. EDWARDS].

Mr. EDWARDS. Mr. Speaker, I do not come to this well with a speech that I have written because I had no intention tonight to give a speech. I came to this House to hear the debate on amending one of the most cherished documents that this world and this Nation have ever seen.

And I want my colleagues to look around in this room at 10:15 in the evening. There are very few Members here; there are more staff people on the floor of this House than there are Members of the House. And the reason I ask Members to look around is that this is the only hearing that this amendment to the most cherished document in our country will receive in this House. It is not arrogance to want a full consideration and careful review of our Constitution.

I suggest it is reverence, reverence for our document that we all proclaim to love and reverence for our country and the seriousness of the issues which we debate this evening.

To my colleagues who genuinely believe that we should have such an amendment, or a similar one, I suggest let us have the courage to debate it in the light of day before the American people and not late at night as a political gimmick simply because this happens to be tax day.

To my colleague and friend, the gentleman from Texas [Mr. BARTON], who genuinely believes in tax limitation, let me suggest it says something wrong about this process when even he, who has fought harder for this issue than anyone I know, had to admit in a national publication just a few days ago that even he did not understand the content of this amendment to our Nation's Constitution.

I plead with my colleagues to pay respect not to our Constitution, just with their rhetoric, but to pay respect to it with our process. I think our Founding Fathers would be sad, whether they supported tax limitation or not. I think our Founding Fathers would be sad that we would have had no single hearing on such an important issue, that we would debate amending the Constitution at 10:20 at night with very few Members on this floor and more staff members than Members here.

Regardless of my colleagues' position on the issue, I suggest this is a sad day for our country and a total lack of reverence for our Constitution.

Mr. CANADY of Florida. Mr. Speaker, I yield 1 minute to the gentleman from Oregon [Mr. COOLEY].

Mr. COOLEY. Mr. Speaker, I rise in favor of this resolution. I rise to remind this body of an important fact that seems to have gotten lost in the debate, that if this resolution passes tonight we will not have amended the Constitution. Remember that it takes three-fourths of the States and the people of the States in order to amend the Constitution. When we vote for this measure, we are voting to let the people decide that they would like two-thirds of congressional votes in order to raise the taxes. We are voting to let the people decide.

Those who vote against this measure would like to keep the money and the power here in Washington. Do not we trust the American people? I think we should. Let us let the American people decide whether or not they would like to make it harder for us to raise taxes.

Mr. BARTON of Texas. Mr. Speaker, I only have two more speakers, myself and the other chief sponsor. So I would like to reserve the balance of my time.

The SPEAKER pro tempore (Mr. RIGGS). The Chair would advise that the gentleman from Florida [Mr. CANADY] has 8 minutes remaining, the gentleman from Michigan [Mr. CONYERS] has 16½ minutes remaining, and the gentleman from Texas [Mr. BARTON] has 12 minutes remaining.

Mr. CONYERS. Mr. Speaker, I will step into the breach and yield 2 minutes to the distinguished gentleman from West Virginia [Mr. WISE].

Mr. WISE. Mr. Speaker, I am going to read a list of names. What is wrong with this list?

Madison.
Adams.
Franklin.
Jefferson.
WISE.
GINGRICH.

Mr. Speaker, if you said that the last two should not be confused tonight with the first four, you are absolutely correct. No one is going to confuse what is happening tonight with Thomas Jefferson or John Adams or Benjamin Franklin.

Careful consideration was what the Constitution was about. What everyone should understand, there has not been one hearing on this, not one committee action. The previous speaker said what is wrong with sending it to the States. When we send it to the States, we send it as is, and, yes, it is fair to let the States vote on it, but have us perfect it first before we send it there.

I have to ask another question. If two-thirds is good for raising taxes for protecting Rupert Murdoch, for instance, then what is wrong with two-thirds for some other sacred areas? What about Social Security cuts when beneficiaries pay more out of pocket? Should not that have been two-thirds? What about Medicaid cuts?

I think if we are going to ask the middle class in this country to potentially pay $36,000 a year for nursing home costs that Medicaid has been paying for their loved ones, that might be worth two-thirds. That is certainly an increase. Somebody adding $3 or $4,000 on a student loan, and you proposed that earlier, Mr. Speaker, and the Republican Party, and yet that would not require two-thirds vote. You were happy with a 1—with 50 percent.

Sending our sons and daughters to war; I find it interesting, Mr. Speaker, that to raise taxes on the wealthiest would require a two-thirds vote, to raise an army to fight a war would only require a simple majority. It seems to me that some priorities are wrong here.

Mr. Speaker, I have faith in the American people, and I do not think it is arrogance. I have faith because I know that American people can say I know how my representatives voted, and I can evaluate that person whether

or not they should have voted for that tax increase.

Mr. CANADY of Florida. Mr. Speaker, I yield 2 minutes to the gentleman from Indiana [Mr. BURTON].

Mr. BURTON of Indiana. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, the American people want a balanced budget. The American people want to control spending. They want a line-item veto. The Republicans have tried to give that to them. And the American people want less taxes. They are going to pay until May 7 everything that they earned this year in taxes. Almost half of the year everything Americans earn are going to go just to pay taxes. They are fed up. Look at every single poll.

I am talking to my liberal colleagues in this Chamber. They are being taxed to death, and they do not want their taxes raised any further.

Now how do we guarantee that? We guarantee that by making it very difficult to raise their taxes, and the best way to do that is to have a supermajority.

The Barton bill is a very good step in the right direction. A two-thirds majority to raise taxes makes sense. If it is really necessary to raise taxes, our colleagues will get the two-thirds majority, but if it is not necessary, they will not.

Now we need a balanced budget, we need a line-item veto. We have given the President that. And we need to control taxes. Their party has been in control for 40 years, and for 40 years the policy has been tax, spend, tax, spend, tax, spend, and it has put this country in a terrible downward spiral. Every time we raise taxes; there has been 3 major taxes in the last 12 years; every time taxes have been raised, we spend more and more and more, and we are now into almost a 6 trillion dollars national debt.

When our forefathers came up with the income tax for the first time back in what, the early 1900's, it was 1 mill on a dollar, 1 tenth of 1 cent on a dollar, and said it was not going to go higher than probably half a cent on the dollar, and now one is working almost 6 months a year just to pay their taxes. it has to come to an end. The Barton bill is a good bill and should pass.

Mr. CANADY of Florida. Mr. Speaker, I yield 1 minute to the gentleman from Colorado [Mr. SCHAEFER].

Mr. SCHAEFER. Mr. Speaker, I thank the gentleman for yielding this time to me, and just to respond one moment to the gentleman from Missouri who was talking about possibly the consumption tax in this country, and we have built into it a two-thirds vote in which to certainly raise that from a 15 percent to a 16 percent level, and more importantly for his farmers in Missouri or any farmer throughout the country, the estate tax is being abolished, which means that that individual who builds this family business or family farm over a period of time and turns around and wants to give it to his children or grandchildren, this is not going to happen any longer, and he can do it or she can do it at no interference with the Federal Government.

The second thing is I wanted to mention that there is built in a personal exemption refund for the working poor all the way up to the poverty line in this particular piece of legislation. So in essence the working poor in this country would pay nothing as far as taxes go on whatever they earn.

So I want to make this a very solid point, that the consumption tax is not being debated now. The two-thirds vote certainly is, and I certainly strongly support it.

Mr. CONYERS. Mr. Speaker, I yield 2 minutes to the gentleman from North Carolina [Mr. HEFNER].

Mr. HEFNER. Mr. Speaker, I do not know where to start here. There was a budget that was offered here that supposedly was supposed to get a lot of support, was going to cut Medicare $270 billion, was going to do $240 billion worth of tax cuts. Right now we are not talking about raising taxes on anybody. But it seems to me, if we are going to do something of this magnitude, we would have some hearings on it, especially something as important as amending the Constitution of the United States.

And let us make one thing perfectly clear. We have been sitting here for almost 3 hours, and what we have come down to is the gentleman from Texas has talked about something that is a very frivolous thing in a campaign year, a campaign year, and the gentleman from Indiana said what we have done, we have given the President the line-item veto, but they saw fit to pass everything else in that bill except give the President the line-item veto the authority for this year. We are going to wait until after the election.

□ 2230

Everything is predicated on the November election. The consultants have already been together and said,

> Hey, look, what we are going to do on this amendment tonight: The folks that vote against it, we are going to brand them as big spenders and liberals and don't want to get the balanced budget, and we will have a campaign issue in November.

It is just that simple. They do not particularly care about restrictions on raising taxes.

Nobody wants to vote to raise taxes. I pay taxes. I am a taxpayer. But this is purely and simply about the November elections, about 30-second spots, what we are going to do in November, how we can make the inroads on folks that vote against this irresponsible constitutional amendment. No hearings. Not even the chairman of the committee is here talking about passing this amendment. It is totally irresponsible, and that is basically what it is. Let us look at it for what it is; it is a campaign tool for November, pure and simple. Had it not been there, we would have been gone a long, long while ago.

Mr. CANADY of Florida. Mr. Speaker, I yield 2 minutes to the gentleman from Maryland [Mr. GILCHREST].

Mr. GILCHREST. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, in the landmark case of McCulloch versus Maryland, America's first giant judicial situation, John Marshall wrote that the power to tax is the power to destroy. To be sure, in that instance Justice Marshall was seeking to prevent my home State of Maryland from taxing a Federal bank, but the principle remains. The fact is that taxation, taken to the extreme, can render meaningless the right to property, freedom of contract, or virtually any other freedom.

This amendment simply clarifies that Congress' use of that potentially destructive power—the power of taxation—should be subject to a higher approval standard than that of Congress' other powers as defined under article I, section 8 of the constitution. This amendment would make it subject to the same super-majority requirements used for constitutional amendment, veto override, or treaty ratification.

It is true that the Founders did not intend for taxation to be subject to the same requirements. But it is also true that their standards were adopted prior to the ratification (indeed the proposal) of the 16th amendment. Prior to the 16th amendment, the power of taxation meant tariffs and excise taxes. But the 16th amendment created the income tax which refocused taxation on the livelihoods of individuals. When the rights of individuals to earn a living face potential threats from Government power, there should be a higher legislative standard for government to use that power. The amendment before us creates such a standard.

Mr. Speaker, today many people feel the strain attendant to tax rates which have risen continually over decades. On this day more than any other, our constituents are aware of the potentially destructive power of Federal taxation. I am supporting this amendment to provide my constituents a reasonable level of protection against that. I urge my colleagues to do the same.

Mr. BARTON of Texas. Mr. Speaker, I yield 6 minutes to the gentleman from Arizona [Mr. SHADEGG] who is one of the original sponsors of this legislation and who helped pass similar legislation in the Arizona legislature, which is now in the Arizona constitution.

Mr. SHADEGG. Mr. Speaker, it has been a privilege to be a part of this debate today, but it has been at times a

very sad debate. At times we have heard from the other side that this is simply politics. That is dead wrong. This amendment raises a straightforward issue regarding fiscal responsibility. Should this Congress and this Federal Government be more responsible about spending the money it has?

If you believe it should, then indeed you should vote for this amendment, because simply by making it harder on this Tax Day, 1996, for the government to reach into the pockets of average American citizens and take more money out, we will force discipline on this Congress and we will cause this Congress to be more cautious, more prudent and more judicious in spending the money that we do take from those citizens.

All day long, Mr. Speaker, I have heard the other side talk about this as an attack on the sacred principle of majority rule. Well, bunk. This is not an attack on the sacred rule, the sacred principle of majority rule. Indeed, the very reason for placing it in the Constitution is because Constitutions are designed to protect minorities, to protect minorities against the tyranny of the majority, and indeed in this Nation where now the average American spends more on taxes than on food, shelter, and clothing combined, since the adoption of the 16th Amendment, we have a tyranny of the majority on the issue of taxes over the minority.

Mr. Speaker, the second issue I have heard makes me question whether anyone has bothered to read the amendment. Indeed, all day long I have heard my colleagues on the opposite side decry that they could not do any tax reform, they could not close corporate tax loopholes they could not provide additional funding for Medicare or child care, or for anything that they believed was a worthy cause.

That is dead wrong. I urge them to read the language which was left here because, as written, this measure provides for "revenue-neutral tax reform"; that is, any measure which raised taxes on some but lowered taxes on others could be passed with a simple majority. Indeed, the other point they have made all day is that this is an outrageous debate which is radical, which is politics, which is a public relations ploy, theater and grandstanding.

Let me tell them, they are again wrong, because in 10 States in this Union, an amendment just like this one has already passed. Are they saying that it is radical of those States? If they are, they are telling one-third of all Americans that they live in a State which has adopted a radical grandstanding political theater of an amendment. That is right; one-third of all Americans live in a State which has adopted a tax limitation amendment just like the one before us tonight.

It is not radical, it is indeed a reasonable reform, a reform that two law professors have said would attempt to retrieve the original values of the Constitution, rather than a radical innovation. Let us look at what has happened. In those States which have adopted supermajority, taxes have climbed more slowly than in other States. You would expect that. Spending has climbed more slowly than in States which do not have a supermajority requirement. Those you could predict.

Let us look at the economic effect. We hear a lot of talk about the economy and jobs. In those States which have a supermajority, which have done what we have proposed to do here tonight, the economy has grown at 43 percent since 1980 to 1992. In those States which have refused to do what we do tonight, the economy has only grown at 35 percent. What does that mean? It means that the growth in the economy creates jobs, and indeed the study reveals the same: higher levels of job creation in those States which have a supermajority requirement.

The other side often talks about the importance of creation of jobs. This measure tonight would do more to enable us to create jobs in this Nation than anything else we could do in the 104th Congress. That is why the last fact is rather evident and why the other side hurts, because once examined by those facts, once made real to them, what happens?

A survey result revealed that 64 percent of Democrats support a tax limitation because it creates jobs; that 68 percent of Federal employees support tax limitation. Why? Because they are sick of wasteful spending at the Federal level; that 71 percent of union members who pick up that tab also support tax limitation, and that 73 percent of all Americans support tax limitation. This is indeed an idea whose time has come.

We have a tyranny of the majority in taxes in this Nation. I urge my colleagues to support this reasonable reform to restore the Founding Fathers' intent, and the intent that we should not have a tyranny of the majority over the taxpayers in this Nation.

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

Mr. SHADEGG. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Speaker, I thank the gentleman very much for yielding to me.

Mr. Speaker, is the gentleman aware that in his charts where he indicates the supermajority of States, he includes California and Florida?

Mr. SHADEGG. Mr. Speaker, I believe those are 3 of the 10 States which have supermajority requirements, as does my State of Arizona, enacted in 1992, pursuant to an initiative drive with the support of 72 percent of the electorate.

Mr. CONYERS. Mr. Speaker, then does the gentleman know that in those two States, that the requirement of supermajority does not apply to sales tax, which is the principal means of raising revenue in those two States?

Mr. SHADEGG. It applies to some taxes in various States. They are not uniform across the Nation.

Mr. CONYERS. Is the gentleman aware of that?

Mr. SHADEGG. Certainly I am aware of that. But what we have seen is that in all 10 States, the economy has grown more and jobs have expanded more.

Mr. CONYERS. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, the distinguished chairman of the Committee on Appropriations, the gentleman from Louisiana [Mr. LIVINGSTON], made some comments that need to be rebutted.

During the 40 years that you claim Democrats were running wild, we had Presidents Nixon, Bush, Eisenhower, Ford, and Reagan. We had Republican majorities in the Senate. In many years, in some of those years, we had Republicans with working control of this House, so I think trying to blame this on one particular party, the debt that we find ourselves in, is unfair and inaccurate.

Further, Mr. Speaker, under this President we have reduced the deficit from $290 billion, the highest in history, to $140 billion, which is more than a half, a 50 percent reduction.

Mr. CANADY of Florida. Mr. Speaker, I yield 1 minute to the gentleman from Michigan [Mr. CHRYSLER].

Mr. CHRYSLER. Mr. Speaker, we hear a lot in this debate today about the election year ploy and the campaign ploy of this two-thirds majority. There are some short memories in this body, because it was just last year that we voted on this very issue in this same body. If we want to talk about election year ploys, we would want to talk about the minimum wage. Why did the Democrats not vote for it in 1993 when they controlled all three bodies? They controlled all three bodies and they raised their taxes, but why not minimum wage? Not until the AFL–CIO came to town and the union bosses demanded of the President that he bring this up and make it an issue in this election did they even talk about the minimum wage this year.

Mr. Speaker, I want to support the two-thirds majority of the gentleman from Texas [Mr. BARTON] for any further tax increases in this country.

Mr. CONYERS. Mr. Speaker, I yield myself 45 seconds.

Mr. Speaker, I would ask my distinguished colleague, the gentleman from Michigan [Mr. CHRYSLER], would he not have felt better if a constitutional amendment would have had some hearings in some committee before we brought it to the floor to attempt to send it out to the States?

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

Mr. CONYERS. I yield to the gentleman from Michigan.

Mr. CHRYSLER. Mr. Speaker, we voted last year, I would say to my colleague, the gentleman from Michigan, just last year we voted on the Barton amendment that had a two-thirds provision in it in the balanced budget amendment. Then we did, in fact, vote to have this body have a two-thirds vote to raise taxes last year.

Mr. CONYERS. Mr. Speaker, I would ask the gentleman to check a little bit more carefully. I do not know how long he has seen the resolution that is on the floor. It was only put together rather recently, in remote corners of the Congress. It is different from the one that was debated at the time the he suggested.

PARLIAMENTARY INQUIRY

Mr. BARTON of Texas. Mr. Speaker, parliamentary inquiry.

The SPEAKER pro tempore (Mr. RIGGS). The gentleman will state it.

Mr. BARTON of Texas. Mr. Speaker, there is some confusion or at least concern on our side. I am the sponsor of the amendment, and I was under the understanding that I have the right to close. I would like a ruling on that.

The SPEAKER pro tempore. The manager of the joint resolution has the right to close debate.

Mr. BARTON of Texas. Mr. Speaker, can the manager of the bill yield to me to close on his time?

The SPEAKER pro tempore. The manager of the joint resolution gentleman from Florida [Mr. CANADY], can yield for the purposes of closing debate to any Member.

Mr. BARTON of Texas. Mr. Speaker, I yield the 6 minutes that I control back to the gentleman from Florida [Mr. CANADY] to use as he may wish to; I yield the 6 minutes that I still control.

The SPEAKER pro tempore. The Chair is advised that that would be an appropriate offer, and that the gentleman from Florida [Mr. CANADY] will now control 8 minutes of time.

Mr. CONYERS. Mr. Speaker, I yield 2 minutes to the gentlewoman from Texas, Ms. SHEILA JACKSON-LEE a distinguished member of the Committee on the Judiciary.

□ 2245

Ms. JACKSON-LEE of Texas. Mr. Speaker, I am somewhat like my colleague from Texas who previously spoke as I came to listen to this dabate, recognizing that Congressman BARTON has a sincere commitment to this issue. But I take umbrage with the gentleman from Arizona and his articulation of who is in control.

I think our Founding Fathers in the Constitutional Convention of 1787 were trying to do one thing, and that is to remove the colonies from tyranny. We come today on April 15, 1996, to return them to that same tyranny, and that is to allow a minority to rule.

The constitutional amendment would allow tax increases on one group of taxpayers to fund tax breaks for another group. The Republican leadership has already waived the existing House rule requiring a three-fifths vote to raise taxes on three separate occasions, demonstrating already the unworkability of such a proposal.

I am opposed to this amendment because we find ourselves again coming to the floor of the House to allow a minority to dominate the majority. This is tyranny, simply and purely.

The framers of the Constitution rejected the principal of requiring a supermajority for basic Government functions such as raising taxes. James Madison, one of the drafters of the Constitution, stated that requiring more than majority of a quorum for decision will result in minority rule and the fundamental principle of free government would be reversed.

I am not sure what my Republican colleagues are trying to do but the Houston Chronicle saw it for what it was, political trickery. Of course we want to bring down the deficit, but do we want to bring down the hammer on top of those who can least afford it. Do we want to continue to see an increasing deficit when this Congress is not able to meet the responsibilities of this government?

This amendment is poorly drafted, Mr. Speaker, and I would simply say this is wrongheaded and wrong-directed. This is tyranny. This is not in keeping with the Constitution or that of our Founding Fathers. I ask that we vote this down.

Mr. Speaker, I rise in opposition to the resolution, House Joint Resolution 159, to amend the Constitution to require that any legislation raising taxes be subject to a two-thirds majority vote in the House and the Senate. If this amendment is added to the Constitution, Congress will not have the flexibility that is necessary to meet the important fiscal priorities of our Nation.

This proposal lists only two circumstances under which Congress could waive the two-thirds requirement. Those instances are when Congress adopts a declaration of war, or Congress adopts a resolution stating that the United States is engaged in a military conflict causing a threat to national security.

Even the House leadership understands the practical problems with this proposal because the House adopted a House rule in January 1995, similar to the constitutional amendment. The House rule requires a three-fifths majority to pass any bill containing an increase in income tax rates. On three occasions, the House leadership waived this requirement when considering bills containing such increases such as the Budget Reconciliation bill, the Medicare Preservation Act, and the Health Coverage Availability and Affordability Act.

I also oppose this resolution because it will give a minority of the House and Senate control over tax legislation. Our democratic system of government is based on majority rule. We must not undermine this central concept by allowing one-third of the membership of either the House or the Senate to exercise this power.

This amendment is poorly drafted. For example, the amendment states that legislation containing only a de minimis increase in revenue will not be subject to the two-thirds requirement. The problem, however, is that the term "de minimis" is not defined. Thus, Federal courts would ultimately decide the meaning of this term.

This resolution is not the most effective means of securing a balanced budget, which the majority of Members of the House proclaim is their legislative priority. In some instances, sound fiscal policy may require a combination of spending reductions and tax increases. In many cases, Congress considers legislation that contains such combination. Moreover, if Congress has considerable difficulty raising taxes, it may have to resort to more deficit spending in order to meet the critical needs of the Federal Government.

Finally, this resolution really avoids the key concerns of most taxpayers. They want simpler tax forms and they want their tax dollars spent wisely by eliminating waste, fraud, and abuse. I urge my colleagues to vote against this resolution. Let us get serious about improving the tax system and moving forward on balancing the budget. This proposed constitutional amendment will not help achieve these important goals.

Mr. CANADY of Florida. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio [Mr. GILLMOR].

Mr. GILLMOR. I thank the gentleman for yielding me the time.

Mr. Speaker, I rise in opposition to the joint resolution.

Mr. CANADY of Florida. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. BAKER].

Mr. BAKER of California. Mr. Speaker, these new constitutionalists are certainly fabricating. The Founding Fathers did not allow a tax on income, so why would they need a limitation? They just made it illegal when we had to amend the Constitution. Yet speaker after speaker say the Founding Fathers did not envision a two-thirds vote. They did not allow you to steal from income at all.

And then, oh, but California. Rob the rich. Tax the rich. Soak the rich. We love the rich. Baloney. California allows a two-thirds vote only for all taxes; sales tax, income tax, all taxes. I served in the legislature for 12 years. Do not fabricate, you new constitutionalists. We are not after one group, we are not after another group. All taxpayers should be protected. The rich, the poor, others.

In the 1950's we taxed at a 23-percent level. We are now taxing at 40 percent. Do you think we are undertaxed? Ask the people. Ask the people tonight on the 15th, do you need protection or is Washington out of control? Yes, we are out of control. No, you have done nothing about the deficit. The new majority will protect you if you will keep us, the new majority.

Mr. CONYERS. Mr. Speaker, I yield 5 minutes to the gentleman from Texas [Mr. STENHOLM].

Mr. STENHOLM. Mr. Speaker, I rise in opposition to House Joint Resolution 159, and I want to spend a little time examining closely what exactly we are voting on and what we are not.

On the floor earlier today a blanket statement was made that if you are opposed to this amendment, there is only one reasonable explanation: it is because you are a big spender. I find it interesting, then, that the National Taxpayer's Union vote tally scores me based on my actual votes on appropriation and reconciliation bills as a Member who is a spending cutter.

I also find it significant that the Concord Coalition, one of the most thoughtful, respected, and credible watchdogs of deficit spending, is opposed to this amendment. They wrote, "Enactment of this constitutional amendment would be detrimental to the budget process. In considering how to balance the Federal budget and keep it balanced over the long term, all options for reducing spending or raising revenues must be on the table. No area of the budget, on either the spending or the revenue side, should receive preferential treatment such as requiring supermajorities."

The Center on Budget and Policy Priorities writes, "The Coalition budget represented the most serious of all deficit reduction plans developed in the last year. It contained more deficit reduction over the next 7 years than any other plan. Under the proposed constitutional amendment, the coalition budget would be unconstitutional unless it received a two-thirds vote."

The coalition budget would have balanced the budget in 7 years, with considerably less debt than the reconciliation bill passed by the majority, primarily through spending cuts. In fact over 90 percent of the deficit reduction came from $731 billion in spending cuts. However, it contained a limited number of commonsense changes that would have resulted in increased revenues, hence unconstitutional unless two-thirds of the House supported it.

Does that really make common sense? I believe amending the Constitution is serious business and deserves serious debate. I suspect it is precisely because Committee on the Judiciary chairman HENRY HYDE has the same respect for and concern about amending the Constitution that his committee was never given its proper and vitally important chance to consider the resolution before us on the floor tonight.

The Constitution serves to protect fundamental rights of the minority in circumstances where majority rule does not adequately protect those rights. I believe that the balanced budget amendment is an appropriate addition to the Constitution because it protects the rights of future generations who are not represented in the current political system. By contrast, individuals who are affected by tax increases are represented in the political system and are protected by our system of majority rule. Our children and grandchildren are not.

It is too easy to borrow money. Debt going from $1 trillion to $5 trillion in the last 13 years is evidence that the theory behind the amendment proposed before us tonight has not worked and will not work.

Tax limitation promises have a superficial appeal which completely ignores the realities of the deficit. It is time for us to start eating our vegetables and resisting the dessert, regardless of whether it is Republican tax cut dessert or Democratic extra spending dessert being peddled.

This debate is not about the level of taxes that CHARLIE STENHOLM, JOE BARTON, PETE GEREN, or any other Member of the 104th Congress thinks is appropriate under the current circumstances for the next year or even the next 7 years. This debate tonight is about whether those of us here tonight should place in the Constitution an inflexible rule that will apply for all future generations.

I wonder if this amendment has been fully thought out. I think the debate today proves it has not. There are so many serious unanswered questions about this amendment.

For example, the resolution before us amends the Constitution to require a two-thirds majority vote to increase internal revenue by more than a de minimis amount. Nowhere either in the bill or in any part of the Constitution are there any clues as to what policies would be covered by the phrase "internal revenue" or what "de minimis" might mean.

Later this week the House will vote on a bill to take the transportation trust funds off-budget. However, the airport ticket tax which is supposed to fund the aviation trust fund has expired. Under this amendment, a two-thirds vote would be required to extend this tax. On the one hand, a majority of this body may say that these trust funds deserve special protection, while on the other hand we are voting tonight to prevent Congress from funding the trust fund at all unless two-thirds of this body shall concur.

This bill should be sent back to committee for the further and thoughtful review that any constitutional amendment, before it ever gets to the floor of the House, should have had. Vote "no" on this amendment. It is a very politically popular amendment but it is a poorly thought out resolution.

Mr. CANADY of Florida. Mr. Speaker, I yield 1 minute to the gentleman from Ohio [Mr. BOEHNER].

Mr. BOEHNER. Mr. Speaker, tonight we are having a debate about whether we should amend the Constitution to make it more difficult to raise taxes. If you look back over the last 15 years, over the last 30 years, take that amount of time, it has become clear that whenever Congress got into a bind, they just raised taxes. The fact is many of us believe that it ought to be more difficult to raise taxes and many of us believe that if we are going to balance the budget, we ought to do it by reducing spending and controlling spending and not by increasing taxes. A number of States already have tax limitation language in their Constitutions, Arizona, Arkansas, California, Colorado, Delaware, Florida, Louisiana, Mississippi, Oklahoma, and South Dakota. They all have requirements to balance their State budgets. And so you can see that these States have a tax limitation amendment in their Constitution. They also have a requirement to balance their budgets, and they are doing just fine, and this Congress can do the same thing. The fact is it has been too easy to raise taxes in this Congress. What we are trying to do is to tell the American people, "We're on your side, we're going to make it tougher."

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

The SPEAKER pro tempore. The Chair would remind the gentleman from Michigan that he has 3¾ minutes remaining.

Mr. CONYERS. Mr. Speaker, this is not a good day to have brought this measure to the floor. I would have liked to have recommended that you brought it on April 1 instead of April 15, and that is because this is a grand and elaborate but clear scheme that attempts to fool the American people. It is also, as it has been pointed out, a sham, to protect the wealthy of this country from being taxed fairly. It is a proposal that the House has once earlier defeated as a constitutional amendment and which the majority, the new majority, has on 4 different occasions violated the very principle that they now attempt to enshrine as a constitutional amendment on April 15.

It is a demeaning insult to a Constitution that deals with fundamental rights and liberties, and it is a scam that will fail, and many of its proponents are fully aware of that.

At its heart, the measure before us tonight is designed to ensure that the very wealthiest of individuals and corporations never have to pay their fair share of taxes. And how is that?

Well, consider the tax loopholes for the super-rich that this bill would all but ensure would never be closed. First, it would take a two-thirds majority to make billionaires who make their fortunes in this country, pay their fair share of taxes instead of moving out of the Nation and renouncing their citizenship to avoid such payment.

Second, it would take a two-thirds majority to end tax incentives for companies that open plants overseas.

Third, it would take a two thirds majority to stop the financial markets from permitting the wealthy to defer capital gains.

Finally, it would take a two-thirds majority vote to stop the wealthy from hiding their income from the Internal Revenue Service by using foreign trusts for safe havens.

All of these measures will raise revenues and require a supermajority vote. At the same time, this fraud that we are considering today would allow tax increases with a simple majority vote on lower and middle income Americans in the form of a flat tax or value added tax. Sock it to the middle class is what the logo of this Congress ought to be.

MORE UNFAIR CUTS TO BALANCE BUDGET WILL RESULT

So while the coporations and wealthy Americans lavish in their continued tax subsidies, the middle and lower income Americans will disproportionately suffer deep cuts in their benefits as we attempt to reduce the budget deficit that we all agree must be reduced. The amendment could as a result lead to a raiding of the Social Security and Medicare trust funds in order to balance the budget.

A NEW CONCEPT: MINORITY RULE

This amendment makes a mockery of this body and a fundamental principle of democracy—the principle of majority rules. By proposing this supermajority requirement Republicans are attempting to shift tax writing powers to a minority of Members.

A supermajority vote requirement to increase taxes has already been rejected this Congress during the balanced budget debate. One of the Republican statesmen that I expect to vote against this measure today, our Judiciary Committee Chairman HENRY HYDE said during previous consideration of this concept that "I'm troubled by the concept of divesting a Member of full import of his or her vote."

Well I am more than troubled, I think it is an outrage that Republicans would put forth a constitutional amendment that would so diminish the impact of a Members' vote in a such fundamental area of responsibility.

REPUBLICAN HYPOCRISY

With today's constitutional amendment we need to officially declare the Republican majority "Brain Dead." Barely 1 year into the Republican's new found majority states we are considering a bill—offered by the majority—to limit their own ability to operate by majority rule.

The Republicans have already passed a House Rule that requires a three-fifths vote for tax increases. But despite self-righteous pledges to oppose tax increases, the majority has on four separate occasions waived or ignored this requirement:

First, on April 5, 1995, during the consideration of H.R. 1212, the Contract With America Tax Relief Act, there was parliamentary ruling that the new House rule did not apply—even though the bill increased the maximum rate of tax on sales of certain small business stock.

Second, on October 19, 1995, the House rule was waived for the consideration of H.R. 2425, the Medicare preservation bill which would have imposed additional taxes on withdrawals from Medicareplus medical savings accounts and premium increases on high-income Medicare beneficiaries.

Third, on October 26, 1995, the House rule was waived for the consideration of the fiscal year 1996 budget reconciliation bill and its conference report.

Finally, on March 28, 1996—the very day that the Republicans released the text of the resolution—they waived the House rule for the consideration of H.R. 3103, the health coverage conference report.

To introduce this amendment after waiving the House rule four times, is the absolute height of hypocrisy.

This amendment will transfer significant tax authority to the courts. The wording of the amendment is so ambiguous that many future tax bills would be subject to challenge in court. For example, what does an increase in internal revenue mean? Will the amendment apply to a reduction in tax rates that results in a temporary increase in tax revenues? What about the requirement that Congress can by a simple majority change the ground rules for determining the validity of tax increases?

And so this is a cruel and a patent hoax that I hope will be refused at this late hour of the night on a measure written somewhere other than in the Committee on the Judiciary and which does not deserve to be supported on this night of April 15.

□ 2300

I urge a "no" vote on the measure now pending.

Mr. Speaker, I yield back the balance of my time.

Mr. CANADY of Florida. Mr. Speaker, I yield such time as he may consume to the gentleman from Massachusetts [Mr. TORKILDSEN].

Mr. TORKILDSEN. Mr. Speaker, I rise in support of this constitutional amendment.

Mr. CANADY of Florida. Mr. Speaker, I yield 6 minutes, the balance of my time, to the gentleman from Texas [Mr. BARTON], the sponsor of this amendment.

Mr. BARTON of Texas. Mr. Speaker, as the much maligned author of this amendment, I feel somewhat put upon. Some of the more polite things the amendment has been called tonight are irresponsible, stupid and insane. It has not been called unnecessary. There have been concerns expressed about the procedure by which it has been brought to the floor. I think some of those concerns are valid. But there has not been anything substantively said against the policy we are attempting to adopt.

We have heard some concerns about the language. Yet the rule offered the Democrats an alternative. If they support the policy but do not agree with the specific language, they could have brought a substitute amendment based on the same policy to the floor, and they chose not to do so.

There has been much said about the history and the Founding Fathers and how in 1787 there was no requirement for supermajority vote for a tax increase in the Constitution. That is true. The original Constitution prevented an income tax of any kind. The 16th Amendment in 1913 made income taxes constitutional. So, for over 125 years the tax limitation provision that we had in the Constitution was that all tax bills should originate in the House of Representatives, which was the body closest to the people and the only Federal body always elected by the people.

But beginning in 1913, with the 16th amendment, we began to have income taxes in this Nation. The first income tax was 1 percent on income up to $20,000. In 1913, one-tenth of 1 percent of the American people had to file a Federal income tax, one-tenth of 1 percent.

Since 1913, the average marginal tax rate on the American taxpayer has grown to 39.8 percent of 40 percent, which is a 4,000 percent increase, 4,000 percent increase in the marginal tax rate on the American taxpayer since 1913 and the passage of the first income tax.

Enough is enough. It is time this evening to pass the two-thirds tax limitation constitutional amendment and send it to the other body for ratification so it can go to the States. We do not have a revenue problem in the U.S. Federal Government. Federal revenues in the time that I have been in this body since 1985 have grown an average of $55 billion a year, $55 billion a year revenue growth.

But, unfortunately, spending has grown $59 billion a year, $59 billion a year. We do not have a revenue problem. We have a spending restraint problem.

Fortunately, we have a laboratory called the State governments. There are States that have tax limitations in their constitutions or in their laws, and in those States that have it, there are four things that are true in every State: Their taxes are lower; their taxes go up slower; their jobs increase faster; and economic growth in those States goes up faster.

Interestingly, no State that has tax limitations repealed it. In fact, States are adding to it. There are 18 States

that are considering adding some form of tax limitation to their constitutions right now, the most current one being Nevada, where it is going to be voted on by the voters this November.

Tax limitation for supermajority vote requirements does work. The polls support that. Seventy-three percent of the American people support it. Eighty percent of Republicans support it. Eighty percent of independents support it. Interestingly enough, 64 percent of the Democrats, self-identified support it, low-income support it, with 80 percent. Middle-income people, 77 percent margins. High income people, 64 percent margins.

Those are polls. Let us talk about real people in Innis, Texas, where I live, real people like Jan and Troy Rogers, who own the hardware store. They support it. Real people like Bill and Helen Templen, who own the drugstore, they support it. Single-parent families, like Linda Gillespie, who works for me and has a son and daughter-in-law, married, both working, and a daughter working her way through college, they support it. They support it because they know that the average American family today spends more time working for the government to pay the government the tax revenue than they do for their own family, any other thing in their family budget.

We simply, Mr. Speaker and Members of this body, must pass the tax limitation language this evening, send it to the other body for ratification, send it to the States so that three-fourths of the States may have an opportunity to ratify this.

On tax day, April 15, 1996, it is time to say enough is enough and pass this. If we do not pass it, we are like the movie villain Freddie in "Friday the 13th." We will be back next year on April 15, 1997, until we do pass it. It is not if we are going to pass it, it is when we are going to pass it.

This is not something that takes a long learning curve. In my town meetings when I talk about this, after the first 10 to 15 seconds the people are for it. I have yet to have one person in my town meetings or my public meetings in the last year who say they oppose it, making it more difficult to raise their taxes.

So let us, please, Mr. Speaker, vote for the two-thirds supermajority vote to require a tax increase on the American people.

Mr. FRANKS of Connecticut. Mr. Speaker as a cosponsor of House Joint Resolution 159, I rise in strong support for the passage of this resolution which proposes a constitutional amendment to require a two-thirds supermajority for passage of legislation that raises taxes.

Mr. Speaker, I am of the opinion that the situation of the taxpayer is one of desperation. For years, the American taxpayer has been like a person stranded in the middle of the desert, crawling, straining, praying for the first sight of that precious, random oasis which would provide him with the water to quench his thirst and give him relief.

However, the aching taxpayer suffering in the desert sun has become rightfully cynical. He knows that because of the deception of the heat, he may not be able to believe his eyes. You see, Mr. Speaker, over the past few years, the taxpayer has had to deal with a series of tax-related mirages. For example, he had to deal with a mirage in 1988 that said to him "Read my lips, no new taxes." But that mirage raised taxes on the American people in an ill-advised budget deal in 1990. After that, the taxpayer had to handle the mirage that comes to him in 1992 and promised him middle-class tax relief but then, in early 1993, that mirage went ahead and gave him the largest tax increase in American history. Later, the mirage of 1992 returned in late 1994 to promise that taxpayer a "middle class bill of rights. Predictably, nothing ever came of that.

Thus, Mr. Speaker, for these long years, the hot, blistering sun of big Government has parched the America taxpayer. The taxpayer of 1996 is presently fiscally dehydrated and it will be up to the members of the 104th Congress to come to the rescue—to provide the American taxpayer with the refreshment of fiscal discipline and the parasol of tax limitation.

I think House Joint Resolution 159 is a commonsense solution. This resolution proposes an amendment to the Constitution to require a two thirds majority vote for the House or Senate to pass any legislation which would result in an increase in personal, business, or other Federal taxes—taxes which have a significant effect on our national security.

Mr. Speaker, this type of legislation is nothing new. It is not some prototype piece of legislation which has not even been tested at the small town level. According to the April 15, 1996, edition of the Wall Street Journal, one-third of all Americans live in the 12 States that have tax limitation provisions in their constitutions. The Journal also pointed out that during the years 1980–92, the States that had the supermajority provisions in their constitutions raised their taxes by 102 percent while the States without such a law raised taxes by 121 percent.

Also, I am sure, much to the chagrin of some of my colleagues on the other side of the aisle who have supported huge tax increases in the past, this type of proposal has the support of our employers, the American people. According to the Wall Street Journal, a Polling Co. poll found that 73 percent of the American populace support the idea of a supermajority when dealing with raising taxes. The same poll cited in the Journal also found the supermajority idea is supported by 64 percent of Democrats, 68 percent of Federal employees, and 71 percent of union members. This is not a concept that is only supported by rich and their fat-cat friends. Rather, this thoughtful proposal is supported by a broad spectrum of America. With this knowledge, I know that this proposal can be supported in my district—from the corporate manager in Danbury to the housewife in Shelton, from the teacher in Newtown to the boilermaker in Waterbury, and so on.

Let me be clear—I can respect the arguments of those colleagues of mine who express reservation about passing the constitutional amendment. The Constitution is the most sacred document of our land and it should not be used for momentary whims and passing fancy. But it is my belief, and the belief of a great supermajority of Americans—not just a mere majority, that is amendment is needed to bring an end to confiscatory Government that has gone on for way too long. We need to let the American people take home more of the money they work for and utilize it in the way they see fit.

Accordingly, I fully support this amendment and encourage my colleagues to do likewise. I yield back the balance of my time.

Mr. LIGHTFOOT. Mr. Speaker, I am proud to serve as an original cosponsor of the tax limitation amendment, which would make it impossible to raise the taxes of America's working families without a two-thirds vote of Congress.

It is inconceivable that it requires a two-thirds vote to override President Clinton's veto of our plan to provide tax relief to American families. But in 1993, it only took a single vote majority to enact the largest tax increase in American history.

Prior to Republican control of the House and Senate, history had shown Congress to be reckless and irresponsible with the taxpayers' dollars. This legislation will protect American taxpayers from the tax-and-spend liberals in Congress, who are all too eager to raise taxes and expand the Federal Government.

The 104th Congress has made great strides in rolling back the tide of Government expansion and escalating debt, yet, we need to take every precaution against backsliding. Requiring a two-thirds vote of Congress to raise taxes will ensure a continued commitment to fiscal responsibility.

Mr. GILMAN. Mr. Speaker, though I am weary at attempts to amend our Constitution and the concepts authored by our forefathers, I am concerned that our Nation continues to drown in wasteful Government spending and increased taxes, laying a heavy financial burden upon the backs of our children and grandchildren. Our Nation is great because of the principles espoused by our Founding Fathers and authored in the Constitution. This includes the belief that if you are able and willing to work hard you can adequately provide for your family.

However, Congress continues to ignore this principle and instead chooses to place economic roadblocks in front of working Americans. It is time to reel in the Federal Government's long arm. The Federal Government has been reaching into the pockets of Americans for far too long.

Accordingly, I rise in support of this constitutional amendment to provide a supermajority to raise taxes.

The debate should not be about supermajority rule versus majority rule, but instead about how best to provide jobs, investment, and economic growth for all working Americans.

Accordingly, I urge my colleagues to support this initiative and all measures aimed at providing working families with the ability to succeed in our Nation's economy.

Mr. KIM. Mr. Speaker, I rise in support of House Joint Resolution 159.

After a long, hard winter, it seems that spring has finally arrived. Across the Nation, many cities enjoyed their first warm, sunny weekend in months. In Washington, the cherry blossoms have bloomed, adding beautiful spring colors to the wonderful weather.

Regrettably, millions of Americans didn't get to enjoy this beautiful spring weekend. Instead, many of us were stuck inside doing our taxes.

A wasted spring weekend is a relatively minor annoyance, however, when compared to Americans' overwhelming frustration with the tax system in general. I'll bet that most Americans would endure the hassle of filing taxes with a lot less complaint—if only they felt that the taxes they paid were fair and that their money was spent wisely.

Unfortunately, neither of the above is true. The fact is, Americans pay too much in taxes, and the taxes they pay are all too often wasted.

The statistics are amazing: The average American citizen works well into May for our Government. Think about it: Every dollar that a person earns, from January 1 until several weeks after April 15, will go to pay Federal, State, and local taxes. And that does not include gas taxes, property taxes, and sales taxes.

And where does all of this money go? A great deal of it goes to support worthy Federal programs, such as Medicare, national parks, student loans, transportation, and defense. But too much of it is wasted—to support a bloated Federal bureaucracy, pork barrel projects, fraudulently received welfare benefits, and inefficient or outdated Federal programs.

Is it any wonder, then, that Americans are fed up with paying taxes? Should we be surprised that the American people resent having to pay high taxes, only to see their hard-earned money thrown down a rathole? I don't think so.

With the new majority in Congress, these frustrations are finally being addressed. In fact, one of the primary goals of the new Republican Congress is to reform how this Nation taxes and spends. We have passed a balanced budget bill that would reduce Federal spending by hundreds of billions of dollars over 7 years. We have passed legislation that would reform or consolidate hundreds of wasteful Federal programs. And, we have passed a bill that would have given middle-class individuals and families a substantial tax cut.

The constitutional amendment we are considering today is part of these continuing efforts. The amendment is simple: It would require a two-thirds vote in both the House and Senate to pass a tax increase. Instead of a simple majority vote, it would take 290 votes in the House and 67 votes in the Senate to raise taxes on the American people.

In doing so, this amendment would make it much more difficult to raise taxes—and would finally stack the odds in favor of the American taxpayer. If this amendment is passed, we will never again be faced with a repeat of the 1993 tax debate, in which the largest tax increase in American history was rammed through both Houses by one vote on a party-line basis. Congress would still have the option of raising taxes—but only if a broad, bipartisan coalition agreed that a tax increase was necessary.

In all probability, however, supporters of a tax increase will never convince two-thirds of both houses that such a tax hike is necessary. History bears this point out: During the past 30 years, Congress has passed 16 major tax increases. If this amendment were in effect, 8 of those tax increases would not have been passed. In the 1980's alone, this amendment would have saved American taxpayers nearly $700 billion in increased taxes.

In short, this amendment will force Congress to stop looking to the American taxpayer every time we want to spend more than we take in. Instead, the tax limitation amendment will force Congress to do what we have historically been unwilling to do: Cut spending.

Finally, the most appealing aspect of this amendment is that it will be permanent. By incorporating this bias against higher taxes into the Constitution, we ensure that future Congresses are not tempted to reach into the wallets of the American people. We also ensure that the efforts of this Congress to cut spending and lower taxes are not in vain.

In sum, I strongly support House Joint Resolution 159 because if provides critically needed protection for American taxpayers. It will stack the deck against tax increases and for spending cuts. And, while it won't prevent taxpayers from having to spend another spring weekend doing their taxes, it will at least ensure that they don't have to pay more taxes than are truly necessary.

For these reasons, I urge my colleagues to support this important legislation.

Mr. BEREUTER. Mr. Speaker, this member rises in opposition to House Joint Resolution 159, the so-called tax limitation amendment. Certainly it would be more politically expedient to simply go along and vote in support of a Constitutional amendment requiring two-thirds approval by Congress for any tax increases. However, this Member can not in good conscience cast such a vote.

As this member stated when speaking in favor of a balanced budget amendment to the U.S Constitution, there is a great burden of proof to deviate from the basic principle of our democracy—the principle of majority rule. Unfortunately, this Member does not believe the proponents of this amendment have met this burden.

There should be no question of this Member's continued and enthusiastic support for a balanced budget and a constitutional amendment requiring such. Tax increases should not routinely be employed to achieve a balanced budget. That is why this member supported the inclusion of a supermajority requirement in the Rules of the 104th House which were adopted at the beginning of this Congress. However, to go beyond that and amend the Constitution is, in this Members opinion, an unreasonable and dangerous action.

Mr. PORTER. Mr. Speaker, I rise in opposition to this resolution. Amending the Constitution to require a two-thirds vote to raise taxes may make for good election year politics, but adding a policy-specific supermajority requirement to our Constitution runs contrary to the fabric of the text and is an unwise change that should be rejected.

I speak today, Mr. Speaker, as a very strong opponent of taxes. I believe that our fiscal problems do not result from excessive spending and I do not favor tax increases. During my service in Congress, I have voted against the tax increases that were adopted in 1983, 1990, and most recently, I opposed President Clinton's tax increase in 1993. My record in opposition to increased spending is equally strong and unwavering.

But I think it is instructive to reflect upon the teachings of the Founding Fathers when considering a proposition of this magnitude. Our forefathers founded this nation over 200 years ago in tax revolt. King George III's imposition of huge and unfair levies without the consent of the American colonists led to their rallying cry of "no taxation without representation." The British Crown's impositions, including heavy taxation, were among the principal causes of the American revolution.

Within a decade, in 1787, the leaders of that revolution were writing a new constitution to govern the relationship among the new National Government, the States, and the people. Heavy upon their minds was the power of the central government to tax. Yet, having the opportunity to require supermajorities for the imposition of any tax, they did not write such a provision into the new Constitution.

Indeed, supermajority provisions are found only rarely in our Constitution. In the instances where they are found, there is a particular rationale reflecting the concern of the Framers with the need to maintain checks and balances between the branches of the government and between the two Houses of the Congress. In no case do we find a policy-specific supermajority requirement such as the one that is proposed today.

Supermajority requirements are found in the Constitution in the context of expelling a member of the House or Senate or impeaching the President. Such requirements make obvious sense in that they protect Representatives or Senators espousing a minority viewpoint or a President who is disfavored by a majority of the legislative branch from being purged from office simply because of his or her views.

A supermajority requirement is also found with respect to the ratification of treaties by the Senate. Again, there is a process-based rationale for this requirement. Because the House plays no role in the treaty ratification process, and because treaties are afforded the status of supreme law, the Framers sought to avoid a situation whereby a President in concert with a simple majority of the Senate could utilize the treaty process to make law while circumventing the popularly elected House. The supermajority requirements was imposed as a check on this power.

There is also a supermajority requirement for the promulgation of an amendment to the Constitution. And, again, this is a process based requirement designed to protect the Constitution itself from constant revision.

Perhaps most well known is the supermajority requirement for the override of a Presidential veto. This requirement also relates to the concerns of the Framers about the balance of powers. During debate on the Constitution, it was proposed by some delegates that the President have an absolute veto over legislation that he disliked, with no provision for an override. Other delegates felt that the Chief Executive should play no role in the enactment of legislation and therefore should

have no ability to veto legislation. The two-thirds override provision that found its way into the final version of our Constitution was essentially a compromise between these two views—the President was given the authority to negate legislation adopted by the Congress in order to protect against the potential for rash action by the legislative branch, but if a supermajority of legislators—after reflecting on the President's veto—nonetheless felt that the measure was in the national interest, they could reverse the effect of that veto.

Moreover, Mr. Speaker, the proponents of the resolution that we debate today have overlooked an even more fundamental reason why policy-specific legislative supermajority requirements were eschewed by the Framers. The bicameral composition of the legislative branch itself—with House members serving relatively short terms and apportioned by population and Senate members serving relatively long terms and apportioned by State—was designed to retard the adoption of unpopular or unfair legislation and, in particular, tax legislation The record of the debates of the Framers makes clear that a chief reason why the House was intentionally structured to keep its Members close to the wishes of their constituencies was to deter them from recklessly taxing those people. Equally clear is that the Senate was intended as a more insular and—it was assumed—contemplative body that would protect the small States from tax and other legislation that might be adopted by the House that might disproportionately impact such small States. In short, the bicameral legislature that we have today was fashioned—after considerable debate—to act as a check on both excess and unfair taxation. A supermajority provision respecting taxes was not considered necessary because it was considered redundant of the essential structure of the legislative branch.

Mr. Speaker, earlier this year, we changed the House rules to require a supermajority to raise taxes. I supported that change in the rules because I feel very strongly that, at this time, we should bind ourselves to resolve the present deficit crisis with a focus on the elimination of wasteful and unnecessary Federal spending and the elimination of programs that have outlived their usefulness or are more appropriately the function of the States or local governments. But the resolution before us today proposes to change the text of our Constitution and, in so doing, to bind future generations with respect to the resolution of a problem that we cannot anticipate. To do so is, in my judgment imprudent. And it is also unnecessary.

Mr. Speaker, I believe that the Founders had it right the first time—each of us must stand for election every 2 years and each of us must answer for our votes in this body. Those who vote for increased taxation must answer to their constituencies for such action and, it seems clear to me, that the voters continue to express a visceral dislike of taxes and a strong willingness to turn out of office those who lose touch with this sentiment. Senators also cannot escape the consequences of voting to raise taxes. Indeed, the move to a popularly elected Senate has, if anything, strengthened the responsiveness of the legislative branch to the anti-tax ethos that is found at the core of our Nation's founding and reflected in its central organizational document.

Mr. Speaker, those who propose to amend our Constitution bear a heavy burden to convince the Members of this body and the American people of the propriety of their action. This resolution does not meet that burden.

Mr. COYNE. Mr. Speaker, I rise today in opposition to this proposed amendment to the Constitution. I believe that such an amendment would be unwise.

I am primarily concerned that this amendment will spell the end of majority rule in this country. We will find it much harder to address the many financial problems that we know this country will face in coming years. Under this amendment, one-third of the Senate could block legislation. Conceivably, one-third of the Senate could represent States containing only 10 percent of the country's population. In short, 10 percent of the country's voters could thwart the will of the other 90 percent! That's not democracy.

What would be the effect of such a change in the Constitution? Well, let us just look at some of the close votes of the past. If this amendment had been part of the Constitution in years past, for example, we wouldn't have had the votes needed to pass the legislation that create Social Security or Medicare. If we adopt this amendment, we would find it much harder to close corporate tax loopholes—we can't even muster a majority of votes to eliminate them. I am also concerned that the proposed amendment, if ratified, would produce a Federal Tax Code that is more regressive than the one under which we live today. We could, for example, pass a flat tax or a VAT tax under this amendment, but we could not pass legislation that would reform the current income tax to make it more progressive and reduce the tax burden on working families.

Mr. KLECZKA. Even the Republicans don't really want to live by such rules. We have had a House rule for the last year that requires a three-fifths vote to increase income tax rates. The Republican-controlled House has already waived that rule four times. What are they saying by offering this constitutional amendment—stop us before we tax again? Or are they just offering this amendment as a political gesture that they know will never be ratified as part of the Constitution?

Moreover, this amendment would shift a great deal of control over Federal taxes from Congress to the courts. Under this amendment, anyone would have standing to bring a suit in court. Do we doubt that the courts would be inundated with cases challenging congressional tax legislation? I doubt that this is what the Founding Fathers had in mind.

If this amendment is ratified, it will be much more difficult to balance the budget in future years. In order to reduce the deficit under this amendment, Congress would have to make devastating changes in the programs that serve the needs of the American people—programs like Social Security, Medicare, and Medicaid. I do not think the American people want such an outcome.

We all know that in coming years, Congress will have to both cut spending and raise taxes in order to keep the deficit from exploding. Entitlements will have to contribute their share. But this amendment would result in paralysis and massive deficits that would cripple the country, impose unnecessary suffering on senior citizens and the poor, and choke off economic growth.

I find it especially disturbing that the House is considering this amendment without adequate hearings and consideration at the committee level first. Amending the Constitution is a major decision. Such a step deserves careful consideration. And yet we have had—what?—one hearing at the subcommittee level on this proposal. It hasn't even been considered by the full Judiciary Committee.

I urge my colleagues to reject this hasty and ill-advised amendment.

Mr. Speaker, I rise in opposition to House Joint Resolution 159. This constitutional change is unnecessary and misguided, and I urge my colleagues to oppose it.

This initiative strikes at the very heart of our constitutional democracy, eroding the principle of majority rule. The Constitution requires a supermajority only in extraordinary circumstances, such as a veto override or impeachment of a president. This resolution would give a small minority of this House the power to block critical bills—even responsible legislation designed to balance the federal budget—if you contain a tax increase. If Congress can declare war by a simple majority vote, surely we can pass a tax bill by the same margin.

I also foresee difficulties defining a tax increase. Earlier this year, the Republican House majority passed a bill reducing the earned income tax credit, a tax credit for our nation's working poor. That measure effectively increased low-income Americans' taxes by reducing their credit. However, the GOP did not consider that bill a tax increase. It is likely we will see similar controversies. If Congress eliminates an unjustified tax deduction, thereby resulting in a tax bracket change for an individual or a corporation, does that constitute a tax increase? Would it require a supermajority to right this hypothetical wrong? The answer is uncertain as this legislation is currently written.

The resolution's provision waiving the two-thirds requirement for "de minimis" tax increases is also troublesome. By failing to define a "de minimis" increase, the resolution abdicates responsibility for developing this guideline and turns it over to the federal courts. The courts will undoubtedly spend many years and thousands of taxpayer dollars delineating precisely what is meant by this term.

There are other technical difficulties with the measure. It does not define the time period over which a tax increase must be estimated in order to trigger the two-thirds requirement. Similarly, this amendment does not address situations where bills projected to decrease tax revenues actually increase taxes. Closing loopholes in the tax code could also be almost impossible if these efforts were subject to a two-thirds vote on the House.

Mr. Speaker, I would also note that the Republican-controlled House has not even been able to live under its own rule that income tax increases must be passed by a three-fifths vote. This rule has been waived three times in this Congress, allowing income tax bills to pass by a simple majority. If the GOP violates

the spirit of its own rules, what will prohibit it from circumventing a Constitutional amendment in a similar way?

House Joint Resolution 159 is the fourth attempt by this Republican Congress to amend the Constitution—the most ever since the post-civil war period. I urge my colleagues to vote against this resolution.

Mr. GILLMOR. Mr. Speaker, I rise in reluctant opposition to the tax limitation amendment offered by the gentlemen from Texas. I commend them for their hard work on this effort, but in the end, I believe this proposal is bad public policy.

Let me make it clear that I am opposed to a tax increase on the American people. I think the overall tax burden of the average American family is too large, and tax relief or tax reduction is appropriate. I believe this amendment is well intentioned, but as we all know, the "road to Hell is paved with good intentions."

Regrettably, this vote and the way it came about is an example of ideology prevailing over common sense. I do not believe that higher taxes are a panacea to our budget problems. I would support a lower tax burden. As Ohio Senate President, I was responsible for pushing through the largest income tax cut bill in Ohio history. This was accomplished even though we had to contend with a Democrat-controlled House and Democrat Governor who opposed that tax relief bill. Americans, of all backgrounds, deserve to have more money in their pockets to spend the best way they know. Government should not be in the business of making decisions that working families can make for themselves. The average family now pays more in taxes than for food, clothing, and shelter.

Let me briefly set out four reasons this proposal should not be approved tonight. First, changes to our fundamental charter, the U.S. Constitution, should not be undertaken lightly. The justification for this proposed change has simply not been adequately made. When the Constitution was first written, Congress was given the authority to raise revenues by a simple majority vote. This amendment places new hurdles on our jurisdiction, putting philosophy over reality.

Second, I want to remind the members that at the beginning of the 104th Congress, the House rules stipulated that new revenue provisions needed to be approved by three-fifths majority. This rule, though, has been waived repeatedly. Very simply, it did not work as intended, so it was waived. However, the Constitution cannot be waived.

Third, the practical effect of this type of provision if it had been in effect in the past would have prevented some of the most significant progress we have achieved as a nation. Specifically, I am referring to the National Highway System, our magnificent interstates that we all voted to renew earlier this Congress. These roads have given us the greatest transportation system in the world, and added hundreds of billions of dollars to our economy. If this Tax Limitation Amendment had been part of our Constitution when the Highway Act was originally voted on by the Congress, this system would not exist today. Congress first passed a gas tax to pay for this highway system, one of the greatest public works projects in our history, with more than two-thirds of House members voting for it. Yet, reauthorizing the tax would have never happened because in 1959 it would have failed by a vote of 243 to 163, less than two-thirds.

Fourth, the procedures used here simply fail to meet the minimum standards we should adhere to in voting on a constitutional amendment. There have been no meaningful hearings on this proposal. In fact, the current version was just recently drafted, behind closed doors, with no opportunity for the public, or even most Members, to examine it.

Mr. Speaker, I urge my colleagues to stand up for sound, reasonable, and practical public policy and oppose this amendment.

Mr. LANTOS. Mr. Speaker, this Congress—now under new management, as my distinguished colleagues on the other side of the aisle have repeatedly emphasized—has been long on rhetoric and extremely short on accomplishments. In the first session, we had the largest number of recorded votes in recent memory—and the fewest number of bills passed in recent memory. I hasten to add, Mr. Speaker, that the limited accomplishments of this Congress' new management had little to do with Presidential vetoes. It has a great deal to do with poor quality legislation and extremist legislation that has not found support even among the Republican majority in the other body. It has a great deal to do with partisan posturing while ignoring the importance of bipartisan cooperation and good government.

Today, Mr. Speaker, we are once again engaged in another exercise of symbolism rather than substance as we consider House Joint Resolution 159/169, to require a two-thirds vote in both houses of Congress in order to increase tax revenues. No one likes to pay taxes, and no one likes to pick up the tab after lunch. But just as there is no free lunch, taxes are the price we pay in order to participate in the benefits of civilized society.

Today is April 15—tax day, the deadline by which all of us must file our Federal income taxes. In order to take advantage of media interest in taxes, our colleagues on the other side of the aisle are bringing to the floor a bill which does little to deal with the burden of taxation, a bill which does little to deal with the issue of fairness in taxation. Once again we are seeing this House posture rather than perform. We are taking time today to consider an ill-conceived and ill-drafted resolution that will go nowhere, a resolution that this House should not even take the time to consider, a resolution that is so flawed that it should not be adopted.

Furthermore, Mr. Speaker, the majority on the other side of the aisle has already had a super majority requirement, which was adopted last year as a rule of the House. The House Rules require a three-fifth vote for any tax increase. But have they followed their own super-majority rule in the House? Since the adoption of the House Rule 16 months ago, the House majority has waived the rule three times for specific legislation. The hypocrisy is appalling, Mr. Speaker.

House Joint Resolution 159/169, which we are considering, has a number of serious flaws. First, it is a violation of the fundamental principle of majority rule that is a the heart of our democracy. Adopting this amendment would make democratic decision making more difficult. Requiring super majorities, in all but the most weighty and most fundamental issues, simply makes it even more difficult to govern. The paralysis we have seen in this House and between the House and the Senate over the past year would be considerably compounded by adding this new requirement.

Second, this amendment would erect serious new barriers to deficit reduction. If we are to deal with our Nation's deficit we must have both spending cuts and revenue increases in the years ahead. The requirement of a two-thirds vote for any legislation that raises revenues would make it difficult, if not impossible, to adopt legislation that balances program cuts and increased payments for government services. Under this amendment, even an increase in the fee charged visitors to our national parks would apparently require a two-thirds vote of the House and the Senate. A cut in the capital gains tax rate, according to official projections would result in an increase in tax revenues for the first few years, this it appears that a reduction in the capital gains tax rate would therefore require a two-thirds vote. The awkwardness of this requirement is obvious.

Third, as with so much of the legislation that we have considered in this house over the past sixteen months, this provision will be of much greater benefit to the wealthiest and most powerful Americans at the expense of the rest of our people. As the Center on Budget and Policy Priorities, which has expressed its strong opposition to this resolution, stated: "A two-thirds majority would be required to curb special interest tax benefits, which disproportionately benefit those at high income levels. By contrast, a simple majority vote would be required to cut federal programs, which primarily benefit the middle class and the poor."

The Concord Coalition—the respected bipartisan organization established four years ago by former Senators Paul Tsongas of Massachusetts and Warren Rudman of New Hampshire "to eliminate federal budget deficits and build a sound economy for future generations"—has expressed its opposition to this constitutional amendment. The Concord Coalition, which has taken fiscal responsibility very seriously, opposes this resolution and has announced that it will include this vote as a key vote for its 1996 congressional scorecard.

Mr. Speaker, there are a number of serious and thoughtful analyses that have been made in connection with the legislation that we are considering today. The Washington Post published an excellent editorial on April 12 entitled "Showboating on Tax Day" which raises very serious and thoughtful objections to the bill we are considering House Joint Resolution 159/169. As the Post argues: "Issues like this ought not be raised to the constitutional level. If evaded, the amendment would breed contempt for the Constitution. If adhered to, it would weaken the government whose resolve it purports to strengthen." Mr. Chairman, I ask that the text of this Washington Post editorial be included in the RECORD at the conclusion of my statement.

Mr. Speaker, this House has been too long on symbolism and too short on legislation that is meaningful to the American people. I urge

my colleagues to oppose this symbolic resolution before us today. Let us move on to the serious and important business of the people.

SHOWBOATING ON TAX DAY

The House is scheduled to vote next week on a constitutional amendment requiring two-thirds votes of both houses to pass tax increases. It's a bad idea whose effect would likely be not so much to limit tax increases as to raise their political price by giving minorities the power to hold the majority hostage. The Republicans are staging the vote to demonstrate on tax day their devotion to lower taxes and smaller government. They should find a better way to do that than to turn the Constitution into a political toy.

The amendment is being advanced in the name of fiscal responsibility, but the effect would be to make a responsible fiscal policy harder to achieve. The budget is structurally out of balance now. It can only become more so as the baby boomers begin to retire; the day is not that far off. Aid to the elderly, mainly in the form of Social Security and Medicare, already makes up close to half the budget for other than interest and defense.

Left to itself, the share will increase; to protect the rest of government and keep the deficit from rising, there will be pressure to cut the net cost of these programs. If all the cost cutting takes the form of benefit reductions, the standard of living of the elderly, so painfully raised in recent years, will be adversely affected. For the sake of social equity as well as fiscal responsibility, there will need to be tax increases as well as benefit cuts. In the face of a problem as fundamental as this, why, except for misplaced ideology, make the decent solution harder to achieve?

The amendment tries to use a change in procedure to achieve a particular policy result. All kinds of questions of interpretation instantly arise. The Republicans want to cut the capital gains tax. As part of the argument in favor, they say that at least at first it will add to revenues rather than reduce them, because it will generate more sales of assets. If you have cut that supposedly adds to revenues, does that mean you need a two-thirds vote in both houses, or will simple majorities suffice? Over what time periods do you measure? Who does the measuring, and what if they turn out to be wrong?

Issues like this ought not be raised to the constitutional level. If evaded, the amendment would breed contempt for the Constitution. If adhered to, it would weaken the government whose resolve it purports to strengthen. If it's hard to assemble majorities for responsible budgets, how much harder to assemble two-thirds. This is a showy proposal meant to make its supporters look good on tax day. What it does instead is make them look like another bunch of pols in search of another gimmick. The House should vote this amendment down.

Mr. BUNNING of Kentucky. Mr. Speaker, this is the day that comes each year when the American people are reminded of the cost of their government. And this government ain't cheap.

The Federal budget has grown to more than one-and-a-half trillion dollars and that is a cost paid directly by working Americans. It has become too easy to sit here in our Nation's Capital and spend other people's money.

Other people's money—money that they earned through work and effort—should be spent with care and only for what we absolutely must have.

But, unfortunately, Jefferson, was right when he said that no one spends someone else's money as carefully as he spends his own.

If the amendment before us today is approved, it will make it more difficult for the government to spend other people's money in such a callous way. In a word, it will make us more accountable.

Those who like to call the ones who earn the money greedy because they want to keep more of it for their families should think again.

In my books, the greedy ones are those who sit here in Washington demanding that the workers hand over more and more of what they earn.

Mr. Speaker, our fiscal problem has not been a lack of revenues but too much spending of other people's money. The time has come for us to make it more difficult to take and spend money earned by the American worker.

Higher taxes and more spending are not signs of virtue. In fact, they are signs of a government grown too fat. To paraphrase President Reagan, you cannot measure compassion by the size of the Federal budget.

I think that it is time for some compassion for the folks who have been paying the bills around here.

The American taxpayer deserves a system that makes it at least as easy to cut spending as it is to raise taxes and this amendment will do that. It levels the field so that the easy answer is no longer to stick it to the taxpayer one more time.

If taxes grow more slowly and spending must be cut so that the government lives with its means, that is a virtue. It may help to curb the vice of spending more and more of other people's money.

I urge my colleagues to support the American Taxpayer and support the ⅔ majority rue for tax increases.

Mrs. SMITH of Washington. Mr. Speaker, I join my colleagues today in supporting this supermajority tax increase amendment. A year ago, my freshmen colleagues and I led a fight in the first round of an effort to bring taxation under control. Since coming to Congress a little over a year ago, I have seen first hand how difficult it is to cut Federal spending. One of the best disincentives we can use is to make raising taxes that much more difficult. The American people are no longer willing to give the benefit of the doubt to Congress. Our tax and spend addiction has taken over efforts for credible discussions about deficit reduction. As a grandmother of six young children, I only have to think of their future tax rates to realize what will happen if we do not get Federal spending under control. We have no moral right to depend on tax increases in the future to fund the Federal spending today.

Requiring a two-thirds supermajority for a tax increase is part of sound economic growth. States with supermajority requirements saw their economies grow 43 percent between 1980 and 1992. States without such requirements lagged behind at 35 percent. Taxes also grow more slowly in States with a supermajority requirement. In the State of Washington, we have such a supermajority and it has done much to increase the level of accountability between the taxpayers and their elected officials. It allows hard working Americans to invest their dollars in the economy whether it be through a home purchase, a college education, or simply providing a better life for their families.

I ask my colleagues today to join with me in supporting this two-thirds supermajority tax legislation. We can do no less for our children and grandchildren.

Ms. DUNN of Washington. Mr. Speaker, I rise today in strong support of House Joint Resolution 159 and urge my colleagues to approve this common sense and responsible measure.

The truth is, Mr. Speaker, that it is simply too easy to raise taxes.

Currently, it is easier to increase taxes than it is to cut them. In 1993, President Clinton and the Democratic-controlled Congress enacted the largest tax increase in the history of our great Nation by a 50-percent-plus-one vote. And that is exactly how it happened. They passed the largest increase in the history of the United States by a one-vote margin.

Democrats placed this burden squarely on the backs of the American people. Those tax increases took real money out of the pockets of real American families.

In 1995, Republicans worked to reverse the largest tax increase in the history of our Nation. Last fall, we passed and sent to the President a measure that would have included tax reductions to offset the economic burden placed on every American by the 1993 tax increases.

Unfortunately, the President vetoed that relief and in order to override the veto and pass tax cuts the Congress needed to achieve a two-thirds majority. It is simply too easy in this country to take more money out of the pockets of the citizens. Simple majority for a tax increase—and two-thirds majority for tax cut. This must stop. This Republican Congress will no longer allow elected officials to take the easy way out.

During the past 30 years there have been 16 major votes to increase taxes. Of those 16, only 8 would have passed if the two-thirds majority requirement had been in place. Since 1980, the taxpayers would have saved $666 billion had the tax limitation amendment been in effect.

Around the country States have also been forced to reform their spending, and budgeting priorities because of deficit-spending. The most successful method used by States has been some type of tax limitation. One-third of all Americans live in a State with tax limitation in their constitutions. Mr. Speaker, the Federal Government has learned a number of lessons from the States, and this is no exception. States that have enacted a tax limitation have experienced expanded economies, reduced spending and a better way of life for its citizens.

Mr. Speaker, I would hope that my colleagues on the other side of the aisle will at the very least listen to their constituents. The American people support tax limitation. Seventy percent of the American public support amending the Constitution to require a two-thirds vote to raise taxes.

The power of the Federal Government to tax is an enormous responsibility. If used unwisely this power will lead to a lower standard

of living for all Americans. With enactment of this amendment, no longer will tax increases become the preferred method of dealing with our Nation's finances. Ultimately, this measure will foster good government by forcing us to reevaluate commitments and prioritize spending. I urge my colleagues to support House Joint Resolution 159.

Mr. McDERMOTT, Mr. Speaker, in the words of Seattle Time's columnist Terry Tang, today's debate is best summed up as "A Republican Floor Show Only a Cynic Could Love."

The proposed constitutional amendment is so gravely flawed it should not be debated on the floor of the House of Representatives. Instead of working to finish passages of this year's budget, or work on serious legislation, the Republican leadership has decided to waste valuable legislative time debating a bill they know will never pass.

Today's vote is nothing more than a cynical publicity stunt to pander for political votes. Today's vote to amend the Constitution to require a two-thirds vote to raise taxes is a perfect example of Republican legislation which has nothing to do with governing and everything to do with bumper-sticker politics.

While these sound-bite tactics play well in campaign ads, they fail the test of serious legislation. When will the Republican Party learn that there is more to legislating than trying to add a campaign slogan to the Constitution?

When the Republicans took control of the House in January 1995, one of the first things they did was pass a House rule requiring a three-fifth's vote to pass any legislation that included an increase in income tax rates. The Republicans touted the passage of this rule as a sign of their commitment to not raise taxes on Americans and balance the budget through spending cuts alone.

Have the Republicans lived up to their lofty promise not to raise taxes on Americans? The answer is an emphatic "No." On four separate occasions, the Republican leadership brought bills to the House floor for a vote which included increases in income tax rates on working Americans.

How do we know for sure that at least four Republican bills included tax increases?

Simply because they already have voted to waive their new rule four times in order to ensure passage of their legislation by a simply majority vote, and not the three-fifth's majority vote that their own House rule required.

Let me make this clear—the Republicans have ignored their own rule, they have voted on and passed four separate pieces of legislation which increased income tax rates on the American people, in direct contradiction to their widely publicized promise not to raise taxes.

The Republicans have clearly not been able to live according to the terms of the House rule they adopted for themselves at the start of this Congress.

The Republicans now want all of their minions to march down to the House floor today and ram an amendment through the House without ever taking the time to study what such an amendment might actually mean to the American people.

If the American people, and my colleagues across the aisle were to take the time to actually think about this bill, people would clearly see that such an amendment would have significant consequences on our country's future.

Passage of this amendment to the Constitution is nothing more than giving Speaker GINGRICH another tool to undermine the working men and women of America.

This amendment is structured to protect corporate welfare in the Tax Code, reduce spending on education and the environment, weaken Medicare and Medicaid and threaten the future of Social Security.

The latest budget proposals put forth by the President and the Republican leadership include provisions which would close corporate tax loopholes in the Tax Code to help reduce the deficit. Yet, the Republican leadership, with this amendment, is signaling to corporate American that they are in the clear from here on out because this amendment would make it almost impossible to close any tax loopholes for deficit reduction.

Why? Because the requirement for a two-thirds majority would not only apply to measures to raise taxes, but also to measures to cut unproductive tax expenditures that grant subsidies to select industries.

The amendment was drafted this way, despite the fact that a recent CBO study found that over half the corporate subsidies the Federal Government provides are through the Tax Code. Closing tax loopholes is often hard enough by a majority vote requirement—to constitutionally require a two-thirds vote of Congress to do so would be impossible.

The Republican party evidently would rather balance the budget on the backs of working men and women than require corporate America to contribute its fair share to deficit reduction.

It shouldn't be surprising to anyone to learn that this amendment is biased against average families and the poor.

Most Government programs that benefit working Americans, like Social Security, school loans, unemployment insurance and food stamps, to name a few, come from the spending side of the budget.

In contrast, wealthy individuals and corporations tend to receive benefits through the Tax Code. Because this amendment makes raising revenue for deficit reduction through the Tax Code very difficult, the wealthy and powerful are more easily able to preserve their Federal Government benefits.

Most distressing is that this amendment makes clear that the Republicans have no commitment to preserving Medicare or Social Security for future generations.

This amendment would prevent Congress from asking beneficiaries of these programs who have high incomes to pay for more of the Government benefits they receive.

The Medicare bill which the Republicans passed, would have increased the Medicare part B premiums for beneficiaries. Under today's amendment, it would not be allowed without a two-thirds vote.

Whether raising premiums is necessary or not, Congress needs the flexibility to be able to take actions such as increasing premiums or means testing Social Security benefits if a majority of Representatives think it is necessary for the continued financial integrity of these programs.

Amending the Constitution should not be taken lightly. It is disconcerting to know that bills we will be voting on later this evening on the suspension calendar will have undergone substantially more scrutiny than this proposed amendment.

Today's amendment has never had a hearing before either the Constitution Subcommittee or the full Judiciary Committee. This legislation has not been marked up nor has a report on this bill been filed.

Trying to amend the Constitution of the United States with a Republican Party campaign slogan is irrefutable evidence of how little respect the Republicans have for our Constitution.

For any Member to vote for legislation which has undergone so little scrutiny, let alone a constitutional amendment which will affect the lives of every American would be a serious mistake.

For this House to vote on such a flawed amendment is a disgrace to the institution and an insult to the Nation.

Mr. MARTINI. Mr. Speaker, I rise today in support of the American taxpayer and in support of this historic amendment being considered by the House of Representatives.

House Joint Resolution 159, the tax limitation amendment, will require a two-thirds supermajority vote of the Congress to raise Federal taxes.

Mr. Speaker, this amendment is necessary because the average family of four pays about 38.2 percent of their income in Federal, State, and local taxes. More than 3 hours of every 8-hour workday are dedicated to the tax man.

To put it another way, the average American works from New Year's Day to May 6 just to pay off his or her tax burden.

We believe that Americans are taxed too much, not too little. We also believe that individuals and families can better decide how to spend their money than Uncle Sam.

Unfortunately, most Americans are scared, they are feeling squeezed by falling wages and mixed signals on status of the economy.

People are anxious about their economic future and job security. In New Jersey, we see corporations like AT&T laying off thousands of employees and the Thomas' English Muffins plant closing their doors in Totowa.

Unfortunately, millions of working families gather around the kitchen table each week and wonder why it is they can't seem to make ends meet. They work longer hours, they take second jobs, but they feel like they are running in place.

In his State of the Union speech, President Clinton stated "our economy is the healthiest it has been in three decades." The President proudly pointed to statistics from the Department of the Treasury as well a robust year on Wall Street.

However, someone forgot to tell the President to check with middle-class America because he has failed to recognize the importance of what we refer to as the "Clinton Crunch."

Secretary of Labor, Robert Reich, likes to point out that real wages for the median worker have fallen 4.6 percent since 1979. What he doesn't tell the American people is that half the wage decline has occurred under the Clinton administration.

In fact, the only period of sustained wage growth in the last 17 years came during the Reagan administration. You may recall former President Reagan advocated a policy of smaller government, lower taxes, and less intrusion into the lives of Americans. Sound familiar?

Mr. Speaker, we don't blame workers for falling wages, we simply believe that they are not being given the necessary tools to compete in the high-technology economy of the 1990's.

Productivity is stagnant because the rate of investment in new equipment in only half of what it was a decade ago.

Investment has been curtailed because our savings rate is low.

American families are not saving as much because Federal taxes are at an all time high.

We must provide working families with tax relief, that is what today's amendment is all about. If Congress wants to raise taxes it is going to require a two-thirds vote of this legislative body.

One-third of the States currently have their own form of the tax limitation amendment and not surprisingly those States had lower taxes, more economic growth, and more job creation than States without a tax limitation law.

Mr. Speaker, the facts are clear, tax relief benefits working families and working Americans. In fact, 74 percent of the proposed $500-per-child family tax credit will go to families making less than $75,000 a year.

Put another way, the $500-per-child tax credit means families earning less than $25,000 will no longer pay Federal taxes, those earning $30,000 will have 48 percent of their Federal tax liability wiped out.

With regards to capital gains tax relief, an IRS analysis of 1993 tax returns found that 77 percent of the tax returns reporting capital gains were filed by taxpayers with adjusted gross incomes of less than $75,000; 60 percent had adjusted gross incomes of less than $50,000.

Lower taxes benefit all Americans, not just the wealthy.

Last year Congress passed a plan to relieve some of the burden on the middle class. We passed a $500-per-child income tax credit for middle-income families, we passed capital gains tax reform, and we passed IRA self-loan legislation.

This Congress wants you to earn more and keep more of what you earn. Had our balanced budget been signed into law, instead of being vetoed by President Clinton, families could look forward to doing more with the money they earn.

Today, as Americans go to the post office to mail their tax returns, we will vote on a constitutional amendment to require a two-thirds supermajority to raise taxes.

If the two-thirds rule had been in existence in 1993, we would have stopped President Clinton's tax hike, and American families would now be paying less for gasoline, small businesses would be creating more jobs, and our retired parents and neighbors would be paying less in taxes.

A tougher standard to raise taxes will ensure that taxes are raised only when there is a broad consensus and when it is absolutely necessary.

This safeguard will help keep spending in check because Congress won't be able to take the easy way out and raise Federal taxes.

Mr. Speaker, House Joint Resolution 159 is another example of how the new majority in Congress is fulfilling its promises and making a difference to the American taxpayer.

Mr. WATTS of Oklahoma. Mr. Speaker, Americans understand the necessity of paying bills, balancing checkbooks, and living within their means. It is unfortunate that Americans must struggle to make ends meet, but their Government does not understand that concept.

The current Tax Code, with its high marginal rates and thousands of pages of rules, regulations, and redtape, poses a formidable barrier to economic growth. Tax reform must move toward making the Tax Code more user friendly and create incentives for savings and investment.

America's voters sent Washington a message in November 1994—just as Americans balance their budgets, so should the Government. This Congress has made fiscal responsibility the hallmark of our legislative agenda. We passed the Balanced Budget Act of 1995, which included a tax reform package, but unfortunately, the President vetoed it.

Today, millions of Americans will pay the Federal Government their share of the tax cut that the Republican Congress promised, then passed, and that the President promised, then vetoed. The Congress passed this tax cut because we believe the people who earn the money should keep more of what they earn, so they can do more for themselves, their children, their churches, and their communities.

For too long, Congress denied its responsibility by using tax increases to cover up its own lack of political will to make tough budgetary decisions. Because Federal benefits tend to be targeted at specific groups, special interest groups consistently come together to effectively lobby for more spending. Taxes, on the other hand, are spread among many millions of working Americans who don't hire Washington lobbyists.

Limiting the ability of Congress to raise taxes will force Congress to set real budget priorities. To safeguard our children and grandchildren from a return to the profligate ways of the past, of tax and spend, and spend and tax, we must enact a tax limitation amendment that ensures congressional accountability for the taxpayers' money.

My home State of Oklahoma has had a tax limitation on its books since 1922. It also has a balanced budget law. In Oklahoma any new tax must be submitted to a vote of the people of the State unless the tax receives a three-fourths supermajority of both the State house and the State senate. I wonder how many new taxes or tax increases would pass if they required a two-thirds supermajority or were submitted to a vote of the American people?

Mr. WELLER. Mr. Speaker, I come back to Washington today after an important district work period. I say important because with tax day approaching, and now finally here, I heard time and time again from constituents who are overtaxed. As a result, they find it very difficult to save for retirement, for a down payment on a home, and for a college education for their children

The American people aren't dumb. They know all to well that the largest obstacle to their personal prosperity is an out-of-touch Government that spends without restraint and looks to the taxpayers to bail it out after the fact.

Some in this Chamber may have forgotten that President Clinton's 1993 tax hike was passed out of this body by a single vote. I am here to tell you that the people of the 11th district haven't forgotten that vote that enacted the greatest tax increase in the history of our Nation, no, the history of civilization. My constituents, who have been squeezed by this additional tax, know all to well what $1,100 in additional taxes has meant for them. This was the single largest contributing factor to the doubling of the American tax burden from $2,300 in 1980 to $4,800 in 1995. According to the Census Bureau, household incomes were actually lower in 1994 than they were when Bill Clinton took office in 1992 and there is no evidence to suggest that they have risen since then because economic growth has been so slow.

That is why I am proud to come to the well today as a cosponsor of this historic legislation to bring some accountability to the Halls of Congress. The American people support making it more difficult for Congress to raise taxes. They ought to * * * Currently, one third of all Americans live in a State with a tax limitation in the Constitution. These citizens know first hand what a tax limitation amendment can do.

In States with a tax limitation taxes grow at a slower rate. This slower rate means that citizens in those States have a fighting chance to get ahead and to save. Economies and employment also grow at faster rates in States that have tax limitations.

Mr. Speaker, every year tax freedom day gets later and later. Currently, Americans need to work until May to pay off their yearly tax burden. Today, we have an opportunity to end this insanity. I urge my colleagues to bring accountability to Congress and freedom to the American taxpayer by passing this important tax limitation amendment to the Constitution.

Mr. EWING. Mr. Speaker, taxes in America are too high on working men and women and their families. Today the average American family pays 38 percent of their income in taxes to local, State, and the Federal Government. That means a family with an income of $25,000 a year only takes home $15,500 to spend on their families.

These high taxes not only take money away from families, they also hurt our Nation's economy and slow its growth which means fewer jobs for Americans. The Joint Economic Committee released a study that shows of the States that have raised income taxes these States lost nearly 200,000 jobs and unemployment rose by 2.3 percent. Conversely, in States that cut income taxes nearly one million new jobs were created and unemployment rose by only .3 percent.

Over the past 30 years there have been 16 major votes to increase Federal taxes on Americans. Had a super-majority requirement been in place only 8 would have become law. In the 1980's alone, had the tax limitation amendment been in place taxpayers would have saved $666 billion. The past 30 years shows that the Federal Government can not control its addiction to taxation.

The 104th Congress is conscious of the high tax burden on Americans, just as past

Congresses have not been afraid to raise taxes. I therefore support this constitutional amendment because raising taxes is too harmful to our economy, employment, and takes money away from American families. This amendment should be considered as a comparison to the balanced budget amendment and both amendments should be sent to the States for ratification.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. All time for general debate has expired.

Is there a Member intending to offer the amendment made in order under the rule? If not, pursuant to House Resolution 395, the previous question is ordered.

The question is on engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. STENHOLM

Mr. STENHOLM. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the joint resolution?

Mr. STENHOLM. I certainly am, in its current form.

The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. STENHOLM moves to recommit House Joint Resolution 159 to the Committee on the Judiciary with instructions that the Committee conduct hearings and a necessary study on the joint resolution.

The SPEAKER pro tempore. The gentleman from Texas [Mr. STENHOLM] is recognized for 5 minutes in support of his motion.

Mr. STENHOLM. Mr. Speaker, the debate tonight has been a good debate. Members on both sides have made very good and relevant points. However, I believe it has now been clearly demonstrated that much more work remains before this amendment should be sent to the other body. If I have learned anything over the many years that we spent in bipartisan work on the passage of the balanced budget constitutional amendment, it is a tremendous respect for every significant single word that goes into the Constitution of the United States.

The constitutional amendment bipartisanly worked on over the years underwent a great deal of scrutiny both in the public arena and in committee hearings. The amendment evolved and improved because of that scrutiny. We have seen an alarming abuse of the committee review process during this entire Congress, but never so blatantly as with this constitutional amendment.

For people who revere the history of this Nation, the aborted democratic procedures of the past year and a half make a mockery of the title deliberative body. To bring a constitutional amendment to the floor of the House without having it undergo the scrutiny of the Committee on the Judiciary I think in itself is ample reason that this House tonight should refer this amendment back to the committee so that it may be what it should have done before tonight, and that is conduct hearings on this amendment, on these words, on this what has been spoken tonight, and a necessary study of the joint resolution, and then bring it forward again for consideration of this House if the majority so wills.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Does the gentleman from Florida wish to be recognized in opposition to the motion to recommit?

Mr. CANADY of Florida. I do wish to be recognized in opposition to the motion to recommit.

The SPEAKER pro tempore. The gentleman from Florida is recognized for 5 minutes.

Mr. CANADY of Florida. Mr. Speaker, let me just point out it is erroneous to claim the House Committee on the Judiciary has not considered this issue. The Committee on the Judiciary has considered the issue. Hearings have been held on this issue.

Let me review some of the history that has occurred during this Congress. In the first session of this Congress the Committee on the Judiciary Subcommittee on the Constitution held hearings on House Joint Resolution 1, the Balanced Budget Constitutional Amendment. Those hearings were conducted on January 9 and January 10. House Joint Resolution 1, as reported by the Committee on the Judiciary on January 11, 1995, included a three-fifths majority voting requirement to increase tax revenues. During floor consideration of House Joint Resolution 1, on January 25 and 26, 1995, the full House voted on the Barton balanced budget proposal, which would have required a three-fifths majority of the entire House and Senate to increase tax revenue and would have allowed a simple majority to waive the requirement in time of war or in the face of serious military threat. Although the Barton proposal received 253 votes, an amendment without the supermajority tax limitation provision was ultimately adopted by the House by a vote of 300 to 132.

I would like to continue with my explanation. On March 6 of this year, the Subcommittee on the Constitution again held hearings on a supermajority tax limitation provision. It is true that the hearing was held on a proposal that did not have language identical to this language. But that hearing considered a broad range of issues related to a supermajority requirement in connection with taxes.

Now, the issue before the House tonight is this: Are the American people undertaxed or not? The opponents of this bill believe that the American people are undertaxed and the debate began with an assertion comparing our tax rate in this country and the tax burden in this country to the tax burden in other countries around the world. The clear implication was that the opponents of this bill believe that the American people are undertaxed. I do not think that the American people agree with that, and as Americans all over the country are racing to the post office to deposit their tax returns in the U.S. Mail, I think most of them are saying that they are not undertaxed. Indeed, I believe that they are overtaxed. All the polls show that. That is consistent. It crosses party lines.

So, the issue here that is before the House tonight is whether we are going to take steps to restrain the taxing authority of this Government. I understand that a principled case can be made against that. But that is the issue before us.

Now, if you believe that the American people are undertaxed, I would suggest that you vote against the motion to recommit and that you vote against this proposed amendment. But if you believe that the tax burden on the American people should be restrained, then I would suggest that you vote against the motion to recommit and in favor of this proposed amendment to the Constitution.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The question is on the motion to recommit offered by the gentleman from Texas [Mr. STENHOLM].

The motion to recommit was rejected.

The SPEAKER pro tempore. The question is on passage of the joint resolution.

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

Mr. CANADY of Florida. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 243, nays 177, not voting 12, as follows:

[Roll No. 117]

YEAS—243

Allard	Ballenger	Bilbray
Andrews	Barr	Bilirakis
Archer	Barrett (NE)	Bliley
Armey	Bartlett	Blute
Bachus	Barton	Boehner
Baker (CA)	Bass	Bonilla
Baker (LA)	Bevill	Bono

Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Doyle
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
Gilman
Gingrich
Goodlatte
Goodling
Gordon
Goss
Graham
Green
Greene
Greenwood
Gutknecht
Hall (TX)
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Montgomery
Moorhead
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Oxley
Packard
Pallone
Parker
Paxon
Petri
Pombo
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stockman
Stump
Talent
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thornberry
Tiahrt
Torkildsen
Traficant
Upton
Vucanovich
Walker
Wamp
Ward
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NAYS—177

Abercrombie
Ackerman
Baesler
Baldacci
Barcia
Barrett (WI)
Bateman
Beilenson
Bentsen
Bereuter
Berman
Bishop
Boehlert
Bonior
Borski
Boucher
Brewster
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Campbell
Cardin
Clay
Clayton
Clement
Clinger
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Durbin
Edwards
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Filner
Foglietta
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gillmor
Gonzalez
Gunderson
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hefner
Hilliard
Hinchey
Hostettler
Houghton
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jacobs
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Leach
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Miller (CA)
Minge
Mink
Moakley
Mollohan
Moran
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Orton
Owens
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Pickett
Pomeroy
Porter
Poshard
Rahall
Rangel
Reed
Richardson
Rivers
Roukema
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schumer
Scott
Serrano
Sisisky
Skaggs
Slaughter
Spratt
Stark
Stenholm
Stokes
Studds
Stupak
Tanner
Thomas
Thompson
Thurman
Torres
Torricelli
Velazquez
Vento
Visclosky
Volkmer
Walsh
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wynn

NOT VOTING—12

Becerra
Chapman
Fields (LA)
Flake
Ford
McDade
Rose
Schroeder
Thornton
Towns
Wilson
Yates

□ 2331

So, two-thirds not having voted in favor thereof, the joint resolution was rejected.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. FLAKE. Mr. Speaker, last night I missed rollcall No. 117. Had I been present, I would have voted "nay" on it.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate had passed a concurrent resolution of the following title, in which the concurrence of the House is requested:

S. Con. Res. 51. Concurrent resolution to provide for the approval of final regulations that are applicable to employing offices that are not employing offices of the House of Representatives or the Senate, and to covered employees who are not employees of the House of Representatives or the Senate, and that were issued by the Office of Compliance on January 22, 1996, and for other purposes.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1972

Mr. PETERSON of Minnesota. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of H.R. 1972.

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

There was no objection.

THE JOURNAL

The SPEAKER pro tempore. Pursuant to clause 5 of rule I, the pending business is the question of the Speaker's approval of the Journal.

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

AMERICAN OVERSEAS INTERESTS ACT—VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 104–197)

The SPEAKER pro tempore laid before the House the following veto message from the President of the United States:

To the House of Representatives:

I am returning herewith without my approval H.R. 1561, the "Foreign Relations Authorization Act, Fiscal Years 1996 and 1997."

This legislation contains many unacceptable provisions that would undercut U.S. leadership abroad and damage our ability to assure the future security and prosperity of the American people. It would unacceptably restrict the President's ability to address the complex international challenges and opportunities of the post-Cold War era. It would also restrict Presidential authority needed to conduct foreign affairs and to control state secrets, thereby raising serious constitutional concerns.

First, the bill contains foreign policy provisions, particularly those involving East Asia, that are of serious concern. It would amend the Taiwan Relations Act (TRA) to state that the TRA supersedes the provisions of the 1982 Joint Communique between the United States and China. The 1982 Communique has been one of the cornerstones of our bipartisan policy toward China for over 13 years. The ongoing management of our relations with China is one of the central challenges of United States foreign policy, but this bill would complicate, not facilitate that task. The bill would also sharply restrict the use of funds to further normalize relations with Vietnam, hampering the President's ability to pursue our national interests there and potentially jeopardizing further progress on POW/MIA issues. If read literally, this restriction would also raise constitutional concerns.

Second, the bill would seriously impede the President's authority to organize and administer foreign affairs

agencies to best serve the Nation's interests and the Administration's foreign policy priorities. I am a strong supporter of appropriate reform and, building on bipartisan support, my Administration has already implemented significant steps to reinvent our international operations in a way that has allowed us to reduce funding significantly, eliminate positions, and close embassies, consulates, and other posts overseas. But this bill proceeds in an improvident fashion, mandating the abolition of at least one of three important foreign affairs agencies, even though each agency has a distinct and important mission that warrants a separate existence. Moreover, the inflexible, detailed mandates and artificial deadlines included in this section of the bill should not be imposed on any President.

Third, the appropriations authorizations included in the bill, for fiscal years 1996 and 1997, fall unacceptably below the levels necessary to conduct the Nation's foreign policy and to protect U.S. interests abroad. These inadequate levels would adversely affect the operation of overseas posts of the foreign affairs agencies and weaken critical U.S. efforts to promote arms control and nonproliferation, reform international organizations and peacekeeping, streamline public diplomacy, and implement sustainable development activities. These levels would cause undue reductions in force of highly skilled personnel at several foreign affairs agencies at a time when they face increasingly complex challenges.

Fourth, this bill contains a series of objectionable provisions that limit U.S. participation in international organizations, particularly the United Nations (U.N.). For example, a provision on intelligence sharing with the U.N. would unconstitutionally infringe on the President's power to conduct diplomatic relations and limit Presidential control over the use of state secrets. Other provisions contain problematic notification, withholding, and certification requirements.

These limits on participation in international organizations, particularly when combined with the low appropriation authorization levels, would undermine current U.S. diplomatic efforts—which enjoy bipartisan support—to reform the U.N. budget. The provisions included in the bill are also at odds with ongoing discussions between the Administration and the Congress aimed at achieving consensus on these issues.

Fifth, the bill fails to remedy the severe limitations placed on U.S. population assistance programs by the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996 (Public Law 104–107). That law imposes unacceptable spending restrictions pending authorization for U.S. bilateral and multilateral population assistance programs. But H.R. 1561 does not authorize these programs. Consequently, these restrictions will remain in place and will have a significant, adverse impact on women and families in the developing world. It is estimated that nearly 7 million couples in developing countries will have no access to safe, voluntary family planning services. The result will be millions of unwanted pregnancies and an increase in the number of abortions.

Finally, the bill contains a number of other objectionable provisions. Some of the most problematic would: (1) abruptly terminate the Agency for International Development's housing guaranty (HG) program, as well as abrogate existing HG agreements, except for South Africa, and prohibit foreign assistance to any country that fails to make timely payments or reimbursements on HG loans; (2) hinder negotiations aimed at resolving the plight of Vietnamese boat people; (3) unduly restrict the ability of the United States to participate in the United Nations Human Rights Committee; and (4) extend provisions of the Nuclear Proliferation Prevention Act that I have objected to in the past. I am also concerned that the bill, by restricting the time period during which economic assistance funds can be expended for longer-term development projects, would diminish the effectiveness of U.S. assistance programs.

In returning H.R. 1561, I recognize that the bill contains a number of important authorities for the Department of State and the United States Information Agency. In its current form, however, the bill is inconsistent with the decades-long tradition of bipartisanship in U.S. foreign policy. It unduly interferes with the constitutional prerogatives of the President and would seriously impair the conduct of U.S. foreign affairs.

For all these reasons, I am compelled to return H.R. 1561 without my approval.

WILLIAM J. CLINTON.

THE WHITE HOUSE, April 12, 1996.

□ 2345

The SPEAKER pro tempore (Mr. RIGGS). The objections of the President will be spread at large upon the Journal, and the message and the bill will be printed as a House document.

Mr. GILMAN. Mr. Speaker, I ask unanimous consent that further consideration of the veto message on the bill, H.R. 1561, be postponed until Tuesday, April 23, 1996.

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

There was no objection.

CONFERENCE REPORT ON S. 735, TERRORISM PERVENTION ACT

Mr. HYDE submitted the following conference report and statement on the Senate bill (S. 735) to prevent and punish acts of terrorism, and for other purposes:

CONFERENCE REPORT (H. REPT. 104–518)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 735), to prevent and punish acts of terrorism, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Antiterrorism and Effective Death Penalty Act of 1996".

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—HABEAS CORPUS REFORM

Sec. 101. Filing deadlines.
Sec. 102. Appeal.
Sec. 103. Amendment of Federal Rules of Appellate Procedure.
Sec. 104. Section 2254 amendments.
Sec. 105. Section 2255 amendments.
Sec. 106. Limits on second or successive applications.
Sec. 107. Death penalty litigation procedures.
Sec. 108. Technical amendment.

TITLE II—JUSTICE FOR VICTIMS

Subtitle A—Mandatory Victim Restitution

Sec. 201. Short title.
Sec. 202. Order of restitution.
Sec. 203. Conditions of probation.
Sec. 204. Mandatory restitution.
Sec. 205. Order of restitution to victims of other crimes.
Sec. 206. Procedure for issuance of restitution order.
Sec. 207. Procedure for enforcement of fine or restitution order.
Sec. 208. Instruction to Sentencing Commission.
Sec. 209. Justice Department regulations.
Sec. 210. Special assessments on convicted persons.
Sec. 211. Effective date.

Subtitle B—Jurisdiction for Lawsuits Against Terrorist States

Sec. 221. Jurisdiction for lawsuits against terrorist states.

Subtitle C—Assistance to Victims of Terrorism

Sec. 231. Short title.
Sec. 232. Victims of Terrorism Act.
Sec. 233. Compensation of victims of terrorism.
Sec. 234. Crime victims fund.
Sec. 235. Closed circuit televised court proceedings for victims of crime.
Sec. 236. Technical correction.

TITLE III—INTERNATIONAL TERRORISM PROHIBITIONS

Subtitle A—Prohibition on International Terrorist Fundraising

Sec. 301. Findings and purpose.
Sec. 302. Designation of foreign terrorist organizations.
Sec. 303. Prohibition on terrorist fundraising.

Subtitle B—Prohibition on Assistance to Terrorist States

Sec. 321. Financial transactions with terrorists.
Sec. 322. Foreign air travel safety.
Sec. 323. Modification of material support provision.

Sec. 324. Findings.
Sec. 325. Prohibition on assistance to countries that aid terrorist states.
Sec. 326. Prohibition on assistance to countries that provide military equipment to terrorist states.
Sec. 327. Opposition to assistance by international financial institutions to terrorist states.
Sec. 328. Antiterrorism assistance.
Sec. 329. Definition of assistance.
Sec. 330. Prohibition on assistance under Arms Export Control Act for countries not cooperating fully with United States antiterrorism efforts.

TITLE IV—TERRORIST AND CRIMINAL ALIEN REMOVAL AND EXCLUSION

Subtitle A—Removal of Alien Terrorists

Sec. 401. Alien terrorist removal.

Subtitle B—Exclusion of Members and Representatives of Terrorist Organizations

Sec. 411. Exclusion of alien terrorists.
Sec. 412. Waiver authority concerning notice of denial of application for visas.
Sec. 413. Denial of other relief for alien terrorists.
Sec. 414. Exclusion of aliens who have not been inspected and admitted.

Subtitle C—Modification to Asylum Procedures

Sec. 421. Denial of asylum to alien terrorists.
Sec. 422. Inspection and exclusion by immigration officers.
Sec. 423. Judicial review.

Subtitle D—Criminal Alien Procedural Improvements

Sec. 431. Restricting the defense to exclusion based on 7 years permanent residence for certain criminal aliens.
Sec. 432. Access to certain confidential immigration and naturalization files through court order.
Sec. 433. Criminal alien identification system.
Sec. 434. Establishing certain alien smuggling-related crimes as RICO-predicate offenses.
Sec. 435. Authority for alien smuggling investigations.
Sec. 436. Expansion of criteria for deportation for crimes of moral turpitude.
Sec. 437. Miscellaneous provisions.
Sec. 438. Interior repatriation program.
Sec. 439. Deportation of nonviolent offenders prior to completion of sentence of imprisonment.
Sec. 440. Authorizing State and local law enforcement officials to arrest and detain certain illegal aliens.
Sec. 441. Criminal alien removal.
Sec. 442. Limitation on collateral attacks on underlying deportation order.
Sec. 443. Deportation procedures for certain criminal aliens who are not permanent residents.
Sec. 444. Extradition of aliens.

TITLE V—NUCLEAR, BIOLOGICAL, AND CHEMICAL WEAPONS RESTRICTIONS

Subtitle A—Nuclear Materials

Sec. 501. Findings and purpose.
Sec. 502. Expansion of scope and jurisdictional bases of nuclear materials prohibitions.
Sec. 503. Report to Congress on thefts of explosive materials from armories.

Subtitle B—Biological Weapons Restrictions

Sec. 511. Enhanced penalties and control of biological agents.

Subtitle C—Chemical Weapons Restrictions

Sec. 521. Chemical weapons of mass destruction; study of facility for training and evaluation of personnel who respond to use of chemical or biological weapons in urban and suburban areas.

TITLE VI—IMPLEMENTATION OF PLASTIC EXPLOSIVES CONVENTION

Sec. 601. Findings and purposes.
Sec. 602. Definitions.
Sec. 603. Requirement of detection agents for plastic explosives.
Sec. 604. Criminal sanctions.
Sec. 605. Exceptions.
Sec. 606. Seizure and forfeiture of plastic explosives.
Sec. 607. Effective date.

TITLE VII—CRIMINAL LAW MODIFICATIONS TO COUNTER TERRORISM

Subtitle A—Crimes and Penalties

Sec. 701. Increased penalty for conspiracies involving explosives.
Sec. 702. Acts of terrorism transcending national boundaries.
Sec. 703. Expansion of provision relating to destruction or injury of property within special maritime and territorial jurisdiction.
Sec. 704. Conspiracy to harm people and property overseas.
Sec. 705. Increased penalties for certain terrorism crimes.
Sec. 706. Mandatory penalty for transferring an explosive material knowing that it will be used to commit a crime of violence.
Sec. 707. Possession of stolen explosives prohibited.
Sec. 708. Enhanced penalties for use of explosives or arson crimes.
Sec. 709. Determination of constitutionality of restricting the dissemination of bomb-making instructional materials.

Subtitle B—Criminal Procedures

Sec. 721. Clarification and extension of criminal jurisdiction over certain terrorism offenses overseas.
Sec. 722. Clarification of maritime violence jurisdiction.
Sec. 723. Increased and alternate conspiracy penalties for terrorism offenses.
Sec. 724. Clarification of Federal jurisdiction over bomb threats.
Sec. 725. Expansion and modification of weapons of mass destruction statute.
Sec. 726. Addition of terrorism offenses to the money laundering statute.
Sec. 727. Protection of Federal employees; protection of current or former officials, officers, or employees of the United States.
Sec. 728. Death penalty aggravating factor.
Sec. 729. Detention hearing.
Sec. 730. Directions to Sentencing Commission.
Sec. 731. Exclusion of certain types of information from definitions.
Sec. 732. Marking, rendering inert, and licensing of explosive materials.

TITLE VIII—ASSISTANCE TO LAW ENFORCEMENT

Subtitle A—Resources and Security

Sec. 801. Overseas law enforcement training activities.
Sec. 802. Sense of Congress.
Sec. 803. Protection of Federal Government buildings in the District of Columbia.
Sec. 804. Requirement to preserve record evidence.
Sec. 805. Deterrent against terrorist activity damaging a Federal interest computer.
Sec. 806. Commission on the Advancement of Federal Law Enforcement.
Sec. 807. Combatting international counterfeiting of United States currency.
Sec. 808. Compilation of statistics relating to intimidation of Government employees.
Sec. 809. Assessing and reducing the threat to law enforcement officers from the criminal use of firearms and ammunition.
Sec. 810. Study and report on electronic surveillance.

Subtitle B—Funding Authorizations for Law Enforcement

Sec. 811. Federal Bureau of Investigation.
Sec. 812. United States Customs Service.
Sec. 813. Immigration and Naturalization Service.
Sec. 814. Drug Enforcement Administration.
Sec. 815. Department of Justice.
Sec. 816. Department of the Treasury.
Sec. 817. United States Park Police.
Sec. 818. The Judiciary.
Sec. 819. Local firefighter and emergency services training.
Sec. 820. Assistance to foreign countries to procure explosive detection devices and other counterterrorism technology.
Sec. 821. Research and development to support counterterrorism technologies.
Sec. 822. Grants to State and local law enforcement for training and equipment.
Sec. 823. Funding source.

TITLE IX—MISCELLANEOUS

Sec. 901. Expansion of territorial sea.
Sec. 902. Proof of citizenship.
Sec. 903. Representation fees in criminal cases.
Sec. 904. Severability.

TITLE I—HABEAS CORPUS REFORM

SEC. 101. FILING DEADLINES.

Section 2244 of title 28, United States Code, is amended by adding at the end the following new subsection:

"(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

"(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

"(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

"(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

"(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

"(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.".

SEC. 102. APPEAL.

Section 2253 of title 28, United States Code, is amended to read as follows:

"§2253. Appeal

"(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

"(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

"(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

"(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

"(B) the final order in a proceeding under section 2255.

"(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

"(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).".

SEC. 103. AMENDMENT OF FEDERAL RULES OF APPELLATE PROCEDURE.

Rule 22 of the Federal Rules of Appellate Procedure is amended to read as follows:

"Rule 22. Habeas corpus and section 2255 proceedings

"(a) APPLICATION FOR THE ORIGINAL WRIT.—An application for a writ of habeas corpus shall be made to the appropriate district court. If application is made to a circuit judge, the application shall be transferred to the appropriate district court. If an application is made to or transferred to the district court and denied, renewal of the application before a circuit judge shall not be permitted. The applicant may, pursuant to section 2253 of title 28, United States Code, appeal to the appropriate court of appeals from the order of the district court denying the writ.

"(b) CERTIFICATE OF APPEALABILITY.—In a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court, an appeal by the applicant for the writ may not proceed unless a district or a circuit judge issues a certificate of appealability pursuant to section 2253(c) of title 28, United States Code. If an appeal is taken by the applicant, the district judge who rendered the judgment shall either issue a certificate of appealability or state the reasons why such a certificate should not issue. The certificate or the statement shall be forwarded to the court of appeals with the notice of appeal and the file of the proceedings in the district court. If the district judge has denied the certificate, the applicant for the writ may then request issuance of the certificate by a circuit judge. If such a request is addressed to the court of appeals, it shall be deemed addressed to the judges thereof and shall be considered by a circuit judge or judges as the court deems appropriate. If no express request for a certificate is filed, the notice of appeal shall be deemed to constitute a request addressed to the judges of the court of appeals. If an appeal is taken by a State or its representative, a certificate of appealability is not required.".

SEC. 104. SECTION 2254 AMENDMENTS.

Section 2254 of title 28, United States Code, is amended—

(1) by amending subsection (b) to read as follows:

"(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

"(A) the applicant has exhausted the remedies available in the courts of the State; or

"(B)(i) there is an absence of available State corrective process; or

"(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

"(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

"(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.";

(2) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively;

(3) by inserting after subsection (c) the following new subsection:

"(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

"(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

"(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.";

(4) by amending subsection (e), as redesignated by paragraph (2), to read as follows:

"(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

"(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

"(A) the claim relies on—

"(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

"(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

"(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense."; and

(5) by adding at the end the following new subsections:

"(h) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

"(i) The ineffectiveness or incompetence of counsel during Federal or State collateral postconviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.".

SEC. 105. SECTION 2255 AMENDMENTS.

Section 2255 of title 28, United States Code, is amended—

(1) by striking the second and fifth undesignated paragraphs; and

(2) by adding at the end the following new undesignated paragraphs:

"A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

"(1) the date on which the judgment of conviction becomes final;

"(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

"(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

"(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

"Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

"A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

"(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

"(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.".

SEC. 106. LIMITS ON SECOND OR SUCCESSIVE APPLICATIONS.

(a) CONFORMING AMENDMENT TO SECTION 2244(a).—Section 2244(a) of title 28, United States Code, is amended by striking "and the petition" and all that follows through "by such inquiry." and inserting ", except as provided in section 2255.".

(b) LIMITS ON SECOND OR SUCCESSIVE APPLICATIONS.—Section 2244(b) of title 28, United States Code, is amended to read as follows:

"(b)(1) A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.

"(2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless—

"(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

"(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

"(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

"(3)(A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

"(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

"(C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

"(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

"(E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and

shall not be the subject of a petition for rehearing or for a writ of certiorari.

"(4) A district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.".

SEC. 107. DEATH PENALTY LITIGATION PROCEDURES.

(a) ADDITION OF CHAPTER TO TITLE 28, UNITED STATES CODE.—Title 28, United States Code, is amended by inserting after chapter 153 the following new chapter:

"CHAPTER 154—SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL CASES

"Sec.

"2261. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment.

"2262. Mandatory stay of execution; duration; limits on stays of execution; successive petitions.

"2263. Filing of habeas corpus application; time requirements; tolling rules.

"2264. Scope of Federal review; district court adjudications.

"2265. Application to State unitary review procedure.

"2266. Limitation periods for determining applications and motions.

"§2261. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment

"(a) This chapter shall apply to cases arising under section 2254 brought by prisoners in State custody who are subject to a capital sentence. It shall apply only if the provisions of subsections (b) and (c) are satisfied.

"(b) This chapter is applicable if a State establishes by statute, rule of its court of last resort, or by another agency authorized by State law, a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State post-conviction proceedings brought by indigent prisoners whose capital convictions and sentences have been upheld on direct appeal to the court of last resort in the State or have otherwise become final for State law purposes. The rule of court or statute must provide standards of competency for the appointment of such counsel.

"(c) Any mechanism for the appointment, compensation, and reimbursement of counsel as provided in subsection (b) must offer counsel to all State prisoners under capital sentence and must provide for the entry of an order by a court of record—

"(1) appointing one or more counsels to represent the prisoner upon a finding that the prisoner is indigent and accepted the offer or is unable competently to decide whether to accept or reject the offer;

"(2) finding, after a hearing if necessary, that the prisoner rejected the offer of counsel and made the decision with an understanding of its legal consequences; or

"(3) denying the appointment of counsel upon a finding that the prisoner is not indigent.

"(d) No counsel appointed pursuant to subsections (b) and (c) to represent a State prisoner under capital sentence shall have previously represented the prisoner at trial or on direct appeal in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

"(e) The ineffectiveness or incompetence of counsel during State or Federal post-conviction proceedings in a capital case shall not be a ground for relief in a proceeding arising under section 2254. This limitation shall not preclude the appointment of different counsel, on the court's own motion or at the request of the prisoner, at any phase of State or Federal post-conviction proceedings on the basis of the ineffectiveness or incompetence of counsel in such proceedings.

"§2262. Mandatory stay of execution; duration; limits on stays of execution; successive petitions

"(a) Upon the entry in the appropriate State court of record of an order under section 2261(c), a warrant or order setting an execution date for a State prisoner shall be stayed upon application to any court that would have jurisdiction over any proceedings filed under section 2254. The application shall recite that the State has invoked the post-conviction review procedures of this chapter and that the scheduled execution is subject to stay.

"(b) A stay of execution granted pursuant to subsection (a) shall expire if—

"(1) a State prisoner fails to file a habeas corpus application under section 2254 within the time required in section 2263;

"(2) before a court of competent jurisdiction, in the presence of counsel, unless the prisoner has competently and knowingly waived such counsel, and after having been advised of the consequences, a State prisoner under capital sentence waives the right to pursue habeas corpus review under section 2254; or

"(3) a State prisoner files a habeas corpus petition under section 2254 within the time required by section 2263 and fails to make a substantial showing of the denial of a Federal right or is denied relief in the district court or at any subsequent stage of review.

"(c) If one of the conditions in subsection (b) has occurred, no Federal court thereafter shall have the authority to enter a stay of execution in the case, unless the court of appeals approves the filing of a second or successive application under section 2244(b).

"§2263. Filing of habeas corpus application; time requirements; tolling rules

"(a) Any application under this chapter for habeas corpus relief under section 2254 must be filed in the appropriate district court not later than 180 days after final State court affirmance of the conviction and sentence on direct review or the expiration of the time for seeking such review.

"(b) The time requirements established by subsection (a) shall be tolled—

"(1) from the date that a petition for certiorari is filed in the Supreme Court until the date of final disposition of the petition if a State prisoner files the petition to secure review by the Supreme Court of the affirmance of a capital sentence on direct review by the court of last resort of the State or other final State court decision on direct review;

"(2) from the date on which the first petition for post-conviction review or other collateral relief is filed until the final State court disposition of such petition; and

"(3) during an additional period not to exceed 30 days, if—

"(A) a motion for an extension of time is filed in the Federal district court that would have jurisdiction over the case upon the filing of a habeas corpus application under section 2254; and

"(B) a showing of good cause is made for the failure to file the habeas corpus application within the time period established by this section.

"§2264. Scope of Federal review; district court adjudications

"(a) Whenever a State prisoner under capital sentence files a petition for habeas corpus relief to which this chapter applies, the district court shall only consider a claim or claims that have been raised and decided on the merits in the State courts, unless the failure to raise the claim properly is—

"(1) the result of State action in violation of the Constitution or laws of the United States;

"(2) the result of the Supreme Court's recognition of a new Federal right that is made retroactively applicable; or

"(3) based on a factual predicate that could not have been discovered through the exercise of due diligence in time to present the claim for State or Federal post-conviction review.

"(b) Following review subject to subsections (a), (d), and (e) of section 2254, the court shall rule on the claims properly before it.

"§2265. Application to State unitary review procedure

"(a) For purposes of this section, a 'unitary review' procedure means a State procedure that authorizes a person under sentence of death to raise, in the course of direct review of the judgment, such claims as could be raised on collateral attack. This chapter shall apply, as provided in this section, in relation to a State unitary review procedure if the State establishes by rule of its court of last resort or by statute a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in the unitary review proceedings, including expenses relating to the litigation of collateral claims in the proceedings. The rule of court or statute must provide standards of competency for the appointment of such counsel.

"(b) To qualify under this section, a unitary review procedure must include an offer of counsel following trial for the purpose of representation on unitary review, and entry of an order, as provided in section 2261(c), concerning appointment of counsel or waiver or denial of appointment of counsel for that purpose. No counsel appointed to represent the prisoner in the unitary review proceedings shall have previously represented the prisoner at trial in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

"(c) Sections 2262, 2263, 2264, and 2266 shall apply in relation to cases involving a sentence of death from any State having a unitary review procedure that qualifies under this section. References to State 'post-conviction review' and 'direct review' in such sections shall be understood as referring to unitary review under the State procedure. The reference in section 2262(a) to 'an order under section 2261(c)' shall be understood as referring to the post-trial order under subsection (b) concerning representation in the unitary review proceedings, but if a transcript of the trial proceedings is unavailable at the time of the filing of such an order in the appropriate State court, then the start of the 180-day limitation period under section 2263 shall be deferred until a transcript is made available to the prisoner or counsel of the prisoner.

"§2266. Limitation periods for determining applications and motions

"(a) The adjudication of any application under section 2254 that is subject to this chapter, and the adjudication of any motion under section 2255 by a person under sentence of death, shall be given priority by the district court and by the court of appeals over all noncapital matters.

"(b)(1)(A) A district court shall render a final determination and enter a final judgment on any application for a writ of habeas corpus brought under this chapter in a capital case not later than 180 days after the date on which the application is filed.

"(B) A district court shall afford the parties at least 120 days in which to complete all actions, including the preparation of all pleadings and briefs, and if necessary, a hearing, prior to the submission of the case for decision.

"(C)(i) A district court may delay for not more than one additional 30-day period beyond the period specified in subparagraph (A), the rendering of a determination of an application for a writ of habeas corpus if the court issues a written order making a finding, and stating the reasons for the finding, that the ends of justice that would be served by allowing the delay outweigh the best interests of the public and the applicant in a speedy disposition of the application.

"(ii) The factors, among others, that a court shall consider in determining whether a delay in the disposition of an application is warranted are as follows:

"(I) Whether the failure to allow the delay would be likely to result in a miscarriage of justice.

"(II) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate briefing within the time limitations established by subparagraph (A).

"(III) Whether the failure to allow a delay in a case that, taken as a whole, is not so unusual or so complex as described in subclause (II), but would otherwise deny the applicant reasonable time to obtain counsel, would unreasonably deny the applicant or the government continuity of counsel, or would deny counsel for the applicant or the government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

"(iii) No delay in disposition shall be permissible because of general congestion of the court's calendar.

"(iv) The court shall transmit a copy of any order issued under clause (i) to the Director of the Administrative Office of the United States Courts for inclusion in the report under paragraph (5).

"(2) The time limitations under paragraph (1) shall apply to—

"(A) an initial application for a writ of habeas corpus;

"(B) any second or successive application for a writ of habeas corpus; and

"(C) any redetermination of an application for a writ of habeas corpus following a remand by the court of appeals or the Supreme Court for further proceedings, in which case the limitation period shall run from the date the remand is ordered.

"(3)(A) The time limitations under this section shall not be construed to entitle an applicant to a stay of execution, to which the applicant would otherwise not be entitled, for the purpose of litigating any application or appeal.

"(B) No amendment to an application for a writ of habeas corpus under this chapter shall be permitted after the filing of the answer to the application, except on the grounds specified in section 2244(b).

"(4)(A) The failure of a court to meet or comply with a time limitation under this section shall not be a ground for granting relief from a judgment of conviction or sentence.

"(B) The State may enforce a time limitation under this section by petitioning for a writ of mandamus to the court of appeals. The court of appeals shall act on the petition for a writ of mandamus not later than 30 days after the filing of the petition.

"(5)(A) The Administrative Office of United States Courts shall submit to Congress an annual report on the compliance by the district courts with the time limitations under this section.

"(B) The report described in subparagraph (A) shall include copies of the orders submitted by the district courts under paragraph (1)(B)(iv).

"(c)(1)(A) A court of appeals shall hear and render a final determination of any appeal of an order granting or denying, in whole or in part, an application brought under this chapter in a capital case not later than 120 days after the date on which the reply brief is filed, or if no reply brief is filed, not later than 120 days after the date on which the answering brief is filed.

"(B)(i) A court of appeals shall decide whether to grant a petition for rehearing or other request for rehearing en banc not later than 30 days after the date on which the petition for rehearing is filed unless a responsive pleading is required, in which case the court shall decide whether to grant the petition not later than 30 days after the date on which the responsive pleading is filed.

"(ii) If a petition for rehearing or rehearing en banc is granted, the court of appeals shall hear and render a final determination of the appeal not later than 120 days after the date on which the order granting rehearing or rehearing en banc is entered.

"(2) The time limitations under paragraph (1) shall apply to—

"(A) an initial application for a writ of habeas corpus;

"(B) any second or successive application for a writ of habeas corpus; and

"(C) any redetermination of an application for a writ of habeas corpus or related appeal following a remand by the court of appeals en banc or the Supreme Court for further proceedings, in which case the limitation period shall run from the date the remand is ordered.

"(3) The time limitations under this section shall not be construed to entitle an applicant to a stay of execution, to which the applicant would otherwise not be entitled, for the purpose of litigating any application or appeal.

"(4)(A) The failure of a court to meet or comply with a time limitation under this section shall not be a ground for granting relief from a judgment of conviction or sentence.

"(B) The State may enforce a time limitation under this section by applying for a writ of mandamus to the Supreme Court.

"(5) The Administrative Office of United States Courts shall submit to Congress an annual report on the compliance by the courts of appeals with the time limitations under this section.".

(b) TECHNICAL AMENDMENT.—The part analysis for part IV of title 28, United States Code, is amended by adding after the item relating to chapter 153 the following new item:

"154. Special habeas corpus procedures in capital cases 2261.".

(c) EFFECTIVE DATE.—Chapter 154 of title 28, United States Code (as added by subsection (a)) shall apply to cases pending on or after the date of enactment of this Act.

SEC. 108. TECHNICAL AMENDMENT.

Section 408(q) of the Controlled Substances Act (21 U.S.C. 848(q)) is amended by amending paragraph (9) to read as follows:

"(9) Upon a finding that investigative, expert, or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or the sentence, the court may authorize the defendant's attorneys to obtain such services on behalf of the defendant and, if so authorized, shall order the payment of fees and expenses therefor under paragraph (10). No ex parte proceeding, communication, or request may be considered pursuant to this section unless a proper showing is made concerning the need for confidentiality. Any such proceeding, communication, or request shall be transcribed and made a part of the record available for appellate review.".

TITLE II—JUSTICE FOR VICTIMS

Subtitle A—Mandatory Victim Restitution

SEC. 201. SHORT TITLE.

This subtitle may be cited as the "Mandatory Victims Restitution Act of 1996".

SEC. 202. ORDER OF RESTITUTION.

Section 3556 of title 18, United States Code, is amended—

(1) by striking "may" and inserting "shall"; and

(2) by striking "sections 3663 and 3664." and inserting "section 3663A, and may order restitution in accordance with section 3663. The procedures under section 3664 shall apply to all orders of restitution under this section.".

SEC. 203. CONDITIONS OF PROBATION.

Section 3563 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (3), by striking "and" at the end;

(B) in the first paragraph (4) (relating to conditions of probation for a domestic crime of violence), by striking the period and inserting a semicolon;

(C) by redesignating the second paragraph (4) (relating to conditions of probation concerning drug use and testing) as paragraph (5);

(D) in paragraph (5), as redesignated, by striking the period at the end and inserting a semicolon; and

(E) by inserting after paragraph (5), as redesignated, the following new paragraphs:

"(6) that the defendant—

"(A) make restitution in accordance with sections 2248, 2259, 2264, 2327, 3663, 3663A, and 3664; and

"(B) pay the assessment imposed in accordance with section 3013; and

"(7) that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments."; and

(2) in subsection (b)—

(A) by striking paragraph (2);

(B) by redesignating paragraphs (3) through (22) as paragraphs (2) through (21), respectively; and

(C) by amending paragraph (2), as redesignated, to read as follows:

"(2) make restitution to a victim of the offense under section 3556 (but not subject to the limitation of section 3663(a) or 3663A(c)(1)(A));".

SEC. 204. MANDATORY RESTITUTION.

(a) IN GENERAL.—Chapter 232 of title 18, United States Code, is amended by inserting immediately after section 3663 the following new section:

"§3663A. Mandatory restitution to victims of certain crimes

"(a)(1) Notwithstanding any other provision of law, when sentencing a defendant convicted of an offense described in subsection (c), the court shall order, in addition to, or in the case of a misdemeanor, in addition to or in lieu of, any other penalty authorized by law, that the defendant make restitution to the victim of the offense or, if the victim is deceased, to the victim's estate.

"(2) For the purposes of this section, the term 'victim' means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable

by the court, may assume the victim's rights under this section, but in no event shall the defendant be named as such representative or guardian.

"(3) The court shall also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.

"(b) The order of restitution shall require that such defendant—

"(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense—

"(A) return the property to the owner of the property or someone designated by the owner; or

"(B) if return of the property under subparagraph (A) is impossible, impracticable, or inadequate, pay an amount equal to—

"(i) the greater of—

"(I) the value of the property on the date of the damage, loss, or destruction; or

"(II) the value of the property on the date of sentencing, less

"(ii) the value (as of the date the property is returned) of any part of the property that is returned;

"(2) in the case of an offense resulting in bodily injury to a victim—

"(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

"(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

"(C) reimburse the victim for income lost by such victim as a result of such offense;

"(3) in the case of an offense resulting in bodily injury that results in the death of the victim, pay an amount equal to the cost of necessary funeral and related services; and

"(4) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense.

"(c)(1) This section shall apply in all sentencing proceedings for convictions of, or plea agreements relating to charges for, any offense—

"(A) that is—

"(i) a crime of violence, as defined in section 16;

"(ii) an offense against property under this title, including any offense committed by fraud or deceit; or

"(iii) an offense described in section 1365 (relating to tampering with consumer products); and

"(B) in which an identifiable victim or victims has suffered a physical injury or pecuniary loss.

"(2) In the case of a plea agreement that does not result in a conviction for an offense described in paragraph (1), this section shall apply only if the plea specifically states that an offense listed under such paragraph gave rise to the plea agreement.

"(3) This section shall not apply in the case of an offense described in paragraph (1)(A)(ii) if the court finds, from facts on the record, that—

"(A) the number of identifiable victims is so large as to make restitution impracticable; or

"(B) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.

"(d) An order of restitution under this section shall be issued and enforced in accordance with section 3664.".

(b) CLERICAL AMENDMENT.—The analysis for chapter 232 of title 18, United States Code, is amended by inserting immediately after the matter relating to section 3663 the following:

"3663A. Mandatory restitution to victims of certain crimes.".

SEC. 205. ORDER OF RESTITUTION TO VICTIMS OF OTHER CRIMES.

(a) IN GENERAL.—Section 3663 of title 18, United States Code, is amended—

(1) in subsection (a)(1)—

(A) by striking "(a)(1) The court" and inserting "(a)(1)(A) The court";

(B) by inserting ", section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863) (but in no case shall a participant in an offense under such sections be considered a victim of such offense under this section)," before "or section 46312,";

(C) by inserting "other than an offense described in section 3663A(c)," after "title 49,";

(D) by inserting before the period at the end the following: ", or if the victim is deceased, to the victim's estate";

(E) by adding at the end the following new subparagraph:

"(B)(i) The court, in determining whether to order restitution under this section, shall consider—

"(I) the amount of the loss sustained by each victim as a result of the offense; and

"(II) the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate.

"(ii) To the extent that the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution under this section outweighs the need to provide restitution to any victims, the court may decline to make such an order."; and

(F) by amending paragraph (2) to read as follows:

"(2) For the purposes of this section, the term 'victim' means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, may assume the victim's rights under this section, but in no event shall the defendant be named as such representative or guardian.";

(2) by striking subsections (c) through (i); and

(3) by adding at the end the following new subsections:

"(c)(1) Notwithstanding any other provision of law (but subject to the provisions of subsections (a)(1)(B) (i)(II) and (ii), when sentencing a defendant convicted of an offense described in section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863), in which there is no identifiable victim, the court may order that the defendant make restitution in accordance with this subsection.

"(2)(A) An order of restitution under this subsection shall be based on the amount of public harm caused by the offense, as determined by the court in accordance with guidelines promulgated by the United States Sentencing Commission.

"(B) In no case shall the amount of restitution ordered under this subsection exceed the amount of the fine ordered for the offense charged in the case.

"(3) Restitution under this subsection shall be distributed as follows:

"(A) 65 percent of the total amount of restitution shall be paid to the State entity designated to administer crime victim assistance in the State in which the crime occurred.

"(B) 35 percent of the total amount of restitution shall be paid to the State entity designated to receive Federal substance abuse block grant funds.

"(4) The court shall not make an award under this subsection if it appears likely that such award would interfere with a forfeiture under chapter 46 of this title or under the Controlled Substances Act (21 U.S.C. 801 et seq.).

"(5) Notwithstanding section 3612(c) or any other provision of law, a penalty assessment under section 3013 or a fine under subchapter C of chapter 227 shall take precedence over an order of restitution under this subsection.

"(6) Requests for community restitution under this subsection may be considered in all plea agreements negotiated by the United States.

"(7)(A) The United States Sentencing Commission shall promulgate guidelines to assist courts in determining the amount of restitution that may be ordered under this subsection.

"(B) No restitution shall be ordered under this subsection until such time as the Sentencing Commission promulgates guidelines pursuant to this paragraph.

"(d) An order of restitution made pursuant to this section shall be issued and enforced in accordance with section 3664.".

(b) SEXUAL ABUSE.—Section 2248 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting "or 3663A" after "3663";

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

"(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).";

(B) by amending paragraph (2) to read as follows:

"(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.";

(C) in paragraph (4), by striking subparagraphs (C) and (D); and

(D) by striking paragraphs (5) through (10);

(3) by striking subsections (c) through (e); and

(4) by redesignating subsection (f) as subsection (c).

(c) SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN.—Section 2259 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting "or 3663A" after "3663";

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

"(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).";

(B) by amending paragraph (2) to read as follows:

"(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.";

(C) in paragraph (4), by striking subparagraphs (C) and (D); and

(D) by striking paragraphs (5) through (10);

(3) by striking subsections (c) through (e); and

(4) by redesignating subsection (f) as subsection (e).

(d) DOMESTIC VIOLENCE.—Section 2264 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting "or 3663A" after "3663";

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

"(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).";

(B) by amending paragraph (2) to read as follows:

"(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.";

(C) in paragraph (4), by striking subparagraphs (C) and (D); and

(D) by striking paragraphs (5) through (10);

(3) by striking subsections (c) through (g); and

(4) by adding at the end the following new subsection (c):

"(c) VICTIM DEFINED.—For purposes of this section, the term 'victim' means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.".

(e) TELEMARKETING FRAUD.—Section 2327 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting "or 3663A" after "3663";

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

"(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).";

(B) by amending paragraph (2) to read as follows:

"(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.";

(C) in paragraph (4), by striking subparagraphs (C) and (D); and

(D) by striking paragraphs (5) through (10);

(3) by striking subsections (c) through (e); and

(4) by redesignating subsection (f) as subsection (c).

SEC. 206. PROCEDURE FOR ISSUANCE OF RESTITUTION ORDER.

(a) IN GENERAL.—Section 3664 of title 18, United States Code, is amended to read as follows:

"§3664. Procedure for issuance and enforcement of order of restitution

"(a) For orders of restitution under this title, the court shall order the probation officer to obtain and include in its presentence report, or in a separate report, as the court may direct, information sufficient for the court to exercise its discretion in fashioning a restitution order. The report shall include, to the extent practicable, a complete accounting of the losses to each victim, any restitution owed pursuant to a plea agreement, and information relating to the economic circumstances of each defendant. If the number or identity of victims cannot be reasonably ascertained, or other circumstances exist that make this requirement clearly impracticable, the probation officer shall so inform the court.

"(b) The court shall disclose to both the defendant and the attorney for the Government all portions of the presentence or other report pertaining to the matters described in subsection (a) of this section.

"(c) The provisions of this chapter, chapter 227, and Rule 32(c) of the Federal Rules of Criminal Procedure shall be the only rules applicable to proceedings under this section.

"(d)(1) Upon the request of the probation officer, but not later than 60 days prior to the date initially set for sentencing, the attorney for the Government, after consulting, to the extent practicable, with all identified victims, shall promptly provide the probation officer with a listing of the amounts subject to restitution.

"(2) The probation officer shall, prior to submitting the presentence report under subsection (a), to the extent practicable—

"(A) provide notice to all identified victims of—

"(i) the offense or offenses of which the defendant was convicted;

"(ii) the amounts subject to restitution submitted to the probation officer;

"(iii) the opportunity of the victim to submit information to the probation officer concerning the amount of the victim's losses;

"(iv) the scheduled date, time, and place of the sentencing hearing;

"(v) the availability of a lien in favor of the victim pursuant to subsection (m)(1)(B); and

"(vi) the opportunity of the victim to file with the probation officer a separate affidavit relating to the amount of the victim's losses subject to restitution; and

"(B) provide the victim with an affidavit form to submit pursuant to subparagraph (A)(vi).

"(3) Each defendant shall prepare and file with the probation officer an affidavit fully describing the financial resources of the defendant, including a complete listing of all assets owned or controlled by the defendant as of the date on which the defendant was arrested, the financial needs and earning ability of the defendant and the defendant's dependents, and such other information that the court requires relating to such other factors as the court deems appropriate.

"(4) After reviewing the report of the probation officer, the court may require additional documentation or hear testimony. The privacy of any records filed, or testimony heard, pursuant to this section shall be maintained to the greatest extent possible, and such records may be filed or testimony heard in camera.

"(5) If the victim's losses are not ascertainable by the date that is 10 days prior to sentencing, the attorney for the Government or the probation officer shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

"(6) The court may refer any issue arising in connection with a proposed order of restitution to a magistrate judge or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.

"(e) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant's dependents, shall be on the defendant. The burden of demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.

"(f)(1)(A) In each order of restitution, the court shall order restitution to each victim in the full amount of each victim's losses as determined by the court and without consideration of the economic circumstances of the defendant.

"(B) In no case shall the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source be considered in determining the amount of restitution.

"(2) Upon determination of the amount of restitution owed to each victim, the court shall, pursuant to section 3572, specify in the restitution order the manner in which, and the schedule according to which, the restitution is to be paid, in consideration of—

"(A) the financial resources and other assets of the defendant, including whether any of these assets are jointly controlled;

"(B) projected earnings and other income of the defendant; and

"(C) any financial obligations of the defendant; including obligations to dependents.

"(3)(A) A restitution order may direct the defendant to make a single, lump-sum payment, partial payments at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments.

"(B) A restitution order may direct the defendant to make nominal periodic payments if the court finds from facts on the record that the economic circumstances of the defendant do not allow the payment of any amount of a restitution order, and do not allow for the payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments.

"(4) An in-kind payment described in paragraph (3) may be in the form of—

"(A) return of property;

"(B) replacement of property; or

"(C) if the victim agrees, services rendered to the victim or a person or organization other than the victim.

"(g)(1) No victim shall be required to participate in any phase of a restitution order.

"(2) A victim may at any time assign the victim's interest in restitution payments to the Crime Victims Fund in the Treasury without in any way impairing the obligation of the defendant to make such payments.

"(h) If the court finds that more than 1 defendant has contributed to the loss of a victim, the court may make each defendant liable for payment of the full amount of restitution or may apportion liability among the defendants to reflect the level of contribution to the victim's loss and economic circumstances of each defendant.

"(i) If the court finds that more than 1 victim has sustained a loss requiring restitution by a defendant, the court may provide for a different payment schedule for each victim based on the type and amount of each victim's loss and accounting for the economic circumstances of each victim. In any case in which the United States is a victim, the court shall ensure that all other victims receive full restitution before the United States receives any restitution.

"(j)(1) If a victim has received compensation from insurance or any other source with respect to a loss, the court shall order that restitution be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.

"(2) Any amount paid to a victim under an order of restitution shall be reduced by any amount later recovered as compensatory damages for the same loss by the victim in—

"(A) any Federal civil proceeding; and

"(B) any State civil proceeding, to the extent provided by the law of the State.

"(k) A restitution order shall provide that the defendant shall notify the court and the Attorney General of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution. The court may also accept notification of a material change in the defendant's economic circumstances from the United States or from the victim. The Attorney General shall certify to the court that the victim or victims owed restitution by the defendant have been notified of the change in circumstances. Upon receipt of the notification, the court may, on its own motion, or the motion of any party, including the victim, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

"(l) A conviction of a defendant for an offense involving the act giving rise to an order of restitution shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim.

"(m)(1)(A)(i) An order of restitution may be enforced by the United States in the manner provided for in subchapter C of chapter 227 and subchapter B of chapter 229 of this title; or

"(ii) by all other available and reasonable means.

"(B) At the request of a victim named in a restitution order, the clerk of the court shall issue an abstract of judgment certifying that a judgment has been entered in favor of such victim in the amount specified in the restitution order. Upon registering, recording, docketing, or indexing such abstract in accordance with the rules and requirements relating to judgments of the court of the State where the district court is located, the abstract of judgment shall be a lien on the property of the defendant located in such State in the same manner and to the same extent and under the same conditions as a judgment of a court of general jurisdiction in that State.

"(2) An order of in-kind restitution in the form of services shall be enforced by the probation officer.

"(n) If a person obligated to provide restitution, or pay a fine, receives substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, such person shall be required to apply the value of such resources to any restitution or fine still owed.

"(o) A sentence that imposes an order of restitution is a final judgment notwithstanding the fact that—

"(1) such a sentence can subsequently be—

"(A) corrected under Rule 35 of the Federal Rules of Criminal Procedure and section 3742 of chapter 235 of this title;

"(B) appealed and modified under section 3742;

"(C) amended under section 3664(d)(3); or

"(D) adjusted under section 3664(k), 3572, or 3613A; or

"(2) the defendant may be resentenced under section 3565 or 3614.

"(p) Nothing in this section or sections 2248, 2259, 2264, 2327, 3663, and 3663A and arising out of the application of such sections, shall be construed to create a cause of action not otherwise authorized in favor of any person against the United States or any officer or employee of the United States.".

(b) TECHNICAL AMENDMENT.—The item relating to section 3664 in the analysis for chapter 232 of title 18, United States Code, is amended to read as follows:

"3664. Procedure for issuance and enforcement of order of restitution.".

SEC. 207. PROCEDURE FOR ENFORCEMENT OF FINE OR RESTITUTION ORDER.

(a) AMENDMENT OF FEDERAL RULES OF CRIMINAL PROCEDURE.—Rule 32(b) of the Federal Rules of Criminal Procedure is amended—

(1) in paragraph (1), by adding at the end the following: "Notwithstanding the preceding sentence, a presentence investigation and report, or other report containing information sufficient for the court to enter an order of restitution, as the court may direct, shall be required in any case in which restitution is required to be ordered."; and

(2) in paragraph (4)—

(A) by redesignating subparagraphs (F) and (G) as subparagraphs (G) and (H), respectively; and

(B) by inserting after subparagraph (E), the following new subparagraph:

"(F) in appropriate cases, information sufficient for the court to enter an order of restitution;".

(b) FINES.—Section 3572 of title 18, United States Code, is amended—

(1) in subsection (b) by inserting "other than the United States," after "offense,";

(2) in subsection (d)—

(A) in the first sentence, by striking "A person sentenced to pay a fine or other monetary penalty" and inserting "(1) A person sentenced to pay a fine or other monetary penalty, including restitution,";

(B) by striking the third sentence; and

(C) by adding at the end the following:

"(2) If the judgment, or, in the case of a restitution order, the order, permits other than immediate payment, the length of time over which scheduled payments will be made shall be set by the court, but shall be the shortest time in which full payment can reasonably be made.

"(3) A judgment for a fine which permits payments in installments shall include a requirement that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine. Upon receipt of such notice the court may, on its own motion or the motion of any party, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.";

(3) in subsection (f), by inserting "restitution" after "special assessment,";

(4) in subsection (h), by inserting "or payment of restitution" after "A fine"; and

(5) in subsection (i)—

(A) in the first sentence, by inserting "or payment of restitution" after "A fine"; and

(B) by amending the second sentence to read as follows: "Notwithstanding any installment schedule, when a fine or payment of restitution is in default, the entire amount of the fine or restitution is due within 30 days after notification of the default, subject to the provisions of section 3613A.".

(c) POSTSENTENCE ADMINISTRATION.—

(1) PAYMENT OF A FINE OR RESTITUTION.—Section 3611 of title 18, United States Code, is amended—

(A) by amending the heading to read as follows:

"§3611. Payment of a fine or restitution";

and

(B) by striking "or assessment shall pay the fine or assessment" and inserting ", assessment, or restitution, shall pay the fine, assessment, or restitution".

(2) COLLECTION.—Section 3612 of title 18, United States Code, is amended—

(A) by amending the heading to read as follows:

"§3612. Collection of unpaid fine or restitution";

(B) in subsection (b)(1)—

(i) in the matter preceding subparagraph (A), by inserting "or restitution order" after "fine";

(ii) in subparagraph (C), by inserting "or restitution order" after "fine";

(iii) in subparagraph (E), by striking "and";

(iv) in subparagraph (F)—

(I) by inserting "or restitution order" after "fine"; and

(II) by striking the period at the end and inserting "; and"; and

(v) by adding at the end the following new subparagraph:

"(G) in the case of a restitution order, information sufficient to identify each victim to whom restitution is owed. It shall be the responsibility of each victim to notify the Attorney General, or the appropriate entity of the court, by means of a form to be provided by the Attorney General or the court, of any change in the victim's mailing address while restitution is still owed the victim. The confidentiality of any information relating to a victim shall be maintained.";

(C) in subsection (c)—

(i) in the first sentence, by inserting "or restitution" after "fine"; and

(ii) by adding at the end the following: "Any money received from a defendant shall be disbursed so that each of the following obligations is paid in full in the following sequence:

"(1) A penalty assessment under section 3013 of title 18, United States Code.

"(2) Restitution of all victims.

"(3) All other fines, penalties, costs, and other payments required under the sentence.";

(D) in subsection (d)—

(i) by inserting "or restitution" after "fine"; and

(ii) by striking "is delinquent, to inform him that the fine is delinquent" and inserting "or restitution is delinquent, to inform the person of the delinquency";

(E) in subsection (e)—

(i) by inserting "or restitution" after "fine"; and

(ii) by striking "him that the fine is in default" and inserting "the person that the fine or restitution is in default";

(F) in subsection (f)—

(i) in the heading, by inserting "and restitution" after "on fines"; and

(ii) in paragraph (1), by inserting "or restitution" after "any fine";

(G) in subsection (g), by inserting "or restitution" after "fine" each place it appears; and

(H) in subsection (i), by inserting "and restitution" after "fines".

(3) CIVIL REMEDIES.—Section 3613 of title 18, United States Code, is amended to read as follows:

"§3613. Civil remedies for satisfaction of an unpaid fine

"(a) ENFORCEMENT.—The United States may enforce a judgment imposing a fine in accordance with the practices and procedures for the enforcement of a civil judgment under Federal law or State law. Notwithstanding any other Federal law (including section 207 of the Social Security Act), a judgment imposing a fine may be enforced against all property or rights to property of the person fined, except that—

"(1) property exempt from levy for taxes pursuant to section 6334(a) (1), (2), (3), (4), (5), (6), (7), (8), (10), and (12) of the Internal Revenue Code of 1986 shall be exempt from enforcement of the judgment under Federal law;

"(2) section 3014 of chapter 176 of title 28 shall not apply to enforcement under Federal law; and

"(3) the provisions of section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673) shall apply to enforcement of the judgment under Federal law or State law.

"(b) TERMINATION OF LIABILITY.—The liability to pay a fine shall terminate the later of 20

years from the entry of judgment or 20 years after the release from imprisonment of the person fined, or upon the death of the individual fined.

"(c) LIEN.—A fine imposed pursuant to the provisions of subchapter C of chapter 227 of this title, or an order of restitution made pursuant to sections 2248, 2259, 2264, 2327, 3663, 3663A, or 3664 of this title, is a lien in favor of the United States on all property and rights to property of the person fined as if the liability of the person fined were a liability for a tax assessed under the Internal Revenue Code of 1986. The lien arises on the entry of judgment and continues for 20 years or until the liability is satisfied, remitted, set aside, or is terminated under subsection (b).

"(d) EFFECT OF FILING NOTICE OF LIEN.—Upon filing of a notice of lien in the manner in which a notice of tax lien would be filed under section 6323(f) (1) and (2) of the Internal Revenue Code of 1986, the lien shall be valid against any purchaser, holder of a security interest, mechanic's lienor or judgment lien creditor, except with respect to properties or transactions specified in subsection (b), (c), or (d) of section 6323 of the Internal Revenue Code of 1986 for which a notice of tax lien properly filed on the same date would not be valid. The notice of lien shall be considered a notice of lien for taxes payable to the United States for the purpose of any State or local law providing for the filing of a notice of a tax lien. A notice of lien that is registered, recorded, docketed, or indexed in accordance with the rules and requirements relating to judgments of the courts of the State where the notice of lien is registered, recorded, docketed, or indexed shall be considered for all purposes as the filing prescribed by this section. The provisions of section 3201(e) of chapter 176 of title 28 shall apply to liens filed as prescribed by this section.

"(e) DISCHARGE OF DEBT INAPPLICABLE.—No discharge of debts in a proceeding pursuant to any chapter of title 11, United States Code, shall discharge liability to pay a fine pursuant to this section, and a lien filed as prescribed by this section shall not be voided in a bankruptcy proceeding.

"(f) APPLICABILITY TO ORDER OF RESTITUTION.—In accordance with section 3664(m)(1)(A) of this title, all provisions of this section are available to the United States for the enforcement of an order of restitution.".

(4) DEFAULT.—Chapter 229 of title 18, United States Code, is amended by inserting after section 3613 the following new section:

"§3613A. Effect of default

"(a)(1) Upon a finding that the defendant is in default on a payment of a fine or restitution, the court may, pursuant to section 3565, revoke probation or a term of supervised release, modify the terms or conditions of probation or a term of supervised release, resentence a defendant pursuant to section 3614, hold the defendant in contempt of court, enter a restraining order or injunction, order the sale of property of the defendant, accept a performance bond, enter or adjust a payment schedule, or take any other action necessary to obtain compliance with the order of a fine or restitution.

"(2) In determining what action to take, the court shall consider the defendant's employment status, earning ability, financial resources, the willfulness in failing to comply with the fine or restitution order, and any other circumstances that may have a bearing on the defendant's ability or failure to comply with the order of a fine or restitution.

"(b)(1) Any hearing held pursuant to this section may be conducted by a magistrate judge, subject to de novo review by the court.

"(2) To the extent practicable, in a hearing held pursuant to this section involving a defendant who is confined in any jail, prison, or other correctional facility, proceedings in which the prisoner's participation is required or permitted shall be conducted by telephone, video conference, or other communications technology without removing the prisoner from the facility in which the prisoner is confined.".

(5) RESENTENCING.—Section 3614 of title 18, United States Code, is amended—

(A) in the heading, by inserting "or restitution" after "fine";

(B) in subsection (a), by inserting "or restitution" after "fine"; and

(C) by adding at the end the following new subsection:

"(c) EFFECT OF INDIGENCY.—In no event shall a defendant be incarcerated under this section solely on the basis of inability to make payments because the defendant is indigent.".

(d) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter B of chapter 229 of title 18, United States Code, is amended to read as follows:

"Sec.
"3611. Payment of a fine or restitution.
"3612. Collection of an unpaid fine or restitution.
"3613. Civil remedies for satisfaction of an unpaid fine.
"3613A. Effect of default.
"3614. Resentencing upon failure to pay a fine or restitution.
"3615. Criminal default.".

SEC. 208. INSTRUCTION TO SENTENCING COMMISSION.

Pursuant to section 994 of title 28, United States Code, the United States Sentencing Commission shall promulgate guidelines or amend existing guidelines to reflect this subtitle and the amendments made by this subtitle.

SEC. 209. JUSTICE DEPARTMENT REGULATIONS.

Not later than 90 days after the date of enactment of this subtitle, the Attorney General shall promulgate guidelines, or amend existing guidelines, to carry out this subtitle and the amendments made by this subtitle and to ensure that—

(1) in all plea agreements negotiated by the United States, consideration is given to requesting that the defendant provide full restitution to all victims of all charges contained in the indictment or information, without regard to the counts to which the defendant actually pleaded; and

(2) orders of restitution made pursuant to the amendments made by this subtitle are enforced to the fullest extent of the law.

SEC. 210. SPECIAL ASSESSMENTS ON CONVICTED PERSONS.

Section 3013(a)(2) of title 18, United States Code, is amended—

(1) in subparagraph (A), by striking "$50" and inserting "not less than $100"; and

(2) in subparagraph (B), by striking "$200" and inserting "not less than $400".

SEC. 211. EFFECTIVE DATE.

The amendments made by this subtitle shall, to the extent constitutionally permissible, be effective for sentencing proceedings in cases in which the defendant is convicted on or after the date of enactment of this Act.

Subtitle B—Jurisdiction for Lawsuits Against Terrorist States

SEC. 221. JURISDICTION FOR LAWSUITS AGAINST TERRORIST STATES.

(a) EXCEPTION TO FOREIGN SOVEREIGN IMMUNITY FOR CERTAIN CASES.—Section 1605 of title 28, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "or" at the end of paragraph (5);

(B) by striking the period at the end of paragraph (6) and inserting "; or"; and

(C) by adding at the end the following new paragraph:

"(7) not otherwise covered by paragraph (2), in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources (as defined in section 2339A of title 18) for such an act if such act or provision of material support is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency, except that the court shall decline to hear a claim under this paragraph—

"(A) if the foreign state was not designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) at the time the act occurred, unless later so designated as a result of such act; and

"(B) even if the foreign state is or was so designated, if—

"(i) the act occurred in the foreign state against which the claim has been brought and the claimant has not afforded the foreign state a reasonable opportunity to arbitrate the claim in accordance with accepted international rules of arbitration; or

"(ii) the claimant or victim was not a national of the United States (as that term is defined in section 101(a)(22) of the Immigration and Nationality Act) when the act upon which the claim is based occurred."; and

(2) by adding at the end the following:

"(e) For purposes of paragraph (7) of subsection (a)—

"(1) the terms 'torture' and 'extrajudicial killing' have the meaning given those terms in section 3 of the Torture Victim Protection Act of 1991;

"(2) the term 'hostage taking' has the meaning given that term in Article 1 of the International Convention Against the Taking of Hostages; and

"(3) the term 'aircraft sabotage' has the meaning given that term in Article 1 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation.

"(f) No action shall be maintained under subsection (a)(7) unless the action is commenced not later than 10 years after the date on which the cause of action arose. All principles of equitable tolling, including the period during which the foreign state was immune from suit, shall apply in calculating this limitation period.

"(g) LIMITATION ON DISCOVERY.—If an action is filed that would otherwise be barred by section 1604, but for subsection (a)(7), the court, upon request of the Attorney General shall stay any request, demand, or order for discovery that the Attorney General certifies will interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action, until such time as the Attorney General advises the court that such request, demand, or order will not longer so interfere.".

(b) EXCEPTION TO IMMUNITY FROM ATTACHMENT.—

(1) FOREIGN STATE.—Section 1610(a) of title 28, United States Code, is amended—

(A) by striking the period at the end of paragraph (6) and inserting ", or"; and

(B) by adding at the end the following new paragraph:

"(7) the judgment relates to a claim for which the foreign state is not immune under section 1605(a)(7), regardless of whether the property is or was involved with the act upon which the claim is based.".

(2) AGENCY OR INSTRUMENTALITY.—Section 1610(b)(2) of title 28, United States Code, is amended—

(A) by striking "or (5)" and inserting "(5), or (7)"; and

(B) by striking "used for the activity" and inserting "involved in the act".

(c) APPLICABILITY.—The amendments made by this subtitle shall apply to any cause of action arising before, on, or after the date of the enactment of this Act.

Subtitle C—Assistance to Victims of Terrorism

SEC. 231. SHORT TITLE.

This subtitle may be cited as the "Justice for Victims of Terrorism Act of 1996".

SEC. 232. VICTIMS OF TERRORISM ACT.

(a) AUTHORITY TO PROVIDE ASSISTANCE AND COMPENSATION TO VICTIMS OF TERRORISM.—The Victims of Crime Act of 1984 (42 U.S.C. 10601 et seq.) is amended by inserting after section 1404A the following new section:

"SEC. 1404B. COMPENSATION AND ASSISTANCE TO VICTIMS OF TERRORISM OR MASS VIOLENCE.

"(a) VICTIMS OF ACTS OF TERRORISM OUTSIDE THE UNITED STATES.—The Director may make supplemental grants as provided in section 1404(a) to States to provide compensation and assistance to the residents of such States who, while outside of the territorial boundaries of the United States, are victims of a terrorist act or mass violence and are not persons eligible for compensation under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.

"(b) VICTIMS OF TERRORISM WITHIN THE UNITED STATES.—The Director may make supplemental grants as provided in section 1404(d)(4)(B) to States for eligible crime victim compensation and assistance programs to provide emergency relief, including crisis response efforts, assistance, training, and technical assistance, for the benefit of victims of terrorist acts or mass violence occurring within the United States and may provide funding to United States Attorney's Offices for use in coordination with State victim compensation and assistance efforts in providing emergency relief.".

(b) FUNDING OF COMPENSATION AND ASSISTANCE TO VICTIMS OF TERRORISM, MASS VIOLENCE, AND CRIME.—Section 1402(d)(4) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(d)(4)) is amended to read as follows:

"(4)(A) If the sums available in the Fund are sufficient to fully provide grants to the States pursuant to section 1403(a)(1), the Director may retain any portion of the Fund that was deposited during a fiscal year that was in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year as an emergency reserve. Such reserve shall not exceed $50,000,000.

"(B) The emergency reserve referred to in subparagraph (A) may be used for supplemental grants under section 1404B and to supplement the funds available to provide grants to States for compensation and assistance in accordance with sections 1403 and 1404 in years in which supplemental grants are needed.".

(c) CRIME VICTIMS FUND AMENDMENTS.—

(1) UNOBLIGATED FUNDS.—Section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601) is amended—

(A) in subsection (c), by striking "subsection" and inserting "chapter"; and

(B) by amending subsection (e) to read as follows:

"(e) AMOUNTS AWARDED AND UNSPENT.—Any amount awarded as part of a grant under this chapter that remains unspent at the end of a fiscal year in which the grant is made may be expended for the purpose for which the grant is made at any time during the 2 succeeding fiscal years, at the end of which period, any remaining unobligated sums in excess of $500,000 shall be returned to the Treasury. Any remaining unobligated sums in an amount less than $500,000 shall be returned to the Fund.".

(2) BASE AMOUNT.—Section 1404(a)(5) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(a)(5)) is amended to read as follows:

"(5) As used in this subsection, the term 'base amount' means—

"(A) except as provided in subparagraph (B), $500,000; and

"(B) for the territories of the Northern Mariana Islands, Guam, American Samoa, and the Republic of Palau, $200,000, with the Republic of Palau's share governed by the Compact of Free Association between the United States and the Republic of Palau.".

SEC. 233. COMPENSATION OF VICTIMS OF TERRORISM.

(a) REQUIRING COMPENSATION FOR TERRORIST CRIMES.—Section 1403(d)(3) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(d)(3)) is amended—

(1) by inserting "crimes involving terrorism," before "driving while intoxicated"; and

(2) by inserting a comma after "driving while intoxicated".

(b) FOREIGN TERRORISM.—Section 1403(b)(6)(B) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(b)(6)(B)) is amended by inserting "are outside of the United States (if the compensable crime is terrorism, as defined in section 2331 of title 18, United States Code), or" before "are States not having".

(c) DESIGNATION OF CARTNEY MCRAVEN CHILD DEVELOPMENT CENTER.—

(1) DESIGNATION.—

(A) IN GENERAL.—The Federal building at 1314 LeMay Boulevard, Ellsworth Air Force Base, South Dakota, shall be known as the "Cartney McRaven Child Development Center".

(B) REPLACEMENT BUILDING.—If, after the date of enactment of this Act, a new Federal building is built at the location described in subparagraph (A) to replace the building described in the paragraph, the new Federal building shall be known as the "Cartney McRaven Child Development Center".

(2) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to a Federal building referred to in paragraph (1) shall be deemed to be a reference to the "Cartney McRaven Child Development Center".

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect 1 year after the date of enactment of this Act.

SEC. 234. CRIME VICTIMS FUND.

(a) PROHIBITION OF PAYMENTS TO DELINQUENT CRIMINAL DEBTORS BY STATE CRIME VICTIM COMPENSATION PROGRAMS.—

(1) IN GENERAL.—Section 1403(b) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(b)) is amended—

(A) by striking "and" at the end of paragraph (7);

(B) by redesignating paragraph (8) as paragraph (9); and

(C) by inserting after paragraph (7) the following new paragraph:

"(8) such program does not provide compensation to any person who has been convicted of an offense under Federal law with respect to any time period during which the person is delinquent in paying a fine, other monetary penalty, or restitution imposed for the offense; and".

(2) APPLICATION OF AMENDMENT.—Section 1403(b)(8) of the Victims of Crime Act of 1984, as added by paragraph (1) of this section, shall not be applied to deny victims compensation to any person until the date on which the Attorney General, in consultation with the Director of the Administrative Office of the United States Courts, issues a written determination that a cost-effective, readily available criminal debt payment tracking system operated by the agency responsible for the collection of criminal debt has established cost-effective, readily available communications links with entities that administer Federal victim compensation programs that are sufficient to ensure that victim compensation is not denied to any person except as authorized by law.

(b) EXCLUSION FROM INCOME FOR PURPOSES OF MEANS TESTS.—Section 1403 of the Victims of Crime Act of 1984 (42 U.S.C. 10602) is amended by inserting after subsection (b) the following new subsection:

"(c) EXCLUSION FROM INCOME FOR PURPOSES OF MEANS TESTS.—Notwithstanding any other law, for the purpose of any maximum allowed income eligibility requirement in any Federal, State, or local government program using Federal funds that provides medical or other assistance (or payment or reimbursement of the cost of such assistance) that becomes necessary to an applicant for such assistance in full or in part because of the commission of a crime against the applicant, as determined by the Director, any amount of crime victim compensation that the applicant receives through a crime victim compensation program under this section shall not be included in the income of the applicant until the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime.".

SEC. 235. CLOSED CIRCUIT TELEVISED COURT PROCEEDINGS FOR VICTIMS OF CRIME.

(a) IN GENERAL.—Notwithstanding any provision of the Federal Rules of Criminal Procedure to the contrary, in order to permit victims of crime to watch criminal trial proceedings in cases where the venue of the trial is changed—

(1) out of the State in which the case was initially brought; and

(2) more than 350 miles from the location in which those proceedings originally would have taken place;

the trial court shall order closed circuit televising of the proceedings to that location, for viewing by such persons the court determines have a compelling interest in doing so and are otherwise unable to do so by reason of the inconvenience and expense caused by the change of venue.

(b) LIMITED ACCESS.—

(1) GENERALLY.—No other person, other than official court and security personnel, or other persons specifically designated by the court, shall be permitted to view the closed circuit televising of the proceedings.

(2) EXCEPTION.—The court shall not designate a person under paragraph (1) if the presiding judge at the trial determines that testimony by that person would be materially affected if that person heard other testimony at the trial.

(c) RESTRICTIONS.—

(1) The signal transmitted pursuant to subsection (a) shall be under the control of the court at all times and shall only be transmitted subject to the terms and conditions imposed by the court.

(2) No public broadcast or dissemination shall be made of the signal transmitted pursuant to subsection (a). In the event any tapes are produced in carrying out subsection (a), such tapes shall be the property of the court and kept under seal.

(3) Any violations of this subsection, or any rule or order made pursuant to this section, shall be punishable as contempt of court as described in section 402 of title 18, United States Code.

(d) DONATIONS.—The Administrative Office of the United States Courts may accept donations to enable the courts to carry out subsection (a).

(e) CONSTRUCTION.—

(1) Nothing in this section shall be construed—

(i) to create in favor of any person a cause of action against the United States or any officer or employees thereof, or

(ii) to provide any person with a defense in any action in which application of this section is made.

(f) DEFINITION.—As used in this section, the term "State" means any State, the District of Columbia, or any possession or territory of the United States.

(g) RULES.—The Judicial Conference of the United States, pursuant to its rule making authority under section 331 of title 28, United States Code, may promulgate and issue rules, or amend existing rules, to effectuate the policy addressed by this section. Upon the implementation of such rules, this section shall cease to be effective.

(h) EFFECTIVE DATE.—This section shall only apply to cases filed after January 1, 1995.

SEC. 236. TECHNICAL CORRECTION.

Section 1402(d)(3)(B) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(d)(3)(B)) is amended by striking "1404A" and inserting "1404(a)".

TITLE III—INTERNATIONAL TERRORISM PROHIBITIONS

Subtitle A—Prohibition on International Terrorist Fundraising

SEC. 301. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) international terrorism is a serious and deadly problem that threatens the vital interests of the United States;

(2) the Constitution confers upon Congress the power to punish crimes against the law of nations and to carry out the treaty obligations of the United States, and therefore Congress may by law impose penalties relating to the provision of material support to foreign organizations engaged in terrorist activity;

(3) the power of the United States over immigration and naturalization permits the exclusion from the United States of persons belonging to international terrorist organizations;

(4) international terrorism affects the interstate and foreign commerce of the United States by harming international trade and market stability, and limiting international travel by United States citizens as well as foreign visitors to the United States;

(5) international cooperation is required for an effective response to terrorism, as demonstrated by the numerous multilateral conventions in force providing universal prosecutive jurisdiction over persons involved in a variety of terrorist acts, including hostage taking, murder of an internationally protected person, and aircraft piracy and sabotage;

(6) some foreign terrorist organizations, acting through affiliated groups or individuals, raise significant funds within the United States, or use the United States as a conduit for the receipt of funds raised in other nations; and

(7) foreign organizations that engage in terrorist activity are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct.

(b) PURPOSE.—The purpose of this subtitle is to provide the Federal Government the fullest possible basis, consistent with the Constitution, to prevent persons within the United States, or subject to the jurisdiction of the United States, from providing material support or resources to foreign organizations that engage in terrorist activities.

SEC. 302. DESIGNATION OF FOREIGN TERRORIST ORGANIZATIONS.

(a) IN GENERAL.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by adding at the end the following:

"SEC. 219. DESIGNATION OF FOREIGN TERRORIST ORGANIZATIONS.

"(a) DESIGNATION.—

"(1) IN GENERAL.—The Secretary is authorized to designate an organization as a terrorist organization in accordance with this subsection if the Secretary finds that—

"(A) the organization is a foreign organization;

"(B) the organization engages in terrorist activity (as defined in section 212(a)(3)(B)); and

"(C) the terrorist activity of the organization threatens the security of United States nationals or the national security of the United States.

"(2) PROCEDURE.—

"(A) NOTICE.—Seven days before making a designation under this subsection, the Secretary shall, by classified communication—

"(i) notify the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees, in writing, of the intent to designate an organization under this subsection, together with the findings made under paragraph (1) with respect to that organization, and the factual basis therefor; and

"(ii) seven days after such notification, publish the designation in the Federal Register.

"(B) EFFECT OF DESIGNATION.—

"(i) For purposes of section 2339B of title 18, United States Code, a designation under this subsection shall take effect upon publication under subparagraph (A).

"(ii) Any designation under this subsection shall cease to have effect upon an Act of Congress disapproving such designation.

"(C) FREEZING OF ASSETS.—Upon notification under paragraph (2), the Secretary of the Treasury may require United States financial institutions possessing or controlling any assets of any organization included in the notification to block all financial transactions involving those assets until further directive from either the Secretary of the Treasury, Act of Congress, or order of court.

"(3) RECORD.—

"(A) IN GENERAL.—In making a designation under this subsection, the Secretary shall create an administrative record.

"(B) CLASSIFIED INFORMATION.—The Secretary may consider classified information in making a designation under this subsection. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c).

"(4) PERIOD OF DESIGNATION.—

"(A) IN GENERAL.—Subject to paragraphs (5) and (6), a designation under this subsection shall be effective for all purposes for a period of 2 years beginning on the effective date of the designation under paragraph (2)(B).

"(B) REDESIGNATION.—The Secretary may redesignate a foreign organization as a terrorist organization for an additional 2-year period at the end of the 2-year period referred to in subparagraph (A) (but not sooner than 60 days prior to the termination of such period) upon a finding that the relevant circumstances described in paragraph (1) still exist. The procedural requirements of paragraphs (2) and (3) shall apply to a redesignation under this subparagraph.

"(5) REVOCATION BY ACT OF CONGRESS.—The Congress, by an Act of Congress, may block or revoke a designation made under paragraph (1).

"(6) REVOCATION BASED ON CHANGE IN CIRCUMSTANCES.—

"(A) IN GENERAL.—The Secretary may revoke a designation made under paragraph (1) if the Secretary finds that—

"(i) the circumstances that were the basis for the designation have changed in such a manner as to warrant revocation of the designation; or

"(ii) the national security of the United States warrants a revocation of the designation.

"(B) PROCEDURE.—The procedural requirements of paragraphs (2) through (4) shall apply to a revocation under this paragraph.

"(7) EFFECT OF REVOCATION.—The revocation of a designation under paragraph (5) or (6) shall not affect any action or proceeding based on conduct committed prior to the effective date of such revocation.

"(8) USE OF DESIGNATION IN TRIAL OR HEARING.—If a designation under this subsection has become effective under paragraph (1)(B), a defendant in a criminal action shall not be permitted to raise any question concerning the validity of the issuance of such designation as a defense or an objection at any trial or hearing.

"(b) JUDICIAL REVIEW OF DESIGNATION.—

"(1) IN GENERAL.—Not later than 30 days after publication of the designation in the Federal Register, an organization designated as a foreign terrorist organization may seek judicial review of the designation in the United States Court of Appeals for the District of Columbia Circuit.

"(2) BASIS OF REVIEW.—Review under this subsection shall be based solely upon the administrative record, except that the Government may submit, for ex parte and in camera review, classified information used in making the designation.

"(3) SCOPE OF REVIEW.—The Court shall hold unlawful and set aside a designation the court finds to be—

"(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

"(B) contrary to constitutional right, power, privilege, or immunity; or

"(C) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right.

"(4) JUDICIAL REVIEW INVOKED.—The pendency of an action for judicial review of a designation shall not affect the application of this section, unless the court issues a final order setting aside the designation.

"(c) DEFINITIONS.—As used in this section—

"(1) the term 'classified information' has the meaning given that term in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.);

"(2) the term 'national security' means the national defense, foreign relations, or economic interests of the United States;

"(3) the term 'relevant committees' means the Committees on the Judiciary, Intelligence, and Foreign Relations of the Senate and the Committees on the Judiciary, Intelligence, and International Relations of the House of Representatives; and

"(4) the term 'Secretary' means the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General.".

(b) CLERICAL AMENDMENT.—The table of contents for the Immigration and Nationality Act, relating to terrorism, is amended by inserting after the item relating to section 218 the following new item:

"Sec. 219. Designation of foreign terrorist organizations.".

SEC. 303. PROHIBITION ON TERRORIST FUNDRAISING.

(a) IN GENERAL.—Chapter 113B of title 18, United States Code, is amended by adding at the end the following new section:

"§2339B. Providing material support or resources to designated foreign terrorist organizations

"(a) PROHIBITED ACTIVITIES.—

"(1) UNLAWFUL CONDUCT.—Whoever, within the United States or subject to the jurisdiction of the United States, knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 10 years, or both.

"(2) FINANCIAL INSTITUTIONS.—Except as authorized by the Secretary, any financial institution that becomes aware that it has possession of, or control over, any funds in which a foreign terrorist organization, or its agent, has an interest, shall—

"(A) retain possession of, or maintain control over, such funds; and

"(B) report to the Secretary the existence of such funds in accordance with regulations issued by the Secretary.

"(b) CIVIL PENALTY.—Any financial institution that knowingly fails to comply with subsection (a)(2) shall be subject to a civil penalty in an amount that is the greater of—

"(A) $50,000 per violation; or

"(B) twice the amount of which the financial institution was required under subsection (a)(2) to retain possession or control.

"(c) INJUNCTION.—Whenever it appears to the Secretary or the Attorney General that any person is engaged in, or is about to engage in, any act that constitutes, or would constitute, a violation of this section, the Attorney General may initiate civil action in a district court of the United States to enjoin such violation.

"(d) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over an offense under this section.

"(e) INVESTIGATIONS.—

"(1) IN GENERAL.—The Attorney General shall conduct any investigation of a possible violation of this section, or of any license, order, or regulation issued pursuant to this section.

"(2) COORDINATION WITH THE DEPARTMENT OF THE TREASURY.—The Attorney General shall work in coordination with the Secretary in investigations relating to—

"(A) the compliance or noncompliance by a financial institution with the requirements of subsection (a)(2); and

"(B) civil penalty proceedings authorized under subsection (b).

"(3) REFERRAL.—Any evidence of a criminal violation of this section arising in the course of an investigation by the Secretary or any other Federal agency shall be referred immediately to the Attorney General for further investigation. The Attorney General shall timely notify the Secretary of any action taken on referrals from the Secretary, and may refer investigations to the Secretary for remedial licensing or civil penalty action.

"(f) CLASSIFIED INFORMATION IN CIVIL PROCEEDINGS BROUGHT BY THE UNITED STATES.—

"(1) DISCOVERY OF CLASSIFIED INFORMATION BY DEFENDANTS.—

"(A) REQUEST BY UNITED STATES.—In any civil proceeding under this section, upon request made ex parte and in writing by the United States, a court, upon a sufficient showing, may authorize the United States to—

"(i) redact specified items of classified information from documents to be introduced into evidence or made available to the defendant through discovery under the Federal Rules of Civil Procedure;

"(ii) substitute a summary of the information for such classified documents; or

"(iii) substitute a statement admitting relevant facts that the classified information would tend to prove.

"(B) ORDER GRANTING REQUEST.—If the court enters an order granting a request under this paragraph, the entire text of the documents to which the request relates shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

"(C) DENIAL OF REQUEST.—If the court enters an order denying a request of the United States under this paragraph, the United States may take an immediate, interlocutory appeal in accordance with paragraph (5). For purposes of such an appeal, the entire text of the documents to which the request relates, together with any transcripts of arguments made ex parte to the court in connection therewith, shall be maintained under seal and delivered to the appellate court.

"(2) INTRODUCTION OF CLASSIFIED INFORMATION; PRECAUTIONS BY COURT.—

"(A) EXHIBITS.—To prevent unnecessary or inadvertent disclosure of classified information in a civil proceeding brought by the United States under this section, the United States may petition the court ex parte to admit, in lieu of classified writings, recordings, or photographs, one or more of the following:

"(i) Copies of items from which classified information has been redacted.

"(ii) Stipulations admitting relevant facts that specific classified information would tend to prove.

"(iii) A declassified summary of the specific classified information.

"(B) DETERMINATION BY COURT.—The court shall grant a request under this paragraph if the court finds that the redacted item, stipulation, or summary is sufficient to allow the defendant to prepare a defense.

"(3) TAKING OF TRIAL TESTIMONY.—

"(A) OBJECTION.—During the examination of a witness in any civil proceeding brought by the United States under this subsection, the United States may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible.

"(B) ACTION BY COURT.—In determining whether a response is admissible, the court shall take precautions to guard against the compromise of any classified information, including—

"(i) permitting the United States to provide the court, ex parte, with a proffer of the witness's response to the question or line of inquiry; and

"(ii) requiring the defendant to provide the court with a proffer of the nature of the information that the defendant seeks to elicit.

"(C) OBLIGATION OF DEFENDANT.—In any civil proceeding under this section, it shall be the defendant's obligation to establish the relevance and materiality of any classified information sought to be introduced.

"(4) APPEAL.—If the court enters an order denying a request of the United States under this subsection, the United States may take an immediate interlocutory appeal in accordance with paragraph (5).

"(5) INTERLOCUTORY APPEAL.—

"(A) SUBJECT OF APPEAL.—An interlocutory appeal by the United States shall lie to a court of appeals from a decision or order of a district court—

"(i) authorizing the disclosure of classified information;

"(ii) imposing sanctions for nondisclosure of classified information; or

"(iii) refusing a protective order sought by the United States to prevent the disclosure of classified information.

"(B) EXPEDITED CONSIDERATION.—

"(i) IN GENERAL.—An appeal taken pursuant to this paragraph, either before or during trial, shall be expedited by the court of appeals.

"(ii) APPEALS PRIOR TO TRIAL.—If an appeal is of an order made prior to trial, an appeal shall be taken not later than 10 days after the decision or order appealed from, and the trial shall not commence until the appeal is resolved.

"(iii) APPEALS DURING TRIAL.—If an appeal is taken during trial, the trial court shall adjourn the trial until the appeal is resolved, and the court of appeals—

"(I) shall hear argument on such appeal not later than 4 days after the adjournment of the trial;

"(II) may dispense with written briefs other than the supporting materials previously submitted to the trial court;

"(III) shall render its decision not later than 4 days after argument on appeal; and

"(IV) may dispense with the issuance of a written opinion in rendering its decision.

"(C) EFFECT OF RULING.—An interlocutory appeal and decision shall not affect the right of the defendant, in a subsequent appeal from a final judgment, to claim as error reversal by the trial court on remand of a ruling appealed from during trial.

"(6) CONSTRUCTION.—Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States to protect against the disclosure of classified information, including the invocation of the military and State secrets privilege.

"(g) DEFINITIONS.—As used in this section—

"(1) the term 'classified information' has the meaning given that term in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.);

"(2) the term 'financial institution' has the same meaning as in section 5312(a)(2) of title 31, United States Code;

"(3) the term 'funds' includes coin or currency of the United States or any other country, traveler's checks, personal checks, bank checks, money orders, stocks, bonds, debentures, drafts, letters of credit, any other negotiable instrument, and any electronic representation of any of the foregoing;

"(4) the term 'material support or resources' has the same meaning as in section 2339A;

"(5) the term 'representative' includes an officer, official, or spokesperson of an organization and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity;

"(6) the term 'Secretary' means the Secretary of the Treasury; and

"(7) the term 'terrorist organization' means an organization designated as a terrorist organization under section 219 of the Immigration and Nationality Act.".

(b) CLERICAL AMENDMENT TO TABLE OF SECTIONS.—The table of sections at the beginning of chapter 113B of title 18, United States Code, is amended by adding at the end the following new item:

"2339B. Providing material support or resources to designated foreign terrorist organizations.".

(c) TECHNICAL AMENDMENT.—

(1) NEW ITEM.—Chapter 113B of title 18, United States Code, relating to torture, is redesignated as chapter 113C.

(2) TABLE OF CHAPTERS.—The table of chapters for part I of title 18, United States Code, is amended by striking "113B. Torture" and inserting "113C. Torture".

Subtitle B—Prohibition on Assistance to Terrorist States

SEC. 321. FINANCIAL TRANSACTIONS WITH TERRORISTS.

(a) IN GENERAL.—Chapter 113B of title 18, United States Code, relating to terrorism, is amended by inserting after the section 2332c added by section 521 of this Act the following new section:

"§2332d. Financial transactions

"(a) OFFENSE.—Except as provided in regulations issued by the Secretary of State, in consultation with the Secretary of the Treasury, whoever, being a United States person, knowing or having reasonable cause to know that a country is designated under section 6(j) of the Export Administration Act (50 U.S.C. App. 2405) as a country supporting international terrorism,

engages in a financial transaction with that country, shall be fined under this title, imprisoned for not more than 10 years, or both.

"(b) DEFINITIONS.—As used in this section—

"(1) the term 'financial transaction' has the same meaning as in section 1956(c)(4); and

"(2) the term 'United States person' means any—

"(A) United States citizen or national;

"(B) permanent resident alien;

"(C) juridical person organized under the laws of the United States; or

"(D) any person in the United States.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113B of title 18, United States Code, relating to terrorism, is amended by inserting after the item added by section 521 of this Act the following new item:

"2332d. Financial transactions.".

SEC. 322. FOREIGN AIR TRAVEL SAFETY.

Section 44906 of title 49, United States Code, is amended to read as follows:

"§44906. Foreign air carrier security programs

"The Administrator of the Federal Aviation Administration shall continue in effect the requirement of section 129.25 of title 14, Code of Federal Regulations, that a foreign air carrier must adopt and use a security program approved by the Administrator. The Administrator shall not approve a security program of a foreign air carrier under section 129.25, or any successor regulation, unless the security program requires the foreign air carrier in its operations to and from airports in the United States to adhere to the identical security measures that the Administrator requires air carriers serving the same airports to adhere to. The foregoing requirement shall not be interpreted to limit the ability of the Administrator to impose additional security measures on a foreign air carrier or an air carrier when the Administrator determines that a specific threat warrants such additional measures. The Administrator shall prescribe regulations to carry out this section.".

SEC. 323. MODIFICATION OF MATERIAL SUPPORT PROVISION.

Section 2339A of title 18, United States Code, is amended to read as follows:

"§2339A. Providing material support to terrorists

"(a) OFFENSE.—Whoever, within the United States, provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of section 32, 37, 81, 175, 351, 831, 842 (m) or (n), 844 (f) or (i), 956, 1114, 1116, 1203, 1361, 1362, 1363, 1366, 1751, 2155, 2156, 2280, 2281, 2332, 2332a, 2332b, or 2340A of this title or section 46502 of title 49, or in preparation for, or in carrying out, the concealment from the commission of any such violation, shall be fined under this title, imprisoned not more than 10 years, or both.

"(b) DEFINITION.—In this section, the term 'material support or resources' means currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.".

SEC. 324. FINDINGS.

The Congress finds that—

(1) international terrorism is among the most serious transnational threats faced by the United States and its allies, far eclipsing the dangers posed by population growth or pollution;

(2) the President should continue to make efforts to counter international terrorism a national security priority;

(3) because the United Nations has been an inadequate forum for the discussion of cooperative, multilateral responses to the threat of international terrorism, the President should undertake immediate efforts to develop effective multilateral responses to international terrorism as a complement to national counter terrorist efforts;

(4) the President should use all necessary means, including covert action and military force, to disrupt, dismantle, and destroy international infrastructure used by international terrorists, including overseas terrorist training facilities and safe havens;

(5) the Congress deplores decisions to ease, evade, or end international sanctions on state sponsors of terrorism, including the recent decision by the United Nations Sanctions Committee to allow airline flights to and from Libya despite Libya's noncompliance with United Nations resolutions; and

(6) the President should continue to undertake efforts to increase the international isolation of state sponsors of international terrorism, including efforts to strengthen international sanctions, and should oppose any future initiatives to ease sanctions on Libya or other state sponsors of terrorism.

SEC. 325. PROHIBITION ON ASSISTANCE TO COUNTRIES THAT AID TERRORIST STATES.

The Foreign Assistance Act of 1961 (22 U.S.C. 151 et seq.) is amended by adding immediately after section 620F the following new section:

"SEC. 620G. PROHIBITION ON ASSISTANCE TO COUNTRIES THAT AID TERRORIST STATES.

"(a) WITHHOLDING OF ASSISTANCE.—The President may withhold assistance under this Act to the government of any country that provides assistance to the government of any other country for which the Secretary of State has made a determination under section 620A.

"(b) WAIVER.—Assistance prohibited by this section may be furnished to a foreign government described in subsection (a) if the President determines that furnishing such assistance is important to the national interests of the United States and, not later than 15 days before obligating such assistance, furnishes a report to the appropriate committees of Congress including—

"(1) a statement of the determination;

"(2) a detailed explanation of the assistance to be provided;

"(3) the estimated dollar amount of the assistance; and

"(4) an explanation of how the assistance furthers United States national interests.".

SEC. 326. PROHIBITION ON ASSISTANCE TO COUNTRIES THAT PROVIDE MILITARY EQUIPMENT TO TERRORIST STATES.

The Foreign Assistance Act of 1961 (22 U.S.C. 151 et seq.) is amended by adding immediately after section 620G the following new section:

"SEC. 620H. PROHIBITION ON ASSISTANCE TO COUNTRIES THAT PROVIDE MILITARY EQUIPMENT TO TERRORIST STATES.

"(a) PROHIBITION.—

"(1) IN GENERAL.—The President may withhold assistance under this Act shall be provided to the government of any country that provides lethal military equipment to a country the government of which the Secretary of State has determined is a terrorist government for the purposes of 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), or 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

"(2) APPLICABILITY.—The prohibition under this section with respect to a foreign government shall terminate 1 year after that government ceases to provide lethal military equipment. This section applies with respect to lethal military equipment provided under a contract entered into after the date of enactment of this Act.

"(b) WAIVER.—Notwithstanding any other provision of law, assistance may be furnished to a foreign government described in subsection (a) if the President determines that furnishing such assistance is important to the national interests of the United States and, not later than 15 days before obligating such assistance, furnishes a report to the appropriate committees of Congress including—

"(1) a statement of the determination;

"(2) a detailed explanation of the assistance to be provided;

"(3) the estimated dollar amount of the assistance; and

"(4) an explanation of how the assistance furthers United States national interests.".

SEC. 327. OPPOSITION TO ASSISTANCE BY INTERNATIONAL FINANCIAL INSTITUTIONS TO TERRORIST STATES.

The International Financial Institutions Act (22 U.S.C. 262c et seq.) is amended by inserting after section 1620 the following new section:

"SEC. 1621. OPPOSITION TO ASSISTANCE BY INTERNATIONAL FINANCIAL INSTITUTIONS TO TERRORIST STATES.

"(a) IN GENERAL.—The Secretary of the Treasury shall instruct the United States executive director of each international financial institution to use the voice and vote of the United States to oppose any loan or other use of the funds of the respective institution to or for a country for which the Secretary of State has made a determination under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

"(b) DEFINITION.—For purposes of this section, the term 'international financial institution' includes—

"(1) the International Bank for Reconstruction and Development, the International Development Association, and the International Monetary Fund;

"(2) wherever applicable, the Inter-American Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, the African Development Bank, and the African Development Fund; and

"(3) any similar institution established after the date of enactment of this section.".

SEC. 328. ANTITERRORISM ASSISTANCE.

(a) FOREIGN ASSISTANCE ACT.—Section 573 of the Foreign Assistance Act of 1961 (22 U.S.C. 2349aa–2) is amended—

(1) in subsection (c), by striking "development and implementation of the antiterrorism assistance program under this chapter, including";

(2) by amending subsection (d) to read as follows:

"(d)(1) Arms and ammunition may be provided under this chapter only if they are directly related to antiterrorism assistance.

"(2) The value (in terms of original acquisition cost) of all equipment and commodities provided under this chapter in any fiscal year shall not exceed 30 percent of the funds made available to carry out this chapter for that fiscal year."; and

(3) by striking subsection (f).

(b) ASSISTANCE TO FOREIGN COUNTRIES TO PROCURE EXPLOSIVES DETECTION DEVICES AND OTHER COUNTERTERRORISM TECHNOLOGY.—(1) Subject to section 575(b), up to $3,000,000 in any fiscal year may be made available—

(A) to procure explosives detection devices and other counterterrorism technology; and

(B) for joint counterterrorism research and development projects on such technology conducted with NATO and major non-NATO allies under the auspices of the Technical Support Working Group of the Department of State.

(2) As used in this subsection, the term "major non-NATO allies" means those countries designated as major non-NATO allies for purposes of section 2350a(i)(3) of title 10, United States Code.

(c) ASSISTANCE TO FOREIGN COUNTRIES.—Notwithstanding any other provision of law (except section 620A of the Foreign Assistance Act of 1961) up to $1,000,000 in assistance may be provided to a foreign country for counterterrorism efforts in any fiscal year if—

(1) such assistance is provided for the purpose of protecting the property of the United States Government or the life and property of any United States citizen, or furthering the apprehension of any individual involved in any act of terrorism against such property or persons; and

(2) the appropriate committees of Congress are notified not later than 15 days prior to the provision of such assistance.

SEC. 329. DEFINITION OF ASSISTANCE.

For purposes of this title—

(1) the term "assistance" means assistance to or for the benefit of a government of any country that is provided by grant, concessional sale, guaranty, insurance, or by any other means on terms more favorable than generally available in the applicable market, whether in the form of a loan, lease, credit, debt relief, or otherwise, including subsidies for exports to such country and favorable tariff treatment of articles that are the growth, product, or manufacture of such country; and

(2) the term "assistance" does not include assistance of the type authorized under chapter 9 of part 1 of the Foreign Assistance Act of 1961 (relating to international disaster assistance).

SEC. 330. PROHIBITION ON ASSISTANCE UNDER ARMS EXPORT CONTROL ACT FOR COUNTRIES NOT COOPERATING FULLY WITH UNITED STATES ANTITERRORISM EFFORTS.

Chapter 3 of the Arms Export Control Act (22 U.S.C. 2771 et seq.) is amended by adding at the end the following:

"SEC. 40A. TRANSACTIONS WITH COUNTRIES NOT FULLY COOPERATING WITH UNITED STATES ANTITERRORISM EFFORTS.—

"(a) PROHIBITED TRANSACTIONS.—No defense article or defense service may be sold or licensed for export under this Act in a fiscal year to a foreign country that the President determines and certifies to Congress, by May 15 of the calendar year in which that fiscal year begins, is not cooperating fully with United States antiterrorism efforts.

"(b) WAIVER.—The President may waive the prohibition set forth in subsection (a) with respect to a specific transaction if the President determines that the transaction is essential to the national security interests of the United States.".

TITLE IV—TERRORIST AND CRIMINAL ALIEN REMOVAL AND EXCLUSION

Subtitle A—Removal of Alien Terrorists

SEC. 401. ALIEN TERRORIST REMOVAL.

(a) IN GENERAL.—The Immigration and Nationality Act is amended by adding at the end the following new title:

"TITLE V—ALIEN TERRORIST REMOVAL PROCEDURES

"SEC. 501. DEFINITIONS.

"As used in this title—

"(1) the term 'alien terrorist' means any alien described in section 241(a)(4)(B);

"(2) the term 'classified information' has the same meaning as in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.);

"(3) the term 'national security' has the same meaning as in section 1(b) of the Classified Information Procedures Act (18 U.S.C. App.);

"(4) the term 'removal court' means the court described in section 502;

"(5) the term 'removal hearing' means the hearing described in section 504; and

"(6) the term 'removal proceeding' means a proceeding under this title.

"SEC. 502. ESTABLISHMENT OF REMOVAL COURT.

"(a) DESIGNATION OF JUDGES.—The Chief Justice of the United States shall publicly designate 5 district court judges from 5 of the United States judicial circuits who shall constitute a court that shall have jurisdiction to conduct all removal proceedings. The Chief Justice may, in the Chief Justice's discretion, designate the same judges under this section as are designated pursuant to section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)).

"(b) TERMS.—Each judge designated under subsection (a) shall serve for a term of 5 years and shall be eligible for redesignation, except that of the members first designated—

"(1) 1 member shall serve for a term of 1 year;

"(2) 1 member shall serve for a term of 2 years;

"(3) 1 member shall serve for a term of 3 years; and

"(4) 1 member shall serve for a term of 4 years.

"(c) CHIEF JUDGE.—

"(1) DESIGNATION.—The Chief Justice shall publicly designate one of the judges of the removal court to be the chief judge of the removal court.

"(2) RESPONSIBILITIES.—The chief judge shall—

"(A) promulgate rules to facilitate the functioning of the removal court; and

"(B) assign the consideration of cases to the various judges on the removal court.

"(d) EXPEDITIOUS AND CONFIDENTIAL NATURE OF PROCEEDINGS.—The provisions of section 103(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(c)) shall apply to removal proceedings in the same manner as they apply to proceedings under that Act.

"SEC. 503. REMOVAL COURT PROCEDURE.

"(a) APPLICATION.—

"(1) IN GENERAL.—In any case in which the Attorney General has classified information that an alien is an alien terrorist, the Attorney General may seek removal of the alien under this title by filing an application with the removal court that contains—

"(A) the identity of the attorney in the Department of Justice making the application;

"(B) a certification by the Attorney General or the Deputy Attorney General that the application satisfies the criteria and requirements of this section;

"(C) the identity of the alien for whom authorization for the removal proceeding is sought; and

"(D) a statement of the facts and circumstances relied on by the Department of Justice to establish probable cause that—

"(i) the alien is an alien terrorist;

"(ii) the alien is physically present in the United States; and

"(iii) with respect to such alien, removal under title II would pose a risk to the national security of the United States.

"(2) FILING.—An application under this section shall be submitted ex parte and in camera, and shall be filed under seal with the removal court.

"(b) RIGHT TO DISMISS.—The Attorney General may dismiss a removal action under this title at any stage of the proceeding.

"(c) CONSIDERATION OF APPLICATION.—

"(1) BASIS FOR DECISION.—In determining whether to grant an application under this section, a single judge of the removal court may consider, ex parte and in camera, in addition to the information contained in the application—

"(A) other information, including classified information, presented under oath or affirmation; and

"(B) testimony received in any hearing on the application, of which a verbatim record shall be kept.

"(2) APPROVAL OF ORDER.—The judge shall issue an order granting the application, if the judge finds that there is probable cause to believe that—

"(A) the alien who is the subject of the application has been correctly identified and is an alien terrorist present in the United States; and

"(B) removal under title II would pose a risk to the national security of the United States.

"(3) DENIAL OF ORDER.—If the judge denies the order requested in the application, the judge shall prepare a written statement of the reasons for the denial, taking all necessary precautions not to disclose any classified information contained in the Government's application.

"(d) EXCLUSIVE PROVISIONS.—If an order is issued under this section granting an application, the rights of the alien regarding removal and expulsion shall be governed solely by this title, and except as they are specifically referenced in this title, no other provisions of this Act shall be applicable.

"SEC. 504. REMOVAL HEARING.

"(a) IN GENERAL.—

"(1) EXPEDITIOUS HEARING.—In any case in which an application for an order is approved under section 503(c)(2), a removal hearing shall be conducted under this section as expeditiously as practicable for the purpose of determining whether the alien to whom the order pertains should be removed from the United States on the grounds that the alien is an alien terrorist.

"(2) PUBLIC HEARING.—The removal hearing shall be open to the public.

"(b) NOTICE.—An alien who is the subject of a removal hearing under this title shall be given reasonable notice of—

"(1) the nature of the charges against the alien, including a general account of the basis for the charges; and

"(2) the time and place at which the hearing will be held.

"(c) RIGHTS IN HEARING.—

"(1) RIGHT OF COUNSEL.—The alien shall have a right to be present at such hearing and to be represented by counsel. Any alien financially unable to obtain counsel shall be entitled to have counsel assigned to represent the alien. Such counsel shall be appointed by the judge pursuant to the plan for furnishing representation for any person financially unable to obtain adequate representation for the district in which the hearing is conducted, as provided for in section 3006A of title 18, United States Code. All provisions of that section shall apply and, for purposes of determining the maximum amount of compensation, the matter shall be treated as if a felony was charged.

"(2) INTRODUCTION OF EVIDENCE.—Subject to the limitations in subsection (e), the alien shall have a reasonable opportunity to introduce evidence on the alien's own behalf.

"(3) EXAMINATION OF WITNESSES.—Subject to the limitations in subsection (e), the alien shall have a reasonable opportunity to examine the evidence against the alien and to cross-examine any witness.

"(4) RECORD.—A verbatim record of the proceedings and of all testimony and evidence offered or produced at such a hearing shall be kept.

"(5) REMOVAL DECISION BASED ON EVIDENCE AT HEARING.—The decision of the judge regarding removal shall be based only on that evidence introduced at the removal hearing.

"(d) SUBPOENAS.—

"(1) REQUEST.—At any time prior to the conclusion of the removal hearing, either the alien or the Department of Justice may request the judge to issue a subpoena for the presence of a named witness (which subpoena may also command the person to whom it is directed to

produce books, papers, documents, or other objects designated therein) upon a satisfactory showing that the presence of the witness is necessary for the determination of any material matter. Such a request may be made ex parte except that the judge shall inform the Department of Justice of any request for a subpoena by the alien for a witness or material if compliance with such a subpoena would reveal classified evidence or the source of that evidence. The Department of Justice shall be given a reasonable opportunity to oppose the issuance of such a subpoena.

"(2) PAYMENT FOR ATTENDANCE.—If an application for a subpoena by the alien also makes a showing that the alien is financially unable to pay for the attendance of a witness so requested, the court may order the costs incurred by the process and the fees of the witness so subpoenaed to be paid from funds appropriated for the enforcement of title II.

"(3) NATIONWIDE SERVICE.—A subpoena under this subsection may be served anywhere in the United States.

"(4) WITNESS FEES.—A witness subpoenaed under this subsection shall receive the same fees and expenses as a witness subpoenaed in connection with a civil proceeding in a court of the United States.

"(5) NO ACCESS TO CLASSIFIED INFORMATION.—Nothing in this subsection is intended to allow an alien to have access to classified information.

"(e) DISCOVERY.—

"(1) IN GENERAL.—For purposes of this title—

"(A) discovery of information derived pursuant to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), or otherwise collected for national security purposes, shall not be authorized if disclosure would present a risk to the national security of the United States;

"(B) an alien subject to removal under this title shall not be entitled to suppress evidence that the alien alleges was unlawfully obtained; and

"(C) section 3504 of title 18, United States Code, and section 1806(c) of title 50, United States Code, shall not apply if the Attorney General determines that public disclosure would pose a risk to the national security of the United States because it would disclose classified information or otherwise threaten the integrity of a pending investigation.

"(2) PROTECTIVE ORDERS.—Nothing in this title shall prevent the United States from seeking protective orders and from asserting privileges ordinarily available to the United States to protect against the disclosure of classified information, including the invocation of the military and state secrets privileges.

"(3) TREATMENT OF CLASSIFIED INFORMATION.—

"(A) USE.—The judge shall examine, ex parte and in camera, any evidence for which the Attorney General determines that public disclosure would pose a risk to the national security of the United States or to the security of any individual because it would disclose classified information.

"(B) SUBMISSION.—With respect to such information, the Government shall submit to the removal court an unclassified summary of the specific evidence that does not pose that risk.

"(C) APPROVAL.—Not later than 15 days after submission, the judge shall approve the summary if the judge finds that it is sufficient to enable the alien to prepare a defense. The Government shall deliver to the alien a copy of the unclassified summary approved under this subparagraph.

"(D) DISAPPROVAL.—

"(i) IN GENERAL.—If an unclassified summary is not approved by the removal court under subparagraph (C), the Government shall be afforded 15 days to correct the deficiencies identified by the court and submit a revised unclassified summary.

"(ii) REVISED SUMMARY.—If the revised unclassified summary is not approved by the court within 15 days of its submission pursuant to subparagraph (C), the removal hearing shall be terminated.

"(f) ARGUMENTS.—Following the receipt of evidence, the Government and the alien shall be given fair opportunity to present argument as to whether the evidence is sufficient to justify the removal of the alien. The Government shall open the argument. The alien shall be permitted to reply. The Government shall then be permitted to reply in rebuttal.

"(g) BURDEN OF PROOF.—In the hearing, it is the Government's burden to prove, by the preponderance of the evidence, that the alien is subject to removal because the alien is an alien terrorist.

"(h) RULES OF EVIDENCE.—The Federal Rules of Evidence shall not apply in a removal hearing.

"(i) DETERMINATION OF DEPORTATION.—If the judge, after considering the evidence on the record as a whole, finds that the Government has met its burden, the judge shall order the alien removed and detained pending removal from the United States. If the alien was released pending the removal hearing, the judge shall order the Attorney General to take the alien into custody.

"(j) WRITTEN ORDER.—At the time of issuing a decision as to whether the alien shall be removed, the judge shall prepare a written order containing a statement of facts found and conclusions of law.

"(k) NO RIGHT TO ANCILLARY RELIEF.—At no time shall the judge consider or provide for relief from removal based on—

"(1) asylum under section 208;

"(2) withholding of deportation under section 243(h);

"(3) suspension of deportation under subsection (a) or (e) of section 244;

"(4) adjustment of status under section 245; or

"(5) registry under section 249.

"SEC. 505. APPEALS.

"(a) APPEAL OF DENIAL OF APPLICATION FOR REMOVAL PROCEEDINGS.—

"(1) IN GENERAL.—The Attorney General may seek a review of the denial of an order sought in an application filed pursuant to section 503. The appeal shall be filed in the United States Court of Appeals for the District of Columbia Circuit by notice of appeal filed not later than 20 days after the date of such denial.

"(2) RECORD ON APPEAL.—The entire record of the proceeding shall be transmitted to the Court of Appeals under seal, and the Court of Appeals shall hear the matter ex parte.

"(3) STANDARD OF REVIEW.—The Court of Appeals shall—

"(A) review questions of law de novo; and

"(B) set aside a finding of fact only if such finding was clearly erroneous.

"(b) APPEAL OF DETERMINATION REGARDING SUMMARY OF CLASSIFIED INFORMATION.—

"(1) IN GENERAL.—The United States may take an interlocutory appeal to the United States Court of Appeals for the District of Columbia Circuit of—

"(A) any determination by the judge pursuant to section 504(e)(3); or

"(B) the refusal of the court to make the findings permitted by section 504(e)(3).

"(2) RECORD.—In any interlocutory appeal taken pursuant to this subsection, the entire record, including any proposed order of the judge, any classified information and the summary of evidence, shall be transmitted to the Court of Appeals. The classified information shall be transmitted under seal. A verbatim record of such appeal shall be kept under seal in the event of any other judicial review.

"(c) APPEAL OF DECISION IN HEARING.—

"(1) IN GENERAL.—The decision of the judge after a removal hearing may be appealed by either the alien or the Attorney General to the United States Court of Appeals for the District of Columbia Circuit by notice of appeal filed not later than 20 days after the date on which the order is issued. The order shall not be enforced during the pendency of an appeal under this subsection.

"(2) TRANSMITTAL OF RECORD.—In an appeal or review to the Court of Appeals pursuant to this subsection—

"(A) the entire record shall be transmitted to the Court of Appeals; and

"(B) information received in camera and ex parte, and any portion of the order that would reveal the substance or source of such information, shall be transmitted under seal.

"(3) EXPEDITED APPELLATE PROCEEDING.—In an appeal or review to the Court of Appeals under this subsection—

"(A) the appeal or review shall be heard as expeditiously as practicable and the court may dispense with full briefing and hear the matter solely on the record of the judge of the removal court and on such briefs or motions as the court may require to be filed by the parties;

"(B) the Court of Appeals shall issue an opinion not later than 60 days after the date of the issuance of the final order of the district court;

"(C) the court shall review all questions of law de novo; and

"(D) a finding of fact shall be accorded deference by the reviewing court and shall not be set aside unless such finding was clearly erroneous.

"(d) CERTIORARI.—Following a decision by the Court of Appeals pursuant to subsection (c), the alien or the Attorney General may petition the Supreme Court for a writ of certiorari. In any such case, any information transmitted to the Court of Appeals under seal shall, if such information is also submitted to the Supreme Court, be transmitted under seal. Any order of removal shall not be stayed pending disposition of a writ of certiorari, except as provided by the Court of Appeals or a Justice of the Supreme Court.

"(e) APPEAL OF DETENTION ORDER.—

"(1) IN GENERAL.—Sections 3145 through 3148 of title 18, United States Code, pertaining to review and appeal of a release or detention order, penalties for failure to appear, penalties for an offense committed while on release, and sanctions for violation of a release condition shall apply to an alien to whom section 507(b)(1) applies. In applying the previous sentence—

"(A) for purposes of section 3145 of such title an appeal shall be taken to the United States Court of Appeals for the District of Columbia Circuit; and

"(B) for purposes of section 3146 of such title the alien shall be considered released in connection with a charge of an offense punishable by life imprisonment.

"(2) NO REVIEW OF CONTINUED DETENTION.—The determinations and actions of the Attorney General pursuant to section 507(b)(2)(C) shall not be subject to judicial review, including application for a writ of habeas corpus, except for a claim by the alien that continued detention violates the alien's rights under the Constitution. Jurisdiction over any such challenge shall lie exclusively in the United States Court of Appeals for the District of Columbia Circuit.

"SEC. 506. CUSTODY AND RELEASE PENDING REMOVAL HEARING.

"(a) UPON FILING APPLICATION.—

"(1) IN GENERAL.—Subject to paragraphs (2) and (3), the Attorney General may—

"(A) take into custody any alien with respect to whom an application under section 503 has been filed; and

"(B) retain such an alien in custody in accordance with the procedures authorized by this title.

"(2) SPECIAL RULES FOR PERMANENT RESIDENT ALIENS.—

"(A) RELEASE HEARING.—An alien lawfully admitted for permanent residence shall be entitled to a release hearing before the judge assigned to hear the removal hearing. Such an alien shall be detained pending the removal hearing, unless the alien demonstrates to the court that the alien—

"(i) is a person lawfully admitted for permanent residence in the United States;

"(ii) if released upon such terms and conditions as the court may prescribe (including the posting of any monetary amount), is not likely to flee; and

"(iii) will not endanger national security, or the safety of any person or the community, if released.

"(B) INFORMATION CONSIDERED.—The judge may consider classified information submitted in camera and ex parte in making a determination whether to release an alien pending the removal hearing.

"(3) RELEASE IF ORDER DENIED AND NO REVIEW SOUGHT.—

"(A) IN GENERAL.—Subject to subparagraph (B), if a judge of the removal court denies the order sought in an application filed pursuant to section 503, and the Attorney General does not seek review of such denial, the alien shall be released from custody.

"(B) APPLICATION OF REGULAR PROCEDURES.—Subparagraph (A) shall not prevent the arrest and detention of the alien pursuant to title II.

"(b) CONDITIONAL RELEASE IF ORDER DENIED AND REVIEW SOUGHT.—

"(1) IN GENERAL.—If a judge of the removal court denies the order sought in an application filed pursuant to section 503 and the Attorney General seeks review of such denial, the judge shall release the alien from custody subject to the least restrictive condition, or combination of conditions, of release described in section 3142(b) and clauses (i) through (xiv) of section 3142(c)(1)(B) of title 18, United States Code, that—

"(A) will reasonably assure the appearance of the alien at any future proceeding pursuant to this title; and

"(B) will not endanger the safety of any other person or the community.

"(2) NO RELEASE FOR CERTAIN ALIENS.—If the judge finds no such condition or combination of conditions, as described in paragraph (1), the alien shall remain in custody until the completion of any appeal authorized by this title.

"SEC. 507. CUSTODY AND RELEASE AFTER REMOVAL HEARING.

"(a) RELEASE.—

"(1) IN GENERAL.—Subject to paragraph (2), if the judge decides that an alien should not be removed, the alien shall be released from custody.

"(2) CUSTODY PENDING APPEAL.—If the Attorney General takes an appeal from such decision, the alien shall remain in custody, subject to the provisions of section 3142 of title 18, United States Code.

"(b) CUSTODY AND REMOVAL.—

"(1) CUSTODY.—If the judge decides that an alien shall be removed, the alien shall be detained pending the outcome of any appeal. After the conclusion of any judicial review thereof which affirms the removal order, the Attorney General shall retain the alien in custody and remove the alien to a country specified under paragraph (2).

"(2) REMOVAL.—

"(A) IN GENERAL.—The removal of an alien shall be to any country which the alien shall designate if such designation does not, in the judgment of the Attorney General, in consultation with the Secretary of State, impair the obligation of the United States under any treaty (including a treaty pertaining to extradition) or otherwise adversely affect the foreign policy of the United States.

"(B) ALTERNATE COUNTRIES.—If the alien refuses to designate a country to which the alien wishes to be removed or if the Attorney General, in consultation with the Secretary of State, determines that removal of the alien to the country so designated would impair a treaty obligation or adversely affect United States foreign policy, the Attorney General shall cause the alien to be removed to any country willing to receive such alien.

"(C) CONTINUED DETENTION.—If no country is willing to receive such an alien, the Attorney General may, notwithstanding any other provision of law, retain the alien in custody. The Attorney General, in coordination with the Secretary of State, shall make periodic efforts to reach agreement with other countries to accept such an alien and at least every 6 months shall provide to the attorney representing the alien at the removal hearing a written report on the Attorney General's efforts. Any alien in custody pursuant to this subparagraph shall be released from custody solely at the discretion of the Attorney General and subject to such conditions as the Attorney General shall deem appropriate.

"(D) FINGERPRINTING.—Before an alien is removed from the United States pursuant to this subsection, or pursuant to an order of exclusion because such alien is excludable under section 212(a)(3)(B), the alien shall be photographed and fingerprinted, and shall be advised of the provisions of section 276(b).

"(c) CONTINUED DETENTION PENDING TRIAL.—

"(1) DELAY IN REMOVAL.—The Attorney General may hold in abeyance the removal of an alien who has been ordered removed, pursuant to this title, to allow the trial of such alien on any Federal or State criminal charge and the service of any sentence of confinement resulting from such a trial.

"(2) MAINTENANCE OF CUSTODY.—Pending the commencement of any service of a sentence of confinement by an alien described in paragraph (1), such an alien shall remain in the custody of the Attorney General, unless the Attorney General determines that temporary release of the alien to the custody of State authorities for confinement in a State facility is appropriate and would not endanger national security or public safety.

"(3) SUBSEQUENT REMOVAL.—Following the completion of a sentence of confinement by an alien described in paragraph (1), or following the completion of State criminal proceedings which do not result in a sentence of confinement of an alien released to the custody of State authorities pursuant to paragraph (2), such an alien shall be returned to the custody of the Attorney General who shall proceed to the removal of the alien under this title.

"(d) APPLICATION OF CERTAIN PROVISIONS RELATING TO ESCAPE OF PRISONERS.—For purposes of sections 751 and 752 of title 18, United States Code, an alien in the custody of the Attorney General pursuant to this title shall be subject to the penalties provided by those sections in relation to a person committed to the custody of the Attorney General by virtue of an arrest on a charge of a felony.

"(e) RIGHTS OF ALIENS IN CUSTODY.—

"(1) FAMILY AND ATTORNEY VISITS.—An alien in the custody of the Attorney General pursuant to this title shall be given reasonable opportunity, as determined by the Attorney General, to communicate with and receive visits from members of the alien's family, and to contact, retain, and communicate with an attorney.

"(2) DIPLOMATIC CONTACT.—An alien in the custody of the Attorney General pursuant to this title shall have the right to contact an appropriate diplomatic or consular official of the alien's country of citizenship or nationality or of any country providing representation services therefore. The Attorney General shall notify the appropriate embassy, mission, or consular office of the alien's detention.".

(b) JURISDICTION OVER EXCLUSION ORDERS FOR ALIEN TERRORISTS.—Section 106(b) of the Immigration and Nationality Act (8 U.S.C. 1105a(b)) is amended by adding at the end the following sentence: "Jurisdiction to review an order entered pursuant to the provisions of section 235(c) concerning an alien excludable under section 212(a)(3)(B) shall rest exclusively in the United States Court of Appeals for the District of Columbia Circuit.".

(c) CRIMINAL PENALTY FOR REENTRY OF ALIEN TERRORISTS.—Section 276(b) of such Act (8 U.S.C. 1326(b)) is amended—

(1) by striking "or" at the end of paragraph (1),

(2) by striking the period at the end of paragraph (2) and inserting "; or", and

(3) by inserting after paragraph (2) the following new paragraph:

"(3) who has been excluded from the United States pursuant to section 235(c) because the alien was excludable under section 212(a)(3)(B) or who has been removed from the United States pursuant to the provisions of title V, and who thereafter, without the permission of the Attorney General, enters the United States, or attempts to do so, shall be fined under title 18, United States Code, and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence.".

(d) TABLE OF CONTENTS.—The Immigration and Nationality Act is amended by adding at the end of the table of contents the following:

"TITLE V—ALIEN TERRORIST REMOVAL PROCEDURES

"Sec. 501. Definitions.
"Sec. 502. Establishment of removal court.
"Sec. 503. Removal court procedure.
"Sec. 504. Removal hearing.
"Sec. 505. Appeals.
"Sec. 506. Custody and release pending removal hearing.
"Sec. 507. Custody and release after removal hearing.".

(e) ELIMINATION OF CUSTODY REVIEW BY HABEAS CORPUS.—Section 106(a) of the Immigration and Nationality Act (8 U.S.C. 1105a(a)) is amended—

(1) in paragraph (8), by adding "and" at the end;

(2) in paragraph (9), by striking "; and" at the end and inserting a period; and

(3) by striking paragraph (10).

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act and shall apply to all aliens without regard to the date of entry or attempted entry into the United States.

Subtitle B—Exclusion of Members and Representatives of Terrorist Organizations

SEC. 411. EXCLUSION OF ALIEN TERRORISTS.

Section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)) is amended—

(1) in clause (i)—

(A) in subclause (I), by striking "or" at the end;

(B) in subclause (II), by inserting "is engaged in or" after "believe,"; and

(C) by inserting after subclause (II) the following:

"(III) is a representative (as defined in clause (iv)) of a foreign terrorist organization, as designated by the Secretary under section 219, or

"(IV) is a member of a foreign terrorist organization, as designated by the Secretary under section 219,"; and

(2) by adding at the end the following:

"(iv) REPRESENTATIVE DEFINED.—As used in this paragraph, the term 'representative' includes an officer, official, or spokesman of an organization, and any person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.".

SEC. 412. WAIVER AUTHORITY CONCERNING NOTICE OF DENIAL OF APPLICATION FOR VISAS.

Section 212(b) of the Immigration and Nationality Act (8 U.S.C. 1182(b)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and indenting each new subparagraph 2 ems to the right;

(2) by striking "If" and inserting "(1) Subject to paragraphs (2) and (3), if"; and

(3) by adding at the end the following new paragraphs:

"(2) The Secretary of State may waive the requirements of paragraph (1) with respect to a particular alien or any class or classes of excludable aliens.

"(3) Paragraph (1) does not apply to any alien excludable under paragraph (2) or (3) of subsection (a).".

SEC. 413. DENIAL OF OTHER RELIEF FOR ALIEN TERRORISTS.

(a) WITHHOLDING OF DEPORTATION.—Section 243(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1253(h)(2)) is amended by adding at the end the following new sentence: "For purposes of subparagraph (D), an alien who is described in section 241(a)(4)(B) shall be considered to be an alien for whom there are reasonable grounds for regarding as a danger to the security of the United States.".

(b) SUSPENSION OF DEPORTATION.—Section 244(a) of such Act (8 U.S.C. 1254(a)) is amended by striking "section 241(a)(4)(D)" and inserting "subparagraph (B) or (D) of section 241(a)(4)".

(c) VOLUNTARY DEPARTURE.—Section 244(e)(2) of such Act (8 U.S.C. 1254(e)(2)) is amended by inserting "under section 241(a)(4)(B) or" after "who is deportable".

(d) ADJUSTMENT OF STATUS.—Section 245(c) of such Act (8 U.S.C. 1255(c)) is amended—

(1) by striking "or" before "(5)", and

(2) by inserting before the period at the end the following: ", or (6) an alien who is deportable under section 241(a)(4)(B)".

(e) REGISTRY.—Section 249(d) of such Act (8 U.S.C. 1259(d)) is amended by inserting "and is not deportable under section 241(a)(4)(B)" after "ineligible to citizenship".

(f) WAIVER.—Section 243(h) of such Act (8 U.S.C. 1253(h)) is amended by adding at the end the following:

"(3) Notwithstanding any other provision of law, paragraph (1) shall apply to any alien if the Attorney General determines, in the discretion of the Attorney General, that—

"(A) such alien's life or freedom would be threatened, in the country to which such alien would be deported or returned, on account of race, religion, nationality, membership in a particular social group, or political opinion; and

"(B) the application of paragraph (1) to such alien is necessary to ensure compliance with the 1967 United Nations Protocol Relating to the Status of Refugees.".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to applications filed before, on, or after such date if final action has not been taken on them before such date.

SEC. 414. EXCLUSION OF ALIENS WHO HAVE NOT BEEN INSPECTED AND ADMITTED.

(a) IN GENERAL.—Section 241 of the Immigration and Nationality Act (8 U.S.C. 1251) is amended by adding at the end the following new subsection:

"(d) Notwithstanding any other provision of this title, an alien found in the United States who has not been admitted to the United States after inspection in accordance with section 235 is deemed for purposes of this Act to be seeking entry and admission to the United States and shall be subject to examination and exclusion by the Attorney General under chapter 4. In the case of such an alien the Attorney General shall provide by regulation an opportunity for the alien to establish that the alien was so admitted.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the first day of the first month beginning more than 90 days after the date of the enactment of this Act.

Subtitle C—Modification to Asylum Procedures

SEC. 421. DENIAL OF ASYLUM TO ALIEN TERRORISTS.

(a) IN GENERAL.—Section 208(a) of the Immigration and Nationality Act (8 U.S.C. 1158(a)) is amended by adding at the end the following: "The Attorney General may not grant an alien asylum if the Attorney General determines that the alien is excludable under subclause (I), (II), or (III) of section 212(a)(3)(B)(i) or deportable under section 241(a)(4)(B), unless the Attorney General determines, in the discretion of the Attorney General, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and apply to asylum determinations made on or after such date.

SEC. 422. INSPECTION AND EXCLUSION BY IMMIGRATION OFFICERS.

(a) IN GENERAL.—Subsection (b) of section 235 of the Immigration and Nationality Act (8 U.S.C. 1225) is amended to read as follows:

"(b)(1)(A) If the examining immigration officer determines that an alien seeking entry—

"(i) is excludable under section 212(a)(6)(C) or 212(a)(7), and

"(ii) does not indicate either an intention to apply for asylum under section 208 or a fear of persecution,

the officer shall order the alien excluded from the United States without further hearing or review.

"(B) The examining immigration officer shall refer for an interview by an asylum officer under subparagraph (C) any alien who is excludable under section 212(a)(6)(C) or 212(a)(7) and has indicated an intention to apply for asylum under section 208 or a fear of persecution.

"(C)(i) An asylum officer shall promptly conduct interviews of aliens referred under subparagraph (B).

"(ii) If the officer determines at the time of the interview that an alien has a credible fear of persecution (as defined in clause (v)), the alien shall be detained for an asylum hearing before an asylum officer under section 208.

"(iii)(I) Subject to subclause (II), if the officer determines that the alien does not have a credible fear of persecution, the officer shall order the alien excluded from the United States without further hearing or review.

"(II) The Attorney General shall promulgate regulations to provide for the immediate review by a supervisory asylum office at the port of entry of a determination under subclause (I).

"(iv) The Attorney General shall provide information concerning the asylum interview described in this subparagraph to aliens who may be eligible. An alien who is eligible for such interview may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, according to regulations prescribed by the Attorney General. Such consultation shall be at no expense to the Government and shall not delay the process.

"(v) For purposes of this subparagraph, the term 'credible fear of persecution' means (I) that it is more probable than not that the statements made by the alien in support of the alien's claim are true, and (II) that there is a significant possibility, in light of such statements and of such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 208.

"(D) As used in this paragraph, the term 'asylum officer' means an immigration officer who—

"(i) has had professional training in country conditions, asylum law, and interview techniques; and

"(ii) is supervised by an officer who meets the condition in clause (i).

"(E)(i) An exclusion order entered in accordance with subparagraph (A) is not subject to administrative appeal, except that the Attorney General shall provide by regulation for prompt review of such an order against an alien who claims under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, after having been warned of the penalties for falsely making such claim under such conditions, to have been lawfully admitted for permanent residence.

"(ii) In any action brought against an alien under section 275(a) or section 276, the court shall not have jurisdiction to hear any claim attacking the validity of an order of exclusion entered under subparagraph (A).

"(2)(A) Except as provided in subparagraph (B), if the examining immigration officer determines that an alien seeking entry is not clearly and beyond a doubt entitled to enter, the alien shall be detained for a hearing before a special inquiry officer.

"(B) The provisions of subparagraph (A) shall not apply—

"(i) to an alien crewman,

"(ii) to an alien described in paragraph (1)(A) or (1)(C)(iii)(I), or

"(iii) if the conditions described in section 273(d) exist.

"(3) The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien whose privilege to enter is so challenged, before a special inquiry officer for a hearing on exclusion of the alien.".

(b) CONFORMING AMENDMENT.—Section 237(a) of such Act (8 U.S.C. 1227(a)) is amended—

(1) in the second sentence of paragraph (1), by striking "Deportation" and inserting "Subject to section 235(b)(1), deportation", and

(2) in the first sentence of paragraph (2), by striking "If" and inserting "Subject to section 235(b)(1), if".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first month that begins more than 90 days after the date of the enactment of this Act.

SEC. 423. JUDICIAL REVIEW.

(a) PRECLUSION OF JUDICIAL REVIEW.—Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a) is amended—

(1) by amending the section heading to read as follows:

"JUDICIAL REVIEW OF ORDERS OF DEPORTATION AND EXCLUSION, AND SPECIAL EXCLUSION"; and

(2) by adding at the end the following new subsection:

"(e)(1) Notwithstanding any other provision of law, and except as provided in this subsection, no court shall have jurisdiction to review any individual determination, or to entertain any other cause or claim, arising from or relating to the implementation or operation of section 235(b)(1). Regardless of the nature of the action or claim, or the party or parties bringing the action, no court shall have jurisdiction or authority to enter declaratory, injunctive, or

other equitable relief not specifically authorized in this subsection nor to certify a class under Rule 23 of the Federal Rules of Civil Procedure.

"(2) Judicial review of any cause, claim, or individual determination covered under paragraph (1) shall only be available in habeas corpus proceedings, and shall be limited to determinations of—

"(A) whether the petitioner is an alien, if the petitioner makes a showing that the petitioner's claim of United States nationality is not frivolous;

"(B) whether the petitioner was ordered specially excluded under section 235(b)(1)(A); and

"(C) whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence and is entitled to such review as is provided by the Attorney General pursuant to section 235(b)(1)(E)(i).

"(3) In any case where the court determines that an alien was not ordered specially excluded, or was not properly subject to special exclusion under the regulations adopted by the Attorney General, the court may order no relief beyond requiring that the alien receive a hearing in accordance with section 236, or a determination in accordance with section 235(c) or 273(d).

"(4) In determining whether an alien has been ordered specially excluded, the court's inquiry shall be limited to whether such an order was in fact issued and whether it relates to the petitioner.".

(b) PRECLUSION OF COLLATERAL ATTACKS.—Section 235 of such Act (8 U.S.C. 1225) is amended by adding at the end the following new subsection:

"(d) In any action brought for the assessment of penalties for improper entry or re-entry of an alien under section 275 or section 276, no court shall have jurisdiction to hear claims collaterally attacking the validity of orders of exclusion, special exclusion, or deportation entered under this section or sections 236 and 242.".

(c) CLERICAL AMENDMENT.—The item relating to section 106 in the table of contents of such Act is amended to read as follows:

"Sec. 106. Judicial review of orders of deportation and exclusion, and special exclusion.".

Subtitle D—Criminal Alien Procedural Improvements

SEC. 431. RESTRICTING THE DEFENSE TO EXCLUSION BASED ON 7 YEARS PERMANENT RESIDENCE FOR CERTAIN CRIMINAL ALIENS.

The last sentence of section 212(c) of the Immigration and Nationality Act (8 U.S.C. 1182(c)) is amended by striking "has served for such felony or felonies" and all that follows through the period and inserting "has been sentenced for such felony or felonies to a term of imprisonment of at least 5 years, if the time for appealing such conviction or sentence has expired and the sentence has become final.".

SEC. 432. ACCESS TO CERTAIN CONFIDENTIAL IMMIGRATION AND NATURALIZATION FILES THROUGH COURT ORDER.

(a) CONFIDENTIALITY OF INFORMATION.—Section 245A(c)(5) of the Immigration and Nationality Act (8 U.S.C. 1255a(c)(5)) is amended—

(1) by inserting "(i)" after "except the Attorney General"; and

(2) by inserting after "Title 13" the following: "and (ii) may authorize an application to a Federal court of competent jurisdiction for, and a judge of such court may grant, an order authorizing disclosure of information contained in the application of the alien to be used—

"(I) for identification of the alien when there is reason to believe that the alien has been killed or severely incapacitated; or

"(II) for criminal law enforcement purposes against the alien whose application is to be disclosed.".

(b) APPLICATIONS FOR ADJUSTMENT OF STATUS.—Section 210(b) of the Immigration and Nationality Act (8 U.S.C. 1160(b)) is amended—

(1) in paragraph (5), by inserting ", except as allowed by a court order issued pursuant to paragraph (6) of this subsection" after "consent of the alien"; and

(2) in paragraph (6), by inserting the following sentence before "Anyone who uses": "Notwithstanding the preceding sentence, the Attorney General may authorize an application to a Federal court of competent jurisdiction for, and a judge of such court may grant an order authorizing, disclosure of information contained in the application of the alien to be used for identification of the alien when there is reason to believe that the alien has been killed or severely incapacitated, or for criminal law enforcement purposes against the alien whose application is to be disclosed or to discover information leading to the location or identity of the alien.".

SEC. 433. CRIMINAL ALIEN IDENTIFICATION SYSTEM.

Section 130002(a) of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322) is amended to read as follows:

"(a) OPERATION AND PURPOSE.—The Commissioner of Immigration and Naturalization shall, under the authority of section 242(a)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(3)(A)), operate a criminal alien identification system. The criminal alien identification system shall be used to assist Federal, State, and local law enforcement agencies in identifying and locating aliens who may be subject to deportation by reason of their conviction of aggravated felonies.".

SEC. 434. ESTABLISHING CERTAIN ALIEN SMUGGLING-RELATED CRIMES AS RICO-PREDICATE OFFENSES.

Section 1961(1) of title 18, United States Code, is amended—

(1) by inserting "section 1028 (relating to fraud and related activity in connection with identification documents) if the act indictable under section 1028 was committed for the purpose of financial gain," before "section 1029";

(2) by inserting "section 1542 (relating to false statement in application and use of passport) if the act indictable under section 1542 was committed for the purpose of financial gain, section 1543 (relating to forgery or false use of passport) if the act indictable under section 1543 was committed for the purpose of financial gain, section 1544 (relating to misuse of passport) if the act indictable under section 1544 was committed for the purpose of financial gain, section 1546 (relating to fraud and misuse of visas, permits, and other documents) if the act indictable under section 1546 was committed for the purpose of financial gain, sections 1581–1588 (relating to peonage and slavery)," after "section 1513 (relating to retaliating against a witness, victim, or an informant),";

(3) by striking "or" before "(E)"; and

(4) by inserting before the period at the end the following: ", or (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain".

SEC. 435. AUTHORITY FOR ALIEN SMUGGLING INVESTIGATIONS.

Section 2516(1) of title 18, United States Code, is amended—

(1) by striking "and" at the end of paragraph (n),

(2) by redesignating paragraph (o) as paragraph (p), and

(3) by inserting after paragraph (n) the following new paragraph:

"(o) a felony violation of section 1028 (relating to production of false identification documents), section 1542 (relating to false statements in passport applications), section 1546 (relating to fraud and misuse of visas, permits, and other documents) of this title or a violation of section 274, 277, or 278 of the Immigration and Nationality Act (relating to the smuggling of aliens); or".

SEC. 436. EXPANSION OF CRITERIA FOR DEPORTATION FOR CRIMES OF MORAL TURPITUDE.

(a) IN GENERAL.—Section 241(a)(2)(A)(i)(II) of the Immigration and Nationality Act (8 U.S.C. 1251(a)(2)(A)(i)(II)) is amended to read as follows:

"(II) is convicted of a crime for which a sentence of one year or longer may be imposed,".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to aliens against whom deportation proceedings are initiated after the date of the enactment of this Act.

SEC. 437. MISCELLANEOUS PROVISIONS.

(a) USE OF ELECTRONIC AND TELEPHONIC MEDIA IN DEPORTATION HEARINGS.—The second sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by inserting before the period the following: "; except that nothing in this subsection shall preclude the Attorney General from authorizing proceedings by electronic or telephonic media (with the consent of the alien) or, where waived or agreed to by the parties, in the absence of the alien".

(b) CODIFICATION.—

(1) Section 242(i) of such Act (8 U.S.C. 1252(i)) is amended by adding at the end the following: "Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.".

(2) Section 225 of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103–416) is amended by striking "and nothing in" and all that follows through "1252(i))".

(3) The amendments made by this subsection shall take effect as if included in the enactment of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103–416).

SEC. 438. INTERIOR REPATRIATION PROGRAM.

Not later than 180 days after the date of enactment of this Act, the Attorney General and the Commissioner of Immigration and Naturalization shall develop and implement a program in which aliens who previously have illegally entered the United States not less than 3 times and are deported or returned to a country contiguous to the United States will be returned to locations not less than 500 kilometers from that country's border with the United States.

SEC. 439. DEPORTATION OF NONVIOLENT OFFENDERS PRIOR TO COMPLETION OF SENTENCE OF IMPRISONMENT.

(a) IN GENERAL.—Section 242(h) of the Immigration and Nationality Act (8 U.S.C. 1252(h)) is amended to read as follows:

"(h)(1) Except as provided in paragraph (2), an alien sentenced to imprisonment may not be deported until such imprisonment has been terminated by the release of the alien from confinement. Parole, supervised release, probation, or possibility of rearrest or further confinement in respect of the same offense shall not be a ground for deferral of deportation.

"(2) The Attorney General is authorized to deport an alien in accordance with applicable procedures under this Act prior to the completion of a sentence of imprisonment—

"(A) in the case of an alien in the custody of the Attorney General, if the Attorney General

determines that (i) the alien is confined pursuant to a final conviction for a nonviolent offense (other than alien smuggling), and (ii) such deportation of the alien is appropriate and in the best interest of the United States; or

"(B) in the case of an alien in the custody of a State (or a political subdivision of a State), if the chief State official exercising authority with respect to the incarceration of the alien determines that (i) the alien is confined pursuant to a final conviction for a nonviolent offense (other than alien smuggling), (ii) such deportation is appropriate and in the best interest of the State, and (iii) submits a written request to the Attorney General that such alien be so deported.

"(3) Any alien deported pursuant to this subsection shall be notified of the penalties under the laws of the United States relating to the reentry of deported aliens, particularly the expanded penalties for aliens deported under paragraph (2).".

(b) REENTRY OF ALIEN DEPORTED PRIOR TO COMPLETION OF TERM OF IMPRISONMENT.—Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) is amended by adding at the end the following new subsection:

"(c) Any alien deported pursuant to section 242(h)(2) who enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release. Such alien shall be subject to such other penalties relating to the reentry of deported aliens as may be available under this section or any other provision of law.".

SEC. 440. AUTHORIZING STATE AND LOCAL LAW ENFORCEMENT OFFICIALS TO ARREST AND DETAIN CERTAIN ILLEGAL ALIENS.

(a) IN GENERAL.—Notwithstanding any other provision of law, to the extent permitted by relevant State and local law, State and local law enforcement officials are authorized to arrest and detain an individual who—

(1) is an alien illegally present in the United States; and

(2) has previously been convicted of a felony in the United States and deported or left the United States after such conviction,

but only after the State or local law enforcement officials obtain appropriate confirmation from the Immigration and Naturalization Service of the status of such individual and only for such period of time as may be required for the Service to take the individual into Federal custody for purposes of deporting or removing the alien from the United States.

(b) COOPERATION.—The Attorney General shall cooperate with the States to assure that information in the control of the Attorney General, including information in the National Crime Information Center, that would assist State and local law enforcement officials in carrying out duties under subsection (a) is made available to such officials.

SEC. 441. CRIMINAL ALIEN REMOVAL.

(a) JUDICIAL REVIEW.—Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a(a)(10)) is amended to read as follows:

"(10) Any final order of deportation against an alien who is deportable by reason of having committed a criminal offense covered in section 241(a)(2) (A)(iii), (B), (C), or (D), or any offense covered by section 241(a)(2)(A)(ii) for which both predicate offenses are covered by section 241(a)(2)(A)(i), shall not be subject to review by any court.".

(b) FINAL ORDER OF DEPORTATION DEFINED.—Section 101(a) of such Act (8 U.S.C. 1101(a)) is amended by adding at the end the following new paragraph:

"(47)(A) The term 'order of deportation' means the order of the special inquiry officer, or other such administrative officer to whom the Attorney General has delegated the responsibility for determining whether an alien is deportable, concluding that the alien is deportable or ordering deportation.

"(B) The order described under subparagraph (A) shall become final upon the earlier of—

"(i) a determination by the Board of Immigration Appeals affirming such order; or

"(ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.".

(c) ARREST AND CUSTODY.—Section 242(a)(2) of such Act is amended—

(1) in subparagraph (A)—

(A) by striking "(2)(A) The Attorney" and inserting "(2) The Attorney";

(B) by striking "an aggravated felony upon" and all that follows through "of the same offense)" and inserting "any criminal offense covered in section 241(a)(2) (A)(iii), (B), (C), or (D), or any offense covered by section 241(a)(2)(A)(ii) for which both predicate offenses are covered by section 241(a)(2)(A)(i), upon release of the alien from incarceration, shall deport the alien as expeditiously as possible"; and

(C) by striking "but subject to subparagraph (B)"; and

(2) by striking subparagraph (B).

(d) CLASSES OF EXCLUDABLE ALIENS.—Section 212(c) of such Act (8 U.S.C. 1182(c)) is amended—

(1) by striking "The first sentence of this" and inserting "This"; and

(2) by striking "has been convicted of one or more aggravated felonies" and all that follows through the end and inserting "is deportable by reason of having committed any criminal offense covered in section 241(a)(2) (A)(iii), (B), (C), or (D), or any offense covered by section 241(a)(2)(A)(ii) for which both predicate offenses are covered by section 241(a)(2)(A)(i).".

(e) AGGRAVATED FELONY DEFINED.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)), as amended by section 222 of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103–416), is amended—

(1) in subparagraph (J), by inserting ", or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses)," after "corrupt organizations)";

(2) in subparagraph (K)—

(A) by striking "or" at the end of clause (i),

(B) by redesignating clause (ii) as clause (iii), and

(C) by inserting after clause (i) the following new clause:

"(ii) is described in section 2421, 2422, or 2423 of title 18, United States Code (relating to transportation for the purpose of prostitution) for commercial advantage; or";

(3) by amending subparagraph (N) to read as follows:

"(N) an offense described in paragraph (1)(A) or (2) of section 274(a) (relating to alien smuggling) for which the term of imprisonment imposed (regardless of any suspension of imprisonment) is at least 5 years;";

(4) by amending subparagraph (O) to read as follows:

"(O) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18, United States Code, or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 18 months;"

(5) in subparagraph (P), by striking "15 years" and inserting "5 years", and by striking "and" at the end;

(6) by redesignating subparagraphs (O), (P), and (Q) as subparagraphs (P), (Q), and (U), respectively;

(7) by inserting after subparagraph (N) the following new subparagraph:

"(O) an offense described in section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;"; and

(8) by inserting after subparagraph (Q), as so redesignated, the following new subparagraphs:

"(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which a sentence of 5 years' imprisonment or more may be imposed;

"(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which a sentence of 5 years' imprisonment or more may be imposed;

"(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to convictions entered on or after the date of the enactment of this Act, except that the amendment made by subsection (a)(3) shall take effect as if included in the enactment of section 222 of the Immigration and Nationality Technical Corrections Act of 1994.

(f) DEPORTATION OF CRIMINAL ALIENS.—Section 242A(a) of such Act (8 U.S.C. 1252a) is amended—

(1) in paragraph (1)—

(A) by striking "aggravated felonies (as defined in section 101(a)(43) of this title)" and inserting "any criminal offense covered in section 241(a)(2) (A)(iii), (B), (C), or (D), or any offense covered by section 241(a)(2)(A)(ii) for which both predicate offenses are covered by section 241(a)(2)(A)(i)."; and

(B) by striking ", where warranted,";

(2) in paragraph (2), by striking "aggravated felony" and all that follows through "before any scheduled hearings." and inserting "any criminal offense covered in section 241(a)(2) (A)(iii), (B), (C), or (D), or any offense covered by section 241(a)(2)(A)(ii) for which both predicate offenses are covered by section 241(a)(2)(A)(i).".

(g) DEADLINES FOR DEPORTING ALIEN.—Section 242(c) of such Act (8 U.S.C. 1252(c)) is amended—

(1) by striking "(c) When a final order" and inserting "(c)(1) Subject to paragraph (2), when a final order"; and

(2) by inserting at the end the following new paragraph:

"(2) When a final order of deportation under administrative process is made against any alien who is deportable by reason of having committed a criminal offense covered in section 241(a)(2) (A)(iii), (B), (C), or (D) or any offense covered by section 241(a)(2)(A)(ii) for which both predicate offenses are covered by section 241(a)(2)(A)(i), the Attorney General shall have 30 days from the date of the order within which to effect the alien's departure from the United States. The Attorney General shall have sole and unreviewable discretion to waive the foregoing provision for aliens who are cooperating with law enforcement authorities or for purposes of national security.".

SEC. 442. LIMITATION ON COLLATERAL ATTACKS ON UNDERLYING DEPORTATION ORDER.

(a) IN GENERAL.—Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) is amended by adding at the end the following new subsection:

"(d) In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a)(1) or subsection (b) unless the alien demonstrates that—

"(1) the alien exhausted any administrative remedies that may have been available to seek relief against the order;

"(2) the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and

"(3) the entry of the order was fundamentally unfair.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to criminal proceedings initiated after the date of enactment of this Act.

SEC. 443. DEPORTATION PROCEDURES FOR CERTAIN CRIMINAL ALIENS WHO ARE NOT PERMANENT RESIDENTS.

(a) ADMINISTRATIVE HEARINGS.—Section 242A(b) of the Immigration and Nationality Act (8 U.S.C. 1252a(b)), as added by section 130004(a) of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322), is amended—

(1) in paragraph (2)—

(A) by striking "and" at the end of subparagraph (A) and inserting "or", and

(B) by amending subparagraph (B) to read as follows:

"(B) had permanent resident status on a conditional basis (as described in section 216) at the time that proceedings under this section commenced.";

(2) in paragraph (3), by striking "30 calendar days" and inserting "14 calendar days";

(3) in paragraph (4)(B), by striking "proceedings" and inserting "proceedings";

(4) in paragraph (4)—

(A) by redesignating subparagraphs (D) and (E) as subparagraphs (F) and (G), respectively; and

(B) by adding after subparagraph (C) the following new subparagraphs:

"(D) such proceedings are conducted in, or translated for the alien into, a language the alien understands;

"(E) a determination is made for the record at such proceedings that the individual who appears to respond in such a proceeding is an alien subject to such an expedited proceeding under this section and is, in fact, the alien named in the notice for such proceeding;".

(5) by adding at the end the following new paragraph:

"(5) No alien described in this section shall be eligible for any relief from deportation that the Attorney General may grant in the Attorney General's discretion.".

(b) LIMIT ON JUDICIAL REVIEW.—Subsection (d) of section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a), as added by section 130004(b) of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322), is amended to read as follows:

"(d) Notwithstanding subsection (c), a petition for review or for habeas corpus on behalf of an alien described in section 242A(c) may only challenge whether the alien is in fact an alien described in such section, and no court shall have jurisdiction to review any other issue.".

(c) PRESUMPTION OF DEPORTABILITY.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended by inserting after subsection (b) the following new subsection:

"(c) PRESUMPTION OF DEPORTABILITY.—An alien convicted of an aggravated felony shall be conclusively presumed to be deportable from the United States.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens against whom deportation proceedings are initiated after the date of the enactment of this Act.

SEC. 444. EXTRADITION OF ALIENS.

(a) SCOPE.—Section 3181 of title 18, United States Code, is amended—

(1) by inserting "(a)" before "The provisions of this chapter"; and

(2) by adding at the end the following new subsections:

"(b) The provisions of this chapter shall be construed to permit, in the exercise of comity, the surrender of persons, other than citizens, nationals, or permanent residents of the United States, who have committed crimes of violence against nationals of the United States in foreign countries without regard to the existence of any treaty of extradition with such foreign government if the Attorney General certifies, in writing, that—

"(1) evidence has been presented by the foreign government that indicates that had the offenses been committed in the United States, they would constitute crimes of violence as defined under section 16 of this title; and

"(2) the offenses charged are not of a political nature.

"(c) As used in this section, the term 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).".

(b) FUGITIVES.—Section 3184 of title 18, United States Code, is amended—

(1) in the first sentence by inserting after "United States and any foreign government," the following: "or in cases arising under section 3181(b),";

(2) in the first sentence by inserting after "treaty or convention," the following: "or provided for under section 3181(b),"; and

(3) in the third sentence by inserting after "treaty or convention," the following: "or under section 3181(b),".

TITLE V—NUCLEAR, BIOLOGICAL, AND CHEMICAL WEAPONS RESTRICTIONS

Subtitle A—Nuclear Materials

SEC. 501. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) nuclear materials, including byproduct materials, can be used to create radioactive dispersal devices that are capable of causing serious bodily injury as well as substantial damage to property and to the environment;

(2) the potential use of nuclear materials, including byproduct materials, enhances the threat posed by terrorist activities and thereby has a greater effect on the security interests of the United States;

(3) due to the widespread hazards presented by the threat of nuclear contamination, as well as nuclear bombs, the United States has a strong interest in ensuring that persons who are engaged in the illegal acquisition and use of nuclear materials, including byproduct materials, are prosecuted for their offenses;

(4) the threat that nuclear materials will be obtained and used by terrorist and other criminal organizations has increased substantially since the enactment in 1982 of the legislation that implemented the Convention on the Physical Protection of Nuclear Material, codified at section 831 of title 18, United States Code;

(5) the successful efforts to obtain agreements from other countries to dismantle nuclear weapons have resulted in increased packaging and transportation of nuclear materials, thereby decreasing the security of such materials by increasing the opportunity for unlawful diversion and theft;

(6) the trafficking in the relatively more common, commercially available, and usable nuclear and byproduct materials creates the potential for significant loss of life and environmental damage;

(7) report trafficking incidents in the early 1990's suggest that the individuals involved in trafficking in these materials from Eurasia and Eastern Europe frequently conducted their black market sales of these materials within the Federal Republic of Germany, the Baltic States, the former Soviet Union, Central Europe, and to a lesser extent in the Middle European countries;

(8) the international community has become increasingly concerned over the illegal possession of nuclear and nuclear byproduct materials;

(9) the potentially disastrous ramifications of increased access to nuclear and nuclear byproduct materials pose such a significant threat that the United States must use all lawful methods available to combat the illegal use of such materials;

(10) the United States has an interest in encouraging United States corporations to do business in the countries that comprised the former Soviet Union, and in other developing democracies;

(11) protection of such United States corporations from threats created by the unlawful use of nuclear materials is important to the success of the effort to encourage business ventures in these countries, and to further the foreign relations and commerce of the United States;

(12) the nature of nuclear contamination is such that it may affect the health, environment, and property of United States nationals even if the acts that constitute the illegal activity occur outside the territory of the United States, and are primarily directed toward foreign nationals; and

(13) there is presently no Federal criminal statute that provides adequate protection to United States interests from nonweapons grade, yet hazardous radioactive material, and from the illegal diversion of nuclear materials that are held for other than peaceful purposes.

(b) PURPOSE.—The purpose of this title is to provide Federal law enforcement agencies with the necessary means and the maximum authority permissible under the Constitution to combat the threat of nuclear contamination and proliferation that may result from the illegal possession and use of radioactive materials.

SEC. 502. EXPANSION OF SCOPE AND JURISDICTIONAL BASES OF NUCLEAR MATERIALS PROHIBITIONS.

Section 831 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "nuclear material" each place it appears and inserting "nuclear material or nuclear byproduct material";

(B) in paragraph (1)—

(i) in subparagraph (A), by inserting "or to the environment" after "property"; and

(ii) so that subparagraph (B) reads as follows:

"(B) circumstances exist, or have been represented to the defendant to exist, that are likely to cause the death or serious bodily injury to any person, or substantial damage to property or to the environment;"; and

(C) in paragraph (6), by inserting "or to the environment" after "property";

(2) in subsection (c)—

(A) so that paragraph (2) reads as follows:

"(2) an offender or a victim is—

"(A) a national of the United States; or

"(B) a United States corporation or other legal entity;";

(B) in paragraph (3)—

(i) by striking "at the time of the offense the nuclear material is in use, storage, or transport, for peaceful purposes, and"; and

(ii) by striking "or" at the end of the paragraph;

(C) in paragraph (4)—

(i) by striking "nuclear material for peaceful purposes" and inserting "nuclear material or nuclear byproduct material"; and

(ii) by striking the period at the end of the paragraph and inserting "; or"; and

(D) by adding at the end the following new paragraph:

"(5) either—

"(A) the governmental entity under subsection (a)(5) is the United States; or

"(B) the threat under subsection (a)(6) is directed at the United States."; and

(3) in subsection (f)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking "with an isotopic concentration not in excess of 80 percent plutonium 238"; and

(ii) in subparagraph (C), by striking "uranium" and inserting "enriched uranium, defined as uranium";

(B) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively;

(C) by inserting after paragraph (1) the following new paragraph:

"(2) the term 'nuclear byproduct material' means any material containing any radioactive isotope created through an irradiation process in the operation of a nuclear reactor or accelerator;";

(D) in paragraph (4), as redesignated, by striking "and" at the end;

(E) in paragraph (5), as redesignated, by striking the period at the end and inserting a semicolon; and

(F) by adding at the end the following new paragraphs:

"(6) the term 'national of the United States' has the same meaning as in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

"(7) the term 'United States corporation or other legal entity' means any corporation or other entity organized under the laws of the United States or any State, Commonwealth, territory, possession, or district of the United States.".

SEC. 503. REPORT TO CONGRESS ON THEFTS OF EXPLOSIVE MATERIALS FROM ARMORIES.

(a) STUDY.—The Attorney General and the Secretary of Defense shall jointly conduct a study of the number and extent of thefts from military arsenals (including National Guard armories) of firearms, explosives, and other materials that are potentially useful to terrorists.

(b) REPORT TO THE CONGRESS.—Not later than 6 months after the date of enactment of this Act, the Attorney General and the Secretary of Defense shall jointly prepare and transmit to the Congress a report on the findings of the study conducted under subsection (a).

Subtitle B—Biological Weapons Restrictions

SEC. 511. ENHANCED PENALTIES AND CONTROL OF BIOLOGICAL AGENTS.

(a) FINDINGS.—The Congress finds that—

(1) certain biological agents have the potential to pose a severe threat to public health and safety;

(2) such biological agents can be used as weapons by individuals or organizations for the purpose of domestic or international terrorism or for other criminal purposes;

(3) the transfer and possession of potentially hazardous biological agents should be regulated to protect public health and safety; and

(4) efforts to protect the public from exposure to such agents should ensure that individuals and groups with legitimate objectives continue to have access to such agents for clinical and research purposes.

(b) CRIMINAL ENFORCEMENT.—Chapter 10 of title 18, United States Code, is amended—

(1) in section 175(a), by inserting "or attempts, threatens, or conspires to do the same," after "to do so,";

(2) in section 177(a)(2), by inserting "threat," after "attempt,"; and

(3) in section 178—

(A) in paragraph (1), by striking "or infectious substance" and inserting "infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product";

(B) in paragraph (2)—

(i) by inserting "the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule" after "means";

(ii) by striking "production—" and inserting "production, including—";

(iii) in subparagraph (A), by inserting "or biological product that may be engineered as a result of biotechnology" after "substance"; and

(v) in subparagraph (B), by inserting "or biological product" after "isomer"; and

(C) in paragraph (4), by inserting ", or molecule, including a recombinant molecule, or biological product that may be engineered as a result of biotechnology," after "organism".

(c) TERRORISM.—Section 2332a(a) of title 18, United States Code, is amended—

(1) by inserting ", threatens," after "attempts"; and

(2) by inserting ", including any biological agent, toxin, or vector (as those terms are defined in section 178)" after "destruction".

(d) REGULATORY CONTROL OF BIOLOGICAL AGENTS.—

(1) LIST OF BIOLOGICAL AGENTS.—

(A) IN GENERAL.—The Secretary shall, through regulations promulgated under subsection (f), establish and maintain a list of each biological agent that has the potential to pose a severe threat to public health and safety.

(B) CRITERIA.—In determining whether to include an agent on the list under subparagraph (A), the Secretary shall—

(i) consider—

(I) the effect on human health of exposure to the agent;

(II) the degree of contagiousness of the agent and the methods by which the agent is transferred to humans;

(III) the availability and effectiveness of immunizations to prevent and treatments for any illness resulting from infection by the agent; and

(IV) any other criteria that the Secretary considers appropriate; and

(ii) consult with scientific experts representing appropriate professional groups.

(e) REGULATION OF TRANSFERS OF LISTED BIOLOGICAL AGENTS.—The Secretary shall, through regulations promulgated under subsection (f), provide for—

(1) the establishment and enforcement of safety procedures for the transfer of biological agents listed pursuant subsection (d)(1), including measures to ensure—

(A) proper training and appropriate skills to handle such agents; and

(B) proper laboratory facilities to contain and dispose of such agents;

(2) safeguards to prevent access to such agents for use in domestic or international terrorism or for any other criminal purpose;

(3) the establishment of procedures to protect the public safety in the event of a transfer or potential transfer of a biological agent in violation of the safety procedures established under paragraph (1) or the safeguards established under paragraph (2); and

(4) appropriate availability of biological agents for research, education, and other legitimate purposes.

(f) REGULATIONS.—The Secretary shall carry out this section by issuing—

(1) proposed rules not later than 60 days after the date of enactment of this Act; and

(2) final rules not later than 120 days after the date of enactment of this Act.

(g) DEFINITIONS.—For purposes of this section—

(1) the term "biological agent" has the same meaning as in section 178 of title 18, United States Code; and

(2) the term "Secretary" means the Secretary of Health and Human Services.

Subtitle C—Chemical Weapons Restrictions

SEC. 521. CHEMICAL WEAPONS OF MASS DESTRUCTION; STUDY OF FACILITY FOR TRAINING AND EVALUATION OF PERSONNEL WHO RESPOND TO USE OF CHEMICAL OR BIOLOGICAL WEAPONS IN URBAN AND SUBURBAN AREAS.

(a) CHEMICAL WEAPONS OF MASS DESTRUCTION.—Chapter 113B of title 18, United States Code, relating to terrorism, is amended by inserting after section 2332b as added by section 702 of this Act the following new section:

"§2332c. Use of chemical weapons

"(a) PROHIBITED ACTS.—

"(1) OFFENSE.—A person shall be punished under paragraph (2) if that person, without lawful authority, uses, or attempts or conspires to use, a chemical weapon against—

"(A) a national of the United States while such national is outside of the United States;

"(B) any person within the United States; or

"(C) any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside of the United States.

"(2) PENALTIES.—A person who violates paragraph (1)—

"(A) shall be imprisoned for any term of years or for life; or

"(B) if death results from that violation, shall be punished by death or imprisoned for any term of years or for life.

"(b) DEFINITIONS.—As used in this section—

"(1) the term 'national of the United States' has the same meaning as in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

"(2) the term 'chemical weapon' means any weapon that is designed or intended to cause widespread death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals or precursors of toxic or poisonous chemicals.

(b) STUDY OF FACILITY FOR TRAINING AND EVALUATION OF PERSONNEL WHO RESPOND TO USE OF CHEMICAL OR BIOLOGICAL WEAPONS IN URBAN AND SUBURBAN AREAS.—

(1) FINDINGS.—The Congress finds that—

(A) the threat of the use of chemical and biological weapons by Third World countries and by terrorist organizations has increased in recent years and is now a problem of worldwide significance;

(B) the military and law enforcement agencies in the United States that are responsible for responding to the use of such weapons require additional testing, training, and evaluation facilities to ensure that the personnel of such agencies discharge their responsibilities effectively; and

(C) a facility that recreates urban and suburban locations would provide an especially effective environment in which to test, train, and evaluate such personnel for that purpose.

(2) STUDY OF FACILITY.—

(A) IN GENERAL.—The President shall establish an interagency task force to determine the feasibility and advisability of establishing a facility that recreates both an urban environment and a suburban environment in such a way as to permit the effective testing, training, and evaluation in such environments of government personnel who are responsible for responding to

the use of chemical and biological weapons in the United States.

(B) DESCRIPTION OF FACILITY.—The facility considered under subparagraph (A) shall include—

(i) facilities common to urban environments (including a multistory building and an underground rail transit system) and to suburban environments;

(ii) the capacity to produce controllable releases of chemical and biological agents from a variety of urban and suburban structures, including laboratories, small buildings, and dwellings;

(iii) the capacity to produce controllable releases of chemical and biological agents into sewage, water, and air management systems common to urban areas and suburban areas;

(iv) chemical and biocontaminant facilities at the P3 and P4 levels;

(v) the capacity to test and evaluate the effectiveness of a variety of protective clothing and facilities and survival techniques in urban areas and suburban areas; and

(vi) the capacity to test and evaluate the effectiveness of variable sensor arrays (including video, audio, meteorological, chemical, and biosensor arrays) in urban areas and suburban areas.

(C) SENSE OF CONGRESS.—It is the sense of Congress that the facility considered under subparagraph (A) shall, if established—

(i) be under the jurisdiction of the Secretary of Defense; and

(ii) be located at a principal facility of the Department of Defense for the testing and evaluation of the use of chemical and biological weapons during any period of armed conflict.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113B of title 18, United States Code, relating to terrorism, is amended by inserting after the item added by section 702 of this Act that relates to section 2332b the following new item:

"2332c. Use of chemical weapons.".

TITLE VI—IMPLEMENTATION OF PLASTIC EXPLOSIVES CONVENTION

SEC. 601. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) plastic explosives were used by terrorists in the bombings of Pan American Airlines flight number 103 in December 1988 and UTA flight number 722 in September 1989;

(2) plastic explosives can be used with little likelihood of detection for acts of unlawful interference with civil aviation, maritime navigation, and other modes of transportation;

(3) the criminal use of plastic explosives places innocent lives in jeopardy, endangers national security, affects domestic tranquility, and gravely affects interstate and foreign commerce;

(4) the marking of plastic explosives for the purpose of detection would contribute significantly to the prevention and punishment of such unlawful acts; and

(5) for the purpose of deterring and detecting such unlawful acts, the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991, requires each contracting State to adopt appropriate measures to ensure that plastic explosives are duly marked and controlled.

(b) PURPOSE.—The purpose of this title is to fully implement the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991.

SEC. 602. DEFINITIONS.

Section 841 of title 18, United States Code, is amended by adding at the end the following new subsections:

"(o) 'Convention on the Marking of Plastic Explosives' means the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991.

"(p) 'Detection agent' means any one of the substances specified in this subsection when introduced into a plastic explosive or formulated in such explosive as a part of the manufacturing process in such a manner as to achieve homogeneous distribution in the finished explosive, including—

"(1) Ethylene glycol dinitrate (EGDN), $C_2H_4(NO_3)_2$, molecular weight 152, when the minimum concentration in the finished explosive is 0.2 percent by mass;

"(2) 2,3-Dimethyl-2,3-dinitrobutane (DMNB), $C_6H_{12}(NO_2)_2$, molecular weight 176, when the minimum concentration in the finished explosive is 0.1 percent by mass;

"(3) Para-Mononitrotoluene (p-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass;

"(4) Ortho-Mononitrotoluene (o-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass; and

"(5) any other substance in the concentration specified by the Secretary, after consultation with the Secretary of State and the Secretary of Defense, that has been added to the table in part 2 of the Technical Annex to the Convention on the Marking of Plastic Explosives.

"(q) 'Plastic explosive' means an explosive material in flexible or elastic sheet form formulated with one or more high explosives which in their pure form has a vapor pressure less than 10^{-4} Pa at a temperature of 25°C., is formulated with a binder material, and is as a mixture malleable or flexible at normal room temperature.".

SEC. 603. REQUIREMENT OF DETECTION AGENTS FOR PLASTIC EXPLOSIVES.

Section 842 of title 18, United States Code, is amended by adding at the end the following new subsections:

"(l) It shall be unlawful for any person to manufacture any plastic explosive that does not contain a detection agent.

"(m)(1) It shall be unlawful for any person to import or bring into the United States, or export from the United States, any plastic explosive that does not contain a detection agent.

"(2) This subsection does not apply to the importation or bringing into the United States, or the exportation from the United States, of any plastic explosive that was imported or brought into, or manufactured in the United States prior to the date of enactment of this subsection by or on behalf of any agency of the United States performing military or police functions (including any military reserve component) or by or on behalf of the National Guard of any State, not later than 15 years after the date of entry into force of the Convention on the Marking of Plastic Explosives, with respect to the United States.

"(n)(1) It shall be unlawful for any person to ship, transport, transfer, receive, or possess any plastic explosive that does not contain a detection agent.

"(2) This subsection does not apply to—

"(A) the shipment, transportation, transfer, receipt, or possession of any plastic explosive that was imported or brought into, or manufactured in the United States prior to the date of enactment of this subsection by any person during the period beginning on that date and ending 3 years after that date of enactment; or

"(B) the shipment, transportation, transfer, receipt, or possession of any plastic explosive that was imported or brought into, or manufactured in the United States prior to the date of enactment of this subsection by or on behalf of any agency of the United States performing a military or police function (including any military reserve component) or by or on behalf of the National Guard of any State, not later than 15 years after the date of entry into force of the Convention on the Marking of Plastic Explosives, with respect to the United States.

"(o) It shall be unlawful for any person, other than an agency of the United States (including any military reserve component) or the National Guard of any State, possessing any plastic explosive on the date of enactment of this subsection, to fail to report to the Secretary within 120 days after such date of enactment the quantity of such explosives possessed, the manufacturer or importer, any marks of identification on such explosives, and such other information as the Secretary may prescribe by regulation.".

SEC. 604. CRIMINAL SANCTIONS.

Section 844(a) of title 18, United States Code, is amended to read as follows:

"(a) Any person who violates any of subsections (a) through (i) or (l) through (o) of section 842 shall be fined under this title, imprisoned for not more than 10 years, or both.".

SEC. 605. EXCEPTIONS.

Section 845 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting "(l), (m), (n), or (o) of section 842 and subsections" after "subsections"; and

(B) in paragraph (1), by inserting before the semicolon ", and which pertain to safety"; and

(2) by adding at the end the following new subsection:

"(c) It is an affirmative defense against any proceeding involving subsections (l) through (o) of section 842 if the proponent proves by a preponderance of the evidence that the plastic explosive—

"(1) consisted of a small amount of plastic explosive intended for and utilized solely in lawful—

"(A) research, development, or testing of new or modified explosive materials;

"(B) training in explosives detection or development or testing of explosives detection equipment; or

"(C) forensic science purposes; or

"(2) was plastic explosive that, within 3 years after the date of enactment of the Antiterrorism and Effective Death Penalty Act of 1996, will be or is incorporated in a military device within the territory of the United States and remains an integral part of such military device, or is intended to be, or is incorporated in, and remains an integral part of a military device that is intended to become, or has become, the property of any agency of the United States performing military or police functions (including any military reserve component) or the National Guard of any State, wherever such device is located.

"(3) For purposes of this subsection, the term 'military device' includes, but is not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades, perforators, and similar devices lawfully manufactured exclusively for military or police purposes.".

SEC. 606. SEIZURE AND FORFEITURE OF PLASTIC EXPLOSIVES.

Section 596(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1595a(c)(1)) is amended—

(1) in subparagraph (B), by striking "or" at the end;

(2) in subparagraph (C), by striking the period and inserting "; or"; and

(3) by adding at the end the following new subparagraph:

"(D) is a plastic explosive, as defined in section 841(q) of title 18, United States Code, which does not contain a detection agent, as defined in section 841(p) of such title.".

SEC. 607. EFFECTIVE DATE.

Except as otherwise provided in this title, this title and the amendments made by this title shall take effect 1 year after the date of enactment of this Act.

TITLE VII—CRIMINAL LAW MODIFICATIONS TO COUNTER TERRORISM

Subtitle A—Crimes and Penalties

SEC. 701. INCREASED PENALTY FOR CONSPIRACIES INVOLVING EXPLOSIVES.

Section 844 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(n) Except as otherwise provided in this section, a person who conspires to commit any offense defined in this chapter shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense the commission of which was the object of the conspiracy.".

SEC. 702. ACTS OF TERRORISM TRANSCENDING NATIONAL BOUNDARIES.

(a) OFFENSE.—Chapter 113B of title 18, United States Code, relating to terrorism, is amended by inserting after section 2332a the following new section:

"§2332b. Acts of terrorism transcending national boundaries

"(a) PROHIBITED ACTS.—

"(1) OFFENSES.—Whoever, involving conduct transcending national boundaries and in a circumstance described in subsection (b)—

"(A) kills, kidnaps, maims, commits an assault resulting in serious bodily injury, or assaults with a dangerous weapon any person within the United States; or

"(B) creates a substantial risk of serious bodily injury to any other person by destroying or damaging any structure, conveyance, or other real or personal property within the United States or by attempting or conspiring to destroy or damage any structure, conveyance, or other real or personal property within the United States, in violation of the laws of any State, or the United States, shall be punished as prescribed in subsection (c).

"(2) TREATMENT OF THREATS, ATTEMPTS AND CONSPIRACIES.—Whoever threatens to commit an offense under paragraph (1), or attempts or conspires to do so, shall be punished under subsection (c).

"(b) JURISDICTIONAL BASES.—

"(1) CIRCUMSTANCES.—The circumstances referred to in subsection (a) are—

"(A) any of the offenders uses the mail or any facility of interstate or foreign commerce in furtherance of the offense;

"(B) the offense obstructs, delays, or affects interstate or foreign commerce, or would have so obstructed, delayed, or affected interstate or foreign commerce if the offense had been consummated;

"(C) the victim, or intended victim, is the United States Government, a member of the uniformed services, or any official, officer, employee, or agent of the legislative, executive, or judicial branches, or of any department or agency, of the United States;

"(D) the structure, conveyance, or other real or personal property is, in whole or in part, owned, possessed, or leased to the United States, or any department or agency of the United States;

"(E) the offense is committed in the territorial sea (including the airspace above and the seabed and subsoil below, and artificial islands and fixed structures erected thereon) of the United States; or

"(F) the offense is committed within the special maritime and territorial jurisdiction of the United States.

"(2) CO-CONSPIRATORS AND ACCESSORIES AFTER THE FACT.—Jurisdiction shall exist over all principals and co-conspirators of an offense under this section, and accessories after the fact to any offense under this section, if at least one of the circumstances described in subparagraphs (A) through (F) of paragraph (1) is applicable to at least one offender.

"(c) PENALTIES.—

"(1) PENALTIES.—Whoever violates this section shall be punished—

"(A) for a killing, or if death results to any person from any other conduct prohibited by this section, by death, or by imprisonment for any term of years or for life;

"(B) for kidnapping, by imprisonment for any term of years or for life;

"(C) for maiming, by imprisonment for not more than 35 years;

"(D) for assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than 30 years;

"(E) for destroying or damaging any structure, conveyance, or other real or personal property, by imprisonment for not more than 25 years;

"(F) for attempting or conspiring to commit an offense, for any term of years up to the maximum punishment that would have applied had the offense been completed; and

"(G) for threatening to commit an offense under this section, by imprisonment for not more than 10 years.

"(2) CONSECUTIVE SENTENCE.—Notwithstanding any other provision of law, the court shall not place on probation any person convicted of a violation of this section; nor shall the term of imprisonment imposed under this section run concurrently with any other term of imprisonment.

"(d) PROOF REQUIREMENTS.—The following shall apply to prosecutions under this section:

"(1) KNOWLEDGE.—The prosecution is not required to prove knowledge by any defendant of a jurisdictional base alleged in the indictment.

"(2) STATE LAW.—In a prosecution under this section that is based upon the adoption of State law, only the elements of the offense under State law, and not any provisions pertaining to criminal procedure or evidence, are adopted.

"(e) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction—

"(1) over any offense under subsection (a), including any threat, attempt, or conspiracy to commit such offense; and

"(2) over conduct which, under section 3, renders any person an accessory after the fact to an offense under subsection (a).

"(f) INVESTIGATIVE AUTHORITY.—In addition to any other investigative authority with respect to violations of this title, the Attorney General shall have primary investigative responsibility for all Federal crimes of terrorism, and the Secretary of the Treasury shall assist the Attorney General at the request of the Attorney General. Nothing in this section shall be construed to interfere with the authority of the United States Secret Service under section 3056.

"(g) DEFINITIONS.—As used in this section—

"(1) the term 'conduct transcending national boundaries' means conduct occurring outside of the United States in addition to the conduct occurring in the United States;

"(2) the term 'facility of interstate or foreign commerce' has the meaning given that term in section 1958(b)(2);

"(3) the term 'serious bodily injury' has the meaning given that term in section 1365(g)(3);

"(4) the term 'territorial sea of the United States' means all waters extending seaward to 12 nautical miles from the baselines of the United States, determined in accordance with international law; and

"(5) the term 'Federal crime of terrorism' means an offense that—

"(A) is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct; and

"(B) is a violation of—

"(i) section 32 (relating to destruction of aircraft or aircraft facilities), 37 (relating to violence at international airports), 81 (relating to arson within special maritime and territorial jurisdiction), 175 (relating to biological weapons), 351 (relating to congressional, cabinet, and Supreme Court assassination, kidnapping, and assault), 831 (relating to nuclear materials), 842 (m) or (n) (relating to plastic explosives), 844(e) (relating to certain bombings), 844 (f) or (i) (relating to arson and bombing of certain property), 956 (relating to conspiracy to injure property of a foreign government), 1114 (relating to protection of officers and employees of the United States), 1116 (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1361 (relating to injury of Government property or contracts), 1362 (relating to destruction of communication lines, stations, or systems), 1363 (relating to injury to buildings or property within special maritime and territorial jurisdiction of the United States), 1366 (relating to destruction of an energy facility), 1751 (relating to Presidential and Presidential staff assassination, kidnapping, and assault), 2152 (relating to injury of fortifications, harbor defenses, or defensive sea areas), 2155 (relating to destruction of national defense materials, premises, or utilities), 2156 (relating to production of defective national defense materials, premises, or utilities), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2332 (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture);

"(ii) section 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284); or

"(iii) section 46502 (relating to aircraft piracy) or section 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113B of title 18, United States Code, relating to terrorism, is amended by inserting after the item relating to section 2332a the following new item:

"2332b. Acts of terrorism transcending national boundaries.".

(c) STATUTE OF LIMITATIONS AMENDMENT.—Section 3286 of title 18, United States Code, is amended—

(1) by striking "any offense" and inserting "any non-capital offense";

(2) by striking "36" and inserting "37";

(3) by striking "2331" and inserting "2332";

(4) by striking "2339" and inserting "2332a"; and

(5) by inserting "2332b (acts of terrorism transcending national boundaries)," after "(use of weapons of mass destruction),".

(d) PRESUMPTIVE DETENTION.—Section 3142(e) of title 18, United States Code, is amended by inserting ", 956(a), or 2332b" after "section 924(c)".

SEC. 703. EXPANSION OF PROVISION RELATING TO DESTRUCTION OR INJURY OF PROPERTY WITHIN SPECIAL MARITIME AND TERRITORIAL JURISDICTION.

Section 1363 of title 18, United States Code, is amended by striking "any building," and all that follows through "shipping" and inserting "any structure, conveyance, or other real or personal property".

SEC. 704. CONSPIRACY TO HARM PEOPLE AND PROPERTY OVERSEAS.

(a) IN GENERAL.—Section 956 of chapter 45 of title 18, United States Code, is amended to read as follows:

"§956. Conspiracy to kill, kidnap, maim, or injure persons or damage property in a foreign country

"(a)(1) Whoever, within the jurisdiction of the United States, conspires with one or more other persons, regardless of where such other person or persons are located, to commit at any place outside the United States an act that would constitute the offense of murder, kidnapping, or maiming if committed in the special maritime and territorial jurisdiction of the United States shall, if any of the conspirators commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be punished as provided in subsection (a)(2).

"(2) The punishment for an offense under subsection (a)(1) of this section is—

"(A) imprisonment for any term of years or for life if the offense is conspiracy to murder or kidnap; and

"(B) imprisonment for not more than 35 years if the offense is conspiracy to maim.

"(b) Whoever, within the jurisdiction of the United States, conspires with one or more persons, regardless of where such other person or persons are located, to damage or destroy specific property situated within a foreign country and belonging to a foreign government or to any political subdivision thereof with which the United States is at peace, or any railroad, canal, bridge, airport, airfield, or other public utility, public conveyance, or public structure, or any religious, educational, or cultural property so situated, shall, if any of the conspirators commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be imprisoned not more than 25 years.".

(b) CLERICAL AMENDMENT.—The item relating to section 956 in the table of sections at the beginning of chapter 45 of title 18, United States Code, is amended to read as follows:

"956. Conspiracy to kill, kidnap, maim, or injure persons or damage property in a foreign country.".

SEC. 705. INCREASED PENALTIES FOR CERTAIN TERRORISM CRIMES.

(a) IN GENERAL.—Title 18, United States Code, is amended—

(1) in section 114, by striking "maim or disfigure" and inserting "torture (as defined in section 2340), maim, or disfigure";

(2) in section 755, by striking "two years" and inserting "5 years";

(3) in section 756, by striking "one year" and inserting "five years";

(4) in section 878(a), by striking "by killing, kidnapping, or assaulting a foreign official, official guest, or internationally protected person";

(5) in section 1113, by striking "three years" and inserting "seven years"; and

(6) in section 2332(c), by striking "five" and inserting "ten".

(b) PENALTY FOR CARRYING WEAPONS OR EXPLOSIVES ON AN AIRCRAFT.—Section 46505 of title 49, United States Code, is amended—

(1) in subsection (b), by striking "one year" and inserting "10 years"; and

(2) in subsection (c), by striking "5" and inserting "15".

SEC. 706. MANDATORY PENALTY FOR TRANSFERRING AN EXPLOSIVE MATERIAL KNOWING THAT IT WILL BE USED TO COMMIT A CRIME OF VIOLENCE.

Section 844 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(o) Whoever knowingly transfers any explosive materials, knowing or having reasonable cause to believe that such explosive materials will be used to commit a crime of violence (as defined in section 924(c)(3)) or drug trafficking crime (as defined in section 924(c)(2)) shall be subject to the same penalties as may be imposed under subsection (h) for a first conviction for the use or carrying of an explosive material.".

SEC. 707. POSSESSION OF STOLEN EXPLOSIVES PROHIBITED.

Section 842(h) of title 18, United States Code, is amended to read as follows:

"(h) It shall be unlawful for any person to receive, possess, transport, ship, conceal, store, barter, sell, dispose of, or pledge or accept as security for a loan, any stolen explosive materials which are moving as, which are part of, which constitute, or which have been shipped or transported in, interstate or foreign commerce, either before or after such materials were stolen, knowing or having reasonable cause to believe that the explosive materials were stolen.".

SEC. 708. ENHANCED PENALTIES FOR USE OF EXPLOSIVES OR ARSON CRIMES.

(a) IN GENERAL.—Section 844 of title 18, United States Code, is amended—

(1) in subsection (e), by striking "five" and inserting "10";

(2) by amending subsection (f) to read as follows:

"(f)(1) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other personal or real property in whole or in part owned or possessed by, or leased to, the United States, or any department or agency thereof, shall be imprisoned for not less than 5 years and not more than 20 years, fined under this title, or both.

"(2) Whoever engages in conduct prohibited by this subsection, and as a result of such conduct, directly or proximately causes personal injury or creates a substantial risk of injury to any person, including any public safety officer performing duties, shall be imprisoned for not less than 7 years and not more than 40 years, fined under this title, or both.

"(3) Whoever engages in conduct prohibited by this subsection, and as a result of such conduct directly or proximately causes the death of any person, including any public safety officer performing duties, shall be subject to the death penalty, or imprisoned for not less than 20 years or for life, fined under this title, or both.";

(3) in subsection (h)—

(A) in the first sentence, by striking "5 years but not more than 15 years" and inserting "10 years"; and

(B) in the second sentence, by striking "10 years but not more than 25 years" and inserting "20 years"; and

(4) in subsection (i)—

(A) by striking "not more than 20 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed," and inserting "not less than 5 years and not more than 20 years, fined under this title"; and

(B) by striking "not more than 40 years, fined the greater of a fine under this title or the cost of repairing or replacing any property that is damaged or destroyed," and inserting "not less than 7 years and not more than 40 years, fined under this title".

(b) CONFORMING AMENDMENT.—Section 81 of title 18, United States Code, is amended by striking "fined under this title or imprisoned not more than five years, or both" and inserting "imprisoned for not more than 25 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed, or both".

(c) STATUTE OF LIMITATION FOR ARSON OFFENSES.—

(1) IN GENERAL.—Chapter 213 of title 18, United States Code, is amended by adding at the end the following new section:

"§3295. Arson offenses

"No person shall be prosecuted, tried, or punished for any non-capital offense under section 81 or subsection (f), (h), or (i) of section 844 unless the indictment is found or the information is instituted not later than 10 years after the date on which the offense was committed.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 213 of title 18, United States Code, is amended by adding at the end the following new item:

"3295. Arson offenses.".

(3) CONFORMING AMENDMENT.—Section 844(i) of title 18, United States Code, is amended by striking the last sentence.

SEC. 709. DETERMINATION OF CONSTITUTIONALITY OF RESTRICTING THE DISSEMINATION OF BOMB-MAKING INSTRUCTIONAL MATERIALS.

(a) STUDY.—The Attorney General, in consultation with such other officials and individuals as the Attorney General considers appropriate, shall conduct a study concerning—

(1) the extent to which there is available to the public material in any medium (including print, electronic, or film) that provides instruction on how to make bombs, destructive devices, or weapons of mass destruction;

(2) the extent to which information gained from such material has been used in incidents of domestic or international terrorism;

(3) the likelihood that such information may be used in future incidents of terrorism;

(4) the application of Federal laws in effect on the date of enactment of this Act to such material;

(5) the need and utility, if any, for additional laws relating to such material; and

(6) an assessment of the extent to which the first amendment protects such material and its private and commercial distribution.

(b) REPORT.—

(1) REQUIREMENT.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall submit to the Congress a report that contains the results of the study required by this section.

(2) AVAILABILITY.—The Attorney General shall make the report submitted under this subsection available to the public.

Subtitle B—Criminal Procedures

SEC. 721. CLARIFICATION AND EXTENSION OF CRIMINAL JURISDICTION OVER CERTAIN TERRORISM OFFENSES OVERSEAS.

(a) AIRCRAFT PIRACY.—Section 46502(b) of title 49, United States Code, is amended—

(1) in paragraph (1), by striking "and later found in the United States";

(2) so that paragraph (2) reads as follows:

"(2) There is jurisdiction over the offense in paragraph (1) if—

"(A) a national of the United States was aboard the aircraft;

"(B) an offender is a national of the United States; or

"(C) an offender is afterwards found in the United States."; and

(3) by inserting after paragraph (2) the following:

"(3) For purposes of this subsection, the term 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).".

(b) DESTRUCTION OF AIRCRAFT OR AIRCRAFT FACILITIES.—Section 32(b) of title 18, United States Code, is amended—

(1) by striking ", if the offender is later found in the United States,"; and

(2) by inserting at the end the following: "There is jurisdiction over an offense under this subsection if a national of the United States was

on board, or would have been on board, the aircraft; an offender is a national of the United States; or an offender is afterwards found in the United States. For purposes of this subsection, the term 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act.".

(c) MURDER OF FOREIGN OFFICIALS AND CERTAIN OTHER PERSONS.—Section 1116 of title 18, United States Code, is amended—

(1) in subsection (b), by adding at the end the following:

"(7) 'National of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).'"; and

(2) in subsection (c), by striking the first sentence and inserting the following: "If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.".

(d) PROTECTION OF FOREIGN OFFICIALS AND CERTAIN OTHER PERSONS.—Section 112 of title 18, United States Code, is amended—

(1) in subsection (c), by inserting "'national of the United States'," before "and"; and

(2) in subsection (e), by striking the first sentence and inserting the following: "If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.".

(e) THREATS AND EXTORTION AGAINST FOREIGN OFFICIALS AND CERTAIN OTHER PERSONS.—Section 878 of title 18, United States Code, is amended—

(1) in subsection (c), by inserting "'national of the United States'," before "and"; and

(2) in subsection (d), by striking the first sentence and inserting the following: "If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.".

(f) KIDNAPPING OF INTERNATIONALLY PROTECTED PERSONS.—Section 1201(e) of title 18, United States Code, is amended—

(1) by striking the first sentence and inserting the following: "If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States."; and

(2) by adding at the end the following: "For purposes of this subsection, the term 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).".

(g) VIOLENCE AT INTERNATIONAL AIRPORTS.—Section 37(b)(2) of title 18, United States Code, is amended—

(1) by inserting "(A)" before "the offender is later found in the United States"; and

(2) by inserting "; or (B) an offender or a victim is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)))" after "the offender is later found in the United States".

(h) BIOLOGICAL WEAPONS.—Section 178 of title 18, United States Code, is amended—

(1) by striking "and" at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting "; and"; and

(3) by adding the following at the end:

"(5) the term 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).".

SEC. 722. CLARIFICATION OF MARITIME VIOLENCE JURISDICTION.

Section 2280(b)(1)(A) of title 18, United States Code, is amended—

(1) in clause (ii), by striking "and the activity is not prohibited as a crime by the State in which the activity takes place"; and

(2) in clause (iii), by striking "the activity takes place on a ship flying the flag of a foreign country or outside the United States,".

SEC. 723. INCREASED AND ALTERNATE CONSPIRACY PENALTIES FOR TERRORISM OFFENSES.

(a) TITLE 18 OFFENSES.—

(1) Sections 32(a)(7), 32(b)(4), 37(a), 115(a)(1)(A), 115(a)(2), 1203(a), 2280(a)(1)(H), and 2281(a)(1)(F) of title 18, United States Code, are each amended by inserting "or conspires" after "attempts".

(2) Section 115(b)(2) of title 18, United States Code, is amended by striking "or attempted kidnapping" both places it appears and inserting ", attempted kidnapping, or conspiracy to kidnap".

(3)(A) Section 115(b)(3) of title 18, United States Code, is amended by striking "or attempted murder" and inserting ", attempted murder, or conspiracy to murder".

(B) Section 115(b)(3) of title 18, United States Code, is amended by striking "and 1113" and inserting ", 1113, and 1117".

(b) AIRCRAFT PIRACY.—

(1) Section 46502(a)(2) of title 49, United States Code, is amended by inserting "or conspiring" after "attempting".

(2) Section 46502(b)(1) of title 49, United States Code, is amended by inserting "or conspiring to commit" after "committing".

SEC. 724. CLARIFICATION OF FEDERAL JURISDICTION OVER BOMB THREATS.

Section 844(e) of title 18, United States Code, is amended by striking "commerce," and inserting "interstate or foreign commerce, or in or affecting interstate or foreign commerce,".

SEC. 725. EXPANSION AND MODIFICATION OF WEAPONS OF MASS DESTRUCTION STATUTE.

Section 2332a of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in the subsection heading, by inserting "AGAINST A NATIONAL OF THE UNITED STATES OR WITHIN THE UNITED STATES" after "OFFENSE";

(B) by striking "uses, or attempts" and inserting ", without lawful authority, uses, threatens, or attempts"; and

(C) in paragraph (2), by inserting ", and the results of such use affect interstate or foreign commerce or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce" before the semicolon at the end;

(2) in subsection (b), by striking subparagraph (B) and inserting the following:

"(B) any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;";

(3) by redesignating subsection (b) as subsection (c); and

(4) by inserting after subsection (a) the following new subsection:

"(b) OFFENSE BY NATIONAL OF THE UNITED STATES OUTSIDE OF THE UNITED STATES.—Any national of the United States who, without lawful authority, uses, or threatens, attempts, or conspires to use, a weapon of mass destruction outside of the United States shall be imprisoned for any term of years or for life, and if death results, shall be punished by death, or by imprisonment for any term of years or for life.".

SEC. 726. ADDITION OF TERRORISM OFFENSES TO THE MONEY LAUNDERING STATUTE.

Section 1956(c)(7) of title 18, United States Code, is amended—

(1) in subparagraph (B), by amending clause (ii) to read as follows:

"(ii) murder, kidnapping, robbery, extortion, or destruction of property by means of explosive or fire;"; and

(2) in subparagraph (D)—

(A) by inserting after "an offense under" the following: "section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member),";

(B) by inserting after "section 215 (relating to commissions or gifts for procuring loans)," the following: "section 351 (relating to congressional or Cabinet officer assassination),";

(C) by inserting after "section 798 (relating to espionage)," the following: "section 831 (relating to prohibited transactions involving nuclear materials), section 844 (f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce),";

(D) by inserting after "section 875 (relating to interstate communications)," the following: "section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country),";

(E) by inserting after "section 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution)," the following: "section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons),";

(F) by inserting after "section 1203 (relating to hostage taking)," the following: "section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction),";

(G) by inserting after "section 1708 (relating to theft from the mail)," the following: "section 1751 (relating to Presidential assassination),";

(H) by inserting after "2114 (relating to bank and postal robbery and theft)," the following: "section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms),";

(I) by striking "or section 2320" and inserting "section 2320"; and

(J) by striking "of this title" and inserting the following: ", section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), or section 2339A (relating to providing material support to terrorists) of this title, section 46502 of title 49, United States Code,".

SEC. 727. PROTECTION OF FEDERAL EMPLOYEES; PROTECTION OF CURRENT OR FORMER OFFICIALS, OFFICERS, OR EMPLOYEES OF THE UNITED STATES.

(a) HOMICIDE.—Section 1114 of title 18, United States Code, is amended to read as follows:

"§1114. Protection of officers and employees of the United States

"Whoever kills or attempts to kill any officer or employee of the United States or of any agency in any branch of the United States Government (including any member of the uniformed services) while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer or employee in the performance of such duties or on account of that assistance, shall be punished—

"(1) in the case of murder, as provided under section 1111;

"(2) in the case of manslaughter, as provided under section 1112; or

"(3) in the case of attempted murder or manslaughter, as provided in section 1113.".

(b) THREATS AGAINST FORMER OFFICERS AND EMPLOYEES.—

(1) IN GENERAL.—Section 115(a)(2) of title 18, United States Code, is amended by inserting ", or threatens to assault, kidnap, or murder, any person who formerly served as a person designated in paragraph (1), or" after "assaults, kidnaps, or murders, or attempts to kidnap or murder".

(2) LIMITATION.—Section 115 of title 18, United States Code, is amended by adding at the end the following:

"(d) This section shall not interfere with the investigative authority of the United States Secret Service, as provided under section 3056, 871, and 879 of this title.".

(c) AMENDMENT TO CLARIFY THE MEANING OF THE TERM DEADLY OR DANGEROUS WEAPON IN THE PROHIBITION ON ASSAULT ON FEDERAL OFFICERS OR EMPLOYEES.—Section 111(b) of title 18, United States Code, is amended by inserting "(including a weapon intended to cause death or danger but that fails to do so by reason of a defective component)" after "deadly or dangerous weapon".

SEC. 728. DEATH PENALTY AGGRAVATING FACTOR.

Section 3592(c) of title 18, United States Code, is amended by inserting after paragraph (15) the following new paragraph:

"(16) MULTIPLE KILLINGS OR ATTEMPTED KILLINGS.—The defendant intentionally killed or attempted to kill more than one person in a single criminal episode.".

SEC. 729. DETENTION HEARING.

Section 3142(f) of title 18, United States Code, is amended by inserting "(not including any intermediate Saturday, Sunday, or legal holiday)" after "five days" and after "three days".

SEC. 730. DIRECTIONS TO SENTENCING COMMISSION.

The United States Sentencing Commission shall forthwith, in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987, as though the authority under that section had not expired, amend the sentencing guidelines so that the chapter 3 adjustment relating to international terrorism only applies to Federal crimes of terrorism, as defined in section 2332b(g) of title 18, United States Code.

SEC. 731. EXCLUSION OF CERTAIN TYPES OF INFORMATION FROM DEFINITIONS.

Section 2510 of title 18, United States Code, is amended—

(1) in paragraph (12)—

(A) by striking "or" at the end of subparagraph (B);

(B) by adding "or" at the end of subparagraph (C); and

(C) by adding at the end the following new subparagraph:

"(D) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds;"; and

(2) in paragraph (16)—

(A) by adding "or" at the end of subparagraph (D);

(B) by striking "or" at the end of subparagraph (E); and

(C) by striking subparagraph (F).

SEC. 732. MARKING, RENDERING INERT, AND LICENSING OF EXPLOSIVE MATERIALS.

(a) STUDY.—

(1) IN GENERAL.—Not later than 12 months after the date of enactment of this Act, the Secretary of the Treasury (referred to in this section as the "Secretary") shall conduct a study of—

(A) the tagging of explosive materials for purposes of detection and identification;

(B) the feasibility and practicability of rendering common chemicals used to manufacture explosive materials inert;

(C) the feasibility and practicability of imposing controls on certain precursor chemicals used to manufacture explosive materials; and

(D) State licensing requirements for the purchase and use of commercial high explosives, including—

(i) detonators;

(ii) detonating cords;

(iii) dynamite;

(iv) water gel;

(v) emulsion;

(vi) blasting agents; and

(vii) boosters.

(2) EXCLUSION.—No study conducted under this subsection or regulation proposed under subsection (a) shall include black or smokeless powder among the explosive materials considered.

(b) CONSULTATION.—

(1) IN GENERAL.—In conducting the study under subsection (a), the Secretary shall consult with—

(A) Federal, State, and local officials with expertise in the area of chemicals used to manufacture explosive materials; and

(B) such other individuals as the Secretary determines are necessary.

(2) FERTILIZER RESEARCH CENTERS.—In conducting any portion of the study under subsection (a) relating to the regulation and use of fertilizer as a pre-explosive material, the Secretary of the Treasury shall consult with and receive input from non-profit fertilizer research centers.

(c) REPORT.—Not later than 30 days after the completion of the study conducted under subsection (a), the Secretary shall submit a report to the Congress, which shall be made public, that contains—

(1) the results of the study;

(2) any recommendations for legislation; and

(3) any opinions and findings of the fertilizer research centers.

(d) HEARINGS.—Congress shall have not less than 90 days after the submission of the report under subsection (c) to—

(1) review the results of the study; and

(2) hold hearings and receive testimony regarding the recommendations of the Secretary.

(e) REGULATIONS.—

(1) IN GENERAL.—Not later than 6 months after the submission of the report required by subsection (c), the Secretary may submit to Congress and publish in the Federal Register draft regulations for the addition of tracer elements to explosive materials manufactured in or imported into the United States, of such character and in such quantity as the Secretary may authorize or require, if the results of the study conducted under subsection (a) indicate that the tracer elements—

(A) will not pose a risk to human life or safety;

(B) will substantially assist law enforcement officers in their investigative efforts;

(C) will not substantially impair the quality of the explosive materials for their intended lawful use;

(D) will not have a substantially adverse effect on the environment; and

(E) the costs associated with the addition of the tracers will not outweigh benefits of their inclusion.

(2) EFFECTIVE DATE.—The regulations under paragraph (1) shall take effect 270 days after the Secretary submits proposed regulations to Congress pursuant to paragraph (1), except to the extent that the effective date is revised or the regulation is otherwise modified or disapproved by an Act of Congress.

TITLE VIII—ASSISTANCE TO LAW ENFORCEMENT

Subtitle A—Resources and Security

SEC. 801. OVERSEAS LAW ENFORCEMENT TRAINING ACTIVITIES.

The Attorney General and the Secretary of the Treasury are authorized to support law enforcement training activities in foreign countries, subject to the concurrence of the Secretary of State, for the purpose of improving the effectiveness of the United States in investigating and prosecuting transnational offenses.

SEC. 802. SENSE OF CONGRESS.

It is the sense of the Congress that, whenever practicable, each recipient of any sum authorized to be appropriated by this Act, should use the money to purchase American-made products.

SEC. 803. PROTECTION OF FEDERAL GOVERNMENT BUILDINGS IN THE DISTRICT OF COLUMBIA.

The Attorney General and the Secretary of the Treasury may prohibit—

(1) any vehicles from parking or standing on any street or roadway adjacent to any building in the District of Columbia used by law enforcement authorities subject to their jurisdiction, that is in whole or in part owned, possessed, or leased to the Federal Government; and

(2) any person or entity from conducting business on any property immediately adjacent to any building described in paragraph (1).

SEC. 804. REQUIREMENT TO PRESERVE RECORD EVIDENCE.

Section 2703 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(f) REQUIREMENT TO PRESERVE EVIDENCE.—

"(1) IN GENERAL.—A provider of wire or electronic communication services or a remote computing service, upon the request of a governmental entity, shall take all necessary steps to preserve records, and other evidence in its possession pending the issuance of a court order or other process.

"(2) PERIOD OF RETENTION.—Records referred to in paragraph (1) shall be retained for a period of 90 days, which shall be extended for an additional 90-day period upon a renewed request by the governmental entity.".

SEC. 805. DETERRENT AGAINST TERRORIST ACTIVITY DAMAGING A FEDERAL INTEREST COMPUTER.

(a) REVIEW.—Not later than 60 calendar days after the date of enactment of this Act, the United States Sentencing Commission shall review the deterrent effect of existing guideline levels as they apply to paragraphs (4) and (5) of section 1030(a) of title 18, United States Code.

(b) REPORT.—The United States Sentencing Commission shall prepare and transmit a report to the Congress on the findings under the study conducted under subsection (a).

(c) AMENDMENT OF GUIDELINES.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the sentencing guidelines to ensure any individual convicted of a violation of paragraph (4) or (5) of section 1030(a) of title 18, United States Code, is imprisoned for not less than 6 months.

SEC. 806. COMMISSION ON THE ADVANCEMENT OF FEDERAL LAW ENFORCEMENT.

(a) ESTABLISHMENT.—There is established a commission to be known as the "Commission on the Advancement of Federal Law Enforcement" (hereinafter in this section referred to as the "Commission").

(b) DUTIES.—The Commission shall review, ascertain, evaluate, report, and recommend action to the Congress on the following matters:

(1) The Federal law enforcement priorities for the 21st century, including Federal law enforcement capability to investigate and deter adequately the threat of terrorism facing the United States.

(2) In general, the manner in which significant Federal criminal law enforcement operations are conceived, planned, coordinated, and executed.

(3) The standards and procedures used by Federal law enforcement to carry out significant Federal criminal law enforcement operations, and their uniformity and compatibility on an interagency basis, including standards related to the use of deadly force.

(4) The investigation and handling of specific Federal criminal law enforcement cases by the United States Government and the Federal law enforcement agencies therewith, selected at the Commission's discretion.

(5) The necessity for the present number of Federal law enforcement agencies and units.

(6) The location and efficacy of the office or entity directly responsible, aside from the President of the United States, for the coordination on an interagency basis of the operations, programs, and activities of all of the Federal law enforcement agencies.

(7) The degree of assistance, training, education, and other human resource management assets devoted to increasing professionalism for Federal law enforcement officers.

(8) The independent accountability mechanisms that exist, if any, and their efficacy to investigate, address, and to correct Federal law enforcement abuses.

(9) The degree of coordination among law enforcement agencies in the area of international crime and the extent to which deployment of resources overseas diminishes domestic law enforcement.

(10) The extent to which Federal law enforcement agencies coordinate with State and local law enforcement agencies on Federal criminal enforcement operations and programs that directly affect a State or local law enforcement agency's geographical jurisdiction.

(11) Such other related matters as the Commission deems appropriate.

(c) MEMBERSHIP AND ADMINISTRATIVE PROVISIONS.—

(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of 5 members appointed as follows:

(A) 1 member appointed by the President pro tempore of the Senate.

(B) 1 member appointed by the minority leader of the Senate.

(C) 1 member appointed by the Speaker of the House of Representatives.

(D) 1 member appointed by the minority leader of the House of Representatives.

(E) 1 member (who shall chair the Commission) appointed by the Chief Justice of the Supreme Court.

(2) DISQUALIFICATION.—A person who is an officer or employee of the United States shall not be appointed a member of the Commission.

(3) TERMS.—Each member shall be appointed for the life of the Commission.

(4) QUORUM.—3 members of the Commission shall constitute a quorum but a lesser number may hold hearings.

(5) MEETINGS.—The Commission shall meet at the call of the Chair of the Commission.

(6) COMPENSATION.—Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day, including travel time, during which the member is engaged in the performance of the duties of the Commission.

(d) STAFFING AND SUPPORT FUNCTIONS.—

(1) DIRECTOR.—The Commission shall have a director who shall be appointed by the Chair of the Commission.

(2) STAFF.—Subject to rules prescribed by the Commission, the Director may appoint additional personnel as the Commission considers appropriate.

(3) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Director and staff of the Commission shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates.

(e) POWERS.—

(1) HEARINGS AND SESSIONS.—The Commission may, for the purposes of carrying out this Act, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it. The Commission may establish rules for its proceedings.

(2) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

(3) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chair of the Commission, the head of that department or agency shall furnish that information to the Commission, unless doing so would threaten the national security, the health or safety of any individual, or the integrity of an ongoing investigation.

(4) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this title.

(f) REPORT.—The Commission shall transmit a report to the Congress and the public not later than 2 years after a quorum of the Commission has been appointed. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with the Commission's recommendations for such actions as the Commission considers appropriate.

(g) TERMINATION.—The Commission shall terminate 30 days after submitting the report required by this section.

SEC. 807. COMBATTING INTERNATIONAL COUNTERFEITING OF UNITED STATES CURRENCY.

(a) IN GENERAL.—The Secretary of the Treasury (hereafter in this section referred to as the "Secretary"), in consultation with the advanced counterfeit deterrence steering committee, shall—

(1) study the use and holding of United States currency in foreign countries; and

(2) develop useful estimates of the amount of counterfeit United States currency that circulates outside the United States each year.

(b) EVALUATION AUDIT PLAN.—

(1) IN GENERAL.—The Secretary shall develop an effective international evaluation audit plan that is designed to enable the Secretary to carry out the duties described in subsection (a) on a regular and thorough basis.

(2) SUBMISSION OF DETAILED WRITTEN SUMMARY.—The Secretary shall submit a detailed written summary of the evaluation audit plan developed pursuant to paragraph (1) to the Congress before the end of the 6-month period beginning on the date of the enactment of this Act.

(3) 1ST EVALUATION AUDIT UNDER PLAN.—The Secretary shall begin the first evaluation audit pursuant to the evaluation audit plan no later than the end of the 1-year period beginning on the date of the enactment of this Act.

(4) SUBSEQUENT EVALUATION AUDITS.—At least 1 evaluation audit shall be performed pursuant to the evaluation audit plan during each 3-year period beginning after the date of the commencement of the evaluation audit referred to in paragraph (3).

(c) REPORTS.—

(1) IN GENERAL.—The Secretary shall submit a written report to the Committee on Banking and Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the results of each evaluation audit conducted pursuant to subsection (b) within 90 days after the completion of the evaluation audit.

(2) CONTENTS.—In addition to such other information as the Secretary may determine to be appropriate, each report submitted to the Congress pursuant to paragraph (1) shall include the following information:

(A) A detailed description of the evaluation audit process and the methods used to develop estimates of the amount of counterfeit United States currency in circulation outside the United States.

(B) The method used to determine the currency sample examined in connection with the evaluation audit and a statistical analysis of the sample examined.

(C) A list of the regions of the world, types of financial institutions, and other entities included.

(D) An estimate of the total amount of United States currency found in each region of the world.

(E) The total amount of counterfeit United States currency and the total quantity of each counterfeit denomination found in each region of the world.

(3) CLASSIFICATION OF INFORMATION.—

(A) IN GENERAL.—To the greatest extent possible, each report submitted to the Congress under this subsection shall be submitted in an unclassified form.

(B) CLASSIFIED AND UNCLASSIFIED FORMS.—If, in the interest of submitting a complete report under this subsection, the Secretary determines that it is necessary to include classified information in the report, the report shall be submitted in a classified and an unclassified form.

(d) SUNSET PROVISION.—This section shall cease to be effective as of the end of the 10-year period beginning on the date of the enactment of this Act.

(e) RULE OF CONSTRUCTION.—No provision of this section shall be construed as authorizing any entity to conduct investigations of counterfeit United States currency.

(f) FINDINGS.—The Congress hereby finds the following:

(1) United States currency is being counterfeited outside the United States.

(2) The 103d Congress enacted, with the approval of the President on September 13, 1994, section 470 of title 18, United States Code, making such activity a crime under the laws of the United States.

(3) The expeditious posting of agents of the United States Secret Service to overseas posts, which is necessary for the effective enforcement

of section 470 and related criminal provisions, has been delayed.

(4) While section 470 of title 18, United States Code, provides for a maximum term of imprisonment of 20 years as opposed to a maximum term of 15 years for domestic counterfeiting, the United States Sentencing Commission has failed to provide, in its sentencing guidelines, for an appropriate enhancement of punishment for defendants convicted of counterfeiting United States currency outside the United States.

(g) TIMELY CONSIDERATION OF REQUESTS FOR CONCURRENCE IN CREATION OF OVERSEAS POSTS.—

(1) IN GENERAL.—The Secretary of State shall—

(A) consider in a timely manner the request by the Secretary of the Treasury for the placement of such number of agents of the United States Secret Service as the Secretary of the Treasury considers appropriate in posts in overseas embassies; and

(B) reach an agreement with the Secretary of the Treasury on such posts as soon as possible and, in any event, not later than December 31, 1996.

(2) COOPERATION OF TREASURY REQUIRED.—The Secretary of the Treasury shall promptly provide any information requested by the Secretary of State in connection with such requests.

(3) REPORTS REQUIRED.—The Secretary of the Treasury and the Secretary of State shall each submit, by February 1, 1997, a written report to the Committee on Banking and Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate explaining the reasons for the rejection, if any, of any proposed post and the reasons for the failure, if any, to fill any approved post by such date.

(h) ENHANCED PENALTIES FOR INTERNATIONAL COUNTERFEITING OF UNITED STATES CURRENCY.—Pursuant to the authority of the United States Sentencing Commission under section 994 of title 28, United States Code, the Commission shall amend the sentencing guidelines prescribed by the Commission to provide an appropriate enhancement of the punishment for a defendant convicted under section 470 of title 18 of such Code.

SEC. 808. COMPILATION OF STATISTICS RELATING TO INTIMIDATION OF GOVERNMENT EMPLOYEES.

(a) FINDINGS.—The Congress finds that—

(1) threats of violence and acts of violence against Federal, State, and local government employees and their families are increasing as the result of attempts to stop public servants from performing their lawful duties;

(2) these acts are a danger to the constitutional form of government of the United States; and

(3) more information is needed relating to the extent and nature of the danger to these employees and their families so that actions can be taken to protect public servants at all levels of government in the performance of their duties.

(b) STATISTICS.—The Attorney General shall collect data, for the calendar year 1990 and each succeeding calendar year thereafter, relating to crimes and incidents of threats of violence and acts of violence against Federal, State, and local government employees and their families in the performance of their lawful duties. Such data shall include—

(1) in the case of crimes against such employees and their families, the nature of the crime; and

(2) in the case of incidents of threats of violence and acts of violence, including verbal and implicit threats against such employees and their families, the deterrent effect on the performance of their jobs.

(c) GUIDELINES.—The Attorney General shall establish guidelines for the collection of the data under subsection (b), including a definition of the sufficiency of evidence of noncriminal incidents required to be reported.

(d) USE OF DATA.—

(1) ANNUAL PUBLISHING.—The Attorney General shall publish an annual summary of the data collected under this section.

(2) USE OF DATA.—Except with respect to the summary published under paragraph (1), data collected under this section shall be used only for research and statistical purposes.

(e) EXEMPTION.—The Attorney General, the Secretary of State, and the United States Secret Service is not required to participate in any statistical reporting activity under this section with respect to any direct or indirect threat made against any individual for whom that official or Service is authorized to provide protection.

SEC. 809. ASSESSING AND REDUCING THE THREAT TO LAW ENFORCEMENT OFFICERS FROM THE CRIMINAL USE OF FIREARMS AND AMMUNITION.

(a) The Secretary of the Treasury, in conjunction with the Attorney General, shall conduct a study and make recommendations concerning—

(1) the extent and nature of the deaths and serious injuries, in the line of duty during the last decade, for law enforcement officers, including—

(A) those officers who were feloniously killed or seriously injured and those that died or were seriously injured as a result of accidents or other non-felonious causes;

(B) those officers feloniously killed or seriously injured with firearms, those killed or seriously injured with, separately, handguns firing handgun caliber ammunition, handguns firing rifle caliber ammunition, rifles firing rifle caliber ammunition, rifles firing handgun caliber ammunition and shotguns;

(C) those officers feloniously killed or seriously injured with firearms, and killings or serious injuries committed with firearms taken by officers' assailants from officers, and those committed with other officers' firearms; and

(D) those killed or seriously injured because shots attributable to projectiles defined as "armor piercing ammunition" under section 921(a)(17)(B) (i) and (ii) of title 18, United States Code, pierced the protective material of bullet resistant vests and bullet resistant headgear;

(2) whether current passive defensive strategies, such as body armor, are adequate to counter the criminal use of firearms against law officers; and

(3) the calibers of ammunition that are—

(A) sold in the greatest quantities;

(B) their common uses, according to consultations with industry, sporting organizations and law enforcement;

(C) the calibers commonly used for civilian defensive or sporting uses that would be affected by any prohibition on non-law enforcement sales of such ammunition, if such ammunition is capable of penetrating minimum level bullet resistant vests; and

(D) recommendations for increase in body armor capabilities to further protect law enforcement from threat.

(b) In conducting the study, the Secretary shall consult with other Federal, State and local officials, non-governmental organizations, including all national police organizations, national sporting organizations and national industry associations with expertise in this area and such other individuals as shall be deemed necessary. Such study shall be presented to Congress twelve months after the enactment of this Act and made available to the public, including any data tapes or data used to form such recommendations.

(c) There are authorized to be appropriated for the study and recommendations such sums as may be necessary.

SEC. 810. STUDY AND REPORT ON ELECTRONIC SURVEILLANCE.

(a) STUDY.—The Attorney General and the Director of the Federal Bureau of Investigation shall study all applicable laws and guidelines relating to electronic surveillance and the use of pen registers and other trap and trace devices.

(b) REPORT.—Not later than 90 days after the date of enactment of this Act, the Attorney General shall submit a report to the Congress that includes—

(1) the findings of the study conducted pursuant to subsection (a);

(2) recommendations for the use of electronic devices in conducting surveillance of terrorist or other criminal organizations, and for any modifications in the law necessary to enable the Federal Government to fulfill its law enforcement responsibilities within appropriate constitutional parameters;

(3) a summary of instances in which Federal law enforcement authorities may have abused electronic surveillance powers and recommendations, if needed, for constitutional safeguards relating to the use of such powers; and

(4) a summary of efforts to use current wiretap authority, including detailed examples of situations in which expanded authority would have enabled law enforcement authorities to fulfill their responsibilities.

Subtitle B—Funding Authorizations for Law Enforcement

SEC. 811. FEDERAL BUREAU OF INVESTIGATION.

(a) IN GENERAL.—With funds made available pursuant to subsection (c)—

(1) the Attorney General shall—

(A) provide support and enhance the technical support center and tactical operations of the Federal Bureau of Investigation;

(B) create a Federal Bureau of Investigation counterterrorism and counterintelligence fund for costs associated with the investigation of cases involving cases of terrorism;

(C) expand and improve the instructional, operational support, and construction of the Federal Bureau of Investigation Academy;

(D) construct a Federal Bureau of Investigation laboratory, provide laboratory examination support, and provide for a command center;

(E) make grants to States to carry out the activities described in subsection (b); and

(F) increase personnel to support counterterrorism activities; and

(2) the Director of the Federal Bureau of Investigation may expand the combined DNA Identification System (CODIS) to include Federal crimes and crimes committed in the District of Columbia.

(b) STATE GRANTS.—

(1) AUTHORIZATION.—The Attorney General, in consultation with the Director of the Federal Bureau of Investigation, may make grants to each State eligible under paragraph (2) to be used by the chief executive officer of the State, in conjunction with units of local government, other States, or any combination thereof, to carry out all or part of a program to establish, develop, update, or upgrade—

(A) computerized identification systems that are compatible and integrated with the databases of the National Crime Information Center of the Federal Bureau of Investigation;

(B) the capability to analyze deoxyribonucleic acid (DNA) in a forensic laboratory in ways that are compatible and integrated with the combined DNA Identification System (CODIS) of the Federal Bureau of Investigation; and

(C) automated fingerprint identification systems that are compatible and integrated with the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation.

(2) ELIGIBILITY.—To be eligible to receive a grant under this subsection, a State shall require that each person convicted of a felony of

a sexual nature shall provide to appropriate State law enforcement officials, as designated by the chief executive officer of the State, a sample of blood, saliva, or other specimen necessary to conduct a DNA analysis consistent with the standards established for DNA testing by the Director of the Federal Bureau of Investigation.

(3) INTERSTATE COMPACTS.—A State may enter into a compact or compacts with another State or States to carry out this subsection.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated for the activities of the Federal Bureau of Investigation, to help meet the increased demands for activities to combat terrorism—

(A) $114,000,000 for fiscal year 1997;

(B) $166,000,000 for fiscal year 1998;

(C) $96,000,000 for fiscal year 1999; and

(D) $92,000,000 for fiscal year 2000.

(2) AVAILABILITY OF FUNDS.—Funds made available pursuant to paragraph (1), in any fiscal year, shall remain available until expended.

(3) ALLOCATION.—

(A) IN GENERAL.—Of the total amount appropriated to carry out subsection (b) in a fiscal year—

(i) the greater of 0.25 percent of such amount or $500,000 shall be allocated to each eligible State; and

(ii) of the total funds remaining after the allocation under clause (i), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this subparagraph as the population of such State bears to the population of all States.

(B) DEFINITION.—For purposes of this paragraph, the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, except that for purposes of the allocation under this subparagraph, American Samoa and the Commonwealth of the Northern Mariana Islands shall be considered as one State and that for these purposes, 67 percent of the amounts allocated shall be allocated to American Samoa, and 33 percent to the Commonwealth of the Northern Mariana Islands.

SEC. 812. UNITED STATES CUSTOMS SERVICE.

(a) IN GENERAL.—There are authorized to be appropriated for the activities of the United States Customs Service, to help meet the increased needs of the United States Customs Service—

(1) $8,000,000 for fiscal year 1997;

(2) $8,000,000 for fiscal year 1998;

(3) $8,000,000 for fiscal year 1999; and

(4) $7,000,000 for fiscal year 2000.

(b) AVAILABILITY OF FUNDS.—Funds made available pursuant to subsection (a), in any fiscal year, shall remain available until expended.

SEC. 813. IMMIGRATION AND NATURALIZATION SERVICE.

(a) IN GENERAL.—There are authorized to be appropriated for the activities of the Immigration and Naturalization Service, to help meet the increased needs of the Immigration and Naturalization Service, including the detention and removal of alien terrorists, $5,000,000 for each of the fiscal years 1997, 1998, 1999, and 2000.

(b) AVAILABILITY OF FUNDS.—Funds made available pursuant to subsection (a), in any fiscal year, shall remain available until expended.

SEC. 814. DRUG ENFORCEMENT ADMINISTRATION.

(a) ACTIVITIES OF DRUG ENFORCEMENT ADMINISTRATION.—The Attorney General shall use funds made available pursuant to subsection (b) to—

(1) fund antiviolence crime initiatives;

(2) fund initiatives to address major violators of Federal antidrug statutes; and

(3) enhance or replace infrastructure of the Drug Enforcement Administration.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Drug Enforcement Administration, to help meet the increased needs of the Drug Enforcement Administration—

(1) $35,000,000 for fiscal year 1997;

(2) $40,000,000 for fiscal year 1998;

(3) $45,000,000 for fiscal year 1999; and

(4) $52,000,000 for fiscal year 2000.

(c) AVAILABILITY OF FUNDS.—Funds made available pursuant to this section, in any fiscal year, shall remain available until expended.

SEC. 815. DEPARTMENT OF JUSTICE.

(a) IN GENERAL.—The Attorney General shall use funds made available pursuant to subsection (b) to—

(1) hire additional Assistant United States Attorneys and attorneys within the Criminal Division of the Department of Justice; and

(2) provide for increased security at courthouses and other facilities in which Federal workers are employed.

(b) AUTHORIZATION OF ADDITIONAL APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $10,000,000 for fiscal year 1997;

(2) $10,000,000 for fiscal year 1998;

(3) $10,000,000 for fiscal year 1999; and

(4) $11,000,000 for fiscal year 2000.

(c) AVAILABILITY OF FUNDS.—Funds made available pursuant to this section, in any fiscal year, shall remain available until expended.

(d) EXEMPTION AUTHORITY.—Notwithstanding any other provision of law, section 102(b) of the Department of Justice and Related Agencies Appropriations Act, 1993 (Public Law 102-395), shall remain in effect until specifically repealed, subject to any limitation on appropriations contained in any Department of Justice Appropriation Authorization Act.

(e) GENERAL REWARD AUTHORITY OF THE ATTORNEY GENERAL.—

(1) IN GENERAL.—Chapter 203 of title 18, United States Code, is amended by adding immediately after section 3059A the following section:

"§3059B. General reward authority

"(a) Notwithstanding any other provision of law, the Attorney General may pay rewards and receive from any department or agency funds for the payment of rewards under this section to any individual who assists the Department of Justice in performing its functions.

"(b) Not later than 30 days after authorizing a reward under this section that exceeds $100,000, the Attorney General shall give notice to the respective chairmen of the Committees on Appropriations and the Committees on the Judiciary of the Senate and the House of Representatives.

"(c) A determination made by the Attorney General to authorize an award under this section and the amount of any reward authorized shall be final and conclusive, and not subject to judicial review.".

SEC. 816. DEPARTMENT OF THE TREASURY.

(a) IN GENERAL.—There are authorized to be appropriated for Department of Treasury law enforcement agencies engaged in counterterrorism efforts to augment those efforts—

(1) $10,000,000 for fiscal year 1997;

(2) $10,000,000 for fiscal year 1998;

(3) $10,000,000 for fiscal year 1999; and

(4) $10,000,000 for fiscal year 2000.

(b) UNITED STATES SECRET SERVICE.—There are authorized to be appropriated for the activities of the United States Secret Service, to augment White House security and expand Presidential protection activities—

(1) $11,000,000 for fiscal year 1997;

(2) $11,000,000 for fiscal year 1998;

(3) $13,000,000 for fiscal year 1999; and

(4) $15,000,000 for fiscal year 2000.

SEC. 817. UNITED STATES PARK POLICE.

(a) IN GENERAL.—There are authorized to be appropriated for the activities of the United States Park Police, to help meet the increased needs of the United States Park Police, $500,000 for each of the fiscal years 1997, 1998, 1999, and 2000.

(b) AVAILABILITY OF FUNDS.—Funds made available pursuant to this section, in any fiscal year, shall remain available until expended.

SEC. 818. THE JUDICIARY.

(a) IN GENERAL.—There are authorized to be appropriated to the Federal judiciary, to help meet the increased demands for judicial branch activities, including supervised release, and pretrial and probation services, resulting from the enactment of this Act—

(1) $10,000,000 for fiscal year 1997;

(2) $10,000,000 for fiscal year 1998;

(3) $10,000,000 for fiscal year 1999; and

(4) $11,000,000 for fiscal year 2000.

(b) AVAILABILITY OF FUNDS.—Funds made available pursuant to this section, in any fiscal year, shall remain available until expended.

SEC. 819. LOCAL FIREFIGHTER AND EMERGENCY SERVICES TRAINING.

(a) GRANT AUTHORIZATION.—The Attorney General, in consultation with the Director of the Federal Emergency Management Agency, may make grants to provide specialized training and equipment to enhance the capability of metropolitan fire and emergency service departments to respond to terrorist attacks.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal year 1997, $5,000,000 to carry out this section.

SEC. 820. ASSISTANCE TO FOREIGN COUNTRIES TO PROCURE EXPLOSIVE DETECTION DEVICES AND OTHER COUNTERTERRORISM TECHNOLOGY.

There are authorized to be appropriated to the National Institute of Justice Office of Science and Technology not more than $10,000,000 for each of the fiscal years 1997 and 1998 to provide assistance to foreign countries facing an imminent danger of terrorist attack that threatens the national interest of the United States, or puts United States nationals at risk, in—

(1) obtaining explosive detection devices and other counterterrorism technology;

(2) conducting research and development projects on such technology; and

(3) testing and evaluating counterterrorism technologies in those countries.

SEC. 821. RESEARCH AND DEVELOPMENT TO SUPPORT COUNTERTERRORISM TECHNOLOGIES.

There are authorized to be appropriated to the National Institute of Justice Office of Science and Technology not more than $10,000,000 for fiscal year 1997, to—

(1) develop technologies that can be used to combat terrorism, including technologies in the areas of—

(A) detection of weapons, explosives, chemicals, and persons;

(B) tracking;

(C) surveillance;

(D) vulnerability assessment; and

(E) information technologies;

(2) develop standards to ensure the adequacy of products produced and compatibility with relevant national systems; and

(3) identify and assess requirements for technologies to assist State and local law enforcement in the national program to combat terrorism.

SEC. 822. GRANTS TO STATE AND LOCAL LAW ENFORCEMENT FOR TRAINING AND EQUIPMENT.

(a) AMENDMENT OF BYRNE GRANT PROGRAM.—Section 501(b) of the Omnibus Crime Control

and Safe Streets Act of 1968 (42 U.S.C. 3751(b)) is amended—

(1) by striking "and" at the end of paragraph (24);

(2) by striking the period at the end of paragraph (25) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(26) to develop and implement antiterrorism training programs and to procure equipment for use by local law enforcement authorities.".

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $25,000,000 for each of fiscal years 1997 through 2000 for grants under section 501 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751(b)) to be used for the development and implementation of antiterrorism training programs and to procure equipment for use by local law enforcement authorities.

SEC. 823. FUNDING SOURCE.

Appropriations for activities authorized in this subtitle may be made from the Violent Crime Reduction Trust Fund.

TITLE IX—MISCELLANEOUS

SEC. 901. EXPANSION OF TERRITORIAL SEA.

(a) TERRITORIAL SEA EXTENDING TO TWELVE MILES INCLUDED IN SPECIAL MARITIME AND TERRITORIAL JURISDICTION.—The Congress declares that all the territorial sea of the United States, as defined by Presidential Proclamation 5928 of December 27, 1988, for purposes of Federal criminal jurisdiction is part of the United States, subject to its sovereignty, and is within the special maritime and territorial jurisdiction of the United States for the purposes of title 18, United States Code.

(b) ASSIMILATED CRIMES IN EXTENDED TERRITORIAL SEA.—Section 13 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting after "title," the following: "or on, above, or below any portion of the territorial sea of the United States not within the jurisdiction of any State, Commonwealth, territory, possession, or district"; and

(2) by adding at the end the following new subsection:

"(c) Whenever any waters of the territorial sea of the United States lie outside the territory of any State, Commonwealth, territory, possession, or district, such waters (including the airspace above and the seabed and subsoil below, and artificial islands and fixed structures erected thereon) shall be deemed, for purposes of subsection (a), to lie within the area of the State, Commonwealth, territory, possession, or district that it would lie within if the boundaries of such State, Commonwealth, territory, possession, or district were extended seaward to the outer limit of the territorial sea of the United States.".

SEC. 902. PROOF OF CITIZENSHIP.

Notwithstanding any other provision of law, a Federal, State, or local government agency may not use a voter registration card (or other related document) that evidences registration for an election for Federal office, as evidence to prove United States citizenship.

SEC. 903. REPRESENTATION FEES IN CRIMINAL CASES.

(a) IN GENERAL.—Section 3006A of title 18, United States Code, is amended—

(1) in subsection (d)—

(A) by redesignating paragraphs (4), (5) and (6) as paragraphs (5), (6), and (7), respectively; and

(B) by inserting after paragraph (3) the following:

"(4) DISCLOSURE OF FEES.—The amounts paid under this subsection, for representation in any case, shall be made available to the public."; and

(2) in subsection (e) by adding at the end of the following:

"(4) DISCLOSURE OF FEES.—The amounts paid under this subsection for services in any case shall be made available to the public.".

(b) FEES AND EXPENSES AND CAPITAL CASES.—Section 408(q)(10) of the Controlled Substances Act (21 U.S.C. 848(q)(10)) is amended to read as follows:

"(10)(A) Compensation shall be paid to attorneys appointed under this subsection at a rate of not more than $125, per hour for in-court and out-of-court time. Not less than 3 years after the date of the enactment of the Antiterrorism and Effective Death Penalty Act of 1996, the Judicial Conference is authorized to raise the maximum for hourly payment specified in the paragraph up to the aggregate of the overall average percentages of the adjustments in the rates of pay for the General Schedule made pursuant to section 5305 of title 5 on or after such date. After the rates are raised under the preceding sentence, such hourly range may be raised at intervals of not less than one year, up to the aggregate of the overall average percentages of such adjustments made since the last raise under this paragraph.

"(B) Fees and expenses paid for investigative, expert, and other reasonably necessary services authorized under paragraph (9) shall not exceed $7,500 in any case, unless payment in excess of that limit is certified by the court, or by the United States magistrate judge, if the services were rendered in connection with the case disposed of entirely before such magistrate judge, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the circuit. The chief judge of the circuit may delegate such approval authority to an active circuit judge.

"(C) The amounts paid under this paragraph for services in any case shall be disclosed to the public, after the disposition of the petition.".

(c) EFFECTIVE DATE.—The amendments made by this section apply to—

(1) cases commenced on or after the date of the enactment of this Act; and

(2) to appellate proceedings, in which an appeal is perfected, on or after the date of the enactment of this Act.

SEC. 904. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the amendment of the House to the title of the bill, insert the following: "An Act to deter terrorism, provide justice for victims, provide for an effective death penalty, and for other purposes.".

And the House agree to the same.

HENRY HYDE,
BILL MCCOLLUM,
STEVEN SCHIFF,
STEVE BUYER,
BOB BARR,
CHARLES SCHUMER,
Managers on the part of the House.

ORRIN G. HATCH,
STROM THURMOND,
ALAN K. SIMPSON,
Managers on the part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the Senate and the House at the conference on the disagreeing votes of the two Houses on the bill (S. 735), to prevent and punish terrorism, submit the following joint statement to the Senate and the House in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

TITLE I—HABEAS CORPUS REFORM

Sections 101–108—Sections 601–608 of the Senate bill and sections 901–908 of the House amendment are identical, and therefore were not modified by the conference committee.

This title incorporates reforms to curb the abuse of the statutory writ of habeas corpus, and to address the acute problems of unnecessary delay and abuse in capital cases. It sets a one year limitation on an application for a habeas writ and revises the procedures for consideration of a writ in federal court. It provides for the exhaustion of state remedies and requires deference to the determinations of state courts that are neither "contrary to," nor an "unreasonable application of," clearly established federal law.

The revision in capital habeas practice also sets a time limit within which the district court must act on a writ, and provides the government with the right to seek a writ of mandamus if the district court refuses to act within the allotted time period. Successive petitions must be approved by a panel of the court of appeals and are limited to those petitions that contain newly discovered evidence that would seriously undermine the jury's verdict or that involve new constitutional rights that have been retroactively applied by the Supreme Court.

In capital cases, procedures are established for the appointment of counsel, conduct of evidentiary hearings, and the application of the procedures to state unitary review systems. Courts are directed to give habeas petitions in capital cases priority status and to decide those petitions within specified time periods. These procedures apply both to state and federal capital cases.

TITLE II—JUSTICE FOR VICTIMS

Subtitle A—Mandatory Victim Restitution

Sections 201–211—Senate recedes to section 806 of the House amendment, with modification. The modification includes the Senate amendments to the bill H.R. 665, passed by the Senate on December 22, 1995, together with perfecting amendments. The managers intend that the Report of the Senate Committee on the Judiciary to accompany H.R. 665 (S.Rept. 104–179) should serve as the legislative history for this subtitle.

Subtitle B—Jurisdiction for Lawsuits Against Terrorist States

Section 221—House section 803 recedes to Senate section 206, with modifications. This subtitle provides that nations designated as state sponsors of terrorism under section 6(j) of the Export Administration Act of 1979 will be amenable to suit in U.S. courts for terrorist acts. It permits U.S. federal courts to hear claims seeking money damages for personal injury or death against such nations and arising from terrorist acts they commit, or direct to be committed, against American citizens or nationals outside of the foreign state's territory, and for such acts within the state's territory if the state involved has refused to arbitrate the claim.

Subtitle C—Assistance to Victims of Terrorism

This subtitle incorporates several provisions of the Senate bill and the House

amendment addressing the needs of victims of terrorism.

Section 232—Victims of Terrorism Act. House recedes to Senate Title X, with modifications to reflect the Senate's later action on a similar provision in its December 22, 1995 amendment H.R. 665. This provision authorizes supplemental grants through the States to compensate and assist victims of terrorism and mass violence.

Section 233—Compensation of victims of terrorism. Senate recedes to House section 802, with a modification to include Senate section 902.

Section 234—Crime Victims Fund.

This provision consists of section 201 of the Senate amendment to H.R. 665, passed by the Senate December 22, 1995. The section prohibits the payment of federally-funded victim assistance to any individual who is delinquent in paying a fine, restitution, or other monetary penalty imposed pursuant to a conviction for a crime in federal court. To ensure that a burden is not imposed on state victim assistance programs, as well as to ensure that no person is wrongfully denied assistance, this prohibition would not take effect until such time as a criminal debt tracking system is in place. The managers do not intend that this provision in any way affect the development of the tracking system referenced by this section.

Section 235—Closed circuit televised court proceedings for victims of crime. Senate recedes to section 808 of the House amendment, with a modification. This section requires, in certain cases when the venue of a criminal trial is moved, that the court provide closed circuit television coverage of the trial to the original venue for the benefit of victims. The Senate modification is intended to ensure that the court retains control over the signal, provides contempt penalties for violating a court order related to restrictions on the signal, removes the prohibition on the use of appropriated funds, and sunsets the provision upon implementation by the federal courts of any rules they may promulgate to effectuate the policy addressed by this section. The managers do not intend that this provision in any way effect either the general policy of Rule 53 of the Federal Rules of Criminal Procedure (prohibiting photography and broadcasting in federal criminal court proceedings), or the authority of the federal courts to regulate and prescribe rules for conduct in federal courts.

Section 236—This section makes a technical correction to the Victims of Crime Act.

TITLE III—INTERNATIONAL TERRORISM PROHIBITIONS

Subtitle A—Prohibition on International Terrorist Fundraising

Sections 301-303—House recedes to Senate sections 401, with modifications. This subtitle adds to federal law prohibitions on providing material support to, or soliciting or raising funds for, foreign organizations designated by the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, to be terrorist organizations. Importantly, the proposed designations of organizations would be subject to congressional approval. Upon notification to Congress of the intent to designate a foreign group as a terrorist organization, the Treasury Secretary will be authorized to order the freezing of such group's American-held financial assets. The designation, when final, would be subject to judicial review, based solely on the administrative record created, including any national security information used to make the designation. The designation would expire after two years, but could be extended for additional two year periods.

Subtitle B—Prohibitions on Assistance to Terrorist States

Section 321—Senate recedes to House amendment title XV. This section provides criminal penalties for engaging in financial transactions with terrorist states by United States citizens, nationals, residents, and corporations.

Section 322—House recedes to Senate section 903. This section, including a perfecting amendment to the Senate provision, instructs the Administrator of the FAA to require identical security measures for foreign flagged carriers serving airports in the United States as are required of U.S. carriers.

In 1990, after the tragic bombing of Pan Am Flight 103, Congress revamped the aviation security laws. It was the intent of Congress to ensure that all Americans would be guaranteed adequate protection from terrorist attacks on international flights arriving in or departing from the United States, regardless of the nationality of the air carrier providing the service.

The 1990 law required the FAA to ensure that foreign carriers operated under security programs providing a similar level of safety to that of programs required of U.S. carriers. Unfortunately, since the 1990 enactment, ambiguity has developed over Congressional intent regarding the meaning of the term "similar".

This section is intended to resolve that ambiguity. It is the intent of the managers that the FAA establish a base floor level of necessary security measures for international flights which all foreign and domestic carriers will be required to employ. It is not the intent that any measures currently required of domestic carriers be dispensed with. Nor is it the intent of the managers to in any way restrict the ability of the FAA to impose additional measures on any airline at any time that a particular threat warrants additional measures.

Additionally, the managers acknowledge that the House Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science and Transportation have jurisdiction over aviation security issues.

Section 323—Senate recedes to House amendment section 103. This provision amends section 2339A of title 18, United States Code, (as added by section 120005 of the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322)) by adding sections 956 and 2332b of title 18 to the list of predicate offenses for which an individual can be prosecuted for providing material support. It is important to note that the material support being provided, which triggers this section, need not be to a designated terrorist organization. The support must be given in furtherance of the specifically listed criminal offenses, however.

This section also deletes subsection (c) of section 2339A of title 18, United States Code. The subsection being repealed provided an unworkable restriction on the investigation of crimes under section 2339A.

This section also redefines the term "material support or resources" to mean "currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials." "Medicine" should be understood to be limited to the medicine itself, and does not include the vast array of medical supplies. "Religious materials" should not be read to include anything that could be used to cause physical injury to any person. It is meant to be limited to those religious articles typically used during customary and time-honored rituals or teachings of a particular faith, denomination, or sect.

Section 324—House recedes to Senate section 201. This section states Congressional findings and urges the President to establish a White House office to coordinate U.S. counterterrorism efforts and to organize an international conference to develop multinational responses to the threat of international terrorism.

Section 325—House recedes to Senate section 202. This section prohibits U.S. aid to countries that provide aid to terrorist nations, but permits the President to waive the prohibition, after notifying Congress, if he determines that such waiver is in the national interest.

Section 326—House recedes to Senate section 203. This section prohibits U.S. aid to countries that provide military equipment to terrorist nations. It, too, permits the President to waive the prohibition, after notifying Congress, if he determines that such waiver is in the national interest.

Section 327—House recedes to Senate section 204. This section requires U.S. opposition to international financial institutions' assistance to countries that support terrorism.

Section 328—House amendment section 702 recedes to Senate section 205. This section eases restrictions for U.S. antiterrorism assistance to foreign nations.

Section 329—House recedes to Senate section 208. This section defines, for purposes of this title, "assistance" as any grant, concessional sale, guaranty, *inter alia*, to the government of any foreign country, whether in the form of loan, lease, credit, or debt relief.

Section 330—House recedes to Senate section 907. This section prohibits the export of defense articles to countries decertified by the President no later than May 15 of the calendar year preceding the fiscal year for which the prohibition applies, that the countries are not cooperating with U.S. antiterrorism efforts; provides a presidential waiver for specific transactions.

TITLE IV—TERRORIST AND CRIMINAL ALIEN REMOVAL AND EXCLUSION

Subtitle A—Removal of Alien Terrorists

Section 401—House recedes to Senate section 301, with modifications. This section creates special procedures to ensure that aliens within the United States whom the government believes to be engaging in terrorist activity can be removed from the United States without disclosing national security secrets. The provision establishes a removal court comprised of sitting district court judges appointed by the Chief Justice of the Supreme Court. This court would have the authority to hear deportation cases involving alien terrorists and would ensure, through the use of a limited *ex parte* procedure, that the United States can expeditiously deport alien terrorists without disclosing national security secrets to the alien or to their criminal partners. The alien's due process rights are protected by requiring that an unclassified summary of the evidence be provided to the alien, sufficient to enable the alien to prepare a defense, and that the judge can only order the deportation based upon the evidence introduced at the hearing, taken as a whole. The removal

of alien terrorists from the United States, and the prevention of alien terrorists from entering the U.S. in the first place, present among the most intractable problems of immigration enforcement. The stakes in such cases are compelling: protecting the very lives and safety of U.S. residents, and preserving the national security. Yet, alien terrorists, while deportable under section 241(a)(4)(D) of the INA, are able to exploit many of the substantive and procedural provisions available to all deportable aliens in order to delay their removal from the U.S. In addition, alien terrorists, including representatives and members of terrorist organizations, often are able to enter the U.S. under a legitimate guise, despite the fact that their entry is inimical to the national interests of the U.S. In several noteworthy cases, the Department of Justice has consumed years of time and hundreds of thousands (if not millions) of dollars seeking to secure the removal of such aliens from the U.S.

Starting in the first Administration of President Reagan, the Department of Justice has sought reform of immigration law and procedures to better enable this country to protect itself against the threat of alien terrorists. The chief target of these reforms are the statutory and administrative protections given to such aliens, many of which are not required by the due process clause of the Fifth or Fourteenth Amendment or any other provision of law, that enable alien terrorists to delay their removal from the U.S.

The need for special procedures to adjudicate deportation charges against alien terrorists is manifest. Terrorist organizations have developed sophisticated international networks that allow their members great freedom of movement and opportunity to strike, including within the United States. They are attracting a more qualified cadre of adherents with increasing technical skills. Several terrorist groups have established footholds within immigrant communities in the U.S.

The nature of these groups tend to shield the participants from effective counterterrorism efforts—including the most basic measure of removing them from our soil. The U.S. relies heavily upon close and continued cooperation of friendly nations who provide information on the identity of such terrorists. Such information will only be forthcoming if it sources continue to be protected. Thus, it is essential to the national security of the U.S. that procedures be established to permit the use of classified information in appropriate cases to establish the deportability of an alien terrorist.

Such procedures also must be crafted to meet constitutional requirements. The government's efforts to safeguard lives and property and to protect the national security may be contested on the grounds that they conflict with the procedural rights of aliens. The interests of the government must therefore be balanced against the legitimate rights of those privileged to be present within the United States.[1]

[1] Fiallo v. Levi, 406 F. Supp. 162 (S.D.N.Y.), *aff'd*, 430 U.S. 787 (1975); Jean V. Nelson, 472 U.S. 846, *aff'g*, 727 F.2d 957 (11th Cir. 1984); Kleindienst v. Mandel, 408 U.S. 753 (1972) (supporting the proposition that alien's presence in U.S. is privilege extended by Congress and not fundamental right.) *See also Alvarez* v. *INS*, 539 F. 2d 1220 (9th Cir.), *cert. denied*, 430 U.S. 918 (1976) (applying rational basis test to equal protection claim for impermissible classification of aliens).

Subtitle B—Exclusion of Members and Representatives of Terrorist -Organizations

Section 411—House recedes to Senate section 210, with modification. This section permits, as a new basis for alien exclusion, the denial of entry into the United States to any person who is a representative or member of a designated foreign terrorist organization.

Section 412—House amendment section 632 recedes to Senate section 209 with modifications. This section grants the Secretary of State discretion to waive, in the case of nonimmigrant visa applications by excludable aliens, the requirement to inform each alien of the denial of the application and the grounds for such denial. This section also provides that no explanation of the denial need be given to aliens excluded on the basis of their terrorist or other criminal activity.

Section 413—Senate recedes to House amendment section 612. This section amends section 208 to provide that an alien may not be granted asylum if the alien is excludable under the provisions of section 212(a), or deportable under the provisions of section 241(a) relating to alien terrorists.

Section 414—Senate recedes to House amendment section 623. This section amends section 241 of the INA by adding a new subsection (d). Subsection (d) provides that an alien present in the United States, who has not been admitted after inspection in accordance with section 235 of the INA, is deemed to be seeking entry and admission and shall be subject to examination and exclusion in accordance with Chapter 4 of Title II of the INA. Such an alien must be provided the opportunity to establish that he or she has been lawfully admitted to the U.S. This section by operation of law, returns "to the border" any alien who has entered the United States unlawfully, regardless of the duration of his or her presence in the United States.

Subtitle C—Modifications to Asylum Procedures

Section 421—Senate recedes to House amendment section 611. This section bars the granting of asylum to an alien excludable as a terrorist unless the Attorney General determines that the individual seeking asylum will not be a danger to the security of the United States.

Section 422—Senate recedes to House amendment section 621. This section amends section 235(b), regarding the inspection and exclusion of aliens arriving at a port of entry. New section 235(b)(1) provides that if an examining immigration officer determines that an alien is inadmissible under section 212(a)(6)(C) (fraud or misrepresentation) or 212(a)(7) (lack of valid documents), the officer may order the alien removed without further hearing or review.

An alien who states a fear of persecution, or wishes to apply for asylum, will be referred for interview by an asylum officer. If the officer finds that the alien has a credible fear of persecution, the alien shall be detained for further consideration of the application for asylum. If the alien does not meet this standard, and the officer's decision is upheld by a supervisory asylum officer, the alien will be ordered removed. An alien may consult with a person of his or her choosing before the interview, at no expense to the Government and without delaying the interview. A "credible fear of persecution"means that it is more likely than not that the alien is telling the truth and the alien has a reasonable possibility of establishing eligibility for asylum. The Attorney General is required to write and promulgate regulations for these procedures consistent with the intent of this provision.

There is no administrative review of a removal order entered into under this paragraph, but an alien claiming under penalty of perjury to be lawfully admitted for permanent residence shall be entitled to administrative review of such an order. An alien ordered removed under this paragraph may not make a collateral attack against the order in a prosecution under section 275(a) (illegal entry) or 276 (illegal reentry).

New section 235(b)(2) provides that an alien who is not clearly and beyond a doubt entitled to enter (other than an alien subject to removal under paragraph (b)(1), or an alien crewman or stowaway) shall be detained for a hearing before a special inquiry officer (immigration judge).

Section 423—Senate recedes to House amendment section 622. Subsection (a) of this section amends section 106 of the INA to add a new subsection (e). Subsection (e) precludes judicial review, subject to the provisions of paragraph (e)(2), of a decision to exclude an alien from entry under the expedited exclusion provisions of new section 235(b)(1). Paragraph (e)(2) allows for habeas corpus review limited to the issues of whether the petitioner is an alien (provided the alien makes a non-frivolous claim of U.S. nationality), whether the alien was ordered specially excluded pursuant to section 235(b)(1)(A), and whether the petitioner is a lawful permanent resident alien entitled to judicial review according to section 235(b)(1)(e)(i).

A reviewing court may not order any relief other than to require that the alien receive an exclusion hearing pursuant to section 236, or a determination in accordance with section 235(c) (special procedures for aliens excludable on national security grounds) or section 273(d) (procedures for stowaways).

Subsection (b) of this section amends section 235 of the INA by adding a new subsection (d), which precludes collateral attack in an action for assessment of penalties for improper entry or re-entry under section 275 or 276 of the validity of an order of exclusion, special exclusion, or deportation made under section 235, 236, or 242 of the INA.

Subtitle D—Criminal Alien Procedural Improvements

Section 431—Senate recedes to House amendment section 664. This section shortens the period under which a permanent resident alien can be considered excludable under certain circumstances.

Section 432—House amendment section 631 recedes to Senate section 304. This section permits the Immigration and Naturalization Service to release certain confidential information on individual aliens for law enforcement purposes.

Section 433—Senate recedes to House amendment section 666. This section expands and clarifies the purpose of the Criminal Alien Tracking Center established by section 130002 of the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322).

Section 434—Senate recedes to House amendment section 667. This section adds several alien smuggling related crimes to the list of offenses that are RICO predicates.

Section 435—Senate recedes to House amendment section 668. This section adds wiretap authority for the investigation of various immigration offenses.

Section 436—Senate recedes to House amendment section 669. This section clarifies that for purposes of deportability, crimes of moral turpitude are crimes punishable by imprisonment for a year or more.

Section 437—Senate recedes to House amendment section 670. This section permits

deportation proceedings to be conducted telephonically.

Section 438—Senate recedes to House amendment section 675. This section directs the development of a program to repatriate to the interior of a bordering country any alien who has entered the US illegally 3 or more times.

Section 439—Senate recedes to House amendment section 676. This section permits nonviolent alien offenders to be deported prior to the completion of sentences. It does not apply to offenses involving alien smuggling. The section requires the remainder of the sentence to be served if the alien reenters the United States illegally.

Section 440—Senate recedes to House amendment section 677. This section allows state and local law enforcement officials to arrest and detain illegal aliens who have previously been deported for criminal behavior until they can be taken into federal custody by the INS.

Section 441—House amendment section 601 recedes to Senate section 303(e). This section enhances the ability of the United States to deport criminal aliens.

Section 442—Senate recedes to House amendment section 665. This section limits the ability of an deportable alien to collaterally challenge an deportation order in a pending criminal case.

Section 443—Senate recedes to House amendment section 663. This section streamlines the procedures for deportation of deportable non-permanent resident aliens.

Section 444—House recedes to Senate section 302. This section permits the Attorney General to extradite persons who are not U.S. citizens, nationals, or permanent residents to countries with which the United States does not have an extradition treaty.

TITLE V—NUCLEAR, BIOLOGICAL, AND CHEMICAL WEAPONS RESTRICTIONS

Subtitle A—Nuclear Materials

Sections 501–502—House amendment title IV recedes to Senate title VIII. These sections provide federal law enforcement officials the tools necessary to combat the threat of nuclear contamination and proliferation that may result from illegal possession of, and trafficking in, nuclear materials, including nuclear by-products and non-weapons-grade materials.

Section 503—Senate recedes to House amendment section 306 with modifications. This section requires the Attorney General, together with the Secretary of Defense, to undertake a study of the number of thefts of firearms, explosives, and other terrorist type materials from military arsenals and report findings to Congress within 6 months from the date of enactment.

Subtitle B—Biological Weapons Restrictions

Section 511—Senate recedes to House amendment title XI with modifications. This subtitle addresses the threat of the misuse or diversion to illegal use of potentially deadly human pathogenic substances. It adds attempt, threat, and conspiracy to the prohibition on acquiring, possessing, or using biological weapons, and expands the definition of biological weapons to include certain human pathogens. This section also authorizes the Secretary of Health and Human Services to regulate the transfer of certain biological agents harmful to humans. The managers intend that in promulgating regulations and listing regulated biological agents pursuant to this provision, the Secretary ensures the continued viability of the use of such agents for legitimate purposes.

Subtitle C—Chemical Weapons Restrictions

Section 521—House recedes to Senate section 908 with modification. This subtitle criminalizes the use of chemical weapons within the United States, or against Americans outside of the United States. Additionally, this section provides for a study of the need for a training center to enhance law enforcement response capabilities to chemical and biological emergencies. Senate section 908 also provided additional authority for military assistance to law enforcement in chemical and biological emergencies. In light of the enactment of section 378 of the National Defense Authorization Act for Fiscal Year 1996 (P.L. 104–106), the managers have omitted this provision.

TITLE VI—IMPLEMENTATION OF PLASTIC EXPLOSIVES CONVENTION

Sections 601–606—House amendment sections 501–505 recede to Senate sections 701–705 and 707. This title fulfills the obligations of the United States to implement the Convention on the Marking of Plastic Explosives for the Purpose of Detection, entered into at Montreal in 1991 in the wake of the bombing of Pan Am flight 103. This title requires that detectant agents be placed in all plastic explosives manufactured in, imported into, or exported from the United States, and provides criminal penalties for violations.

TITLE VII—CRIMINAL LAW MODIFICATIONS TO COUNTER TERRORISM

Subtitle A—Crimes and Penalties

Section 701—House amendment section 202 recedes to Senate section 101. This section amends the explosives chapter of Title 18 to provide that a conspiracy to commit a crime under that chapter is punishable by the same maximum penalty as that applicable to the substantive offense that formed the object of the conspiracy.

Section 702—Senate section 102 recedes to House amendment section 104 with modifications. This section creates a new federal criminal prohibition on acts of terrorism transcending national boundaries. It will be a violation of this provision to kill, kidnap, maim, or seriously injure any person in the United States, or to create substantial risk of injury to any person by damaging or destroying property in the United States. Their will be federal jurisdiction over the offense if the offender uses facilities of interstate commerce, the offense interferes with interstate commerce, the victim is the United States or any employee of the United States, or the offense takes place in U.S. territorial jurisdiction, and at least part of the conduct occurred outside of the United States.

Section 703—House section 104 recedes to Senate section 102(f). This section expands the categories of property in federal jurisdiction the destruction or damage of which is criminally punishable by the United States .

Section 704—Senate section 103 recedes to House section 105. This section amends Section 956 of title 18, United States Code, which currently only prohibits conspiracies within the United States to injure property overseas.

This amendment will criminalize conspiracies to harm people and property outside the United States, so long as at least one was present, and one act in furtherance of the conspiracy occurred, within the jurisdiction of the United States.

The penalties for offenses under section 956 will range from life imprisonment for conspiracies to murder or kidnap; 35 years for conspiracy to maim; and 25 years for conspiring to damage property.

Section 705—House recedes to Senate section 104. This section increases penalties for a series of federal crimes, including amending the law against maiming and disfiguring to include torture and punishing an attempt to violate this section by up to $10,000 in fines and/or 10 years imprisonment, and adding protection to armed services personnel.

Section 706—Senate section 105 recedes to House amendment section 205. This section above and creates a criminal prohibition on the transfer of explosive materials, "knowing or having reasonable cause to believe"they will be used to commit a crime of violence or drug trafficking offense. Crimes committed under this section will be subject to the same penalties as are provided for a first conviction of section 844(h) of title 18, United States Code, which is a mandatory minimum 5 year term of imprisonment.

Section 707—Senate section 106 recedes to House amendment section 111. This section amends current section 842(h) of title 18, United States Code, to include the possession of and pledging, or acceptance as security for a loan, any stolen explosive materials that have moved in, or constitute any part of interstate or foreign commerce. Currently, the law only prohibits the transport, shipment, concealment, storage, bartering, sale, and disposal of such stolen explosive material.

Section 708—House amendment section 201 recedes to Senate section 107 with modifications. This section increases penalty for arson or explosives crimes against property, with mandatory minimums for these offenses. This section also extends the statute of limitations for arson offenses from seven to ten years.

Section 709—Senate section 901 recedes to House amendment section 804. This section requires the Attorney General to undertake a 180 day study of publicly available literature and material instructing how to make bombs, destructive devices, or weapons of mass destruction. The study is to include a review of print, electronic, and film media, in this regard. This provision requires the Attorney General to determine the extent to which the availability of this material has been used in terrorism incidents, and the likelihood of its use for such activity in the future.

This section also mandates that the Attorney General review existing federal laws having application to this material and the need or utility of any additional statutory coverage. Furthermore, the Attorney General must render a legal analysis of the protection provided this material by the First Amendment.

The Attorney General is required to submit a report of findings to Congress and make that report available to the public.

Subtitle B—Criminal Procedures

Section 721—Senate section 621 recedes to House amendment section 106. This section clarifies United States jurisdiction for specific terrorism crimes occurring overseas. The Aircraft Piracy statute is amended to provide extraterritorial federal jurisdiction for aircraft piracy if a U.S. national was on the plane; if the perpetrator is a U.S. national; or, if the offender is found in the U.S. after committing the crime. The United States has a legitimate interest in punishing anyone who injures a U.S. national, and also retains an interest in punishing its own citizens for crimes committed against foreign nations, or foreign nationals.

This section also clarifies U.S. extraterritorial jurisdiction over the offenses of aircraft destruction, murder of, and assaults or threats against of foreign officials or internationally protected persons, biological weapons offenses, and violence at

international airports if the offense occurred outside the U.S., so long as the victim is an "internationally protected person," (as defined by Section 1116(b)(4) of title 18); if the victim is a representative, officer, employee, or agent of the United States; if the offender is a U.S. national; or, if the offender is later found in the U.S.

Section 722—Senate recedes to House amendment section 110. This section provides clarifying language to section 2280(b)(1)(A) of title 18, United States Code, which establishes federal jurisdiction over violent activities occurring on the high seas.

Section 723—Senate section 627 recedes to House amendment section 203. This section will make it a crime to conspire to commit any offense under the specifically listed sections of title 18, United States Code found in this provision. Adding the conspiracy language to these criminal statutes will enable the government to prosecute and punish those offenses appropriately. Without a conspiracy element in the statutory language, the government must rely on title 18, United States Code, section 371, to prosecute conspiracies generally. Section 371 only carries a five year statutory maximum penalty, even if the underlying offense requires a much higher penalty. This section corrects this anomaly. This section provides clarifying language to Section 2280(b)(1)(A) of title 18, United States Code, which establishes federal jurisdiction over violent activities occurring on the high seas.

Section 724—Senate section 628 recedes to House amendment section 109 with modification. This section amends section 844(e) of title 18, United States Code. Currently, Section 844(e) prohibits threats of violence against persons or property, whether true or false, if the threat is made through the mail or any other instrument of commerce. This new section replaces "commerce" with the words "interstate or foreign commerce." It also expands the statute's reach to any threat that is "in or affects interstate or foreign commerce."

Section 725—Senate section 623 recedes to House amendment section 107 with modifications. This section criminalizes a threat to use a weapon of mass destruction, extends the prohibition to the use of such weapons by U.S. nationals overseas, and clarifies that any chemical weapon is included in the definition of weapon of mass destruction or destructive device.

Section 726—House amendment section 108 recedes to Senate section 625. This section adds certain terrorism offenses to the money laundering statute.

Section 727—Senate section 626 recedes to House amendment section 101 with modifications. Subsection (a) of this section amends Section 1114 of title 18, United States Code, to allow federal prosecution for the murder or attempted murder of all officers and employees of the United States government while that person was engaged in or because of that person's official duties. It also covers the murder or attempted murder of any other person assisting the United States officer, or employee, in the performance of his or her duties, or on account of the assistance provided. The penalties for this offense are the same as those provided under sections 1111, 1112, and 1113 of title 18, United States Code.

Subsection (b) amends section 115(a)(2) of title 18, United States Code, by including within that statute's reach threats "to assault, kidnap, or murder, any person who formerly served" as a federal law enforcement officer or agent in retaliation for the exercise of his official duties. The statute currently provides this protection to currently employed federal law enforcement officers, and the family members of former law enforcement personnel. Curiously, former federal law enforcement officers are left out of the statute's coverage. This subsection of the bill corrects that omission.

This section also clarifies the use of a deadly or dangerous weapon in an assault on a federal employee or officer includes the use of a weapon that fails to cause death or danger due to a defective component.

Section 728—Senate recedes to House amendment title XIV. This section adds multiple killings or attempted killings to the list of aggravating factors for the imposition of the death penalty in federal criminal cases.

Section 729—Senate recedes to House amendment section 310. This section clarifies that the time period in which a detention hearing must be held does not include weekends and legal holidays.

Section 730—Senate recedes to House amendment sections 206 and 207. This section gives the U.S. Sentencing Commission amendment authority to expand the scope of its Chapter 3 enhancement for "international terrorism offenses" under the U.S. Sentencing Guidelines, to apply only to federal crimes of terrorism as defined in section 2332b(g). In amendments to the Sentencing Guidelines that became effective November 1, 1996, a new provision that substantially increases jail time for offenses committed in connection with a crime of international terrorism. This section of the bill will make that new provision applicable only to those specifically listed federal crimes of terrorism, upon conviction of those crimes with the necessary motivational element to be established at the sentencing phase of the prosecution, without having to wait until November 1996 for the change to become law.

Section 731—Senate recedes to House amendment section 302. Subsection (a)(3) of this section excludes from the definition of "electronic communication" under the wiretap statute "information stored in a communications system used for the electronic storage and transfer of funds." This will allow law enforcement to obtain such bank records through the usual grand jury subpoena, or other court order procedure, without requiring a wiretap order for these purposes.

Subsection (b) eliminates "electronic communication" from the definition of "radio communications that are readily accessible to the general public." This inclusion of "electronic communication" negated the need to exempt from the wiretap coverage radio transmissions, i.e., scanners, CBs, and Ham radio signals. It is not intended to preclude the need for a title III wiretap order for telephone conversations occurring over cordless telephones, which operate through radio signals not readily available to the general public. "Electronic communications" are already specifically and separately covered by the wiretap statutes.

Section 732—House amendment sections 301 and 801 recede to Senate sections 708 and 905, with modifications. This section directs the Treasury Secretary to provide to the Congress a study of the feasibility of tagging explosives and precursor chemicals, for the purpose of tracing the explosives back to the manufacturer after an explosion. The study would also evaluate the feasibility of imposing controls on the sale and distribution of certain of those chemicals. Black or smokeless powder is excluded from the study. The section requires input from non-profit fertilizer research centers in the Treasury Secretary's conduct of the study. The section also requires the Treasury Secretary to conduct a study of the licensing requirements applicable in the various states for the purchase and use of commercial high explosives. The phrase "commercial high explosives" is defined, by way of illustration, to include "detonators, detonating cards, dynamite, water gel, emulsion, blasting agents, and boosters." This section also requires the Treasury Secretary to report the results of the study to Congress, together, if deemed necessary, with recommendations for regulation. The Secretary is authorized to promulgate regulations requiring the inclusion of tracing taggants in explosive materials if the taggants will not endanger human life or safety, will substantially assist law enforcement, and are cost-effective. The regulations promulgated pursuant to this authority shall go into effect if Congress does not act within 270 days of the publication of the regulations in the Federal Register.

TITLE VIII—ASSISTANCE TO LAW ENFORCEMENT

Subtitle A—Resources and Security

Section 801—Senate recedes to House amendment section 807, with modification. This provision provides clear statutory authority for the Departments of Justice and Treasury, in consultation with the Department of State, to use appropriated funds for the purposes of law enforcement training activities overseas.

Section 802—Senate recedes to House amendment section 704. This section expresses the sense of the Congress that any purchases made with funds authorized under this Act should be American-made.

Section 803—Senate section 513 recedes to House amendment section 303, with modification. This section authorizes the Attorney General and the Treasury Secretary to ban parking or vending adjacent to any building in the District of Columbia used by law enforcement authorities subject to their jurisdiction. The managers intend and expect that in carrying out this section, the Attorney General and the Secretary will consult and coordinate with the Government of the District of Columbia.

Section 804—House amendment section 303 recedes to Senate section 513. This section requires the providers of wire or electronic communications services to take necessary steps to preserve evidence relevant in certain investigations.

Section 805—House recedes to Senate section 528. This section requires the United States Sentencing Commission to report on the deterrent effect of current penalties for violations of laws prohibiting unauthorized access to, or damage to, a federal interest computer. Also requires the Commission to ensure that persons sentenced under these laws are incarcerated for at least six months.

Section 806—Senate recedes to House amendment title XII, with modification. This section establishes a commission, appointed jointly by the leadership of the Congress and the Chief Justice of the United States Supreme Court, to evaluate the coordination, effectiveness, and oversight of federal law enforcement. The Commission is required to report to Congress.

Section 807—Senate recedes to House amendment title X. This section requires an audit of counterfeit U.S. currency in international markets, and provides for consideration by the Secretary of State of requests by the Department of the Treasury for the posting of agents of the United States Secret Service at U.S. embassies.

Section 808—Senate recedes to House amendment section 805. This section establishes findings by Congress that acts of violence against all levels of government employees are on the increase, that such acts create a danger to our constitutional form of government, and that additional information is needed to fully understand the true nature and source of the dangers faced by public servants.

This section then directs the Attorney General to acquire and compile data for each calendar year, beginning in 1990, reflecting crimes and incidents of threats of violence against federal, state, and local government employees on account of the performance of their public duties. The Attorney General is required to publish an annual summary of the collected data.

Section 809—Senate recedes to House amendment section 112. This section requires the National Institute of Justice ("NIJ") to conduct a study that may result in a standard protocol for identifying handgun bullets that are capable of penetrating body armor commonly worn by police when shot from a handgun. The NIJ must establish standard criteria for the type of body armor against which the bullets were tested. The NIJ must report its findings to Congress with recommendations regarding its findings.

The current practice is to outlaw bullets by brand-name without regard to their specific component qualities. To continue this practice could result in hunting-type bullets being outlawed indiscriminately, without regard to the nature and purpose of the ammunition, and without regard to the proximity of the target, or the type of weapon used to shoot the bullet.

It is important to establish standard criteria for determining which bullets, when shot from a handgun, have the ability to penetrate body armor.

Section 810—House recedes to Senate section 511, with modifications. This section requires a study of current laws and guidelines governing the use of electronic surveillance devices and PEN registers, and the effect of evolving technology on criminal activity.

Subtitle B—Funding Authorizations for Law Enforcement

This subtitle provides $1.0 billion in authorization for appropriations to enhance law enforcement ability to deter, investigate, and prosecute terrorism.

Of this $1.0 billion authorization, $468 million is authorized for the Federal Bureau of Investigation, $172 million is authorized for the Drug Enforcement Administration, and $100 million is authorized for State and Local law enforcement. The remaining $260 million is divided among other enforcement and emergency response organizations.

The conference report authorization levels represent a $940 million increase from the House amendment's authorization. This increases authorized appropriations for Federal law enforcement, the Federal Judiciary and State and local law enforcement.

However, the conference authorization levels also represent a $1.116 billion decrease from the Senate bill authorizations. The reductions come from removing Fiscal Year 1996 authorizations and reducing the remaining authorizations by half. These reductions were applied equally among all affected Senate authorizations, with minor exceptions.

The managers are committed to achieving a balanced budget, and intend that all authorizations be considered as part of the levels within the Balanced Budget Act of 1995, if enacted, or any subsequent balanced budget act.

Section 811—House recedes to Senate section 521 with modifications. Total authorization is $468 million. Funds may be used for, among other purposes, to create a Federal Bureau of Investigation counterterrorism and counterintelligence fund; expand and improve the instructional, operational support, and construction of the Federal Bureau of Investigation academy; and construct an FBI laboratory, provide laboratory examination support.

Section 812—House recedes to Senate sections 522 and section 912 with modifications. Total authorization is $31 million. Funds may be used to help the Customs Service meet the increased demands occasioned by the enactment of this Act.

Section 813—Senate recedes to House Section 601 with modifications. Total authorization is $20 million. Funds may be used to help Immigration and Naturalization Service meet the increased demands occasioned by the enactment of this Act, including the purpose of detaining and removing alien terrorists.

Section 814—House recedes to Senate section 524 with modifications. Total authorization is $172 million. Funds may be used by the Drug Enforcement Administration to fund antiviolence crime initiatives; fund major violators of Federal antidrug statute initiatives; and enhance or replace the infrastructure of the Drug Enforcement Administration.

Section 815—House recedes to Senate sections 503 and 525, with modifications. Total authorization is $41 million. Funds may be used by the Department of Justice to hire additional Assistant United States Attorneys, and provide for increased security at facilities housing Federal workers.

This section also increases the maximum reward authority available to the Attorney General for information relating to international terrorists.

Section 816—House recedes to Senate section 526 with modifications. Total authorization is $90 million. Funds may be used by the Department of the Treasury to augment counterterrorism efforts, augment White House security, and expand Presidential protection activities.

Section 817—House recedes to Senate section 910 with modifications. Total authorization is $2 million. Funds may be used to help the U.S. Park Police meet the increased demands occasioned by the enactment of this Act.

Section 818—House recedes to Senate Section 911 with modifications. Total authorization is $41 million. Funds to be used for the activities of the Federal Judiciary, including increased workload of the Federal courts occasioned by the enactment of this Act.

Section 819—Senate recedes to House Section 701 with modifications. Total authorization is $5 million. Funds to be used to provide grants for specialized training or equipment to enhance the capability of local fire and emergency service departments to respond to terrorist attacks and acts of mass violence.

Section 820—Senate recedes to House Section 702 with modifications. Total authorization is $20 million. Funds may be used to provide assistance to foreign countries facing an imminent danger of terrorist attack that threatens the national interest of the United States or puts United States nationals at risk.

Section 821—Senate recedes to House Section 703 with modifications. Total authorization is $10 million. Funds may be used to develop technologies to combat terrorism.

Section 822—Byrne grant program is modified include a program to develop and implement antiterrorism training programs and to procure equipment for use by local law enforcement authorities. Total authorization is $100 million.

Section 823—House recedes to Senate Section 527 with modification. This section provides that funding for this subtitle is authorized to be made from the Violent Crime Reduction Trust Fund, established by Title XXXI of the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322).

TITLE IX—MISCELLANEOUS

Section 901—House recedes to Senate Section 622. This section codifies the extension of United States territorial sea, as defined by a 1988 Presidential Proclamation. This area would then be included within the special maritime and territorial jurisdiction of the U.S. for purposes of the criminal law. This section also adopts non-conflicting state law in the territorial sea.

Section 902—House recedes to Senate section 904. This section provides that voter registration cards (or similar documents) will not qualify as proof of U.S. citizenship.

Section 903—Senate recedes to House amendment title XIII. This section provides limitations on fees for representation of defendants in criminal cases.

Section 904—House recedes to Senate section 913. This section provides severability for the provisions of the Act.

HENRY HYDE,
BILL MCCOLLUM,
STEVEN SCHIFF,
STEVE BUYER,
BOB BARR,
CHARLES SCHUMER,
Managers on the Part of the House.

ORRIN G. HATCH,
STROM THURMOND,
ALAN K. SIMPSON,
Managers on the Part of the Senate.

PARTIAL-BIRTH ABORTION BAN ACT—VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 104-198)

The Speaker pro tempore laid before the House the following veto message from the President of the United States:

To the House of Representatives:

I am returning herewith without any approval H.R. 1833, which would prohibit doctors from performing a certain kind of abortion. I do so because the bill does not allow women to protect themselves from serious threats to their health. By refusing to permit women, in reliance on their doctors' best medical judgment, to use their procedure when their lives are threatened or when their health is put in serious jeopardy, the Congress has fashioned a bill that is consistent neither with the Constitution nor with sound public policy.

I have always believed that the decision to have an abortion generally should be between a woman, her doctor, her conscience, and her God. I support the decision in *Roe* v. *Wade* protecting a woman's right to choose, and I believe that the abortions protected

by that decision should be safe and rare. Consistent with that decision, I have long opposed late-term abortions except where necessary to protect the life or health of the mother. In fact, as Governor of Arkansas, I signed into law a bill that barred third trimester abortions, with an appropriate exception for life or health.

The procedure described in H.R. 1833 has troubled me deeply, as it has many people. I cannot support use of that procedure on an elective basis, where the abortion is being performed for non-health related reasons and there are equally safe medical procedures available.

There are, however, rare and tragic situations that can occur in a woman's pregnancy in which, in a doctor's medical judgment, the use of this procedure may be necessary to save a woman's life or to protect her against serious injury to her health. In these situations, in which a woman and her family must make an awful choice, the Constitution requires, as it should, that the ability to choose this procedure be protected.

In the past several months, I have heard from women who desperately wanted to have their babies, who were devastated to learn that their babies had fatal conditions and would not live, who wanted anything other than an abortion, but who were advised by their doctors that this procedure was their best chance to avert the risk of death or grave harm which, in some cases, would have included an inability to ever bear children again. For these women, this was not about choice—not about deciding against having a child. These babies were certain to perish before, during or shortly after birth, and the only question was how much grave damage was going to be done to the woman.

I cannot sign H.R. 1833, as passed, because it fails to protect women in such dire circumstances—because by treating doctors who perform the procedure in these tragic cases as criminals, the bill poses a danger of serious harm to women. This bill, in curtailing the ability of women and their doctors to choose the procedure for sound medical reasons, violates the constitutional command that any law regulating abortion protect both the life and the health of the woman. The bill's overbroad criminal prohibition risks that women will suffer serious injury.

That is why I implored Congress to add an exemption for the small number of compelling cases where selection of the procedure, in the medical judgment of the attending physician, was necessary to preserve the life of the woman or avert serious adverse consequences to her health. The life exception in the current bill only covers cases where the doctor believes that the woman will die. It fails to cover cases where, absent the procedure, serious physical harm, often including losing the ability to have more children, is very likely to occur. I told Congress that I would sign H.R. 1833 if it were amended to add an exception for serious health consequences. A bill amended in this way would strike a proper balance, remedying the constitutional and human defect of H.R. 1833. If such a bill were presented to me, I would sign it now.

I understand the desire to eliminate the use of a procedure that appears inhumane. But to eliminate it without taking into consideration the rare and tragic circumstances in which its use may be necessary would be even more inhumane.

The Congress chose not to adopt the sensible and constitutionally appropriate proposal I made, instead leaving women unprotected against serious health risks. As a result of this Congressional indifference to women's health, I cannot, in good conscience and consistent with my responsibility to uphold the law, sign this legislation.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *April 10, 1996*.

The SPEAKER pro tempore. The objections of the President will be spread at large upon the Journal, and the message and the bill will be printed as a House document.

Mr. CANADY of Florida. Mr. Speaker, I ask unanimous consent that the message of the President and the bill be referred to the Committee on the Judiciary.

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

There was no objection.

APPROVING REGULATIONS TO IMPLEMENT THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995 WITH RESPECT TO EMPLOYEES OF THE HOUSE OF REPRESENTATIVES

Mr. THOMAS. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 400) approving regulations to implement the Congressional Accountability Act of 1995 with respect to employing offices and covered employees of the House of Representatives.

The Clerk read as follows:

H. RES. 400

Resolved,

SECTION 1. APPROVAL OF REGULATIONS.

(a) IN GENERAL.—The regulations listed in subsection (b) are hereby approved, insofar as such regulations apply to employing offices and covered employees of the House of Representatives.

(b) REGULATIONS APPROVED.—The regulations referred to in subsection (a) are the following regulations issued by the Office of Compliance on January 22, 1996, as published in the Congressional Record on January 22, 1996 (Volume 142, daily edition), each beginning on the page indicated:

(1) Regulation on rights and protections under the Family and Medical Leave Act of 1993, page S200.

(2) Regulation on rights and protections under the Fair Labor Standards Act of 1938, page S238.

(3) Regulation on use of lie detector tests by the Capitol Police, page S261.

(4) Regulation on rights and protections under the Employee Polygraph Protection Act of 1988, page S263.

(5) Regulation on rights and protections under the Worker Adjustment and Retraining Notification Act, page S271.

The SPEAKER pro tempore. The gentleman from California [Mr. THOMAS] and the gentleman from California [Mr. FAZIO] each will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. THOMAS].

Mr. THOMAS. Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. GOODLING], the chairman of the Committee on Economic and Educational Opportunities.

Mr. GOODLING. I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in support of the resolution before us with regard to congressional coverage.

While largely ministerial, they represent one more important step in bringing ourselves under the workplace laws we have long imposed, often too cavalierly in my view, on other employers.

Let me just say that I still occasionally express some wonderment that this day is finally here. The Congressional Accountability Act regulations represent the culmination of a several-year process in the Opportunities Committee in which the now-majority party repeatedly attempted to extend the laws of the workplace to our own employees, with proper enforcement mechanisms including access to the courts with jury trials.

Enactment of the Congressional Accountability Act, like the unfunded mandate legislation which was also enacted this Congress, has created a long-needed institutional brake—a yellow flag—on the passage of laws this institution too easily imposed in the past on all other workplaces while exempting itself. As importantly, the law finally extended the same workplace protections other workers have to our own employees. While these laws are not perfect there is no reason why our workers should be under different standards. And now that we are forced to comply with these laws, we will learn from experience and better identify with problems of compliance endured by our constituents. In fact, I can guarantee it. Proposals for future workplace requirements and reform of existing laws will gather a lot closer attention by every member of the Opportunities Committee and the House. And it's about time.

True, the protections of some laws had been applied in the past to the House, but the protections were hollow because employees never had the same right to court enforcement that their counterparts in the private sector and the executive branch enjoyed. And there were no signs there would ever be such enforcement! Indeed, as recently as 1991 when I had CRS do an analysis of the issue, we were still arguing over whether court enforcement posed constitutional concerns. Fortunately, that analysis, which found there were

not significant concerns, growing public awareness over the double standard enjoyed by Congress, and, most importantly, the outcome of the last election, brought us here today. Yes, the issue is now bipartisan, and I am glad it is, but it is clear that real—truly effective—congressional coverage was the result of the last election. We've come a long way in a year's time.

Indeed, the only shadow cast over today is that it took so long in coming. As I have noted in the past, the irony of Congress in exempting itself from the laws it imposed on others is so obvious that one wonders how it so long escaped criticism. But I am gratified that those of us who long fought for strong congressional coverage enforcement now have amply company.

The first House resolution before us, House Resolution 400, simply provides for approval of the regulations issued by the Office of Compliance, including those under the Fair Labor Standards Act and the Family and Medical Leave Act, as applicable to House employees.

After we proceed with this resolution, we will take up House Resolution 401 which provides for educational assistance by the Office of Compliance by employees who are not involved in deciding cases, and only to the same extent as such assistance is provided by the Department of Labor to the employers it regulates. The resolution also provides for a settlement procedure to ensure that taxpayer funds are protected from abuse.

Last, we will take up Senate Concurrent Resolution 51, already passed by the Senate, applying the regulations issued by the Office of Compliance to certain of the so-called instrumentalities of the House and Senate. These are offices administered by both the House and the Senate—such as the Congressional Budget Office, the Architect of the Capitol, and the Capitol Police—and, therefore, have to be covered through a concurrent resolution.

Mr. Speaker, I support these resolutions.

Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the Congressional Accountability Act—Public Law 104–1—became effective on January 23, 1996. This law created the Office of Compliance, an independent office within the legislative branch, which is responsible for educating Congressional offices on how to comply with the laws made applicable to the Congress, as well as for providing a procedure for resolution of employee grievances, and for adopting regulations to implement these laws. These regulations must be approved by the House.

The Board of Directors of the Office of Compliance adopted regulations which were published in the CONGRESSIONAL RECORD on January 22, 1996. In anticipation of these regulations, on December 19, 1995, the House agreed to House Resolution 31 and House Concurrent Resolution 123, which provided for provisional approval of these regulations until the Committees of jurisdiction could review them and make a final recommendation to the House.

On March 12, 1996, the Committee on House Oversight considered these regulations, and voted to recommend their approval to the House. The regulations were also considered by the Committee on Educational and Economic Opportunities, which has jurisdiction over most of the laws made applicable to Congress by the act. The two House Resolutions which will be considered by the House today are the product of consultation by the two committees.

An issue addressed by the Committee on House Oversight at its March 12, 1996 meeting was supporting of time off plans. Our research indicates that these plans are available to House employers in the same way they are available to employers in the private sector. Mr. Speaker, I ask unanimous consent to insert at this point in the RECORD a memo on this issue written by the American Law Division of the Congressional Research Service.

In addition House Resolution 400 provides for approval of the regulations adopted by the Office of Compliance which are applicable to House employing offices and covered employees, as contemplated by section 304(c)(4) of the act.

Mr. Speaker, I submit for the RECORD a memorandum from the American Law Division of the Congressional Research Service.

AMERICAN LAW DIVISION,
CONGRESSIONAL RESEARCH SERVICE,
Washington, DC,

Subject: Time-off Plans Under Fair Labor Standards Act (FLSA).

Author: Vince Treacy, Legislative Attorney.

The Fair Labor Standards Act (FLSA) requires that employees be paid one-and-one-half times their regular rate of pay for each hour worked in excess of 40 hours in a workweek. 29 U.S.C. §207(a). Overtime compensation earned in a particular workweek must be paid on the regular pay day for the period in which such workweek ends. 29 C.F.R. §778.106. The Congressional Accountability Act (CAA) made the overtime provisions of the FLSA applicable to all employing offices in the Legislative Branch. Public Law No. 104–1, §203(a)(3).

Under a time-off plan, the employer may comply with the FLSA and continue to pay a fixed wage or salary each pay period, even though the employee works overtime in some other week or weeks within the pay period. The employer lays off the employee a sufficient number of hours during some other week or weeks of the pay period, so that the desired wage or salary for the pay period covers the total amount of compensation, including overtime compensation, for each workweek taken separately. The essential principle of the time-off plan is the control of earnings by control of the number of hours an employee is permitted to work.

A time-off plan cannot be applied "to a salaried employee who is paid a fixed salary to cover all hours he may work in any particular workweek or pay-period." U.S. Dep't of Labor, Employment Standards Administration, The Time Off Plan. In other words, a time-off practice cannot be applied to a nonexempt salaried employee who is paid a fixed salary to cover all hours, however few or many, that he may have worked in a particular workweek. For example, if an employee was hired to work for a salary of $400 per week to cover all hours worked up to 40 in a week, then the employee would earn the same $400 whether he worked 40, 30, 20, or no hours in a week. This employee could not be compensated with time off within another week in the pay period, since the employer would have paid him for that time in any event. Since the employee was already entitled to his salary for the short workweek, the use of the hours under 40 as an offset against overtime liability owed for a separate workweek would result in a denial of the extra overtime compensation the employee was entitled to under the FLSA.

The Department of Labor expressly disapproved time-off plans for workers with a guaranteed salary in Opinion Letter of May 27, 1964. The employer wanted to guarantee certain employees 40 hours of work or pay each week. Employees would receive a minimum week's pay in any week even though they may have worked fewer hours in the week. The proposed plan "is not a bona fide time-off plan in that the employee is guaranteed a definite number of hours of work or the equivalent in pay each workweek. The required control of earnings through control of the number of hours an employee is permitted to work in a pay period is lacking."

A similar problem would arise if an employee were expressly hired to work 35 hours per week for a fixed salary of $350. That employee could not be compensated with hours-off under 40 in a week, since those hours are unpaid under the employment agreement. The time off for such an employee must be subtracted from the 35 hours in the regular workweek. An employee who worked 50 hours in one week could then be compensated by receiving the full $350 salary for 20 hours of work in the second week. In the second week, $200 would represent compensation for the 20 hours actually worked, while $150 would be cash compensation for the 10 hours of overtime in the first week.

A time-off plan allows an employer to control earnings by controlling the number of hours worked. If the employee works more than 40 hours in a workweek, the employee can be required to take one-and-one-half hours off for each overtime hour within the same pay period. This produces virtually the same total earnings as if the employee had work only 40 hours in each workweek in the pay period.

Salaries status does not preclude the use of time-off plans for nonexempt employees. Time-off plans are barred only when the employee is guaranteed the salary regardless of the number of hours actually worked. Salaried nonexempt employees are customarily required to work a fixed number of hours for their pay. Absences must be charged to leave banks for vacation, sickness, or personal use. The actual salary is reduced ("docked") only when leave is denied or exhausted. These salaried employees may be given time off with pay in lieu of cash overtime, since the pay for the compensatory time off represents pay they would not otherwise have received.

In the state and local public sector, compensatory time off may be carried over to other pay periods, and can be accumulated into banks of up to 240 hours, or 480 for public safety employees. In the private sector, however, the overtime hours cannot be accumulated and the time off cannot be given in another pay period. This policy is based in part on the possibility that the employer may go out of business, or file for liquidation under the Bankruptcy Code, and thereby eliminate employee overtime compensation entirely.

The Congressional Accountability Act expressly adopted the private sector policy,

and prohibited the accumulation of compensatory time. "Except as provided in regulations under subsection (c)(3), covered employees may not receive compensatory time in lieu of overtime compensation." Public Law No. 104–1, §203(a)(3).

Time-off plans were approved by the Court in Dunlop v. State of New Jersey: :"The restriction that time off for overtime be granted within the same pay period as earned mirrors the stricture placed upon monetary payments for overtime." 522 F.2d 504, 510 (3d Cir. 1975), affirming 364 F.Supp. 156 (D.N.J. 1973), vacated on other grounds, 427 U.S. 909 (1976). Time-off plans have been approved by the Wage-Hour Administrator in Opinion Letters. DOL Opinion Letter No. 913 (Dec. 27, 1968), quoted with approval, 522 F.2d at 509–510, 364 F.Supp. at 158.

The use of time-off plans was first suggested to the House in 1990 by Betty Southard Murphy, an attorney who was a former Wage and House Administrator at the Department of Labor.

Overtime compensation need not be paid as money wages. Under proper and rigid circumstances, employees may receive their overtime compensation as compensatory time off. Such plans are only permitted as an alternative to overtime payments if the time off is taken during the same pay period in which the overtime is earned. Presentation by Betty Southard Murphy Before the Administrative Assistants Association, U.S. House of Representatives, Washington, DC, Oct. 18, 1990 (emphasis in original).

The time-off plan must meet three requirements. (1) The employees must be either hourly or salaried; employees paid by piecework, commission, or amount of production are excluded. (2) The wage agreement must provide a fixed number working hours per week; employees who work fluctuating hours for a fixed salary do not qualify. (3) The pay period must be either bi-weekly, semimonthly; or monthly; the plan cannot be applied to employees whose pay period is weekly.

Furthermore, time-off plans require careful records, because the employer may not at any time owe the employees overtime compensation. Payroll records should clearly indicate that the premium rate of one-and-one-half of the regular rate of pay is paid for all overtime hours worked. The employer must maintain an individual account for each employee, with credit for the appropriate amount of time. "Overall, time-off plans are rarely used because they are difficult to administer—the employer must anticipate workload requirements in all weeks of the established pay period." Betty Murphy, Guide to Wage and Hour Regulation at 46 (BNA, 1987).

Under the Portal-to-Portal Act of 1947, an employer must act "in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval, or interpretation" of the Administrator of the Wage and Hour Division of the Department of Labor. 29 U.S.C. §259. The Office of Compliance has ruled that the Portal-to-Portal Act applies under the Congressional Accountability Act. 122 Cong. Rec. S222 (daily ed., Jan. 22, 1996).

The Office of Compliance has stated that "[t]ime-off plans are authorized under section 7(a) of the FLSA. See, e.g., Wage and Hour Administrator Opinion Letter, issued 1950; Wage and Hour Opinion Letter dated December 27, 1968. Thus, employing offices are authorized to use such plans under section 203 of the CAA." It would therefore appear that employing offices may rely on the written opinions of the Wage and Hour Administrator of DOL in adopting time-off plans.

In the House of Representatives, several provisions should be noted. Title 2 of the U.S. Code provides that "[n]o person shall be paid from any clerk hire allowance if such person does not perform services for which he receives such compensation in the offices of such Member or Resident Commissioner in Washington, District of Columbia, or in the State or the district in which such Member or Resident Commissioner represents." 2 U.S.C. §92–1.

The Rules of the House of Representatives provides that a Member or officer of the House "shall retain no one under his payroll authority who does not perform official duties commensurate with the compensation received in the offices of the employing authority." Rule XLIII, clause 8 (1995). The Members' Congressional Handbook provides that "Members may not [emphasis in original] retain a Clerk Hire employee on their payroll who does not perform official duties commensurate with their compensation," and that "Clerk Hire employees must perform the duties for which they are compensated within the Washington, D.C., or district congressional office(s) of the Member." See section II.A, clauses 2, 3, at page 5. Moreover, Title 31 of the U.S. Code provides that "[a]ppropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law." 31 U.S.C. §1301(a).

An employing office in the House of Representatives may adopt a time-off plan. It is advisable that the plan be in writing. The plan should note that its provisions revoke and supersede all prior customs, practices and usages concerning time and pay. The plan should stipulate that all covered employees, whether salaried or hourly, are employed for a fixed workweek, such as 40 hours per week. The plan should also require that all hours be strictly accounted for, either as hours worked or as hours charged to paid leave, such as annual, sick, personal, holiday, emergency, or administrative leave.

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

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

Mr. Speaker, my friend from California, Chairman THOMAS, has accurately described the purpose of the resolution. It simply approves the regulations issued by the Office of Compliance.

Reforming employment practices in the House took bi-partisan effort. Members from both sides of the aisle were steadfast in the reform efforts, and we were able to work through all the obstacles and pass the law.

I want to single out for praise the efforts to Chairman THOMAS, Representative SHAYS, Representative HOYER, and many other Members of this Congress, as well as Representative Swett in 103d Congress. They deserve recognition for their dedication to this reform.

House Members of both parties overwhelmingly supported this bill, and individual Members should take credit for their part in it. Remember, the underlying purpose of this law—imposing the same sandards on the House as on the private sector—enjoyed the same strong bi-partisan support in this Congress that it enjoyed in the last Congress.

I think we can be proud, individually and as an institution, that we have arrived at this point. Furthermore, as I have surveyed my colleagues, I find them universally supportive of the new law, and the workplace fairness which it brings to the House. There is a genuine desire to comply with the law, and Members seem eager for information to help them comply.

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

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

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. THOMAS] that the House suspend the rules and agree to the resolution, House Resolution 400.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

DIRECTING THE OFFICE OF COMPLIANCE TO PROVIDE EDUCATIONAL ASSISTANCE TO EMPLOYING OFFICES OF THE HOUSE IN SAME MANNER AS SUCH ASSISTANCE IS PROVIDED TO THE PRIVATE SECTOR THROUGH THE DEPARTMENT OF LABOR

Mr. THOMAS. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 401) directing the Office of Compliance to provide educational assistance to employing offices of the House of Representatives regarding compliance with the Congressional Accountability Act of 1995 and requiring employing offices of the House of Representatives to obtain the prior approval of the chairman and the ranking minority party member of the Committee on House Oversight of the House of Representatives of the amount of any settlement payments made under such Act.

The Clerk read as follows:

H. RES. 401

Resolved,

SECTION 1. INTERPRETATION AND ADVICE BY OFFICE OF COMPLIANCE.

In carrying out its duties under section 301(h) of the Congressional Accountability Act of 1995, the Office of Compliance shall, through interpretive bulletins, advisory opinions, and other methods, provide educational assistance to employing offices of the House of Representatives in the same manner as, and to no lesser extent than, such assistance is provided to other employers through the Department of Labor with respect to laws made applicable to such offices under that Act, except that any employees of the Office of Compliance who provide such

assistance may not participate in deciding complaints filed under section 405 of the Act or in deciding petitions for review filed under section 406 of the Act.

SEC. 2. APPROVAL OF AMOUNT OF SETTLEMENT PAYMENTS.

No employing office of the House of Representatives may enter into any settlement of a compliant under the Congressional Accountability Act of 1995 which includes the payment of funds unless the office has obtained the prior approval of the chairman and the ranking minority party member of the Committee on House Oversight of the House of Representatives, acting jointly, regarding the amount of funds to be paid.

The SPEAKER pro tempore. The gentleman from California [Mr. THOMAS] and the gentleman from California [Mr. FAZIO] each will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. THOMAS].

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Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, Section 301(h) of the Congressional Accountability Act—Public Law 104–1—requires the Office of Compliance to carry out a program of education for employing authorities of the legislative branch with regard to the laws made applicable to Congress by the act. The purpose of this section was to ensure that employing offices have the information necessary to comply with the act.

On March 12, 1996, the Committee on House Oversight agreed to direct the Office of Compliance to provide educational assistance through interpretive bulletins, advisory opinions, and other methods with respect to the regulations adopted by the Office of Compliance. It is important to note that this assistance is currently provided to employers in the private sector by the Department of Labor.

The Office of Compliance has publicly claimed that they cannot issue advisory opinions. The authority to issue advisory opinions, in the committee's opinion, is a necessary function related to the authority to issue regulations. It seems a little disingenuous to adopt regulations. It seems a little disingenuous to adopt regulations and then claim an inability to explain or interpret those regulations. Therefore, H.R. 401 expresses the will of the House that the Office of Compliance provide educational assistance through various methods. Advisory opinions are only one of the many ways such assistance may be provided.

Mr. Speaker, I include for the RECORD a copy of an analysis on this issue from the American Law Division of the Congressional Research Service.

The document referred to is as follows:

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, April 15, 1996.

To: Committee on House Oversight; attention: Dan Crowley.

From: American Law Division.

Subject: Examination of Authority of Office of Compliance to Issue Advisory Opinions.

This memorandum is submitted in response to the committee's request, as discussed with Dan Crowley of the committee staff, concerning the subject noted above. Specifically, the committee has asked that we examine the position taken by the Office of Compliance that it cannot, consistent with the scheme of the Congressional Accountability Act of 1995[1] (CAA or the act), issue advisory opinions.

On March 12, 1996, the Committee on House Oversight (committee) considered, but did not report, two resolutions to approve regulations adopted by the Board of Directors (Board) of the Office of Compliance (Office) to implement the act.[2] The first section of each resolution states that specified regulations of the Board "are hereby approved. . . ." Section 2 of each resolution provides:

"In carrying out its duties under section 301(h) of the Congressional Accountability Act of 1995, the Office of Compliance shall, through interpretive bulletins, advisory opinions, and other methods, provide educational assistance to employing offices of the House of Representatives in the same manner as, and to no lesser extent than, such assistance is provided to other employers through the Department of Labor with respect to laws made applicable to the House of Representatives under that Act."

We have been advised by the committee staff that similar language may be included in a resolution to be considered by the House on April 15, 1996, to approve of the Board's regulations.[3]

The Board maintains that, given its functions and powers under the CAA, it cannot issue advisory opinions.[4] Two premises provide the foundation for the Board's view. First, the Board argues that, as an administrative entity with adjudicatory functions under the CAA, it "may not issue binding legal interpretations concerning disputed matters in non-public proceedings and without the benefit of an adversary proceeding that is governed by rules of law and subject to judicial review. . . . [T]o issue such binding interpretations and advisory opinions . . . would . . . compromise the independence and impartiality of the Office. . . ."[5] And second, the Board considers the issuance of interpretations and advisory opinions to be incident to an agency's investigative and prosecutorial powers—a means by which an agency informs those subject to its jurisdiction of its prosecutorial policies and its stance with regard to conduct deemed to be violative of the pertinent laws and regulations. Since the Office does not generally exercise investigative and prosecutorial authority under the CAA, the Board believes that it would be inappropriate for it to issue advisory opinions.

From our review of the CAA, the committee's resolutions, the Board's argument, and sources on administrative law, it appears for several reasons that the Office need not be precluded from issuing advisory opinions of the type seemingly contemplated by the resolutions.

(2) The resolutions call for educational assistance. The resolutions call upon the Office, in fulfilling its duties under CAA, §301(h), to "provide educational assistance to employing offices of the House of Representatives" by means of "interpretive bulletins, advisory opinions, and other methods. . . ."[6] The resolutions are arguably intended to secure education for employers, and advisory opinions are only one of the means contemplated by which this education would be furnished. Although the Office deems it to be inappropriate to issue advisory opinions, it could fulfill the central purpose of this provision of the resolution by affording other types of educational assistance to employing offices. The Office acknowledges that it "has issued hundreds of pages of educational and informational materials, sponsored numerous educational programs, and established an information hot-line."[7] Additional assistance to employers of the type already provided by the Office, although perhaps more particularized, could satisfy the goal of the resolutions. Furthermore, it seems that the Office could issue advisory opinions, as contemplated by the resolutions, without raising the concerns advanced by the Office in regard to the impact on the "independence and impartiality of the office."[8] The Office is troubled by the prospect of issuing "*binding* legal interpretations . . . in non-public proceedings" on "*individual fact-specific cases* that may then later come before . . . [the Office] for adjudication."[9] However, it is arguable that an advisory opinion could be rendered by the Office, consistent with the purpose of the resolutions, without speaking to the facts of an individual case but addressing instead a fact pattern potentially of interest to a number of employing offices. Additionally, the educational assistance sought by the resolutions could be afforded without providing a binding legal interpretation, but merely further guidance along the lines already made available by the Office in other ways.[10]

(2) Advisory opinions may be issued pursuant to rulemaking power. Although our research has revealed a dearth of literature on the issuance of advisory opinions by administrative bodies, one study of advice giving by federal agencies observes that "the most striking characteristic of the advice-giving procedures of the agencies studied is that, except on the question of jurisdiction, agencies view advice-giving assistance to the public as part of their rulemaking, rather than their adjudicatory processes."[11] From this statement, it seems that an agency with adjudicatory powers may provide advice[12] and it would further appear that such advice might encompass advisory opinions.[13] Thus, it might be argued that the adjudicatory powers vested by the CAA in the Office of Compliance need not bar the Office from issuing advisory opinions. Furthermore, the advice giving function has been considered by at least some agencies to be a part of their rulemaking duties, and the Office does have rulemaking responsibilities under the act.[14] Thus, the Office arguably could issue advisory opinions under its rulemaking powers, without regard to the fact that it lacks prosecutorial authority.

CONCLUSION

It would appear that the scheme of the CAA need not preclude the Office from issuing advisory opinions, as contemplated by the resolutions described above, pursuant to its education function or pursuant to its rulemaking power, notwithstanding the fact that it generally does not exercise investigative or prosecutorial powers. Furthermore, the Office's adjudicatory powers would not

[1] Footnotes at end.

seem to bar it from issuing advisory opinions.

JAY R. SHAMPANSKY,
Legislative Attorney,
American law Division.

FOOTNOTES

[1] Pub. L. No. 104–1, 109 Stat. 3.

[2] Our analysis is based on discussion drafts of the resolutions, dated March 7, 1996, which were provided to us by the committee staff. One resolution is a simple House resolution which approves of regulations applicable to the House, and the other is a concurrent resolution which approves of regulations applicable to employees covered by the CAA who are not employees of either the House or the Senate.

[3] Similar language appears in §1 of a revised discussion draft of the resolution provided to us by committee staff. However, the revised draft further specifies that "any employees of the Office of Compliance who provide such [educational] assistance may not participate in, deciding complaints filed under section 405 of the Act or in deciding petitions for review filed under section 405 of the Act. . . ."

[4] Letter from Glen Nager, Chair of the Board, to the Honorable William M. Thomas, Chairman of the Committee on House Oversight (Mar. 15, 1996) (hereafter, "Board's letter"), at pp. 2–4 (A copy of the letter was provided to us by committee staff.) Similar views are set forth in a March 28, 1996, letter from Ricky Silberman, Executive Director, Office of Compliance, to the editor of Roll Call. Our analysis focuses on the reasoning set forth in the Board's letter with regard to the propriety of the issuance of advisory opinions by an administrative body in light of its adjudicatory, prosecutorial, and investigative powers. Our analysis is confined to the question of the Board's authority to issue advisory opinions. We do not address any other issues that might be raised by the resolutions or by the Board's critique of the resolutions in its letter. The Board suggests, without explanation, that "the additional provisions of the resolution [including the provision concerning advisory opinions] are not legally binding. . . ." Board's letter, at p. 4. In the absence of elaboration by the Board, we do not explore here the issue of whether the additional provisions of the resolution would be binding. Our analysis is restricted to the question of whether the Board has authority under the CAA, as originally enacted, to issue advisory opinions.

[5] Board's letter *supra* note 4, at p. 2.

[6] Section 301(h) mandates that the Office "carry out a program of education for Members of Congress and other employing authorities . . . respecting the laws made applicable to them . . . ."

[7] Board's letter, supra note 4, at p. 3.

[8] Id., at p. 2.

[9] Id. (emphasis added).

[10] The resolutions call upon the Office to provide educational assistance in the same manner as such assistance is provided to other employers through the Department of Labor. The Board contends that, lacking investigative and prosecutorial powers, it cannot meet this standard. Board letter, supra note 4, at pp. 2–3. But such investigative and prosecutorial powers may not be required to issue advisory opinions. See notes 11 14 and accompanying text, infra.

[11] Powell, "Sinners, Supplicants, and Samaritans: Agency Advice Giving in Relation to Section 554(e) of the Administrative Procedure Act," 63 N.C.L. Rev. 339, 348–49 (1985). The article was based on a study of the following fourteen federal agencies: Consumer Product Safety Commission, Environmental Protection Agency, Federal Aviation Administration, Federal Communications Commission, Federal Election Commission, Federal Energy Regulatory Commission, Federal Maritime Commission, Federal Trade Commission, Food and Drug Administration Interstate Commerce Commission, National Labor Relations Board, Nuclear Regulatory Commission, Occupational Safety and Health Administration, and Securities and Exchange Commission. Id. at 348 n.36.

[12] See id. at 355 (adjudication occurs where advice giving by agency has already failed).

[13] "Advice giving" is considered to be a type of rulemaking, and definitions of rulemaking generally do not attempt to distinguish among "interpretive rules and various kinds of announcements, interpretations, opinions, releases, rulings, practices, usages, and policies." Id. at 350 n.38, citing 1 K. Davis, Administrative Law Treatise, §5.01 at p. 289 (1958).

[14] CAA §§303, 304.

Mr. Speaker, H.R. 401 also establishes the process by which a settlement may be entered into by any employing office of the House, as contemplated in Section 414 of the act. Specifically, this resolution safeguards taxpayer funds by requiring the prior approval of the chairman and the agreement of the ranking minority member of the Committee on House Oversight, acting jointly, regarding the amount of funds to be paid.

This procedure is similar to the current procedure for approval of settlement payments sanctioned by the Office of Fair Employment Practices under House rule 51. All cash settlements will be approved on a strictly bipartisan basis.

In practice, it will be incumbent upon the employing office or defense counsel to ensure that the chairman and ranking minority member approve the amount of funds to be paid prior to entering into any settlement involving a cash payment. It is important to note that this resolution does not affect the authority of the executive director of the Office of Compliance to approve settlement. Instead, it imposes a restriction on the ability of House employing offices to enter into settlement agreements involving cash payments. Settlements involving only other forms of relief, including reinstatement, promotion, and prospective salary adjustments, are beyond the scope of this resolution.

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

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

Mr. Speaker, as with the earlier resolution, my friend, the gentleman from California, the chairman, has accurately described the purpose of this resolution. It simply expresses the House's desire to be treated the same as the private sector with respect to information available to Members to comply with the Act.

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

Mr. THOMAS. Mr. Speaker, I have no further request for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. RIGGS). The question is on the motion offered by the gentleman from California [Mr. THOMAS] that the House suspend the rules and agree to the resolution, House Resolution 401.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

APPROVING FINAL REGULATIONS APPLICABLE TO JOINT ENTITIES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE

Mr. THOMAS. Mr. Speaker, I move to suspend the rules and concur in the Senate concurrent resolution (S. Con. Res. 51) to provide for the approval of final regulations that are applicable to employing offices that are not employing offices of the House of Representatives or the Senate, and to covered employees who are not employees of the House of Representatives or the Senate, and that were issued by the Office of Compliance on January 22, 1996, and for other purposes.

The Clerk read as follows:

S. CON. RES. 51

Resolved by the Senate (the House of Representatives concurring), That the following regulations issued by the Office of Compliance on January 22, 1996, and applicable to employing offices that are not employing offices of the House of Representatives or the Senate, and to covered employees who are not employees of the House of Representatives or the Senate, are hereby approved as follows:

PART 825—FAMILY AND MEDICAL LEAVE

825.1 Purpose and scope
825.2 [Reserved]

Subpart A—What is the Family and Medical Leave Act, and to Whom Does it Apply under the Congressional Accountability Act?

825.100 What is the Family and Medical Leave Act?
825.101 What is the purpose of the FMLA?
825.102 When are the FMLA and the CAA effective for covered employees and employing offices?
825.103 How does the FMLA, as made applicable by the CAA, affect leave in progress on, or taken before, the effective date of the CAA?
825.104 What employing offices are covered by the FMLA, as made applicable by the CAA?
825.105 [Reserved]
825.106 How is "joint employment" treated under the FMLA as made applicable by the CAA?
825.107—825.109 [Reserved]
825.110 Which employees are "eligible" to take FMLA leave under these regulations?
825.111 [Reserved]
825.112 Under what kinds of circumstances are employing offices required to grant family or medical leave?
825.113 What do "spouse," "parent," and "son or daughter" mean for purposes of an employee qualifying to take FMLA leave?
825.114 What is a "serious health condition" entitling an employee to FMLA leave?
825.115 What does it mean that "the employee is unable to perform the functions of the position of the employee"?
825.116 What does it mean that an employee is "needed to care for" a family member?
825.117 For an employee seeking intermittent FMLA leave or leave on a reduced leave schedule, what is meant by "the medical necessity for" such leave?
825.118 What is a "health care provider"?

Subpart B—What Leave Is an Employee Entitled To Take Under The Family and Medical Leave Act, as Made Applicable by the Congressional Accountability Act?

825.200 How much leave may an employee take?
825.201 If leave is taken for the birth of a child, or for placement of a child for adoption or foster care, when must the leave be concluded?
825.202 How much leave may a husband and wife take if they are employed by the same employing office?
825.203 Does FMLA leave have to be taken all at once, or can it be taken in parts?
825.204 May an employing office transfer an employee to an "alternative position" in order to accommodate intermittent leave or a reduced leave schedule?
825.205 How does one determine the amount of leave used where an employee takes leave intermittently or on a reduced leave schedule?
825.206 May an employing office deduct hourly amounts from an employee's salary, when providing unpaid leave under FMLA, as made applicable by the CAA, without affecting the employee's qualification for exemption as an executive, administrative, or professional employee, or when utilizing the fluctuating workweek method for payment of overtime, under the Fair Labor Standards Act?
825.207 Is FMLA leave paid or unpaid?
825.208 Under what circumstances may an employing office designate leave, paid or unpaid, as FMLA leave and, as a result, enable leave to be counted against the employee's total FMLA leave entitlement?
825.209 Is an employee entitled to benefits while using FMLA leave?
825.210 How may employees on FMLA leave pay their share of group health benefit premiums?
825.211 What special health benefits maintenance rules apply to multi-employer health plans?
825.212 What are the consequences of an employee's failure to make timely health plan premium payments?
825.213 May an employing office recover costs it incurred for maintaining "group health plan" or other non-health benefits coverage during FMLA leave?
825.214 What are an employee's rights on returning to work from FMLA leave?
825.215 What is an equivalent position?
825.216 Are there any limitations on an employing office's obligation to reinstate an employee?
825.217 What is a "key employee"?
825.218 What does "substantial and grievous economic injury" mean?
825.219 What are the rights of a key employee?
825.220 How are employees protected who request leave or otherwise assert FMLA rights?

Subpart C—How Do Employees Learn of Their Rights and Obligations under the FMLA, as Made Applicable by the CAA, and What Can an Employing Office Require of an Employee?

825.300 [Reserved]
825.301 What notices to employees are required of employing offices under the FMLA as made applicable by the CAA?
825.302 What notice does an employee have to give an employing office when the need for FMLA leave is foreseeable?
825.303 What are the requirements for an employee to furnish notice to an employing office where the need for FMLA leave is not foreseeable?
825.304 What recourse do employing offices have if employees fail to provide the required notice?
825.305 When must an employee provide medical certification to support FMLA leave?
825.306 How much information may be required in medical certifications of a serious health condition?
825.307 What may an employing office do if it questions the adequacy of a medical certification?
825.308 Under what circumstances may an employing office request subsequent recertifications of medical conditions?
825.309 What notice may an employing office require regarding an employee's intent to return to work?
825.310 Under what circumstances may an employing office require that an employee submit a medical certification that the employee is able (or unable) to return to work (i.e., a "fitness-for-duty" report)?
825.311 What happens if an employee fails to satisfy the medical certification and/or recertification requirements?
825.312 Under what circumstances may an employing office refuse to provide FMLA leave or reinstatement to eligible employees?

Subpart D—What Enforcement Mechanisms Does the CAA Provide?

825.400 What can employees do who believe that their rights under the FMLA as made applicable by the CAA have been violated?
825.401—825.404 [Reserved]

Subpart E—[Reserved]

Subpart F—What Special Rules Apply to Employees of Schools?

825.600 To whom do the special rules apply?
825.601 What limitations apply to the taking of intermittent leave or leave on a reduced leave schedule?
825.602 What limitations apply to the taking of leave near the end of an academic term?
825.603 Is all leave taken during "periods of a particular duration" counted against the FMLA leave entitlement?
825.604 What special rules apply to restoration to "an equivalent position?"

Subpart G—How Do Other Laws, Employing Office Practices, and Collective Bargaining Agreements Affect Employee Rights Under the FMLA as Made Applicable by the CAA?

825.700 What if an employing office provides more generous benefits than required by FMLA as Made Applicable by the CAA?
825.701 [Reserved]
825.702 How does FMLA affect anti-discrimination laws as applied by section 201 of the CAA?

Subpart H—Definitions

825.800 Definitions
Appendix A to Part 825—[Reserved]
Appendix B to Part 825—Certification of Physician or Practitioner
Appendix C to Part 825—[Reserved]
Appendix D to Part 825—Prototype Notice: Employing Office Response to Employee Request for Family and Medical Leave
Appendix E to Part 825—[Reserved]

§825.1 Purpose and scope

(a) Section 202 of the Congressional Accountability Act (CAA) (2 U.S.C. 1312) applies the rights and protections of sections 101 through 105 of the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2611-2615) to covered employees. (The term "covered employee" is defined in section 101(3) of the CAA (2 U.S.C. 1301(3)). See §825.800 of these regulations for that definition.) The purpose of this part is to set forth the regulations to carry out the provisions of section 202 of the CAA.

(b) These regulations are issued by the Board of Directors, Office of Compliance, pursuant to sections 202(d) and 304 of the CAA, which direct the Board to promulgate regulations implementing section 202 that are "the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 202 of the CAA] except insofar as the Board may determine, for good cause shown . . . that a modification of such regulations would be more effective for the implementation of the rights and protections under this section." The regulations issued by the Board herein are on all matters for which section 202 of the CAA requires regulations to be issued. Specifically, it is the Board's considered judgment, based on the information available to it at the time of the promulgation of these regulations, that, with the exception of regulations adopted and set forth herein, there are no other "substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 202 of the CAA].

(c) In promulgating these regulations, the Board has made certain technical and nomenclature changes to the regulations as promulgated by the Secretary. Such changes are intended to make the provisions adopted accord more naturally to situations in the legislative branch. However, by making these changes, the Board does not intend a substantive difference between these regulations and those of the Secretary from which they are derived. Moreover, such changes, in and of themselves, are not intended to constitute an interpretation of the regulation or of the statutory provisions of the CAA upon which they are based.

§825.2 [Reserved]

Subpart A—What is the Family and Medical Leave Act, and to Whom Does it Apply under the Congressional Accountability Act?

§825.100 What is the Family and Medical Leave Act?

(a) The Family and Medical Leave Act of 1993 (FMLA), as made applicable by the Congressional Accountability Act (CAA), allows "eligible" employees of an employing office to take job-protected, unpaid leave, or to substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 12 workweeks in any 12 months because of the birth of a child and to care for the newborn child, because of the placement of a child with the employee for adoption or foster care, because the employee is needed to care for a family member (child, spouse, or parent) with a serious health condition, or because the employee's own serious health condition makes the employee unable to perform the functions of his or her job (*see* §825.306(b)(4)). In certain cases, this leave may be taken on an intermittent basis rather than all at once, or the employee may work a part-time schedule.

(b) An employee on FMLA leave is also entitled to have health benefits maintained while on leave as if the employee had continued to work instead of taking the leave. If an employee was paying all or part of the premium payments prior to leave, the employee

would continue to pay his or her share during the leave period. The employing office, or a disbursing or other financial office of the House of Representatives or the Senate may recover its share only if the employee does not return to work for a reason other than the serious health condition of the employee or the employee's immediate family member, or another reason beyond the employee's control.

(c) An employee generally has a right to return to the same position or an equivalent position with equivalent pay, benefits and working conditions at the conclusion of the leave. The taking of FMLA leave cannot result in the loss of any benefit that accrued prior to the start of the leave.

(d) The employing office has a right to 30 days advance notice from the employee where practicable. In addition, the employing office may require an employee to submit certification from a health care provider to substantiate that the leave is due to the serious health condition of the employee or the employee's immediate family member. Failure to comply with these requirements may result in a delay in the start of FMLA leave. Pursuant to a uniformly applied policy, the employing office may also require that an employee present a certification of fitness to return to work when the absence was caused by the employee's serious health condition (*see* §825.311(c)). The employing office may delay restoring the employee to employment without such certificate relating to the health condition which caused the employee's absence.

§825.101 What is the purpose of the FMLA?

(a) FMLA is intended to allow employees to balance their work and family life by taking reasonable unpaid leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition. The FMLA is intended to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity. It was intended that the FMLA accomplish these purposes in a manner that accommodates the legitimate interests of employers, and in a manner consistent with the Equal Protection Clause of the Fourteenth Amendment in minimizing the potential for employment discrimination on the basis of sex, while promoting equal employment opportunity for men and women.

(b) The enactment of FMLA was predicated on two fundamental concerns "the needs of the American workforce, and the development of high-performance organizations. Increasingly, America's children and elderly are dependent upon family members who must spend long hours at work. When a family emergency arises, requiring workers to attend to seriously-ill children or parents, or to newly-born or adopted infants, or even to their own serious illness, workers need reassurance that they will not be asked to choose between continuing their employment, and meeting their personal and family obligations or tending to vital needs at home.

(c) The FMLA is both intended and expected to benefit employers as well as their employees. A direct correlation exists between stability in the family and productivity in the workplace. FMLA will encourage the development of high-performance organizations. When workers can count on durable links to their workplace they are able to make their own full commitments to their jobs. The record of hearings on family and medical leave indicate the powerful productive advantages of stable workplace relationships, and the comparatively small costs of guaranteeing that those relationships will not be dissolved while workers attend to pressing family health obligations or their own serious illness.

§825.102 When are the FMLA and the CAA effective for covered employees and employing offices?

(a) The rights and protection of sections 101 through 105 of the FMLA have applied to certain Senate employees and certain employing offices of the Senate since August 5, 1993 (*see* section 501 of FMLA).

(b) The rights and protection of sections 101 through 105 of the FMLA have applied to any employee in an employment position and any employment authority of the House of Representatives since August 5, 1993 (*see* section 502 of FMLA).

(c) The rights and protections of sections 101 through 105 of the FMLA have applied to certain employing offices and covered employees other than those referred to in paragraphs (a) and (b) of this section for certain periods since August 5, 1993 (*see, e.g.*, Title V of the FMLA, sections 501 and 502).

(d) The provisions of section 202 of the CAA that apply rights and protections of the FMLA to covered employees are effective on January 23, 1996.

(e) The period prior to the effective date of the application of FMLA rights and protections under the CAA must be considered in determining employee eligibility.

§825.103 How does the FMLA, as made applicable by the CAA, affect leave in progress on, or taken before, the effective date of the CAA?

(a) An eligible employee's right to take FMLA leave began on the date that the rights and protections of the FMLA first went into effect for the employing office and employee (*see* §825.102(a)). Any leave taken prior to the date on which the rights and protections of the FMLA first became effective for the employing office from which the leave was taken may not be counted for purposes of the FMLA as made applicable by the CAA. If leave qualifying as FMLA leave was underway prior to the effective date of the FMLA for the employing office from which the leave was taken and continued after the FMLA's effective date for that office, only that portion of leave taken on or after the FMLA's effective date may be counted against the employee's leave entitlement under the FMLA, as made applicable by the CAA.

(b) If an employing office-approved leave is underway when the application of the FMLA by the CAA takes effect, no further notice would be required of the employee unless the employee requests an extension of the leave. For leave which commenced on the effective date or shortly thereafter, such notice must have been given which was practicable, considering the foreseeability of the need for leave and the effective date.

(c) Starting on January 23, 1996, an employee is entitled to FMLA leave under these regulations if the reason for the leave is qualifying under the FMLA, as made applicable by the CAA, even if the event occasioning the need for leave (*e.g.*, the birth of a child) occurred before such date (so long as any other requirements are satisfied).

§825.104 What employing offices are covered by the FMLA, as made applicable by the CAA?

(a) The FMLA, as made applicable by the CAA, covers all employing offices. As used in the CAA, the term "employing office" means—

(1) the personal office of a Member of the House of Representatives or of a Senator;

(2) a committee of the House of Representatives or the Senate or a joint committee;

(3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or

(4) the Capitol Guide Board, the Capitol Police Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment.

(b) [Reserved]

(c) Separate entities will be deemed to be parts of a single employer for purposes of the FMLA, as made applicable by the CAA, if they meet the "integrated employer" test. A determination of whether or not separate entities are an integrated employer is not determined by the application of any single criterion, but rather the entire relationship is to be reviewed in its totality. Factors considered in determining whether two or more entities are an integrated employer include:

(i) Common management;

(ii) Interrelation between operations;

(iii) Centralized control of labor relations; and

(iv) Degree of common financial control.

§825.105 [Reserved]

§825.106 How is "joint employment" treated under the FMLA as made applicable by the CAA?

(a) Where two or more employing offices exercise some control over the work or working conditions of the employee, the employing offices may be joint employers under FMLA, as made applicable by the CAA. Where the employee performs work which simultaneously benefits two or more employing offices, or works for two or more employing offices at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as:

(1) Where there is an arrangement between employing offices to share an employee's services or to interchange employees;

(2) Where one employing office acts directly or indirectly in the interest of the other employing office in relation to the employee; or

(3) Where the employing offices are not completely disassociated with respect to the employee's employment and may be deemed to share control of the employee, directly or indirectly, because one employing office controls, is controlled by, or is under common control with the other employing office.

(b) A determination of whether or not a joint employment relationship exists is not determined by the application of any single criterion, but rather the entire relationship is to be viewed in its totality. For example, joint employment will ordinarily be found to exist when: (1) an employee, who is employed by an employing office other than the personal office of a Member of the House of Representatives or of a Senator, is under the actual direction and control of the Member of the House of Representatives or Senator; or

(2) two or more employing offices employ an individual to work on common issues or other matters for both or all of them.

(c) When employing offices employ a covered employee jointly, they may designate one of themselves to be the primary employing office, and the other or others to be the secondary employing office(s). Such a designation shall be made by written notice to the covered employee.

(d) If an employing office is designated a primary employing office pursuant to paragraph (c) of this section, only that employing office is responsible for giving required notices to the covered employee, providing FMLA leave, and maintenance of health benefits. Job restoration is the primary responsibility of the primary employing office, and the secondary employing office(s) may, subject to the limitations in §825.216, be responsible for accepting the employee returning from FMLA leave.

(e) If employing offices employ an employee jointly, but fail to designate a primary employing office pursuant to paragraph (c) of this section, then all of these employing offices shall be jointly and severally liable for giving required notices to the employee, for providing FMLA leave, for assuring that health benefits are maintained, and for job restoration. The employee may give notice of need for FMLA leave, as described in §§ 825.302 and 825.303, to whichever of these employing offices the employee chooses. If the employee makes a written request for restoration to one of these employing offices, that employing office shall be primarily responsible for job restoration, and the other employing office(s) may, subject to the limitations in §825.216, be responsible for accepting the employee returning from FMLA leave.

§825.107 [Reserved]

§825.108 [Reserved]

§825.109 [Reserved]

§825.110 Which employees are "eligible" to take FMLA leave under these regulations?

(a) An "eligible employee" under these regulations means a covered employee who has been employed in any employing office for 12 months and for at least 1,250 hours of employment during the previous 12 months.

(b) The 12 months an employee must have been employed by any employing office need not be consecutive months. If an employee worked for two or more employing offices sequentially, the time worked will be aggregated to determine whether it equals 12 months. If an employee is maintained on the payroll for any part of a week, including any periods of paid or unpaid leave (sick, vacation) during which other benefits or compensation are provided by the employer (e.g., workers' compensation, group health plan benefits, etc.), the week counts as a week of employment. For purposes of determining whether intermittent/occasional/casual employment qualifies as "at least 12 months," 52 weeks is deemed to be equal to 12 months.

(c) If an employee was employed by two or more employing offices, either sequentially or concurrently, the hours of service will be aggregated to determine whether the minimum of 1,250 hours has been reached. Whether an employee has worked the minimum 1,250 hours of service is determined according to the principles established under the Fair Labor Standards Act (FLSA) , as applied by section 203 of the CAA (2 U.S.C. 1313), for determining compensable hours of work. The determining factor is the number of hours an employee has worked for one or more employing offices. The determination is not limited by methods of record-keeping, or by compensation agreements that do not accurately reflect all of the hours an employee has worked for or been in service to the employing office. Any accurate accounting of actual hours worked may be used. For this purpose, full-time teachers (see §825.800 for definition) of an elementary or secondary school system, or institution of higher education, or other educational establishment or institution are deemed to meet the 1,250 hour test. An employing office must be able to clearly demonstrate that such an employee did not work 1,250 hours during the previous 12 months in order to claim that the employee is not "eligible" for FMLA leave.

(d) The determinations of whether an employee has worked for any employing office for at least 1,250 hours in the previous 12 months and has been employed by any employing office for a total of at least 12 months must be made as of the date leave commences. The "previous 12 months" means the 12 months immediately preceding the commencement of the leave. If an employee notifies the employing office of need for FMLA leave before the employee meets these eligibility criteria, the employing office must either confirm the employee's eligibility based upon a projection that the employee will be eligible on the date leave would commence or must advise the employee when the eligibility requirement is met. If the employing office confirms eligibility at the time the notice for leave is received, the employing office may not subsequently challenge the employee's eligibility. In the latter case, if the employing office does not advise the employee whether the employee is eligible as soon as practicable (i.e., two business days absent extenuating circumstances) after the date employee eligibility is determined, the employee will have satisfied the notice requirements and the notice of leave is considered current and outstanding until the employing office does advise. If the employing office fails to advise the employee whether the employee is eligible prior to the date the requested leave is to commence, the employee will be deemed eligible. The employing office may not, then, deny the leave. Where the employee does not give notice of the need for leave more than two business days prior to commencing leave, the employee will be deemed to be eligible if the employing office fails to advise the employee that the employee is not eligible within two business days of receiving the employee's notice.

(e) The period prior to the effective date of the application of FMLA rights and protections under the CAA must be considered in determining employee's eligibility.

(f) [Reserved]

§825.111 [Reserved]

§825.112 Under what kinds of circumstances are employing offices required to grant family or medical leave?

(a) Employing offices are required to grant leave to eligible employees:

(1) For birth of a son or daughter, and to care for the newborn child;

(2) For placement with the employee of a son or daughter for adoption or foster care;

(3) To care for the employee's spouse, son, daughter, or parent with a serious health condition; and

(4) Because of a serious health condition that makes the employee unable to perform the functions of the employee's job.

(b) The right to take leave under FMLA as made applicable by the CAA applies equally to male and female employees. A father, as well as a mother, can take family leave for the birth, placement for adoption or foster care of a child.

(c) Circumstances may require that FMLA leave begin before the actual date of birth of a child. An expectant mother may take FMLA leave pursuant to paragraph (a)(4) of this section before the birth of the child for prenatal care or if her condition makes her unable to work.

(d) Employing offices are required to grant FMLA leave pursuant to paragraph (a)(2) of this section before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. For example, the employee may be required to attend counseling sessions, appear in court, consult with his or her attorney or the doctor(s) representing the birth parent, or submit to a physical examination. The source of an adopted child (*e.g.*, whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for leave for this purpose.

(e) Foster care is 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

(f) In situations where the employer/employee relationship has been interrupted, such as an employee who has been on layoff, the employee must be recalled or otherwise be re-employed before being eligible for FMLA leave. Under such circumstances, an eligible employee is immediately entitled to further FMLA leave for a qualifying reason.

(g) FMLA leave is available for treatment for substance abuse provided the conditions of §825.114 are met. However, treatment for substance abuse does not prevent an employing office from taking employment action against an employee. The employing office may not take action against the employee because the employee has exercised his or her right to take FMLA leave for treatment. However, if the employing office has an established policy, applied in a non-discriminatory manner that has been communicated to all employees, that provides under certain circumstances an employee may be terminated for substance abuse, pursuant to that policy the employee may be terminated whether or not the employee is presently taking FMLA leave. An employee may also take FMLA leave to care for an immediate family member who is receiving treatment for substance abuse. The employing office may not take action against an employee who is providing care for an immediate family member receiving treatment for substance abuse.

§825.113 What do "spouse," "parent," and "son or daughter" mean for purposes of an employee qualifying to take FMLA leave?

(a) Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

(b) Parent means a biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a son or daughter as defined in (c) below. This term does not include parents "in law".

(c) Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability."

(1) "Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene,

bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

(2) "Physical or mental disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. See the Americans with Disabilities Act (ADA), as made applicable by section 201(a)(3) of the CAA (2 U.S.C. 1311(a)(3)).

(3) Persons who are "*in loco parentis*" include those with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

(d) For purposes of confirmation of family relationship, the employing office may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship. This documentation may take the form of a simple statement from the employee, or a child's birth certificate, a court document, *etc.* The employing office is entitled to examine documentation such as a birth certificate, *etc.*, but the employee is entitled to the return of the official document submitted for this purpose.

§ 825.114 What is a "serious health condition" entitling an employee to FMLA leave?

(a) For purposes of FMLA, "serious health condition" entitling an employee to FMLA leave means an illness, injury, impairment, or physical or mental condition that involves:

(1) *Inpatient care* (*i.e.*, an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of *incapacity* (for purposes of this section, defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom), or any subsequent treatment in connection with such inpatient care; or

(2) *Continuing treatment* by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(i) A period of *incapacity* (*i.e.*, inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(A) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (*e.g.*, physical therapist) under orders of, or on referral by, a health care provider; or

(B) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

(ii) Any period of incapacity due to pregnancy, or for prenatal care.

(iii) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(A) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(B) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(C) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

(iv) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(v) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

(b) Treatment for purposes of paragraph (a) of this section includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under paragraph (a)(2)(i)(B), a regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

(c) Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not "serious health conditions" unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness resulting from stress or allergies may be serious health conditions, but only if all the conditions of this section are met.

(d) Substance abuse may be a serious health condition if the conditions of this section are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

(e) Absences attributable to incapacity under paragraphs (a)(2)(ii) or (iii) qualify for FMLA leave even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

§ 825.115 What does it mean that "the employee is unable to perform the functions of the position of the employee"?

An employee is "unable to perform the functions of the position" where the health care provider finds that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act (ADA), as made applicable by section 201(a)(3) of the CAA (2 U.S.C. 1311(a)(3)). An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment. An employing office has the option, in requiring certification from a health care provider, to provide a statement of the essential functions of the employee's position for the health care provider to review. For purposes of FMLA, the essential functions of the employee's position are to be determined with reference to the position the employee held at the time notice is given or leave commenced, whichever is earlier.

§ 825.116 What does it mean that an employee is "needed to care for" a family member?

(a) The medical certification provision that an employee is "needed to care for" a family member encompasses both physical and psychological care. It includes situations where, for example, because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor, etc. The term also includes providing psychological comfort and reassurance which would be beneficial to a child, spouse or parent with a serious health condition who is receiving inpatient or home care.

(b) The term also includes situations where the employee may be needed to fill in for others who are caring for the family member, or to make arrangements for changes in care, such as transfer to a nursing home.

(c) An employee's intermittent leave or a reduced leave schedule necessary to care for a family member includes not only a situation where the family member's condition itself is intermittent, but also where the employee is only needed intermittently "such as where other care is normally available, or care responsibilities are shared with another member of the family or a third party.

§ 825.117 For an employee seeking intermittent FMLA leave or leave on a reduced leave schedule, what is meant by "the medical necessity for" such leave?

For intermittent leave or leave on a reduced leave schedule, there must be a medical need for leave (as distinguished from voluntary treatments and procedures) and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. The treatment regimen and other information described in the certification of a serious health condition (see § 825.306) meets the requirement for certification of the medical necessity of intermittent leave or leave on a reduced leave

schedule. Employees needing intermittent FMLA leave or leave on a reduced leave schedule must attempt to schedule their leave so as not to disrupt the employing office's operations. In addition, an employing office may assign an employee to an alternative position with equivalent pay and benefits that better accommodates the employee's intermittent or reduced leave schedule.

§825.118 What is a "health care provider"?

(a)(1) The term "health care provider" means:

(i) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(ii) Any other person determined by the Office of Compliance to be capable of providing health care services.

(2) In making a determination referred to in subparagraph (1)(ii), and absent good cause shown to do otherwise, the Office of Compliance will follow any determination made by the Secretary of Labor (under section 101(6)(B) of the FMLA, 29 U.S.C. 2611(6)(B)) that a person is capable of providing health care services, provided the Secretary's determination was not made at the request of a person who was then a covered employee.

(b) Others "capable of providing health care services" include only:

(1) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law;

(2) Nurse practitioners, nurse-midwives and clinical social workers who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;

(3) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employing office that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement.

(4) Any health care provider from whom an employing office or the employing office's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and

(5) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

(c) The phrase "authorized to practice in the State" as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions without supervision by a doctor or other health care provider.

Subpart B—What Leave Is an Employee Entitled To Take Under the Family and Medical Leave Act, as Made Applicable by the Congressional Accountability Act?

§825.200 How much leave may an employee take?

(a) An eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during any 12-month period for any one, or more, of the following reasons:

(1) The birth of the employee's son or daughter, and to care for the newborn child;

(2) The placement with the employee of a son or daughter for adoption or foster care, and to care for the newly placed child;

(3) To care for the employee's spouse, son, daughter, or parent with a serious health condition; and,

(4) Because of a serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job.

(b) An employing office is permitted to choose any one of the following methods for determining the "12-month period" in which the 12 weeks of leave entitlement occurs:

(1) The calendar year;

(2) Any fixed 12-month "leave year," such as a fiscal year or a year starting on an employee's "anniversary" date;

(3) The 12-month period measured forward from the date any employee's first FMLA leave begins; or

(4) A "rolling" 12-month period measured backward from the date an employee uses any FMLA leave (except that such measure may not extend back before the date on which the application of FMLA rights and protections first becomes effective for the employing office; see §825.102).

(c) Under methods in paragraphs (b)(1) and (b)(2) of this section an employee would be entitled to up to 12 weeks of FMLA leave at any time in the fixed 12-month period selected. An employee could, therefore, take 12 weeks of leave at the end of the year and 12 weeks at the beginning of the following year. Under the method in paragraph (b)(3) of this section, an employee would be entitled to 12 weeks of leave during the year beginning on the first date FMLA leave is taken; the next 12-month period would begin the first time FMLA leave is taken after completion of any previous 12-month period. Under the method in paragraph (b)(4) of this section, the "rolling" 12-month period, each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months. For example, if an employee has taken eight weeks of leave during the past 12 months, an additional four weeks of leave could be taken. If an employee used four weeks beginning February 1, 1997, four weeks beginning June 1, 1997, and four weeks beginning December 1, 1997, the employee would not be entitled to any additional leave until February 1, 1998. However, beginning on February 1, 1998, the employee would be entitled to four weeks of leave, on June 1 the employee would be entitled to an additional four weeks, etc.

(d)(1) Employing offices will be allowed to choose any one of the alternatives in paragraph (b) of this section provided the alternative chosen is applied consistently and uniformly to all employees. An employing office wishing to change to another alternative is required to give at least 60 days notice to all employees, and the transition must take place in such a way that the employees retain the full benefit of 12 weeks of leave under whichever method affords the greatest benefit to the employee. Under no circumstances may a new method be implemented in order to avoid the CAA's FMLA leave requirements.

(2) [Reserved]

(e) If an employing office fails to select one of the options in paragraph (b) of this section for measuring the 12-month period, the option that provides the most beneficial outcome for the employee will be used. The employing office may subsequently select an option only by providing the 60-day notice to all employees of the option the employing office intends to implement. During the running of the 60-day period any other employee who needs FMLA leave may use the option providing the most beneficial outcome to that employee. At the conclusion of the 60-day period the employing office may implement the selected option.

(f) For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, if for some reason the employing office's activity has temporarily ceased and employees generally are not expected to report for work for one or more weeks (e.g., a school closing two weeks for the Christmas/New Year holiday or the summer vacation or an employing office closing the office for repairs), the days the employing office's activities have ceased do not count against the employee's FMLA leave entitlement. Methods for determining an employee's 12-week leave entitlement are also described in §825.205.

(g)(1) If employing offices jointly employ an employee, and if they designate a primary employer pursuant to §825.106(c), the primary employer may choose any one of the alternatives in paragraph (b) of this section for measuring the 12-month period, provided that the alternative chosen is applied consistently and uniformly to all employees of the primary employer including the jointly employed employee.

(2) If employing offices fail to designated a primary employer pursuant to §825.106(c), an employee jointly employed by the employing offices may, by so notifying one of the employing offices, select that employing office to be the primary employer of the employee for purposes of the application of paragraphs (d) and (e) of this section.

§825.201 If leave is taken for the birth of a child, or for placement of a child for adoption or foster care, when must the leave be concluded?

An employee's entitlement to leave for a birth or placement for adoption or foster care expires at the end of the 12-month period beginning on the date of the birth or placement, unless the employing office permits leave to be taken for a longer period. Any such FMLA leave must be concluded within this one-year period.

§825.202 How much leave may a husband and wife take if they are employed by the same employing office?

(a) A husband and wife who are eligible for FMLA leave and are employed by the same employing office may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken:

(1) for birth of the employee's son or daughter or to care for the child after birth;

(2) for placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement; or

(3) to care for the employee's parent with a serious health condition.

(b) This limitation on the total weeks of leave applies to leave taken for the reasons

(c) Where the husband and wife both use a portion of the total 12-week FMLA leave entitlement for one of the purposes in paragraph (a) of this section, the husband and wife would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for

a purpose other than those contained in paragraph (a) of this section. For example, if each spouse took 6 weeks of leave to care for a healthy, newborn child, each could use an additional 6 weeks due to his or her own serious health condition or to care for a child with a serious health condition.

§ 825.203 Does FMLA leave have to be taken all at once, or can it be taken in parts?

(a) FMLA leave may be taken "intermittently or on a reduced leave schedule" under certain circumstances. Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per work week, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

(b) When leave is taken after the birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employing office agrees. Such a schedule reduction might occur, for example, where an employee, with the employing office's agreement, works part-time after the birth of a child, or takes leave in several segments. The employing office's agreement is not required, however, for leave during which the mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition.

(c) Leave may be taken intermittently or on a reduced leave schedule when medically necessary for planned and/or unanticipated medical treatment of a related serious health condition by or under the supervision of a health care provider, or for recovery from treatment or recovery from a serious health condition. It may also be taken to provide care or psychological comfort to an immediate family member with a serious health condition.

(1) Intermittent leave may be taken for a serious health condition which requires treatment by a health care provider periodically, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy. A pregnant employee may take leave intermittently for prenatal examinations or for her own condition, such as for periods of severe morning sickness. An example of an employee taking leave on a reduced leave schedule is an employee who is recovering from a serious health condition and is not strong enough to work a full-time schedule.

(2) Intermittent or reduced schedule leave may be taken for absences where the employee or family member is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition even if he or she does not receive treatment by a health care provider.

(d) There is no limit on the size of an increment of leave when an employee takes intermittent leave or leave on a reduced leave schedule. However, an employing office may limit leave increments to the shortest period of time that the employing office's payroll system uses to account for absences or use of leave, provided it is one hour or less. For example, an employee might take two hours off for a medical appointment, or might work a reduced day of four hours over a period of several weeks while recuperating from an illness. An employee may not be required to take more FMLA leave than necessary to address the circumstance that precipitated the need for the leave, except as provided in §§ 825.601 and 825.602.

§ 825.204 May an employing office transfer an employee to an "alternative position" in order to accommodate intermittent leave or a reduced leave schedule?

(a) If an employee needs intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment for the employee or a family member, including during a period of recovery from a serious health condition, or if the employing office agrees to permit intermittent or reduced schedule leave for the birth of a child or for placement of a child for adoption or foster care, the employing office may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. See § 825.601 for special rules applicable to instructional employees of schools.

(b) Transfer to an alternative position may require compliance with any applicable collective bargaining agreement and any applicable law (such as the Americans with Disabilities Act, as made applicable by the CAA). Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced leave.

(c) The alternative position must have equivalent pay and benefits. An alternative position for these purposes does not have to have equivalent duties. The employing office may increase the pay and benefits of an existing alternative position, so as to make them equivalent to the pay and benefits of the employee's regular job. The employing office may also transfer the employee to a part-time job with the same hourly rate of pay and benefits, provided the employee is not required to take more leave than is medically necessary. For example, an employee desiring to take leave in increments of four hours per day could be transferred to a half-time job, or could remain in the employee's same job on a part-time schedule, paying the same hourly rate as the employee's previous job and enjoying the same benefits. The employing office may not eliminate benefits which otherwise would not be provided to part-time employees; however, an employing office may proportionately reduce benefits such as vacation leave where an employing office's normal practice is to base such benefits on the number of hours worked.

(d) An employing office may not transfer the employee to an alternative position in order to discourage the employee from taking leave or otherwise work a hardship on the employee. For example, a white collar employee may not be assigned to perform laborer's work; an employee working the day shift may not be reassigned to the graveyard shift; an employee working in the headquarters facility may not be reassigned to a branch a significant distance away from the employee's normal job location. Any such attempt on the part of the employing office to make such a transfer will be held to be contrary to the prohibited-acts provisions of the FMLA, as made applicable by the CAA.

(e) When an employee who is taking leave intermittently or on a reduced leave schedule and has been transferred to an alternative position no longer needs to continue on leave and is able to return to full-time work, the employee must be placed in the same or equivalent job as the job he/she left when the leave commenced. An employee may not be required to take more leave than necessary to address the circumstance that precipitated the need for leave.

§ 825.205 How does one determine the amount of leave used where an employee takes leave intermittently or on a reduced leave schedule?

(a) If an employee takes leave on an intermittent or reduced leave schedule, only the amount of leave actually taken may be counted toward the 12 weeks of leave to which an employee is entitled. For example, if an employee who normally works five days a week takes off one day, the employee would use 1/5 of a week of FMLA leave. Similarly, if a full-time employee who normally works 8-hour days works 4-hour days under a reduced leave schedule, the employee would use ½ week of FMLA leave each week.

(b) Where an employee normally works a part-time schedule or variable hours, the amount of leave to which an employee is entitled is determined on a pro rata or proportional basis by comparing the new schedule with the employee's normal schedule. For example, if an employee who normally works 30 hours per week works only 20 hours a week under a reduced leave schedule, the employee's ten hours of leave would constitute one-third of a week of FMLA leave for each week the employee works the reduced leave schedule.

(c) If an employing office has made a permanent or long-term change in the employee's schedule (for reasons other than FMLA, and prior to the notice of need for FMLA leave), the hours worked under the new schedule are to be used for making this calculation.

(d) If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 weeks prior to the beginning of the leave period would be used for calculating the employee's normal workweek.

§ 825.206 May an employing office deduct hourly amounts from an employee's salary, when providing unpaid leave under FMLA, as made applicable by the CAA, without affecting the employee's qualification for exemption as an executive, administrative, or professional employee, or when utilizing the fluctuating workweek method for payment of overtime, under the Fair Labor Standards Act?

(a) Leave taken under FMLA, as made applicable by the CAA, may be unpaid. If an employee is otherwise exempt from minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA), as made applicable by the CAA, as a salaried executive, administrative, or professional employee (under regulations issued by the Board, at part 541), providing unpaid FMLA-qualifying leave to such an employee will not cause the employee to lose the FLSA exemption. This means that under regulations currently in effect, where an employee meets the specified duties test, is paid on a salary basis, and is paid a salary of at least the amount specified in the regulations, the employing office may make deductions from the employee's salary for any hours taken as intermittent or reduced FMLA leave within

(b) For an employee paid in accordance with a fluctuating workweek method of payment for overtime, where permitted by section 203 of the CAA (2 U.S.C. 1313), the employing office, *during the period* in which

intermittent or reduced schedule FMLA leave is scheduled to be taken, may compensate an employee on an hourly basis and pay only for the hours the employee works, including time and one-half the employee's regular rate for overtime hours. The change to payment on an hourly basis would include the entire period during which the employee is taking intermittent leave, including weeks in which no leave is taken. The hourly rate shall be determined by dividing the employee's weekly salary by the employee's normal or average schedule of hours worked during weeks in which FMLA leave is not being taken. If an employing office chooses to follow this exception from the fluctuating workweek method of payment, the employing office must do so uniformly, with respect to all employees paid on a fluctuating workweek basis for whom FMLA leave is taken on an intermittent or reduced leave schedule basis. If an employing office does not elect to convert the employee's compensation to hourly pay, no deduction may be taken for FMLA leave absences. Once the need for intermittent or reduced scheduled leave is over, the employee may be restored to payment on a fluctuating work week basis.

(c) This special exception to the "salary basis" requirements of the FLSA exemption or fluctuating workweek payment requirements applies only to employees of employing offices who are eligible for FMLA leave, and to leave which qualifies as (one of the four types of) FMLA leave. Hourly or other deductions which are not in accordance with the Board's regulations at part 541 or with a permissible fluctuating workweek method of payment for overtime may not be taken, for example, where the employee has not worked long enough to be eligible for FMLA leave without potentially affecting the employee's eligibility for exemption. Nor may deductions which are not permitted by the Board's regulations at part 541 or by a permissible fluctuating workweek method of payment for overtime be taken from such an employee's salary for any leave which does not qualify as FMLA leave, for example, deductions from an employee's pay for leave required under an employing office's policy or practice for a reason which does not qualify as FMLA leave, *e.g.*, leave to care for a grandparent or for a medical condition which does not qualify as a serious health condition; or for leave which is more generous than provided by FMLA as made applicable by the CAA, such as leave in excess of 12 weeks in a year. The employing office may comply with the employing office's own policy/practice under these circumstances and maintain the employee's eligibility for exemption or for the fluctuating workweek method of pay by not taking hourly deductions from the employee's pay, in accordance with FLSA requirements, or may take such deductions, treating the employee as an "hourly" employee and pay overtime premium pay for hours worked over 40 in a workweek.

§ 825.207 Is FMLA leave paid or unpaid?

(a) Generally, FMLA leave is unpaid. However, under the circumstances described in this section, FMLA, as made applicable by the CAA, permits an eligible employee to choose to substitute paid leave for FMLA leave. If an employee does not choose to substitute accrued paid leave, the employing office may require the employee to substitute accrued paid leave for FMLA leave.

(b) Where an employee has earned or accrued paid vacation, personal or family leave, that paid leave may be substituted for all or part of any (otherwise) unpaid FMLA leave relating to birth, placement of a child for adoption or foster care, or care for a spouse, child or parent who has a serious health condition. The term "family leave" as used in FMLA refers to paid leave provided by the employing office covering the particular circumstances for which the employee seeks leave for either the birth of a child and to care for such child, placement of a child for adoption or foster care, or care for a spouse, child or parent with a serious health condition. For example, if the employing office's leave plan allows use of family leave to care for a child but not for a parent, the employing office is not required to allow accrued family leave to be substituted for FMLA leave used to care for a parent.

(c) Substitution of paid accrued vacation, personal, or medical/sick leave may be made for any (otherwise) unpaid FMLA leave needed to care for a family member or the employee's own serious health condition. Substitution of paid sick/medical leave may be elected to the extent the circumstances meet the employing office's usual requirements for the use of sick/medical leave. An employing office is not required to allow substitution of paid sick or medical leave for unpaid FMLA leave "in any situation" where the employing office's uniform policy would not normally allow such paid leave. An employee, therefore, has a right to substitute paid medical/sick leave to care for a seriously ill family member only if the employing office's leave plan allows paid leave to be used for that purpose. Similarly, an employee does not have a right to substitute paid medical/sick leave for a serious health condition which is not covered by the employing office's leave plan.

(d)(1) Disability leave for the birth of a child would be considered FMLA leave for a serious health condition and counted in the 12 weeks of leave permitted under FMLA as made applicable by the CAA. Because the leave pursuant to a temporary disability benefit plan is not unpaid, the provision for substitution of paid leave is inapplicable. However, the employing office may designate the leave as FMLA leave and count the leave as running concurrently for purposes of both the benefit plan and the FMLA leave entitlement. If the requirements to qualify for payments pursuant to the employing office's temporary disability plan are more stringent than those of FMLA as made applicable by the CAA, the employee must meet the more stringent requirements of the plan, or may choose not to meet the requirements of the plan and instead receive no payments from the plan and use unpaid FMLA leave or substitute available accrued paid leave.

(2) The FMLA as made applicable by the CAA provides that a serious health condition may result from injury to the employee "on or off" the job. If the employing office designates the leave as FMLA leave in accordance with § 825.208, the employee's FMLA 12-week leave entitlement may run concurrently with a workers' compensation absence when the injury is one that meets the criteria for a serious health condition. As the workers' compensation absence is not unpaid leave, the provision for substitution of the employee's accrued paid leave is not applicable. However, if the health care provider treating the employee for the workers' compensation injury certifies the employee is able to return to a "light duty job" but is unable to return to the same or equivalent job, the employee may decline the employing office's offer of a "light duty job". As a result the employee may lose workers' compensation payments, but is entitled to remain on unpaid FMLA leave until the 12-week entitlement is exhausted. As of the date workers' compensation benefits cease, the substitution provision becomes applicable and either the employee may elect or the employing office may require the use of accrued paid leave. See also §§825.210(f), 825.216(d), 825.220(d), 825.307(a)(1) and 825.702 (d) (1) and (2) regarding the relationship between workers' compensation absences and FMLA leave.

(e) Paid vacation or personal leave, including leave earned or accrued under plans allowing "paid time off," may be substituted, at either the employee's or the employing office's option, for any qualified FMLA leave. No limitations may be placed by the employing office on substitution of paid vacation or personal leave for these purposes.

(f) If neither the employee nor the employing office elects to substitute paid leave for unpaid FMLA leave under the above conditions and circumstances, the employee will remain entitled to all the paid leave which is earned or accrued under the terms of the employing office's plan.

(g) If an employee uses paid leave under circumstances which do not qualify as FMLA leave, the leave will not count against the 12 weeks of FMLA leave to which the employee is entitled. For example, paid sick leave used for a medical condition which is not a serious health condition does not count against the 12 weeks of FMLA leave entitlement.

(h) When an employee or employing office elects to substitute paid leave (of any type) for unpaid FMLA leave under circumstances permitted by these regulations, and the employing office's procedural requirements for taking that kind of leave are less stringent than the requirements of FMLA as made applicable by the CAA (e.g., notice or certification requirements), only the less stringent requirements may be imposed. An employee who complies with an employing office's less stringent leave plan requirements in such cases may not have leave for an FMLA purpose delayed or denied on the grounds that the employee has not complied with stricter requirements of FMLA as made applicable by the CAA. However, where accrued paid vacation or personal leave is substituted for unpaid FMLA leave for a serious health condition, an employee may be required to comply with any less stringent medical certification requirements of the employing office's sick leave program. See §§825.302(g), 825.305(e) and 825.306(c).

(i) Compensatory time off, if any is authorized under applicable law, is not a form of accrued paid leave that an employing office may require the employee to substitute for unpaid FMLA leave. The employee may request to use his/her balance of compensatory time for an FMLA reason. If the employing office permits the accrual of compensatory time to be used in compliance with applicable Board regulations, the absence which is paid from the employee's accrued compensatory time "account" may not be counted against the employee's FMLA leave entitlement.

§ 825.208 Under what circumstances may an employing office designate leave, paid or unpaid, as FMLA leave and, as a result, enable leave to be counted against the employee's total FMLA leave entitlement?

(a) In all circumstances, it is the employing office's responsibility to designate leave, paid or unpaid, as FMLA-qualifying, and to give notice of the designation to the employee as provided in this section. In the *e.g.*, if the employee is incapacitated, the employee's spouse, adult child, parent, doctor, etc.,

may provide notice to the employing office of the need to take FMLA leave). In any circumstance where the employing office does not have sufficient information about the reason for an employee's use of paid leave, the employing office should inquire further of the employee or the spokesperson to ascertain whether the paid leave is potentially FMLA-qualifying.

(1) An employee giving notice of the need for unpaid FMLA leave must explain the reasons for the needed leave so as to allow the employing office to determine that the leave qualifies under the FMLA, as made applicable by the CAA. If the employee fails to explain the reasons, leave may be denied. In many cases, in explaining the reasons for a request to use paid leave, especially when the need for the leave was unexpected or unforeseen, an employee will provide sufficient information for the employing office to designate the paid leave as FMLA leave. An employee using accrued paid leave, especially vacation or personal leave, may in some cases not spontaneously explain the reasons or their plans for using their accrued leave.

(2) As noted in §825.302(c), an employee giving notice of the need for unpaid FMLA leave does not need to expressly assert rights under the FMLA as made applicable by the CAA or even mention the FMLA to meet his or her obligation to provide notice, though the employee would need to state a qualifying reason for the needed leave. An employee requesting or notifying the employing office of an intent to use accrued paid leave, even if for a purpose covered by FMLA, would not need to assert such right either. However, if an employee requesting to use paid leave for an FMLA-qualifying purpose does not explain the reason for the leave—consistent with the employing office's established policy or practice—and the employing office denies the employee's request, the employee will need to provide sufficient information to establish an FMLA-qualifying reason for the needed leave so that the employing office is aware of the employee's entitlement (i.e., that the leave may not be denied) and, then, may designate that the paid leave be appropriately counted against (substituted for) the employee's 12-week entitlement. Similarly, an employee using accrued paid vacation leave who seeks an extension of unpaid leave for an FMLA-qualifying purpose will need to state the reason. If this is due to an event which occurred during the period of paid leave, the employing office may count the leave used after the FMLA-qualifying event against the employee's 12-week entitlement.

(b)(1) Once the employing office has acquired knowledge that the leave is being taken for an FMLA required reason, the employing office must promptly (within two business days absent extenuating circumstances) notify the employee that the paid leave is designated and will be counted as FMLA leave. If there is a dispute between an employing office and an employee as to whether paid leave qualifies as FMLA leave, it should be resolved through discussions between the employee and the employing office. Such discussions and the decision must be documented.

(2) The employing office's notice to the employee that the leave has been designated as FMLA leave may be orally or in writing. If the notice is oral, it shall be confirmed in writing, no later than the following payday (unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday). The written notice may be in any form, including a notation on the employee's pay stub.

(c) If the employing office requires paid leave to be substituted for unpaid leave, or that paid leave taken under an existing leave plan be counted as FMLA leave, this decision must be made by the employing office within two business days of the time the employee gives notice of the need for leave, or, where the employing office does not initially have sufficient information to make a determination, when the employing office determines that the leave qualifies as FMLA leave if this happens later. The employing office's designation must be made before the leave starts, unless the employing office does not have sufficient information as to the employee's reason for taking the leave until after the leave commenced. If the employing office has the requisite knowledge to make a determination that the paid leave is for an FMLA reason at the time the employee either gives notice of the need for leave or commences leave and fails to designate the leave as FMLA leave (and so notify the employee in accordance with paragraph (b)), the employing office may not designate leave as FMLA leave retroactively, and may designate only prospectively as of the date of notification to the employee of the designation. In such circumstances, the employee is subject to the full protections of the FMLA, as made applicable by the CAA, but none of the absence preceding the notice to the employee of the designation may be counted against the employee's 12-week FMLA leave entitlement.

(d) If the employing office learns that leave is for an FMLA purpose after leave has begun, such as when an employee gives notice of the need for an extension of the paid leave with unpaid FMLA leave, the entire or some portion of the paid leave period may be retroactively counted as FMLA leave, to the extent that the leave period qualified as FMLA leave. For example, an employee is granted two weeks paid vacation leave for a skiing trip. In mid-week of the second week, the employee contacts the employing office for an extension of leave as unpaid leave and advises that at the beginning of the second week of paid vacation leave the employee suffered a severe accident requiring hospitalization. The employing office may notify the employee that both the extension and the second week of paid vacation leave (from the date of the injury) is designated as FMLA leave. On the other hand, when the employee takes sick leave that turns into a serious health condition (*e.g.*, bronchitis that turns into bronchial pneumonia) and the employee gives notice of the need for an extension of leave, the entire period of the serious health condition may be counted as FMLA leave.

(e) Employing offices may not designate leave as FMLA leave after the employee has returned to work with two exceptions:

(1) If the employee was absent for an FMLA reason and the employing office did not learn the reason for the absence until the employee's return (e.g., where the employee was absent for only a brief period), the employing office may, upon the employee's return to work, promptly (within two business days of the employee's return to work) designate the leave retroactively with appropriate notice to the employee. If leave is taken for an FMLA reason but the employing office was not aware of the reason, and the employee desires that the leave be counted as FMLA leave, the employee must notify the employing office within two business days of returning to work of the reason for the leave. In the absence of such timely notification by the employee, the employee may not subsequently assert FMLA protections for the absence.

(2) If the employing office knows the reason for the leave but has not been able to confirm that the leave qualifies under FMLA, or where the employing office has requested medical certification which has not yet been received or the parties are in the process of obtaining a second or third medical opinion, the employing office should make a preliminary designation, and so notify the employee, at the time leave begins, or as soon as the reason for the leave becomes known. Upon receipt of the requisite information from the employee or of the medical certification which confirms the leave is for an FMLA reason, the preliminary designation becomes final. If the medical certifications fail to confirm that the reason for the absence was an FMLA reason, the employing office must withdraw the designation (with written notice to the employee).

(f) If, before beginning employment with an employing office, an employee had been employed by another employing office, the subsequent employing office may count against the employee's FMLA leave entitlement FMLA leave taken from the prior employing office, except that, if the FMLA leave began after the effective of these regulations (or if the FMLA leave was subject to other applicable requirement under which the employing office was to have designated the leave as FMLA leave), the prior employing office must have properly designated the leave as FMLA under these regulations or other applicable requirement.

§825.209 Is an employee entitled to benefits while using FMLA leave?

(a) During any FMLA leave, the employing office must maintain the employee's coverage under the Federal Employees Health Benefits Program or any group health plan (as defined in the Internal Revenue Code of 1986 at 26 U.S.C. 5000(b)(1)) on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period. All employing offices are subject to the requirements of the FMLA, as made applicable by the CAA, to maintain health coverage. The definition of "group health plan" is set forth in §825.800. For purposes of FMLA, the term "group health plan" shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that:

(1) no contributions are made by the employing office;

(2) participation in the program is completely voluntary for employees;

(3) the sole functions of the employing office with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer;

(4) the employing office receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and,

(5) the premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

(b) The same group health plan benefits provided to an employee prior to taking FMLA leave must be maintained during the FMLA leave. For example, if family member coverage is provided to an employee, family

member coverage must be maintained during the FMLA leave. Similarly, benefit coverage

(c) If an employing office provides a new health plan or benefits or changes health benefits or plans while an employee is on FMLA leave, the employee is entitled to the new or changed plan/benefits to the same extent as if the employee were not on leave. For example, if an employing office changes a group health plan so that dental care becomes covered under the plan, an employee on FMLA leave must be given the same opportunity as other employees to receive (or obtain) the dental care coverage. Any other plan changes (*e.g.*, in coverage, premiums, deductibles, etc.) which apply to all employees of the workforce would also apply to an employee on FMLA leave.

(d) Notice of any opportunity to change plans or benefits must also be given to an employee on FMLA leave. If the group health plan permits an employee to change from single to family coverage upon the birth of a child or otherwise add new family members, such a change in benefits must be made available while an employee is on FMLA leave. If the employee requests the changed coverage it must be provided by the employing office.

(e) An employee may choose not to retain group health plan coverage during FMLA leave. However, when an employee returns from leave, the employee is entitled to be reinstated on the same terms as prior to taking the leave, including family or dependent coverages, without any qualifying period, physical examination, exclusion of pre-existing conditions, etc. See §825.212(c).

(f) Except as required by the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) or 5 U.S.C. 8905a, whichever is applicable, and for "key" employees (as discussed below), an employing office's obligation to maintain health benefits during leave (and to restore the employee to the same or equivalent employment) under FMLA ceases if and when the employment relationship would have terminated if the employee had not taken FMLA leave (*e.g.*, if the employee's position is eliminated as part of a nondiscriminatory reduction in force and the employee would not have been transferred to another position); an employee informs the employing office of his or her intent not to return from leave (including before starting the leave if the employing office is so informed before the leave starts); or the employee fails to return from leave or continues on leave after exhausting his or her FMLA leave entitlement in the 12-month period.

(g) If a "key employee" (see §825.218) does not return from leave when notified by the employing office that substantial or grievous economic injury will result from his or her reinstatement, the employee's entitlement to group health plan benefits continues unless and until the employee advises the employing office that the employee does not desire restoration to employment at the end of the leave period, or FMLA leave entitlement is exhausted, or reinstatement is actually denied.

(h) An employee's entitlement to benefits other than group health benefits during a period of FMLA leave (*e.g.*, holiday pay) is to be determined by the employing office's established policy for providing such benefits when the employee is on other forms of leave (paid or unpaid, as appropriate).

§825.210 How may employees on FMLA leave pay their share of group health benefit premiums?

(a) Group health plan benefits must be maintained on the same basis as coverage would have been provided if the employee had been continuously employed during the FMLA leave period. Therefore, any share of group health plan premiums which had been paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA leave period. If premiums are raised or lowered, the employee would be required to pay the new premium rates. Maintenance of health insurance policies which are not a part of the employing office's group health plan, as described in §825.209(a), are the sole responsibility of the employee. The employee and the insurer should make necessary arrangements for payment of premiums during periods of unpaid FMLA leave.

(b) If the FMLA leave is substituted paid leave, the employee's share of premiums must be paid by the method normally used during any paid leave, presumably as a payroll deduction.

(c) If FMLA leave is unpaid, the employing office has a number of options for obtaining payment from the employee. The employing office may require that payment be made to the employing office or to the insurance carrier, but no additional charge may be added to the employee's premium payment for administrative expenses. The employing office may require employees to pay their share of premium payments in any of the following ways:

(1) Payment would be due at the same time as it would be made if by payroll deduction;

(2) Payment would be due on the same schedule as payments are made under COBRA or 5 U.S.C. 8905a, whichever is applicable;

(3) Payment would be prepaid pursuant to a cafeteria plan at the employee's option;

(4) The employing office's existing rules for payment by employees on "leave without pay" would be followed, provided that such rules do not require prepayment (*i.e.*, prior to the commencement of the leave) of the premiums that will become due during a period of unpaid FMLA leave or payment of higher premiums than if the employee had continued to work instead of taking leave; or,

(5) Another system voluntarily agreed to between the employing office and the employee, which may include prepayment of premiums (*e.g.*, through increased payroll deductions when the need for the FMLA leave is foreseeable).

(d) The employing office must provide the employee with advance written notice of the terms and conditions under which these payments must be made. (*See* §825.301.)

(e) An employing office may not require more of an employee using FMLA leave than the employing office requires of other employees on "leave without pay."

(f) An employee who is receiving payments as a result of a workers' compensation injury must make arrangements with the employing office for payment of group health plan benefits when simultaneously taking unpaid FMLA leave. *See* paragraph (c) of this section and §825.207(d)(2).

§825.211 What special health benefits maintenance rules apply to multi-employer health plans?

(a) A multi-employer health plan is a plan to which more than one employer is required to contribute, and which is maintained pursuant to one or more collective bargaining agreements between employee organization(s) and the employers.

(b) An employing office under a multi-employer plan must continue to make contributions on behalf of an employee using FMLA leave as though the employee had been continuously employed, unless the plan contains an explicit FMLA provision for maintaining coverage such as through pooled contributions by all employers party to the plan.

(c) During the duration of an employee's FMLA leave, coverage by the group health plan, and benefits provided pursuant to the plan, must be maintained at the level of coverage and benefits which were applicable to the employee at the time FMLA leave commenced.

(d) An employee using FMLA leave cannot be required to use "banked" hours or pay a greater premium than the employee would have been required to pay if the employee had been continuously employed.

(e) As provided in §825.209(f), group health plan coverage must be maintained for an employee on FMLA leave until:

(1) the employee's FMLA leave entitlement is exhausted;

(2) the employing office can show that the employee would have been laid off and the employment relationship terminated; or,

(3) the employee provides unequivocal notice of intent not to return to work.

§825.212 What are the consequences of an employee's failure to make timely health plan premium payments?

(a)(1) In the absence of an established employing office policy providing a longer grace period, an employing office's obligations to maintain health insurance coverage cease under FMLA if an employee's premium payment is more than 30 days late. In order to drop the coverage for an employee whose premium payment is late, the employing office must provide written notice to the employee that the payment has not been received. Such notice must be mailed to the employee at least 15 days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 days after the date of the letter unless the payment has been received by that date. If the employing office has established policies regarding other forms of unpaid leave that provide for the employing office to cease coverage retroactively to the date the unpaid premium payment was due, the employing office may drop the employee from coverage retroactively in accordance with that policy, provided the 15-day notice was given. In the absence of such a policy, coverage for the employee may be terminated at the end of the 30-day grace period, where the required 15-day notice has been provided.

(2) An employing office has no obligation regarding the maintenance of a health insurance policy which is not a "group health plan." See §825.209(a).

(3) All other obligations of an employing office under FMLA would continue; for example, the employing office continues to have an obligation to reinstate an employee upon return from leave.

(b) The employing office may recover the employee's share of any premium payments missed by the employee for any FMLA leave period during which the employing office maintains health coverage by paying the employee's share after the premium payment is missed.

(c) If coverage lapses because an employee has not made required premium payments, upon the employee's return from FMLA leave the employing office must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage. See §825.215(d)(1)-(5). In such case, an employee

may not be required to meet any qualification requirements imposed by the plan, including any new preexisting condition waiting period, to wait for an open season, or to

§ 825.213 May an employing office recover costs it incurred for maintaining "group health plan" or other non-health benefits coverage during FMLA leave?

(a) In addition to the circumstances discussed in § 825.212(b), the share of health plan premiums paid by or on behalf of the employing office during a period of unpaid FMLA leave may be recovered from an employee if the employee fails to return to work after the employee's FMLA leave entitlement has been exhausted or expires, unless the reason the employee does not return is due to:

(1) The continuation, recurrence, or onset of a serious health condition of the employee or the employee's family member which would otherwise entitle the employee to leave under FMLA; or

(2) Other circumstances beyond the employee's control. Examples of "other circumstances beyond the employee's control" are necessarily broad. They include such situations as where a parent chooses to stay home with a newborn child who has a serious health condition; an employee's spouse is unexpectedly transferred to a job location more than 75 miles from the employee's worksite; a relative or individual other than an immediate family member has a serious health condition and the employee is needed to provide care; the employee is laid off while on leave; or, the employee is a "key employee" who decides not to return to work upon being notified of the employing office's intention to deny restoration because of substantial and grievous economic injury to the employing office's operations and is not reinstated by the employing office. Other circumstances beyond the employee's control would not include a situation where an employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care, or a parent chooses not to return to work to stay home with a well, newborn child.

(3) When an employee fails to return to work because of the continuation, recurrence, or onset of a serious health condition, thereby precluding the employing office from recovering its (share of) health benefit premium payments made on the employee's behalf during a period of unpaid FMLA leave, the employing office may require medical certification of the employee's or the family member's serious health condition. Such certification is not required unless requested by the employing office. The employee is required to provide medical certification in a timely manner which, for purposes of this section, is within 30 days from the date of the employing office's request. For purposes of medical certification, the employee may use the optional form developed for this purpose (see § 825.306(a) and Appendix B of this part). If the employing office requests medical certification and the employee does not provide such certification in a timely manner (within 30 days), or the reason for not returning to work does not meet the test of other circumstances beyond the employee's control, the employing office may recover 100% of the health benefit premiums it paid during the period of unpaid FMLA leave.

(b) Under some circumstances an employing office may elect to maintain other benefits, *e.g.*, life insurance, disability insurance, *etc.*, by paying the employee's (share of) premiums during periods of unpaid FMLA leave. For example, to ensure the employing office can meet its responsibilities to provide equivalent benefits to the employee upon return from unpaid FMLA leave, it may be necessary that premiums be paid continuously to avoid a lapse of coverage. If the employing office elects to maintain such benefits during the leave, at the conclusion of leave, the employing office is entitled to recover only the costs incurred for paying the employee's share of any premiums whether or not the employee returns to work.

(c) An employee who returns to work for at least 30 calendar days is considered to have "returned" to work. An employee who transfers directly from taking FMLA leave to retirement, or who retires during the first 30 days after the employee returns to work, is deemed to have returned to work.

(d) When an employee elects or an employing office requires paid leave to be substituted for FMLA leave, the employing office may not recover its (share of) health insurance or other non-health benefit premiums for any period of FMLA leave covered by paid leave. Because paid leave provided under a plan covering temporary disabilities (including workers' compensation) is not unpaid, recovery of health insurance premiums does not apply to such paid leave.

(e) The amount that self-insured employing offices may recover is limited to only the employing office's share of allowable "premiums" as would be calculated under COBRA, excluding the 2 percent fee for administrative costs.

(f) When an employee fails to return to work, any health and non-health benefit premiums which this section of the regulations permits an employing office to recover are a debt owed by the non-returning employee to the employing office. The existence of this debt caused by the employee's failure to return to work does not alter the employing office's responsibilities for health benefit coverage and, under a self-insurance plan, payment of claims incurred during the period of FMLA leave. To the extent recovery is allowed, the employing office may recover the costs through deduction from any sums due to the employee (*e.g.*, unpaid wages, vacation pay, *etc.*), provided such deductions do not otherwise violate applicable wage payment or other laws. Alternatively, the employing office may initiate legal action against the employee to recover such costs.

§ 825.214 What are an employee's rights on returning to work from FMLA leave?

(a) On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to such reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. *See* also § 825.106(e) for the obligations of employing offices that are joint employing offices.

(b) If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under the FMLA. However, the employing office's obligations may be governed by the Americans with Disabilities Act (ADA), as made applicable by the CAA. *See* § 825.702.

§ 825.215 What is an equivalent position?

(a) An equivalent position is one that is virtually identical to the employee's former position in terms of pay, benefits and working conditions, including privileges, perquisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

(b) If an employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license, fly a minimum number of hours, *etc.*, as a result of the leave, the employee shall be given a reasonable opportunity to fulfill those conditions upon return to work.

(c) *Equivalent Pay.* (1) An employee is entitled to any unconditional pay increases which may have occurred during the FMLA leave period, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed would not have to be granted unless it is the employing office's policy or practice to do so with respect to other employees on "leave without pay." In such case, any pay increase would be granted based on the employee's seniority, length of service, work performed, *etc.*, excluding the period of unpaid FMLA leave. An employee is entitled to be restored to a position with the same or equivalent pay premiums, such as a shift differential. If an employee departed from a position averaging ten hours of overtime (and corresponding overtime pay) each week, an employee is ordinarily entitled to such a position on return from FMLA leave.

(2) Many employing offices pay bonuses in different forms to employees for job-related performance such as for perfect attendance, safety (absence of injuries or accidents on the job) and exceeding production goals. Bonuses for perfect attendance and safety do not require performance by the employee but rather contemplate the absence of occurrences. To the extent an employee who takes FMLA leave had met all the requirements for either or both of these bonuses before FMLA leave began, the employee is entitled to continue this entitlement upon return from FMLA leave, that is, the employee may not be disqualified for the bonus(es) for the taking of FMLA leave. *See* § 825.220 (b) and (c). A monthly production bonus, on the other hand, does require performance by the employee. If the employee is on FMLA leave during any part of the period for which the bonus is computed, the employee is entitled to the same consideration for the bonus as other employees on paid or unpaid leave (as appropriate). *See* paragraph (d)(2) of this section.

(d) *Equivalent Benefits.* "Benefits" include all benefits provided or made available to employees by an employing office, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employing office through an employee benefit plan.

(1) At the end of an employee's FMLA leave, benefits must be resumed in the same manner and at the same levels as provided when the leave began, and subject to any changes in benefit levels that may have taken place during the period of FMLA leave affecting the entire workforce, unless otherwise elected by the employee. Upon return from FMLA leave, an employee cannot be required to requalify for any benefits the employee enjoyed before FMLA leave began (including family or dependent coverages). For example, if an employee was covered by a life insurance policy before taking leave but is not covered or coverage lapses during the period of unpaid FMLA leave, the employee

cannot be required to meet any qualifications, such as taking a physical examination, in order to requalify for life insurance upon return from leave. Accordingly, some employing offices may find it necessary to modify life insurance and other benefits programs in order to restore employees to equivalent benefits upon return from FMLA leave, make arrangements for continued payment of costs to maintain such benefits during unpaid FMLA leave, or pay these costs subject to recovery from the employee on return from leave. *See* §825.213(b).

(2) An employee may, but is not entitled to, accrue any additional benefits or seniority during unpaid FMLA leave. Benefits accrued at the time leave began, however, (*e.g.*, paid vacation, sick or personal leave to the extent not substituted for FMLA leave) must be available to an employee upon return from leave.

(3) If, while on unpaid FMLA leave, an employee desires to continue life insurance, disability insurance, or other types of benefits for which he or she typically pays, the employing office is required to follow established policies or practices for continuing such benefits for other instances of leave without pay. If the employing office has no established policy, the employee and the employing office are encouraged to agree upon arrangements before FMLA leave begins.

(4) With respect to pension and other retirement plans, any period of unpaid FMLA leave shall not be treated as or counted toward a break in service for purposes of vesting and eligibility to participate. Also, if the plan requires an employee to be employed on a specific date in order to be credited with a year of service for vesting, contributions or participation purposes, an employee on unpaid FMLA leave on that date shall be deemed to have been employed on that date. However, unpaid FMLA leave periods need not be treated as credited service for purposes of benefit accrual, vesting and eligibility to participate.

(5) Employees on unpaid FMLA leave are to be treated as if they continued to work for purposes of changes to benefit plans. They are entitled to changes in benefits plans, except those which may be dependent upon seniority or accrual during the leave period, immediately upon return from leave or to the same extent they would have qualified if no leave had been taken. For example if the benefit plan is predicated on a pre-established number of hours worked each year and the employee does not have sufficient hours as a result of taking unpaid FMLA leave, the benefit is lost. (In this regard, §825.209 addresses health benefits.)

(e) *Equivalent Terms and Conditions of Employment.* An equivalent position must have substantially similar duties, conditions, responsibilities, privileges and status as the employee's original position.

(1) The employee must be reinstated to the same or a geographically proximate worksite (*i.e.*, one that does not involve a significant increase in commuting time or distance) from where the employee had previously been employed. If the employee's original worksite has been closed, the employee is entitled to the same rights as if the employee had not been on leave when the worksite closed. For example, if an employing office transfers all employees from a closed worksite to a new worksite in a different city, the employee on leave is also entitled to transfer under the same conditions as if he or she had continued to be employed.

(2) The employee is ordinarily entitled to return to the same shift or the same or an equivalent work schedule.

(3) The employee must have the same or an equivalent opportunity for bonuses and other similar discretionary and non-discretionary payments.

(4) FMLA does not prohibit an employing office from accommodating an employee's request to be restored to a different shift, schedule, or position which better suits the employee's personal needs on return from leave, or to offer a promotion to a better position. However, an employee cannot be induced by the employing office to accept a different position against the employee's wishes.

(f) The requirement that an employee be restored to the same or equivalent job with the same or equivalent pay, benefits, and terms and conditions of employment does not extend to *de minimis* or intangible, unmeasurable aspects of the job. However, restoration to a job slated for lay-off, when the employee's original position is not, would not meet the requirements of an equivalent position.

§825.216 Are there any limitations on an employing office's obligation to reinstate an employee?

(a) An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. An employing office must be able to show that an employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment. For example:

(1) If an employee is laid off during the course of taking FMLA leave and employment is terminated, the employing office's responsibility to continue FMLA leave, maintain group health plan benefits and restore the employee ceases at the time the employee is laid off, provided the employing office has no continuing obligations under a collective bargaining agreement or otherwise. An employing office would have the burden of proving that an employee would have been laid off during the FMLA leave period and, therefore, would not be entitled to restoration.

(2) If a shift has been eliminated, or overtime has been decreased, an employee would not be entitled to return to work that shift or the original overtime hours upon restoration. However, if a position on, for example, a night shift has been filled by another employee, the employee is entitled to return to the same shift on which employed before taking FMLA leave.

(b) If an employee was hired for a specific term or only to perform work on a discrete project, the employing office has no obligation to restore the employee if the employment term or project is over and the employing office would not otherwise have continued to employ the employee.

(c) In addition to the circumstances explained above, an employing office may deny job restoration to salaried eligible employees ("key employees," as defined in paragraph (c) of §825.217) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the employing office; or may delay restoration to an employee who fails to provide a fitness for duty certificate to return to work under the conditions described in §825.310.

(d) If the employee has been on a workers' compensation absence during which FMLA leave has been taken concurrently, and after 12 weeks of FMLA leave the employee is unable to return to work, the employee no longer has the protections of FMLA and must look to the workers' compensation statute or ADA, as made applicable by the CAA, for any relief or protections.

§825.217 What is a "key employee"?

(a) A "key employee" is a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employing office within 75 miles of the employee's worksite.

(b) The term "salaried" means paid on a salary basis, within the meaning of the Board's regulations at part 541, implementing section 203 of the CAA (2 U.S.C. 1313) (regarding employees who may qualify as exempt from the minimum wage and overtime requirements of the FLSA, as made applicable by the CAA, as executive, administrative, and professional employees).

(c) A "key employee" must be "among the highest paid 10 percent" of all the employees "both salaried and non-salaried, eligible and ineligible "who are employed by the employing office within 75 miles of the worksite.

(1) In determining which employees are among the highest paid 10 percent, year-to-date earnings are divided by weeks worked by the employee (including weeks in which paid leave was taken). Earnings include wages, premium pay, incentive pay, and non-discretionary and discretionary bonuses. Earnings do not include incentives whose value is determined at some future date, *e.g.*, benefits or perquisites.

(2) The determination of whether a salaried employee is among the highest paid 10 percent shall be made at the time the employee gives notice of the need for leave. No more than 10 percent of the employing office's employees within 75 miles of the worksite may be "key employees."

§825.218 What does "substantial and grievous economic injury" mean?

(a) In order to deny restoration to a key employee, an employing office must determine that the restoration of the employee to employment will cause "substantial and grievous economic injury" to the operations of the employing office, not whether the absence of the employee will cause such substantial and grievous injury.

(b) An employing office may take into account its ability to replace on a temporary basis (or temporarily do without) the employee on FMLA leave. If permanent replacement is unavoidable, the cost of then reinstating the employee can be considered in evaluating whether substantial and grievous economic injury will occur from restoration; in other words, the effect on the operations of the employing office of reinstating the employee in an equivalent position.

(c) A precise test cannot be set for the level of hardship or injury to the employing office which must be sustained. If the reinstatement of a "key employee" threatens the economic viability of the employing office, that would constitute "substantial and grievous economic injury." A lesser injury which causes substantial, long-term economic injury would also be sufficient. Minor inconveniences and costs that the employing office would experience in the normal course would certainly not constitute "substantial and grievous economic injury."

(d) FMLA's "substantial and grievous economic injury" standard is different from and more stringent than the "undue hardship" test under the ADA (see, also §825.702).

§825.219 What are the rights of a key employee?

(a) An employing office which believes that reinstatement may be denied to a key employee, must give written notice to the employee at the time the employee gives notice

of the need for FMLA leave (or when FMLA leave commences, if earlier) that he or she qualifies as a key employee. At the same time, the employing office must also fully inform the employee of the potential consequences with respect to reinstatement and maintenance of health benefits if the employing office should determine that substantial and grievous economic injury to the employing office's operations will result if the employee is reinstated from FMLA leave. If such notice cannot be given immediately because of the need to determine whether the employee is a key employee, it shall be given as soon as practicable after being notified of a need for leave (or the commencement of leave, if earlier). It is expected that in most circumstances there will be no desire that an employee be denied restoration after FMLA leave and, therefore, there would be no need to provide such notice. However, an employing office who fails to provide such timely notice will lose its right to deny restoration even if substantial and grievous economic injury will result from reinstatement.

(b) As soon as an employing office makes a good faith determination, based on the facts available, that substantial and grievous economic injury to its operations will result if a key employee who has given notice of the need for FMLA leave or is using FMLA leave is reinstated, the employing office shall notify the employee in writing of its determination, that it cannot deny FMLA leave, and that it intends to deny restoration to employment on completion of the FMLA leave. It is anticipated that an employing office will ordinarily be able to give such notice prior to the employee starting leave. The employing office must serve this notice either in person or by certified mail. This notice must explain the basis for the employing office's finding that substantial and grievous economic injury will result, and, if leave has commenced, must provide the employee a reasonable time in which to return to work, taking into account the circumstances, such as the length of the leave and the urgency of the need for the employee to return.

(c) If an employee on leave does not return to work in response to the employing office's notification of intent to deny restoration, the employee continues to be entitled to maintenance of health benefits and the employing office may not recover its cost of health benefit premiums. A key employee's rights under FMLA continue unless and until either the employee gives notice that he or she no longer wishes to return to work, or the employing office actually denies reinstatement at the conclusion of the leave period.

(d) After notice to an employee has been given that substantial and grievous economic injury will result if the employee is reinstated to employment, an employee is still entitled to request reinstatement at the end of the leave period even if the employee did not return to work in response to the employing office's notice. The employing office must then again determine whether there will be substantial and grievous economic injury from reinstatement, based on the facts at that time. If it is determined that substantial and grievous economic injury will result, the employing office shall notify the employee in writing (in person or by certified mail) of the denial of restoration.

§ 825.220 How are employees protected who request leave or otherwise assert FMLA rights?

(a) The FMLA, as made applicable by the CAA, prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights. More specifically, the law contains the following employee protections:

(1) An employing office is prohibited from interfering with, restraining, or denying the exercise of (or attempts to exercise) any rights provided by the FMLA as made applicable by the CAA.

(2) An employing office is prohibited from discharging or in any other way discriminating against any covered employee (whether or not an eligible employee) for opposing or complaining about any unlawful practice under the FMLA as made applicable by the CAA.

(3) All employing offices are prohibited from discharging or in any other way discriminating against any covered employee (whether or not an eligible employee) because that covered employee has—

(i) Filed any charge, or has instituted (or caused to be instituted) any proceeding under or related to the FMLA, as made applicable by the CAA;

(ii) Given, or is about to give, any information in connection with an inquiry or proceeding relating to a right under the FMLA, as made applicable by the CAA;

(iii) Testified, or is about to testify, in any inquiry or proceeding relating to a right under the FMLA, as made applicable by the CAA.

(b) Any violations of the FMLA, as made applicable by the CAA, or of these regulations constitute interfering with, restraining, or denying the exercise of rights provided by the FMLA as made applicable by the CAA. "Interfering with" the exercise of an employee's rights would include, for example, not only refusing to authorize FMLA leave, but discouraging an employee from using such leave. It would also include manipulation by covered an employing office to avoid responsibilities under FMLA, for example:

(1) [Reserved];

(2) changing the essential functions of the job in order to preclude the taking of leave;

(3) reducing hours available to work in order to avoid employee eligibility.

(c) An employing office is prohibited from discriminating against employees or prospective employees who have used FMLA leave. For example, if an employee on leave without pay would otherwise be entitled to full benefits (other than health benefits), the same benefits would be required to be provided to an employee on unpaid FMLA leave. By the same token, employing offices cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under "no fault" attendance policies.

(d) Employees cannot waive, nor may employing offices induce employees to waive, their rights under FMLA. For example, employees (or their collective bargaining representatives) cannot "trade off" the right to take FMLA leave against some other benefit offered by the employing office. This does not prevent an employee's voluntary and uncoerced acceptance (not as a condition of employment) of a "light duty" assignment while recovering from a serious health condition (see § 825.702(d)). In such a circumstance the employee's right to restoration to the same or an equivalent position is available until 12 weeks have passed within the 12-month period, including all FMLA leave taken and the period of "light duty."

(e) Covered employees, and not merely eligible employees, are protected from retaliation for opposing (e.g., file a complaint about) any practice which is unlawful under the FMLA, as made applicable by the CAA. They are similarly protected if they oppose any practice which they reasonably believe to be a violation of the FMLA, as made applicable by the CAA or regulations.

Subpart C—How do Employees Learn of Their Rights and Obligations under the FMLA, as Made Applicable by the CAA, and What Can an Employing Office Require of an Employee?

§ 825.300 [Reserved]

§ 825.301 What notices to employees are required of employing offices under the FMLA as made applicable by the CAA?

(a)(1) If an employing office has any eligible employees and has any written guidance to employees concerning employee benefits or leave rights, such as in an employee handbook, information concerning both entitlements and employee obligations under the FMLA, as made applicable by the CAA, must be included in the handbook or other document. For example, if an employing office provides an employee handbook to all employees that describes the employing office's policies regarding leave, wages, attendance, and similar matters, the handbook must incorporate information on FMLA rights and responsibilities and the employing office's policies regarding the FMLA, as made applicable by the CAA. Informational publications describing the provisions of the FMLA as made applicable by the CAA are available from the Office of Compliance and may be incorporated in such employing office handbooks or written policies.

(2) If such an employing office does not have written policies, manuals, or handbooks describing employee benefits and leave provisions, the employing office shall provide written guidance to an employee concerning all the employee's rights and obligations under the FMLA as made applicable by the CAA. This notice shall be provided to employees each time notice is given pursuant to paragraph (b), and in accordance with the provisions of that paragraph. Employing offices may duplicate and provide the employee a copy of the FMLA Fact Sheet available from the Office of Compliance to provide such guidance.

(b)(1) The employing office shall also provide the employee with written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. The written notice must be provided to the employee in a language in which the employee is literate. Such specific notice must include, as appropriate:

(i) that the leave will be counted against the employee's annual FMLA leave entitlement (see § 825.208);

(ii) any requirements for the employee to furnish medical certification of a serious health condition and the consequences of failing to do so (see § 825.305);

(iii) the employee's right to substitute paid leave and whether the employing office will require the substitution of paid leave, and the conditions related to any substitution;

(iv) any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments (see § 825.210), and the possible consequences of failure to make such payments on a timely basis (i.e., the circumstances under which coverage may lapse);

(v) any requirement for the employee to present a fitness-for-duty certificate to be restored to employment (see § 825.310);

(vi) the employee's status as a "key employee" and the potential consequence that restoration may be denied following FMLA leave, explaining the conditions required for such denial (see §825.218);

(vii) the employee's right to restoration to the same or an equivalent job upon return from leave (see §§ 825.214 and 825.604); and,

(viii) the employee's potential liability for payment of health insurance premiums paid by the employing office during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave (see §825.213).

(2) The specific notice may include other information—*e.g.*, whether the employing office will require periodic reports of the employee's status and intent to return to work, but is not required to do so. A prototype notice is contained in Appendix D of this part, or may be obtained from the Office of Compliance, which employing offices may adapt for their use to meet these specific notice requirements.

(c) Except as provided in this subparagraph, the written notice required by paragraph (b) (and by subparagraph (a)(2) where applicable) must be provided to the employee no less often than the first time in each six-month period that an employee gives notice of the need for FMLA leave (if FMLA leave is taken during the six-month period). The notice shall be given within a reasonable time after notice of the need for leave is given by the employee—within one or two business days if feasible. If leave has already begun, the notice should be mailed to the employee's address of record.

(1) If the specific information provided by the notice changes with respect to a subsequent period of FMLA leave during the six-month period, the employing office shall, within one or two business days of receipt of the employee's notice of need for leave, provide written notice referencing the prior notice and setting forth any of the information in subparagraph (b) which has changed. For example, if the initial leave period were paid leave and the subsequent leave period would be unpaid leave, the employing office may need to give notice of the arrangements for making premium payments.

(2)(i) Except as provided in subparagraph (ii), if the employing office is requiring medical certification or a "fitness-for-duty" report, written notice of the requirement shall be given with respect to each employee notice of a need for leave.

(ii) Subsequent written notification shall *not* be required if the initial notice in the six-month period *and* the employing office handbook or other written documents (if any) describing the employing office's leave policies, clearly provided that certification or a "fitness-for-duty" report would be required (*e.g.*, by stating that certification would be required in all cases, by stating that certification would be required in all cases in which leave of more than a specified number of days is taken, or by stating that a "fitness-for-duty" report would be required in all cases for back injuries for employees in a certain occupation). Where subsequent written notice is not required, at least oral notice shall be provided. (*See* §825.305(a).)

(d) Employing offices are also expected to responsively answer questions from employees concerning their rights and responsibilities under the FMLA as made applicable under the CAA.

(e) Employing offices furnishing FMLA-required notices to sensory impaired individuals must also comply with all applicable requirements under law.

(f) If an employing office fails to provide notice in accordance with the provisions of this section, the employing office may not take action against an employee for failure to comply with any provision required to be set forth in the notice.

§825.302 What notice does an employee have to give an employing office when the need for FMLA leave is foreseeable?

(a) An employee must provide the employing office at least 30 days advance notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or of a family member. If 30 days notice is not practicable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable. For example, an employee's health condition may require leave to commence earlier than anticipated before the birth of a child. Similarly, little opportunity for notice may be given before placement for adoption. Whether the leave is to be continuous or is to be taken intermittently or on a reduced schedule basis, notice need only be given one time, but the employee shall advise the employing office as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown.

(b) "As soon as practicable" means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. For foreseeable leave where it is not possible to give as much as 30 days notice, "as soon as practicable" ordinarily would mean at least verbal notification to the employing office within one or two business days of when the need for leave becomes known to the employee.

(c) An employee shall provide at least verbal notice sufficient to make the employing office aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave. The employee need not expressly assert rights under the FMLA as made applicable by the CAA, or even mention the FMLA, but may only state that leave is needed for an expected birth or adoption, for example. The employing office should inquire further of the employee if it is necessary to have more information about whether FMLA leave is being sought by the employee, and obtain the necessary details of the leave to be taken. In the case of medical conditions, the employing office may find it necessary to inquire further to determine if the leave is because of a serious health condition and may request medical certification to support the need for such leave (see §825.305).

(d) An employing office may also require an employee to comply with the employing office's usual and customary notice and procedural requirements for requesting leave. For example, an employing office may require that written notice set forth the reasons for the requested leave, the anticipated duration of the leave, and the anticipated start of the leave. However, failure to follow such internal employing office procedures will not permit an employing office to disallow or delay an employee's taking FMLA leave if the employee gives timely verbal or other notice.

(e) When planning medical treatment, the employee must consult with the employing office and make a reasonable effort to schedule the leave so as not to disrupt unduly the employing office's operations, subject to the approval of the health care provider. Employees are ordinarily expected to consult with their employing offices prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the employing office and the employee. If an employee who provides notice of the need to take FMLA leave on an intermittent basis for planned medical treatment neglects to consult with the employing office to make a reasonable attempt to arrange the schedule of treatments so as not to unduly disrupt the employing office's operations, the employing office may initiate discussions with the employee and require the employee to attempt to make such arrangements, subject to the approval of the health care provider.

(f) In the case of intermittent leave or leave on a reduced leave schedule which is medically necessary, an employee shall advise the employing office, upon request, of the reasons why the intermittent/reduced leave schedule is necessary and of the schedule for treatment, if applicable. The employee and employing office shall attempt to work out a schedule which meets the employee's needs without unduly disrupting the employing office's operations, subject to the approval of the health care provider.

(g) An employing office may waive employees' FMLA notice requirements. In addition, an employing office may not require compliance with stricter FMLA notice requirements where the provisions of a collective bargaining agreement or applicable leave plan allow less advance notice to the employing office. For example, if an employee (or employing office) elects to substitute paid vacation leave for unpaid FMLA leave (see §825.207), and the employing office's paid vacation leave plan imposes no prior notification requirements for taking such vacation leave, no advance notice may be required for the FMLA leave taken in these circumstances. On the other hand, FMLA notice requirements would apply to a period of unpaid FMLA leave, unless the employing office imposes lesser notice requirements on employees taking leave without pay.

§825.303 What are the requirements for an employee to furnish notice to an employing office where the need for FMLA leave is not foreseeable?

(a) When the approximate timing of the need for leave is not foreseeable, an employee should give notice to the employing office of the need for FMLA leave as soon as practicable under the facts and circumstances of the particular case. It is expected that an employee will give notice to the employing office within no more than one or two working days of learning of the need for leave, except in extraordinary circumstances where such notice is not feasible. In the case of a medical emergency requiring leave because of an employee's own serious health condition or to care for a family member with a serious health condition, written advance notice pursuant to an employing office's internal rules and procedures may not be required when FMLA leave is involved.

(b) The employee should provide notice to the employing office either in person or by telephone, telegraph, facsimile ("fax") machine or other electronic means. Notice may be given by the employee's spokesperson (e.g., spouse, adult family member or other responsible party) if the employee is unable to do so personally. The employee need not expressly assert rights under the FMLA, as made applicable by the CAA, or even mention the FMLA, but may only state that

leave is needed. The employing office will be expected to obtain any additional required information through informal means. The employee or spokesperson will be expected to provide more information when it can readily be accomplished as a practical matter, taking into consideration the exigencies of the situation.

§ 825.304 What recourse do employing offices have if employees fail to provide the required notice?

(a) An employing office may waive employees' FMLA notice obligations or the employing office's own internal rules on leave notice requirements.

(b) If an employee fails to give 30 days notice for foreseeable leave with no reasonable excuse for the delay, the employing office may delay the taking of FMLA leave until at least 30 days after the date the employee provides notice to the employing office of the need for FMLA leave.

(c) In all cases, in order for the onset of an employee's FMLA leave to be delayed due to lack of required notice, it must be clear that the employee had actual notice of the FMLA notice requirements. This condition would be satisfied by the employing office's proper posting, at the worksite where the employee is employed, of the information regarding the FMLA provided (pursuant to section 301(h)(2) of the CAA, 2 U.S.C. 1381(h)(2)) by the Office of Compliance to the employing office in a manner suitable for posting. Furthermore, the need for leave and the approximate date leave would be taken must have been clearly foreseeable to the employee 30 days in advance of the leave. For example, knowledge that an employee would receive a telephone call about the availability of a child for adoption at some unknown point in the future would not be sufficient.

§ 825.305 When must an employee provide medical certification to support FMLA leave?

(a) An employing office may require that an employee's leave to care for the employee's seriously ill spouse, son, daughter, or parent, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position, be supported by a certification issued by the health care provider of the employee or the employee's ill family member. An employing office must give notice of a requirement for medical certification each time a certification is required; such notice must be written notice whenever required by § 825.301. An employing office's oral request to an employee to furnish any subsequent medical certification is sufficient.

(b) When the leave is foreseeable and at least 30 days notice has been provided, the employee should provide the medical certification before the leave begins. When this is not possible, the employee must provide the requested certification to the employing office within the time frame requested by the employing office (which must allow at least 15 calendar days after the employing office's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

(c) In most cases, the employing office should request that an employee furnish certification from a health care provider at the time the employee gives notice of the need for leave or within two business days thereafter, or, in the case of unforeseen leave, within two business days after the leave commences. The employing office may request certification at some later date if the employing office later has reason to question the appropriateness of the leave or its duration.

(d) At the time the employing office requests certification, the employing office must also advise an employee of the anticipated consequences of an employee's failure to provide adequate certification. The employing office shall advise an employee whenever the employing office finds a certification incomplete, and provide the employee a reasonable opportunity to cure any such deficiency.

(e) If the employing office's sick or medical leave plan imposes medical certification requirements that are less stringent than the certification requirements of these regulations, and the employee or employing office elects to substitute paid sick, vacation, personal or family leave for unpaid FMLA leave where authorized (see § 825.207), only the employing office's less stringent sick leave certification requirements may be imposed.

§ 825.306 How much information may be required in medical certifications of a serious health condition?

(a) The Office of Compliance has made available an optional form ("Certification of Physician or Practitioner") for employees' (or their family members') use in obtaining medical certification, including second and third opinions, from health care providers that meets FMLA's certification requirements. (See Appendix B to these regulations.) This optional form reflects certification requirements so as to permit the health care provider to furnish appropriate medical information within his or her knowledge.

(b) The Certification of Physician or Practitioner form is modeled closely on Form WH–380, as revised, which was developed by the Department of Labor (see 29 C.F.R. Part 825, Appendix B). The employing office may use the Office of Compliance's form, or Form WH–380, as revised, or another form containing the same basic information; however, no additional information may be required. In all instances the information on the form must relate only to the serious health condition for which the current need for leave exists. The form identifies the health care provider and type of medical practice (including pertinent specialization, if any), makes maximum use of checklist entries for ease in completing the form, and contains required entries for:

(1) A certification as to which part of the definition of "serious health condition" (see § 825.114), if any, applies to the patient's condition, and the medical facts which support the certification, including a brief statement as to how the medical facts meet the criteria of the definition.

(2)(i) The approximate date the serious health condition commenced, and its probable duration, including the probable duration of the patient's present incapacity (defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) if different.

(ii) Whether it will be necessary for the employee to take leave intermittently or to work on a reduced leave schedule basis (i.e., part-time) as a result of the serious health condition (see § 825.117 and § 825.203), and if so, the probable duration of such schedule.

(iii) If the condition is pregnancy or a chronic condition within the meaning of § 825.114(a)(2)(iii), whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.

(3)(i)(A) If additional treatments will be required for the condition, an estimate of the probable number of such treatments.

(B) If the patient's incapacity will be intermittent, or will require a reduced leave schedule, an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any.

(ii) If any of the treatments referred to in subparagraph (i) will be provided by another provider of health services (e.g., physical therapist), the nature of the treatments.

(iii) If a regimen of continuing treatment by the patient is required under the supervision of the health care provider, a general description of the regimen (see § 825.114(b)).

(4) If medical leave is required for the employee's absence from work because of the employee's own condition (including absences due to pregnancy or a chronic condition), whether the employee:

(i) is unable to perform work of any kind;

(ii) is unable to perform any one or more of the essential functions of the employee's position, including a statement of the essential functions the employee is unable to perform (see § 825.115), based on either information provided on a statement from the employing office of the essential functions of the position or, if not provided, discussion with the employee about the employee's job functions; or

(iii) must be absent from work for treatment.

(5)(i) If leave is required to care for a family member of the employee with a serious health condition, whether the patient requires assistance for basic medical or personal needs or safety, or for transportation; or if not, whether the employee's presence to provide psychological comfort would be beneficial to the patient or assist in the patient's recovery. The employee is required to indicate on the form the care he or she will provide and an estimate of the time period.

(ii) If the employee's family member will need care only intermittently or on a reduced leave schedule basis (*i.e.*, part-time), the probable duration of the need.

(c) If the employing office's sick or medical leave plan requires less information to be furnished in medical certifications than the certification requirements of these regulations, and the employee or employing office elects to substitute paid sick, vacation, personal or family leave for unpaid FMLA leave where authorized (*see* § 825.207), only the employing office's lesser sick leave certification requirements may be imposed.

§ 825.307 What may an employing office do if it questions the adequacy of a medical certification?

(a) If an employee submits a complete certification signed by the health care provider, the employing office may not request additional information from the employee's health care provider. However, a health care provider representing the employing office may contact the employee's health care provider, with the employee's permission, for purposes of *clarification* and authenticity of the medical certification.

(1) If an employee is on FMLA leave running concurrently with a workers' compensation absence, and the provisions of the workers' compensation statute permit the employing office or the employing office's representative to have direct contact with the employee's workers' compensation health care provider, the employing office may follow the workers' compensation provisions.

(2) An employing office that has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion at the employing office's expense.

Pending receipt of the second (or third) medical opinion, the employee is provisionally entitled to the benefits of the FMLA as made applicable by the CAA, including maintenance of group health benefits. If the certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave and may be treated as paid or unpaid leave under the employing office's established leave policies. The employing office is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider may not be employed on a regular basis by the employing office. See also paragraphs (e) and (f) of this section.

(b) The employing office may not regularly contract with or otherwise regularly utilize the services of the health care provider furnishing the second opinion unless the employing office is located in an area where access to health care is extremely limited (e.g., a rural area where no more than one or two doctors practice in the relevant specialty in the vicinity).

(c) If the opinions of the employee's and the employing office's designated health care providers differ, the employing office may require the employee to obtain certification from a third health care provider, again at the employing office's expense. This third opinion shall be final and binding. The third health care provider must be designated or approved jointly by the employing office and the employee. The employing office and the employee must each act in good faith to attempt to reach agreement on whom to select for the third opinion provider. If the employing office does not attempt in good faith to reach agreement, the employing office will be bound by the first certification. If the employee does not attempt in good faith to reach agreement, the employee will be bound by the second certification. For example, an employee who refuses to agree to see a doctor in the specialty in question may be failing to act in good faith. On the other hand, an employing office that refuses to agree to any doctor on a list of specialists in the appropriate field provided by the employee and whom the employee has not previously consulted may be failing to act in good faith.

(d) The employing office is required to provide the employee with a copy of the second and third medical opinions, where applicable, upon request by the employee. Requested copies are to be provided within two business days unless extenuating circumstances prevent such action.

(e) If the employing office requires the employee to obtain either a second or third opinion the employing office must reimburse an employee or family member for any reasonable "out of pocket" travel expenses incurred to obtain the second and third medical opinions. The employing office may not require the employee or family member to travel outside normal commuting distance for purposes of obtaining the second or third medical opinions except in very unusual circumstances.

(f) In circumstances when the employee or a family member is visiting in another country, or a family member resides in a another country, and a serious health condition develops, the employing office shall accept a medical certification as well as second and third opinions from a health care provider who practices in that country.

§ 825.308 Under what circumstances may an employing office request subsequent recertifications of medical conditions?

(a) For pregnancy, chronic, or permanent/long-term conditions under continuing supervision of a health care provider (as defined in § 825.114(a) (2)(ii), (iii) or (iv)), an employing office may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless:

(1) Circumstances described by the previous certification have changed significantly (e.g., the duration or frequency of absences, the severity of the condition, complications); or

(2) The employing office receives information that casts doubt upon the employee's stated reason for the absence.

(b)(1) If the minimum duration of the period of incapacity specified on a certification furnished by the health care provider is more than 30 days, the employing office may not request recertification until that minimum duration has passed unless one of the conditions set forth in paragraph (c)(1), (2) or (3) of this section is met.

(2) For FMLA leave taken intermittently or on a reduced leave schedule basis, the employing office may not request recertification in less than the minimum period specified on the certification as necessary for such leave (including treatment) unless one of the conditions set forth in paragraph (c)(1), (2) or (3) of this section is met.

(c) For circumstances not covered by paragraphs (a) or (b) of this section, an employing office may request recertification at any reasonable interval, but not more often than every 30 days, unless:

(1) The employee requests an extension of leave;

(2) Circumstances described by the previous certification have changed significantly (e.g., the duration of the illness, the nature of the illness, complications); or

(3) The employing office receives information that casts doubt upon the continuing validity of the certification.

(d) The employee must provide the requested recertification to the employing office within the time frame requested by the employing office (which must allow at least 15 calendar days after the employing office's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

(e) Any recertification requested by the employing office shall be at the employee's expense unless the employing office provides otherwise. No second or third opinion on recertification may be required.

§ 825.309 What notice may an employing office require regarding an employee's intent to return to work?

(a) An employing office may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work. The employing office's policy regarding such reports may not be discriminatory and must take into account all of the relevant facts and circumstances related to the individual employee's leave situation.

(b) If an employee gives unequivocal notice of intent not to return to work, the employing office's obligations under FMLA, as made applicable by the CAA, to maintain health benefits (subject to requirements of COBRA or 5 U.S.C. 8905a, whichever is applicable) and to restore the employee cease. However, these obligations continue if an employee indicates he or she may be unable to return to work but expresses a continuing desire to do so.

(c) It may be necessary for an employee to take more leave than originally anticipated. Conversely, an employee may discover after beginning leave that the circumstances have changed and the amount of leave originally anticipated is no longer necessary. An employee may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave. In both of these situations, the employing office may require that the employee provide the employing office reasonable notice (i.e., within two business days) of the changed circumstances where foreseeable. The employing office may also obtain information on such changed circumstances through requested status reports.

§ 825.310 Under what circumstances may an employing office require that an employee submit a medical certification that the employee is able (or unable) to return to work (i.e., a "fitness-for-duty" report)?

(a) As a condition of restoring an employee whose FMLA leave was occasioned by the employee's own serious health condition that made the employee unable to perform the employee's job, an employing office may have a uniformly-applied policy or practice that requires all similarly-situated employees (i.e., same occupation, same serious health condition) who take leave for such conditions to obtain and present certification from the employee's health care provider that the employee is able to resume work.

(b) If the terms of a collective bargaining agreement govern an employee's return to work, those provisions shall be applied. Similarly, requirements under the Americans with Disabilities Act (ADA), as made applicable by the CAA, that any return-to-work physical be job-related and consistent with business necessity apply. For example, an attorney could not be required to submit to a medical examination or inquiry just because her leg had been amputated. The essential functions of an attorney's job do not require use of both legs; therefore such an inquiry would not be job related. An employing office may require a warehouse laborer, whose back impairment affects the ability to lift, to be examined by an orthopedist, but may not require this employee to submit to an HIV test where the test is not related to either the essential functions of his/her job or to his/her impairment.

(c) An employing office may seek fitness-for-duty certification only with regard to the particular health condition that caused the employee's need for FMLA leave. The certification itself need only be a simple statement of an employee's ability to return to work. A health care provider employed by the employing office may contact the employee's health care provider with the employee's permission, for purposes of clarification of the employee's fitness to return to work. No additional information may be acquired, and clarification may be requested only for the serious health condition for which FMLA leave was taken. The employing office may not delay the employee's return to work while contact with the health care provider is being made.

(d) The cost of the certification shall be borne by the employee and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification.

(e) The notice that employing offices are required to give to each employee giving notice of the need for FMLA leave regarding their FMLA rights and obligations as made applicable by the CAA (see § 825.301) shall advise the employee if the employing office will require fitness-for-duty certification to return to work. If the employing office has a handbook explaining employment policies and benefits, the handbook should explain

the employing office's general policy regarding any requirement for fitness-for-duty certification to return to work. Specific notice shall also be given to any employee from whom fitness-for-duty certification will be required either at the time notice of the need for leave is given or immediately after leave commences and the employing office is advised of the medical circumstances requiring the leave, unless the employee's condition changes from one that did not previously require certification pursuant to the employing office's practice or policy. No second or third fitness-for-duty certification may be required.

(f) An employing office may delay restoration to employment until an employee submits a required fitness-for-duty certification unless the employing office has failed to provide the notices required in paragraph (e) of this section.

(g) An employing office is not entitled to certification of fitness to return to duty when the employee takes intermittent leave as described in §825.203.

(h) When an employee is unable to return to work after FMLA leave because of the continuation, recurrence, or onset of the employee's or family member's serious health condition, thereby preventing the employing office from recovering its share of health benefit premium payments made on the employee's behalf during a period of unpaid FMLA leave, the employing office may require medical certification of the employee's or the family member's serious health condition. (*See* §825.213(a)(3).) The cost of the certification shall be borne by the employee and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification.

§825.311 What happens if an employee fails to satisfy the medical certification and/or recertification requirements?

(a) In the case of foreseeable leave, an employing office may delay the taking of FMLA leave to an employee who fails to provide timely certification after being requested by the employing office to furnish such certification (i.e., within 15 calendar days, if practicable), until the required certification is provided.

(b) When the need for leave is not foreseeable, or in the case of recertification, an employee must provide certification (or recertification) within the time frame requested by the employing office (which must allow at least 15 days after the employing office's request) or as soon as reasonably possible under the particular facts and circumstances. In the case of a medical emergency, it may not be practicable for an employee to provide the required certification within 15 calendar days. If an employee fails to provide a medical certification within a reasonable time under the pertinent circumstances, the employing office may delay the employee's continuation of FMLA leave. If the employee never produces the certification, the leave is not FMLA leave.

(c) When requested by the employing office pursuant to a uniformly applied policy for similarly-situated employees, the employee must provide medical certification at the time the employee seeks reinstatement at the end of FMLA leave taken for the employee's serious health condition, that the employee is fit for duty and able to return to work (see §825.310(a)) if the employing office has provided the required notice (see §825.301(c); the employing office may delay restoration until the certification is provided. In this situation, unless the employee provides either a fitness-for-duty certification or a new medical certification for a serious health condition at the time FMLA leave is concluded, the employee may be terminated. See also §825.213(a)(3).

§825.312 Under what circumstances may an employing office refuse to provide FMLA leave or reinstatement to eligible employees?

(a) If an employee fails to give timely advance notice when the need for FMLA leave is foreseeable, the employing office may delay the taking of FMLA leave until 30 days after the date the employee provides notice to the employing office of the need for FMLA leave. (*See* §825.302.)

(b) If an employee fails to provide in a timely manner a requested medical certification to substantiate the need for FMLA leave due to a serious health condition, an employing office may delay continuation of FMLA leave until an employee submits the certificate. (*See* §§ 825.305 and 825.311.) If the employee never produces the certification, the leave is not FMLA leave.

(c) If an employee fails to provide a requested fitness-for-duty certification to return to work, an employing office may delay restoration until the employee submits the certificate. (*See* §§ 825.310 and 825.311.)

(d) An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. Thus, an employee's rights to continued leave, maintenance of health benefits, and restoration cease under FMLA, as made applicable by the CAA, if and when the employment relationship terminates (*e.g.*, layoff), unless that relationship continues, for example, by the employee remaining on *paid* FMLA leave. If the employee is recalled or otherwise re-employed, an eligible employee is immediately entitled to further FMLA leave for an FMLA-qualifying reason. An employing office must be able to show, when an employee requests restoration, that the employee would not otherwise have been employed if leave had not been taken in order to deny restoration to employment. (See §825.216.)

(e) An employing office may require an employee on FMLA leave to report periodically on the employee's status and intention to return to work. (See §825.309.) If an employee unequivocally advises the employing office either before or during the taking of leave that the employee does not intend to return to work, and the employment relationship is terminated, the employee's entitlement to continued leave, maintenance of health benefits, and restoration ceases unless the employment relationship continues, for example, by the employee remaining on *paid* leave. An employee may not be required to take more leave than necessary to address the circumstances for which leave was taken. If the employee is able to return to work earlier than anticipated, the employee shall provide the employing office two business days notice where feasible; the employing office is required to restore the employee once such notice is given, or where such prior notice was not feasible.

(f) An employing office may deny restoration to employment, but not the taking of FMLA leave and the maintenance of health benefits, to an eligible employee only under the terms of the "key employee" exemption. Denial of reinstatement must be necessary to prevent "substantial and grievous economic injury" to the employing office's operations. The employing office must notify the employee of the employee's status as a "key employee" and of the employing office's intent to deny reinstatement on that basis when the employing office makes these determinations. If leave has started, the employee must be given a reasonable opportunity to return to work after being so notified. (See §825.219.)

(g) An employee who fraudulently obtains FMLA leave from an employing office is not protected by job restoration or maintenance of health benefits provisions of the FMLA as made applicable by the CAA.

(h) If the employing office has a uniformly-applied policy governing outside or supplemental employment, such a policy may continue to apply to an employee while on FMLA leave. An employing office which does not have such a policy may not deny benefits to which an employee is entitled under FMLA as made applicable by the CAA on this basis unless the FMLA leave was fraudulently obtained as in paragraph (g) of this section.

Subpart D—What Enforcement Mechanisms Does the CAA Provide?

§825.400 What can employees do who believe that their rights under the FMLA as made applicable by the CAA have been violated?

(a) To commence a proceeding, a covered employee alleging a violation of the rights and protections of the FMLA made applicable by the CAA must request counseling by the Office of Compliance not later than 180 days after the date of the alleged violation. If a covered employee misses this deadline, the covered employee will be unable to obtain a remedy under the CAA.

(b) The following procedures are available under title IV of the CAA for covered employees who believe that their rights under FMLA as made applicable by the CAA have been violated:

(1) counseling;

(2) mediation; and

(3) election of either—

(A) a formal complaint, filed with the Office of Compliance, and a hearing before a hearing officer, subject to review by the Board of Directors of the Office of Compliance, and judicial review in the United States Court of Appeals for the Federal Circuit; or

(B) a civil action in a district court of the United States.

(c) Regulations of the Office of Compliance describing and governing these procedures are found at [proposed rules can be found at 141 Cong. Rec. S17012 (November 14, 1995)].

§825.401 [Reserved]

§825.402 [Reserved]

§825.403 [Reserved]

§825.404 [Reserved]

Subpart E—[Reserved]

Subpart F—What Special Rules Apply to Employees of Schools?

§825.600 To whom do the special rules apply?

(a) Certain special rules apply to employees of "local educational agencies," including public school boards and elementary schools under their jurisdiction, and private elementary and secondary schools. The special rules do not apply to other kinds of educational institutions, such as colleges and universities, trade schools, and preschools.

(b) Educational institutions are covered by FMLA as made applicable by the CAA (and these special rules). The usual requirements for employees to be "eligible" apply.

(c) The special rules affect the taking of intermittent leave or leave on a reduced leave schedule, or leave near the end of an academic term (semester), by instructional employees. "Instructional employees" are those whose principal function is to teach

and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include, and the special rules do not apply to, teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

(d) Special rules which apply to restoration to an equivalent position apply to all employees of local educational agencies.

§ 825.601 What limitations apply to the taking of intermittent leave or leave on a reduced leave schedule?

(a) Leave taken for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently. The period during the summer vacation when the employee would not have been required to report for duty is not counted against the employee's FMLA leave entitlement. An instructional employee who is on FMLA leave at the end of the school year must be provided with any benefits over the summer vacation that employees would normally receive if they had been working at the end of the school year.

(1) If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule to care for a family member, or for the employee's own serious health condition, which is foreseeable based on planned medical treatment, and the employee would be on leave for more than 20 percent of the total number of working days over the period the leave would extend, the employing office may require the employee to choose either to:

(i) Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or

(ii) Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

(2) These rules apply only to a leave involving more than 20 percent of the working days during the period over which the leave extends. For example, if an instructional employee who normally works five days each week needs to take two days of FMLA leave per week over a period of several weeks, the special rules would apply. Employees taking leave which constitutes 20 percent or less of the working days during the leave period would not be subject to transfer to an alternative position. "Periods of a particular duration" means a block, or blocks, of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed, and may include one uninterrupted period of leave.

(b) If an instructional employee does not give required notice of foreseeable FMLA leave (see § 825.302) to be taken intermittently or on a reduced leave schedule, the employing office may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the employing office may require the employee to delay the taking of leave until the notice provision is met. *See* § 825.207(h).

§ 825.602 What limitations apply to the taking of leave near the end of an academic term?

(a) There are also different rules for instructional employees who begin leave more than five weeks before the end of a term, less than five weeks before the end of a term, and less than three weeks before the end of a term. Regular rules apply except in circumstances when:

(1) An instructional employee begins leave more than five weeks before the end of a term. The employing office may require the employee to continue taking leave until the end of the term if—

(i) The leave will last at least three weeks, and

(ii) The employee would return to work during the three-week period before the end of the term.

(2) The employee begins leave for a purpose other than the employee's own serious health condition *during* the five-week period before the end of a term. The employing office may require the employee to continue taking leave until the end of the term if —

(i) The leave will last more than two weeks, and

(ii) The employee would return to work during the two-week period before the end of the term.

(3) The employee begins leave for a purpose other than the employee's own serious health condition during the three-week period before the end of a term, and the leave will last more than five working days. The employing office may require the employee to continue taking leave until the end of the term.

(b) For purposes of these provisions, "academic term" means the school semester, which typically ends near the end of the calendar year and the end of spring each school year. In no case may a school have more than two academic terms or semesters each year for purposes of FMLA as made applicable by the CAA. An example of leave falling within these provisions would be where an employee plans two weeks of leave to care for a family member which will begin three weeks before the end of the term. In that situation, the employing office could require the employee to stay out on leave until the end of the term.

§ 825.603 Is all leave taken during "periods of a particular duration" counted against the FMLA leave entitlement?

(a) If an employee chooses to take leave for "periods of a particular duration" in the case of intermittent or reduced schedule leave, the entire period of leave taken will count as FMLA leave.

(b) In the case of an employee who is required to take leave until the end of an academic term, only the period of leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement. The employing office has the option not to require the employee to stay on leave until the end of the school term. Therefore, any additional leave required by the employing office to the end of the school term is not counted as FMLA leave; however, the employing office shall be required to maintain the employee's group health insurance and restore the employee to the same or equivalent job including other benefits at the conclusion of the leave.

§ 825.604 What special rules apply to restoration to "an equivalent position?"

The determination of how an employee is to be restored to "an equivalent position" upon return from FMLA leave will be made on the basis of "established school board policies and practices, private school policies and practices, and collective bargaining agreements." The "established policies" and collective bargaining agreements used as a basis for restoration must be in writing, must be made known to the employee prior to the taking of FMLA leave, and must clearly explain the employee's restoration rights upon return from leave. Any established policy which is used as the basis for restoration of an employee to "an equivalent position" must provide substantially the same protections as provided in the FMLA, as made applicable by the CAA, for reinstated employees. See § 825.215. In other words, the policy or collective bargaining agreement must provide for restoration to an "equivalent position" with equivalent employment benefits, pay, and other terms and conditions of employment. For example, an employee may not be restored to a position requiring additional licensure or certification.

Subpart G—How Do Other Laws, Employing Office Practices, and Collective Bargaining Agreements Affect Employee Rights Under the FMLA as Made Applicable by the CAA?

§ 825.700 What if an employing office provides more generous benefits than required by FMLA as made applicable by the CAA?

(a) An employing office must observe any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established by the FMLA. Conversely, the rights established by the FMLA, as made applicable by the CAA, may not be diminished by any employment benefit program or plan. For example, a provision of a collective bargaining agreement (CBA) which provides for reinstatement to a position that is not equivalent because of seniority (e.g., provides lesser pay) is superseded by FMLA. If an employing office provides greater unpaid family leave rights than are afforded by FMLA, the employing office is not required to extend additional rights afforded by FMLA, such as maintenance of health benefits (other than through COBRA or 5 U.S.C. 8905a, whichever is applicable), to the additional leave period not covered by FMLA. If an employee takes paid or unpaid leave and the employing office does not designate the leave as FMLA leave, the leave taken does not count against an employee's FMLA entitlement.

(b) Nothing in the FMLA, as made applicable by the CAA, prevents an employing office from amending existing leave and employee benefit programs, provided they comply with FMLA as made applicable by the CAA. However, nothing in the FMLA, as made applicable by the CAA, is intended to discourage employing offices from adopting or retaining more generous leave policies.

(c) [Reserved]

§ 825.701 [Reserved]

§ 825.702 How does FMLA affect anti-discrimination laws as applied by section 201 of the CAA?

(a) Nothing in FMLA modifies or affects any applicable law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability (e.g., Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act), as made applicable by the CAA. FMLA's legislative history explains that FMLA is "not intended to modify or affect the Rehabilitation Act of 1973, as amended, the regulations concerning employment which have been promulgated pursuant to that statute, or the Americans with Disabilities Act of 1990, or the regulations issued

under that act. Thus, the leave provisions of the [FMLA] are wholly distinct from the reasonable accommodation obligations of employers covered under the [ADA] * * * or the Federal government itself. The purpose of the FMLA is to make leave available to eligible employees and employing offices within its coverage, and not to limit already existing rights and protection." S. Rep. No. 3, 103d Cong., 1st Sess. 38 (1993). An employing office must therefore provide leave under whichever statutory provision provides the greater rights to employees.

(b) If an employee is a qualified individual with a disability within the meaning of the Americans with Disabilities Act (ADA), the employing office must make reasonable accommodations, etc., barring undue hardship, in accordance with the ADA. At the same time, the employing office must afford an employee his or her FMLA rights. ADA's "disability" and FMLA's "serious health condition" are different concepts, and must be analyzed separately. FMLA entitles eligible employees to 12 weeks of leave in any 12-month period, whereas the ADA allows an indeterminate amount of leave, barring undue hardship, as a reasonable accommodation. FMLA requires employing offices to maintain employees' group health plan coverage during FMLA leave on the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period, whereas ADA does not require maintenance of health insurance unless other employees receive health insurance during leave under the same circumstances.

(c)(1) A reasonable accommodation under the ADA might be accomplished by providing an individual with a disability with a part-time job with no health benefits, assuming the employing office did not ordinarily provide health insurance for part-time employees. However, FMLA would permit an employee to work a reduced leave schedule until the equivalent of 12 workweeks of leave were used, with group health benefits maintained during this period. FMLA permits an employing office to temporarily transfer an employee who is taking leave intermittently or on a reduced leave schedule to an alternative position, whereas the ADA allows an accommodation of reassignment to an equivalent, vacant position only if the employee cannot perform the essential functions of the employee's present position and an accommodation is not possible in the employee's present position, or an accommodation in the employee's present position would cause an undue hardship. The examples in the following paragraphs of this section demonstrate how the two laws would interact with respect to a qualified individual with a disability.

(2) A qualified individual with a disability who is also an "eligible employee" entitled to FMLA leave requests 10 weeks of medical leave as a reasonable accommodation, which the employing office grants because it is not an undue hardship. The employing office advises the employee that the 10 weeks of leave is also being designated as FMLA leave and will count towards the employee's FMLA leave entitlement. This designation does not prevent the parties from also treating the leave as a reasonable accommodation and reinstating the employee into the *same* job, as required by the ADA, rather than an equivalent position under FMLA, if that is the greater right available to the employee. At the same time, the employee would be entitled under FMLA to have the employing office maintain group health plan coverage during the leave, as that requirement provides the greater right to the employee.

(3) If the same employee needed to work part-time (a reduced leave schedule) after returning to his or her same job, the employee would still be entitled under FMLA to have group health plan coverage maintained for the remainder of the two-week equivalent of FMLA leave entitlement, notwithstanding an employing office policy that part-time employees do not receive health insurance. This employee would be entitled under the ADA to reasonable accommodations to enable the employee to perform the essential functions of the part-time position. In addition, because the employee is working a part-time schedule as a reasonable accommodation, the employee would be shielded from FMLA's provision for temporary assignment to a different alternative position. Once the employee has exhausted his or her remaining FMLA leave entitlement while working the reduced (part-time) schedule, if the employee is a qualified individual with a disability, and if the employee is unable to return to the same full-time position at that time, the employee might continue to work part-time as a reasonable accommodation, barring undue hardship; the employee would then be entitled to only those employment benefits ordinarily provided by the employing office to part-time employees.

(4) At the end of the FMLA leave entitlement, an employing office is required under FMLA to reinstate the employee in the same or an equivalent position, with equivalent pay and benefits, to that which the employee held when leave commenced. The employing office's FMLA obligations would be satisfied if the employing office offered the employee an equivalent full-time position. If the employee were unable to perform the essential functions of that equivalent position even with reasonable accommodation, because of a disability, the ADA may require the employing office to make a reasonable accommodation at that time by allowing the employee to work part-time or by reassigning the employee to a vacant position, barring undue hardship.

(d)(1) If FMLA entitles an employee to leave, an employing office may not, in lieu of FMLA leave entitlement, *require* an employee to take a job with a reasonable accommodation. However, ADA may require that an employing office offer an employee the opportunity to take such a position. An employing office may not change the essential functions of the job in order to deny FMLA leave. See §825.220(b).

(2) An employee may be on a workers' compensation absence due to an on-the-job injury or illness which also qualifies as a serious health condition under FMLA. The workers' compensation absence and FMLA leave may run concurrently (subject to proper notice and designation by the employing office). At some point the health care provider providing medical care pursuant to the workers' compensation injury may certify the employee is able to return to work in a "light duty" position. If the employing office offers such a position, the employee is permitted but not required to accept the position (*see* §825.220(d)). As a result, the employee may no longer qualify for payments from the workers' compensation benefit plan, but the employee is entitled to continue on unpaid FMLA leave either until the employee is able to return to the same or equivalent job the employee left or until the 12-week FMLA leave entitlement is exhausted. See §825.207(d)(2). If the employee returning from the workers' compensation injury is a qualified individual with a disability, he or she will have rights under the ADA.

(e) If an employing office requires certifications of an employee's fitness for duty to return to work, as permitted by FMLA under a uniform policy, it must comply with the ADA requirement that a fitness for duty physical be job-related and consistent with business necessity.

(f) Under Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, and as made applicable by the CAA, an employing office should provide the same benefits for women who are pregnant as the employing office provides to other employees with short-term disabilities. Because Title VII does not require employees to be employed for a certain period of time to be protected, an employee employed for less than 12 months by any employing office (and, therefore, not an "eligible" employee under FMLA, as made applicable by the CAA) may *not* be denied maternity leave if the employing office normally provides short-term disability benefits to employees with the same tenure who are experiencing other short-term disabilities.

(g) For further information on Federal anti-discrimination laws applied by section 201 of the CAA (2 U.S.C. 1311), including Title VII, the Rehabilitation Act, and the ADA, individuals are encouraged to contact the Office of Compliance.

Subpart H—Definitions

§825.800 Definitions.

For purposes of this part:

ADA means the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*).

CAA means the Congressional Accountability Act of 1995 (Pub. Law 104-1, 109 Stat. 3, 2 U.S.C. 1301 et seq.).

COBRA means the continuation coverage requirements of Title X of the Consolidated Omnibus Budget Reconciliation Act of 1986 (Pub. Law 99-272, title X, section 10002; 100 Stat. 227; as amended; 29 U.S.C. 1161-1168).

Continuing treatment means: A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(1) A period of *incapacity* (*i.e.*, inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(i) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (*e.g.*, physical therapist) under orders of, or on referral by, a health care provider; or

(ii) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

(2) Any period of incapacity due to pregnancy, or for prenatal care.

(3) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(i) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(iii) May cause episodic rather than a continuing period of incapacity (*e.g.*, asthma, diabetes, epilepsy, *etc.*).

(4) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(5) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, *etc.*), severe arthritis (physical therapy), kidney disease (dialysis).

Covered employee—The term "covered employee", as defined in the CAA, means any employee of—(1) the House of Representatives; (2) the Senate; (3) the Capitol Guide Service; (4) the Capitol Police; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; (8) the Office of Compliance; or (9) the Office of Technology Assessment.

Eligible employee—The term "eligible employee", as defined in the CAA, means a covered employee who has been employed in any employing office for 12 months and for at least 1,250 hours of employment during the previous 12 months.

Employ means to suffer or permit to work.

Employee means an employee as defined in the CAA and includes an applicant for employment and a former employee.

Employee employed in an instructional capacity. See Teacher.

Employee of the Capitol Police—The term "employee of the Capitol Police" includes any member or officer of the Capitol Police.

Employee of the House of Representatives—The term "employee of the House of Representatives" includes an individual occupying a position the pay for which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (9) under "covered employee" above.

Employee of the Office of the Architect of the Capitol—The term "employee of the Office of the Architect of the Capitol" includes any employee of the Office of the Architect of the Capitol, the Botanic Garden, or the Senate Restaurants.

Employee of the Senate—The term "employee of the Senate" includes any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (9) under "covered employee" above.

Employing Office—The term "employing office", as defined in the CAA, means:

(1) the personal office of a Member of the House of Representatives or of a Senator;

(2) a committee of the House of Representatives or the Senate or a joint committee;

(3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or

(4) the Capitol Guide Board, the Capitol Police Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment.

Employment benefits means all benefits provided or made available to employees by an employing office, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employing office or through an employee benefit plan. The term does not include non-employment related obligations paid by employees through voluntary deductions such as supplemental insurance coverage. (See § 825.209(a)).

FLSA means the Fair Labor Standards Act (29 U.S.C. 201 et seq.).

FMLA means the Family and Medical Leave Act of 1993, Public Law 103-3 (February 5, 1993), 107 Stat. 6 (29 U.S.C. 2601 et seq.).

Group health plan means the Federal Employees Health Benefits Program and any other plan of, or contributed to by, an employing office (including a self-insured plan) to provide health care (directly or otherwise) to the employing office's employees, former employees, or the families of such employees or former employees. For purposes of FMLA, as made applicable by the CAA, the term "group health plan" shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that:

(1) no contributions are made by the employing office;

(2) participation in the program is completely voluntary for employees;

(3) the sole functions of the employing office with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer;

(4) the employing office receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and,

(5) the premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

Health care provider means:

(1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; or

(2) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law; and

(3) Nurse practitioners, nurse-midwives and clinical social workers who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law; and

(4) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.

(5) Any health care provider from whom an employing office or a group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

(6) A health care provider as defined above who practices in a country other than the United States, who is licensed to practice in accordance with the laws and regulations of that country.

"Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

Instructional employee: See *Teacher*.

Intermittent leave means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.

Mental disability: See *Physical or mental disability*.

Office of Compliance means the independent office established in the legislative branch under section 301 of the CAA (2 U.S.C. 1381).

Parent means the biological parent of an employee or an individual who stands or stood in loco parentis to an employee when the employee was a child.

Physical or mental disability means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. See the Americans with Disabilities Act (ADA), as made applicable by section 201(a)(3) of the CAA (2 U.S.C. 1311(a)(3)).

Reduced leave schedule means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

Secretary means the Secretary of Labor or authorized representative.

Serious health condition entitling an employee to FMLA leave means:

(1) an illness, injury, impairment, or physical or mental condition that involves:

(i) *Inpatient care* (*i.e.*, an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of *incapacity* (for purposes of this section, defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom), or any subsequent treatment in connection with such inpatient care; or

(ii) *Continuing treatment* by a health care provider. A serious health condition involving continuing treatment by a health care provider includes:

(A) A period of *incapacity* (*i.e.*, inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) of more than three consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(*1*) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of

health care services (*e.g.*, physical therapist) under orders of, or on referral by, a health care provider; or

(*2*) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

(B) Any period of incapacity due to pregnancy, or for prenatal care.

(C) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(*1*) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(*2*) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(*3*) May cause episodic rather than a continuing period of incapacity (*e.g.*, asthma, diabetes, epilepsy, etc.).

(D) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(E) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

(2) Treatment for purposes of paragraph (1) of this definition includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under paragraph (1)(ii)(A)(*2*) of this definition, a regimen of continuing treatment includes, for example, a course of prescription medication (*e.g.*, an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (*e.g.*, oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bedrest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

(3) Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not "serious health conditions" unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness resulting from stress or allergies may be serious health conditions, but only if all the conditions of this section are met.

(4) Substance abuse may be a serious health condition if the conditions of this section are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

(5) Absences attributable to incapacity under paragraphs (1)(ii)(B) or (C) of this definition qualify for FMLA leave even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability.

Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

State means any State of the United States or the District of Columbia or any Territory or possession of the United States.

Teacher (or *employee employed in an instructional capacity*, or *instructional employee*) means an employee employed principally in an instructional capacity by an educational agency or school whose principal function is to teach and instruct students in a class, a small group, or an individual setting, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing, nor auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily noninstructional employees.

Appendix A to Part 825—[Reserved]

Appendix B to Part 825—Certification of Physician or Practitioner

Certification of Health Care Provider

(Family and Medical Leave Act of 1993 as Made Applicable by the Congressional Accountability Act of 1995)

1. Employee's Name:

2. Patient's Name (if different from employee):

3. The attached sheet describes what is meant by a "serious health condition" under the Family and Medical Leave Act as made applicable by the Congressional Accountability Act. Does the patient's condition[1] qualify under any of the categories described? If so, please check the applicable category.

(1) _____ (2) _____ (3) _____ (4) _____ (5) _____ (6) _____, or None of the above _____

[1] Footnotes at the end of appendix B.

4. Describe the medical facts which support your certification, including a brief statement as to how the medical facts meet the criteria of one of these categories:

5.a. State the approximate date the condition commenced, and the probable duration of the condition (and also the probable duration of the patient's present incapacity[2] if different):

b. Will it be necessary for the employee to take work only intermittently or to work on a less than full schedule as a result of the condition (including for treatment described in Item 6 below)? _____

If yes, give probable duration:

c. If the condition is a chronic condition (condition #4) or pregnancy, state whether the patient is presently incapacitated[2] and the likely duration and frequency of episodes of incapacity[2]:

6.a. If additional treatments will be required for the condition, provide an estimate of the probable number of such treatments:

If the patient will be absent from work or other daily activities because of treatment on an intermittent or part-time basis, also provide an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any:

b. If any of these treatments will be provided by another provider of health services (e.g., physical therapist), please state the nature of the treatments:

c. If a regimen of continuing treatment by the patient is required under your supervision, provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment):

7.a. If medical leave is required for the employee's absence from work because of the employee's own condition (including absences due to pregnancy or a chronic condition), is the employee unable to perform work of any kind? _____

b. If able to perform some work, is the employee unable to perform any one or more of the essential functions of the employee's job (the employee or the employer should supply you with information about the essential job functions)? _____ If yes, please list the essential functions the employee is unable to perform: _____

c. If neither a. nor b. applies, is it necessary for the employee to be absent from work for treatment? _____

8.a. If leave is required to care for a family member of the employee with a serious health condition, does the patient require assistance for basic medical or personal needs or safety, or for transportation? _____

b. If no, would the employee's presence to provide psychological comfort be beneficial to the patient or assist in the patient's recovery? _____

c. If the patient will need care only intermittently or on a part-time basis, please indicate the probable duration of this need:

(Signature of Health Care Provider)

(Type of Practice)

(Address)

(Telephone number)

To be completed by the employee needing family leave to care for a family member:

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule:

(Employee signature)

(Date)

A "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. *Hospital Care.*—Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity[1] or subsequent treatment in connection with or consequent to such inpatient care.

2. *Absence Plus Treatment.*—(a) A period of incapacity[2] of more than three consecutive calendar days (including any subsequent treatment or period of incapacity[2] relating to the same condition), that also involves:

(1) Treatment[3] two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider: or

(2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment[4] under the supervision of the health care provider.

3. *Pregnancy.*—Any period of incapacity due to pregnancy, or for prenatal care.

4. *Chronic Conditions Requiring Treatments.*—A chronic condition which:

(1) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity[2] (e.g., asthma, diabetes, epilepsy, etc.)

5. *Permanent/Long-term Conditions Requiring Supervision.*—A period of incapacity[2] which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

6. *Multiple Treatments (Non-Chronic Conditions).*—Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity[2] of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

FOOTNOTES

[1] Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking FMLA leave.

[2] "Incapacity," for purposes of FMLA as make applicable by the CAA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

[3] Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

[4] A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

Appendix C to Part 825—[Reserved]

Appendix D to Part 825—Prototype Notice: Employing Office Response to Employee Request for Family and Medical Leave

Employing office response to employee request for family or medical leave

(Optional use form—see § 825.301(b)(1) of the regulations of the Office of Compliance)

(Family and Medical Leave Act of 1993, as made applicable by the Congressional Accountability Act of 1995)

(Date)

To:_____

(Employee's name)

From:_____

(Name of appropriate employing office representative)

Subject: Request for Family/Medical Leave

On_____, *(date)* you notified us of your need to take family/medical leave due to: (date)

the birth of your child, or the placement of a child with you for adoption or foster care; or

a serious health condition that makes you unable to perform the essential functions of your job; or

a serious health condition affecting your "spouse, "child, "parent, for which you are needed to provide care.

You notified us that you need this leave beginning on _____*(date)* and that you expect leave to continue until on or about_____ *(date).*

Except as explained below, you have a right under the FMLA, as made applicable by the CAA, for up to 12 weeks of unpaid leave in a 12-month period for the reasons listed above. Also, your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work, and you must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from leave. If you do not return to work following FMLA leave for a reason other than: (1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; or (2) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.

This is to inform you that: *(check appropriate boxes; explain where indicated)*

1. You are ☐ eligible ☐ not eligible for leave under the FMLA as made applicable by the CAA.

2. The requested leave ☐ will ☐ will not be counted against your annual FMLA leave entitlement.

3. You ☐ will ☐ will not be required to furnish medical certification of a serious health condition. If required, you must furnish certification by_____ *(insert date)* (must be at least 15 days after you are notified of this requirement) or we may delay the commencement of your leave until the certification is submitted.

4. You may elect to substitute accrued paid leave for unpaid FMLA leave. We ☐ will ☐ will not require that you substitute accrued paid leave for unpaid FMLA leave. If paid leave will be used the following conditions will apply: *(Explain)*

5(a). If you normally pay a portion of the premiums for your health insurance, these payments will continue during the period of FMLA leave. Arrangements for payment have been discussed with you and it is agreed that you will make premium payments as follows: *(Set forth dates, e.g., the 10th of each month, or pay periods, etc. that specifically cover the agreement with the employee.)*

(b). You have a minimum 30-day *(or, indicate longer period, if applicable)* grace period in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled, *provided* we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during FMLA leave, and recover these payments from you upon your return to work. We ☐ will ☐ will not pay your share of health insurance premiums while you are on leave.

(c). We ☐ will ☐ will not do the same with other benefits (e.g., life insurance, disability insurance, etc.) while you are on FMLA leave. If we do pay your premiums for other benefits, when you return from leave you ☐ will ☐ will not be expected to reimburse us for the payments made on your behalf.

6. You ☐ will ☐ will not be required to present a fitness-for-duty certificate prior to being restored to employment. If such certification is required but not received, your return to work may be delayed until the certification is provided.

7(a). You ☐ are ☐ are not a "key employee" as described in § 825.218 of the Office of Compliance's FMLA regulations. If you are a "key employee," restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to us.

(b). We ☐ have ☐ have not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us. *(Explain (a) and/or (b) below. See § 825.219 of the Office of Compliance's FMLA regulations.)*

8. While on leave, you ☐ will ☐ will not be required to furnish us with periodic reports every _____ *(indicate interval of periodic reports, as appropriate for the particular leave situation)* of your status and intent to return to work *(see § 825.309 of the Office of Compliance's FMLA regulations).* If the circumstances of your leave change and you are able to return to work earlier than the date indicated on the reverse side of this form, you ☐ will ☐ will not be required to notify us at least two work days prior to the date you intend to report for work.

9. You ☐ will ☐ will not be required to furnish recertification relating to a serious health condition. *(Explain below, if necessary, including the interval between certifications as prescribed in § 825.308 of the Office of Compliance's FMLA regulations.)*

Subtitle C—Regulations relating to the employing offices other than those of the Senate and the House of Representatives—C series

Chapter III—Regulations Relating to the Rights and Protections Under the Fair Labor Standards Act of 1938

Part C501—General provisions

Sec.

C501.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.

C501.101 Purpose and scope.

C501.102 Definitions.

C501.103 Coverage.

C501.104 Administrative authority.

C501.105 Effect of Interpretations of the Labor Department.

C501.106 Application of the Portal-to-Portal Act of 1947.

C501.107 [Reserved]

§ C501.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance

The following table lists the parts of the Secretary of Labor Regulations at Title 29 of the Code of Federal Regulations under the FLSA with the corresponding parts of the Office of Compliance (OC) Regulations under Section 203 of the CAA:

Secretary of Labor regulations	*OC regulations*
Part 531 Wage payments under the Fair Labor Standards Act of 1938	Part C531
Part 541 Defining and delimiting the terms "bona fide executive," "administrative," and "professional" employees	Part C541
Part 547 Requirements of a "Bona fide thrift or savings plan"	Part C547
Part 553 Application of the FLSA to employees of public agencies	Part C553
Part 570 Child labor	Part C570

Subpart A—Matters of general applicability

§ C501.101 Purpose and scope

(a) Section 203 of the Congressional Accountability Act (CAA) provides that the rights and protections of subsections (a)(1) and (d) of section 6, section 7, and section 12(c) of the Fair Labor Standards Act of 1938 (FLSA) (29 U.S.C. §§206(a)(1) & (d), 207, 212(c)) shall apply to covered employees of the legislative branch of the Federal government. Section 301 of the CAA creates the Office of Compliance as an independent office in the legislative branch for enforcing the rights and protections of the FLSA, as applied by the CAA.

(b) The FLSA as applied by the CAA provides for minimum standards for both wages and overtime entitlements, and delineates administrative procedures by which covered worktime must be compensated. Included also in the FLSA are provisions related to child labor, equal pay, and portal-to-portal activities. In addition, the FLSA exempts specified employees or groups of employees from the application of certain of its provisions.

(c) This chapter contains the substantive regulations with respect to the FLSA that the Board of Directors of the Office of Compliance has adopted pursuant to Sections 203(c) and 304 of the CAA, which requires that the Board promulgate regulations that are "the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of §203 of the CAA] except insofar as the Board may determine, for good cause shown . . . That a modification of such regulations would be more effective for the implementation of the rights and protections under this section."

(d) These regulations are issued by the Board of Directors, Office of Compliance, pursuant to sections 203(c) and 304 of the CAA, which directs the Board to promulgate regulations implementing section 203 that are "the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection a [of section 203 of the CAA] except insofar as the Board may determine, for good cause shown . . . that a modification of such regulations would be more effective for the implementation of the rights and protections under this section." The regulations issued by the Board herein are on all matters for which section 203 of the CAA requires a regulations to be issued. Specifically, it is the Board's considered judgment, based on the information available to it at the time of the promulgation of these regulations, that, with the exception of regulations adopted and set forth herein, there are no other "substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 203 of the CAA]."

(e) In promulgating these regulations, the Board has made certain technical and nomenclature changes to the regulations as promulgated by the Secretary. Such changes are intended to make the provisions adopted accord more naturally to situations in the legislative branch. However, by making these changes, the Board does not intend a substantive difference between these regulations and those of the Secretary from which they are derived. Moreover, such changes, in and of themselves, are not intended to constitute an interpretation of the regulation or of the statutory provisions of the CAA upon which they are based.

§ C501.102 Definitions

For purposes of this chapter:

(a) *CAA* means the Congressional Accountability Act of 1995 (P.L. 104–1, 109 Stat. 3, 2 U.S.C. §§1301–1438).

(b) *FLSA* or *Act* means the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §201 et seq.), as applied by section 203 of the CAA to covered employees and employing offices.

(c) *Covered employee* means any employee, including an applicant for employment and a former employee, of the (1) the Capitol Guide Service; (2) the Capitol Police; (3) the Congressional Budget Office; (4) the Office of the Architect of the Capitol; (5) the Office of the Attending Physician; (6) the Office of Compliance; or (7) the Office of Technology Assessment, but shall not include an intern.

(d)(1) *Employee of the Office of the Architect of the Capitol* includes any employee of the Architect of the Capitol, the Botanic Garden, or the Senate Restaurants;

(2) *Employee of the Capitol Police* includes any member or officer of the Capitol Police.

(e) *Employing office* and *employer* mean (1) the Capitol Guide Service; (2) the Capitol Police; (3) the Congressional Budget Office; (4) the Office of the Architect of the Capitol; (5) the Office of the Attending Physician; (6) the Office of Compliance; or (7) the Office of Technology Assessment.

(f) *Board* means the Board of Directors of the Office of Compliance.

(g) *Office* means the Office of Compliance.

(h) *Intern* is an individual who (a) is performing services in an employing office as part of a demonstrated educational plan, and (b) is appointed on a temporary basis for a period not to exceed 12 months; *provided* that if an intern is appointed for a period shorter than 12 months, the intern may be reappointed for additional periods as long as the total length of the internship does not exceed 12 months; *provided further* that the defintion of *intern* does not include volunteers, fellows or pages.

§ C501.103 Coverage

The coverage of Section 203 of the CAA extends to any covered employee of an employing office without regard to whether the covered employee is engaged in commerce or the production of goods for interstate commerce and without regard to size, number of employees, amount of business transacted, or other measure.

§C501.104 Administrative authority

(a) The Office of Compliance is authorized to administer the provisions of Section 203 of the Act with respect to any covered employee or covered employer.

(b) The Board is authorized to promulgate substantive regulations in accordance with the provisions of Sections 203(c) and 304 of the CAA.

§ C501.105 Effect of interpretations of the Department of Labor

(a) In administering the FLSA, the Wage and Hour Division of the Department of Labor has issued not only substantive regulations but also interpretative bulletins. Substantive regulations represent an exercise of statutorily-delegated lawmaking authority from the legislative branch to an administrative agency. Generally, they are proposed in accordance with the notice-and-comment procedures of the Administrative Procedure Act (APA), 5 U.S.C. §553. Once promulgated, such regulations are considered to have the force and effect of law, unless set aside upon judicial review as arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. See *Batterton v. Francis*, 432 U.S. 416, 425 n.9 (1977). See also 29 C.F.R. §790.17(b) (1994). Unlike substantive regulations, interpretative statements, including bulletins and other releases of the Wage and Hour Division, are not issued pursuant to the provisions of the APA and may not have the force and effect of law. Rather, they may only constitute official interpretations of the Department of Labor with respect to the meaning and application of the minimum wage, maximum hour, and overtime pay requirements of the FLSA. See 29 C.F.R. §790.17(c) (citing Final Report of the Attorney General's Committee on Administrative Procedure, Senate Document No.8, 77th Cong., 1st Sess., at p. 27 (1941)). The purpose of such statements is to make available in one place the interpretations of the FLSA which will guide the Secretary of Labor and the Wage and Hour Administrator in the performance of their duties unless and until they are otherwise directed by authoritative decisions of the courts or conclude, upon reexamination of an interpretation, that it is incorrect. The Supreme Court has observed: "[T]he rulings, interpretations and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in the consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore v. Swift*, 323 U.S. 134, 140 (1944).

(b) Section 203(c) of the CAA provides that the substantive regulations implementing Section 203 of the CAA shall be "the same as substantive regulations promulgated by the Secretary of Labor" except where the Board finds, for good cause shown, that a modification would more effectively implement the rights and protections established by the FLSA. Thus, the CAA by its terms does not mandate that the Board adopt the interpretative statements of the Department of Labor or its Wage and Hour Division. The Board is thus not adopting such statements as part of its substantive regulations.

§ C501.106 Application of the Portal-to-Portal Act of 1947

(a) Consistent with Section 225 of the CAA, the Portal to Portal Act (PPA), 29 U.S.C.

§§216 and 251 *et seq.*, is applicable in defining and delimiting the rights and protections of the FLSA that are prescribed by the CAA. Section 10 of the PPA, 29 U.S.C. §259, provides in pertinent part: "[N]o employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended, . . . if he pleads and proves that the act or omission complained of was in good faith in conformity with and reliance on any written administrative regulation, order, ruling, approval or interpretation of [the Administrator of the Wage and Hour Division of the Department of Labor] . . . or any administrative practice or enforcement policy of such agency with respect to the class of employers to which he belonged. Such a defense, if established shall be a bar to the action or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect."

(b) In defending any action or proceeding based on any act or omission arising out of section 203 of the CAA, an employing office may satisfy the standards set forth in subsection (a) by pleading and proving good faith reliance upon any written administrative regulation, order, ruling, approval or interpretation, of the Administrator of the Wage and Hour Division of the Department of Labor: *Provided*, that such regulation, order, ruling approval or interpretation had not been superseded at the time of reliance by any regulation, order, decision, or ruling of the Board or the courts.

§C501.107 [Reserved]

Part C531—Wage Payments Under the Fair Labor Standards Act of 1938

Subpart A—Preliminary Matters

Sec.

C531.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.

C531.1 Definitions.

C531.2 Purpose and scope.

Subpart B—Determinations of "reasonable cost" and "fair value"; effects of collective bargaining agreements

C531.3 General determinations of "reasonable cost".

C531.6 Effects of collective bargaining agreements.

A—Preliminary matters

§C531.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance

The following table lists the sections of the Secretary of Labor Regulations at Title 29 of the Code of Federal Regulations under the FLSA with the corresponding sections of the Office of Compliance (OC) Regulations under Section 203 of the CAA:

Secretary of Labor regulations	*OC regulations*
531.1 Definitions	C531.1
531.2 Purpose and scope	C531.2
531.3 General determinations of "reasonable cost"	C531.3
Effects of collective bargaining agreements	C531.6

§C531.1 Definitions

(a) *Administrator* means the Administrator of the Wage and Hour Division or his authorized representative. The Secretary of Labor has delegated to the Administrator the functions vested in him under section 3(m) of the Act.

(b) *Act* means the Fair Labor Standards Act of 1938, as amended.

§C531.2 Purpose and scope

(a) Section 3(m) of the Act defines the term 'wage' to include the 'reasonable cost', as determined by the Secretary of Labor, to an employer of furnishing any employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by the employer to his employees. In addition, section 3(m) gives the Secretary authority to determine the 'fair value' of such facilities on the basis of average cost to the employer or to groups of employers similarly situated, on average value to groups of employees, or other appropriate measures of 'fair value.' Whenever so determined and when applicable and pertinent, the 'fair value' of the facilities involved shall be includable as part of 'wages' instead of the actual measure of the costs of those facilities. The section provides, however, that the cost of board, lodging, or other facilities shall not be included as part of 'wages' if excluded therefrom by a bona fide collective bargaining agreement. Section 3(m) also provides a method for determining the wage of a tipped employee.

(b) This part 531 contains any determinations made as to the 'reasonable cost' and 'fair value' of board, lodging, or other facilities having general application.

Subpart B—Determinations of "reasonable cost" and "fair value"; effects of collective bargaining agreements

§C531.3 General determinations of 'reasonable cost'

(a) The term *reasonable cost* as used in section 3(m) of the Act is hereby determined to be not more than the actual cost to the employer of the board, lodging, or other facilities customarily furnished by him to his employees.

(b) Reasonable cost does not include a profit to the employer or to any affiliated person.

(c) The reasonable cost to the employer of furnishing the employee with board, lodging, or other facilities (including housing) is the cost of operation and maintenance including adequate depreciation plus a reasonable allowance (not more than 5½ percent) for interest on the depreciated amount of capital invested by the employer: *Provided*, That if the total so computed is more than the fair rental value (or the fair price of the commodities or facilities offered for sale), the fair rental value (or the fair price of the commodities or facilities offered for sale) shall be the reasonable cost. The cost of operation and maintenance, the rate of depreciation, and the depreciated amount of capital invested by the employer shall be those arrived at under good accounting practices. As used in this paragraph, the term *good accounting practices* does not include accounting practices which have been rejected by the Internal Revenue Service for tax purposes, and the term *depreciation* includes obsolescence.

(d)(1) The cost of furnishing 'facilities' found by the Administrator to be primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not therefore be included in computing wages.

(2) The following is a list of facilities found by the Administrator to be primarily for the benefit of convenience of the employer. The list is intended to be illustrative rather than exclusive: (i) Tools of the trade and other materials and services incidental to carrying on the employer's business; (ii) the cost of any construction by and for the employer; (iii) the cost of uniforms and of their laundering, where the nature of the business requires the employee to wear a uniform.

§C531.6 Effects of collective bargaining agreements

(a) The cost of board, lodging, or other facilities shall not be included as part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective bargaining agreement applicable to the particular employee.

(b) A collective bargaining agreement shall be deemed to be "bona fide" when pursuant to the provisions of section 7(b)(1) or 7(b)(2) of the FLSA it is made with the certified representative of the employees under the provisions of the CAA.

Part C541—Defing and Delimiting the Terms "Bona Fide Executive," "Administrative," or "Professional" Capacity (Including Any Employee Employed in the Capacity of Academic Administrative Personnel or Teacher in Secondary School)

Subpart A—General regulations

Sec.

C541.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.

C541.01 Application of the exemptions of section 13(a)(1) of the FLSA.

C541.1 Executive.

C541.2 Administrative.

C541.3 Professional.

C541.5b Equal pay provisions of section 6(d) of the FLSA as applied by the CAA extend to executive, administrative, and professional employees.

C541.5d Special provisions applicable to employees of public agencies.

Subpart A—General regulations

§C541.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance

The following table lists the sections of the Secretary of Labor Regulations at Title 29 of the Code of Federal Regulations under the FLSA with the corresponding sections of the Office of Compliance (OC) Regulations under Section 203 of the CAA:

Secretary of Labor Regulations	*OC Regulations*
541.1 Executive	C541.1
541.2 Administrative	C541.2
541.3 Professional	C541.3
541.5b Equal pay provisions of section 6(d) of the FLSA apply to executive, administrative, and professional employees.	C541.5b
541.5d Special provisions applicable to employees of public agencies	C541.5d

§C541.01 Application of the exemptions of section 13 (a)(1) of the FLSA

(a) Section 13(a)(1) of the FLSA, which provides certain exemptions for employees employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in a secondary school), applies to covered employees by virtue of Section 225(f)(1) of the CAA.

(b) The substantive regulations set forth in this part are promulgated under the authority of sections 203(c)and 304 of the CAA,

which require that such regulations be the same as the substantive regulations promulgated by the Secretary of Labor except where the Board determines for good cause shown that modifications would be more effective for the implementation of the rights and protections under § 203.

§ C541.1 Executive

The term *employee employed in a bona fide executive* * * * capacity in section 13(a) (1) of the FLSA as applied by the CAA shall mean any employee:

(a) Whose primary duty consists of the management of an employing office in which he is employed or of a customarily recognized department of subdivision thereof; and

(b) Who customarily and regularly directs the work of two or more other employees therein; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercises discretionary powers; and

(e) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section: *Provided*, That this paragraph shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment; and

(f) Who is compensated for his services on a salary basis at a rate of not less than $155 per week, exclusive of board, lodging or other facilities: *Provided*, That an employee who is compensated on a salary basis at a rate of not less than $250 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the management of the employing office in which the employee is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all the requirements of this section

§ C541.2 Administrative

The term *employee employed in a bona fide* * * * *administrative* * * * *capacity* in section 13(a)(1) of the FLSA as applied by the CAA shall mean any employee:

(a) Whose primary duty consists of either:

(1) The performance of office or nonmanual work directly related to management policies or general operations of his employer or his employer's customers, or

(2) The performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and

(b) Who customarily and regularly exercises discretion and independent judgment; and

(c)(1) Who regularly and directly assists the head of an employing office, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined in the regulations of this subpart), or

(2) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or

(3) Who executes under only general supervision special assignments and tasks; and

(d) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (c) of this section; and

(e)(1) Who is compensated for his services on a salary or fee basis at a rate of not less than $155 per week, exclusive of board, lodging or other facilities, or

(2) Who, in the case of academic administrative personnel, is compensated for services as required by paragraph (e)(1) of this section, or on a salary basis which is at least equal to the entrance salary for teachers of in the school system, educational establishment or institution by which employed: *Provided*, That an employee who is compensated on a salary or fee basis at a rate of not less than $250 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the performance of work described in paragraph (a) of this section, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all the requirements of this section.

§ C541.3 Professional

The term *employee employed in a bona fide* * * * *professional capacity* in section 13(a)(1) of the FLSA as applied by the CAA shall mean any employee:

(a) Whose primary duty consists of the performance of:

(1) Work requiring knowledge of an advance type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or

(2) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee, or

(3) Teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in school system, educational establishment or institution by which employed, or

(4) Work that requires theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering, and who is employed and engaged in these activities as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field; and

(b) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(c) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(d) Who does not devote more than 20 percent of his hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in paragraphs (a) through (c) of this section; and

(e) Who is compensated for services on a salary or fee basis at a rate of not less than $170 per week, exclusive of board, lodging or other facilities: *Provided*, That this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, nor in the case of an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of medicine or any of its branches, nor in the case of an employee employed and engaged as a teacher as provided in paragraph (a)(3) of this section: *Provided further*, That an employee who is compensated on a salary or fee basis at a rate of not less than $250 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the performance either of work described in paragraph (a) (1), (3), or (4) of this section, which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section: *Provided further*, That the salary or fee requirements of this paragraph shall not apply to an employee engaged in computer-related work within the scope of paragraph (a)(4) of this section and who is compensated on an hourly basis at a rate in excess of 6 1/2 times the minimum wage provided by section 6 of the FLSA as applied by the CAA.

§ C541.5b Equal pay provisions of section 6(d) of the FLSA as applied by the CAA extend to executive, administrative, and professional employees

The FLSA, as amended and as applied by the CAA, includes within the protection of the equal pay provisions those employees exempt from the minimum wage and overtime pay provisions as bona fide executive, administrative, and professional employees (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools) under section 13(a)(1) of the FLSA. Thus, for example, where an exempt administrative employee and another employee of the employing office are performing substantially "equal work," the sex discrimination prohibitions of section 6(d) are applicable with respect to any wage differential between those two employees.

§ C541.5d Special provisions applicable to employees of public agencies

(a) An employee of a public agency who otherwise meets the requirement of being paid on a salary basis shall not be disqualified from exemption under Sec. C541.1, C541.2, or C541.3 on the basis that such employee is paid according to a pay system established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one work-day when accrued leave is not used by an employee because—(1) permission for its use has not been sought or has been sought and denied; (2) accrued leave has been exhausted; or (3) the employee chooses to use leave without pay.

(b) Deductions from the pay of an employee of a public agency for absences due to

a budget-required furlough shall not disqualify the employee from being paid 'on a salary basis' except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

Part C547—Requirements of a "Bona Fide Thrift or Savings Plan

Sec.
C547.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance
C547.0 Scope and effect of part.
C547.1 Essential requirements of qualifications.
C547.2 Disqualifying provisions.

§ C547.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.

The following table lists the sections of the Secretary of Labor Regulations under the FLSA with the corresponding sections of the Office of Compliance (OC) Regulations under Section 203 of the CAA:

Secretary of Labor regulations	*OC regulations*
547.0 Scope and effect of part	C547.0
547.1 Essential requirements of qualifications	C547.1
547.2 Disqualifying provisions	C547.2

§ C547.0 Scope and effect of part

(a) The regulations in this part set forth the requirements of a "bona fide thrift or savings plan" under section 7(e)(3)(b) of the Fair Labor Standards Act of 1938, as amended (FLSA), as applied by the CAA. In determining the total remuneration for employment which section 7(e) of the FLSA requires to be included in the regular rate at which an employee is employed, it is not necessary to include any sums paid to or on behalf of such employee, in recognition of services performed by him during a given period, which are paid pursuant to a bona fide thrift or savings plan meeting the requirements set forth herein. In the formulation of these regulations due regard has been given to the factors and standards set forth in section 7(e)(3)(b) of the Act.

(b) Where a thrift or savings plan is combined in a single program (whether in one or more documents) with a plan or trust for providing old age, retirement, life, accident or health insurance or similar benefits for employees, contributions made by the employer pursuant to such thrift or savings plan may be excluded from the regular rate if the plan meets the requirements of the regulation in this part and the contributions made for the other purposes may be excluded from the regular rate if they meet the tests set forth in regulations.

§ C547.1 Essential requirements for qualifications

(a) A "bona fide thrift or savings plan" for the purpose of section 7(e)(3)(b) of the FLSA as applied by the CAA is required to meet all the standards set forth in paragraphs (b) through (f) of this section and must not contain the disqualifying provisions set forth in § 547.2.

(b) The thrift or savings plan constitutes a definite program or arrangement in writing, adopted by the employer or by contract as a result of collective bargaining and communicated or made available to the employees, which is established and maintained, in good faith, for the purpose of encouraging voluntary thrift or savings by employees by providing an incentive to employees to accumulate regularly and retain cash savings for a reasonable period of time or to save through the regular purchase of public or private securities.

(c) The plan specifically shall set forth the category or categories of employees participating and the basis of their eligibility. Eligibility may not be based on such factors as hours of work, production, or efficiency of the employees: *Provided, however,* That hours of work may be used to determine eligibility of part-time or casual employees.

(d) The amount any employee may save under the plan shall be specified in the plan or determined in accordance with a definite formula specified in the plan, which formula may be based on one or more factors such as the straight-time earnings or total earnings, base rate of pay, or length of service of the employee.

(e) The employer's total contribution in any year may not exceed 15 percent of the participating employees' total earnings during that year. In addition, the employer's total contribution in any year may not exceed the total amount saved or invested by the participating employees during that year.

(f) The employer's contributions shall be apportioned among the individual employees in accordance with a definite formula or method of calculation specified in the plan, which formula or method of calculation is based on the amount saved or the length of time the individual employee retains his savings or investment in the plan: *Provided,* That no employee's share determined in accordance with the plan may be diminished because of any other remuneration received by him.

§ C547.2 Disqualifying provisions

(a) No employee's participation in the plan shall be on other than a voluntary basis.

(b) No employee's wages or salary shall be dependent upon or influenced by the existence of such thrift or savings plan or the employer's contributions thereto.

(c) The amounts any employee may save under the plan, or the amounts paid by the employer under the plan may not be based upon the employee's hours of work, production or efficiency.

Part C553—Overtime Compensation: Partial Exemption for Employees Engaged in Law Enforcement and Fire Protection; Overtime and Compensatory Time-Off for Employees Whose Work Schedule Directly Depends Upon the Schedule of the House

Introduction

Sec.
C553.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.
C553.1 Definitions.
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Subpart C—Partial exemption for employees engaged in law enforcement and fire protection
C553.201 Statutory provisions: section 7(k).
C553.202 Limitations.
C553.211 Law enforcement activities.
C553.212 Twenty percent limitation on nonexempt work.
C553.213 Public agency employees engaged in both fire protection and law enforcement activities.
C553.214 Trainees.
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C553.220 "Tour of duty" defined.
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C553.225 Early relief.
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C553.230 Maximum hours standards for work periods of 7 to 28 days—section 7(k).
C553.231 Compensatory time off.
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C553.301 Definition of "directly depends."
C553.302 Overtime compensation and compensatory time off for an employee whose work schedule directly depends upon the schedule of the House.
C553.303 Using compensatory time off.
C553.304 Payment of overtime compensation for accrued compensatory time off as of termination of service.

Introduction

§ C553.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance

The following table lists the sections of the Secretary of Labor Regulations under the FLSA with the corresponding sections of the Office of Compliance (OC) Regulations under Section 203 of the CAA:

Secretary of Labor regulations	*OC regulations*
553.1 Definitions	C553.1
553.2 Purpose and scope	C553.2
553.201 Statutory provisions: section 7(k)	C553.201
553.202 Limitations	C553.202
553.211 Law enforcement activities	C553.211
553.212 Twenty percent limitation on nonexempt work	C553.212
553.213 Public agency employees engaged in both fire protection and law enforcement activities	C553.213
553.214 Trainees	C553.214
553.215 Ambulance and rescue service employees	C553.215
553.216 Other exemptions	C553.216
553.220 "Tour of duty" defined	C553.220
553.221 Compensable hours of work	C553.221
553.222 Sleep time	C553.222
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553.224 "Work period" defined	C553.224
553.225 Early relief	C553.225
553.226 Training time	C553.226
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553.230 Maximum hours standards for work periods of 7 to 28 days—section 7(k)	C553.230
553.231 Compensatory time off	C553.231
553.232 Overtime pay requirements	C553.232
553.233 "Regular rate" defined	C553.233

Introduction

§ C553.1 Definitions

(a) Act or FLSA means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201–219), as applied by the CAA.

(b) 1985 Amendments means the Fair Labor Standards Amendments of 1985 (Pub. L. 99–150).

(c) Public agency means an employing office as the term is defined in § 501.102 of this chapter, including the Capitol Police.

(d) Section 7(k) means the provisions of §7(k) of the FLSA as applied to covered employees and employing offices by §203 of the CAA.

§ C553.2 Purpose and scope

The purpose of part C553 is to adopt with appropriate modifications the regulations of the Secretary of Labor to carry out those provisions of the FLSA relating to public agency employees as they are applied to covered employees and employing offices of the CAA. In particular, these regulations apply section 7(k) as it relates to fire protection and law enforcement employees of public agencies.

Subpart C—Partial exemption for employees engaged in law enforcement and fire protection

§ C553.201 Statutory provisions: section 7(k).

Section 7(k) of the Act provides a partial overtime pay exemption for fire protection and law enforcement personnel (including security personnel in correctional institutions) who are employed by public agencies on a work period basis. This section of the Act formerly permitted public agencies to pay overtime compensation to such employees in work periods of 28 consecutive days only after 216 hours of work. As further set forth in §C553.230 of this part, the 216-hour standard has been replaced, pursuant to the study mandated by the statute, by 212 hours for fire protection employees and 171 hours for law enforcement employees. In the case of such employees who have a work period of at least 7 but less than 28 consecutive days, overtime compensation is required when the ratio of the number of hours worked to the number of days in the work period exceeds the ratio of 212 (or 171) hours to 28 days.

§ C553.202 Limitations

The application of §7(k), by its terms, is limited to public agencies, and does not apply to any private organization engaged in furnishing fire protection or law enforcement services. This is so even if the services are provided under contract with a public agency.

Exemption requirements

§ C553.211 Law enforcement activities

(a) As used in §7(k) of the Act, the term 'any employee . . . in law enforcement activities' refers to any employee (1) who is a uniformed or plainclothed member of a body of officers and subordinates who are empowered by law to enforce laws designed to maintain public peace and order and to protect both life and property from accidental or willful injury, and to prevent and detect crimes, (2) who has the power to arrest, and (3) who is presently undergoing or has undergone or will undergo on-the-job training and/or a course of instruction and study which typically includes physical training, self-defense, firearm proficiency, criminal and civil law principles, investigative and law enforcement techniques, community relations, medical aid and ethics.

(b) Employees who meet these tests are considered to be engaged in law enforcement activities regardless of their rank, or of their status as 'trainee,' 'probationary,' or 'permanent,' and regardless of their assignment to duties incidental to the performance of their law enforcement activities such as equipment maintenance, and lecturing, or to support activities of the type described in paragraph (g) of this section, whether or not such assignment is for training or familiarization purposes, or for reasons of illness, injury or infirmity. The term would also include rescue and ambulance service personnel if such personnel form an integral part of the public agency's law enforcement activities. See Sec. C553.215.

(c) Typically, employees engaged in law enforcement activities include police who are regularly employed and paid as such. Other agency employees with duties not specifically mentioned may, depending upon the particular facts and pertinent statutory provisions in that jurisdiction, meet the three tests described above. If so, they will also qualify as law enforcement officers. Such employees might include, for example, any law enforcement employee within the legislative branch concerned with keeping public peace and order and protecting life and property.

(d) Employees who do not meet each of the three tests described above are not engaged in (law enforcement activities' as that term is used in sections 7(k). Employees who normally would not meet each of these tests include:

(1) Building inspectors (other than those defined in Sec. C553.213(a)),

(2) Health inspectors,

(3) Sanitarians,

(4) civilian traffic employees who direct vehicular and pedestrian traffic at specified intersections or other control points,

(5) Civilian parking checkers who patrol assigned areas for the purpose of discovering parking violations and issuing appropriate warnings or appearance notices,

(6) Wage and hour compliance officers,

(7) Equal employment opportunity compliance officers, and

(8) Building guards whose primary duty is to protect the lives and property of persons within the limited area of the building.

(e) The term 'any employee in law enforcement activities' also includes, by express reference, 'security personnel in correctional institutions.' Typically, such facilities may include precinct house lockups. Employees of correctional institutions who qualify as security personnel for purposes of the section 7(k) exemption are those who have responsibility for controlling and maintaining custody of inmates and of safeguarding them from other inmates or for supervising such functions, regardless of whether their duties are performed inside the correctional institution or outside the institution. These employees are considered to be engaged in law enforcement activities regardless of their rank or of their status as 'trainee,' 'probationary,' or 'permanent,' and regardless of their assignment to duties incidental to the performance of their law enforcement activities, or to support activities of the type described in paragraph (f) of this section, whether or not such assignment is for training or familiarization purposes or for reasons of illness, injury or infirmity.

(f) Not included in the term 'employee in law enforcement activities' are the so-called 'civilian' employees of law enforcement agencies or correctional institutions who engage in such support activities as those performed by dispatcher, radio operators, apparatus and equipment maintenance and repair workers, janitors, clerks and stenographers. Nor does the term include employees in correctional institutions who engage in building repair and maintenance, culinary services, teaching, or in psychological, medical and paramedical services. This is so even though such employees may, when assigned to correctional institutions, come into regular contact with the inmates in the performance of their duties.

§ C553.212 Twenty percent limitation on nonexempt work

(a) Employees engaged in fire protection or law enforcement activities as described in Sec. C553.210 and C553.211, may also engage in some nonexempt work which is not performed as an incident to or in conjunction with their fire protection or law enforcement activities. For example, firefighters who work for forest conservation agencies may, during slack times, plant trees and perform other conservation activities unrelated to their firefighting duties. The performance of such nonexempt work will not defeat the §7(k) exemption unless it exceeds 20 percent of the total hours worked by that employee during the workweek or applicable work period. A person who spends more than 20 percent of his/her working time in nonexempt activities is not considered to be an employee engaged in fire protection or law enforcement activities for purposes of this part.

(b) Public agency fire protection and law enforcement personnel may, at their own option, undertake employment for the same employer on an occasional or sporadic and part-time basis in a different capacity from their regular employment. The performance of such work does not affect the application of the §7(k) exemption with respect to the regular employment. In addition, the hours of work in the different capacity need not be counted as hours worked for overtime purposes on the regular job, nor are such hours counted in determining the 20 percent tolerance for nonexempt work discussed in paragraph (a) of this section.

§ C553.213 Public agency employees engaged in both fire protection and law enforcement activities

(a) Some public agencies have employees (often called 'public safety officers') who engage in both fire protection and law enforcement activities, depending on the agency needs at the time. This dual assignment would not defeat the section 7(k) exemption, provided that each of the activities performed meets the appropriate tests set forth in Sec. C553.210 and C553.211. This is so regardless of how the employee's time is divided between the two activities. However, all time spent in nonexempt activities by public safety officers within the work period, whether performed in connection with fire protection or law enforcement functions, or with neither, must be combined for purposes of the 20 percent limitation on nonexempt work discussed in Sec.C553.212.

(b) As specified in Sec.C553.230, the maximum hours standards under section 7(k) are different for employees engaged in fire protection and for employees engaged in law enforcement. For those employees who perform both fire protection and law enforcement activities, the applicable standard is the one which applies to the activity in which the employee spends the majority of work time during the work period.

§ C553.214 Trainees

The attendance at a bona fide fire or police academy or other training facility, when required by the employing agency, constitutes engagement in activities under section 7(k) only when the employee meets all the applicable tests described in Sec. C553.210 or Sec. C553.211 (except for the power of arrest for law enforcement personnel), as the case may be. If the applicable tests are met, then basic training or advanced training is considered incidental to, and part of, the employee's fire protection or law enforcement activities.

§ C553.215 Ambulance and rescue service employees

Ambulance and rescue service employees of a public agency other than a fire protection or law enforcement agency may be

treated as employees engaged in fire protection or law enforcement activities of the type contemplated by §7(k) if their services are substantially related to firefighting or law enforcement activities in that (1) the ambulance and rescue service employees have received training in the rescue of fire, crime, and accident victims or firefighters or law enforcement personnel injured in the performance of their respective duties, and (2) the ambulance and rescue service employees are regularly dispatched to fires, crime scenes, riots, natural disasters and accidents. As provided in Sec. C553.213(b), where employees perform both fire protection and law enforcement activities, the applicable standard is the one which applies to the activity in which the employee spends the majority of work time during the work period.

§ C553.216 Other exemptions

Although the 1974 Amendments to the FLSA as applied by the CAA provide special exemptions for employees of public agencies engaged in fire protection and law enforcement activities, such workers may also be subject to other exemptions in the Act, and public agencies may claim such other applicable exemptions in lieu of §7(k). For example, section 13(a)(1) as applied by the CAA provides a complete minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, or professional capacity, as those terms are defined and delimited in Part C541. The section 13(a)(1) exemption can be claimed for any fire protection or law enforcement employee who meets all of the tests specified in part C541 relating to duties, responsibilities, and salary. Thus, high ranking police officials who are engaged in law enforcement activities, may also, depending on the facts, qualify for the section 13(a)(1) exemption as "executive" employees. Similarly, certain criminal investigative agents may qualify as "administrative" employees under section 13(a)(1).

Tour of duty and compensable hours of work rules

§ C553.220 "Tour of duty" defined

(a) The term "tour of duty" is a unique concept applicable only to employees for whom the section 7(k) exemption is claimed. This term, as used in section 7(k), means the period of time during which an employee is considered to be on duty for purposes of determining compensable hours. It may be a scheduled or unscheduled period. Such periods include "shifts" assigned to employees often days in advance of the performance of the work. Scheduled periods also include time spent in work outside the"shift" which the public agency employer assigns. For example, a police officer may be assigned to crowd control during a parade or other special event outside of his or her shift.

(b) Unscheduled periods include time spent in court by police officers, time spent handling emergency situations, and time spent working after a shift to complete an assignment. Such time must be included in the compensable tour of duty even though the specific work performed may not have been assigned in advance.

(c) The tour of duty does not include time spent working for a separate and independent employer in certain types of special details as provided in Sec. C553.227.

§ C553.221 Compensable hours of work

(a) The rules under the FLSA as applied by the CAA on compensable hours of work are applicable to employees for whom the section 7(k) exemption is claimed. Special rules for sleep time (Sec. C553.222) apply to both law enforcement and firefighting employees for whom the section 7(k) exemption is claimed. Also, special rules for meal time apply in the case of firefighters (Sec. C553.223).

(b) Compensable hours of work generally include all of the time during which an employee is on duty on the employer's premises or at a prescribed workplace, as well as all other time during which the employee is suffered or permitted to work for the employer. Such time includes all pre-shift and post-shift activities which are an integral part of the employee's principal activity or which are closely related to the performance of the principal activity, such as attending roll call, writing up and completing tickets or reports, and washing and re-racking fire hoses.

(c) Time spent away from the employer's premises under conditions that are so circumscribed that they restrict the employee from effectively using the time for personal pursuits also constitutes compensable hours of work. For example, where a police station must be evacuated because of an electrical failure and the employees are expected to remain in the vicinity and return to work after the emergency has passed, the entire time spent away from the premises is compensable. The employees in this example cannot use the time for their personal pursuits.

(d) An employee who is not required to remain on the employer's premises but is merely required to leave word at home or with company officials where he or she may be reached is not working while on call. Time spent at home on call may or may not be compensable depending on whether the restrictions placed on the employee preclude using the time for personal pursuits. Where, for example, a firefighter has returned home after the shift, with the understanding that he or she is expected to return to work in the event of an emergency in the night, such time spent at home is normally not compensable. On the other hand, where the conditions placed on the employee's activities are so restrictive that the employee cannot use the time effectively for personal pursuits, such time spent on call is compensable.

(e) Normal home to work travel is not compensable, even where the employee is expected to report to work at a location away from the location of the employer's premises.

(f) A police officer, who has completed his or her tour of duty and who is given a patrol car to drive home and use on personal business, is not working during the travel time even where the radio must be left on so that the officer can respond to emergency calls. Of course, the time spent in responding to such calls is compensable.

§ C553.222 Sleep time

(a) Where a public agency elects to pay overtime compensation to firefighters and/or law enforcement personnel in accordance with section 7(a)(1) of the Act, the public agency may exclude sleep time from hours worked if all the conditions for the exclusion of such time are met.

(b) Where the employer has elected to use the section 7(k) exemption, sleep time cannot be excluded from the compensable hours of work where

(1) The employee is on a tour of duty of less than 24 hours, and

(2) Where the employee is on a tour of duty of exactly 24 hours.

(c) Sleep time can be excluded from compensable hours of work, however, in the case of police officers or firefighters who are on a tour of duty of more than 24 hours, but only if there is an expressed or implied agreement between the employer and the employees to exclude such time. In the absence of such an agreement, the sleep time is compensable. In no event shall the time excluded as sleep time exceed 8 hours in a 24-hour period. If the sleep time is interrupted by a call to duty, the interruption must be counted as hours worked. If the sleep period is interrupted to such an extent that the employee cannot get a reasonable night's sleep (which, for enforcement purposes means at least 5 hours), the entire time must be counted as hours of work.

§ C553.223 Meal time

(a) If a public agency elects to pay overtime compensation to firefighters and law enforcement personnel in accordance with section 7(a)(1) of the Act, the public agency may exclude meal time from hours worked if all the statutory tests for the exclusion of such time are met.

(b) If a public agency elects to use the section 7(k) exemption, the public agency may, in the case of law enforcement personnel, exclude meal time from hours worked on tours of duty of 24 hours or less, provided that the employee is completely relieved from duty during the meal period, and all the other statutory tests for the exclusion of such time are met. On the other hand, where law enforcement personnel are required to remain on call in barracks or similar quarters, or are engaged in extended surveillance activities (e.g., stakeouts'), they are not considered to be completely relieved from duty, and any such meal periods would be compensable.

(c) With respect to firefighters employed under section 7(k), who are confined to a duty station, the legislative history of the Act indicates Congressional intent to mandate a departure from the usual FLSA 'hours of work' rules and adoption of an overtime standard keyed to the unique concept of 'tour of duty' under which firefighters are employed. Where the public agency elects to use the section 7(k) exemption for firefighters, meal time cannot be excluded from the compensable hours of work where (1) the firefighter is on a tour of duty of less than 24 hours, and (2) where the firefighter is on a tour of duty of exactly 24 hours.

(d) In the case of police officers or firefighters who are on a tour of duty of more than 24 hours, meal time may be excluded from compensable hours of work provided that the statutory tests for exclusion of such hours are met.

§ C553.224 "Work period" defined

(a) As used in section 7(k), the term 'work period' refers to any established and regularly recurring period of work which, under the terms of the Act and legislative history, cannot be less than 7 consecutive days nor more than 28 consecutive days. Except for this limitation, the work period can be of any length, and it need not coincide with the duty cycle or pay period or with a particular day of the week or hour of the day. Once the beginning and ending time of an employee's work period is established, however, it remains fixed regardless of how many hours are worked within the period. The beginning and ending of the work period may be changed, provided that the change is intended to be permanent and is not designed to evade the overtime compensation requirements of the Act.

(b) An employer may have one work period applicable to all employees, or different work periods for different employees or groups of employees.

§ C553.225 Early relief

It is a common practice among employees engaged in fire protection activities to relieve employees on the previous shift prior to the scheduled starting time. Such early relief time may occur pursuant to employee agreement, either expressed or implied. This practice will not have the effect of increasing the number of compensable hours of work for employees employed under section 7(k) where it is voluntary on the part of the employees and does not result, over a period of time, in their failure to receive proper compensation for all hours actually worked. On the other hand, if the practice is required by the employer, the time involved must be added to the employee's tour of duty and treated as compensable hours of work.

§ C553.226 Training time

(a) The general rules for determining the compensability of training time under the FLSA apply to employees engaged in law enforcement or fire protection activities.

(b) While time spent in attending training required by an employer is normally considered compensable hours of work, following are situations where time spent by employees in required training is considered to be noncompensable:

(1) Attendance outside of regular working hours at specialized or follow-up training, which is required by law for certification of public and private sector employees within a particular governmental jurisdiction (e.g., certification of public and private emergency rescue workers), does not constitute compensable hours of work for public employees within that jurisdiction and subordinate jurisdictions.

(2) Attendance outside of regular working hours at specialized or follow-up training, which is required for certification of employees of a governmental jurisdiction by law of a higher level of government, does not constitute compensable hours of work.

(3) Time spent in the training described in paragraphs (b) (1) or (2) of this section is not compensable, even if all or part of the costs of the training is borne by the employer.

(c) Police officers or firefighters, who are in attendance at a police or fire academy or other training facility, are not considered to be on duty during those times when they are not in class or at a training session, if they are free to use such time for personal pursuits. Such free time is not compensable.

§ C553.227 Outside employment

(a) Section 7(p)(1) makes special provision for fire protection and law enforcement employees of public agencies who, at their own option, perform special duty work in fire protection, law enforcement or related activities for a separate and independent employer (public or private) during their off-duty hours. The hours of work for the separate and independent employer are not combined with the hours worked for the primary public agency employer for purposes of overtime compensation.

(b) Section 7(p)(1) applies to such outside employment provided (1) the special detail work is performed solely at the employee's option, and (2) the two employers are in fact separate and independent.

(c) Whether two employers are, in fact, separate and independent can only be determined on a case-by-case basis.

(d) The primary employer may facilitate the employment or affect the conditions of employment of such employees. For example, a police department may maintain a roster of officers who wish to perform such work. The department may also select the officers for special details from a list of those wishing to participate, negotiate their pay, and retain a fee for administrative expenses. The department may require that the separate and independent employer pay the fee for such services directly to the department, and establish procedures for the officers to receive their pay for the special details through the agency's payroll system. Finally, the department may require that the officers observe their normal standards of conduct during such details and take disciplinary action against those who fail to do so.

(e) Section 7(p)(1) applies to special details even where a State law or local ordinance requires that such work be performed and that only law enforcement or fire protection employees of a public agency in the same jurisdiction perform the work. For example, a city ordinance may require the presence of city police officers at a convention center during concerts or sports events. If the officers perform such work at their own option, the hours of work need not be combined with the hours of work for their primary employer in computing overtime compensation.

(f) The principles in paragraphs (d) and (e) of this section with respect to special details of public agency fire protection and law enforcement employees under section 7(p)(1) are exceptions to the usual rules on joint employment set forth in part 791 of this title.

(g) Where an employee is directed by the public agency to perform work for a second employer, section 7(p)(1) does not apply. Thus, assignments of police officers outside of their normal work hours to perform crowd control at a parade, where the assignments are not solely at the option of the officers, would not qualify as special details subject to this exception. This would be true even if the parade organizers reimburse the public agency for providing such services.

(h) Section 7(p)(1) does not prevent a public agency from prohibiting or restricting outside employment by its employees.

Overtime compensation rules

§ C553.230 Maximum hours standards for work periods of 7 to 28 days—section 7(k)

(a) For those employees engaged in fire protection activities who have a work period of at least 7 but less than 28 consecutive days, no overtime compensation is required under section 7(k) until the number of hours worked exceeds the number of hours which bears the same relationship to 212 as the number of days in the work period bears to 28.

(b) For those employees engaged in law enforcement activities (including security personnel in correctional institutions) who have a work period of at least 7 but less than 28 consecutive days, no overtime compensation is required under section 7(k) until the number of hours worked exceeds the number of hours which bears the same relationship to 171 as the number of days in the work period bears to 28.

(c) The ratio of 212 hours to 28 days for employees engaged in fire protection activities is 7.57 hours per day (rounded) and the ratio of 171 hours to 28 days for employees engaged in law enforcement activities is 6.11 hours per day (rounded). Accordingly, overtime compensation (in premium pay or compensatory time) is required for all hours worked in excess of the following maximum hours standards (rounded to the nearest whole hour):

MAXIMUM HOURS STANDARDS

Work period (days)	Fire protection	Law enforcement
28	212	171
27	204	165
26	197	159
25	189	153
24	182	147
23	174	141
22	167	134
21	159	128
20	151	122
19	144	116
18	136	110
17	129	104
16	121	98
15	114	92
14	106	86
13	98	79
12	91	73
11	83	67
10	76	61
9	68	55
8	61	49
7	53	43

§ C553.231 Compensatory time off

(a) Law enforcement and fire protection employees who are subject to the section 7(k) exemption may receive compensatory time off in lieu of overtime pay for hours worked in excess of the maximum for their work period as set forth in Sec. C553.230.

(b) Section 7(k) permits public agencies to balance the hours of work over an entire work period for law enforcement and fire protection employees. For example, if a firefighter's work period is 28 consecutive days, and he or she works 80 hours in each of the first two weeks, but only 52 hours in the third week, and does not work in the fourth week, no overtime compensation (in cash wages or compensatory time) would be required since the total hours worked do not exceed 212 for the work period. If the same firefighter had a work period of only 14 days, overtime compensation or compensatory time off would be due for 54 hours (160 minus 106 hours) in the first 14 day work period.

§ C553.232 Overtime pay requirements

If a public agency pays employees subject to section 7(k) for overtime hours worked in cash wages rather than compensatory time off, such wages must be paid at one and one-half times the employees' regular rates of pay.

§ C553.233 'Regular rate' defined

The statutory rules for computing an employee's 'regular rate', for purposes of the Act's overtime pay requirements are applicable to employees or whom the section 7(k) exemption is claimed when overtime compensation is provided in cash wages.

Subpart D—Compensatory time-off for overtime earned by employees whose work schedule directly depends upon the schedule of the House and the Senate

§ C553.301 Definition of "directly depends"

For the purposes of this Part, a covered employee's work schedule "directly depends" on the schedule of the House of Representatives and the Senate only if the eligible employee performs work that directly supports the conduct of legislative or other business in the chamber and works hours that regularly change in response to the schedule of the House and the Senate.

§ C553.302 Overtime compensation and compensatory time off for an employee whose work schedule directly depends upon the schedule of the House and Senate

No employing office shall be deemed to have violated section 203(a)(1) of the CAA, which applies the protections of section 7(a) of the Fair Labor Standards Act ("FLSA") to covered employees and employing office,

by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under section 7(a) of the FLSA where the employee's work schedule directly depends on the schedule of the House of Representatives or the Senate within the meaning of § C553.301, and: (a) the employee is compensated at the rate of time-and-a-half in pay for all hours in excess of 40 and up to 60 hours in a workweek, and (b) the employee is compensated at the rate of time-and-a-half in either pay or in time off for all hours in excess of 60 hours in a workweek.

§ C553.303 Using compensatory time off

An employee who has accrued compensatory time off under § C553.302 upon his or her request, shall be permitted by the employing office to use such time within a reasonable period after making the request, unless the employing office makes a bona fide determination that the needs of the operations of the office do not allow the taking of compensatory time off at the time of the request. An employee may renew the request at a subsequent time. An employing office may also, upon reasonable notice, require an employee to use accrued compensatory time-off.

§ C553.304 Payment of overtime compensation for accrued compensatory time off as of termination of service

An employee who has accrued compensatory time authorized by this regulation shall, upon termination of employment, be paid for the unused compensatory time at the rate earned by the employee at the time the employee receives such payment.

Part C570—Child Labor Regulations

Subpart A—General

Sec.
C570.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.
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C570.58 Occupations involved in the operation of power-driven hoisting apparatus (Order 7).
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C570.63 Occupations involved in the operation of paper-products machines (Order 12).
C570.65 Occupations involved in the operations of circular saws, band saws, and guillotine shears (Order 14).
C570.66 Occupations involved in wrecking and demolition operations (Order 15).
C570.67 Occupations in roofing operations (Order 16).
C570.68 Occupations in excavation operations (Order 17).

Subpart A—General

§ C570.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance

The following table lists the sections of the Secretary of Labor Regulations under the FLSA with the corresponding sections of the Office of Compliance Regulations under Section 202 of the CAA:

Secretary of Labor regulations	*OC regulations*
570.1 Definitions	C570.1
570.2 Minimum age standards	C570.2
570.31 Determinations	C570.31
570.32 Effect of this subpart	C570.32
570.33 Occupations	C570.33
570.35 Periods and conditions of employment	C570.35
570.50 General	C570.50
570.51 Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components (Order 1)	C570.51
570.52 Occupations of motor-vehicle driver and outside helper (Order 2)	C570.52
570.55 Occupations involved in the operation of power-driven woodworking machines (Order 5)	C570.55
570.58 Occupations involved in the operation of power-driven hoisting apparatus (Order 7)	C570.58
570.59 Occupations involved in the operations of power-driven metal forming, punching, and shearing machines (Order 8)	C570.59
570.62 Occupations involved in the operation of bakery machines (Order 11)	C570.62
570.63 Occupations involved in the operation of paper-products machines (Order 12)	C570.63
570.65 Occupations involved in the operations of circular saws, band saws, and guillotine shears (Order 14)	C570.65
Secretary of Labor regulations	*OC regulations*
570.66 Occupations involved in wrecking and demolition operations (Order 15)	C570.66
570.67 Occupations in roofing operations (Order 16)	C570.67
570.68 Occupations in excavation operations (Order 17)	C570.68

§ C570.1 Definitions

As used in this part:

(a) *Act* means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201–219).

(b) *Oppressive child labor* means employment of a minor in an occupation for which he does not meet the minimum age standards of the Act, as set forth in Sec. 570.2 of this subpart.

(c) *Oppressive child labor age* means an age below the minimum age established under the Act for the occupation in which a minor is employed or in which his employment is contemplated.

(d) [Reserved]

(e) [Reserved]

(f) *Secretary or Secretary of Labor* means the Secretary of Labor, United States Department of Labor, or his authorized representative.

(g) *Wage and Hour Division* means the Wage and Hour Division, Employment Standards Administration, United States Department of Labor.

(h) *Administrator* means the Administrator of the Wage and Hour Division or his authorized representative.

§ C570.2 Minimum age standards

(a) All occupations except in agriculture. (1) The Act, in section 3(1), sets a general 16-year minimum age which applies to all employment subject to its child labor provisions in any occupation other than in agriculture, with the following exceptions:

(i) The Act authorizes the Secretary of Labor to provide by regulation or by order that the employment of employees between the ages of 14 and 16 years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor, if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being (see subpart C of this part); and

(ii) The Act sets an 18-year minimum age with respect to employment in any occupation found and declared by the Secretary of Labor to be particularly hazardous for the employment of minors of such age or detrimental to their health or well-being.

(2) The Act exempts from its minimum age requirements the employment by a parent of his own child, or by a person standing in place of a parent of a child in his custody, except in occupations to which the 18-year age minimum applies and in manufacturing and mining occupations.

Subpart B [reserved]

Subpart C—Employment of minors between 14 and 16 years of age (child labor reg. 3)

§ C570.31 Determination

The employment of minors between 14 and 16 years of age in the occupations, for the periods, and under the conditions hereafter specified does not interfere with their schooling or with their health and well-being and shall not be deemed to be oppressive child labor.

§ C570.32 Effect of this subpart

In all occupations covered by this subpart the employment (including suffering or permitting to work) by an employer of minor employees between 14 and 16 years of age for the periods and under the conditions specified in § 570.35 shall not be deemed to be oppressive child labor within the meaning of the Fair Labor Standards Act of 1938.

§ C570.33 Occupations

This subpart shall apply to all occupations other than the following:

(a) Manufacturing, mining, or processing occupations, including occupations requiring the performance of any duties in work rooms or work places where goods are manufactured, mined, or otherwise processed;

(b) Occupations which involve the operation or tending of hoisting apparatus or of any power-driven machinery other than office machines;

(c) The operation of motor vehicles or service as helpers on such vehicles;

(d) Public messenger service;

(e) Occupations which the Secretary of Labor may, pursuant to section 3(1) of the Fair Labor Standards Act and Reorganization Plan No. 2, issued pursuant to the Reorganization Act of 1945, find and declare to be hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health or well-being;

(f) Occupations in connection with:

(1) Transportation of persons or property by rail, highway, air, water, pipeline, or other means;

(2) Warehousing and storage;

(3) Communications and public utilities;

(4) Construction (including demolition and repair); except such office (including ticket office) work, or sales work, in connection with paragraphs (f)(1), (2), (3), and (4) of this section, as does not involve the performance of any duties on trains, motor vehicles, aircraft, vessels, or other media of transportation or at the actual site of construction operations.

§ C570.35 Periods and conditions of employment

(a) Except as provided in paragraph (b) of this section, employment in any of the occupations to which this subpart is applicable shall be confined to the following periods:

(1) Outside school hours;

(2) Not more than 40 hours in any 1 week when school is not in session;

(3) Not more than 18 hours in any 1 week when school is in session;

(4) Not more than 8 hours in any 1 day when school is not in session;

(5) Not more than 3 hours in any 1 day when school is in session;

(6) Between 7 a.m. and 7 p.m. in any 1 day, except during the summer (June 1 through Labor Day) when the evening hour will be 9 p.m.

SUBPART D [RESERVED]

Subpart E—Occupations particularly hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health or well-being

§ C570.50 General

(a) Higher standards. Nothing in this subpart shall authorize non-compliance with any Federal law or regulation establishing a higher standard. If more than one standard within this subpart applies to a single activity the higher standard shall be applicable.

(b) Apprentices. Some sections in this subpart contain an exemption for the employment of apprentices. Such an exemption shall apply only when: (1) The apprentice is employed in a craft recognized as an apprenticeable trade; (2) the work of the apprentice in the occupations declared particularly hazardous is incidental to his training; (3) such work is intermittent and for short periods of time and is under the direct and close supervision of a journeyman as a necessary part of such apprentice training; and (4) the apprentice is registered by the Executive Director of the Office of Compliance as employed in accordance with the standards established by the Bureau of Apprenticeship and Training of the United States Department of Labor.

(c) Student-learners. Some sections in this subpart contain an exemption for the employment of student-learners. Such an exemption shall apply when:

(1) The student-learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized State or local educational authority or in a course of study in a substantially similar program conducted by a private school and;

(2) Such student-learner is employed under a written agreement which provides:

(i) That the work of the student-learner in the occupations declared particularly hazardous shall be incidental to his training;

(ii) That such work shall be intermittent and for short periods of time, and under the direct and close supervision of a qualified and experienced person;

(iii) That safety instructions shall be given by the school and correlated by the employer with on-the-job training; and

(iv) That a schedule of organized and progressive work processes to be performed on the job shall have been prepared. Each such written agreement shall contain the name of student-learner, and shall be signed by the employer and the school coordinator or principal. Copies of each agreement shall be kept on file by both the school and the employer. This exemption for the employment of student-learners may be revoked in any individual situation where it is found that reasonable precautions have not been observed for the safety of minors employed thereunder. A high school graduate may be employed in an occupation in which he has completed training as provided in this paragraph as a student-learner, even though he is not yet 18 years of age.

§ C570.51 Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components (Order 1)

(a) Finding and declaration of fact. The following occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components are particularly hazardous for minors between 16 and 18 years of age or detrimental to their health or well-being:

(1) All occupations in or about any plant or establishment (other than retail establishments or plants or establishments of the type described in paragraph (a)(2) of this section) manufacturing or storing explosives or articles containing explosive components except where the occupation is performed in a 'nonexplosives area' as defined in paragraph (b)(3) of this section.

(2) The following occupations in or about any plant or establishment manufacturing or storing small-arms ammunition not exceeding .60 caliber in size, shotgun shells, or blasting caps when manufactured or stored in conjunction with the manufacture of small-arms ammunition:

(i) All occupations involved in the manufacturing, mixing, transporting, or handling of explosive compounds in the manufacture of small-arms ammunition and all other occupations requiring the performance of any duties in the explosives area in which explosive compounds are manufactured or mixed.

(ii) All occupations involved in the manufacturing, transporting, or handling of primers and all other occupations requiring the performance of any duties in the same building in which primers are manufactured.

(iii) All occupations involved in the priming of cartridges and all other occupations requiring the performance of any duties in the same workroom in which rim-fire cartridges are primed.

(iv) All occupations involved in the plate loading of cartridges and in the operation of automatic loading machines.

(v) All occupations involved in the loading, inspecting, packing, shipping and storage of blasting caps.

(b) Definitions. For the purpose of this section:

(1) The term *plant or establishment manufacturing or storing explosives or articles containing explosive component* means the land with all the buildings and other structures thereon used in connection with the manufacturing or processing or storing of explosives or articles containing explosive components.

(2) The terms *explosives* and *articles containing explosive components* mean and include ammunition, black powder, blasting caps, fireworks, high explosives, primers, smokeless powder, and all goods classified and defined as explosives by the Interstate Commerce Commission in regulations for the transportation of explosives and other dangerous substances by common carriers (49 CFR parts 71 to 78) issued pursuant to the Act of June 25, 1948 (62 Stat.739; 18 U.S.C. 835).

(3) An area meeting all of the criteria in paragraphs (b)(3) (i) through (iv) of this section shall be deemed a "nonexplosives area":

(i) None of the work performed in the area involves the handling or use of explosives;

(ii) The area is separated from the explosives area by a distance not less than that prescribed in the American Table of Distances for the protection of inhabited buildings;

(iii) The area is separated from the explosives area by a fence or is otherwise located so that it constitutes a definite designated area; and

(iv) Satisfactory controls have been established to prevent employees under 18 years of age within the area from entering any area in or about the plant which does not meet criteria of paragraphs (b)(3) (i) through (iii) of this section.

§ C570.52 Occupations of motor-vehicle driver and outside helper (Order 2)

(a) Findings and declaration of fact. Except as provided in paragraph (b) of this section, the occupations of motor-vehicle driver and outside helper on any public road, highway, in or about any mine (including open pit mine or quarry), place where logging or sawmill operations are in progress, or in any excavation of the type identified in § C570.68(a) are particularly hazardous for the employment of minors between 16 and 18 years of age.

(b) Exemption—Incidental and occasional driving. The findings and declaration in paragraph (a) of this section shall not apply to the operation of automobiles or trucks not exceeding 6,000 pounds gross vehicle weight if such driving is restricted to daylight hours; *provided*, such operation is only occasional and incidental to the minor's employment; that the minor holds a State license valid for the type of driving involved in the job performed and has completed a State approved driver education course; and *provided further*, that the vehicle is equipped with a seat belt or similar restraining device for the driver and for each helper, and the employer has instructed each minor that such belts or other devices must be used. This paragraph shall not be applicable to any occupation of motor-vehicle driver which involves the towing of vehicles.

(c) Definitions. For the purpose of this section:

(1) The term *motor vehicle* shall mean any automobile, truck, truck-tractor, trailer, semitrailer, motorcycle, or similar vehicle propelled or drawn by mechanical power and designed for use as a means of transportation but shall not include any vehicle operated exclusively on rails.

(2) The term *driver* shall mean any individual who, in the course of employment, drives a motor vehicle at any time.

(3) The term *outside helper* shall mean any individual, other than a driver, whose work includes riding on a motor vehicle outside the cab for the purpose of assisting in transporting or delivering goods.

(4) The term *gross vehicle weight* includes the truck chassis with lubricants, water and a full tank or tanks of fuel, plus the weight of the cab or driver's compartment, body and special chassis and body equipment, and payload.

§ C570.55 Occupations involved in the operation of power-driven woodworking machines (Order 5)

(a) Finding and declaration of fact. The following occupations involved in the operation of power-driven wood-working machines are particularly hazardous for minors between 16 and 18 years of age:

(1) The occupation of operating power-driven woodworking machines, including supervising or controlling the operation of such machines, feeding material into such machines, and helping the operator to feed material into such machines but not including the placing of material on a moving chain or in a hopper or slide for automatic feeding.

(2) The occupations of setting up, adjusting, repairing, oiling, or cleaning power-driven woodworking machines.

(3) The occupations of off-bearing from circular saws and from guillotine-action veneer clippers.

(b) Definitions. As used in this section:

(1) The term *power-driven woodworking machines* shall mean all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening, or otherwise assembling, pressing, or printing wood or veneer.

(2) The term *off-bearing* shall mean the removal of material or refuse directly from a saw table or from the point of operation. Operations not considered as off-bearing within the intent of this section include: (i) The removal of material or refuse from a circular saw or guillotine-action veneer clipper where the material or refuse has been conveyed away from the saw table or point of operation by a gravity chute or by some mechanical means such as a moving belt or expulsion roller, and (ii) the following operations when they do not involve the removal of material or refuse directly from a saw table or from the point of operation: The carrying, moving, or transporting of materials from one machine to another or from one part of a plant to another; the piling, stacking, or arranging of materials for feeding into a machine by another person; and the sorting, tying, bundling, or loading of materials.

(c) Exemptions. This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in Sec. 570.50 (b) and (c).

§ C570.58 Occupations involved in the operation of power-driven hoisting apparatus (Order 7)

(a) Finding and declaration of fact. The following occupations involved in the operation of power-driven hoisting apparatus are particularly hazardous for minors between 16 and 18 years of age:

(1) Work of operating an elevator, crane, derrick, hoist, or high-lift truck, except operating an unattended automatic operation passenger elevator or an electric or air-operated hoist not exceeding one ton capacity.

(2) Work which involves riding on a manlift or on a freight elevator, except a freight elevator operated by an assigned operator.

(3) Work of assisting in the operation of a crane, derrick, or hoist performed by crane hookers, crane chasers, hookers-on, riggers, rigger helpers, and like occupations.

(b) Definitions. As used in this section:

(1) The term *elevator* shall mean any power-driven hoisting or lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction. The term shall include both passenger and freight elevators (including portable elevators or tiering machines), but shall not include dumbwaiters.

(2) The term *crane* shall mean a power-driven machine for lifting and lowering a load and moving it horizontally, in which the hoisting mechanism is an integral part of the machine. The term shall include all types of cranes, such as cantilever gantry, crawler, gantry, hammerhead, ingot-pouring, jib, locomotive, motor-truck, overhead traveling, pillar jib, pintle, portal, semi-gantry, semi-portal, storage bridge, tower, walking jib, and wall cranes.

(3) The term *derrick* shall mean a power-driven apparatus consisting of a mast or equivalent members held at the top by guys or braces, with or without a boom, for use with an hoisting mechanism or operating ropes. The term shall include all types of derricks, such as A-frame, breast, Chicago boom, gin-pole, guy and stiff-leg derrick.

(4) The term *hoist* shall mean a power-driven apparatus for raising or lowering a load by the application of a pulling force that does not include a car or platform running in guides. The term shall include all types of hoists, such as base mounted electric, clevis suspension, hook suspension, monorail, overhead electric, simple drum and trolley suspension hoists.

(5) The term *high-lift* truck shall mean a power-driven industrial type of truck used for lateral transportation that is equipped with a power-operated lifting device usually in the form of a fork or platform capable of tiering loaded pallets or skids one above the other. Instead of a (fork or platform, the lifting device may consist of a ram, scoop, shovel, crane, revolving) fork, or other attachments for handling specific loads. The term shall mean and include highlift trucks known under such names as fork lifts, fork trucks, fork-lift trucks, tiering trucks, or stacking trucks, but shall not mean low-lift trucks or low-lift platform trucks that are designed for the transportation of but not the tiering of material.

(6) The term *manlift* shall mean a device intended for the conveyance of persons which consists of platforms or brackets mounted on, or attached to, an endless belt, cable, chain or similar method of suspension; such belt, cable or chain operating in a substantially vertical direction and being supported by and driven through pulleys, sheaves or sprockets at the top and bottom.

(c) Exception. (1) This section shall not prohibit the operation of an automatic elevator and an automatic signal operation elevator provided that the exposed portion of the car interior (exclusive of vents and other necessary small openings), the car door, and the hoistway doors are constructed of solid surfaces without any opening through which a part of the body may extend; all hoistway openings at floor level have doors which are interlocked with the car door so as to prevent the car from starting until all such doors are closed and locked; the elevator (other than hydraulic elevators) is equipped with a device which will stop and hold the car in case of overspeed or if the cable slackens or breaks; and the elevator is equipped with upper and lower travel limit devices which will normally bring the car to rest at either terminal and a final limit switch which will prevent the movement in either direction and will open in case of excessive over travel by the car.

(2) For the purpose of this exception the term *automatic elevator* shall mean a passenger elevator, a freight elevator, or a combination passenger-freight elevator, the operation of which is controlled by pushbuttons in such a manner that the starting, going to the landing selected, leveling and holding, and the opening and closing of the car and hoistway doors are entirely automatic.

(3) For the purpose of this exception, the term *automatic signal operation elevator* shall mean an elevator which is started in response to the operation of a switch (such as a lever or pushbutton) in the car which when operated by the operator actuates a starting device that automatically closes the car and hoistway doors-from this point on, the movement of the car to the landing selected, leveling and holding when it gets there, and the opening of the car and hoistway doors are entirely automatic.

§ C570.59 Occupations involved in the operations of power-driven metal forming, punching, and shearing machines (Order 8)

(a) Finding and declaration of fact. The following occupations are particularly hazardous for the employment of minors between 16 and 18 years of age:

(1) The occupations of operator of or helper on the following power-driven metal forming, punching, and shearing machines:

(i) All rolling machines, such as beading, straightening, corrugating, flanging, or bending rolls; and hot or cold rolling mills.

(ii) All pressing or punching machines, such as punch presses except those provided with full automatic feed and ejection and with a fixed barrier guard to prevent the hands or fingers of the operator from entering the area between the dies; power presses; and plate punches.

(iii) All bending machines, such as apron brakes and press brakes.

(iv) All hammering machines, such as drop hammers and power hammers.

(v) All shearing machines, such as guillotine or squaring shears; alligator shears; and rotary shears.

(2) The occupations of setting up, adjusting, repairing, oiling, or cleaning these machines including those with automatic feed and ejection.

(b) Definitions. (1) The term *operator* shall mean a person who operates a machine covered by this section by performing such functions as starting or stopping the machine, placing materials into or removing them from the machine, or any other functions directly involved in operation of the machine.

(2) The term *helper* shall mean a person who assists in the operation of a machine covered by this section by helping place materials into or remove them from the machine.

(3) The term *forming, punching, and shearing machines* shall mean power-driven metal-working machines, other than machine tools, which change the shape of or cut metal by means of tools, such as dies, rolls, or knives which are mounted on rams, plungers, or other moving parts. Types of forming, punching, and shearing machines enumerated in this section are the machines to which the designation is by custom applied.

(c) Exemptions. This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in Sec. 570.50 (b) and (c).

§ C570.62 Occupations involved in the operation of bakery machines (Order 11)

(a) Finding and declaration of fact. The following occupations involved in the operation of power-driven bakery machines are particularly hazardous for the employment of minors between 16 and 18 years of age:

(1) The occupations of operating, assisting to operate, or setting up, adjusting, repairing, oiling, or cleaning any horizontal or vertical dough mixer; batter mixer; bread dividing, rounding, or molding machine; dough brake; dough sheeter; combination bread slicing and wrapping machine; or cake cutting band saw.

(2) The occupation of setting up or adjusting a cookie or cracker machine.

§ C570.63 Occupations involved in the operation of paper-products machines (Order 12)

(a) Findings and declaration of fact. The following occupations are particularly hazardous for the employment of minors between 16 and 18 years of age:

(1) The occupations of operation or assisting to operate any of the following power-driven paper products machines:

(i) Arm-type wire stitcher or stapler, circular or band saw, corner cutter or mitering machine, corrugating and single-or-double-facing machine, envelope die-cutting press, guillotine paper cutter or shear, horizontal bar scorer, laminating or combining machine, sheeting machine, scrap-paper baler, or vertical slotter.

(ii) Platen die-cutting press, platen printing press, or punch press which involves hand feeding of the machine.

(2) The occupations of setting up, adjusting, repairing, oiling, or cleaning these machines including those which do not involve hand feeding.

(b) Definitions. (1) The term *operating or assisting to operate* shall mean all work which involves starting or stopping a machine covered by this section, placing or removing materials into or from the machine, or any other work directly involved in operating the machine. The term does not include the stacking of materials by an employee in an area nearby or adjacent to the machine where such employee does not place the materials into the machine.

(2) The term *paper products* machine shall mean all power-driven machines used in:

(i) The remanufacture or conversion of paper or pulp into a finished product, including the preparation of such materials for recycling; or

(ii) The preparation of such materials for disposal. The term applies to such machines whether they are used in establishments that manufacture converted paper or pulp products, or in any other type of manufacturing or nonmanufacturing establishment.

(c) Exemptions. This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in § 570.50 (b) and (c).

§ C570.65 Occupations involved in the operations of circular saws, band saws, and guillotine shears (Order 14)

(a) Findings and declaration of fact. The following occupations are particularly hazardous for the employment of minors between 16 and 18 years of age:

(1) The occupations of operator of or helper on the following power-driven fixed or portable machines except machines equipped with full automatic feed and ejection:

(i) Circular saws.

(ii) Band saws.

(iii) Guillotine shears.

(2) The occupations of setting-up, adjusting, repairing, oiling, or cleaning circular saws, band saws, and guillotine shears.

(b) Definitions. (1) The term *operator* shall mean a person who operates a machine covered by this section by performing such functions as starting or stopping the machine, placing materials into or removing them from the machine, or any other functions directly involved in operation of the machine.

(2) The term *helper* shall mean a person who assists in the operation of a machine covered by this section by helping place materials into or remove them from the machine.

(3) The term *machines equipped with full automatic feed and ejection* shall mean machines covered by this Order which are equipped with devices for full automatic feeding and ejection and with a fixed barrier guard to prevent completely the operator or helper from placing any part of his body in the point-of-operation area.

(4) The term *circular saw* shall mean a machine equipped with a thin steel disc having a continuous series of notches or teeth on the periphery, mounted on shafting, and used for sawing materials.

(5) The term *band saw* shall mean a machine equipped with an endless steel band having a continuous series of notches or teeth, running over wheels or pulleys, and used for sawing materials.

(6) The term *guillotine shear* shall mean a machine equipped with a movable blade operated vertically and used to shear materials. The term shall not include other types of shearing machines, using a different form of shearing action, such as alligator shears or circular shears.

(c) Exemptions. This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in § 570.50 (b) and (c).

§ C570.66 Occupations involved in wrecking and demolition operations (Order 15)

(a) Finding and declaration of fact. All occupations in wrecking and demolition operations are particularly hazardous for the employment of minors between 16 and 18 years of age and detrimental to their health and well-being.

(b) Definition. The term *wrecking and demolition operations* shall mean all work, including clean-up and salvage work, performed at the site of the total or partial razing demolishing or dismantling of a building, bridge, steeple, tower, chimney, other structure.

§ C570.67 Occupations in roofing operations (Order 16)

(a) Finding and declaration of fact. All occupations in roofing operations are particularly hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health.

(b) Definition of roofing operations. The term *roofing operations* shall mean all work performed in connection with the application of weatherproofing materials and substances (such as tar or pitch, asphalt prepared paper, tile, slate, metal, translucent materials, and shingles of asbestos, asphalt or wood) to roofs of buildings or other structures. The term shall also include all work performed in connection with: (1) The installation of roofs, including related metal work such as flashing and (2) alterations, additions, maintenance, and repair, including painting and coating, of existing roofs. The term shall not include gutter and downspout work; the construction of the sheathing or base of roofs; or the installation of television antennas, air conditioners, exhaust and ventilating equipment, or similar appliances attached to roofs.

(c) Exemptions. This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in § 570.50 (b) and (c).

§ C570.68 Occupations in excavation operations (Order 17)

(a) Finding and declaration of fact. The following occupations in excavation operations are particularly hazardous for the employment of persons between 16 and 18 years of age: (1) Excavating, working in, or backfilling (refilling) trenches, except (i) manually excavating or manually backfilling trenches that do not exceed four feet in depth at any point, or (ii) working in trenches that do not exceed four feet in depth at any point.

(2) Excavating for buildings or other structures or working in such excavations, except: (i) Manually excavating to a depth not exceeding four feet below any ground surface adjoining the excavation, or (ii) working in an excavation not exceeding such depth, or (iii) working in an excavation where the side walls are shored or sloped to the angle of repose.

(3) Working within tunnels prior to the completion of all driving and shoring operations.

(4) Working within shafts prior to the completion of all sinking and shoring operations.

(b) Exemptions. This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in Sec.C570.50 (b) and (c).

Exclusion for employees of the Capitol Police

None of the limitations on the use of lie detector tests by employing offices set forth in Section 204 of the CAA apply to the Capitol Police. This exclusion from the limitations of Section 204 of the CAA applies only with respect to Capitol Police employees. Except as otherwise provided by law or these regulations, this exclusion does not extend to contractors or nongovernmental agents of the Capitol Police; nor does it extend to the Capitol Police with respect to employees of a private employer or an otherwise covered employing office with which the Capitol Police has a contractual or other business relationship.

Scope of regulations

These regulations are issued by the Board of Directors, Office of Compliance, pursuant to sections 204(a)(3) and 304 of the CAA, which authorize the Board to issue regulations governing the use of lie detector tests by the Capitol Police. The regulations issued by the Board herein are on all matters for which section 204(a)(3) of the CAA requires a regulation to be issued.

OFFICE OF COMPLIANCE—THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995: EXTENSION OF RIGHTS AND PROTECTIONS UNDER THE EMPLOYEE POLYGRAPH PROTECTION ACT OF 1988

NOTICE OF ADOPTION OF REGULATION AND SUBMISSION FOR APPROVAL AND ISSUANCE OF INTERIM REGULATIONS

Summary: The Board of Directors, Office of Compliance, after considering comments to its Notice of Proposed Rulemaking published November 28, 1995 in the Congressional Record, has adopted, and is submitting for approval by the Congress, final regulations implementing Sections 204(a) and (b) of the Congressional Accountability Act of 1995 ("CAA"). The Board is also adopting and issuing such regulations as interim regulations for the House of Representatives, the Senate and the employing offices of the instrumentalities effective on January 23, 1996 or on the dates upon which appropriate resolutions of approval are passed, whichever is

later. The interim regulations shall expire on April 15, 1996 or on the dates on which appropriate resolutions concerning the Board's final regulations are passed by the House and the Senate, respectively, whichever is earlier.

For Further Information Contact: Executive Director, Office of Compliance, Room LA 200, Library of Congress, Washington, D.C. 20540-1999. Telephone: (202) 724-9250.

Background and Summary

Supplementary Information: The Congressional Accountability Act of 1995 ("CAA"), P.L. 104-1, 109 Stat. 3, was enacted on January 23, 1995. 2 U.S.C. §§1301-1438. In general, the CAA applies the rights and protections of eleven federal labor and employment statutes to covered employees and employing offices within the legislative branch. Section 204(a) of the CAA provides that no employing office may require any covered employee (including a covered employee who does not work in that employing office) to take a lie detector test where such test would be prohibited if required by an employer under paragraphs (1), (2) or (3) of section 3 of the Employee Polygraph Protection Act of 1988, 29 U.S.C. §2002(1), (2) or (3) ("EPPA"). 2 U.S.C. §1314(a). Section 204(a) of the EPPA also applies the waiver provisions of section 6(d) of the EPPA (29 U.S.C. §2005(d)) to covered employees. *Id.* Section 225(f) of the CAA provides that, "[e]xcept where inconsistent with definitions and exemptions provided in this Act, the definitions and exemptions [of the EPPA] shall apply under this Act." 2 U.S.C. §1361(f)(1).

Section 204(c) of the CAA requires the Board of Directors of the Office of Compliance issue regulations implementing the section. 2 U.S.C. §1314(c). Section 204(c) further states that such regulations "shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsections (a) and (b) except insofar as the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section." *Id.*

To obtain input from interested persons on the content of these regulations, the Board published for comment a Notice of Proposed Rulemaking in the Congressional Record 141 Cong. Rec. S17656 (daily ed., Nov. 28, 1995) ("NPR"), inviting comments from interested parties regarding the proposed regulations. The Board received three comments on the proposed regulations from interested parties. Two of the comments, without elaboration, supported the regulations as proposed. Only one commenter took issue with certain sections of the proposed regulations and the Board's resolution of certain issues raised in the NPR. In addition, the Office has sought consultations with the Secretary of Labor regarding the proposed regulations, pursuant to section 304(g) of the CAA.

After full consideration of the comments received in response to the proposed rule, the Board has adopted and is submitting these final regulations for approval by the Congress. Moreover, pursuant to sections 411 and 304, the Board is also adopting and issuing such regulations as interim regulations for the House, the Senate and the employing offices of the instrumentalities effective on January 23, 1996 or on the dates upon which appropriate resolutions of approval are passed, whichever is later. The interim regulations shall expire on April 15, 1996 or on the dates on which appropriate resolutions concerning the Board's final regulations are passed by the House and the Senate, respectively, whichever is earlier.

I. Summary of Comments and Board's Final Rules

A. Exemption for national defense and security

One commenter suggested that proposed section 1.11, implementing the national defense and security exemption, be modified. The commenter suggested that, as proposed, the regulatory exemption for national defense and security could be construed to permit claims by employees that an employing office violated section 204 of the CAA by conveying information that ultimately led to a lie detector test, even though the subsequent law enforcement investigation was outside of that employing office's control. Moreover, the commenter argued that proposed section 1.11(d), which states that the Executive Branch must administer the tests "in accordance with applicable Department of Defense directives and regulations," should be deleted since administration of such tests by the Executive Branch is outside of the control of employing offices. Finally, this commenter argued that proposed section 1.11 should refer to all of the exemptions under section 7(b) of the EPPA, not just to subsection (b)(2) of section 7 of the EPPA.

Contrary to the commenter's concern, section 1.11(d) cannot reasonably be construed to permit claims by employees that the employing office has violated section 204 of the CAA merely by conveying information to law enforcement authorities. Section 1.11 of the regulation states that lie detector tests performed by the Federal Government in the performance of any intelligence or counterintelligence function are not within any of the prohibitions of section 204 of the CAA. Thus, if the conditions of section 1.11 are met, no employing office should be held liable under section 204 of the CAA for indirectly causing the Executive Branch to perform such tests by conveying a report to Federal Government intelligence or counterintelligence officers. Moreover, section 1.4(b) of the regulations makes it clear that employing offices will ordinarily not be liable under section 204 of the CAA for making reports to law enforcement authorities or for cooperating in law enforcement investigations.

Nor is the Board inclined to modify the requirement in section 1.11(d) that any tests administered under the national security exemption be in accordance with applicable Department of Defense directives and regulations. That requirement is taken verbatim from the identical Executive Branch regulations that are applicable to private sector employers who also have no control over the requirements of the Department of Defense directives and regulations. The Board has not been presented with any reason that would constitute good cause to deviate from these provisions.

Finally, the Board was not provided with sufficient information to determine whether the portions of the Secretary's regulation implementing section 7(b) of the EPPA that were not included in proposed section 1.11 are applicable to the legislative branch. However, out of an abundance of caution, the Board's final regulation shall include, with appropriate modifications, the entirety of the implementing regulation, as suggested by the commenter.

B. Exemption for employees of the Capitol Police

The commenter also stated that section 1.4(e) of the regulations, which provides that the Capitol Police may administer lie detector tests to non-Capitol Police employees only during the course of an "ongoing investigation" by the Capitol Police, is not authorized by the CAA. The Board disagrees.

Section 204(a)(3) gives the Board authority to adopt limitations on the nature and scope of lie detector use by the Capitol Police. This is such a provision.

Contrary to the commenter's suggestion, this regulation strikes an appropriate balance between giving the Capitol Police authority to use lie detector tests for legitimate law enforcement purposes and protecting against overbroad and unreasonable use of lie detector tests by the Capitol Police with respect to covered employees not employed by it. Specifically, section 1.4(e) of the regulation makes it clear that the regulation excluding the Capitol Police from section 204 of the CAA with respect to its own employees is not a total exemption of the Capitol Police from the prohibitions on the employment-related use of lie detector tests. It prohibits employing offices other than the Capitol Police from avoiding the prohibitions of section 204 of the CAA by administering lie detector tests on their covered employees indirectly through the Capitol Police under circumstances where such tests would not be warranted by legitimate law enforcement investigative considerations.

Application of Rights and Protections of the Employee Polygraph Protection Act of 1988

Subpart A—General

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Appendix A—Notice to Examinee
Authority: Pub. L. 104-1, 109 Stat. 3, 2 U.S.C. 1314(c)

Subpart A—General

Sec. 1.1 Purpose and scope.

Enacted into law on January 23, 1995, the Congressional Accountability Act ("CAA")

directly applies the rights and protections of eleven federal labor and employment law statutes to covered employees and employing offices within the legislative branch. Section 204(a) of the CAA, 2 U.S.C. §1314(a) provides that no employing office may require any covered employee (including a covered employee who does not work in that employing office) to take a lie detector test where such test would be prohibited if required by an employer under paragraphs (1), (2) or (3) of section 3 of the Employee Polygraph Protection Act of 1988 (EPPA), 29 U.S.C. §2002(1), (2) or (3). The purpose of this part is to set forth the regulations to carry out the provisions of Section 204 of the CAA.

Subpart A contains the provisions generally applicable to covered employers, including the requirements relating to the prohibitions on lie detector use. Subpart B sets forth rules regarding the statutory exemptions from application of section 204 of the CAA. Subpart C sets forth the restrictions on polygraph usage under such exemptions. Subpart D sets forth the rules on recordkeeping and the disclosure of polygraph test information.

Sec. 1.2 Definitions.

For purposes of this part:

(a) *Act* or *CAA* means the Congressional Accountability Act of 1995 (P.L. 104–1, 109 Stat. 3, 2 U.S.C. §§1301–1438).

(b) *EPPA* means the Employee Polygraph Protection Act of 1988 (Pub. L. 100-347, 102 Stat. 646, 29 U.S.C. §§2001-2009) as applied to covered employees and employing offices by Section 204 of the CAA.

(c) The term *covered employee* means any employee of (1) the House of Representatives; (2) the Senate; (3) the Capitol Guide Service; (4) the Congressional Budget Office; (5) the Office of the Architect of the Capitol; (6) the Office of the Attending Physician; (7) the Office of Compliance; or (8) the Office of Technology Assessment.

(d) The term *employee* includes an applicant for employment and a former employee.

(e) The term *employee of the Office of the Architect of the Capitol* includes any employee of the Office of the Architect of the Capitol, the Botanic Gardens, or the Senate Restaurants.

(f) The term *employee of the Capitol Police* includes any member or officer of the Capitol Police.

(g) The term *employee of the House of Representatives* includes an individual occupying a position the pay for which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (c) above.

(h) The term *employee of the Senate* includes any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (c) above.

(i) The term *employing office* means (1) the personal office of a Member of the House of Representatives or of a Senator; (2) a committee of the House of Representatives or the Senate or a joint committee; (3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or (4) the Capitol Guide Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment. The term *employing office* includes any person acting directly or indirectly in the interest of an employing office in relation to an employee or prospective employee. A polygraph examiner either employed for or whose services are retained for the sole purpose of administering polygraph tests ordinarily would not be deemed an employing office with respect to the examinees. Any reference to "employer" in these regulations includes employing offices.

(j)(1) The term *lie detector* means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device (whether mechanical or electrical) that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual. Voice stress analyzers, or psychological stress evaluators, include any systems that utilize voice stress analysis, whether or not an opinion on honesty or dishonesty is specifically rendered.

(2) The term *lie detector* does not include medical tests used to determine the presence or absence of controlled substances or alcohol in bodily fluids. Also not included in the definition of *lie detector* are written or oral tests commonly referred to as "honesty" or "paper and pencil" tests, machine-scored or otherwise; and graphology tests commonly referred to as handwriting tests.

(k) The term *polygraph* means an instrument that—

(1) Records continuously, visually, permanently, and simultaneously changes in cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards; and

(2) Is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

(l) *Board* means the Board of Directors of the Office of Compliance.

(m) *Office* means the Office of Compliance.

Sec. 1.3 Coverage

The coverage of Section 204 of the Act extends to any "covered employee" or "covered employing office" without regard to the number of employees or the employing office's effect on interstate commerce.

Sec. 1.4 Prohibitions on lie detector use

(a) Section 204 of the CAA provides that, subject to the exemptions of the EPPA incorporated into the CAA under section 225(f) of the CAA, as set forth in Sec. 1.10 through 1.12 of this Part, employing offices are prohibited from:

(1) Requiring, requesting, suggesting or causing, directly or indirectly, any covered employee or prospective employee to take or submit to a lie detector test;

(2) Using, accepting, or inquiring about the results of a lie detector test of any covered employee or prospective employee; and

(3) Discharging, disciplining, discriminating against, denying employment or promotion, or threatening any covered employee or prospective employee to take such action for refusal or failure to take or submit to such test, or on the basis of the results of a test.

The above prohibitions apply irrespective of whether the covered employee referred to in paragraphs (1), (2) or (3), above, works in that employing office.

(b) An employing office that reports a theft or other incident involving economic loss to police or other law enforcement authorities is not engaged in conduct subject to the prohibitions under paragraph (a) of this section if, during the normal course of a subsequent investigation, such authorities deem it necessary to administer a polygraph test to a covered employee(s) suspected of involvement in the reported incident. Employing offices that cooperate with police authorities during the course of their investigations into criminal misconduct are likewise not deemed engaged in prohibitive conduct provided that such cooperation is passive in nature. For example, it is not uncommon for police authorities to request employees suspected of theft or criminal activity to submit to a polygraph test during the employee's tour of duty since, as a general rule, suspect employees are often difficult to locate away from their place of employment. Allowing a test on the employing office's premises, releasing a covered employee during working hours to take a test at police headquarters, and other similar types of cooperation at the request of the police authorities would not be construed as "requiring, requesting, suggesting, or causing, directly or indirectly, any covered employee * * * to take or submit to a lie detector test." Cooperation of this type must be distinguished from actual participation in the testing of employees suspected of wrongdoing, either through the administration of a test by the employing office at the request or direction of police authorities, or through reimbursement by the employing office of tests administered by police authorities to employees. In some communities, it may be a practice of police authorities to request testing by employing offices of employees before a police investigation is initiated on a reported incident. In other communities, police examiners are available to covered employing offices, on a cost reimbursement basis, to conduct tests on employees suspected by an employing office of wrongdoing. All such conduct on the part of employing offices is deemed within the prohibitions of section 204 of the CAA.

(c) The receipt by an employing office of information from a polygraph test administered by police authorities pursuant to an investigation is prohibited by section 3(2) of the EPPA. (See paragraph (a)(2) of this section.)

(d) The simulated use of a polygraph instrument so as to lead an individual to believe that an actual test is being or may be performed (e.g., to elicit confessions or admissions of guilt) constitutes conduct prohibited by paragraph (a) of this section. Such use includes the connection of a covered employee or prospective employee to the instrument without any intention of a diagnostic purpose, the placement of the instrument in a room used for interrogation unconnected to the covered employee or prospective employee, or the mere suggestion that the instrument may be used during the course of the interview.

(e) The Capitol Police may not require a covered employee not employed by the Capitol Police to take a lie detector test (on its own initiative or at the request of another employing office) except where the Capitol Police administers such lie detector test as part of an "ongoing investigation" by the Capitol Police. For the purpose of this subsection, the definition of "ongoing investigation" contained section 1.12(b) shall apply.

Sec. 1.5 Effect on other laws or agreements

(a) Section 204 of the CAA does not preempt any otherwise applicable provision of federal law or any rule or regulation of the

House or Senate or any negotiated collective bargaining agreement that prohibits lie detector tests or is more restrictive with respect to the use of lie detector tests.

(b)(1) This provision applies to all aspects of the use of lie detector tests, including procedural safeguards, the use of test results, the rights and remedies provided examinees, and the rights, remedies, and responsibilities of examiners and employing offices.

(2) For example, a collective bargaining agreement that provides greater protection to an examinee would apply in addition to the protection provided in section 204 of the CAA.

Sec. 1.6 Notice of protection

Pursuant to section 301(h) of the CAA, the Office shall prepare, in a manner suitable for posting, a notice explaining the provisions of section 204 of the CAA. Copies of such notice may be obtained from the Office of Compliance.

Sec. 1.7 Authority of the Board

Pursuant to sections 204 and 304 of the CAA, the Board is authorized to issue regulations to implement the rights and protections of the EPPA. Section 204(c) directs the Board to promulgate regulations implementing section 204 that are "the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsections (a) and (b) [of section 204 of the CAA] except insofar as the Board may determine, for good cause shown . . . that a modification of such regulations would be more effective for the implementation of the rights and protections under this section." The regulations issued by the Board herein are on all matters for which section 204 of the CAA requires a regulation to be issued. Specifically, it is the Board's considered judgment, based on the information available to it at the time of promulgation of these regulations, that, with the exception of the regulations adopted and set forth herein, there are no other "substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsections (a) and (b) [of section 204 of the CAA]."

In promulgating these regulations, the Board has made certain technical and nomenclature changes to the regulations as promulgated by the Secretary. Such changes are intended to make the provisions adopted accord more naturally to situations in the legislative branch. However, by making these changes, the Board does not intend a substantive difference between these regulations and those of the Secretary from which they are derived. Moreover such changes, in and of themselves, are not intended to constitute an interpretation of the regulation or of the statutory provisions of the CAA upon which they are based.

Sec. 1.8 Employment relationship

Subject to the exemptions incorporated into the CAA by section 225(f), section 204 applies the prohibitions on the use of lie detectors by employing offices with respect to covered employees irrespective of whether a covered employee works in that employing office. Sections 101 (3), (4) and 204 of the CAA also apply EPPA prohibitions against discrimination to applicants for employment and former employees of a covered employing office. For example, an employee may quit rather than take a lie detector test. The employing office cannot discriminate or threaten to discriminate in any manner against that person (such as by providing bad references in the future) because of that person's refusal to be tested. Similarly, an employing office cannot discriminate or threaten to discriminate in any manner against that person because that person files a complaint, institutes a proceeding, testifies in a proceeding, or exercises any right under section 204 of the CAA. (*See* section 207 of the CAA.)

Subpart B—Exemptions

Sec. 1.10 Exclusion for employees of the Capitol Police [Reserved]

Sec. 1.11 Exemption for national defense and security

(a) The exemptions allowing for the administration of lie detector tests in the following paragraphs (b) through (e) of this section apply only to the Federal Government; they do not allow covered employing offices to administer such tests. For the purposes of this section, the term "Federal Government" means any agency or entity within the Federal Government authorized to administer polygraph examinations which is otherwise exempt from coverage under section 7(a) of the EPPA, 29 U.S.C. § 2006(a).

(b) Section 7(b)(1) of the EPPA, incorporated into the CAA under section 225(f) of the CAA, provides that nothing in the EPPA shall be construed to prohibit the administration of any lie detector test by the Federal Government, in the performance of any counterintelligence function, to any expert, consultant or employee of any contractor under contract with the Department of Defense; or with the Department of Energy, in connection with the atomic energy defense activities of such Department.

(c) Section 7(b)(2)(A) of the EPPA, incorporated into the CAA under section 225(f) of the CAA, provides that nothing in the EPPA shall be construed to prohibit the administration of any lie detector test by the Federal Government, in the performance of any intelligence or counterintelligence function of the National Security Agency, the Defense Intelligence Agency, or the Central Intelligence Agency, to any individual employed by, assigned to, or detailed to any such agency; or any expert or consultant under contract to any such agency; or any employee of a contractor to such agency; or any individual applying for a position in any such agency; or any individual assigned to a space where sensitive cryptologic information is produced, processed, or stored for any such agency.

(d) Section 7(b)(2)(B) of the EPPA, incorporated into the CAA under section 225(f) of the CAA, provides that nothing in the EPPA shall be construed to prohibit the administration of any lie detector test by the Federal Government, in the performance of any intelligence or counterintelligence function, to any covered employee whose duties involve access to information that has been classified at the level of top secret or designated as being within a special access program under section 4.2 (a) of Executive Order 12356 (or a successor Executive Order).

(c) *Counterintelligence* for purposes of the above paragraphs means information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, terrorist activities, or assassinations conducted for or on behalf of foreign governments, or foreign or domestic organizations or persons.

(d) Lie detector tests of persons described in the above paragraphs will be administered in accordance with applicable Department of Defense directives and regulations, or other regulations and directives governing the use of such tests by the United States Government, as applicable.

Sec. 1.12 Exemption for Employing Offices Conducting Investigations of Economic Loss or Injury

(a) Section 7(d) of the EPPA, incorporated into the CAA under section 225(f) of the CAA, provides a limited exemption from the general prohibition on lie detector use for employers conducting ongoing investigations of economic loss or injury to the employer's business. An employing office may request an employee, subject to the conditions set forth in sections 8 and 10 of the EPPA and Secs. 1.20, 1.22, 1.23, 1.24, 1.25, 1.26 and 1.35 of this part, to submit to a polygraph test, but no other type of lie detector test, only if—

(1) The test is administered in connection with an ongoing investigation involving economic loss or injury to the employing office's operations, such as theft, embezzlement, misappropriation or an act of unlawful industrial espionage or sabotage;

(2) The employee had access to the property that is the subject of the investigation;

(3) The employing office has a reasonable suspicion that the employee was involved in the incident or activity under investigation;

(4) The employing office provides the examinee with a statement, in a language understood by the examinee, prior to the test which fully explains with particularity the specific incident or activity being investigated and the basis for testing particular employees and which contains, at a minimum:

(i) An identification with particularity of the specific economic loss or injury to the operations of the employing office;

(ii) A description of the employee's access to the property that is the subject of the investigation;

(iii) A description in detail of the basis of the employing office's reasonable suspicion that the employee was involved in the incident or activity under investigation; and

(iv) Signature of a person (other than a polygraph examiner) authorized to legally bind the employing office; and

(5) The employing office retains a copy of the statement and proof of service described in paragraph (a)(4) of this section for at least 3 years.

(b) For the exemption to apply, the condition of an "ongoing investigation" must be met. As used in section 7(d) of the EPPA, the ongoing investigation must be of a specific incident or activity. Thus, for example, an employing office may not request that an employee or employees submit to a polygraph test in an effort to determine whether or not any thefts have occurred. Such random testing by an employing office is precluded by the EPPA. Further, because the exemption is limited to a specific incident or activity, an employing office is precluded

(c)(1)(i) The terms *economic loss or injury to the employing office's operations* include both direct and indirect economic loss or injury.

(ii) Direct loss or injury includes losses or injuries resulting from theft, embezzlement, misappropriation, espionage or sabotage. These examples, cited in the EPPA, are intended to be illustrative and not exhaustive. Another specific incident which would constitute direct economic loss or injury is the misappropriation of confidential or trade secret information.

(iii) Indirect loss or injury includes the use of an employing office's operations to commit a crime, such as check-kiting or money laundering. In such cases, the ongoing investigation must be limited to criminal activity that has already occurred, and to use of the employing office's operations (and not simply the use of the premises) for such activity. For example, the use of an employing office's vehicles, warehouses, computers or

equipment to smuggle or facilitate the importing of illegal substances constitutes an indirect loss or injury to the employing office's business operations. Conversely, the mere fact that an illegal act occurs on the employing office's premises (such as a drug transaction that takes place in the employing office's parking lot or rest room) does not constitute an indirect economic loss or injury to the employing office.

(iv) Indirect loss or injury also includes theft or injury to property of another for which the employing office exercises fiduciary, managerial or security responsibility, or where the office has custody of the property (but not property of other offices to which the employees have access by virtue of the employment relationship). For example, if a maintenance employee of the manager of an apartment building steals jewelry from a tenant's apartment, the theft results in an indirect economic loss or injury to the employer because of the manager's management responsibility with respect to the tenant's apartment. A messenger on a delivery of confidential business reports for a client firm who steals the reports causes an indirect economic loss or injury to the messenger service because the messenger service is custodian of the client firm's reports, and therefore is responsible for their security. Similarly, the theft of property protected by a security service employer is considered an economic loss or injury to that employer.

(v) A theft or injury to a client firm does not constitute an indirect loss or injury to an employing office unless that employing office has custody of, or management, or security responsibility for, the property of the client that was lost or stolen or injured. For example, a cleaning contractor has no responsibility for the money at a client bank. If money is stolen from the bank by one of the cleaning contractor's employees, the cleaning contractor does not suffer an indirect loss or injury.

(vi) Indirect loss or injury does not include loss or injury which is merely threatened or potential, e.g., a threatened or potential loss of an advantageous business relationship.

(2) Economic losses or injuries which are the result of unintentional or lawful conduct would not serve as a basis for the administration of a polygraph test. Thus, apparently unintentional losses or injuries stemming from truck, car, workplace, or other similar type accidents or routine inventory or cash register shortages would not meet the economic loss or injury requirement. Any economic loss incident to lawful union or employee activity also would not satisfy this requirement.

(3) It is the operations of the employing office which must suffer the economic loss or injury. Thus, a theft committed by one employee against another employee of the same employing office would not satisfy the requirement.

(d) While nothing in the EPPA as applied by the CAA prohibits the use of medical tests to determine the presence of controlled substances or alcohol in bodily fluids, the section 7(d) exemption of the EPPA does not permit the use of a polygraph test to learn whether an employee has used drugs or alcohol, even where such possible use may have contributed to an economic loss to the employing office (e.g., an accident involving an employing office's vehicle).

(e) Section 7(d)(2) of the EPPA provides that, as a condition for the use of the exemption, the employee must have had access to the property that is the subject of the investigation.

(1) The word *access*, as used in section 7(d)(2), refers to the opportunity which an employee had to cause, or to aid or abet in causing, the specific economic loss or injury under investigation. The term "access", thus, includes more than direct or physical contact during the course of employment. For example, as a general matter, all employees working in or with authority to enter a property storage area have "access" to unsecured property in the area. All employees with the combination to a safe have "access" to the property in a locked safe. Employees also have "access" who have the ability to divert possession or otherwise affect the disposition of the property that is the subject of investigation. For example, a bookkeeper in a jewelry store with access to inventory records may aid or abet a clerk who steals an expensive watch by removing the watch from the employing office's inventory records. In such a situation, it is clear that the bookkeeper effectively has "access" to the property that is the subject of the investigation.

(2) As used in section 7(d)(2), *property* refers to specifically identifiable property, but also includes such things of value as security codes and computer data, and proprietary, financial or technical information, such as trade secrets, which by its availability to competitors or others would cause economic harm to the employing office.

(f)(1) As used in section 7(d)(3), the term *reasonable suspicion* refers to an observable, articulable basis in fact which indicates that a particular employee was involved in, or responsible for, an economic loss. Access in the sense of possible or potential opportunity, standing alone, does not constitute a basis for "reasonable suspicion." Information from a co-worker, or an employee's behavior, demeanor, or conduct may be factors in the basis for reasonable suspicion. Likewise, inconsistencies between facts, claims, or statements that surface during an investigation can serve as a sufficient basis for reasonable suspicion. While access or opportunity, standing alone, does not constitute a basis for reasonable suspicion, the totality of circumstances surrounding the access or opportunity (such as its unauthorized or unusual nature or the fact that access was limited to a single individual) may constitute a factor in determining whether there is a reasonable suspicion.

(2) For example, in an investigation of a theft of an expensive piece of jewelry, an employee authorized to open the establishment's safe no earlier than 9 a.m., in order to place the jewelry in a window display case, is observed opening the safe at 7:30 a.m. In such a situation, the opening of the safe by the employee one and one-half hours prior to the specified time may serve as the basis for reasonable suspicion. On the other hand, in the example given, if the employee is asked to bring the piece of jewelry to his or her office at 7:30 a.m., and the employee then opened the safe and reported the jewelry missing, such access, standing alone, would not constitute a basis for reasonable suspicion that the employee was involved in the incident unless access to the safe was limited solely to the employee. If no one other than the employee possessed the combination to the safe, and all other possible explanations for the loss are ruled out, such as a break-in, a basis for reasonable suspicion may be formulated based on sole access by one employee.

(3) The employing office has the burden of establishing that the specific individual or individuals to be tested are "reasonably suspected" of involvement in the specific economic loss or injury for the requirement in section 7(d)(3) of the EPPA to be met.

(g)(1) As discussed in paragraph (a)(4) of this section, section 7(d)(4) of the EPPA sets forth what information, at a minimum, must be provided to an employee if the employing office wishes to claim the exemption.

(2) The statement required under paragraph (a)(4) of this section must be received by the employee at least 48 hours, excluding weekend days and holidays, prior to the time of the examination. The statement must set forth the time and date of receipt by the employee and be verified by the employee's signature. This will provide the employee with adequate pre-test notice of the specific incident or activity being investigated and afford the employee sufficient time prior to the test to obtain and consult with legal counsel or an employee representative.

(3) The statement to be provided to the employee must set forth with particularity the specific incident or activity being investigated and the basis for testing particular employees. Section 7(d)(4)(A) of the EPPA requires specificity beyond the mere assertion of general statements regarding economic loss, employee access, and reasonable suspicion. For example, an employing office's assertion that an expensive watch was stolen, and that the employee had access to the watch and is therefore a suspect, would not meet the "with particularity" criterion. If the basis for an employing office's requesting an employee (or employees) to take a polygraph test is not articulated with particularity, and reduced to writing, then the standard is not met. The identity of a co-worker or other individual providing information used to establish reasonable suspicion need not be revealed in the statement.

(4) It is further required that the statement provided to the examinee be signed by the employing office, or an employee or other representative of the employing office

(h) Polygraph tests administered pursuant to this exemption are subject to the limitations set forth in sections 8 and 10 of the EPPA, as discussed in Secs. 1.20, 1.22, 1.23, 1.24, 1.25, 1.26, and 1.35 of this part. As provided in these sections, the exemption will apply only if certain requirements are met. Failure to satisfy any of the specified requirements nullifies the statutory authority for polygraph test administration and may subject the employing office to remedial actions, as provided for in section 6(c) of the EPPA.

Sec. 1.13 Exemption of Employing Offices Authorized to Manufacture, Distribute, or Dispense Controlled Substances

(a) Section 7(f) of the EPPA, incorporated into the CAA by section 225(f) of the CAA, provides an exemption from the EPPA's general prohibition regarding the use of polygraph tests for employers authorized to manufacture, distribute, or dispense a controlled substance listed in schedule I, II, III, or IV of section 202 of the Controlled Substances Act (21 U.S.C. §812). This exemption permits the administration of polygraph tests, subject to the conditions set forth in sections 8 and 10 of the EPPA and Sec. 1.21, 1.22, 1.23, 1.24, 1.25, 1.26, and 1.35 of this part, to:

(1) A prospective employee who would have direct access to the manufacture, storage, distribution, or sale of any such controlled substance; or

(2) A current employee if the following conditions are met:

(i) The test is administered in connection with an ongoing investigation of criminal or other misconduct involving, or potentially involving, loss or injury to the manufacture,

distribution, or dispensing of any such controlled substance by such employing office; and

(ii) The employee had access to the person or property that is the subject of the investigation.

(b)(1) The terms *manufacture, distribute, distribution, dispense, storage, and sale,* for the purposes of this exemption, are construed within the meaning of the Controlled Substances Act (21 U.S.C. §812 et seq.), as administered by the Drug Enforcement Administration (DEA), U.S. Department of Justice.

(2) The exemption in section 7(f) of the EPPA applies only to employing offices that are authorized by DEA to manufacture, distribute, or dispense a controlled substance. Section 202 of the Controlled Substances Act (21 U.S.C. §812) requires every person who manufactures, distributes, or dispenses any controlled substance to register with the Attorney General (i.e., with DEA). Common or contract carriers and warehouses whose possession of the controlled substance is in the usual course of their business or employment are not required to register. Truck drivers and warehouse employees of the persons or entities registered with DEA and authorized to manufacture, distribute, or dispense controlled substances, are within the scope of the exemption where they have direct access or access to the controlled substances, as discussed below.

(c) In order for a polygraph examination to be performed, section 7(f) of the Act requires that a prospective employee have "direct access" to the controlled substance(s) manufactured, dispensed, or distributed by the employing office. Where a current employee is to be tested as a part of an ongoing investigation, section 7(f) requires that the employee have "access" to the person or property that is the subject of the investigation.

(1) A prospective employee would have "direct access" if the position being applied for has responsibilities which include contact with or which affect the disposition of a controlled substance, including participation in the process of obtaining, dispensing, or otherwise distributing a controlled substance. This includes contact or direct involvement in the manufacture, storage, testing, distribution, sale or dispensing of a controlled substance and may include, for example, packaging, repackaging, ordering, licensing, shipping, receiving, taking inventory, providing security, prescribing, and handling of a controlled substance. A prospective employee would have "direct access" if the described job duties would give such person access to the products in question, whether such employee would be in physical proximity to controlled substances or engaged in activity which would permit the employee to divert such substances to his or her possession.

(2) A current employee would have "access" within the meaning of section 7(f) if the employee had access to the specific person or property which is the subject of the on-going investigation, as discussed in Sec. 1.12(e) of this part. Thus, to test a current employee, the employee need not have had "direct" access to the controlled substance, but may have had only infrequent, random, or opportunistic access. Such access would be sufficient to test the employee if the employee could have caused, or could have aided or abetted in causing, the loss of the specific property which is the subject of the investigation. For example, a maintenance worker in a drug warehouse, whose job duties include the cleaning of areas where the controlled substances which are the subject of the investigation were present, but whose job duties do not include the handling of controlled substances, would be deemed to have "access", but normally not "direct access", to the controlled substances. On the other hand, a drug warehouse truck loader, whose job duties include the handling of outgoing shipment orders which contain controlled substances, would have "direct access" to such controlled substances. A pharmacy department in a supermarket is another common situation which is useful in illustrating the distinction between "direct access" and "access." Store personnel receiving pharmaceutical orders, i.e., the pharmacist, pharmacy intern, and other such employees working in the pharmacy department, would ordinarily have "direct access" to controlled substances. Other store personnel whose job duties and responsibilities do not include the handling of controlled substances but who had occasion to enter the pharmacy department where the controlled substances which are the subject of the investigation were stored, such as maintenance personnel or pharmacy cashiers, would have "access." Certain other store personnel whose job duties do not permit or require entrance into the pharmacy department for any reason, such as produce or meat clerks, checkout cashiers, or baggers, would not ordinarily have "access." However, any current employee, regardless of described job duties, may be polygraphed if the employing office's investigation of criminal or other misconduct discloses that such employee in fact took action to obtain "access" to the person or property that is the subject of the investigation—e.g., by actually entering the drug storage area in violation of company rules. In the case of "direct access", the prospective employee's access to controlled substances would be as a part of the manufacturing, dispensing or distribution process, while a current employee's "access" to the controlled substances which are the subject of the investigation need only be opportunistic.

(d) The term *prospective employee,* for the purposes of this section, includes a current employee who presently holds a position which does not entail direct access to controlled substances, and therefore is outside the scope of the exemption's provisions for preemployment polygraph testing, provided the employee has applied for and is being considered for transfer or promotion to another position which entails such direct access. For example, an office secretary may apply for promotion to a position in the vault or cage areas of a drug warehouse, where controlled substances are kept. In such a situation, the current employee would be deemed a "prospective employee" for the purposes of this exemption, and thus could be subject to preemployment polygraph screening, prior to such a change in position. However, any adverse action which is based in part on a polygraph test against a current employee who is considered a "prospective employee" for purposes of this section may be taken only with respect to the prospective position and may not affect the employee's employment in the current position.

(e) Section 7(f) of the EPPA, as applied by the CAA, makes no specific reference to a requirement that employing offices provide current employees with a written statement prior to polygraph testing. Thus, employing offices to whom this exemption is available are not required to furnish a written statement such as that specified in section 7(d) of the EPPA and Sec. 1.12(a)(4) of this part.

(f) For the section 7(f) exemption to apply, the polygraph testing of current employees must be administered in connection with an ongoing investigation of criminal or other misconduct involving, or potentially involving, loss or injury to the manufacture, distribution, or dispensing of any such controlled substance by such employing office.

(1) Current employees may only be administered polygraph tests in connection with an ongoing investigation of criminal or other misconduct, relating to a specific incident or activity, or potential incident or activity. Thus, an employing office is precluded from using the exemption in connection with continuing investigations or on a random basis to determine if thefts are occurring. However, unlike the exemption in section 7(d) of the EPPA for employing offices conducting ongoing investigations of economic loss or injury, the section 7(f) exemption includes ongoing investigations of misconduct involving potential drug losses. Nor does the latter exemption include the requirement for "reasonable suspicion" contained in the section 7(d) exemption. Thus, a drug store operator is permitted to polygraph all current employees who have access to a controlled substance stolen from the inventory, or where there is evidence that such a theft is planned. Polygraph testing based on an inventory shortage of the drug during a particular accounting period would not be permitted unless there is extrinsic evidence of misconduct.

(2) In addition, the test must be administered in connection with loss or injury, or potential loss or injury, to the manufacture, distribution, or dispensing of a controlled substance.

(i) Retail drugstores and wholesale drug warehouses typically carry inventory of so-called health and beauty aids, cosmetics, over-the-counter drugs, and a variety of other similar products, in addition to their product lines of controlled drugs. The non-controlled products usually constitute

(ii) Polygraph testing, with respect to an ongoing investigation concerning products other than controlled substances might be initiated under section 7(d) of the EPPA and Sec. 1.12 of this part. However, the exemption in section 7(f) of the EPPA and this section is limited solely to losses or injury associated with controlled substances.

(g) Polygraph tests administered pursuant to this exemption are subject to the limitations set forth in sections 8 and 10 of the EPPA, as discussed in Secs. 1.21, 1.22, 1.23, 1.24, 1.25, 1.26, and 1.35 of this part. As provided in these sections, the exemption will apply only if certain requirements are met. Failure to satisfy any of the specified requirements nullifies the statutory authority for polygraph test administration and may subject the employing office to the remedies authorized in section 204 of the CAA. The administration of such tests is also subject to collective bargaining agreements, which may either prohibit lie detector tests, or contain more restrictive provisions with respect to polygraph testing.

Subpart C—Restrictions on polygraph usage under exemptions

Sec. 1.20 Adverse employment action under ongoing investigation exemption.

(a) Section 8(a)(1) of the EPPA provides that the limited exemption in section 7(d) of the EPPA and Sec. 1.12 of this part for ongoing investigations shall not apply if an employing office discharges, disciplines, denies employment or promotion or otherwise discriminates in any manner against a current employee based upon the analysis of a polygraph test chart or the refusal to take a polygraph test, without additional supporting evidence.

(b) "Additional supporting evidence", for purposes of section 8(a) of the EPPA, includes, but is not limited to, the following:

(1)(i) Evidence indicating that the employee had access to the missing or damaged property that is the subject of an ongoing investigation; and

(ii) Evidence leading to the employing office's reasonable suspicion that the employee was involved in the incident or activity under investigation; or

(2) Admissions or statements made by an employee before, during or following a polygraph examination.

(c) Analysis of a polygraph test chart or refusal to take a polygraph test may not serve as a basis for adverse employment action, even with additional supporting evidence, unless the employing office observes all the requirements of sections 7(d) and 8(b) of the EPPA, as applied by the CAA and described in Secs. 1.12, 1.22, 1.23, 1.24 and 1.25 of this part.

Sec. 1.21 Adverse employment action under controlled substance exemption.

(a) Section 8(a)(2) of the EPPA provides that the controlled substance exemption in section 7(f) of the EPPA and section 1.13 of this part shall not apply if an employing office discharges, disciplines, denies employment or promotion, or otherwise discriminates in any manner against a current employee or prospective employee based solely on the analysis of a polygraph test chart or the refusal to take a polygraph test.

(b) Analysis of a polygraph test chart or refusal to take a polygraph test may serve as one basis for adverse employment actions of the type described in paragraph (a) of this section, provided that the adverse action was also based on another bona fide reason, with supporting evidence therefor. For example, traditional factors such as prior employment experience, education, job performance, etc. may be used as a basis for employment decisions. Employment decisions based on admissions or statements made by an employee or prospective employee before, during or following a polygraph examination may, likewise, serve as a basis for such decisions.

(c) Analysis of a polygraph test chart or the refusal to take a polygraph test may not serve as a basis for adverse employment action, even with another legitimate basis for such action, unless the employing office observes all the requirements of section 7(f) of the EPPA, as appropriate, and section 8(b) of the EPPA, as described in sections 1.13, 1.22, 1.23, 1.24 and 1.25 of this part.

Sec. 1.22 Rights of examinee—general.

(a) Pursuant to section 8(b) of the EPPA, the limited exemption in section 7(d) of the EPPA for ongoing investigations (described in Secs. 1.12 and 1.13 of this part) shall not apply unless all of the requirements set forth in this section and Secs. 1.23 through 1.25 of this part are met.

(b) During all phases of the polygraph testing the person being examined has the following rights:

(1) The examinee may terminate the test at any time.

(2) The examinee may not be asked any questions in a degrading or unnecessarily intrusive manner.

(3) The examinee may not be asked any questions dealing with:

(i) Religious beliefs or affiliations;

(ii) Beliefs or opinions regarding racial matters;

(iii) Political beliefs or affiliations;

(iv) Sexual preferences or behavior; or

(v) Beliefs, affiliations, opinions, or lawful activities concerning unions or labor organizations.

(4) The examinee may not be subjected to a test when there is sufficient written evidence by a physician that the examinee is suffering from any medical or psychological condition or undergoing any treatment that might cause abnormal responses during the actual testing phase. "Sufficient written evidence" shall constitute, at a minimum, a statement by a physician specifically describing the examinee's medical or psychological condition or treatment and the basis for the physician's opinion that the condition or treatment might result in such abnormal responses.

(5) An employee or prospective employee who exercises the right to terminate the test, or who for medical reasons with sufficient supporting evidence is not administered the test, shall be subject to adverse employment action only on the same basis as one who refuses to take a polygraph test, as described in Secs. 1.20 and 1.21 of this part.

(c) Any polygraph examination shall consist of one or more pretest phases, actual testing phases, and post-test phases, which must be conducted in accordance with the rights of examinees described in Secs. 1.23 through 1.25 of this part.

Sec. 1.23 Rights of examinee—pretest phase.

(a) The pretest phase consists of the questioning and other preparation of the prospective examinee before the actual use of the polygraph instrument. During the initial pretest phase, the examinee must be:

(1) Provided with written notice, in a language understood by the examinee, as to when and where the examination will take place and that the examinee has the right to consult with counsel or an employee representative before each phase of the test. Such notice shall be received by the examinee at least forty-eight hours, excluding weekend days and holidays, before the time of the examination, except that a prospective employee may, at the employee's option, give written consent to administration of a test anytime within 48 hours but no earlier than 24 hours after receipt of the written notice. The written notice or proof of service must set forth the time and date of receipt by the employee or prospective employee and be verified by his or her signature. The purpose of this requirement is to provide a sufficient opportunity prior to the examination for the examinee to consult with counsel or an employee representative. Provision shall also be made for a convenient place on the premises where the examination will take place at which the examinee may consult privately with an attorney or an employee representative before each phase of the test. The attorney or representative may be excluded from the room where the examination is administered during the actual testing phase.

(2) Informed orally and in writing of the nature and characteristics of the polygraph instrument and examination, including an explanation of the physical operation of the polygraph instrument and the procedure used during the examination.

(3) Provided with a written notice prior to the testing phase, in a language understood by the examinee, which shall be read to and signed by the examinee. Use of Appendix A to this part, if properly completed, will constitute compliance with the contents of the notice requirement of this paragraph. If a format other than in Appendix A is used, it must contain at least the following information:

(i) Whether or not the polygraph examination area contains a two-way mirror, a camera, or other device through which the examinee may be observed;

(ii) Whether or not any other device, such as those used in conversation or recording will be used during the examination;

(iii) That both the examinee and the employing office have the right, with the other's knowledge, to make a recording of the entire examination;

(iv) That the examinee has the right to terminate the test at any time;

(v) That the examinee has the right, and will be given the opportunity, to review all questions to be asked during the test;

(vi) That the examinee may not be asked questions in a manner which degrades, or needlessly intrudes;

(vii) That the examinee may not be asked any questions concerning religious beliefs or opinions; beliefs regarding racial matters; political beliefs or affiliations; matters relating to sexual behavior; beliefs, affiliations, opinions, or lawful activities regarding unions or labor organizations;

(viii) That the test may not be conducted if there is sufficient written evidence by a physician that the examinee is suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the examination;

(ix) That the test is not and cannot be required as a condition of employment;

(x) That the employing office may not discharge, dismiss, discipline, deny employment or promotion, or otherwise discriminate against the examinee based on the analysis of a polygraph test, or based on the examinee's refusal to take such a test, without additional evidence which would support such action;

(xi)(A) In connection with an ongoing investigation, that the additional evidence required for the employing office to take adverse action against the examinee, including

(B) That any statement made by the examinee before or during the test may serve as additional supporting evidence for an adverse employment action, as described in paragraph (a)(3)(x) of this section, and that any admission of criminal conduct by the examinee may be transmitted to an appropriate government law enforcement agency;

(xii) That information acquired from a polygraph test may be disclosed by the examiner or by the employing office only:

(A) To the examinee or any other person specifically designated in writing by the examinee to receive such information;

(B) To the employing office that requested the test;

(C) To a court, governmental agency, arbitrator, or mediator pursuant to a court order;

(D) By the employing office, to an appropriate governmental agency without a court order where, and only insofar as, the information disclosed is an admission of criminal conduct;

(xiii) That if any of the examinee's rights or protections under the law are violated, the examinee has the right to take action against the employing office under sections 401-404 of the CAA. Employing offices that violate this law are liable to the affected examinee, who may recover such legal or equitable relief as may be appropriate, including, but not limited to, employment, reinstatement, and promotion, payment of lost wages and benefits, and reasonable costs, including attorney's fees;

(xiv) That the examinee has the right to obtain and consult with legal counsel or other representative before each phase of the test, although the legal counsel or representative may be excluded from the room where the test is administered during the actual testing phase.

(xv) That the employee's rights under the CAA may not be waived, either voluntarily or involuntarily, by contract or otherwise, except as part of a written settlement to a pending action or complaint under the CAA, agreed to and signed by the parties.

(b) During the initial or any subsequent pretest phases, the examinee must be given the opportunity, prior to the actual testing phase, to review all questions in writing that the examiner will ask during each testing phase. Such questions may be presented at any point in time prior to the testing phase.

Sec. 1.24 Rights of examinee—actual testing phase

(a) The actual testing phase refers to that time during which the examiner administers the examination by using a polygraph instrument with respect to the examinee and then analyzes the charts derived from the test. Throughout the actual testing phase, the examiner shall not ask any question that was not presented in writing for review prior to the testing phase. An examiner may, however, recess the testing phase and return to the pre-test phase to review additional relevant questions with the examinee. In the case of an ongoing investigation, the examiner shall ensure that all relevant questions (as distinguished from technical baseline questions) pertain to the investigation.

(b) No testing period subject to the provisions of the Act shall be less than ninety minutes in length. Such "test period" begins at the time that the examiner begins informing the examinee of the nature and characteristics of the examination and the instruments involved, as prescribed in section 8(b)(2)(B) of the EPPA and Sec. 1.23(a)(2) of this part, and ends when the examiner completes the review of the test results with the examinee as provided in Sec. 1.25 of this part. The ninety-minute minimum duration shall not apply if the examinee voluntarily acts to terminate the test before the completion thereof, in which event the examiner may not render an opinion regarding the employee's truthfulness.

Sec. 1.25 Rights of examinee—post-test phase

(a) The post-test phase refers to any questioning or other communication with the examinee following the use of the polygraph instrument, including review of the results of the test with the examinee. Before any adverse employment action, the employing office must:

(1) Further interview the examinee on the basis of the test results; and

(2) Give to the examinee a written copy of any opinions or conclusions rendered in response to the test, as well as the questions asked during the test, with the corresponding charted responses. The term "corresponding charted responses" refers to copies of the entire examination charts recording the employee's physiological responses, and not just the examiner's written report which describes the examinee's responses to the questions as "charted" by the instrument.

Sec. 1.26 Qualifications of and requirements for examiners

(a) Section 8 (b) and (c) of the EPPA provides that the limited exemption in section 7(d) of the EPPA for ongoing investigations shall not apply unless the person conducting the polygraph examination meets specified qualifications and requirements.

(b) An examiner must meet the following qualifications:

(1) Have a valid current license, if required by the State in which the test is to be conducted; and

(2) Carry a minimum bond of $50,000 provided by a surety incorporated under the laws of the United States or of any State, which may under those laws guarantee the fidelity of persons holding positions of trust, or carry an equivalent amount of professional liability coverage.

(c) An examiner must also, with respect to examinees identified by the employing office pursuant to Sec. 1.30(c) of this part:

(1) Observe all rights of examinees, as set out in Secs. 1.22, 1.23, 1.24, and 1.25 of this part;

(2) Administer no more than five polygraph examinations in any one calendar day on which a test or tests subject to the provisions of EPPA are administered, not counting those instances where an examinee voluntarily terminates an examination prior to the actual testing phase;

(3) Administer no polygraph examination subject to the provisions of the EPPA which is less than ninety minutes in duration, as described in Sec. 1.24(b) of this part; and

(4) Render any opinion or conclusion regarding truthfulness or deception in writing. Such opinion or conclusion must be based solely on the polygraph test results. The written report shall not contain any information other than admissions, information, case facts, and interpretation of the charts relevant to the stated purpose of the polygraph test and shall not include any recommendation concerning the employment of the examinee.

(5) Maintain all opinions, reports, charts, written questions, lists, and other records relating to the test, including, statements signed by examinees advising them of rights under the CAA (as described in section 1.23(a)(3) of this part) and any electronic recordings of examinations, for at least three years from the date of the administration of the test. (See section 1.30 of this part for recordkeeping requirements.)

Subpart D—Recordkeeping and disclosure requirements

Sec. 1.30 Records to be preserved for 3 years

(a) The following records shall be kept for a minimum period of three years from the date the polygraph examination is conducted (or from the date the examination is requested if no examination is conducted):

(1) Each employing office that requests an employee to submit to a polygraph examination in connection with an ongoing investigation involving economic loss or injury shall retain a copy of the statement that sets forth the specific incident or activity under investigation and the basis for testing that particular covered employee, as required by section 7(d)(4) of the EPPA and described in 1.12(a)(4) of this part.

(2) Each examiner retained to administer examinations pursuant to any of the exemptions under section 7(d), (e) or (f) of the EPPA (described in sections 1.12 and 1.13 of this part) shall maintain all opinions, reports, charts, written questions, lists, and other records relating to polygraph tests of such persons.

Sec. 1.35 Disclosure of test information

This section prohibits the unauthorized disclosure of any information obtained during a polygraph test by any person, other than the examinee, directly or indirectly, except as follows:

(a) A polygraph examiner or an employing office (other than an employing office exempt under section 7 (a), or (b) of the EPPA (described in Secs. 1.10 and 1.11 of this part)) may disclose information acquired from a polygraph test only to:

(1) The examinee or an individual specifically designated in writing by the examinee to receive such information;

(2) The employing office that requested the polygraph test pursuant to the provisions of the EPPA (including management personnel of the employing office where the disclosure is relevant to the carrying out of their job responsibilities);

(3) Any court, governmental agency, arbitrator, or mediator pursuant to an order from a court of competent jurisdiction requiring the production of such information;

(b) An employing office may disclose information from the polygraph test at any time to an appropriate governmental agency without the need of a court order where, and only insofar as, the information disclosed is an admission of criminal conduct.

(c) A polygraph examiner may disclose test charts, without identifying information (but not other examination materials and records), to another examiner(s) for examination and analysis, provided that such disclosure is for the sole purpose of consultation and review of the initial examiner's opinion concerning the indications of truthfulness or deception. Such action would not constitute disclosure under this part provided that the other examiner has no direct or indirect interest in the matter.

Subpart E—Duration of Interim Regulations

Sec. 1.40 [Reserved]

Appendix A to Part 801—Notice to Examinee

Section 204 of the Congressional Accountability Act, which applies the rights and protections of section 8(b) of the Employee Polygraph Protection Act to covered employees and employing offices, and the regulations of the Board of Directors of the Office of Compliance (Sections 1.22, 1.23, 1.24, and 1.25), require that you be given the following information before taking a polygraph examination:

1. (a) The polygraph examination area [does] [does not] contain a two-way mirror, a camera, or other device through which you may be observed.

(b) Another device, such as those used in conversation or recording, [will] [will not] be used during the examination.

(c) Both you and the employing office have the right, with the other's knowledge, to record electronically the entire examination.

2. (a) You have the right to terminate the test at any time.

(b) You have the right, and will be given the opportunity, to review all questions to be asked during the test.

(c) You may not be asked questions in a manner which degrades, or needlessly intrudes.

(d) You may not be asked any questions concerning: Religious beliefs or opinions; beliefs regarding racial matters; political beliefs or affiliations; matters relating to sexual preference or behavior; beliefs, affiliations, opinions, or lawful activities regarding unions or labor organizations.

(e) The test may not be conducted if there is sufficient written evidence by a physician that you are suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the examination.

(f) You have the right to consult with legal counsel or other representative before each phase of the test, although the legal counsel or other representative may be excluded from the room where the test is administered during the actual testing phase.

3. (a) The test is not and cannot be required as a condition of employment.

(b) The employing office may not discharge, dismiss, discipline, deny employment or promotion, or otherwise discriminate against you based on the analysis of a polygraph test, or based on your refusal to take such a test without additional evidence which would support such action.

(c)(1) In connection with an ongoing investigation, the additional evidence required for an employing office to take adverse action against you, including termination, may be (A) evidence that you had access to the property that is the subject of the investigation, together with (B) the evidence supporting the employing office's reasonable suspicion that you were involved in the incident or activity under investigation.

(2) Any statement made by you before or during the test may serve as additional supporting evidence for an adverse employment action, as described in 3(b) above, and any admission of criminal conduct by you may be transmitted to an appropriate government law enforcement agency.

4. (a) Information acquired from a polygraph test may be disclosed by the examiner or by the employing office only:

(1) To you or any other person specifically designated in writing by you to receive such information;

(2) To the employing office that requested the test;

(3) To a court, governmental agency, arbitrator, or mediator that obtains a court order.

(b) Information acquired from a polygraph test may be disclosed by the employing office to an appropriate governmental agency without a court order where, and only insofar as, the information disclosed is an admission of criminal conduct.

5. If any of your rights or protections under the law are violated, you have the right to take action against the employing office by filing a request for counseling with the Office of Compliance under section 402 of the Congressional Accountability Act. Employing offices that violate this law are liable to the affected examinee, who may recover such legal or equitable relief as may be appropriate, including, but not limited to, employment, reinstatement, and promotion, payment of lost wages and benefits, and reasonable costs, including attorney's fees.

6. Your rights under the CAA may not be waived, either voluntarily or involuntarily, by contract or otherwise, except as part of a written settlement to a pending action or complaint under the CAA, and agreed to and signed by the parties.

I acknowledge that I have received a copy of the above notice, and that it has been read to me.

_____

(Date)

_____

(Signature)

Application of Rights and Protections of the Worker Adjustment Retraining and Notification Act of 1988 (Implementing Section 204 of the CAA)

Sec.

639.1 Purpose and scope.
639.2 What does WARN require?
639.3 Definitions.
639.4 Who must give notice?
639.5 When must notice be given?
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639.7 What must the notice contain?
639.8 How is the notice served?
639.9 When may notice be given less than 60 days in advance?
639.10 When may notice be extended?
639.11 [Reserved]

§639.1 Purpose and scope

(a) *Purpose of WARN as applied by the CAA.* Section 205 of the Congressional Accountability Act, P.L. 104–1 ("CAA"), provides protection to covered employees and their families by requiring employing offices to provide notification 60 calendar days in advance of office closings and mass layoffs within the meaning of section 3 of the Worker Adjustment and Retraining Notification Act of 1988, 29 U.S.C. §2102. Advance notice provides workers and their families some transition time to adjust to the prospective loss of employment, to seek and obtain alternative jobs and, if necessary, to enter skill training or retraining that will allow these workers to successfully compete in the job market. As used in these regulations. WARN shall refer to the provisions of WARN applied to covered employing offices by section 305 of the CAA

(b) *Scope of these regulations.* These regulations are issued by the Board of Directors, Office of Compliance, pursuant to sections 205(c) and 304 of the CAA, which directs the Board to promulgate regulations implementing section 205 that are "the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 205 of the CAA] except insofar as the Board may determine, for good cause shown . . . that a modification of such regulations would be more effective for the implementation of the rights and protections under this section." The regulations issued by the Board herein are on all matters for which section 205 of the CAA requires a regulation to be issued. Specifically, it is the Board's considered judgment, based on the information available to it at the time of promulgation of these regulations, that, with the exception of regulations adopted and set forth herein, there are no other "substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 205 of the CAA]."

In promulgating these regulations, the Board has made certain technical and nomenclature changes to the regulations as promulgated by the Secretary. Such changes are intended to make the provisions adopted accord more naturally to situations in the legislative branch. However, by making these changes, the Board does not intend a substantive difference between these sections and those of the Secretary from which they are derived. Moreover, such changes, in and of themselves, are not intended to constitute an interpretation of the regulation or of the statutory provisions of the CAA upon which they are based.

These regulations establish basic definitions and rules for giving notice, implementing the provisions of WARN. The objective of these regulations is to establish clear principles and broad guidelines which can be applied in specific circumstances. However, it is recognized that rulemaking cannot address the multitude of employing office-specific situations in which advance notice will be given.

(c) *Notice in ambiguous situations.* It is civically desirable and it would appear to be good business practice for an employing office to provide advance notice, where reasonably possible, to its workers or unions when terminating a significant number of employees. The Office encourages employing offices to give notice in such circumstances.

(d) *WARN not to supersede other laws and contracts.* The provisions of WARN do not supersede any otherwise applicable laws or collective bargaining agreements that provide for additional notice or additional rights and remedies. If such law or agreement provides for a longer notice period, WARN notice shall run concurrently with that additional notice period. Collective bargaining agreements may be used to clarify or amplify the terms and conditions of WARN, but may not reduce WARN rights.

§639.2 What does WARN require?

WARN requires employing offices that are planning an office closing or a mass layoff to give affected employees at least 60 days' notice of such an employment action. While the 60-day period is the minimum for advance notice, this provision is not intended to discourage employing offices from voluntarily providing longer periods of advance notice. Not all office closings and layoffs are subject to WARN, and certain employment thresholds must be reached before WARN applies. WARN sets out specific exemptions, and provides for a reduction in the notification period in particular circumstances. Remedies authorized under section 205 of the CAA may be assessed against employing offices that violate WARN requirements.

§639.3 Definitions

(a) *Employing office.* (1) The term "employing office" means any of the entities listed in section 101(9) of the CAA, 2 U.S.C. §1301(9) that employs—

(i) 100 or more employees, excluding part-time employees; or

(ii) employs 100 or more employees, including part-time employees, who in the aggregate work at least 4,000 hours per week, exclusive of overtime.

Workers on temporary layoff or on leave who have a reasonable expectation of recall are counted as employees. An employee has a "reasonable expectation of recall" when he/she understands, through notification or through common practice, that his/her employment with the employing office has been temporarily interrupted and that he/she will be recalled to the same or to a similar job.

(2) Workers, other than part-time workers, who are exempt from notice under section 4 of WARN, are nonetheless counted as employees for purposes of determining coverage as an employing office.

(3) An employing office may have one or more sites of employment under common control.

(b) *Office closing.* The term "office closing" means the permanent or temporary shutdown of a "single site of employment", or one or more "facilities or operating units" within a single site of employment, if the shutdown results in an "employment loss" during *any 30-day period* at the single site of employment for *50 or more* employees, excluding any part-time employees. An employment action that results in the effective cessation of the work performed by a unit, even if a few employees remain, is a shutdown. A "temporary shutdown" triggers the notice requirement only if there are a sufficient number of terminations, layoffs exceeding 6 months, or reductions in hours of work as specified under the definition of "employment loss."

(c) *Mass layoff.* (1) The term "mass layoff" means a reduction in force which first, is not the result of an office closing, and second, results in an employment loss at the single site of employment during *any 30-day period* for:

(i) *At least 33 percent* of the active employees, excluding part-time employees, and

(ii) *At least 50 employees,* excluding part-time employees.

Where 500 or more employees (excluding part-time employees) are affected, the 33% requirement does not apply, and notice is required if the other criteria are met. Office closings involve employment loss which results from the shutdown of one or more distinct units within a single site or the entire site. A mass layoff involves employment loss, regardless of whether one or more units are shut down at the site.

(2) Workers, other than part-time workers, who are exempt from notice under section 4 of WARN are nonetheless counted as employees for purposes of determining coverage as an office closing or mass layoff. For example, if an employing office closes a temporary project on which 10 permanent and 40 temporary workers are employed, a covered office closing has occurred although only 10 workers are entitled to notice.

(d) *Representative.* The term "representative" means an exclusive representative of employees within the meaning of 5 U.S.C. §§7101 *et seq.*, as applied to covered employees and employing offices by section 220 of the CAA, 2 U.S.C. §1351.

(e) *Affected employees.* The term "affected employees" means employees who may reasonably be expected to experience an employment loss as a consequence of a proposed office closing or mass layoff by their employing office. This includes individually identifiable employees who will likely lose their jobs because of bumping rights or other factors, to the extent that such individual workers reasonably can be identified at the time notice is required to be given. The term affected employees includes managerial and supervisory employees. Consultant or contract employees who have a separate employment relationship with another employing office or employer and are paid by that other employing office or employer, or who are self-employed, are not "affected employees" of the operations to which they are assigned. In addition, for purposes of determining whether coverage thresholds are met, either incumbent workers in jobs being eliminated or, if known 60 days in advance, the actual employees who suffer an employment loss may be counted.

(f) *Employment loss.* (1) The term employment loss means (i) an employment termination, other than a discharge for cause, voluntary departure, or retirement, (ii) a layoff exceeding 6 months, or (iii) a reduction in hours of work of individual employees of more than 50% during each month of any 6-month period.

(2) Where a termination or a layoff (see paragraphs (f)(1) (i) and (ii) of this section) is involved, an employment loss does not occur when an employee is reassigned or transferred to employing office-sponsored programs, such as retraining or job search activities, as long as the reassignment does not constitute a constructive discharge or other involuntary termination.

(3) An employee is not considered to have experienced an employment loss if the closing or layoff is the result of the relocation or consolidation of part or all of the employing office's operations and, prior to the closing or layoff—

(i) The employing office offers to transfer the employee to a different site of employment within a reasonable commuting distance with no more than a 6-month break in employment, or

(ii) The employing office offers to transfer the employee to any other site of employment regardless of distance with no more than a 6-month break in employment, and the employee accepts within 30 days of the offer or of the closing or layoff, whichever is later.

(4) A "relocation or consolidation" of part or all of an employing office's operations, for purposes of paragraph §639.3(f)(3), means that some definable operations are transferred to a different site of employment and that transfer results in an office closing or mass layoff.

(g) *Part-time employee.* The term "part-time" employee means an employee who is employed for an average of fewer than 20 hours per week or who has been employed for fewer than 6 of the 12 months preceding the date on which notice is required, including workers who work full-time. This term may include workers who would traditionally be understood as "seasonal" employees. The period to be used for calculating whether a worker has worked "an average of fewer than 20 hours per week" is the shorter of the actual time the worker has been employed or the most recent 90 days.

(h) *Single site of employment.* (1) A single site of employment can refer to either a single location or a group of contiguous locations. Separate facilities across the street from one another may be considered a single site of employment.

(2) There may be several single sites of employment within a single building, such as an office building, if separate employing offices conduct activities within such a building. For example, an office building housing 50 different employing offices will contain 50 single sites of employment. The offices of each employing office will be its single site of employment.

(3) Separate buildings or areas which are not directly connected or in immediate proximity may be considered a single site of employment if they are in reasonable geographic proximity, used for the same purpose, and share the same staff and equipment.

(4) Non-contiguous sites in the same geographic area which do not share the same staff or operational purpose should not be considered a single site.

(5) Contiguous buildings operated by the same employing office which have separate management and have separate workforces are considered separate single sites of employment.

(6) For workers whose primary duties require travel from point to point, who are outstationed, or whose primary duties involve work outside any of the employing office's regular employment sites (e.g., railroad workers, bus drivers, salespersons), the single site of employment to which they are assigned as their home base, from which their work is assigned, or to which they report will be the single site in which they are covered for WARN purposes.

(7) Foreign sites of employment are not covered under WARN. U.S. workers at such sites are counted to determine whether an employing office is covered as an employing office under §639.3(a).

(8) The term "single site of employment" may also apply to truly unusual organizational situations where the above criteria do not reasonably apply. The application of this definition with the intent to evade the purpose of WARN to provide notice is not acceptable.

(i) *Facility or operating unit.* The term "facility" refers to a building or buildings. The term "operating unit" refers to an organizationally or operationally distinct product, operation, or specific work function within or across facilities at the single site.

§639.4 Who must give notice?

Section 205(a)(1) of the CAA states that "[n]o employing office shall be closed or a mass layoff ordered within the meaning of section 3 of [WARN] until the end of a 60-day period after the employing office serves written notice of such prospective closing or layoff. . ." Therefore, an employing office that is anticipating carrying out an office closing or mass layoff is required to give notice to affected employees or their representative(s). (See definitions in §639.3 of this part.).

(a) It is the responsibility of the employing office to decide the most appropriate person within the employing office's organization to prepare and deliver the notice to affected employees or their representative(s). In most instances, this may be the local site office manager, the local personnel director or a labor relations officer.

(b) An employing office that has previously announced and carried out a short-term layoff (6 months or less) which is being extended beyond 6 months due to circumstances not reasonably foreseeable at the time of the initial layoff is required to give notice when it becomes reasonably foreseeable that the extension is required. A layoff extending beyond 6 months from the date the layoff commenced for any other reason shall be treated as an employment loss from the date of its commencement.

(c) In the case of the privatization or sale of part or all of an employing office's operations, the employing office is responsible for providing notice of any office closing or mass layoff which takes place up to and including the effective date (time) of the privatization or sale, and the contractor or buyer is responsible for providing any required notice of any office closing or mass layoff that takes place thereafter.

(1) If the employing office is made aware of any definite plans on the part of the buyer or contractor to carry out an office closing or mass layoff within 60 days of purchase, the employing office may give notice to affected employees as an agent of the buyer or contractor, if so empowered. If the employing office does not give notice, the buyer or contractor is, nevertheless, responsible to give notice. If the employing office gives notice as the agent of the buyer or contractor, the responsibility for notice still remains with the buyer or contractor.

(2) It may be prudent for the buyer or contractor and employing office to determine the impacts of the privatization or sale on workers, and to arrange between them for advance notice to be given to affected employees or their representative(s), if a mass layoff or office closing is planned.

§639.5 When must notice be given?

(a) *General rule.* (1) With certain exceptions discussed in paragraphs (b) and (c) of this section and in §639.9 of this part, notice must be given at least 60 calendar days prior to any planned office closing or mass layoff, as defined in these regulations. When all employees are not terminated on the same date, the date of the first individual termination within the statutory 30-day or 90-day period triggers the 60-day notice requirement. A worker's last day of employment is considered the date of that worker's layoff. The first and each subsequent group of terminees are entitled to a full 60 days' notice. In order for an employing office to decide whether issuing notice is required, the employing office should—

(i) Look ahead 30 days and behind 30 days to determine whether employment actions both taken and planned will, in the aggregate for any 30-day period, reach the minimum numbers for an office closing or a mass layoff and thus trigger the notice requirement; and

(ii) Look ahead 90 days and behind 90 days to determine whether employment actions both taken and planned each of which separately is not of sufficient size to trigger WARN coverage will, in the aggregate for any 90-day period, reach the minimum numbers for an office closing or a mass layoff and thus trigger the notice requirement. An employing office is not, however, required under section 3(d) to give notice if the employing office demonstrates that the separate employment losses are the result of separate and distinct actions and causes, and are not an attempt to evade the requirements of WARN.

(2) The point in time at which the number of employees is to be measured for the purpose of determining coverage is the date the first notice is required to be given. If this "snapshot" of the number of employees employed on that date is clearly unrepresentative of the ordinary or average employment level, then a more representative number can be used to determine coverage. Examples of unrepresentative employment levels include cases when the level is near the peak or trough of an employment cycle or when large upward or downward shifts in the number of employees occur around the time notice is to be given. A more representative number may be an average number of employees over a recent period of time or the number of employees on an alternative date which is more representative of normal employment levels. Alternative methods cannot be used to evade the purpose of WARN, and should only be used in unusual circumstances.

(b) *Transfers.* (1) Notice is not required in certain cases involving transfers, as described under the definition of "employment loss" at §639.3(f) of this part.

(2) An offer of reassignment to a different site of employment should not be deemed to be a "transfer" if the new job constitutes a constructive discharge.

(3) The meaning of the term "reasonable commuting distance" will vary with local conditions. In determining what is a "reasonable commuting distance," consideration should be given to the following factors: geographic accessibility of the place of work, the quality of the roads, customarily available transportation, and the usual travel time.

(4) In cases where the transfer is beyond reasonable commuting distance, the employing office may become liable for failure to give notice if an offer to transfer is not accepted within 30 days of the offer or of the closing or layoff (whichever is later). Depending upon when the offer of transfer was made by the employing office, the normal 60-day notice period may have expired and the office closing or mass layoff may have occurred. An employing office is, therefore, well advised to provide 60-day advance notice as part of the transfer offer.

(c) *Temporary employment.* (1) No notice is required if the closing is of a temporary facility, or if the closing or layoff is the result of the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility or the project or undertaking.

(2) Employees must clearly understand at the time of hire that their employment is temporary. When such understandings exist will be determined by reference to employment contracts, collective bargaining agreements, or employment practices of other employing offices or a locality, but the burden of proof will lie with the employing office to show that the temporary nature of the project or facility was clearly communicated should questions arise regarding the temporary employment understandings.

§639.6 Who must receive notice?

Section 3(a) of WARN provides for notice to each representative of the affected employees as of the time notice is required to be given or, if there is no such representative at that time, to each affected employee.

(a) *Representative(s) of affected employees.* Written notice is to be served upon the chief elected officer of the exclusive representative(s) or bargaining agent(s) of affected employees at the time of the notice. If this person is not the same as the officer of the local union(s) representing affected employees, it is recommended that a copy also be given to the local union official(s).

(b) *Affected employees.* Notice is required to be given to employees who may reasonably be expected to experience an employment loss. This includes employees who will likely lose their jobs because of bumping rights or other factors, to the extent that such workers can be identified at the time notice is required to be given. If, at the time notice is required to be given, the employing office cannot identify the employee who may reasonably be expected to experience an employment loss due to the elimination of a particular position, the employing office must provide notice to the incumbent in that position. While part-time employees are not counted in determining whether office closing or mass layoff thresholds are reached, such workers are due notice.

§639.7 What must the notice contain?

(a) *Notice must be specific.* (1) All notice must be specific.

(2) Where voluntary notice has been given more than 60 days in advance, but does not contain all of the required elements set out in this section, the employing office must ensure that all of the information required by this section is provided in writing to the parties listed in §639.6 at least 60 days in advance of a covered employment action.

(3) Notice may be given conditional upon the occurrence or nonoccurrence of an event only when the event is definite and the consequences of its occurrence or nonoccurrence will necessarily, in the normal course of operations, lead to a covered office closing or mass layoff less than 60 days after the event. The notice must contain each of the elements set out in this section.

(4) The information provided in the notice shall be based on the best information available to the employing office at the time the notice is served. It is not the intent of the regulations that errors in the information provided in a notice that occur because events subsequently change or that are minor, inadvertent errors are to be the basis for finding a violation of WARN.

(b) As used in this section, the term "date" refers to a specific date or to a 14-day period during which a separation or separations are expected to occur. If separations are planned according to a schedule, the schedule should indicate the specific dates on which or the beginning date of each 14-day period during which any separations are expected to occur. Where a 14-day period is used, notice must be given at least 60 days in advance of the first day of the period.

(c) Notice to each representative of affected employees is to contain:

(1) The name and address of the employment site where the office closing or mass layoff will occur, and the name and telephone number of an employing office official to contact for further information;

(2) A statement as to whether the planned action is expected to be permanent or temporary and, if the entire office is to be closed, a statement to that effect;

(3) The expected date of the first separation and the anticipated schedule for making separations;

(4) The job titles of positions to be affected and the names of the workers currently holding affected jobs.

The notice may include additional information useful to the employees such as information on available dislocated worker assistance, and, if the planned action is expected to be temporary, the estimated duration, if known.

(d) Notice to each affected employee who does not have a representative is to be written in language understandable to the employees and is to contain:

(1) A statement as to whether the planned action is expected to be permanent or temporary and, if the entire office is to be closed, a statement to that effect;

(2) The expected date when the office closing or mass layoff will commence and the expected date when the individual employee will be separated;

(3) An indication whether or not bumping rights exist;

(4) The name and telephone number of an employing office official to contact for further information.

The notice may include additional information useful to the employees such as information on available dislocated worker assistance, and, if the planned action is expected to be temporary, the estimated duration, if known.

§639.8 How is the notice served?

Any reasonable method of delivery to the parties listed under §639.6 of this part which is designed to ensure receipt of notice of at least 60 days before separation is acceptable (e.g., first class mail, personal delivery with optional signed receipt). In the case of notification directly to affected employees, insertion of notice into pay envelopes is another viable option. A ticketed notice, i.e., preprinted notice regularly included in each employee's pay check or pay envelope, does not meet the requirements of WARN.

§639.9 When may notice be given less than 60 days in advance?

Section 3(b) of WARN, as applied by section 205 of the CAA, sets forth two conditions under which the notification period may be reduced to less than 60 days. The employing office bears the burden of proof that conditions for the exceptions have been met. If one of the exceptions is applicable, the employing office must give as much notice as is practicable to the union and non-represented employees and this may, in some circumstances, be notice after the fact. The employing office must, at the time notice actually is given, provide a brief statement of the reason for reducing the notice period, in addition to the other elements set out in §639.7.

(a) The "unforeseeable business circumstances" exception under section 3(b)(2)(A) of WARN, as applied under the CAA, applies to office closings and mass layoffs caused by circumstances that were not reasonably foreseeable at the time that 60-day notice would have been required.

(1) An important indicator of a circumstance that is not reasonably foreseeable is that the circumstance is caused by some sudden, dramatic, and unexpected action or condition outside the employing office's control.

(2) The test for determining when circumstances are not reasonably foreseeable

focuses on an employing office's business judgment. The employing office must exercise such reasonable business judgment as would a similarly situated employing office in predicting the demands of its operations. The employing office is not required, however, to accurately predict general economic conditions that also may affect its operations.

(b) The "natural disaster" exception in section 3(b)(2)(B) of WARN applies to office closings and mass layoffs due to any form of a natural disaster.

(1) Floods, earthquakes, droughts, storms, tidal waves or tsunamis and similar effects of nature are natural disasters under this provision.

(2) To qualify for this exception, an employing office must be able to demonstrate that its office closing or mass layoff is a direct result of a natural disaster.

(3) While a disaster may preclude full or any advance notice, such notice as is practicable, containing as much of the information required in §639.7 as is available in the circumstances of the disaster still must be given, whether in advance or after the fact of an employment loss caused by a natural disaster.

(4) Where an office closing or mass layoff occurs as an indirect result of a natural disaster, the exception does not apply but the "unforeseeable business circumstance" exception described in paragraph (a) of this section may be applicable.

§639.10 When may notice be extended?

Additional notice is required when the date or schedule of dates of a planned office closing or mass layoff is extended beyond the date or the ending date of any 14-day period announced in the original notice as follows:

(a) If the postponement is for less than 60 days, the additional notice should be given as soon as possible to the parties identified in §639.6 and should include reference to the earlier notice, the date (or 14-day period) to which the planned action is postponed, and the reasons for the postponement. The notice should be given in a manner which will provide the information to all affected employees.

(b) If the postponement is for 60 days or more, the additional notice should be treated as new notice subject to the provisions of §§639.5, 639.6 and 639.7 of this part. Rolling notice, in the sense of routine periodic notice, given whether or not an office closing or mass layoff is impending, and with the intent to evade the purpose of the Act rather than give specific notice as required by WARN, is not acceptable.

§639.11 [Reserved]

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California [Mr. THOMAS] and the gentleman from California [Mr. FAZIO] will each be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. THOMAS].

Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, what this resolution does is it accomplishes the same purpose as House Resolution 401, but it is extended to those joint entities under regulations adopted by the Office of Compliance, and those joint entities are the Capitol Guide Board, the Capitol Police Board, the Capitol Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, and the Office of Compliance itself.

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

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

Mr. Speaker, as with the earlier resolution adopting the regulations applicable to the House, my friend, the gentleman from California [Mr. THOMAS], has accurately described the Senate concurrent resolution. Again, it simply approves the regulations issued by the Office of Compliance for those items that are jointly responsible to both houses of the Congress.

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

Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the chairman of the committee does want to thank the ranking member. It is difficult enough in making sure that the application of laws that have been applied to the private sector apply equally and fairly to this House, and I have to say that we have had an excellent bipartisan working relationship in making sure that this has been done in a professional manner so that the laws that apply to others apply to us fairly.

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

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. THOMAS] that the House suspend the rules and concur in the Senate concurrent resolution (S. Con. Res. 51).

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Ms. JACKSON-LEE (at the request of Mr. GEPHARDT) on today, Monday, April 15, 1996, on account of business in the district.

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. COX of California) to revise and extend their remarks and include extraneous material:)

Mr. HUTCHINSON, for 5 minutes, today.

Mr. COX of California, for 5 minutes, today.

Mr. SHADEGG, for 5 minutes, today.

(The following Members (at the request of Mr. FAZIO of California) to revise and extend their remarks and include extraneous material:)

Mr. WISE, for 5 minutes, today.

Mr. PALLONE, for 5 minutes, today.

Mr. KAPTUR, for 5 minutes, today.

(The following Member (at the request of Mr. HAYWORTH) to revise and extend his remarks and include extraneous material:)

Mr. RIGGS, for 5 minutes, on April 16.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Member (at the request of Mr. COX of California) and to include extraneous matter:)

Mr. LEWIS of California.

(The following Members (at the request of Mr. FAZIO of California) and to include extraneous matter:)

Mr. BONIOR.

Mr. STOKES.

Ms. NORTON.

Mrs. MEEK of Florida.

Mr. SERRANO in three instances.

Mr. MANTON.

Mrs. MALONEY.

Mr. TOWNS.

Mr. PALLONE.

Mr. LANTOS in three instances.

Mr. JACOBS.

Mr. FARR of California in two instances.

Mr. FILNER.

Mr. RAHALL.

(The following Members (at the request of Mr. HAYWORTH) and to include extraneous matter:)

Mr. HAYES.

Mr. BARTON of Texas.

Mr. COX of California.

Mrs. CHENOWETH.

Mr. COMBEST.

Mr. WATTS of Oklahoma in two instances.

Mr. BAKER of California.

Mr. SPENCE.

Mr. BUNNING of Kentucky.

Mr. KING.

Mr. HOUGHTON.

Mr. GILMAN.

Mr. LIGHTFOOT in two instances.

BILLS PRESENTED TO THE PRESIDENT

Mr. THOMAS, from the Committee on House Oversight, reported that that committee did on the following days present to the President, for his approval, bills of the House of the following titles:

On March 27, 1996:

H.R. 1833. An act to amend title 18, United States Code, to ban partial-birth abortions.

On April 1, 1996:

H.R. 956. An act to establish legal standards and procedures for product liability litigation, and for other purposes.

H.R. 1561. An act to consolidate the foreign affairs agencies of the United States; to authorize appropriations for the Department of

State and related agencies for fiscal years 1996 and 1997; to responsibly reduce the authorizations of appropriations for United States foreign assistance programs for fiscal years 1996 and 1997, and for other purposes.

H.R. 2854. An act to modify the operation of certain agricultural programs.

ADJOURNMENT

Mr. HAYWORTH. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 12 o'clock and 7 minutes a.m.), under its previous order, the House adjourned until today, Tuesday, April 16, 1996, at 9:30 a.m. for morning hour debates.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2335. A communication from the President of the United States, transmitting his requests for fiscal year 1996 supplemental appropriations totaling $250 million to intensify our Nation's drug law enforcement, treatment, and prevention efforts, and to designate the amount made available as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, pursuant to 31 U.S.C. 1107 (H. Doc. No. 104–193); to the Committee on Appropriations and ordered to be printed.

2336. A communication from the President of the United States, transmitting his request to make available appropriations totaling $13,025,000 in budgetary authority for the Department of Health and Human Services, in addition a request to redirect appropriations totaling $3,700,000 in budget authority to the Department of Health and Human Services, and to designate the amounts made available as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, pursuant to 31 U.S.C. 1107 (H. Doc. No. 104–194); to the Committee on Appropriations and ordered to be printed.

2337. A communication from the President of the United States transmitting a report of 10 proposed rescissions of budgetary resources, totaling $400.4 million affecting the Department of Defense, pursuant to 2 U.S.C. 683(a)(1) (H. Doc. No. 104–195); to the Committee on Appropriations and ordered to be printed.

2338. A letter from the Director, the Office of Management and Budget, transmitting the cumulative report on rescissions and deferrals of budget authority as of April 1, 1996, pursuant to 2 U.S.C. 685(e) (H. Doc. No. 104–192); to the Committee on Appropriations and ordered to be printed.

2339. A letter from the Chief of Legislative Affairs, Department of the Navy, transmitting notification that the Department of the Navy intends to transfer by sale the ship U.S.S. *Recovery* to the Taipei Economic and Cultural Representative Office, pursuant to 10 U.S.C. 7307(b)(2); to the Committee on National Security.

2340. A letter from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting a report on the transfer of property to the Republic of Panama under the Panama Canal Treaty of 1977 and related agreements, pursuant to 22 U.S.C. 3784(b); to the Committee on National Security.

2341. A letter from the Comptroller General of the United States, transmitting a report entitled, "Financial Audit: Panama Canal Commission's 1995 and 1994 Financial Statements" (GAO/AIMD–96–61) March 1996, pursuant to 31 U.S.C. 9106(a); to the Committee on National Security.

2342. A letter from the General Counsel of the Department of Defense, transmitting a draft of proposed legislation entitled the "National Defense Authorization Act for Fiscal Year 1997," pursuant to 31 U.S.C. 1110; to the Committee on National Security.

2343. A letter from the Chairman, Federal Financial Institutions Examination Council, transmitting the Council's 1995 annual report to the Congress, pursuant to 12 U.S.C. 3305; to the Committee on Banking and Financial Services.

2344. A letter from the Chairman, National Credit Union Administration, transmitting the 1995 annual report of the National Credit Union Administration, pursuant to 12 U.S.C. 1256; to the Committee on Banking and Financial Services.

2345. A letter from the Director, Office of Management and Budget, transmitting OMB's estimate of the amount of discretionary new budget authority and outlays for the current year—if any—and the budget year provided by House Joint Resolution 170, pursuant to Public Law 101–508, section 13101(a) (104 Stat. 1388–578); to the Committee on the Budget.

2346. A letter from the National Foundation on the Arts and the Humanities, transmitting the Federal Council on the Arts and the Humanities' 20th annual report on the Arts and Artifacts Indemnity Program for fiscal year 1995, pursuant to 20 U.S.C. 959(c); to the Committee on Economic and Educational Opportunities.

2347. A letter from the Secretary of Transportation, transmitting the Department's 20th annual report to Congress entitled "Automotive Fuel Economy Program," pursuant to 49 U.S.C. 32916; to the Committee on Commerce.

2348. A letter from the Chairman, Federal Trade Commission, transmitting the Commission's 80th annual report covering its accomplishments during the fiscal year ended September 30, 1994, pursuant to 15 U.S.C. 46(f); to the Committee on Commerce.

2349. A letter from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting the semiannual report for the combined periods October 1, 1994 to September 30, 1995 listing voluntary contributions made by the U.S. Government to International Organizations, pursuant to 22 U.S.C. 2226(b)(1); to the Committee on International Relations.

2350. A letter from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting a report on chemical and biological weapons proliferation control efforts for the period of February 1, 1995 to January 31, 1996, pursuant to Public Law 102–182, section 308(a) (105 Stat. 1257); to the Committee on International Relations.

2351. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, 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.

2352. A communication from the President of the United States, transmitting a report on the evaluation from Liberia of private United States citizens and certain third-country nationals who have taken refuge in the United States Embassy compound wishing to leave. (H. Doc. No. 104–196); to the Committee on International Relations and ordered to be printed.

2353. A letter from the Chair, Foreign Claims Settlement Commission, Department of Justice, transmitting a copy of the annual report in compliance with the Government in the Sunshine Act during the calendar year 1995, pursuant to 5 U.S.C. 552b(j); to the Committee on Government Reform and Oversight.

2354. A letter from the Executive Director, District of Columbia Financial Responsibility and Management Assistance Authority, transmitting the Authority's report on procedures for hiring experts and consultants, pursuant to Public Law 104–8, section 101(e)(1) (109 Stat. 101); to the Committee on Government Reform and Oversight.

2355. A letter from the Executive Director, District of Columbia Financial Responsibility and Management Assistance Authority, transmitting the Authority's report entitled "Report on Final Allocations of the District of Columbia's Fiscal Year 1996 Budget," pursuant to Public Law 104–8, section 202(d) (109 Stat. 113); to the Committee on Government Reform and Oversight.

2356. A letter from the Executive Director, Interstate Commission on the Potomac River Basin, transmitting the annual report under the Federal Managers' Financial Integrity Act for fiscal year 1995, pursuant to 31 U.S.C. 3512(c)(3); to the Committee on Government Reform and Oversight.

2357. A letter from the Chairman, National Endowment for the Arts, transmitting a report of activities under the Freedom of Information Act for the calendar year 1995, pursuant to 5 U.S.C. 552(e); to the Committee on Government Reform and Oversight.

2358. A letter from the Director, Office of Government Ethics, transmitting a report of activities under the Freedom of Information Act for the calendar year 1995, pursuant to 5 U.S.C. 552(e); to the Committee on Government Reform and Oversight.

2359. A letter from the Special Counsel, Office of Special Counsel, transmitting the annual report of the Office of the Special Counsel [OSC] for fiscal year [FY] 1995, pursuant to Public Law 101–12, section 3(a)(11) (103 Stat. 29); to the Committee on Government Reform and Oversight.

2360. A letter from the President and CEO, Overseas Private Investment Corporation, transmitting the Corporation's fifth annual management report, pursuant to Public Law 101–576, section 306(a) (104 Stat. 2854); to the Committee on Government Reform and Oversight.

2361. A letter from the Chairman, Railroad Retirement Board, transmitting a copy of the annual report in compliance with the Government in the Sunshine Act during the calender year 1995, pursuant to 5 U.S.C. 552b(j); to the Committee on Government Reform and Oversight.

2362. A letter from the Chairman, Federal Election Commission, transmitting 50 recommendations for legislative action, pursuant to 2 U.S.C. 438(a)(9); to the Committee on House Oversight.

2363. A letter from the Clerk, U.S. House of Representatives, transmitting the quarterly report of receipts and expenditures of appropriations and other funds for the period October 1, 1995, through December 31, 1995, as

compiled by the Chief Administrative Officer, pursuant to 2 U.S.C. 104a (H. Doc. No. 104–191); to the Committee on House Oversight and ordered to be printed.

2364. A letter from the Deputy Associate Director for Compliance, Department of the Interior, transmitting notification of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Resources.

2365. A letter from the Deputy Associate Director for Compliance, Department of the Interior, transmitting notification of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Resources.

2366. A letter from the Attorney General of the United States, transmitting the 1995 annual report of the Federal Prison Industries, Inc. [FPI], pursuant to 18 U.S.C. 4127; to the Committee on the Judiciary.

2367. A letter from the Director, Federal Judicial Center, transmitting the Federal Judicial Center's annual report for 1995, pursuant to 28 U.S.C. 623(b); to the Committee on the Judiciary.

2368. A letter from the Secretary of Transportation, transmitting the Department's report entitled "Remote Alcohol Testing Program for Masters and Pilots," pursuant to Public Law. 101–380, section 4111(c) (104 Stat. 516); to the Committee on Transportation and Infrastructure.

2369. A letter from the Secretary of Transportation, transmitting the Department's report entitled "Tanker Navigation Equipment, Systems, and Procedures Report," pursuant to Public Law 101–380, section 4111(c) (104 Stat. 516); to the Committee on Transportation and Infrastructure.

2370. A letter from the Chairman, Federal Maritime Commission, transmitting the 34th annual report of the Federal Maritime Commission for fiscal year 1995, pursuant to 46 U.S.C. 1118; to the Committee on Transportation and Infrastructure.

2371. A letter from the Acting Administrator, General Services Administration, transmitting an informational copy of the fiscal year 1997 Capital Investment and Leasing Program of the General Services Administration's Public Buildings Service, pursuant to 40 U.S.C. 606(a); to the Committee on Transportation and Infrastructure.

2372. A letter from the Secretary of Veterans Affairs, transmitting a report covering the disposition of cases granted relief from administrative error, overpayment, and forfeiture by the Administrator in 1995, pursuant to 38 U.S.C. 503; to the Committee on Veterans' Affairs.

2373. A letter from the Chairman, U.S. International Trade Commission, transmitting a draft of proposed legislation to provide authorization of appropriations for the U.S. International Trade Commission for fiscal year 1997, pursuant to 31 U.S.C. 1110; to the Committee on Ways and Means.

2374. A letter from the Director, Office of Government Ethics, transmitting the Office's fourth biennial report to the Congress, pursuant to Public Law 95–452, section 408 (102 Stat. 3032); jointly, to the Committees on the Judiciary and Government Reform and Oversight.

2375. A letter from the Administrator, Federal Aviation Administration, transmitting the Administration's report of progress on developing and certifying the traffic alert and collision avoidance system [TCAS] for the period October through December 1995, pursuant to Public Law 100–223, section 203(b) (101 Stat. 1518); jointly, to the Committees on Transportation and Infrastructure and Science.

2376. A letter from the Secretary of Transportation, transmitting a draft of proposed legislation entitled the "Department of Transportation Regulatory Reform Act of 1996"; jointly, to the Committees on Transportation and Infrastructure and Commerce.

2377. A letter from the Secretary of Commerce, transmitting the annual report of the National Technical Information Service [NTIS] for fiscal year 1994, pursuant to Public Law 100–519, section 212(f)(3) (102 Stat. 2596); jointly, to the Committee on Science and Commerce.

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. 1527. A bill to amend the National Forest Ski Area Permit Act of 1986 to clarify the authorities and duties of the Secretary of Agriculture in issuing ski area permits on National Forest System lands and to withdraw lands within ski area permit boundaries from the operation of the mining and mineral leasing laws; with amendments (Rept. 104–516 Pt. 1). Referred to the Committee of the Whole House on the State of the Union.

Mr. YOUNG of Alaska: Committee on Resources. H.R. 2160. A bill to authorize appropriations to carry out the Interjurisdictional Fisheries Act of 1986 and the Anadromous Fish Conservation Act; with an amendment (Rept. 104–517). Referred to the Committee of the Whole House on the State of the Union.

Mr. HYDE: Committee of Conference. Conference report on S. 735. An act to prevent and punish acts of terrorism, and for other purposes (Rept. 104–518). Ordered to be printed.

SUBSEQUENT ACTION ON BILLS INITIALLY REFERRED UNDER TIME LIMITATIONS

Under clause 5 of rule X, the following actions were taken by the Speaker.

H.R. 1527. The Committee on Agriculture discharged from further consideration. Referred to the Committee of the Whole House on the State of the Union.

TIME LIMITATION OF REFERRED BILL

Pursuant to clause 5 of rule X the following action was taken by the Speaker:

H.R. 1527. Referral to the Committee on Agriculture extended for a period ending not later than April 15, 1996.

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. SPENCE (for himself and Mr. DELLUMS) (both by request):

H.R. 3230. A bill to authorize appropriations for fiscal year 1997 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 1997, and for other purposes; to the Committee on National Security.

By Mr. HEFLEY (for himself and Mr. ORTIZ) (both by request):

H.R. 3231. A bill to authorize certain construction at military installations for fiscal year 1997, and for other purposes; to the Committee on National Security.

By Mr. EHRLICH:

H.R. 3232. A bill to amend title XIX of the Social Security Act to repeal the preadmission screening and resident review [PASARR] requirement for nursing facilities under the Medicaid Program; to the Committee on Commerce.

H.R. 3233. A bill to amend titles XVIII and XIX of the Social Security Act to repeal denial of approval of nurse aide training programs based on reasons not associated with quality or operation; to the Committee on Ways and Means, 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. BALLENGER (for himself, Mrs. MEYERS of Kansas, Mr. BARRETT of Nebraska, Mr. HOEKSTRA, Mr. NORWOOD, Mr. STENHOLM, Mr. GRAHAM, Mr. HAYES, Mr. HUTCHINSON, Mr. HALL of Texas, and Mr. BREWSTER):

H.R. 3234. A bill to amend the Occupational Safety and Health Act of 1970; to the Committee on Economic and Educational Opportunities.

By Mr. CANADY (for himself and Mr. HYDE):

H.R. 3235. A bill to amend the Ethics in Government Act of 1978, to extend the authorization of appropriations for the Office of Government Ethics for 3 years, and for other purposes; to the Committee on the Judiciary, and in addition to the Committee on Government Reform and Oversight, 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. COMBEST (for himself and Mr. THORNBERRY):

H.R. 3236. A bill to amend the Consolidated Farm and Rural Development Act to provide a grace period for the prohibition on Consolidated Farm Service Agency [CFSA] lending to delinquent borrowers; to the Committee on Agriculture.

By Mr. COMBEST:

H.R. 3237. A bill to provide for improved management and operation of intelligence activities of the Government by providing for a more corporate approach to intelligence, to reorganize the agencies of the Government engaged in intelligence activities so as to provide an improved Intelligence Community for the 21st century, and for other purposes; to the Committee on Intelligence (Permanent Select), and in addition to the Committee on National Security, 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. DEUTSCH (for himself, Ms. ROS-LEHTINEN, Mr. DIAZ-BALART, Mr. JOHNSTON of Florida, Mrs. MEEK of Florida, Mr. HASTINGS of Florida, Mr. GIBBONS, Mr. FOLEY, Ms. WOOLSEY, Mr. BRYANT of Texas, Mr. WARD, Mr. GORDON, and Mr. MANTON):

H.R. 3238. A bill to amend the Juvenile Justice and Delinquency Prevention Act of 1974 to establish a national resource center and clearinghouse to carry out, through the

Jimmy Ryce Law Enforcement Training Center for the Recovery of Missing Children, training of State and local law enforcement personnel to more effectively respond to cases involving missing or exploited children, and for other purposes; to the Committee on Economic and Educational Opportunities.

By Mr. DICKEY (for himself, Mr. SHAYS, Mr. INGLIS of South Carolina, Mr. BONILLA, Mr. STUMP, Mr. TAYLOR of North Carolina, Mr. HEFLEY, Mr. BAKER of California, Mr. THORNTON, Mr. PACKARD, Mr. GREEN of Texas, and Mr. KING):

H.R. 3239. A bill to reform the independent counsel statute, and for other purposes; to the Committee on the Judiciary.

By Mr. DORNAN (for himself and Mr. WOLF):

H.R. 3240. A bill to amend the Internal Revenue Code of 1986 to clarify the prohibition against lobbying; to the Committee on Ways and Means.

By Mr. FOGLIETTA (for himself, Mr. BARRETT of Wisconsin, Mr. DELLUMS, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. GREEN of Texas, Mr. CLYBURN, Mr. HINCHEY, Ms. NORTON, Mr. HASTINGS of Florida, Miss COLLINS of Michigan, and Ms. MCKINNEY):

H.R. 3241. A bill to amend the Internal Revenue Code to allow the designation of additional empowerment zones and provide additional incentives for empowerment zones and enterprise communities, and for other purposes; to the Committee on Ways and Means, and in addition to the Committees on Banking and Financial Services, Government Reform and Oversight, Transportation and Infrastructure, Economic and Educational Opportunities, International Relations, Commerce, the Judiciary, National Security, and Small Business, 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. HUTCHINSON (for himself and Mr. SCOTT):

H.R. 3242. A bill to provide for the reporting of deaths of persons in custody; to the Committee on the Judiciary.

By Mr. JACOBS:

H.R. 3243. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to reduce certain funds if eligible States do not enact certain laws; to the Committee on the Judiciary.

By Ms. NORTON:

H.R. 3244. A bill to amend the Internal Revenue Code of 1986 to provide for individuals who are residents of the District of Columbia a maximum rate of tax of 15 percent on income from sources within the District of Columbia; to the Committee on Ways and Means.

By Mr. POMEROY:

H.R. 3245. A bill to amend the Internal Revenue Code of 1986 to provide a deduction for higher education expenses; to the Committee on Ways and Means.

By Mr. SCHUMER (for himself, Mr. KENNEDY of Massachusetts, and Mrs. MALONEY):

H.R. 3246. A bill to amend the Electronic Fund Transfer Act to protect the consumer with regard to fees imposed in connection with an electronic fund transfer initiated by a consumer, and for other purposes; to the Committee on Banking and Financial Services.

By Mr. THOMPSON (for himself, Mr. CLYBURN, Mr. HILLIARD, and Ms. EDDIE BERNICE JOHNSON of Texas):

H.R. 3247. A bill to redesignate the Herbert Clark Hoover Department of Commerce Building located at 14th Street and Constitution Avenue, NW, in Washington, DC, as the "Ronald H. Brown Commerce Building"; to the Committee on Transportation and Infrastructure.

By Mr. HOUGHTON (for himself, Mr. WATT of North Carolina, Mr. CHABOT, Mr. ACKERMAN, Mr. PAYNE of New Jersey, Mr. HASTINGS of Florida, Mr. ENGEL, and Mr. FRAZER):

H. Con. Res. 160. Concurrent resolution congratulating the people of the Republic of Sierra Leone on the success of their recent democratic multiparty elections; to the Committee on International Relations.

By Mr. STOCKMAN:

H. Con. Res. 161. Concurrent resolution authorizing the use of the Capitol Grounds for the Washington for Jesus 1996 prayer rally; to the Committee on Transportation and Infrastructure.

By Mr. THOMAS:

H. Res. 400. Resolution approving regulations to implement the Congressional Accountability Act of 1995 with respect to employing offices and covered employees of the House of Representatives; to the Committee on House Oversight.

H. Res. 401. Resolution directing the Office of Compliance to provide educational assistance to employing offices of the House of Representatives regarding compliance with the Congressional Accountability Act of 1995 and requiring employing offices of the House of Representatives to obtain the prior approval of the chairman and the ranking minority party member of the Committee on House Oversight of the House of Representatives of the amount of any settlement payments made under such Act; to the Committee on House Oversight.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

214. By the SPEAKER: Memorial of the House of Representatives of the State of Idaho, relative to the training range at Mountain Home Air Force Base, ID; to the Committee on National Security.

215. Also, memorial of the Senate of the State of Idaho, relative to opposition to any legislation seeking to authorize the United Nations to levy taxes on the people and corporations of the United States directly or indirectly for U.N. purposes; to the Committee on International Relations.

216. Also, memorial of the House of Representatives of the State of Idaho, relative to the reintroduction of grizzly bears to Idaho; to the Committee on Resources.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 26: Mr. SALMON.

H.R. 28: Mr. SALMON.

H.R. 123: Mr. BROWNBACK.

H.R. 209: Mr. SALMON.

H.R. 218: Mr. HEFNER.

H.R. 246: Mr. BATEMAN.

H.R. 248: Ms. NORTON, Ms. ESHOO, and Mr. GUTIERREZ.

H.R. 351: Mr. ROHRABACHER, Mr. NEY, Mr. BONO, Mr. WELDON of Florida, Mr. DOOLITTLE, Mr. HORN, Mr. HUTCHINSON, Mr. CALLAHAN, Mr. BAKER of California, and Mr. KING.

H.R. 392: Mr. NEY.

H.R. 452: Ms. NORTON.

H.R. 580: Mr. SCOTT, Mr. BROWN of California, and Mr. ROMERO-BARCELÓ.

H.R. 773: Mr. PAYNE of New Jersey, Mr. CUNNINGHAM, Mrs. MORELLA, and Mr. CHABOT.

H.R. 777: Mr. FALEOMAVAEGA, Ms. JACKSON-LEE, Mr. SAXTON, and Mr. CRAMER.

H.R. 778: Mr. FALEOMAVAEGA, Ms. JACKSON-LEE, Mr. SAXTON, and Mr. CRAMER.

H.R. 779: Ms. MOLINARI.

H.R. 780: Ms. MOLINARI.

H.R. 784: Mrs. CHENOWETH and Mrs. SEASTRAND.

H.R. 791: Mr. BATEMAN.

H.R. 820: Mrs. MEYERS of Kansas.

H.R. 833: Mr. BECERRA.

H.R. 835: Ms. MCKINNEY, Mrs. CLAYTON, Mr. CONYERS, Mrs. MALONEY, Mr. FRAZER, Mr. OWENS, and Mr. CLYBURN.

H.R. 858: Mr. PAYNE of New Jersey, Mr. BARCIA of Michigan, Mr. KENNEDY of Rhode Island, Mr. DOYLE, Mr. KLINK, Mr. BONIOR, Mr. ENGLISH of Pennsylvania, Mr. HINCHEY, Mr. SHUSTER, Mr. SKELTON, Mr. GONZALEZ, Mr. FROST, Mr. PETERSON of Minnesota, Mr. HEFLEY, Mr. KLECZKA, Mr. LATOURETTE, Mr. BRYANT of Texas, Mr. THORTON, Mr. WISE, Ms. BROWN of Florida, and Mrs. LOWEY.

H.R. 885: Mr. FORBES.

H.R. 911: Mrs. SMITH of Washington, Mr. WATTS of Oklahoma, Mr. CUNNINGHAM, Ms. NORTON, Ms. PELOSI, and Mr. HASTINGS of Florida.

H.R. 941: Mr. SAWYER.

H.R. 958: Mr. WOLF, Mr. OWENS, Mr. STUPAK, Mr. TORRICELLI, Mr. GENE GREEN of Texas, Mr. FILNER, Mr. FAZIO of California, Mr. KILDEE, Mr. GUTIERREZ, and Mr. CLYBURN.

H.R. 1005: Mr. SALMON.

H.R. 1023: Mr. DIXON, Mr. KNOLLENBERG, Mr. SKELTON, Mr. CARDIN, Mr. NUSSLE, Ms. DUNN of Washington, Ms. ESHOO, Mr. PETE GEREN of Texas, and Mr. NORWOOD.

H.R. 1033: Mr. DAVIS.

H.R. 1073: Mr. WARD, Mr. SMITH of Texas, Mr. TORKILDSEN, and Mrs. THURMAN.

H.R. 1074: Mr. WARD, Mr. SMITH of Texas, Mr. TORKILDSEN, and Mrs. THURMAN.

H.R. 1131: Mr. SALMON.

H.R. 1210: Mr. CRAMER and Mr. TRAFICANT.

H.R. 1227: Mr. WALSH, Mr. WELDON of Florida, and Mr. CRAMER.

H.R. 1355: Ms. KAPTUR.

H.R. 1386: Mr. HALL of Texas, Mr. PETERSON of Minnesota, Mr. DAVIS, Mr. EHRLICH, and Mrs. FOWLER.

H.R. 1402: Mr. MORAN.

H.R. 1483: Mr. WALSH.

H.R. 1484: Mr. WATT of North Carolina, Mr. KLINK, Mr. WYNN, Mr. GREEN of Texas, and Mrs. LOWEY.

H.R. 1496: Mr. FRANK of Massachusetts.

H.R. 1501: Mr. BATEMAN and Mr. ZIMMER.

H.R. 1507: Mr. ENGEL, Mr. WAXMAN, Mr. JOHNSTON of Florida, Mr. WILLIAMS, Mr. JACKSON, Mrs. MORELLA, Mr. SANDERS, Mr. WARD, and Ms. LOFGREN.

H.R. 1527: Mr. SKAGGS and Mr. ZELIFF.

H.R. 1547: Mr. NADLER.

H.R. 1619: Mr. TEJEDA, Mr. SMITH of Texas, Mr. QUINN, and Mr. DELLUMS.

H.R. 1711: Mr. FUNDERBURK, Mr. DUNCAN, and Mr. MCINTOSH.

H.R. 1776: Mr. SISISKY, Mr. FLANAGAN, Mr. HOBSON, Mr. KASICH, Mr. MATSUI, Mrs. MYRICK, Mr. SHAYS, Mr. HOYER, Miss COLLINS of Michigan, Mr. ABERCROMBIE, Mrs. LINCOLN, Mr. MOAKLEY Mr. GILLMOR, Mrs. MORELLA, Mrs. MALONEY, Ms. PRYCE, Mr.

GEJDENSON, Mr. WAXMAN, and Mr. BAKER of California.

H.R. 1810: Mr. SALMON.

H.R. 1893: Mr. FILNER.

H.R. 1981: Mr. SALMON.

H.R. 2024: Mr. WHITE.

H.R. 2137: Mr. MCINTOSH.

H.R. 2167: Mr. NEY, Mr. BROWN of California, Mr. EMERSON, and Mr. MANTON.

H.R. 2214: Mr. STARK, Mr. BROWN of California, Mr. ENGLISH of Pennsylvania, Mr. EMERSON, and Mr. RAHALL.

H.R. 2240: Mr. MARTINEZ.

H.R. 2244: Mr. MARTINI.

H.R. 2270: Mr. EMERSON and Mr. POMBO.

H.R. 2450: Mr. BARCIA of Michigan, Mr. FALEOMAVAEGA, Mr. GREEN of Texas, Mr. HOKE, Mr. SOLOMON, Mr. CLAY, Mr. DEAL of Georgia, Mr. HASTINGS of Florida, and Mr. GONZALEZ.

H.R. 2566: Mr. MARKEY, Mr. GREENWOOD, and Mr. DURBIN.

H.R. 2579: Mr. GRAHAM, Mr. RUSH, Mr. COLLINS of Georgia, Mr. TALENT, Mr. DAVIS, Mr. HAMILTON, Mr. LAUGHLIN, Mr. ZIMMER, and Mr. TORKILDSEN.

H.R. 2585: Mr. OLVER.

H.R. 2618: Mr. SANDERS and Mr. BROWN of California.

H.R. 2651: Mr. PETERSON of Minnesota and Mr. YATES.

H.R. 2655: Mr. MARTINI.

H.R. 2683: Ms. WOOLSEY, Mr. GILMAN, Mr. HUTCHINSON, Mr. YOUNG of Florida, Mr. BARTON of Texas, Mrs. FOWLER, and Mr. TALENT.

H.R. 2701: Mr. MONTGOMERY, Mr. GEJDENSON, Mr. SCHIFF, Mr. FATTAH, and Mr. DIAZ-BALART.

H.R. 2745: Mr. LEACH.

H.R. 2757: Mr. FORBES, Mr. CRAMER, and Mr. ROBERTS.

H.R. 2779: Mr. LEWIS of Kentucky, Mr. PAYNE of Virginia, Mr. PAXON, and Mr. HOBSON.

H.R. 2796: Mr. BENTSEN.

H.R. 2820: Mr. HUTCHINSON, Mr. DICKEY, Mr. EMERSON, Mr. HAYES, Mr. BAKER of Louisiana, Mr. NEY, Mr. UPTON, Mr. TIAHRT, and Mr. DUNCAN.

H.R. 2875: Mr. BAKER of Louisiana, Mr. CALVERT, and Mr. ROMERO-BARCELÓ.

H.R. 2911: Mr. LAHOOD.

H.R. 2912: Ms. FURSE.

H.R. 2959: Mr. SCOTT, Mr. FAWELL, Mr. FORD, and Mr. FROST.

H.R. 2994: Mr. OBERSTAR, Mr. FRANK of Massachusetts, Mr. CLEMENT, Mr. FAZIO of California, Mr. EVANS, Mr. BEREUTER, Mr. HINCHEY, and Mr. WYNN.

H.R. 3002: Mr. MCINTOSH and Mrs. MEYERS of Kansas.

H.R. 3050: Mr. EVANS, Mr. BONIOR, and Mr. BEREUTER.

H.R. 3059: Mr. HILLIARD and Mr. STARK.

H.R. 3065: Mr. DEUTSCH and Mr. CRAPO.

H.R. 3067: Ms. RIVERS, Mr. FOGLIETTA, Ms. PRYCE, and Mr. MILLER of California.

H.R. 3085: Mr. CAMP.

H.R. 3086: Mr. WELDON of Florida and Mr. HILLEARY.

H.R. 3102: Mr. KLINK, Mr. BARRETT of Wisconsin, Mr. LIPINSKI, and Mrs. SCHROEDER.

H.R. 3104: Mr. CALVERT, Mr. BARRETT of Nebraska, Ms. NORTON, and Mr. POMEROY.

H.R. 3118: Mr. FROST, Mr. MOAKLEY, Mr. SOLOMON, Mr. MASCARA, Mr. HALL of Texas, and Mr. TEJEDA.

H.R. 3119: Mr. MOAKLEY, Ms. ROYBAL-ALLARD, Mr. MASCARA, Mr. DORNAN, Mr. TEJEDA, Mr. HALL of Texas, and Mr. VOLKMER.

H.R. 3123: Mr. SMITH of New Jersey, Mr. SOLOMON, and Mr. CALVERT.

H.R. 3139: Mr. LAZIO of New York, Mr. ACKERMAN, Mr. FLAKE, Mr. MANTON, Mr. SERRANO, Mrs. KELLY, Mr. GILMAN, Mr. SOLOMON, Mr. BOEHLERT, Mr. MCHUGH, and Mr. WALSH.

H.R. 3141: Ms. LOFGREN.

H.R. 3142: Mr. NORWOOD, Mr. WATTS of Oklahoma, Mr. KIM, Mr. ORTIZ, Mr. RIGGS, Mr. RAHALL, Mr. GREEN of Texas, Mr. BILBRAY, Mr. HUTCHINSON, Mr. BEREUTER, Mr. PETERSON of Florida, Mr. HEFNER, Mr. EHRLICH, Mr. HOBSON, Mr. MARTINEZ, Mr. WHITFIELD, Mr. EMERSON, Mr. WARD, Mr. EVANS, Mr. KINGSTON, Mr. SISISKY, Mr. BAKER of California, Mr. WOLF, Mr. MCHUGH, Ms. BROWN of Florida, Mrs. FOWLER, Mr. COOLEY, Mr. OLVER, Mr. HASTINGS of Florida, Mr. STUMP, Mr. SKEEN, Mr. BROWN of California, Mr. TORKILDSEN, Mr. ROMERO-BARCELÓ, and Mr. NETHERCUTT.

H.R. 3153: Mr. HILLIARD, Mr. MICA, Mr. BUNNING of Kentucky, Mr. BAKER of Louisiana, Mr. CRAPO, Mr. HOLDEN, Mr. TANNER, Mr. BEREUTER, Mr. BURR, Mr. DUNCAN, Mr. HOKE, Mr. CHAPMAN, and Mrs. CHENOWETH.

H.R. 3165: Mr. RIGGS, Mr. STUPAK, and Mr. ROMERO-BARCELÓ.

H.R. 3195: Mr. GREEN of Texas, Mr. COBURN, Mr. FROST, Mr. HEFLEY, Mr. LUCAS, and Mr. HUTCHINSON.

H.R. 3226: Ms. MOLINARI.

H.J. Res. 114: Mr. REED.

H.J. Res. 159: Mrs. VUCANOVICH, Mr. BASS, Mrs. MEYERS of Kansas, and Ms. ROS-LEHTINEN.

H. Con. Res. 47: Mr. STUPAK, Mr. NEUMANN, Mr. HOYER, Mr. HALL of Ohio, Mr. GONZALEZ, and Mr. FATTAH.

H. Con. Res. 50: Mr. WATT of North Carolina.

H. Con. Res. 128: Mrs. MEEK of Florida, Ms. VELÁZQUEZ, Ms. PELOSI, Mrs. MALONEY, and Ms. NORTON.

H. Con. Res. 145: Mr. LIPINSKI.

H. Con. Res. 151: Mr. MASCARA and Mr. CRAMER.

H. Res. 30: Mr. FOX, Mr. COLLINS of Georgia, Mrs. SCHROEDER, Mr. SMITH of Texas, Mr. LANTOS, and Mr. DELAY.

H. Res. 49: Mr. DEFAZIO and Ms. SLAUGHTER.

H. Res. 348: Mr. ENGLISH of Pennsylvania, Mr. FLANAGAN, Mr. BURR, Mr. MANZULLO, Mr. MOORHEAD, Mr. MCKEON, and Mr. HUNTER.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

[Omitted from the Record of September 19, 1995]

H. Con. Res. 12: Mr. LIVINGSTON.

[Omitted from the Record, March 29, 1996]

H.J. Res. 159: Mr. GOSS.

[Submitted April 15, 1996]

H.R. 1972: Mr. PETERSON of Minnesota.

PETITIONS, ETC.

Under clause 1 of rule XXII.

70. The SPEAKER presented a petition of the Dutchess County Legislature, NY, relative to flow control; which was referred to the Committee on Commerce.