

# EXTENSIONS OF REMARKS

## PROVIDING FOR CONSIDERATION OF H.R. 3136, CONTRACT WITH AMERICA ADVANCEMENT ACT OF 1996

SPEECH OF

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OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 28, 1996

Mr. HYDE. Mr. Speaker, I submit for the RECORD a summary of the Small Business Regulatory Enforcement Fairness Act, included in H.R. 3136.

SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT VIEWS OF THE HOUSE COMMITTEES OF JURISDICTION ON THE CONGRESSIONAL INTENT REGARDING THE "SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT OF 1996"

### I. SUMMARY OF THE LEGISLATION

The Hyde amendment to H.R. 3136 replaced Title III of the Contract with America Advancement Act of 1996 to incorporate a revised version of the Small Business Regulatory Enforcement Fairness Act of 1996 (the "Act"). As enacted, Title III of H.R. 3136 became Title II of Public Law 104-121. This legislation was originally passed by the Senate as S. 942. The Hyde amendment makes a number of changes to the Senate bill to better implement certain recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations, including judicial review of agency actions under the Regulatory Flexibility Act (RFA). The amendment also provides for expedited procedures for Congress to review agency rules and to enact Resolutions of Disapproval voiding agency rules.

The goal of the legislation is to foster a more cooperative, less threatening regulatory environment among agencies, small businesses and other small entities. The legislation provides a framework to make federal regulators more accountable for their enforcement actions by providing small entities with an opportunity for redress of arbitrary enforcement actions. The centerpiece of the legislation is the RFA which requires a regulatory flexibility analysis of all rules that have a "significant economic impact on a substantial number" of small entities. Under the RFA, this term "small entities" includes small businesses, small non-profit organizations, and small governmental units.

### II. SECTION-BY-SECTION ANALYSIS

#### Section 101

This section entitles the Act the "Small Business Regulatory Enforcement Fairness Act of 1996."

#### Section 202

This section of the Act sets forth findings as to the need for a strong small business sector, the disproportionate impact of regulations on small businesses, the recommendations of the 1995 White House Conference on Small Business, and the need for judicial review of the Regulatory Flexibility Act.

#### Section 203

This section of the Act sets forth the purposes of this legislation. These include the

need to address some of the key Federal regulatory recommendations of the 1995 White House Conference on Small Business. The White House Conference produced a consensus that small businesses should be included earlier and more effectively in the regulatory process. The Act seeks to create a more cooperative and less threatening regulatory environment to help small businesses in their compliance efforts. The Act also provides small businesses with legal redress from arbitrary enforcement actions by making Federal regulators accountable for their actions. Additionally, the Act provides for judicial review of the RFA.

#### Subtitle A—Regulatory Compliance Simplification

Agencies would be required to publish easily understood guides to assist small businesses in complying with regulations and provide them informal, non-binding advice about regulatory compliance. This subtitle creates permissive authority for Small Business Development Centers to offer regulatory compliance information to small businesses and to establish resource centers to disseminate reference materials. Federal agencies are directed to cooperate with states to create guides that fully integrate Federal and state regulatory requirements on small businesses.

#### Section 211

This section defines certain terms as used in this subtitle. The term "small entity" is currently defined in the RFA (5 U.S.C. 601) to include small business concerns, as defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a)) small nonprofit organizations and small governmental jurisdictions. The process of determining whether a given business qualifies as a small business is straightforward, using size standard thresholds established by the SBA based on Standard Industrial Classification codes. The RFA also defines small organization and small governmental jurisdiction (5 U.S.C. 601). Any definition established by an agency for purposes of implementing the RFA would also apply to this Act.

#### Section 212

This section requires agencies to publish "small entity compliance guides" to assist small entities in complying with regulations which are the subject of a final regulatory flexibility analysis. The bill does not allow judicial review of the guide itself. However, the agency's claim that the guide provides "plain English" assistance would be a matter of public record. In addition, the small business compliance guide would be available as evidence of the reasonableness of any proposed fine on the small entity.

Agencies should endeavor to make these "plain English" guides available to small entities through a coordinated distribution system for regulatory compliance information utilizing means such as the SBA's U.S. Business Advisor, the Small Business Ombudsman at the Environmental Protection Agency, state-run compliance assistance programs established under section 507 of the Clean Air Act, Manufacturing Technology Centers or Small Business Development Centers established under the Small Business Act.

#### Section 213

This section directs agencies that regulate small entities to answer inquiries of small

entities seeking information on and advice about regulatory compliance. Some agencies already have established successful programs to provide compliance assistance and the amendment intends to encourage these efforts. For example, the IRS, SEC and the Customs Service have an established practice of issuing private letter rulings applying the law to a particular set of facts. This legislation does not require other agencies to establish programs with the same level of formality as found in the current practice of issuing private letter rulings. The use of toll free telephone numbers and other informal means of responding to small entities is encouraged. This legislation does not mandate changes in current programs at the IRS, SEC and Customs Service, but these agencies should consider establishing less formal means of providing small entities with informal guidance in accordance with this section.

This section gives agencies discretion to establish procedures and conditions under which they would provide advice to small entities. There is no requirement that the agency's advice to small entities be binding as to the legal effects of the actions of other entities. Any guidance provided by the agency applying statutory or regulatory provisions to facts supplied by the small entity would be available as relevant evidence of the reasonableness of any subsequently proposed fine on the small entity.

#### Section 214

This section creates permissive authority for Small Business Development Centers (SBDC) to provide information to small businesses regarding compliance with regulatory requirements. SBDCs would not become the predominant source of regulatory information, but would supplement agency efforts to make such information widely available. This section is not intended to grant an exclusive franchise to SBDC's for providing information on regulatory compliance.

There are small business information and technical assistance programs, both Federal and state, in various forms throughout this country. Some of the manufacturing technology centers and other similar extension programs administered by the National Institute of Standards and Technology are providing environmental compliance assistance in addition to general technology assistance. The small business stationary source technical and environmental compliance assistance programs established under section 507 of the Clean Air Act Amendments of 1990 is also providing compliance assistance to small businesses. This section is designed to add to the currently available resources for small businesses.

Compliance assistance programs can save small businesses money, improve their environmental performance and increase their competitiveness. They can help small businesses learn about cost-saving pollution prevention programs and new environmental technologies. Most importantly, they can help small business owners avoid potentially costly regulatory citations and adjudications. Comments from small business representatives in a variety of fora support the need for expansion of technical information assistance programs.

#### Section 215

This section directs agencies to cooperate with states to create guides that fully integrate Federal and state requirements on

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

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

small entities. Separate guides may be created for each state, or states may modify or supplement a guide to Federal requirements. Since different types of small entities are affected by different agency regulations, or are affected in different ways, agencies should consider preparing separate guides for the various sectors of the small business community and other small entities subject to their jurisdiction. Priority in producing these guides should be given to areas of law where rules are complex and where the regulated community tend to be small entities. Agencies may contract with outside providers to produce these guides and, to the extent practicable, agencies should utilize entities with the greatest experience in developing similar guides.

#### Section 216

This section provides that the effective date for this subtitle is 90 days after the date of enactment. The requirement for agencies to publish compliance guides applies to final rules published after the effective date. Agencies have one year from the date of enactment to develop their programs for informal small entity guidance, but these programs should assist small entities with regulatory questions regardless of the date of publication of the regulation at issue.

#### Subtitle B—Regulatory Enforcement Reforms

This subtitle creates a Small Business and Agriculture Regulatory Enforcement Ombudsman at the Small Business Administration to give small businesses a confidential means to comment on and rate the performance of agency enforcement personnel. It also creates Regional Small Business Regulatory Fairness Boards at the Small Business Administration to coordinate with the Ombudsman and to provide small businesses a greater opportunity to come together on a regional basis to assess the enforcement activities of the various Federal regulatory agencies.

This subtitle directs all Federal agencies that regulate small entities to develop policies or programs providing for waivers or reductions of civil penalties for violations by small entities, under appropriate circumstances.

#### Section 221

This section provides definitions for the terms as used in the subtitle. [See discussion set forth under "Section 211" above.]

#### Section 222

The Act creates a Small Business and Agriculture Regulatory Enforcement Ombudsman at the SBA to give small businesses a confidential means to comment on Federal regulatory agency enforcement activities. This might include providing toll-free telephone numbers, computer access points, or mail-in forms allowing businesses to comment on the enforcement activities of inspectors, auditors and other enforcement personnel. As used in this section of the bill, the term "audit" is not intended to refer to audits conducted by Inspectors General. This Ombudsman would not replace or diminish any similar ombudsman programs in other agencies.

Concerns have arisen in the Inspector General community that this Ombudsman might have new enforcement powers that would conflict with those currently held by the Inspectors General. Nothing in the Act is intended to supersede or conflict with the provisions of the Inspector General Act of 1978, as amended, or to otherwise restrict or interfere with the activities of any Office of the Inspector General.

The Ombudsman will compile the comments of small businesses and provide an annual evaluation similar to a "customer satis-

faction" rating for different agencies, regions, or offices. The goal of this rating system is to see whether agencies and their personnel are in fact treating small businesses more like customers than potential criminals. Agencies will be provided an opportunity to comment on the Ombudsman's draft report, as is currently the practice with reports by the General Accounting Office. The final report may include a section in which an agency can address any concerns that the Ombudsman does not choose to address.

The Act states that the Ombudsman shall "work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel." The SBA shall publicize the existence of the Ombudsman generally to the small business community and also work cooperatively with enforcement agencies to make small businesses aware of the program at the time of agency enforcement activity. The Ombudsman shall report annually to Congress based on substantiated comments received from small business concerns and the Boards, evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each regulatory agency. The report to Congress shall in part be based on the findings and recommendation of the Boards as reported by the Ombudsman to affected agencies. While this language allows for comment on the enforcement activities of agency personnel in order to identify potential abuses of the regulatory process, it does not provide a mandate for the boards and the Ombudsman to create a public performance rating of individual agency employees.

The goal of this section is to reduce the instances of excessive and abusive enforcement actions. Those actions clearly originate in the acts of individual enforcement personnel. Sometimes the problem is with the policies of an agency, and the goal of this section is also to change the culture and policies of Federal regulatory agencies. At other times, the problem is not agency policy, but individuals who violate the agency's enforcement policy. To address this issue, the legislation includes a provision to allow the Ombudsman, where appropriate, to refer serious problems with individuals to the agency's Inspector General for proper action.

The intent of the Act is to give small businesses a voice in evaluating the overall performances of agencies and agency offices in their dealings with the small business community. The purpose of the Ombudsman's reports is not to rate individual agency personnel, but to assess each program's or agency's performance as a whole. The Ombudsman's report to Congress should not single out individual agency employees by name or assign an individual evaluation or rating that might interfere with agency management and personnel policies.

The Act also creates Regional Small Business Regulatory Fairness Boards at the SBA to coordinate with the Ombudsman and to provide small businesses a greater opportunity to track and comment on agency enforcement policies and practices. These boards provide an opportunity for representatives of small businesses to come together on a regional basis to assess the enforcement activities of the various federal regulatory agencies. The boards may meet to collect information about these activities, and report and make recommendations to the Ombuds-

man about the impact of agency enforcement policies or practices on small businesses. The boards will consist of owners, operators or officers of small entities who are appointed by the Administrator of the Small Business Administration. Prior to appointing any board members, the Administrator must consult with the leadership of the House and Senate Small Business Committees. There is nothing in the bill that would exempt the boards from the Federal Advisory Committee Act, which would apply according to its terms. The Boards may accept donations of services such as the use of a regional SBA office for conducting their meetings.

#### Section 223

The Act directs all federal agencies that regulate small entities to develop policies or programs providing for waivers or reductions of civil penalties for violations by small entities in certain circumstances. This section builds on the current Executive Order on small business enforcement practices and is intended to allow agencies flexibility to tailor their specific programs to their missions and charters. Agencies should also consider the ability of a small entity to pay in determining penalty assessments under appropriate circumstances. Each agency would have discretion to condition and limit the policy or program on appropriate conditions. For purposes of illustration, these could include requiring the small entity to act in good faith, requiring that violations be discovered through participation in agency supported compliance assistance programs, or requiring that violations be corrected within a reasonable time.

An agency's policy or program could also provide for suitable exclusions. Again, for purposes of illustration, these could include circumstances where the small entity has been subject to multiple enforcement actions, the violation involves criminal conduct, or poses a grave threat to worker safety, public health, safety or the environment.

In establishing their programs, it is up to each agency to develop the boundaries of their program and the specific circumstances for providing for a waiver or reduction of penalties; but once established, an agency must implement its program in an evenhanded fashion. Agencies may distinguish among types of small entities and among classes of civil penalties. Some agencies have already established formal or informal policies or programs that would meet the requirements of this section. For example, the Environmental Protection Agency has adopted a small business enforcement policy that satisfies this section. While this legislation sets out a general requirement to establish penalty waiver and reduction programs, some agencies may be subject to other statutory requirements or limitations applicable to the agency or to a particular program. For example, this section is not intended to override, amend or affect provisions of the Occupational Safety and Health Act or the Mine Safety and Health Act that may impose specific limitations on the operation of penalty reduction or waiver programs.

#### Section 224

This section provides that this subtitle takes effect 90 days after the date of enactment.

#### Subtitle C—Equal Access to Justice Act Amendments

The Equal Access to Justice Act (EAJA) provides a means for prevailing parties to recover their attorneys fees in a wide variety of civil and administrative actions between eligible parties and the government. This Act amends EAJA to create a new avenue for parties to recover a portion of their attorneys fees and costs where the government

makes excessive demands in enforcing compliance with a statutory or regulatory requirement, either in an adversary adjudication or judicial review of the agency's enforcement action, or in a civil enforcement action. While this is a significant change from current law, the legislation is not intended to result in the awarding of attorneys fees as a matter of course. Rather, the legislation is intended to assist in changing the culture among government regulators to increase the reasonableness and fairness of their enforcement practices. Past agency practice too often has been to treat small businesses like suspects. One goal of this bill is to encourage government regulatory agencies to treat small businesses as partners sharing in a common goal of informed regulatory compliance. Government enforcement attorneys often take the position that they must zealously advocate for their client, in this case a regulatory agency, to the maximum extent permitted by law, as if they were representing an individual or other private party. But in the new regulatory climate for small businesses under this legislation, government attorneys with the advantages and resources of the federal government behind them in dealing with small entities must adjust their actions accordingly and not routinely issue original penalties or other demands at the high end of the scale merely as a way of pressuring small entities to agree to quick settlements.

#### Sections 231 and 232

H.R. 3136 will allow parties which do not prevail in a case involving the government to nevertheless recover a portion of their fees and cost in certain circumstances. The test for recovering attorneys fees is whether the agency or government demand that led to the administrative or civil action is substantially in excess of the final outcome of the case and is unreasonable when compared to the final outcome (whether a fine, injunctive relief or damages) under the facts and circumstances of the case.

For purposes of this Act, the term "party" is amended to include a "small entity" as that term is defined in section 601(6) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This will ensure consistency of coverage between the provisions of this subtitle and those of the Small Business Act (15 U.S.C. 632 (a)). This broadening of the term "party" is intended solely for purposes of the amendments to the EAJA effected under this subtitle. Other portions of the EAJA will continue to be governed by the definition of "party" as appears in current law.

The comparison called for in the Act is always between a "demand" by the government for injunctive and monetary relief taken as a whole and the final outcome of the case in terms of injunctive and monetary relief taken as a whole. As used in these amendments, the term "demand" means an express written demand that leads directly to an adversary adjudication or civil action. Thus, the "demand" at issue would be the government's demand that was pending upon commencement of the adjudication or action. A written demand by the government for performance or payment qualifies under this section regardless of form; it would include, but not be limited to, a fine, penalty notice, demand letter or citation. In the case of an adversary adjudication, the demand would often be a statement of the "Definitive Penalty Amount." In the case of a civil action brought by the United States, the demand could be in the form of a demand for settlement issued prior to commencement of the litigation. In a civil action to review the determination of an administrative proceeding, the demand could be the demand that led to such proceeding. However, the term

"demand" should not be read to extend to a mere recitation of facts and law in a complaint. The bill's definition of the term "demand" expressly excludes a recitation of the maximum statutory penalty in the complaint or elsewhere when accompanied by an express demand for a lesser amount. This definition is not intended to suggest that a statement of the maximum statutory penalty somewhere other than the complaint, which is not accompanied by an express demand for a lesser amount, is per se a demand, but would depend on the circumstances.

This test should not be a simple mathematical comparison. The Committee intends for it to be applied in such a way that it identifies and corrects situations where the agency's demand is so far in excess of the true value of the case, as compared to the final outcome, and where it appears the agency's assessment or enforcement action did not represent a reasonable effort to match the penalty to the actual facts and circumstances of the case.

In addition, the bill excludes awards in connection with willful violations, bad faith actions and in special circumstances that would make such an award unjust. These additional factors are intended to provide a "safety valve" to ensure that the government is not unduly deterred from advancing its case in good faith. Whether a violation is "willful" should be determined in accordance with existing judicial construction of the subject matter to which the case relates. Special circumstances are intended to include both legal and factual considerations which may make it unjust to require the public to pay attorneys fees and costs, even in situations where the ultimate award is significantly less than the amount demanded. Special circumstances could include instances where the party seeking fees engaged in a flagrant violation of the law, endangered the lives of others, or engaged in some other type of conduct that would make the award of the fees unjust. The actions covered by "bad faith" include the conduct of the party seeking fees both at the time of the underlying violation, and during the enforcement action. For example, if the party seeking fees attempted to elude government officials, cover up its conduct, or otherwise impede the government's law enforcement activities, then attorneys' fees and costs should not be awarded.

The Committee does not intend by this provision to compensate a party for fees and costs which it would have been expended even had the government demand been reasonable under the circumstances. The amount of the award which a party may recover under this section is limited to the proportion of attorneys' fees and costs attributable to the excessive demand. Thus, for example, if the ultimate decision of the administrative law judge or the judgment of the court is twenty percent of the relevant government demand, the defendant might be entitled to eighty percent of fees and costs. The ultimate determination of the amount of fees and costs to be awarded is to be made by the administrative law judge or the court, based on the facts and circumstances of each case.

The Act also increases the maximum hourly rate for attorneys fees under the EAJA from \$75 to \$125. Agencies could avoid the possibility of paying attorneys fees by settling with the small entity prior to final judgement. The Committee anticipates that if a settlement is reached, all further claims of either party, including claims for attorneys fees, could be included as part of the settlement. The government may obtain a release specifically including attorneys fees under EAJA.

Additional language is included in the Act to ensure that the legislation did not violate of the PAYGO requirements of the Budget Act. This language requires agencies to satisfy any award of attorneys fees or expenses arising from an agency enforcement action from their discretionary appropriated funds, but does not require that an agency seek or obtain an individual line item or earmarked appropriation for these amounts.

#### Section 233

The new provisions of the EAJA apply to civil actions and adversary adjudications commenced on or after the date of enactment.

#### Subtitle D—Regulatory Flexibility Act Amendments

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.), was first enacted in 1980. Under its terms, federal agencies are directed to consider the special needs and concerns of small entities—small businesses, small local governments, farmers, etc.—whenever they engage in a rulemaking subject to the Administrative Procedure Act. The agencies must then prepare and publish a regulatory flexibility analysis of the impact of the proposed rule on small entities, unless the head of the agency certifies that the proposed rule will not "have a significant economic impact on a substantial number of small entities."

Under current law, there is no provision for judicial review of agency action under the RFA. This makes the agencies completely unaccountable for their failure to comply with its requirements. This current prohibition on judicial enforcement of the RFA is contrary to the general principle of administrative law, and it has long been criticized by small business owners. Many small business owners believe that agencies have given lip service at best to the RFA, and small entities have been denied legal recourse to enforce the Act's requirements. Subtitle D gives teeth to the RFA by specifically providing for judicial review of selected sections.

#### Section 241

H.R. 3136 expands the coverage of the RFA to include Internal Revenue Service interpretative rules that provide for a "collection of information" from small entities. Many IRS rulemakings involve "interpretative rules" that IRS contends need not be promulgated pursuant to section 553 of the Administrative Procedures Act. However, these interpretative rules may have significant economic effects on small entities and should be covered by the RFA. The amendment applies to those IRS interpretative rulemakings that are published in the Federal Register for notice and comment and that will be codified in the Code of Federal Regulations. This limitation is intended to exclude from the RFA other, less formal IRS publications such as revenue rulings, revenue procedures, announcements, publications or private letter rulings.

The requirement that IRS interpretative rules comply with the RFA is further limited to those involving a "collection of information." The term "collection of information" is defined in the Act to include the obtaining, causing to be obtained, soliciting of facts or opinions by an agency through a variety of means that would include the use of written report forms, schedules, or reporting or other record keeping requirements. It would also include any requirements that require the disclosure to third parties of any information. The intent of this phrase "collection of information" in the context of the RFA is to include all IRS interpretative rules of general applicability that lead to or result in small entities keeping records, filing reports or otherwise providing information to IRS or third parties.

While the term "collection of information" also is used in the Paperwork Reduction Act (44 U.S.C. 3502(4)) ("PRA"), the purpose of the term in the context of the RFA is different than the purpose of the term in the PRA. Thus, while some courts have interpreted the PRA to exempt from its requirements certain recordkeeping requirements that are explicitly required by statute, such an interpretation would be inappropriate in the context of the RFA. If a collection of information is explicitly required by a regulation that will ultimately be codified in the Code of Federal Regulations ("CFR"), the effect might be to limit the possible regulatory alternatives available to the IRS in the proposed rulemaking, but would not exempt the IRS from conducting a regulatory flexibility analysis.

Some IRS interpretative rules merely reiterate or restate the statutorily required tax liability. While a small entity's tax liability may be a burden, the RFA cannot act to supersede the statutorily required tax rate. However, most IRS interpretative rules involve some aspect of defining or establishing requirements for compliance with the CFR, or otherwise require small entities to maintain records to comply with the CFR now being covered by the RFA. One of the primary purposes of the RFA is to reduce the compliance burdens on small entities whenever possible under the statute. To accomplish this purpose, the IRS should take an expansive approach in interpreting the phrase "collection of information" when considering whether to conduct a regulatory flexibility analysis.

The courts generally are given broad discretion to formulate appropriate remedies under the facts and circumstances of each individual case. The rights of judicial review and remedial authority of the courts provided in the Act as to IRS interpretative rules should be applied in a manner consistent with the purposes of the Anti-Injunction Act (26 U.S.C. 7421), which may limit remedies available in particular circumstances. The RFA, as amended by the Act, permits the court to remand a rule to an Agency for further consideration of the rule's impact on small entities. The amendment also directs the court to consider the public interest in determining whether or not to delay enforcement of a rule against small entities pending agency compliance with the court's findings. The filing of an action requesting judicial review pursuant to this section does not automatically stay the implementation of the rule. Rather, the court has discretion in determining whether enforcement of the rule shall be deferred as it relates to small entities. In the context of IRS interpretative rulemakings, this language should be read to require the court to give appropriate deference to the legitimate public interest in the assessment and collection of taxes reflected by the Anti-Injunction Act. The court should not exercise its discretion more broadly than necessary under the circumstances or in a way that might encourage excessive litigation.

If an agency is required to publish an initial regulatory flexibility analysis, the agency also must publish a final regulatory flexibility analysis. In the final regulatory flexibility analysis, agencies will be required to describe the impacts of the rule on small entities and to specify the actions taken by the agency to modify the proposed rule to minimize the regulatory impact on small entities. Nothing in the bill directs the agency to choose a regulatory alternative that is not authorized by the statute granting regulatory authority. The goal of the final regulatory flexibility analysis is to demonstrate how the agency has minimized the impact on small entities consistent with the underlying statute and other applicable legal requirements.

#### Section 242

H.R. 3136 removes the current prohibition on judicial review of agency compliance with certain sections of the RFA. It allows adversely affected small entities to seek judicial review of agency compliance with the RFA within one year after final agency action, except where a provision of law requires a shorter period for challenging a final agency action. The amendment is not intended to encourage or allow spurious lawsuits which might hinder important governmental functions. The Act does not subject all regulations issued since the enactment of the RFA to judicial review. The one-year limitation on seeking judicial review ensures that this legislation will not permit indefinite, retroactive application of judicial review.

For rules promulgated after the effective date, judicial review will be available pursuant to this Act. The procedures and standards for review to be used are those set forth in the Administrative Procedure Act at Chapter 7 of Title 5. If the court finds that a final agency action was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law, the court may set aside the rule or order the agency to take other corrective action. The court may also decide that the failure to comply with the RFA warrants remanding the rule to the agency or delaying the application of the rule to small entities pending completion of the court ordered corrective action. However, in some circumstances, the court may find that there is good cause to allow the rule to be enforced and to remain in effect pending the corrective action.

Judicial review of the RFA is limited to agency compliance with the requirements of sections 601, 604, 605(b), 608(b) and 610. Review under these sections is not limited to the agency's compliance with the procedural aspects of the RFA; final agency action under these sections will be subject to the normal judicial review standards of Chapter 7 of Title 5. While the Committees determined that agency compliance with sections 607 and 609(a) of the RFA is important, it did not believe that a party should be entitled to judicial review of agency compliance with those sections in the absence of a judicable claim for review of agency compliance with section 604. Therefore, under the Act, an agency's failure to comply with sections 607 or 609(a) may be reviewed only in conjunction with a challenge under section 604 of the RFA.

#### Section 243

Section 243 of the Act alters the content of the statement which an agency must publish when making a certification under section 605 of the RFA that a regulation will not impose a significant economic impact on a substantial number of small entities. Current law requires only that the agency publish a "succinct statement explaining the reasons for such certification." The Committee believes that more specific justification for its determination should be provided by the agency. Under the amendment, the agency must state its factual basis for the certification. This will provide a record upon which a court may review the agency's determination in accordance with the judicial review provisions of the Administrative Procedure Act.

#### Section 244

H.R. 3136 amends the existing requirements of section 609 of the RFA for small business participation in the rulemaking process by incorporating a modified version of S. 917, the Small Business Advocacy Act, which was introduced by Senator Domenici, to provide early input from small businesses into the

regulatory process. For proposed rules with a significant economic impact on a substantial number of small entities, EPA and OSHA would have to collect advice and recommendations from small businesses to better inform the agency's regulatory flexibility analysis on the potential impacts of the rule. The House version drops the provision of the Senate bill that would have required the panels to reconvene prior to publication of the final rule.

The agency promulgating the rule would consult with the SBA's Chief Counsel for Advocacy to identify individuals who are representative of affected small businesses. The agency would designate a senior level official to be responsible for implementing this section and chairing an interagency review panel for the rule. Before the publication of an initial regulatory flexibility analysis for a proposed EPA or OSHA rule, the SBA's Chief Counsel for Advocacy will gather information from individual representatives of small businesses and other small entities, such as small local governments, about the potential impacts of that proposed rule. This information will then be reviewed by a panel composed of members from EPA or OSHA, OIRA, and the Chief Counsel for Advocacy. The panel will then issue a report on those individuals' comments, which will become part of the rulemaking record. The review panel's report and related rulemaking information will be placed in the rulemaking record in a timely fashion so that others who are interested in the proposed rule may have an opportunity to review that information and submit their own responses for the record before the close of the agency's public comment period for the proposed rule. The legislation includes limits on the period during which the review panel conducts its review. It also creates a limited process allowing the Chief Counsel for Advocacy to waive certain requirements of the section after consultation with the Office of Information and Regulatory Affairs and small businesses.

#### Section 245

This section provides that the effective date of subtitle D is 90 days after enactment. Proposed rules published after the effective date must be accompanied by an initial regulatory flexibility analysis or a certification under section 605 of the RFA. Final rules published after the effective date must be accompanied by a final regulatory flexibility analysis or a certification under section 605 of the RFA, regardless of when the rule was first proposed. Thus judicial review shall apply to any final regulation published after the effective date regardless of when the rule was proposed. However, IRS interpretative rules proposed prior to enactment will not be subject to the amendments made in this subchapter expanding the scope of the RFA to include IRS interpretative rules. Thus, the IRS could finalize previously proposed interpretative rules according to the terms of currently applicable law, regardless of when the final interpretative rule is published.

#### Subtitle E—Congressional review subtitle

Subtitle E adds a new chapter to the Administrative Procedure Act (APA), "Congressional Review of Agency Rulemaking," which is codified in the United States Code as chapter 8 of title 5. The congressional review chapter creates a special mechanism for Congress to review new rules issued by federal agencies (including modification, repeal, or reissuance of existing rules). During the review period, Congress may use expedited procedures to enact joint resolutions of disapproval to overrule the federal rulemaking actions. In the 104th Congress, four slightly different versions of this legislation passed the Senate and two different versions passed the House. Yet, no formal legislative history

document was prepared to explain the legislation or the reasons for changes in the final language negotiated between the House and Senate. This joint statement of the committees of jurisdiction on the congressional review subtitle is intended to cure this deficiency.

#### Background

As the number and complexity of federal statutory programs has increased over the last fifty years, Congress has come to depend more and more upon Executive Branch agencies to fill out the details of the programs it enacts. As complex as some statutory schemes passed by Congress are, the implementing regulation is often more complex by several orders of magnitude. As more and more of Congress' legislative functions have been delegated to federal regulatory agencies, many have complained that Congress has effectively abdicated its constitutional role as the national legislature in allowing federal agencies so much latitude in implementing and interpreting congressional enactments.

In many cases, this criticism is well founded. Our constitutional scheme creates a delicate balance between the appropriate roles of the Congress in enacting laws, and the Executive Branch in implementing those laws. This legislation will help to redress the balance, reclaiming for Congress some of its policymaking authority, without at the same time requiring Congress to become a super regulatory agency.

This legislation establishes a government-wide congressional review mechanism for most new rules. This allows Congress the opportunity to review a rule before it takes effect and to disapprove any rule to which Congress objects. Congress may find a rule to be too burdensome, excessive, inappropriate or duplicative. Subtitle E uses the mechanism of a joint resolution of disapproval which requires passage by both houses of Congress and the President (or veto by the President and a two-thirds' override by Congress) to be effective. In other words, enactment of a joint resolution of disapproval is the same as enactment of a law.

Congress has considered various proposals for reviewing rules before they take effect for almost twenty years. Use of a simple (one-house), concurrent (two-house), or joint (two houses plus the President) resolution are among the options that have been debated and in some cases previously implemented on a limited basis. In *INS v. Chadha*, 462 U.S. 919 (1983), the Supreme Court struck down as unconstitutional any procedure where executive action could be overturned by less than the full process required under the Constitution to make laws—that is, approval by both houses of Congress and presentment to the President. That narrowed Congress' options to use a joint resolution of disapproval. The one-house or two-house legislative veto (as procedures involving simple and concurrent resolutions were previously called), was thus voided.

Because Congress often is unable to anticipate the numerous situations to which the laws it passes must apply, Executive Branch agencies sometimes develop regulatory schemes at odds with congressional expectations. Moreover, during the time lapse between passage of legislation and its implementation, the nature of the problem addressed, and its proper solution, can change. Rules can be surprisingly different from the expectations of Congress or the public. Congressional review gives the public the opportunity to call the attention of politically accountable, elected officials to concerns about new agency rules. If these concerns are sufficiently serious, Congress can stop the rule.

#### Brief procedural history of congressional review chapter

In the 104th Congress, the congressional review legislation originated as S. 348, the "Regulatory Oversight Act," which was introduced on February 2, 1995. The text of S. 348 was offered by its sponsors, Senators Don Nickles and Harry Reid, as a substitute amendment to S. 219, the "Regulatory Transition Act of 1995." As amended, S. 219 provided for a 45-day delay on the effectiveness of a major rule, and provided expedited procedures that Congress could use to pass resolutions disapproving of the rule. On March 29, 1995, the Senate passed the amended version of S. 219 by a vote of 100-0. The Senate later substituted the text of S. 219 for the text of H.R. 450, the House passed "Regulatory Transition Act of 1995." Although the House did not agree to a conference on H.R. 450 and S. 219, both Houses continued to incorporate the congressional review provisions in other legislative packages. On May 25, the Senate Governmental Affairs Committee reported out S. 343, the "Comprehensive Regulatory Reform Act of 1995," and S. 291, the "Regulatory Reform Act of 1995," both with congressional review provisions. On May 26, 1995, the Senate Judiciary Committee reported out a different version of S. 343, the "Comprehensive Regulatory Reform Act of 1995," which also included a congressional review provision. The congressional review provision in S. 343 that was debated by the Senate was quite similar to S. 219, except that the delay period in the effectiveness of a major rule was extended to 60 days and the legislation did not apply to rules issued prior to enactment. A filibuster of S. 343, unrelated to the congressional review provisions, led to the withdrawal of that bill.

The House next took up the congressional review legislation by attaching a version of it (as section 3006) to H.R. 2586, the first debt limit extension bill. The House made several changes in the legislation that was attached to H.R. 2586, including a provision that would allow the expedited procedures also to apply to resolutions disapproving of proposed rules, and provisions that would have extended the 60-day delay on the effectiveness of a major rule for any period when the House or Senate was in recess for more than three days. On November 9, 1995 both the House and Senate passed this version of the congressional review legislation as part of the first debt limit extension bill. President Clinton vetoed the bill a few days later, for reasons unrelated to the congressional review provision.

On February 29, 1996, a House version of the congressional review legislation was published in the Congressional Record as title III of H.R. 994, which was scheduled to be brought to the House floor in the coming weeks. The congressional review title was almost identical to the legislation approved by both Houses in H.R. 2586. On March 19, 1996, the Senate adopted a congressional review amendment by voice vote to S. 942, which bill passed the Senate 100-0. The congressional review legislation in S. 942 was similar to the original version of S. 219 that passed the Senate on March 29, 1995.

Soon after passage of S. 942, representatives of the relevant House and Senate committees and principal sponsors of the congressional review legislation met to craft a congressional review subtitle that was acceptable to both Houses and would be added to the debt limit bill that was scheduled to be taken up in Congress the week of March 24. The final compromise language was the result of these joint discussions and negotiations.

On March 28, 1996, the House and Senate passed title III, the "Small Business Regu-

latory Enforcement Fairness Act of 1996," as part of the second debt limit bill, H.R. 3136. There was no separate vote in either body on the congressional review subtitle or on title III of H.R. 3136. However, title III received broad support in the House and the entire bill passed in the Senate by unanimous consent. The President signed H.R. 3136 into law on March 29, 1996, exactly one year after the first congressional review bill passed the Senate.

#### Submission of rules to Congress and to GAO

Pursuant to subsection 801(a)(1)(A), a federal agency promulgating a rule must submit a copy of the rule and a brief report about it to each House of Congress and to the Comptroller General before the rule can take effect. In addition to a copy of the rule, the report shall contain a concise general statement relating to the rule, including whether it is a major rule under the chapter, and the proposed effective date of the rule. Because most rules covered by the chapter must be published in the Federal Register before they can take effect, it is not expected that the submission of the rule and the report to Congress and the Comptroller General will lead to any additional delay.

Section 808 provides the only exception to the requirement that rules must be submitted to each House of Congress and the Comptroller General before they can take effect. Subsection 808(1) excepts specified rules relating to commercial, recreational, or subsistence hunting, fishing, and camping. Subsection 808(2) excepts certain rules that are not subject to notice-and-comment procedures. It provides that if the relevant agency finds "for good cause ... that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, [such rules] shall take effect at such time as the Federal agency promulgating the rule determines." Although rules described in section 808 shall take effect when the relevant Federal agency determines pursuant to other provisions of law, the federal agency still must submit such rules and the accompanying report to each House of Congress and to the Comptroller General as soon as practicable after promulgation. Thus, rules described in section 808 are subject to congressional review and the expedited procedures governing joint resolutions of disapproval. Moreover, the congressional review period will not begin to run until such rules and the accompanying reports are submitted to each House of Congress and the Comptroller General.

In accordance with current House and Senate rules, covered agency rules and the accompanying report must be separately addressed and transmitted to the Speaker of the House (the Capitol, Room H-209), the President of the Senate (the Capitol, Room S-212), and the Comptroller General (GAO Building, 441 G Street, N.W., Room 1139). Except for rules described in section 808, any covered rule not submitted to Congress and the Comptroller General will remain ineffective until it is submitted pursuant to subsection 801(a)(1)(A). In almost all cases, there will be sufficient time for an agency to submit notice-and-comment rules or other rules that must be published to these legislative officers during normal office hours. There may be a rare instance, however, when a federal agency must issue an emergency rule that is effective upon actual notice and does not meet one of the section 808 exceptions. In such a rare case, the federal agency may provide contemporaneous notice to the Speaker of the House, the President of the Senate, and the Comptroller General. These legislative officers have accommodated the receipt of similar, emergency communications in the past and will utilize the same means to

receive emergency rules and reports during non-business hours. If no other means of delivery is possible, delivery of the rule and related report by telefax to the Speaker of the House, the President of the Senate, and the Comptroller General shall satisfy the requirements of subsection 801(a)(1)(A).

*Additional delay in the effectiveness of major rules*

Subsection 553(d) of the APA requires publication or service of most substantive rules at least 30 days prior to their effective date. Pursuant to subsection 801(a)(3)(A), a major rule (as defined in subsection 804(2)) shall not take effect until at least 60 calendar days after the later of the date on which the rule and accompanying information is submitted to Congress or the date on which the rule is published in the Federal Register, if it is so published. If the Congress passes a joint resolution of disapproval and the President vetoes such resolution, the delay in the effectiveness of a major rule is extended by subsection 801(a)(3)(B) until the earlier date on which either House of Congress votes and fails to override the veto or 30 session days<sup>1</sup> after the date on which the Congress receives the veto and objections from the President. By necessary implication, if the Congress passes a joint resolution of disapproval within the 60 calendar days provided in subsection 801(a)(3)(A), the delay period in the effectiveness of a major rule must be extended at least until the President acts on the joint resolution or until the time expires for the President to act. Any other result would be inconsistent with subsection 801(a)(3)(B), which extends the delay in the effectiveness of a major rule for a period of time after the President vetoes a resolution.

Of course, if Congress fails to pass a joint resolution of disapproval within the 60-day period provided by subsection 801(a)(3)(A), subsection 801(a)(3)(B) would not apply and would not further delay the effective date of the rule. Moreover, pursuant to subsection 801(a)(5), the effective date of a rule shall not be delayed by this chapter beyond the date on which either house of Congress votes to reject a joint resolution of disapproval.

Although it is not expressly provided in the congressional review chapter, it is the committees' intent that a rule may take effect if an adjournment of Congress prevents the President from returning his veto and objections within the meaning of the Constitution. Such will be the case if the President does not act on a joint resolution within 10 days (Sundays excepted) after it is presented to him, and "the Congress by their Adjournment prevent its Return" within the meaning of Article I, §7, cl. 2, or when the President affirmatively vetoes a resolution during such an adjournment. This is the logical result because Congress cannot act to override these vetoes. Congress would have to begin anew, pass a second resolution, and present it to the President in order for it to become law. It is also the committees' intent that a rule may take effect immediately if the President returns a veto and his objections to Congress but Congress adjourns its last session sine die before the expiration of time provided in subsection 801(a)(3)(B). Like the situations described immediately above, no subsequent Congress can act further on the veto, and the next Congress would have to begin anew, pass a second resolution of

disapproval, and present it to the President in order for it to become law.

*Purpose of and exceptions to the delay of major rules*

The reason for the delay in the effectiveness of a major rule beyond that provided in APA subsection 553(d) is to try to provide Congress with an opportunity to act on resolutions of disapproval before regulated parties must invest the significant resources necessary to comply with a major rule. Congress may continue to use the expedited procedures to pass resolutions of disapproval for a period of time after a major rule takes effect, but it would be preferable for Congress to act during the delay period so that fewer resources would be wasted. To increase the likelihood that Congress would act before a major rule took effect, the committees agreed on an approximately 60-day delay period in the effective date of a major rule, rather than an approximately 45-day delay period in some earlier versions of the legislation.

There are four exceptions to the required delay in the effectiveness of a major rule in the congressional review chapter. The first is in subsection 801(c), which provides that a major rule is not subject to the delay period of subsection 801(a)(3) if the President determines in an executive order that one of four specified situations exist and notifies Congress of his determination. The second is in subsection 808(1), which excepts specified rules relating to commercial, recreational, or subsistence hunting, fishing, and camping from the initial delay specified in subsection 801(a)(1)(A) and from the delay in the effective date of a major rule provided in subsection 801(a)(3). The third is in subsection 808(2), which excepts certain rules from the initial delay specified in subsection 801(a)(1)(A) and from the delay in the effective date of a major rule provided in subsection 801(a)(3) if the relevant agency finds "for good cause . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." This "good cause" exception in subsection 808(2) is taken from the APA and applies only to rules which are exempt from notice and comment under subsection 553(b)(B) or an analogous statute. The fourth exception is in subsection 804(2). Any rule promulgated under the Telecommunications Act of 1996 or any amendments made by that Act that otherwise could be classified as a "major rule" is exempt from that definition and from the 60-day delay in section 801(a)(3). However, such an issuance still would fall within the definition of "rule" and would be subject to the requirements of the legislation for non-major rules. A determination under subsection 801(c), subsection 804(2), or section 808 shall have no effect on the procedures to enact joint resolutions of disapproval.

*A court may not stay or suspend the effectiveness of a rule beyond the period specified in section 801 simply because a resolution of disapproval is pending in Congress*

The committees discussed the relationship between the period of time that a major rule is delayed and the period of time during which Congress could use the expedited procedures in section 802 to pass a resolution of disapproval. Although it would be best for Congress to act pursuant to this chapter before a major rule goes into effect, it was recognized that Congress could not often act immediately after a rule was issued because it may be issued during a recesses of Congress, shortly before such recesses, or during other periods when Congress cannot devote the time to complete prompt legislative action. Accordingly, the committees determined that the proper public policy was to give Congress an adequate opportunity to de-

liberate and act on joint resolutions of disapproval, while ensuring that major rules could go into effect without unreasonable delay. In short, the committees decided that major rules could take effect after an approximate 60-day delay, but the period governing the expedited procedures in section 802 for review of joint resolution of disapproval would extend for a period of time beyond that.

Accordingly, courts may not stay or suspend the effectiveness of any rule beyond the periods specified in section 801 simply because a joint resolution is pending before Congress. Such action would be contrary to the many express provisions governing when different types of rules may take effect. Such court action also would be contrary to the committees' intent because it would upset an important compromise on how long a delay there should be on the effectiveness of a major rule. The final delay period was selected as a compromise between the period specified in the version that passed the Senate on March 19, 1995 and the version that passed both Houses on November 9, 1995. It is also the committees' belief that such court action would be inconsistent with the principles of (and potentially violate) the Constitution, art. I, §7, cl. 2, in that courts may not give legal effect to legislative action unless it results in the enactment of law pursuant to Clause. See *INS v. Chadha*, 462 U.S. 919 (1983). Finally, the committees believe that a court may not predicate a stay on the basis of possible future congressional action because it would be improper for a court to rule that the movant had demonstrated a "likelihood of success on the merits," unless and until a joint resolution is enacted into law. A judicial stay prior to that time would raise serious separation of powers concerns because it would be tantamount to the court making a prediction of what Congress is likely to do and then exercising its own power in furtherance of that prediction. Indeed, the committees believe that Congress may have been reluctant to pass congressional review legislation at all if its action or inaction pursuant to this chapter would be treated differently than its action or inaction regarding any other bill or resolution.

*Time periods governing passage of joint resolutions of disapproval*

Subsection 802(a) provides that a joint resolution disapproving of a particular rule may be introduced in either House beginning on the date the rule and accompanying report are received by Congress until 60 calendar days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress). But if Congress did not have sufficient time in a previous session to introduce or consider a resolution of disapproval, as set forth in subsection 801(d), the rule and accompanying report will be treated as if it were first received by Congress on the 15th session day in the Senate, or 15th legislative day in the House, after the start of its next session. When a rule was submitted near the end of a Congress or prior to the start of the next Congress, a joint resolution of disapproval regarding that rule may be introduced in the next Congress beginning on the 15th session day in the Senate or the 15th legislative day in the House until 60 calendar days thereafter (excluding days either House of Congress is adjourned for more than 3 days during the session) regardless of whether such a resolution was introduced in the prior Congress. Of course, any joint resolution pending from the first session of a Congress, may be considered further in the next session of the same Congress.

Subsections 802(c)-(d) specify special procedures that apply to the consideration of a

<sup>1</sup> In the Senate, a "session day" is a calendar day in which the Senate is in session. In the House of Representatives, the same term is normally expressed as a "legislative day." In the congressional review chapter, however, the term "session day" means both a "session day" of the Senate and a "legislative day" of the House of Representatives unless the context of the sentence or paragraph indicates otherwise.

joint resolution of disapproval in the Senate. Subsection 802(c) allows 30 Senators to petition for the discharge of resolution from a Senate committee after a specified period of time (the later of 20 calendar days after the rule is submitted to Congress or published in the Federal Register, if it is so published). Subsection 802(d) specifies procedures for the consideration of a resolution on the Senate floor. Such a resolution is highly privileged, points of order are waived, a motion to postpone consideration is not in order, the resolution is unamendable, and debate on the joint resolution and "on all debatable motions and appeals in connection therewith" (including a motion to proceed) is limited to no more than 10 hours.

Subsection 802(e) provides that the special Senate procedures specified in subsections 802(c)-(d) shall not apply to the consideration of any joint resolution of disapproval of a rule after 60 session days of the Senate beginning with the later date that rule is submitted to Congress or published, if it is so published. However, if a rule and accompanying report are submitted to Congress shortly before the end of a session or during an intersession recess as described in subsection 801(d)(1), the special Senate procedures specified in subsections 802(c)-(d) shall expire 60 session days after the 15th session day of the succeeding session of Congress—or on the 75th session day after the succeeding session of Congress first convenes. For purposes of subsection 802(e), the term "session day" refers only to a day the Senate is in session, rather than a day both Houses are in session. However, in computing the time specified in subsection 801(d)(1), that subsection specifies that there shall be an additional period of review in the next session if either House did not have an adequate opportunity to complete action on a joint resolution. Thus, if either House of Congress did not have adequate time to consider a joint resolution in a given session (60 session days in the Senate and 60 legislative days in the House), resolutions of disapproval may be introduced or reintroduced in both Houses in the next session, and the special Senate procedures specified in subsection 802(c)-(d) shall apply in the next session of the Senate.

If a joint resolution of disapproval is pending when the expedited Senate procedures specified in subsections 802(c)-(d) expire, the resolution shall not die in either House but shall simply be considered pursuant to the normal rules of either House—with one exception. Subsection 802(f) sets forth one unique provision that does not expire in either House. Subsection 802(f) provides procedures for passage of a joint resolution of disapproval when one House passes a joint resolution and transmits it to the other House that has not yet completed action. In both Houses, the joint resolution of the first House to act shall not be referred to a committee but shall be held at the desk. In the Senate, a House-passed resolution may be considered directly only under normal Senate procedures, regardless of when it is received by the Senate. A resolution of disapproval that originated in the Senate may be considered under the expedited procedures only during the period specified in subsection 802(e). Regardless of the procedures used to consider a joint resolution in either House, the final vote of the second House shall be on the joint resolution of the first House (no matter when that vote takes place). If the second House passes the resolution, no conference is necessary and the joint resolution will be presented to the President for his signature. Subsection 802(f) is justified because subsection 802(a) sets forth the required language of a joint resolution in each House, and thus, permits little variance in the joint resolutions that could be introduced in each House.

#### *Effect of enactment of a joint resolution of disapproval*

Subsection 801(b)(1) provides that: "A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule." Subsection 801(b)(2) provides that such a disapproved rule "may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule." Subsection 801(b)(2) is necessary to prevent circumvention of a resolution of disapproval. Nevertheless, it may have a different impact on the issuing agencies depending on the nature of the underlying law that authorized the rule.

If the law that authorized the disapproved rule provides broad discretion to the issuing agency regarding the substance of such rule, the agency may exercise its broad discretion to issue a substantially different rule. If the law that authorized the disapproved rule did not mandate the promulgation of any rule, the issuing agency may exercise its discretion not to issue any new rule. Depending on the law that authorized the rule, an issuing agency may have both options. But if an agency is mandated to promulgate a particular rule and its discretion in issuing the rule is narrowly circumscribed, the enactment of a resolution of disapproval for that rule may work to prohibit the reissuance of any rule. The committees intend the debate on any resolution of disapproval to focus on the law that authorized the rule and make the congressional intent clear regarding the agency's options or lack thereof after enactment of a joint resolution of disapproval. It will be the agency's responsibility in the first instance when promulgating the rule to determine the range of discretion afforded under the original law and whether the law authorizes the agency to issue a substantially different rule. Then, the agency must give effect to the resolution of disapproval.

#### *Limitation on judicial review of congressional or administrative actions*

Section 805 provides that a court may not review any congressional or administrative "determination, finding, action, or omission under this chapter." Thus, the major rule determinations made by the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget are not subject to judicial review. Nor may a court review whether Congress complied with the congressional review procedures in this chapter. This latter limitation on the scope of judicial review was drafted in recognition of the constitutional right of each House of Congress to "determine the Rules of its Proceedings," U.S. Const., art. I, §5, cl. 2, which includes being the final arbiter of compliance with such Rules.

The limitation on a court's review of subsidiary determination or compliance with congressional procedures, however, does not bar a court from giving effect to a resolution of disapproval that was enacted into law. A court with proper jurisdiction may treat the congressional enactment of a joint resolution of disapproval as it would treat the enactment of any other federal law. Thus, a court with proper jurisdiction may review the resolution of disapproval and the law that authorized the disapproved rule to determine whether the issuing agency has the legal authority to issue a substantially different rule. The language of subsection 801(g) is also instructive. Subsection 801(g) prohibits a court or agency from inferring any intent of the Congress only when "Congress does not enact a joint resolution of disapproval," or by implication, when it has not

yet done so. In deciding cases or controversies properly before it, a court or agency must give effect to the intent of the Congress when such a resolution is enacted and becomes the law of the land. The limitation on judicial review in no way prohibits a court from determining whether a rule is in effect. For example, the committees expect that a court might recognize that a rule has no legal effect due to the operation of subsections 801(a)(1)(A) or 801(a)(3).

#### *Enactment of a joint resolution of disapproval for a rule that was already in effect*

Subsection 801(f) provides that: "Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect." Application of this subsection should be consistent with existing judicial precedents on rules that are deemed never to have taken effect.

#### *Agency information required to be submitted to GAO*

Pursuant to subsection 801(a)(1)(B), the federal agency promulgating the rule shall submit to the Comptroller General (and make available to each House) (i) a complete copy of the cost-benefit analysis of the rule, if any, (ii) the agency's actions related to the Regulatory Flexibility Act, (iii) the agency's actions related to the Unfunded Mandates Reform Act, and (iv) "any other relevant information or requirements under any other Act and any relevant Executive Orders." Pursuant to subsection 801(a)(1)(B), this information must be submitted to the Comptroller General on the day the agency submits the rule to Congress and to GAO.

The committees intend information supplied in conformity with subsection 801(a)(1)(B)(iv) to encompass both agency-specific statutes and government-wide statutes and executive orders that impose requirements relevant to each rule. Examples of agency-specific statutes include information regarding compliance with the law that authorized the rule and any agency-specific procedural requirements, such as section 9 of the Consumer Product Safety Act, as amended, 15 U.S.C. §2054 (procedures for consumer product safety rules); section 6 of the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §655 (promulgation of standards); section 307(d) of the Clean Air Act, as amended, 42 U.S.C. §7607(d) (promulgation of rules); and section 501 of the Department of Energy Organization Act, 42 U.S.C. §7191 (procedure for issuance of rules, regulations, and orders). Examples of government-wide statutes include other chapters of the Administrative Procedure Act, 5 U.S.C. §§551-559 and 701-706; and the Paperwork Reduction Act, as amended, 44 U.S.C. §§3501-3520.

Examples of relevant executive orders include E.O. No. 12866 (Sept. 30, 1993) (Regulatory Planning and Review); E.O. No. 12606 (Sept. 2, 1987) (Family Considerations in Policy Formulation and Implementation); E.O. No. 12612 (Oct. 26, 1987) (Federalism Considerations in Policy Formulation and Implementation); E.O. No. 12630 (Mar. 15, 1988) (Government Actions and Interference with Constitutionally Protected Property Rights); E.O. No. 12875 (Oct. 26, 1993) (Enhancing the Intergovernmental Partnership); E.O. No. 12778 (Oct. 23, 1991) (Civil Justice Reform); E.O. No. 12988 (Feb. 5, 1996) (Civil Justice Reform) (effective May 5, 1996).

#### *GAO reports on major rules*

Fifteen days after the federal agency submits a copy of a major rule and report to each House of Congress and the Comptroller General, the Comptroller General shall prepare and provide a report on the major rule



to the committees of jurisdiction in each House. Subsection 801(a)(2)(B) requires agencies to cooperate with the Comptroller General in providing information relevant to the Comptroller General's reports on major rules. Given the 15-day deadline for these reports, it is essential that the agencies' initial submission to the General Accounting Office (GAO) contain all of the information necessary for GAO to conduct its analysis. At a minimum, the agency's submission must include the information required of all rules pursuant to 801(a)(1)(B). Whenever possible, OMB should work with GAO to alert GAO when a major rule is likely to be issued and to provide as much advance information to GAO as possible on such proposed major rule. In particular, OMB should attempt to provide the complete cost-benefit analysis on a major rule, if any, well in advance of the final rule's promulgation.

It also is essential for the agencies to present this information in a format that will facilitate the GAO's analysis. The committees expect that GAO and OMB will work together to develop, to the greatest extent practicable, standard formats for agency submissions. OMB also should ensure that agencies follow such formats. The committees also expect that agencies will provide expeditiously any additional information that GAO may require for a thorough report. The committees do not intend the Comptroller General's reports to be delayed beyond the 15-day deadline due to lack of information or resources unless the committees of jurisdiction indicate a different preference. Of course, the Comptroller General may supplement his initial report at any time with any additional information, on its own, or at the request of the relevant committees of jurisdiction.

#### *Covered agencies and entities in the executive branch*

The committees intend this chapter to be comprehensive in the agencies and entities that are subject to it. The term "Federal agency" in subsection 804(1) was taken from 5 U.S.C. § 551(1). That definition includes "each authority of the Government" that is not expressly excluded by subsection 551(1)(A)–(H). With those few exceptions, the objective was to cover each and every government entity, whether it is a department, independent agency, independent establishment, or government corporation. This is because Congress is enacting the congressional review chapter, in large part, as an exercise of its oversight and legislative responsibility. Regardless of the justification for excluding or granting independence to some entities from the coverage of other laws, that justification does not apply to this chapter, where Congress has an interest in exercising its constitutional oversight and legislative responsibility as broadly as possible over all agencies and entities within its legislative jurisdiction.

In some instances, federal entities and agencies issue rules that are not subject to the traditional 5 U.S.C. § 553(c) rulemaking process. However, the committees intend the congressional review chapter to cover every agency, authority, or entity covered by subsection 551(1) that establishes policies affecting any segment of the general public. Where it was necessary, a few special exceptions were provided, such as the exclusion for the monetary policy activities of the Board of Governors of the Federal Reserve System, rules of particular applicability, and rules of agency management and personnel. Where it was not necessary, no exemption was provided and no exemption should be inferred from other law. This is made clear by the provision of section 806 which states that the Act applies notwithstanding any other provision of law.

#### *Definition of a "major rule"*

The definition of a "major rule" in subsection 804(2) is taken from President Reagan's Executive Order 12291. Although President Clinton's Executive Order 12866 contains a definition of a "significant regulatory action" that is seemingly as broad, several of the Administration's significant rule determinations under Executive Order 12866 have been called into question. The committees intend the term "major rule" in this chapter to be broadly construed, including the non-numerical factors contained in the subsections 804(2) (B) and (C).

Pursuant to subsection 804(2), the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget (the Administrator) must make the major rule determination. The committees believe that centralizing this function in the Administrator will lead to consistency across agency lines. Moreover, from 1981–93, OIRA staff interpreted and applied the same major rule definition under E.O. 12291. Thus, the Administrator should rely on guidance documents prepared by OIRA during that time and previous major rule determinations from that Office as a guide in applying the statutory definition to new rules.

Certain covered agencies, including many "independent agencies," include their proposed rules in the Unified Regulatory Agenda published by OMB but do not normally submit their final rules to OMB for review. Moreover, interpretative rules and general statements of policy are not normally submitted to OMB for review. Nevertheless, it is the Administrator that must make the major rule determination under this chapter whenever a new rule is issued. The Administrator may request the recommendation of any agency covered by this chapter on whether a proposed rule is a major rule within the meaning of subsection 804(2), but the Administrator is responsible for the ultimate determination. Thus, all agencies or entities covered by this chapter will have to coordinate their rulemaking activity with OIRA so that the Administrator may make the final, major rule determination.

#### *Scope of rules covered*

The committees intend this chapter to be interpreted broadly with regard to the type and scope of rules that are subject to congressional review. The term "rule" in subsection 804(3) begins with the definition of a "rule" in subsection 551(4) and excludes three subsets of rules that are modeled on APA sections 551 and 553. This definition of a rule does not turn on whether a given agency must normally comply with the notice-and-comment provisions of the APA, or whether the rule at issue is subject to any other notice-and-comment procedures. The definition of "rule" in subsection 551(4) covers a wide spectrum of activities. First, there is formal rulemaking under section 553 that must adhere to procedures of sections 556 and 557 of title 5. Second, there is informal rulemaking, which must comply with the notice-and-comment requirements of subsection 553(c). Third, there are rules subject to the requirements of subsection 552(a)(1) and (2). This third category of rules normally either must be published in the Federal Register before they can adversely affect a person, or must be indexed and made available for inspection and copying or purchase before they can be used as precedent by an agency against a non-agency party. Documents covered by subsection 552(a) include statements of general policy, interpretations of general applicability, and administrative staff manuals and instructions to staff that affect a member of the public. Fourth, there is a body of materials that fall within the APA definition of "rule" and are the product of

agency process, but that meet none of the procedural specifications of the first three classes. These include guidance documents and the like. For purposes of this section, the term rule also includes any rule, rule change, or rule interpretation by a self-regulatory organization that is approved by a Federal agency. Accordingly, all "rules" are covered under this chapter, whether issued at the agency's initiative or in response to a petition, unless they are expressly excluded by subsections 804(3)(A)–(C). The committees are concerned that some agencies have attempted to circumvent notice-and-comment requirements by trying to give legal effect to general statements of policy, "guidelines," and agency policy and procedure manuals. The committees admonish the agencies that the APA's broad definition of "rule" was adopted by the authors of this legislation to discourage circumvention of the requirements of chapter 8.

The definition of a rule in subsection 551(4) covers most agency statements of general applicability and future effect. Subsection 804(3)(A) excludes "any rule of particular applicability, including a rule that approves or prescribes rates, wages, prices, services, or allowances therefore, corporate and financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing" from the definition of a rule. Many agencies, including the Treasury, Justice, and Commerce Departments, issue letter rulings or other opinion letters to individuals who request a specific ruling on the facts of their situation. These letter rulings are sometimes published and relied upon by other people in similar situations, but the agency is not bound by the earlier rulings even on facts that are analogous. Thus, such letter rulings or opinion letters do not fall within the definition of a rule within the meaning of subsection 804(3).

The different types of rules issued pursuant to the internal revenue laws of the United States are good examples of the distinction between rules of general and particular applicability. IRS private letter rulings and Customs Service letter rulings are classic examples of rules of particular applicability, notwithstanding that they may be cited as authority in transactions involving the same circumstances. Examples of substantive and interpretative rules of general applicability will include most temporary and final Treasury regulations issued pursuant to notice-and-comment rulemaking procedures, and most revenue rulings, revenue procedures, IRS notices, and IRS announcements. It does not matter that these later types of rules are issued without notice-and-comment rulemaking procedures or that they are accorded less deference by the courts than notice-and-comment rules. In fact, revenue rulings have been described by the courts as the "classic example of an interpretative rul[e]" within the meaning of the APA. See *Wing v. Commissioner*, 81 T.C. 17, 26 (1983). The test is whether such rules announce a general statement of policy or an interpretation of law of general applicability.

Most rules or other agency actions that grant an approval, license, registration, or similar authority to a particular person or particular entities, or grant or recognize an exemption or relieve a restriction for a particular person or particular entities, or permit new or improved applications of technology for a particular person or particular entities, or allow the manufacture, distribution, sale, or use of a substance or product are exempted under subsection 804(3)(A) from the definition of a rule. This is probably the largest category of agency actions excluded from the definition of a rule. Examples include import and export licenses, individual



rate and tariff approvals, wetlands permits, grazing permits, plant licenses or permits, drug and medical device approvals, new source review permits, hunting and fishing take limits, incidental take permits and habitat conservation plans, broadcast licenses, and product approvals, including approvals that set forth the conditions under which a product may be distributed.

Subsection 804(3)(B) excludes "any rule relating to agency management or personnel" from the definition of a rule. Pursuant to subsection 804(3)(C), however, a "rule of agency organization, procedure, or practice," is only excluded if it "does not substantially affect the rights or obligations of non-agency parties." The committees' intent in these subsections is to exclude matters of purely internal agency management and organization, but to include matters that substantially affect the rights or obligations of outside parties. The essential focus of this inquiry is not on the type of rule but on its effect on the rights or obligations of non-agency parties.

# GRAND OPENING OF MAIN BRANCH, SAN FRANCISCO LI- BRARY

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 18, 1996

Mr. LANTOS. Mr. Speaker, I rise today, on the 90th anniversary of the devastating 1906 San Francisco earthquake, to celebrate with the city of San Francisco a monumental achievement of community cooperation and commitment. I invite my colleagues to join me in conveying our congratulations and admiration to the people of San Francisco who have committed their precious resources to the construction of the new main branch of the San Francisco Library, a beautiful and highly functional testament to the love that San Franciscans have for their city and for books and education. It is a love that has found its voice through the coordinated efforts of corporations, foundations, and individuals.

A library should reflect the pride, the culture, and the values of the diverse communities that it serves. The San Francisco main library will undoubtedly be successful in reaching this goal. The library will be home to special centers dedicated to the history and interests of African-Americans, Chinese-Americans, Filipino-Americans, Latino-Americans, and gays and lesbians. The library will be designed to serve the specialized needs of the businessman as well as the immigrant newcomer. It will become home to the diverse communities that make San Francisco unique among metropolitan areas of the world. It will also become a home, most importantly, that serves to unite.

The new San Francisco main library represents an opportunity to preserve and disperse the knowledge of times long since passed. The book serves as man's most lasting testament and the library serves as our version of a time machine into the past, the present and the future. This library, built upon the remains of the old City Hall destroyed 90 years ago today, is a befitting tribute to the immortality of thought. Buildings will come as they will most definitely pass, but the books of this new library and the information that they hold are eternal and serve as an indelible

foundation that cannot be erased by the passage of time.

The expanded areas of the new main library will provide space for numerous hidden treasures that no longer will be hidden. The people of San Francisco will have the opportunity to reacquire themselves with numerous literary treasures previously locked behind the dusty racks of unsightly storage rooms.

Although the new San Francisco main library serves as a portal into our past, it also serves to propel us into the future. It is an edifice designed to stoke the imagination by providing access to the numerous streams of information that characterize our society today. The technologically designed library will provide hundreds of public computer terminals to locate materials on-line, 14 multimedia stations, as well as access to data bases and the Information Superhighway. It will provide education and access for those previously unable to enter the "computer revolution." The library will provide vital access and communication links so that it can truly serve as a resource for the city and for other libraries and educational institutions throughout the region. The new library will serve as an outstanding model for libraries around the world to emulate.

Like an educational institution, the San Francisco Library will be a repository of human knowledge, organized and made accessible for writers, students, lifelong learners and leisure readers. It will serve to compliment and expand San Francisco's existing civic buildings—City Hall, Davies Symphony Hall, Brooks Hall, and the War Memorial and Performing Arts Center. The library serves as a symbiotic commitment between the city of San Francisco and its people. In 1988, when electorates across the country refused to support new bond issues, the people of San Francisco committed themselves to a \$109.5 million bond measure to build the new main library building and to strengthen existing branch libraries. Eight years later those voices are still clearly heard and they resonate with the dedication of this unique library, built by a community to advance themselves and their neighbors.

Mr. Speaker, on this day, when we celebrate the opening of the new main branch of the San Francisco Library, I ask my colleagues to join me in congratulating the community of San Francisco for their admirable accomplishments and outstanding determination.

## TRIBUTE TO DAVID J. WHEELER

HON. WES COOLEY

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 18, 1996

Mr. COOLEY of Oregon. Mr. Speaker, on February 1, 1996, the President signed H.R. 2061, a bill to designate the Federal building in Baker City, OR in honor of the late David J. Wheeler. As the congressional representative for Baker City, and as the sponsor of H.R. 2061, I recently returned to Baker City for the building dedication ceremony. Mr. Wheeler, a Forest Service employee, was a model father and an active citizen. In honor of Mr. Wheeler, I would like to submit, for the record, my speech at the dedication ceremony.

Thank you for inviting me here today. It has been an honor to sponsor the congress-

sional bill to designate this building in memory of David Wheeler. I did not have the privilege of knowing Mr. Wheeler myself, but from my discussions with Mayor Griffith—and from researching his accomplishments—I've come to know what a fine man he was. I know that Mr. Wheeler was a true community leader, and I know that the community is that much poorer for his passing. With or without this dedication, his spirit will remain within the Baker City community.

Mayor Griffith, I have brought a copy of H.R. 2061—the law to honor David Wheeler. The bill has been signed by the President of the United States, by the Speaker of the House, and by the President of the Senate. Hopefully, this bill will find a suitable place within the new David J. Wheeler Federal Building.

I'd like to offer my deepest sympathy to the Wheeler family, and to everyone here who knew him. And, I'd like to offer a few words from Henry Wadsworth Longfellow—who once commented on the passing-away of great men. His words—I think—describe Mr. Wheeler well:

If a star were quenched on high,  
For ages would its light,  
Still traveling down from the sky,  
Shine on our mortal sight.

So when a great man dies,  
For years beyond our ken,  
The light he leaves behind him lies  
Upon the paths of men."

So too with David Wheeler. His light will shine on the paths of us all—particularly of his family—for the rest of our days.

## THE MINIMUM WAGE

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 18, 1996

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, April 17, 1996, into the CONGRESSIONAL RECORD.

### RAISING THE MINIMUM WAGE

Rewarding work is a fundamental American value. There are many ways to achieve that goal, including deficit reduction to boost the economy, opening markets abroad to our products, improving education and skills training, and investing in technology and infrastructure. Increasing wages must be a central objective of government policies.

The economy is improving. It has in recent years reduced the unemployment rate of 5.6%, cut the budget deficit nearly in half, and spurred the creation of 8.4 million additional jobs. Real hourly earning has now begun to rise modestly, and the tax cut in 1993 for 15 million working families helped spur economic growth.

But much work needs to be done. We must build on the successes of the last few years, and address the key challenges facing our economy, including the problem of stagnant wages. This problem will not be solved overnight, but one action we can take immediately, and which I support, is to raise the minimum wage.

### RAISING THE MINIMUM WAGE

The minimum wage was established in 1938 in an attempt to assist the working poor, usually non-union workers with few skills and little bargaining power. The wage has been increased 17 times, from 25 cents per hour in 1938 to \$4.25 per hour in 1991. Currently some 5 million people work for wages at or below \$4.25 per hour, and most of them are adults rather than teenagers.

I support a proposal to increase the minimum wage 90 cents over two years, from its current level of \$4.25 per hour to \$5.15 per hour. The first 45 cents of the new increase would not even restore the buying power the minimum wage has lost since the last increase five years ago. Inflation has already eaten away 81% of that increase. If we do not act to increase the minimum wage this year, it will fall to a 40 year low in terms of purchasing power.

#### WHO EARNS MINIMUM WAGE

The typical minimum wage worker is a white woman over age 20 working in the service sector or the retail industry. About 60% of the minimum wage earners are women, and about 70% of the 12 million workers who would benefit from a minimum wage increase—since their wages are less than \$5.15 per hour—are 20 years of age or older. The average minimum wage worker brings home half of the family's earnings, so an increase in the minimum wage can make a real difference.

An increase in the minimum wage would benefit over 315,000 Hoosiers, or 12.4% of the Indiana workforce, and would mean an additional \$1800 in earnings each year.

#### EFFECT ON JOBS

Opponents of a minimum wage increase claim that it will wipe out jobs. But the weight of the evidence today supports the conclusion that a moderate minimum wage increase would not have a significant impact on job levels, because it would help boost productivity and lower employee turnover. Over 100 economists, including several Nobel laureates, have urged the President and Congress to approve a minimum wage increase and have affirmed that it would not have a significant effect on employment.

Opponents of a minimum wage increase also criticize it as being an inefficient way to alleviate poverty. In a sense they are right. A minimum wage increase is not as well targeted as the earned income tax credit, which directly benefits low-paid workers either by cutting their taxes or, if they owe no tax, giving them a check from the Treasury. The credit is structured to encourage the poor to go to work without hitting their employers. My view is that the best anti-poverty strategy is probably to mix minimum wages with tax credits.

There are limits, however, to how much higher Congress can push the tax credit. The problem, of course, with increases in the earned income tax credit is that it costs the government billions of dollars that it does not have, and won't for many years. I do not, however, support efforts by Speaker Gingrich to reduce the earned income tax credit.

#### A MATTER OF FAIRNESS

Surely we want to help ensure that people who work hard can get ahead. Raising the income of America's lowest paid workers is part of meeting that challenge. If we value work, we ought to raise the value of the minimum wage. Most people believe that somebody who works a 40-hour week ought to make a wage they can live on. It is hard to believe that people can oppose that notion.

I have been particularly troubled by growing income inequality in this country, and the declining value of the minimum wage only contributes to that problem. For most of the past four decades the minimum wage averaged between 45% and 50% of the average hourly wage in the economy. After a small gain in 1990 and 1991, the minimum wage has now dropped to 38% of the average hourly wage.

My view is that the minimum wage should be increased as a simple matter of fairness to unskilled workers. These workers are not protected by unions. They cannot and do not

lobby Congress. The minimum wage offers a margin of security to those who want a job rather than a handout. For a rich country like America, that's not too much to provide.

I have been frustrated in Congress in recent weeks when we were even denied an opportunity to vote on a raise in the minimum wage. It is unfair to refuse to allow a vote on the increase in the minimum wage, which is supported by 75% of the American people.

#### CONCLUSION

I don't for a moment think that an increase in the minimum wage is ultimately the cure for low working wages in this country, but until we find an answer to that broader question fundamental decency requires us to increase the income of the lowest-income working Americans.

I talked to a person earning minimum wage the other day. When pay day comes, she is several days late on the rent, the fuel tank on her automobile has to be filled, she is unable to buy enough food, her family is not healthy and needs medical help, and the utility companies are about ready to shut the power off. She is faced with miserable choices. But she said she was proud to be a working person, and only wished she could make a living for her family.

An increase in the minimum wage would help families get by. It would reward work, giving 12 million workers a direct increase, and it would be good for the American economy.

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

##### SPEECH OF

HON. GERALD D. KLECZKA

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Monday, April 15, 1996

Mr. KLECZKA. 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 taxpayers 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.

#### A PROCLAMATION REMEMBERING SHELLY McPECK KELLY

HON. ROBERT W. NEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 18, 1996

Mr. NEY. Mr. Speaker, I commend the following article to my colleagues:

Whereas, Shelly McPeck Kelly, a United States Air Force Technical Sergeant that died in the plane crash along with Commerce Secretary Ron Brown, and

Whereas, Shelly McPeck Kelly, was a loyal and devoted wife, and loving mother of two; and,

Whereas, Shelly McPeck Kelly, served faithfully as an airplane stewardess in the United States Air Force achieving the rank of Technical Sergeant, and

Whereas, Shelly McPeck Kelly, should be commended for her service to the United States of America during the Bosnian Peace-keeping Operation; and,

Whereas, the residents of Eastern Ohio join me in honoring Shell McPeck Kelly for her brave and loyal citizenship to the United States.

#### PERSONAL EXPLANATION

HON. JUANITA MILLENDER-MCDONALD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 18, 1996

Ms. MILLENDER-MCDONALD. Mr. Speaker, yesterday, I inadvertently voted "no" on H.R. 842 the truth-in-budgeting bill, thinking that I was voting on an amendment. Had I known that I was voting on final passage, I would have voted "yes."

## TRIBUTE TO JOHN O. HEMPERLEY

HON. RON PACKARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. PACKARD. Mr. Speaker, I rise today to pay tribute to John O. Hemperley, the budget officer of the Library of Congress, who passed away last Saturday. As former chairman and now as ranking member on the Legislative Branch Subcommittee of Appropriations, Congressman VIC FAZIO, worked with John for many years and joins me in honoring his memory.

Appropriations Committee members and staff rely heavily on the expertise, efficiency, and responsiveness of agency budget officers. John embodied the highest standards of dedicated public service. Both Vic and I counted on his unsurpassed knowledge and understanding of the Library's budget. John fervently supported the Library's mission and the budget funding that mission. However, he always presented the facts honestly and faithfully executed the budget enacted by the Congress.

For 196 years, the Congress of the United States supported and nurtured the Library's development. Today, it stands as a unique and treasured institution—the greatest repository of knowledge in the history of the world. The Library continues to explore new frontiers, expanding its mission to provide electronic services to all its constituent groups while maintaining its traditional services to the Congress and the Nation.

John O. Hemperley was a unique and treasured individual. For the past 23 years, he developed and cultivated the relationship between the Library of Congress and the Committee on Appropriations. He will be sorely missed, not only by those who knew and loved him here in the Congress and in the Library, but by all those who may never have known him but who benefit daily from the enormous resources the Library provides. The challenges the Library faces will be more daunting without him.

Mr. Speaker, as chairman of our Legislative Branch Appropriations Subcommittee, and for all other members of the Appropriations Committee, and our staff, I would like to express our great sorrow and extend our sincere condolences to John's wife, Bess Hemperley, their children, and grandchildren.

CHILDREN ARE OUR MOST  
PRECIOUS POSSESSION

HON. MAJOR R. OWENS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. OWENS. Mr. Speaker, our children are our most precious possessions. Both Republicans and Democrats theoretically and philosophically agree on this self-evident, but nevertheless profound truth. In practice and policymaking with respect to programs that benefit children; however, there is a deep chasm of disagreement between the two parties. Since

it gained control of the House of Representatives the Republican majority has waged a cruel and unrelenting war on children.

While trumpeting its support for the "right-to-life" for unborn children, the Republican majority has made survival much more difficult for living children. Aid to Families with Dependent Children has been eliminated as a Federal entitlement in House legislation. Within the next few weeks it is expected that the White House will surrender and agree to remove this Federal protection for poor children that has existed since the New Deal. The entitlement for Medicaid which protects the health of our poorest children is also under attack with all of the State's Governors voting to eliminate it. The new Government-health care industrial complex has already begun to endanger the lives of newborn infants and their mothers by forcing them out of hospitals within 24 to 48 hours after birth.

Immigrant children will now be searched out in schools and denied school lunches if Republican legislation prevails. And, of course, immigrant children will be denied access to Medicaid. Cuts in funding for education threaten the provision of opportunity for all poor children. Republicans have proposed to cut even the very successful HeadStart Program. Teenagers who have benefited from the Summer Youth Employment Program for more than 20 years may be the victims of the zero funding passed by the Republican majority and find there are no jobs in this summer of 1996. Children in poor working families will continue to suffer despite the fact that their parents go to work every day but are still unable to adequately provide for their families on the present hourly minimum wage.

The "right-to-life" is just an empty slogan unless it is accompanied by programs and policies which provide an even playing field of opportunity for all children. On June 1 the Children's Defense Fund is sponsoring a great summit in Washington called "Stand For Children." This is a gathering which deserves the support of all Members of Congress. We should all join the "Stand For Children" on that specific day. And for all the days before and after June 1 Congress should refocus on the business of protecting our most precious resource—children outside of their mothers' wombs as well as children inside the wombs.

MESSAGE FROM THE NEWBORN TO THE  
FETUS

Man stay in there  
The womb is where its at  
Until tots slide out and breathe  
The right-to-life is guaranteed  
You never had it so good  
Out here in America  
They don't treat us  
Like they promised they would  
Right away at the hospital  
They put us out  
Cause my welfare Mom  
Didn't have no clout  
Stay where you are man  
The womb is where its at  
A smart fetus can live  
Like a rich lady's cat  
No food stamps for immigrants  
But long picket lines protect  
Our pre-birth rights  
The womb they glorify  
Outside they watch us die  
The womb is where its at  
Curled up in that nice nest  
You always get the very best

But out here only fear  
They'll take my entitlement  
Man stay in there  
Cash in on this fetus fetish  
Be a hero embryo  
Pro-life politicians  
Offer nine months of love  
But at birth's border  
Immigrants from heaven  
Receive a hellish shove  
Until tots slide out and breathe  
The right to life is guaranteed  
Long protest lines protected  
Our pre-birth rights  
We crave the medals they gave  
When we were hidden  
Intimately way out of sight  
The womb is where its at  
Safely grow soft and fat  
Immigrant school lunches are now gone  
Budget cuts down to the bone  
Newborns sound the trumpet  
This land is littered  
With ugly infant tombs  
Babies must unite in battle  
Make war to regain  
Out wonderful respected wombs  
The womb is where its at  
Until tots slide out and breathe  
The right-to-life is guaranteed  
We appeal to the United Nations  
We cry out to the Almighty Pope  
The holy right of return  
Is now our only hope  
Man stay in there  
The womb is where its at.

TRIBUTE TO MS. MARGARET  
SIMMS

HON. WILLIAM (BILL) CLAY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. CLAY. Mr. Speaker, I rise to pay tribute to a magnificent lady, Ms. Margaret Simms, who retired from 23 years of service to the National Democratic Club [NDC] at the end of March. She played an important role in the daily lives of Members of Congress, political party representatives, lobbyists, and friends of the NDC. She will be sorely missed.

Margaret labored faithfully on behalf of the NDC. She performed her job with grace and perfection. She greeted all patrons with respect and courtesy. My constituents, family, friends, and I were beneficiaries of her geniality on numerous occasions. She was cherished by all of us.

On April 2, Members of Congress and friends of the National Democratic Club gathered to pay tribute to Margaret and to thank her for making their lives in Washington more pleasant. I was among those Members who took time during the recent congressional recess to personally express my appreciation to Margaret. In addition, I presented her with a proclamation, designating Tuesday, April 2, 1996 as "Margaret Simms Day" in the First Congressional District of Missouri, in recognition of her dedication, excellence, and hospitality to citizens of the First District. It was an honor much deserved.

I wish Margaret Simms great health and wonderful fellowship in her retirement.

A TRIBUTE TO THE VARICK  
FAMILY LIFE CENTER

HON. ROSA L. DeLAURO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Ms. DeLAURO. Mr. Speaker, this Saturday, April 20, 1996 the Varick Family Life Center will celebrate its official opening. The Center is a multi-service resource and support center for children and families in the Dixwell Avenue neighborhood of New Haven. It is with great pleasure that I rise today to commend this wonderful organization.

The Varick Family Life Center adheres to the Old African proverb "It takes a whole village to raise a child." The proverb encapsulates one of the main goals of the Center which is to make already existing services more available to the residents of the neighborhood. Parents will be guided through the use of family services and have an advocate as they seek the resources they need. Effectively bringing parents into contact with community resources will go a long way toward making parents feel connected to the community and neighborhood.

The second goal of the Center is to provide families with the tools to become self-sufficient. I believe that this dual focus of family and community will be the cornerstone of the Center's success. By integrating the many human services and programs available in New Haven neighborhoods, the Center hopes to insure that all the needs of the family are attended to and that no family slips through the cracks. By truly coordinating family services, the Center will make vital community resources more available to the families that need them.

The Center will maintain its focus on families by appointing four neighborhood residents and training them to act as Family Resource Specialists. These specialists will focus on the social, health and financial concerns of needy families. I believe that this is the most crucial aspect of the Center. The Family Resource Specialists will work with parents to help them become more proactive rather than reactive in situations that affect their lives and families. Economic and financial concerns are addressed by the Center through job training and educational programs in the areas of budgeting and money management. By providing parents and families with these valuable tools we are enabling them to become more self-reliant and independent. We are giving them a chance to make a difference in their own lives and to feel that they have some control over their life's course. This is ultimately the most important and best solution to the problems and challenges faced by the residents of the neighborhood.

I commend the congregation and leadership of the Varick Memorial AME Zion Church for their amazing dedication to this worthwhile project. They have every reason to believe that their vision and hopes for the project will be realized. The Center is a wonderful community resource that should serve as a model for other cities and towns in Connecticut and in the Nation.

IN HONOR OF DR. HENRY PONDER

HON. BOB CLEMENT

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. CLEMENT. Mr. Speaker, it is an honor and a privilege for me to pay tribute to one of Nashville's favorite citizens, Dr. Henry Ponder. Dr. Ponder is retiring from his position as President of Fisk University shortly, and he will be missed at that fine institution and in the Nashville community more than words can say.

I am certain, however, that we will not find Dr. Ponder resting on his laurels. In fact, he will be coming to Washington to head an organization whose mission is to further the cause of minority higher education. I look forward to having Henry and his lovely wife Eunice as neighbors in our Nation's Capitol. I am certain he will continue to make all of us very proud.

I have had the great pleasure over the years to interact professionally with Dr. Ponder on several occasions. Most recently, he came to Washington and we both testified in front of the House Subcommittee on National Parks, Forests and Lands in support of legislation I introduced that would provide much-needed monetary support for the restoration of historic buildings on the campuses of America's Historically Black Colleges and Universities. As a college president, Dr. Ponder has always attended to the needs of every aspect of university life. Not only was he responsible for eliminating a \$4 million debt at Fisk, he also staged an extremely successful 5-year, 25 million capital campaign that revitalized and reenergized the school.

By the same token, Dr. Ponder realized the importance of obtaining funds to restore badly deteriorating buildings, such as Administration Hall, whose history and significance are an embodiment of all that Fisk stands for. The health of the complete university—from fundraising to student recruitment to building maintenance to school spirit—is Dr. Ponder's mission. By all accounts, he is leaving Fisk University in a state of wonderful health.

Dr. Ponder is a native of Oklahoma. He received his Bachelor of Science from Langston University, his Masters Degree from Oklahoma State University and his Ph.D. from Ohio State University. Prior to becoming president of Fisk, Henry Ponder served in various academic and administrative positions at universities throughout the Southeastern United States: president of Benedict College in Columbia, SC; vice president and dean of the College of Alabama A&M University; chairman of the department of agribusiness and assistant professor of that department at Virginia State College in Petersburg, VA.

Henry Ponder is also an economist of national and international renown. He has served as a consultant for and on special assignment to the Federal Reserve Bank of New York, Philadelphia National Bank, Chase Manhattan Bank, the Irving Trust Co. and Omaha National Bank. Dr. Ponder also serves on the Bishop Desmond Tutu Southern Africa Refugee Scholarship Fund committee. In 1986, he was chosen as one of the "One Hundred Most Effective College Presidents in the United States."

On behalf of all Nashvillians, Dr. Ponder, thank you for all you have done to improve the

quality of life at Fisk and in the community. People with your dedication and energy are rare indeed, and those of us who have had the pleasure of working with you can only consider ourselves blessed for the lessons you have taught us and the example you have been. You have left an outstanding legacy of growth and achievement that will stand for decades to come. We wish you well in your new career. You will be missed.

SHERROD RAYBORN, LONGTIME  
LAWRENCE COUNTY CHANCERY  
CLERK, IS HONORED

HON. MIKE PARKER

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. PARKER. Mr. Speaker, today I stand in the Halls of Congress to ask you to join me in paying tribute to the late Sherrod Rayborn, who died March 24, 1996, at the Mississippi Baptist Medical Center following heart surgery.

Sherrod Rayborn was elected to his first term as Lawrence County chancery clerk in 1972, and he served in that position for 24 years. At the time of his death at age 60, he had recently begun serving his seventh term. A native of Walthall County, he attended school in Lawrence County and spent his adult life in Monticello. Mr. Rayborn was a member of Bethel Baptist Church, where he served as a deacon. He also was minister of music at the church for the last 26½ years.

In addition to his career in politics, he also was known for his musical talents, his sense of humor, and his positive outlook. Several friends describe Sherrod Rayborn and his service to the county and the church as "irreplaceable." But I was particularly moved by what his friend Carey Hedgepath told a local reporter: "He was a man of character. You could take for granted the accuracy of anything he told you."

These words are a fitting tribute to Sherrod Rayborn. Indeed, he is irreplaceable and truly an unforgettable friend to those who knew him. He will be greatly missed by his friends and family. He is survived by his wife, Madeline; two sons, Mitch and Kevin; a daughter, Mali Rayborn Powell; a brother, W.T.; two sisters, Willene Alexander and Alyne Sumrall; and a grandson, Jerrod.

Mr. Speaker and my colleagues in the U.S. House of Representatives, I ask you again to join me in honoring a man of character, Sherrod Rayborn, his willing sacrifice of his time and energy for the public good, and his representation of all that is good, true, and steadfast in our society.

CAMP TALL TURF MAKING A  
DIFFERENCE

HON. VERNON J. EHLERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. EHLERS. Mr. Speaker, it is with great pleasure that I take this time to tell you about an extremely important and effective program for inner-city children and families in my district. Every summer since 1968, hundreds of

children, ages 8–16, have been given the opportunity to get away from it all by attending Camp Tall Turf. The camp is appropriately named for its location among very large trees in Walkerville, MI. At Camp Tall Turf campers learn that God is present and that there can be no taller turf than that. The camp was established in response to racial strife that was prevalent during the sixties in cities across the Nation. Since that first summer over 15,000 young people have benefited from the positive Christian activities and messages presented by the caring, committed, and dedicated staff of Camp Tall Turf.

When the founders of this camp first came together, little did they know that their ideas and visions would reach this level almost 30 years later. The camp, located on Lake Campbell, provides an environment conducive to growing both mentally and spiritually. Through daily chapel, cabin devotions, drama, and singing, each camper gains a new outlook on his or her life and is able to store away these lessons for the future. These valuable lessons have helped prepare hundreds of children, who might not have received the opportunity otherwise, for roles of service and leadership in their young adult and adult lives.

It is important to point out that Camp Tall Turf is not just a one day, week, or month gathering. Staff members work year round to continue relationships that have been established at the summer camp. These relationships are so very important for the young people who need Christian role models and friends. In addition to encouraging meaningful and positive social relationships, the interaction between the staff and the child helps promote cooperation, companionship, and respect. Camp Tall Turf also helps to provide opportunities and experiences that strengthen self confidence and build character in youths who are involved with the camp.

Mr. Speaker, far too often we read or hear negative stories involving children. Camp Tall Turf and its staff should be praised for their continuous effort to change the negatives that we read and hear about, and make them positive. Their work to enhance the quality of life and relationships of others should not go unnoticed and should serve as an example for others to follow. It is a great pleasure and honor for me to commend the founders, board and staff of Camp Tall Turf for their outstanding work.

#### HOLOCAUST REMEMBRANCE DAY

HON. J.C. WATTS, JR.

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 18, 1996

Mr. WATTS of Oklahoma. Mr. Speaker, today is Holocaust Remembrance Day. It is a time to pause and pray for the day when mankind will value understanding over hate, respect over contempt, and life over death. Today we must take time to remember this event. We cannot let the day slip by without a solemn moment for remembrance.

I cannot know their names nor see their faces, but in my heart, in my mind, and in my prayers, I pause today to remember the millions of men, women, and children whose lives were taken in one of history's most heinous events—the Holocaust.

I ask my colleagues and the people of the world to do the same. Please pause for a moment today and recall the needless loss of mankind that was the Holocaust. While it must never be repeated, we must never forget its occurrence. Let the people of the world take time to recognize what happened and to recall those who perished. We owe them the time to remember.

#### IN MEMORY OF RUBY WORTHEN

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 18, 1996

Mr. HALL of Texas. Mr. Speaker, I rise today to pay tribute to a longtime civic and political leader from east Texas—Ruby Irene Worthen of Terrell—who died recently at the age of 95. Mrs. Worthen was an outstanding citizen who devoted a lifetime to helping those in her community, and she will be missed by all those who knew her.

Born on Jan. 22, 1901, Mrs. Worthen served her community as a teacher, home demonstration agent for the Texas A&M Extension Service, real estate agent, and as a moving force in community activities in Terrell—especially in the development of services for senior citizens. On her 95th birthday this year, the Kaufman County Commissioners' Court recognized her life of dedication to others by proclaiming the day as Ruby M. Worthen Day in Kaufman County. The proclamation noted her many accomplishments and contributions to the community and stated that "she is perhaps most widely known and highly acclaimed as a loving and selfless caregiver to anyone in need, having provided meals and a place to live for many through the years."

Mrs. Worthen was active in the Democratic Party. She taught the senior adult ladies Sunday school class at the First Baptist Church for several years. She also was active in the AARP.

Mrs. Worthen was preceded in death by her husband, Don; a sister, Idella Coffman; and a brother, T.O. Mashburn. She is survived by a brother, Eugene Mashburn of Dallas, a sister, Thelma Mashburn of Terrell, and other relatives and friends. She was well-loved and well-respected in Terrell, and she will be missed by all those who knew her. Mr. Speaker, I am honored today to pay a final tribute to this outstanding community leader, Ruby Irene Worthen of Terrell, TX.

#### IN REMEMBRANCE OF APHIS EMPLOYEES

HON. E de la GARZA

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 18, 1996

Mr. DE LA GARZA. Mr. Speaker, 1 year ago, on April 19, 1995, 168 people were murdered in the bombing of the Alfred P. Murrah Federal Building in Oklahoma City. The explosion killed scores of innocent children and adults, injured hundreds, and devastated thousands of lives. We remember and honor them all.

I took part in a ceremony in South Texas in which the Kika de la Garza Elementary School

in the La Joya school district planted a tree in memory of the children who died in the Oklahoma bombing to link themselves to the loss. I was particularly moved by this ceremony because although they did not know any of the children personally, they had a common bond in that they were children also.

I, too, have a common bond with some of the victims. In this case the bond is the agricultural community.

Among the victims were seven employees of the Department of Agriculture's Animal and Plant Health Inspection Service—dedicated workers who left a legacy of service and believed that protecting American agriculture was a goal worth achieving.

These were people who were loved by their families and friends and respected by their colleagues. Today, we especially remember and honor these APHIS employees.

We honor as well the survivors and the many people who gave of themselves to aid in rescue efforts and reach out with helping hands and loving hearts. In their hope, we found hope; in their strength, we found strength; in their actions, we found the power to act. In adversity, America came together.

Robert Green Ingersoll said "in the night of death hope sees a star and listening love can hear the rustle of a wing." We remember those who lost their lives in Oklahoma. We embrace those who were left behind, and we hope our caring helps soothe their grief.

Together, we all listen for the rustle of a wing that whispers of hope.

#### PROBLEMS WITH TRUTH IN BUDGETING

HON. BILL ORTON

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 18, 1996

Mr. ORTON. Mr. Speaker, yesterday, the House considered and passed H.R. 842, the so-called Truth in Budgeting Act. During my statements in opposition to this unwise bill, I made reference to a letter sent last year by the Council for Citizens Against Government Waste, in opposition to this bill.

I would now like to enter this letter into the RECORD. I believe it makes a compelling case against enacting this bill into law.

COUNCIL FOR CITIZENS AGAINST  
GOVERNMENT WASTE,

Washington, DC, March 16, 1995.

DEAR REPRESENTATIVE: We were intrigued when we learned of proposals to move the various transportation trust funds off-budget and out of the hands of the usual budgeting and appropriations process. Despite proponents' arguments for "truth in budgeting," we discovered that advocates of off-budget transportation trust funds seek not to increase fiscal accountability but to increase the ease of pork-barrel spending.

While the Committee on Transportation and Infrastructure does not have a corner on congressional pork-barrel spending, the committee's record is seriously tarnished. The 1991 Intermodal Surface Transportation Efficiency Act (ISTEA), replete with such dubious pork as studying the use of zebra mussels as an infrastructure building material or building bicycle paths with highway funds, is as much evidence as we need to conclude that the off-budget trust funds proposal lacks credibility.

There is also alarming and vicious counter-attack from pork-barrelers to Rep. Bill

Orton's suggestion that line-item veto authority extend to "contract authority" for which transportation authorizations are famous. Since the Council for Citizens Against Government Waste (CCAGW) testified at joint line-item veto hearings in favor of presidential authority over contract authority as proposed by Rep. Orton, you can understand that we are suspicious that the off-budget transportation trust funds gambit is yet another end-run for the pork-barrel goal line.

The past pattern of pork-barrel abuse in funding highway, airport and waterway projects compels us to recommend in the strongest possible manner that you defeat any attempt to move the transportation trust funds off-budget. Indeed, a message needs to be sent to the entire Transportation and Infrastructure Committee—majority and minority—that we had an election last November. The old days are gone.

A final note: Not gone, apparently, are threats to cancel projects in the districts of legislative opponents, an all-too-frequent bullying tactic of the folks who used to run Congress that showed up again in the debate on the Orton amendment to the line-item veto bill. CCAGW deplores such threats and, knowing that the public would not take kindly to such intimidation and threats, hopes Members will make them known when they occur.

Sincerely,

TOM SCHATZ,

*President.*

JOE WINKELMANN,

*Chief Lobbyist.*

## THE FUTURE IS OURS TO CREATE

HON. JIM McDERMOTT

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. McDERMOTT. Mr. Speaker, I am pleased to welcome the Wound, Ostomy and Continence Nurses Society [WOCN] to my congressional district, Seattle, WA, on June 15–19, for their 28th annual conference. The theme of the conference, "The Future is Ours to Create," will focus on future opportunities and challenges relating to the changing and expanding role of enterostomal therapist [ET] nurses and other nurses specializing in wound, ostomy, and continence care.

Founded in 1968, the WOCN is the only national organization for nurses who specialize in the prevention of pressure ulcers and the management and rehabilitation of persons with ostomies, wounds, and incontinence. WOCN, an organization of ET nurses, is a professional nursing society which supports its members by promoting educational, clinical, and research opportunities, to advance the practice and guide the delivery of expert health care to individuals with wounds, ostomies, and incontinence.

In this age of changing health care services and skyrocketing costs, the WOCN nurse plays an integral role in providing cost-effective care for their patients. This year's Seattle conference will provide a unique opportunity for WOCN participants to learn about the most current issues and trends related to their practice. I am honored that WOCN has chosen Seattle to host its conference and wish them every success.

## TRUTH IN BUDGETING ACT

SPEECH OF

HON. PETER G. TORKILDSEN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, April 17, 1996*

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 842) to provide off-budget treatment for the Highway Trust Fund, the Airport and Airway Trust Fund, the Inland Waterways Trust Fund, and the Harbor Maintenance Trust Fund:

Mr. TORKILDSEN. Mr. Chairman, I rise in opposition to H.R. 842, a bill to move transportation trust funds off budget. This change would increase the deficit and stymie future efforts to balance the budget.

This bill is the equivalent of telling someone to learn how to swim while they're drowning. Moving the trust funds off budget will make sense when Congress has its fiscal house in order, but it should not be implemented when the Federal Government is drowning in a sea of red ink.

Furthermore, the Congressional Budget Office estimates that exempting the transportation trust funds from spending cuts could increase the deficit by over \$20 billion over 5 years.

Our goal of balancing the budget must come before attempts to restructure the budget. I am not opposed to moving trust funds off budget, in principle, but we must balance the budget first.

Mr. Chairman, I urge my colleagues to defeat this bill and ensure that our efforts to balance the budget stay on course.

## TRUTH IN BUDGETING ACT

SPEECH OF

HON. JOHN N. HOSTETTLER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, April 17, 1996*

The House in Committee of the Whole on the State of the Union had under consideration the bill (H.R. 842) to provide off-budget treatment for the Highway Trust Fund, the Airport and Airway Trust Fund, the Inland Waterways Trust Fund, and the Harbor Maintenance Trust Fund:

Mr. HOSTETTLER. Mr. Chairman, today we are having a very controversial debate about where the truth in budgeting transportation funds really lies. I rise today in support of H.R. 842, The Truth in Budgeting Act.

Every time you or I pull into a gas station and fill up our cars or pay a tax on an airline ticket, we are sending money to Washington to build new highways and maintain our current transportation systems. Decades ago, these transportation trust funds were established to collect taxes from transportation users and invest in transportation capital. Today, we find the transportation trust fund balance at \$30 billion. The existence of this on-budget trust fund surplus only reinforces the public's belief that they are not getting an honest return for the taxes they pay to Washington. This issue is about tax fairness.

Spending and investment in necessary transportation improvements has been held

down to keep the balance of the trust fund artificially high in order to mask the true size of the deficit, this is just not honest. Those who pay into the trust fund should be able to count on those dollars going toward the purpose for which they were intended.

H.R. 842 does not add to the deficit. According to a March 20, 1996 estimate from the Congressional Budget Office, taking programs off budget does not change total spending of the Federal Government and does not affect spending or revenue estimates for congressional scorekeeping purposes.

H.R. 842 does not alter the transportation spending process. Congress will still have to approve every new dollar of trust fund spending.

H.R. 842, however, does assure this: When a taxpayer back home pays gasoline or airline ticket tax to the Federal Government, he knows it is going towards building or improving our national transportation system.

## AMERICA DESERVES A RAISE

HON. RON PACKARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. PACKARD. Mr. Speaker, while the President offers a politically appealing, yet ineffective plan to give Americans a raise, my Republican colleagues and I have a very sound plan to give millions of working American families more money in their paychecks and greater power to decide how and where the Federal Government spends their hard earned pay.

Under the President Clinton's plan to raise the minimum wage, countless employers will have to rob Peter to pay Paul. Millions of working men and women will lose job opportunities, employment security, and pay raises. The Republican plan gives Americans the raise they deserve. It provides tax relief for families with children. Over 6 million new and more secure high-wage jobs will result from a balanced budget and less Washington red-tape.

Mr. Speaker, the President's plan to raise the minimum wage is a bad policy. It is simply a political ploy designed to divide America along class, ethnic, and gender lines. Even some of the President's own advisers, agree that his proposal hurts the people most in need: low-skilled workers, women and intercity residents. It does not help working families.

American families deserve more. They deserve to keep more of their hard earned money, they deserve lower interest rates and they deserve better, higher wage jobs. My Republican colleagues and I provide working families a true raise—the President's policies do not.

## THANK YOU, VIRGINIA CARTER

HON. JAMES A. BARCIA

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. BARCIA. Mr. Speaker, dedicated individuals who are willing to put the interests of those in their community ahead of their own comforts are people we should admire. The

people of Sanilac County within my congressional district have been blessed with such an individual, Mrs. Virginia Carter, who is retiring after 20 years as a member of the Sanilac County Mental Health Board's Recipient Rights Advisory Committee.

People who have benefited from the excellent care provided by Sanilac County Mental Health Services have most assuredly benefited from programs either pioneered by Virginia Carter—supported employment, for example—or thriving because of her devotion to maintaining these important programs.

Not only has Virginia Carter served for 20 years on the recipient rights committee, she has been elected chairperson for 18 of those years, a real testimony to the fact that she is held in high esteem by her colleagues on the committee.

Mental health care can be a particularly trying field. Most people have a more difficult time dealing with the identification and treatment of mental health problems. Signs are not as easily identified as is a cold, nor is treatment as easy as a prescription for several days. Those who deal with the needs for mental health services must be patient, understanding, and resilient. They also need to have the support of understanding people like Virginia Carter who knows the meaning of pursuing quality care.

It has been my privilege and pleasure to know many fine, dedicated people who live in Sanilac County. It is a particular pleasure to join with so many of them who will be honoring her at a special retirement event this Friday evening.

Mr. Speaker, I urge you and all of our colleagues to join me in wishing her the very best.

#### PERSONAL EXPLANATION

HON. STEPHEN HORN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. HORN. Mr. Speaker, on rollcall No. 120, I regret having been unavoidably detained in a meeting with constituents, which prevented me from voting aye in support of House Resolution 316: Deploing individuals who deny the historical reality of the Holocaust and commending the work of the U.S. Holocaust Memorial Museum.

This is particularly ironic since I have spoken out for over two decades about the foolishness and evil of those who deny the Holocaust and the murder of 6 million Jews in Nazi-controlled Europe during the Second World War.

Had I been present, I would have voted "aye."

TRIBUTE TO DR. ROBERT E.  
HENDERSON

HON. FLOYD SPENCE

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. SPENCE. Mr. Speaker, I rise today to recognize Dr. Robert E. Henderson, as he retires as President and Director, Chief Execu-

tive Officer of the South Carolina Research Authority [SCRA]. The SCRA was established in 1983 as a nonprofit scientific and engineering corporation to address national and international manufacturing issues through the development of new technologies. For the past 12½ years, Dr. Henderson has shaped the SCRA into the dynamic organization that it is today, and South Carolinians are most appreciative of the contributions that he has made to our State and to the Nation.

Under the leadership of Dr. Henderson, nearly one-half billion dollars have been invested, sold, and/or contracted through SCRA research parks and technology management programs. In addition to leading South Carolina to the cutting-edge of technology, the SCRA has become a recognized leader nationally, through SCRA projects, technology, and corporate teams representing activity in almost every State in the Union.

Dr. Henderson has always responded to the call of his country and his community. During World War II, he served as a staff sergeant in the infantry of the U.S. Army, and was awarded the Purple Heart medal. He then received the bachelor of arts degree in physics from Carlton College, as well as the masters of arts degree in physics and the doctor of philosophy degree in physics from the University of Missouri.

Dr. Henderson has distinguished himself in the fields of physics and engineering, and he has published numerous scholarly articles. He has been appointed to the Defense Science Board and the Defense Manufacturing Board, in addition to having served as president of the Indianapolis Scientific and Engineering Foundation, director of the International Solar Energy Society, and a member of the Board of Visitors of Clemson University. He recently received South Carolina's highest recognition, The Order of the Palmetto.

Dr. Henderson has made great contributions to South Carolina and to our country through an outstanding career that has been diverse and exemplary. He is wished much continued success as he moves on to face new challenges and rewards.

#### TALENTED HIGH SCHOOL STUDENTS REPRESENTING OREGON

HON. ELIZABETH FURSE

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Ms. FURSE. Mr. Speaker, on April 27–April 29, 1996, more than 13,000 students from 50 States and the District of Columbia will be in Washington, DC, to compete in the national finals of the "We the People . . . The Citizen and the Constitution" Program. I am proud to announce that the class from Lincoln High School from Portland will represent Oregon and the First Congressional District. These young scholars have worked diligently to reach the national finals by winning local competitions in their home State.

The distinguished members of the team representing Oregon are: Students: Vasiliki Despina Ariston, Jereme Rain Axelrod, Rebekah Rose Cook, Tawan Wyndelle Davis, David Eyre Easterday, Amanda Hope Emmerson, Tiffany Ann Grosvenor, William John Hawkins IV, Soren Anders Heitmann,

Stacy Elizabeth Humes-Schulz, Martissa Tamar Isaak, Heather Brooke Johnson, Katherine Mace Kasameyer, Christopher Michael Knutson, Jeanne Marie Layman, Daniel Hart Lerner, Casey James McMahon, Lindsay Katrina Nesbit, Gerald William Palmrose, Mary Ruth Pursifull, Catherine Clare Rockwood, Daniel Boss Rubin, Elizabeth Leslie Rutzick, Mark Richard Samco, Kathryn Denelle Stevens, Simon Brendan Thomas, Miles Mark Von Bergen, Lauren Elizabeth Wiener, and Farleith Aiken Wolfe.

I would also like to recognize their teacher, Mr. Hal Hart, who deserves much of the credit for the success of the team. The district coordinator, Mr. Daniel James, and the State coordinator, Ms. Marilyn Cover, also contributed a significant amount of time and effort to help the team reach the national finals.

The "We the People . . . The Citizen and the Constitution" Program is the most extensive educational program in the country developed specifically to educate young people about the Constitution and the Bill of Rights. The 3-day national competition simulates a congressional hearing in which students' oral presentations are judged on the basis of their knowledge of constitutional principles and their ability to apply them to historical and contemporary issues.

Administered by the Center for Civic Education, the "We the People" Program, now in its ninth academic year, has reached more than 70,400 teachers, and 22,600,000 students nationwide at the upper elementary, middle and high school levels. Members of Congress and their staff enhance the program by discussing current constitutional issues with students and teachers.

The "We the People" Program provides an excellent opportunity for students to gain an informed perspective on the significance of the U.S. Constitution and its place in our history and our lives. I wish these students the best of luck in the national finals and look forward to their continued success in the years ahead.

#### PERSONAL EXPLANATION

HON. ROSCOE G. BARTLETT

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. BARTLETT of Maryland. Mr. Speaker, on rollcall No. 124, I was off the Hill well within 15 minutes return time. My pager did not respond to the 15-minute call. It did respond to the 10-minute call.

Had I been present, I would have voted "yes."

#### THE WATER QUALITY PUBLIC RIGHT-TO-KNOW ACT OF 1996

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. WAXMAN. Mr. Speaker, today I am introducing the Water Quality Public Right-To-Know Act of 1996. This bill will guarantee the public's right to know about the contaminants that they are exposed to in their drinking water.



Under current law the public has no information about the presence of serious contaminants in their drinking water. Every year millions of Americans unknowingly drink tap water contaminated with cryptosporidium, carcinogens, and arsenic. If we can't prevent this contamination, we should at least give our constituents the ability to protect themselves.

The Water Quality Public Right-To-Know Act of 1996 will require water systems to annually report to their customers a plainly worded explanation of the health implications of contaminants present in their drinking water. It also allows States the flexibility to shape this program.

During the last 2 years many of my Republican colleagues have argued for a devolution revolution. They have urged that we move power from the Federal Government to the State and local level. My legislation goes one step further. It requires that information be given directly to our constituents, which will allow them to make individual choices about the level of exposure to dangerous contaminants.

#### A TRIBUTE TO CHARLOTTE J. VISCIO

HON. MICHAEL R. McNULTY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. McNULTY. Mr. Speaker, each year the Veterans of Foreign Wars of the United States and its Ladies Auxiliary conduct the Voice of Democracy broadcast scriptwriting contest. This year more than 116,000 secondary school students participated, competing for 54 national scholarships.

I am pleased to announce that my constituent, Ms. Charlotte J. Viscio, a senior at Guilderland Central High School in Guilderland, NY, has been named a national winner and recipient of the Larry W. Rivers Scholarship Award.

This year's theme was "Answering America's Call." I found great inspiration in Charlotte's words and wanted to share them here with my colleagues. They are as follows:

It doesn't sound like a trumpet or an angel's harp. Nor does it echo like a cannon or fire crackers on the Fourth of July. It's not about war or winning. Nor is it about uniforms or medals. It's not just for leaders or peacemakers, soldiers or sons. Nor is it only for women. Whether ten or eight times ten, age makes no difference. The call of America is simply what United States citizens, proud and loving of their country, answer to when their services are needed.

In some, the call is not loud, while in others, it's the only thing that they hear. For the President of the United States, this call is his job description. If he fails to answer, he's failed as America's leader and role model. Some Americans hear the call loud and clear and enlist in the military. Often, they are sent to foreign countries to strive for an American goal, realizing that they might lose their lives for America. And what, exactly, in America is worth fighting for? What is in our country's history that is worth preserving? It is the strongest nation in the world. It is a symbol of hope for countries striving for democracy. It is a place on

the earth where all nationalities, religions, sexes, races and colors are unified by equality. America screams of hope and strength and leadership. And this is within every American.

To be an American is a choice. Just because a person lives in the United States does not mean that he or she is a true American. A true American recognizes the call and is willing to answer it. It is not hard to answer. Some answer by volunteering their services to fire companies, food drives and charities. Others collect litter from the sides of roads, improving the appearance of American land. Many people answer the call by casting their votes on election day for the candidates they feel will make strong American leaders. All these activities are examples of how people answer America's call, giving of themselves for the betterment of their country.

What called these Americans to their duty? Was it a television or radio advertisement? Were they inspired by a hero or a role model? Or, was it simply the voice inside them, the voice of their conscience leading them to serve their country? Within every true American's heart, the call exists.

Answering this call is the duty of an American. The United States is a proud country, but it isn't self-centered. It has concern for other nations around the world and strives to help these nations. This is a reflection of its people. Since they are willing to give their services to their country they make life better not only for themselves but for their fellow Americans and others around the world.

America is the voice of democracy. It is not the voice of one person but of all Americans, an accumulation of answers they have given to their calls. Nothing sounds louder than America's response. Nothing is more powerful. This is the foundation of the United States of America. A person simply needs to listen closely for the call within and then respond with the conviction that shows and professes, "I'm proud to be an American."

#### CONGRATULATIONS HERITAGE CHRISTIAN HIGH SCHOOL STUDENTS—"WE THE PEOPLE" CHAMPIONS

HON. GERALD D. KLECZKA

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. KLECZKA. Mr. Speaker, I rise today to congratulate a group of students from Heritage Christian High School in West Allis, WI, and their teacher, Mr. Tim Moore, on being judged this year's State of Wisconsin "We the People" champions.

The "We the People" program, funded by the U.S. Department of Education by an act of Congress, promotes the study of our Nation's Constitution. Mr. Moore's students have displayed an exceptional foundation of knowledge of its history, as well as the constitutional issues of today.

The Heritage Christian High School group has been given the honor of representing the State of Wisconsin in the national "We the People" competition to be held here in Washington, DC. I am very proud that these students come from Wisconsin's Fourth Congressional District and commend their hard work and dedication.

Once again, I congratulate Mr. Moore and his students and wish them the very best of luck in the upcoming competition.

#### RONALD J. DEL MAURO HONORED FOR OUTSTANDING LEADERSHIP BY MENTAL HEALTH ASSOCIATION

HON. RODNEY P. FRELINGHUYSEN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. FRELINGHUYSEN. Mr. Speaker, I rise today to honor Mr. Ronald J. Del Mauro, president and CEO of St. Barnabas Health Care System. On April 20, 1996, Mr. Del Mauro will be honored by the Mental Health Association of Essex County for his outstanding leadership and philanthropy in serving as head of the St. Barnabas Behavioral Health Care System. His worked has helped thousands of residents who are often the most vulnerable members of our population—the mentally ill.

Mr. Del Mauro created the St. Barnabas Behavioral Health Network because, unfortunately, for many parents and their children, a number of health services are often separated for those with psychiatric problem and those with substance abuse problems. Mr. Del Mauro, recognizing this, created the St. Barnabas Behavioral Health Network to provide parents and their children with a place to turn get appropriate diagnosis and treatment.

Mr. Del Mauro is also responsible for the St. Barnabas Health Care System which includes, in addition to St. Barnabas Medical Center, the 201-bed Union Hospital, four nursing homes with 660 beds, 10 corporate affiliates and 20 for-profit business ventures. The St. Barnabas Health Care System operates in 13 facilities throughout New Jersey and the Behavioral Health Network has 17 locations in the tristate area. More than 7,000 employees, including 1,800 physicians, treat a total of 59,000 inpatients, and provide treatment and services for more than 300,000 outpatient visits annually.

I recently had the opportunity to visit St. Barnabas and tour their facility in Livingston, NJ. The health care delivery system Mr. Del Mauro has developed is an outstanding one and I would strongly recommend any of my colleagues look to at St. Barnabas as a national model.

Mr. Del Mauro is also an active and effective leader in other areas. He serves as chairman of the New Jersey Hospital Association, as well as being a member of the Center for Health Affairs, Inc., Life Sciences Advisory Committee of the CIT Group, Inc., Seton Hall University Center for Public Services Advisory Council, board of trustees of the Paper Mill Playhouse and the Essex/Hudson/Union Hospital Council.

He is a graduate of Seton Hall University, where he served as a adjunct professor at the Graduate School of Public Administration from 1983 to 1985.

Mr. Speaker, today I honor Mr. Del Mauro for his leadership in helping to make our communities a healthier place to live and for his ongoing commitment to the mentally ill in New Jersey.

## TAXPAYER BILL OF RIGHTS

SPEECH OF

HON. WAYNE ALLARD

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, April 17, 1996*

Mr. ALLARD. Mr. Speaker, Congress has passed a new Taxpayers' Bill of Rights to help level the playing field between our citizens and the IRS.

The Tax Code is long and complicated, and taxpayers make legitimate mistakes on their returns. When folks make honest mistakes, they shouldn't be exposed to what often boils down to bullying and harassment by the IRS.

The Taxpayers' Bill of Rights reforms numerous tax collecting operations of the IRS to protect taxpayers. Foremost is the creation of a taxpayer advocate, who must assist taxpayers in resolving and preventing problems with the IRS. The advocate also can require the IRS to meet deadlines in performing tasks for taxpayers.

Other important provisions include changes in terminating tax payment plans, waiving interest and penalties, and awarding costs and fees in legal disputes.

Many people view the IRS as a massive bureaucracy that acts without proper authority. This important bill makes a number of changes to protect people who have legitimate grievances with the IRS, while ensuring that taxes are collected fairly.

This bill was adopted just 1 day after the House unfortunately failed to approve a tax amendment to the U.S. Constitution. The amendment would have required a full two-thirds of the House or Senate vote to approve any legislation that would increase personal, business, or other Federal taxes.

Although I am disappointed the amendment failed, I am pleased by the broad support it did receive.

Congress has proven time and again that it cannot control its urge to raise taxes. The amendment would have created more accountability and would have forced Congress to work in a more bipartisan manner on tax issues.

Passage of the second Taxpayers' Bill of Rights helps take away some of the sting from the failure of the tax amendment.

## MORE INDIAN OPPRESSION

HON. DAN BURTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. BURTON of Indiana. Mr. Speaker, on Thursday, April 18, the Indian police detained six Kashmiri leaders when they tried to peacefully walk to India's military headquarters in the Kashmiri capital of Srinagar to protest India's human rights violations.

The six, who are well known on Capitol Hill for their tireless efforts to win the right of self-determination for Kashmiris and are all executive members of the All Parties Hurriyat—Freedom—Conference, were stopped by police as they approached the United Nations Military Observer Group's office. Syed Ali Shah Geelani, Abdul Gani Lone, Shabir Shah, Abdul Gani Bhat, Moulana Abass Ansari, and

Yasin Malik were only allowed to walk 2 kilometers—1 mile—through the deserted streets on Srinagar before being detained by police.

Mr. Speaker, as you may know, the Government of India has banned public gatherings in Kashmir to prevent protests against India for its terrible human rights violations against the people of Kashmir. In response to this continual brutality, the Hurriyat had called a strike in the Kashmir Valley and asked Kashmiris to remain indoors. Why did these leaders risk their lives to challenge India? According to Abdul Gani Bhat—one of the detainees, we walked to offer our lives to the Indian army for peace and stability in the whole sub-continent.

Most of these leaders have already narrowly escaped attempts on their lives by renegade militant groups which have been armed and supported by India's intelligence agencies. So perhaps for them—risking their lives one more time is business as usual. Nevertheless, their bravery to secure peace and happiness for the people of Kashmir should not be ignored here in the U.S. Congress.

Mr. Speaker, while I wish I could say that this most recent incident is isolated—it is not. For the last decade, the Government of India has used every measure at its disposal to suppress the peace-loving people of Kashmir who desire nothing more than the internationally-recognized right of self-determination. As Thursday's events demonstrate, the leadership of India only respects the right of free speech when the words are spoken by the majority Hindu population. The time has come for the U.S. Government to forcefully condemn this tyrannical behavior and demand the immediate release of these six Kashmiri leaders.

If India ever hopes to be treated as the world class power it believes it is—it must respect human rights.

## IN HONOR OF THE HOMETOWN TREES PROGRAM

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. MENENDEZ. Mr. Speaker, I rise today to recognize the Hometown Trees Program for its dedicated service toward improving and preserving hometown landscapes. The program which began 4 years ago will plant its 4 millionth tree on Earth Day, April 22, 1996. I would also like to take this opportunity to honor Kristin Hyman, the 9-year-old grand-prize winner in a nationwide contest on the importance of trees.

The Hometown Trees Program has prospered since its inception 4 years ago. Every spring, the program teams up with thousands of local volunteers who plant trees in their communities to ensure that future generations will enjoy their natural beauty. To date, through the Hometown Trees Program, more than 3 million trees have been rooted in over 1,500 cities in 43 States.

The program's pledge to enhance, protect and generate awareness about the environment is of great importance. The planting of one tree today will serve the community for hundreds of years to come. This program also develops amongst our children an appreciation for nature that will serve our Nation for generations that follow.

In February, a nationwide essay contest was held to increase children's environmental awareness and appreciation. I am pleased to announce to my colleagues that the winner of the nationwide event was 9-year-old Kristin Hyman of Bayonne, NJ. Her poem, "Tree Reasons," was selected from the hundreds of entries received in her age group for its creativity and uniqueness. I am proud to say that she will be honored in a special ceremony in her hometown on Earth Day.

I ask that my colleagues join me in honoring the achievements of the Home Trees Program and its continuing commitment to the environment. I would also like to pay tribute to Kristin Hyman, a special young lady who has demonstrated to her community that no one is ever too young to care for and appreciate the environment. I am proud to have such a talented young woman living within my district.

## RAISE THE MINIMUM WAGE

HON. CARLOS A. ROMERO-BARCELÓ

OF PUERTO RICO

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. ROMERO-BARCELÓ. Mr. Speaker, I rise in strong support of the Democratic efforts to raise the Federal minimum wage.

The proposal for a moderate 90-cent increase in 2 years is needed because workers at the minimum wage level have actually seen their real incomes decrease in the last decades. In 1979, the minimum wage was the equivalent of about \$6 per hour in 1996 dollars.

Real wages and the purchasing power of millions of families have become stagnant. We must support the incentives that reward hard work, such as a minimum wage.

When I was Governor of Puerto Rico, I took the bold step of asking the Federal Government to extend minimum wage laws to Puerto Rico, where at the time they did not apply. Special interests and many corporations lobbied hard against it, predicting economic havoc and job displacement.

Such bleak scenarios did not materialize. In fact, the minimum wage has been a blessing for the 3.7 million American citizens of Puerto Rico. It raised the standard of living of thousands of working class families, took tens of thousands of working families out of welfare and brought them added dignity.

Both sides of the aisle should seek to promote and assure a decent standard of living for all Americans. Raising the minimum wage is a wise move, based on solid economic policy and common sense.

I urge our colleagues to support raising the minimum wage to \$5.15 an hour over the next 2 years. Millions of hard working Americans who deserve better economic opportunities will appreciate our leadership.

## SALUTE TO DON NICOLAI, CHEVRON USA AND OLYMPIC HIGH SCHOOL

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. MILLER of California. Mr. Speaker, today I rise to salute the contributions of

Chevron USA and particularly their dedicated employee Don Nicolai, manager of business products and services, to Olympic High School in Concord, CA.

Mr. Nicolai first became involved with Olympic High School when he served as "principal for a day" in 1994 through a local schools and business partnership initiative. That service for a day turned into much, much more, prompting the Olympic staff and students to vote to rename their guest principal "hero of the year." The expanse of Mr. Nicolai's contributions includes a donated van for transporting students, numerous pieces of equipment and furniture, work experience and summer employment opportunities for Olympic students and sponsorship of ongoing employability skills training seminars. Additionally, Mr. Nicolai has made it possible for several other Chevron employees to be present in the classrooms, working directly with students to share their professional expertise and personal talents.

Don Nicolai and Chevron USA have formed a substantive, long-term partnership with Olympic High School that goes far beyond the rhetoric of school-business partnerships or school-to-work transition. They see the value in a well-prepared work force and recognize that changing the social and economic conditions that plague our communities today must be addressed by individuals and businesses which can lend a helping hand.

I am pleased to rise today to recognize Mr. Don Nicolai, and I am confident that my colleagues join me in this tribute.

#### IN TRIBUTE TO DAVID LEON FORD

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. DINGELL. Mr. Speaker, 33 Americans were taken from us far too early in the plane that crashed April 3 near Dubrovnik. This morning, we paid tribute to our good friend, Secretary Ron Brown. At this time, I want to commemorate one of those brave souls traveling with the Secretary, Mr. David L. Ford.

David Ford was one of 12 American business executives accompanying Secretary Brown on a mission with the most noble goal of helping the people of Bosnia and Croatia to rebuild their war-ravaged countries. An executive with Guardian Industries, headquartered in Michigan, David was to donate 23 metric tons of flat glass to Sarajevo, enough to produce about 8,000 windows for use in rebuilding the Bosnia capital. After the trade mission ended in tragedy, the glass was delivered to Sarajevo as planned and donated to the people by the U.S. Embassy.

David Ford's career at Guardian began in 1971, and he spent time at its facilities around the country, including several years at the Guardian plant in Carleton, MI, in my congressional district. He helped lead his company's expansion into the European market, and at the time he was taken from us he headed Guardian's European operations.

We will remember David Ford as a successful businessman, but more importantly, his wife and two children will remember him as a loving husband and devoted father. He was a deeply religious man, who before his passing

was able to provide some desperately needed relief to the people of Sarajevo. There, his final effort will be honored by a plaque.

I know that my colleagues join me in sending our thoughts and prayers to his family.

#### TRIBUTE TO RAKI NELSON

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. TOWNS. Mr. Speaker, I am pleased to acknowledge Raki Nelson, a young man who is destined to achieve greatness. Raki is the 1996 Watkins Award Winner, and has been honored as the premier African-American student-athlete in the country.

Raki has committed to attend Notre Dame University as a wide receiver on a full football scholarship. He has achieved recognition for not only his dazzling display on the football field, but his contributions to his community. As the recipient of the Watkins Award, he is being honored for exemplifying leadership. Franklin Watkins was one of the founding fathers of the National Alliance of African-American Athletes. The alliance lists a host of professional athletes who support the organization's endeavors, including Reggie White, Green Bay Packers; Charlie Ward, New York Knicks; and Royce Clayton of the St. Louis Cardinals.

Raki's sterling career as a wide receiver ended with 185 catches for 34 touchdowns which generated 3,132 total yards. However, the hallmark of his efforts was his community action poster. He and a fellow team member distributed and autographed posters for grade school and midget football programs throughout his home State of Pennsylvania. I am pleased to recognize one of college football's future stars, and a shining light in his own community.

#### UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA 100TH ANNIVERSARY DINNER-DANCE

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. PALLONE. Mr. Speaker, on Saturday, April 20, 1996, at the Hyatt Regency in New Brunswick, NY, the United Brotherhood of Carpenters and Joiners of America, Local No. 65, of Perth Amboy, NJ, will hold its 100th anniversary dinner-dance.

It is a great honor for me to join the members of Local No. 65 for this momentous occasion. The Carpenters and Joiners have consistently been a strong supporter and a tireless fighter, not only for the needs of their own members, but for the American worker in general. In a time when labor unions are being attacked and the gains that organized labor has made over the past century are under constant threat, I have stood up to defend the livable wages and good working conditions that have contributed to the creation of the great American middle class.

Mr. Speaker, this 100th anniversary is a great occasion for us all to remember the im-

portant contributions that labor unions have made and continue to make to improve the quality of life at home and abroad.

#### A SALUTE TO CHARLES ALFRED ANDERSON, TRAINER OF TUSKEGEE AIRMEN

HON. GLEN BROWDER

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. BROWDER. Mr. Speaker, Members of the House will be saddened to know that Charles Alfred Anderson, who trained the Army's first black fliers in Alabama and formed the famed Tuskegee Airmen during World War II, has died. He was 89.

Mr. Anderson was a self-taught pilot who served as the chief instructor of Tuskegee University's pilot training program from 1938 through 1945. To thousands of fliers, he was known affectionately as "Chief."

Members may recall "The Tuskegee Airmen," an HBO movie last year, which told the story of the 332d Fighter Group and its exploits over North Africa, Sicily, and Europe. Those African-American flyers destroyed 260 enemy planes, damaged an additional 148, and sank a Nazi destroyer. No U.S. bomber under the protection of the Tuskegee airmen was ever shot down.

The roster of fliers who trained under "Chief" Anderson includes Gen. Daniel "Chappie" James, the Nation's first four-star black general; Coleman Young, who became mayor of Detroit; and William Coleman, Transportation Secretary under President Gerald Ford.

Mr. Anderson was an aviation pioneer, a teacher, and a great American. I wish to extend my condolences and deep sympathy to his two sons, Alfred Forsythe Anderson of Seattle and Charles A. Anderson, Jr. of Tuskegee, and to his three grandchildren and one great-grandchild.

The Opelika-Auburn News published a wonderful account of Mr. Anderson's career and his exploits in the early days of flying. This salute to the father of black aviation was written by men who knew "Chief" well. I am attaching the article for publication in the CONGRESSIONAL RECORD.

An equally impressive article was published in the Tuskegee News and that is included for publication also.

[From the Opelika-Auburn News, Apr. 17, 1996]

#### FAMED TUSKEGEE AIRMAN DIES

(By Vascar Harris and Roosevelt J. Lewis, Jr.)

TUSKEGEE.—Charles Alfred "Chief" Anderson, a self-taught pilot who trained the military's first black flyers and formed the famed Tuskegee Airmen, died Saturday at age 89 after a lengthy battle with cancer.

Anderson was born to Janie and Iverson Anderson of Bryn Mawr, Pa., and was a 56-year resident of Tuskegee Institute.

"Chief" was an inductee of the Alabama Aviation Hall of Fame (1991), The International Order of the Gathering of Eagles (1990), winner of the famous Brewer Trophy (1985), and held other aviation awards. An honorary doctorate of science was conferred by Tuskegee University in 1988.

His first love was teaching new students to fly, and he amassed more than 52,000 flying hours in his lifetime.

He is best remembered as the chief flight instructor and mentor of the famed "Tuskegee Airmen" of World War II. His 40-minute flight with First Lady Eleanor Roosevelt during her Tuskegee visit in 1941, was the catalyst that led to the training of the first African-American military pilots, the "Tuskegee Experiment."

He also flew Vice President Henry Wallace from Tuskegee to Atlanta during that period.

As a boy of 6, "Chief" was fascinated with the idea of airplanes and knew he had to fly. At 8, he ran away from home looking for airplanes rumored to be barnstorming in the area, he had to have a ride. As a teen-ager, no one would give him a ride because of racism.

At 22, he borrowed \$2,500 from friends and relatives, bought a used airplane and taught himself to fly. By 1920, he had learned so well he received a private license and in 1932, an Airline Transport Rating (#7638), the equivalent of the Ph.D. in the act of science of flying an airplane.

In 1932, he would wed his childhood sweetheart, Gertrude Elizabeth Nelson, who died in 1995.

That same year, with a friend and flying partner, Dr. Albert Forsythe, an Atlantic City, NJ surgeon, he became known for long distance flying. East coast-West coast and back to the East coast. They also flew the first overseas flight by Negroes to Montreal, Canada, where Forsythe had studied medicine.

In preparation for a Pan American Goodwill Tour in 1934, they brought a Lambert Moncoupe airplane in St. Louis, Mo., where they met Charles Lindbergh. Lindbergh also bought an aircraft. Separated by one serial number, it hangs in the Lambert St. Louis airport today. Linbergh discouraged their plan to fly.

"Chief" and Forsythe continued to Tuskegee, where the aircraft was christened the "Spirit of Booker T. Washington." He and Forsythe made the first land plane flight from Miami to Nassau in 1934.

They island hopped throughout the Caribbean, to the Northeastern tip of South America. They overflew the Venezuelan straits and landed in Trinidad as national heroes. "Chief," at the age of 86, recreated the trip 59 years later, as his birthday present to himself. He was accompanied in his aircraft by Roscoe Draper, lifelong friend and Tuskegee Airmen instructor, and Dr. and Mrs. Lawrence Koons.

With his credentials as a Certified Flight Instructor and Airline Transport rated pilot, "Chief" touched thousands of the nation's military and civilian pilots, such as Gen. B.O. Davis Jr.; Gen. Daniel "Chappie" James; Col. Herbert Carter, and other Tuskegee Airmen during the Tuskegee Experiment.

"Chief" gave countless free airplane rides to the youth of the world, and was a founding member of the NAI, Black Wings in Aviation; the Tuskegee Chapter bears his name. For 22 years, youth from 16-19 have received intensive ground and flight training during the last two weeks in July at the NAI Summer Flight Academy, in order to prepare them for pilot ratings.

Many of his students, such as Capt. Raymond Dothard, U.S. Air, and president Mandella's U.S. pilot; Southeast Asian standouts such as Lt. Col. Robert V. Western, (Bob Mig Sweep); Judge John D. Allen, F-4 Flight Commander, Columbus, Ga; Col. James Otis Johnson, USAF, and many others, have continued in the footsteps of "Chief."

He also soloed the late Capt. "Pete" Peterson of the USAF Thunderbirds Flight Demonstration Team.

At 84, Chief turned over the reins of his beloved Moton Field training site airport to Col. Roosevelt J. Lewis Jr., USAF, another aviation protege, who flew his aircraft to Trinidad with "Chief" in 1993. They proceeded to facilitate 18 young people into military training needs since 1991.

Two of his last students, Capt. Kevin T. Smith and Lt. Greg West, were the first two blacks in the history of the Alabama Air National Guard. With 385 hours in the F-16, Capt. Smith scored "Top Gun" honors for the USAF in March 1996 Red Flag competition. "Chief" was thrilled.

He is survived by sons, Alfred and Charles; Charles' wife, Peggy; his grandchildren, Vincent, Christina and Marina; his great-granddaughter Krystal; his nieces and nephews, in-laws, and his dog, "Stinky."

[From the Tuskegee News, Apr. 1996]

PIONEER AVIATOR "CHIEF" ANDERSON DIES AT AGE 89

C. Alfred "Chief" Anderson, one of America's last aviation pioneers, died Saturday morning, April 13, 1996, at his Tuskegee home after a lengthy bout with cancer. He was 89.

Born to Janie and Iverson Anderson of Bryn Mawr PA, and a 56-year resident of Tuskegee, "Chief" Anderson was an inductee of the Alabama Aviation Hall of Fame (1991), the International Order of the Gathering of Eagles (1990), and winner of the famous Brewer Trophy (1985).

He held many other aviation awards. An Honorary Doctorate of Science was conferred by Tuskegee University in 1988. His first love always was teaching students to fly. He amassed over 52,000 flying hours.

Universally known as "Chief," he is best remembered as the Chief Flight Instructor and mentor of the famed "Tuskegee Airmen" of WWII.

His 40-minute flight with First Lady Eleanor Roosevelt during her Tuskegee visit in 1941 was the catalyst that led to the training of the first African American military pilots, known as the "Tuskegee Experiment."

He also flew Vice President Henry Wallace from Tuskegee to Atlanta during that period. Chief Anderson's life has been a shining example of integrity, self reliance, adventure and contributions to others.

As a young boy of six, Chief Anderson was fascinated with the idea of airplanes and knew that he had to fly. At eight he ran away from home looking for airplanes rumored to be barnstorming in the areas he had to have a ride.

As a teenager, no one would give him a ride because of racism. At the age of 22, he borrowed \$2,500 from friends and relatives, bought a used airplane and taught himself to fly. By 1929, he had learned so well until he received a private license and in 1932 an Airline Transport Rating, an equivalent of the Ph.D. in the art and science of flying an airplane.

More importantly that year (1932), he married his childhood sweetheart, Gertrude Elizabeth Nelson, who preceded him in death in 1995.

Later in 1932, with a friend and flying partner, Dr. Albert Forsythe, an Atlantic City, N.J. surgeon, he became known for long distance flying; East coast-West coast and back to the East coast.

They also flew the first overseas flight by Negroes to Montreal, Canada, where Dr. Forsythe had studied medicine. In preparation for a Pan American Goodwill tour in 1934 they bought a Lambert Moncoupe airplane in St. Louis, Mo., where they met Charles Lindbergh.

## HONORING THE VICTIMS AND SURVIVORS OF THE OKLAHOMA CITY BOMBING

HON. PAT ROBERTS

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 18, 1996

Mr. ROBERTS. Mr. Speaker, 1 year ago today, the Nation was gripped by the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, OK. We looked on in shock and horror as rescue workers and members of the community tried valiantly to reach the victims still trapped in the rubble—victims who were young and old, victims who were somebody's child or parent, husband or wife, brother or sister, friend or colleague. The magnitude of the tragedy was incomprehensible, the sense of loss overwhelming. We were left, in the words of the Roman philosopher Virgil, with "a grief too much to be told."

As the hours and days passed, our grief continued to mount. Mixed with the grief was a sense of empathy and compassion so strong that it gave birth to courage and hope and a resolute spirit. We watched the faces of thousands of heroes as they reached out with gestures large and small. We knew as a community and as a nation that we would endure.

Some 168 lives were lost that day, including the lives of 7 employees from the Department of Agriculture's Animal and Plant Health Inspection Service [APHIS]. A little over a month after the bombing, we paid tribute to the seven APHIS employees on the floor of this Chamber. Last year in this Chamber I paid tribute to Olen Bloomer, Jim Boles, Peggy Clark, Dick Cummins, Adele Higginbottom, Carole Khalil, and Rheta Long. I spoke of the lives they had led—good, productive, loving lives—and remembered their dedication to their work and their families. Today, we honor their memory and we remember as well the other victims, the survivors, and all the people whose lives were so sadly transformed by the events in Oklahoma.

SALUTE TO THE SIKH NATION

HON. PETER T. KING

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 18, 1996

Mr. KING. Mr. Speaker, I would like to take this opportunity to congratulate the Sikh Nation on Vaisakhi Day, the anniversary of the founding of the Sikh Nation. The 297th birthday of the Sikh Nation occurred this past Saturday, April 13. I salute the Sikh Nation on this occasion.

The Sikh religion is a revealed, monotheistic religion which believes in the equality of all people, including gender equality. Its principles are found in the Guru Granth Sahib, the writings of the 10 Gurus, founders of the Sikh religion. Vaisakhi Day marks the anniversary of the consecration of the Sikh Nation by the tenth and final Guru, Guru Gobind Singh. The Sikh Nation has always tried to live in peace with its neighbors. The Sikhs suffered disproportionate casualties in India's struggle for independence, and Punjab, the Sikh homeland, was the last part of the subcontinent to be subdued by the British.

Sikhs ruled Punjab from 1710 to 1716 and again from 1765 to 1849. When India achieved its independence, the Sikh Nation was one of the three nations that were to receive sovereign power. However, the Sikh leaders of the time chose to take their share with India on the promise of autonomy and respect for Sikh rights—an arrangement similar to America's own association with the people of Puerto Rico. Many of us have spoken about Indian violations of the fundamental human rights of the Sikhs and others. The abduction and "disappearance" of human rights activist Jaswant Singh Khalsa is one prominent example. Despite the solemn promises of Gandhi and Nehru, these violations have been going on since the Union Jack was taken down for the last time in 1947. As a result, no Sikh to this day has ever signed the Indian constitution. If the people of New York, California, or Illinois had not agreed to the U.S. Constitution, would we consider them part of this country?

When India attacked the Golden Temple, the Vatican or Mecca of the Sikh Nation, in 1984, more than 20,000 people were killed. Another 20,000 were killed in simultaneous attacks on 38 other Sikh temples, or Gurdwaras, throughout Punjab, Khalistan.

The Indian regime also has imposed "Presidential rule"—that is, direct rule from the central government which supersedes the elected state government—on Punjab nine times. It is likely that if Punjab, Khalistan makes any move toward freedom after the elections, Presidential rule will be imposed for a tenth time. This is one more way to deny the Sikh Nation the freedom that is its birthright.

On October 7, 1987, the Sikh Nation declared its independence and the sovereign country of Khalistan was born. The Sikh Nation is set unalterably on a course to freedom, although this movement is nonviolent and democratic. Khalistan will secure its freedom the same way that India secured its independence. India cannot keep together an empire which has 18 official languages. Many experts predict that India will unravel within ten years, if not sooner. It is falling apart in front of our eyes, and too many of my colleagues do not even recognize it. The collapse of the Soviet empire shows that you cannot keep an empire of many nations by force permanently.

America is a country founded on the idea of freedom. Let us remember America's mission: in the words of John F. Kennedy, "to secure the survival and success of liberty." We must support freedom around the world because we are the land of the free. The American idea requires us to support freedom for the Sikhs, the Muslims of Kashmir, the Christians of Nagaland, the peoples of Assam and Manipur, and all the oppressed peoples of the Indian subcontinent. Two bills are pending which address this issue. The first, H.R. 1425, would cut off United States development aid to India until basic human rights are respected. The second, House Concurrent Resolution 32, calls for self-determination in Indian-occupied Khalistan. I call upon my colleagues to support these bills. They will help to end India's brutal occupation of Khalistan and insure that when we congratulate the Sikh Nation on its 300th anniversary three years from now, we can offer those congratulations to the leaders of a free and sovereign Khalistan.

# TRIBUTE TO LYNDEN B. MILLER

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mrs. MALONEY. Mr. Speaker, I am especially pleased today to bring to the attention of my colleagues Mrs. Lynden B. Miller, my close personal friend, whose years of behind-the-scenes service to the public is deserving of a very special tribute. We owe a debt of gratitude to Lynden who, as a designer of public gardens, has made an immeasurable contribution of beauty and grace to the great parks and public spaces of New York City.

Lynden Miller's most recent and notable contribution is on view in Bryant Park, on 6 acres located behind the New York Public Library. The city of New York closed Bryant Park in the late 1980's because it had become a haven for crime. In 1992, after 5 years of renovation, and with gardens newly designed by Lynden, Bryant Park was triumphantly reopened. Since its opening, 10,000 visitors walk through the garden each day, rejuvenated by Lynden's pallet of spiraeas, hydrangeas, foxgloves, sedums, phlox, hollyhocks and Japanese anemones set in borders 300 feet long by 12 feet deep. Today, due largely to Lynden's vision of the possibilities for public space, Bryant Park has been transformed into an oasis of peace and elegance in the midst of busy midtown Manhattan.

As the director of the Conservatory Garden in Central Park since 1982, Lynden has again defied expectations. This northeastern most area of Central Park was designed in the 1930's as an Italianate estate garden. Fifty years later, at the time Lynden was appointed to take on its renaissance, it has been abandoned. After 14 years of Lynden's direction of garden design, relentless fundraising and staff supervision, the Conservatory Garden of Central Park has become one of the great jewels in the greatest public park in the world. Under Lynden's guidance, the Conservatory Garden has also remained a community institution serving residents of both upper Fifth Avenue and some of the blighted neighborhoods of East Harlem.

Other public spaces which bear Lynden's signature include the garden at the Central Park Zoo, portions of the New York Botanical Gardens, Wagner Park at Battery Park City, spring and summer annuals at Grand Army Plaza in Brooklyn, gardens at the Cooper-Hewitt Museum, and Herald & Greeley Squares. She is on the Boards of Directors of the United States National Advisory Council for the National Arboretum in Washington, DC, and New York City's Central Park Conservancy and The Parks Council, among others. Lynden also lectures and participates in symposiums in the United States and abroad. She has written several articles and essays on garden design.

Lynden owes her sense of color to her training as an artist. She was a successful studio artist from 1967 until 1982 and has had several gallery shows in London and New York. She was educated at Smith College, the New York Botanical Gardens, Chelsea-Westminster College in London, and the University of Maryland.

I am very proud to pay tribute to Lynden Miller, who for fourteen years has been quietly

dedicated to the well-being and beauty of New York City's most frequented public spaces. I ask my colleagues to join with me today in celebration of Lynden for her many wondrous botanical gifts to the millions of residents and visitors of the city of New York.

## HAVERHILL GIRLS BASKETBALL CHAMPS

HON. PETER G. TORKILDSEN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. TORKILDSEN. Mr. Speaker, this morning I spoke on the floor praising the UMASS Minutemen basketball team—the best college basketball team in the country. Now I rise to applaud and celebrate the best women's basketball team in Massachusetts—from Haverhill High School—on their championship win. These athletes have proven they possess the necessary edge to be champions and rightfully deserve heartfelt congratulations.

On Saturday, March 16, 1996, at the Worcester Centrum in Massachusetts, Haverhill won its third consecutive Division I girls crown with a 74–46 victory over Pittsfield High School. With nine seniors leading the team to victory, UMASS-bound Kelly Van Heisen netted 12 points in the championship game.

Other members of this championship team include Julie Szabo, Jaimie DeSimone, Samantha Good, Sara Jewett, Allison Godfrey, Julie Dirs, Tricia Guertin, Cheryl Leger, Nicole Lacroix, Kelly Van Keisen, Melissa Rowe, Melissa Cerasuolo, Meghan Buckley, Heather Langlois and Caitlin Masys.

Thirteen-year head coach Kevin Woelfel had led his teams to win six State titles in the last 10 years, finished second twice and has a stunning overall record of 275–37, for a winning percentage of 88 percent.

To be a champion athlete requires dedication, perseverance, skill and drive. The young women who make up this winning team possess all of these characteristics and combined them to produce a group of unbeatable champions.

I'm very proud to have such an outstanding team from my district. Success in any field demands a great deal of commitment and hard work, and it's obvious from these championship victories that these women have what it takes to win.

These incredibly talented young women have not only proven themselves to be the best this past season, but to possess a record of six championship wins in the past 10 years reflects the dedication of their coach, Mr. Kevin Woelfel. In the equation for success, effective leadership and guidance are as necessary as talent and commitment from the players.

Once again, congratulations to this winning team, and I wish you nothing but continued success as you continue on to college and throughout the rest of your lives. You are excellent role models for those who follow in your footsteps, and you are outstanding representatives of both your school and the State of Massachusetts.

CONGRATULATIONS TO SIKHS ON  
VAISAAKHI DAY

HON. DAN BURTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. BURTON of Indiana. Mr. Speaker, I rise today to recognize the 297th celebration of Vaisaakhi Day, the birthday of the Sikh nation. On Vaisaakhi Day in 1699, Guru Gobind Singh, the tenth and last Guru of the Sikh religion, formally baptized the Sikhs into nationhood, creating the order of the Khalsa Panth.

The Sikhs are a proud, hard-working, and freedom-loving people. At times they have prospered. At times they have persevered under immense tyranny. They have always conducted themselves according to the axiom uttered by Guru Gobind Singh: "Recognize ye all the human race as one."

Sikhism is a monotheistic, independent religion that should not be confused with Hinduism or Islam. Sikhism dates back to the first of the ten Sikh Gurus, Guru Nanak, born in 1469. He laid the foundation of Sikhism by preaching a simple creed based on three principles: 1.) Pray daily, meditating on God's name; 2.) Work hard and earn an honest living by the sweat of your own brow—live a family life and practice honesty in all dealings, and 3.) Be charitable, sharing the fruits of your labor with others.

Most importantly, the Guru instructed Sikhs to stand up against tyranny wherever it exists. On many occasions, Sikhs have lived up to this high calling, defending Hindus from the aggression of Mogul invaders from Afghanistan. Today Sikhs find themselves in a position of defending themselves from the brutal tyranny of the Indian Government. Over the past ten years, over 100,000 Sikhs have been killed by Indian security forces. Yet Sikhs continue to look to the spirit imbued in them on Vaisaakhi Day in 1699.

Mr. Speaker, the Sikh people remain bloody but unbowed in the face of the campaign of murder, torture and rape being waged by the Indian military. Because of India's bloody rule, the Sikh people are seeking to exercise their right to self determination and declare an independent Sikh homeland. In October 1987, three years after India's bloody assault and massacre at the Golden Temple in Amritsar, every major Sikh political group joined together to issue a declaration of nationhood and independence.

I ask all of my colleagues to support two pieces of legislation: H.R. 1425, "The Human Rights in India Act, which would cut off U.S. aid to India until it stops the human rights abuses; and House Resolutions 32, which would recognize the Sikh people's right to self-determination. America stands for freedom, human rights and democracy, and we should support these ideals.

DEPLORING INDIVIDUALS WHO  
DENY HISTORICAL REALITY OF  
HOLOCAUST AND COMMENDING  
WORK OF U.S. HOLOCAUST ME-  
MORIAL MUSEUM

SPEECH OF

HON. GARY A. FRANKS

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, April 16, 1996*

Mr. FRANKS of Connecticut. I rise in strong support of House Resolution 316, a measure which applauds the work of the U.S. Holocaust Memorial Museum while condemning those people who have the sheer audacity to deny that the Holocaust ever occurred.

Mr. Speaker, the Holocaust Museum serves as a poignant historical reminder of one of the darkest periods of human history—the systematic extermination by Nazi Germany of over six million Jews. This important museum serves as an essential, necessary monument that reminds the world of those people whose lives were savagely ripped away from them in Nazi death camps like Auschwitz while honoring the brave people who fiercely took a stand against the evil Nazi tyrants.

Mr. Speaker, anyone who visits the Holocaust Museum will find it to be an experience both sobering and stirring. I applaud the work of those who are involved with the Holocaust Museum for the job they have done in educating the public and making sure that we will never forget. Truly, anyone who visits our Nation's capital should make pilgrimage to this museum.

Sadly, Mr. Speaker, there are still those who dispute that a Holocaust ever occurred. They maintain, mainly out of hatred and anti-semitism, that there was no genocide and that the notion of the Holocaust is fraudulent. Mr. Speaker, I feel it is our duty as duly-elected officials, as representatives of the American people, to condemn these hateful people for such warped attitudes and make notice that these despicable people, these offensive outcasts of society, remain permanently embedded in the status of pariahs of our communities.

Mr. Speaker, when all is said and done, I pray that we have learned from this sad, sad chapter of human history and that we, the human race, must never forget the necessity of being soldiers on the front lines in the war versus bigotry, hatred, and racism. The Holocaust Museum serves as a concrete record and as a reminder, for us and generations to come, of our obligation in this battle for us and our children. I commend Congressman GILMAN and Congressman LANTOS for their work on this endeavor and I encourage my colleagues to pass this important resolution.

FOR SURVIVORS OF THE  
ARMENIAN GENOCIDE

HON. GEORGE P. RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. RADANOVICH. Mr. Speaker, between 1915 and 1923 the Ottoman Turkish Empire committed a terrible genocide against Armenians. In a systematic and deliberate cam-

paign to eliminate the Armenian people and erase their culture and history of 3,000 years the Turks committed this atrocity. As a result, over one-half million Armenians were massacred. The Armenian genocide is a historical fact, and has been recognized by academicians and historians all over the world. The documentary evidence is irrefutable and beyond question. Unfortunately, the Turkish Government is still persisting in their denial that the genocide took place.

Many survivors of the genocide have made the United States their new home. On April 24, 1996 Armenians all over the world will commemorate the 81st anniversary of the Armenian genocide. Commemoration activities will occur in Washington, D.C., Los Angeles, and in my district in Fresno, California. I have the honor of representing thousands of Armenians in California's 19th Congressional District, and I send my sincerest condolences on this solemn occasion to all members of the Armenian community. As a member of the Congressional Caucus on Armenian Issues, I intend to join my colleagues, Representatives JOHN PORTER and FRANK PALLONE in a special order on April 24, 1996 on the floor of the House of Representatives to commemorate the genocide victims.

I am an original cosponsor of House Concurrent Resolution 47 which calls on Congress to officially recognize the Armenian genocide and encourages the Republic of Turkey to do the same. This legislation would call on the Government of Turkey to turn away from its denials of the Armenian genocide, and instead, to openly acknowledge this tragic chapter in its history. By doing so, the Turkish Government can help to raise the level of trust in a strategic, yet highly unstable, region of the world and facilitate the normalization of relations between Turkey and Armenia. I encourage my colleagues to vote for the passage of H. Con. Res. 47.

Remembering this genocide against the Armenians will help ensure that this type of tragedy is never allowed to occur again.

CONTRACT WITH AMERICA  
ADVANCEMENT ACT OF 1996

SPEECH OF

HON. THOMAS J. BLILEY, JR.

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, March 28, 1996*

Mr. BLILEY. Mr. Speaker, I commend Chairman HYDE of the Judiciary Committee and Senator BOND for their leadership on this bill. We share the goals of reducing regulatory burdens on small business and, in so doing, promoting job creation and economic growth.

S. 942 sweeps across a wide range of Federal regulation. Oversight of the Securities and Exchange Commission [SEC] falls within the jurisdiction of the Commerce. The SEC is charged with the important role of preventing fraud in our securities markets. Though its enforcement of the anti-fraud provisions of the securities laws, the SEC builds confidence of investors and makes our financial markets liquid and transparent.

My analysis of the provisions of S. 942 indicates that the bill will not have any negative effect on the enforcement activities of the SEC. We will not tolerate, and this bill does



not create, any free pass for financial fraud. Specifically, Section 323(b)(4) of the bill expressly excludes "violations involving wilful or criminal conduct" from the small business enforcement variance. In the context of the Federal securities laws, I understand "wilful" to have the longstanding judicial construction as expressed in, for example, *Tager v. Securities and Exchange Commission*, 344 F.2d 5, 7 (2d. Cir. 1965).

In addition, it is my understanding that the enforcement procedures followed by the SEC under current law, specifically the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, satisfy the requirements of Section 323, and said section does not impose requirements beyond those of the Remedies Act.

In connection with the provisions of S. 942 dealing with attorneys fees, the bill excludes awards of attorneys fees in connection with wilful violations. In the context of the Federal securities laws, the term "wilful" has the meaning set forth in *Tager*, supra at 7.

Additionally, provisions of S. 942 makes useful changes in what constitutes a demand by the Government. My understanding is that the term "demand" when applied in the context of the Federal securities laws, does not include notices or other communication with the staff or members of the SEC that occur in the context of the "Wells" procedure.

Finally, my understanding of the provisions for Congressional review of major rules, the definition of major rules would not extend to actions for exemptive relief under the securities laws. Such exemptive rules are those that permit regulated entities to engage in transactions that would otherwise be proscribed by statute. It would be perverse to read this deregulatory bill in such a way as to inhibit exemptive relief for regulated persons by the SEC.

#### SOUTH DAKOTA VOICE OF DEMOCRACY WINNER

HON. TIM JOHNSON

OF SOUTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

*Friday, April 19, 1996*

Mr. JOHNSON of South Dakota. Mr. Speaker, Ms. Nicole Sanderson of Wagner, SD, was recently selected as a State winner in the Voice of Democracy broadcast script writing contest conducted each year by the Veterans of Foreign Wars of the United States and its ladies auxiliary. The contest theme for this year was answering America's call, and of the more than 116,000 secondary school students who participated in this year's contest, Nicole was also named a winner at the national level. Mr. Speaker, I ask that Nicole's winning script be reprinted in the CONGRESSIONAL RECORD. She deserves to be commended for her exceptional efforts in writing this script and participating in this contest. Nicole's insights and enthusiasm will serve as a model to others her age.

#### ANSWERING AMERICA'S CALL

(By Nicole Sanderson, Post 7319, WAGNER, SD)

Alexander Hamilton once said, "The sacred rights of mankind are not to be rummaged for, among old parchments, or musty records. They are written, as with a sunbeam

in the whole volume of human nature, by the hand of the divinity itself; and can never be erased or obscured by mortal power." Not in the course of human events would one discover a more substantial remark or a clearer understanding of the prospect of the American dream than that of Alexander Hamilton's. Hamilton truly believed that the so-called "American experiment" would succeed and over generations would prove to be a powerful existence. Hamilton realized that to simply live under the wrath of tyranny with no objections would be surrendering the very rights he deemed necessary, but to fight for the rule of one's own hand was justification for every rebellion in the cause for justice and freedom.

In the two hundred years since our forefathers signed the Constitution, America has gained the respect of those very nations who believed we were a failing idea from the start. She has grown to be the strong, influential nation Hamilton and many others had foreseen, regarding with utmost respect those ideas we were founded on. Today, however, America is lacking the respect from her own citizens that we once so eagerly prided ourselves on.

Many Americans have turned to the idea of hatred, deceit, and revenge. But why? Has the American dream failed them or have they simply failed the American dream? With crime rate on a drastic increase and disregard for the law a common occurrence, Americans have lost the sense of direction that the founders of this great country so generously provided and intended for us. We must not sit back and watch as the destruction of our country continues, but we must speak out to those who are disrespectful to the constitution and to the American people. We must prove to them that America is not the villain they see, but merely one modest voice in the choir of heroes.

When Abraham Lincoln was assassinated, that was not the dream intended for our country, and when the innocent people of the Oklahoma City bombing were so brutally victimized, that was not the dream America would one day prosper from either, but merely the blatant disrespect for human life and the rights of all who care for this country. Once again, I ask why? America is about freedom and responsibility. America is the dream of unity and everlasting respect. Why, then, are there demonstrations burning the very flag in which we should so gratefully salute, burning the very idea our forefathers worked, fought and died for. The authors of the Constitution did not attempt to establish a government and a symbol for all to honor so that one day their descendants could flagrantly burn and degrade their accomplishments. We must encourage those voices that they did not choose America, but America chose them, and now they must return her kind favor and participate in the Government which tries so very hard to guarantee their freedom, their responsibility, and their prosperity.

Never have I been so disappointed with my fellow citizens as when I see such horrendous disregard for human rights. Does not the Declaration of Independence directly state that "all men are created equal, that they are endowed by their creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness?"

Then why are people committing such acts of violence against one another, so unthinkable to our choice of freedom, hindering every possibility of justice among free, self-governed men? As a young citizen of this remarkable country, I feel it not only my privilege, but also my duty to protect and honor her at all times and to create within her the direction our fathers intended.

We must not blind ourselves to the needs of our nation, but we must stand up and

fight to regain the pride and honesty we once knew. America is calling us, pleading for us to help her. As the future of this great nation, we must not only believe in the ideas of unity among the people, freedom and equality for all men, and the pleasure and possibilities of good government, but we must also act on them. Answering her calls will not be easy, but it will be necessary to fight the hatred that is growing stronger every day.

This nation calls to us from the graves of those long since gone, from the patriotic memorials of those we honor, and from the very idea we hold strong in our hearts, the idea of freedom, asking us kindly to remember those who gave so graciously to this country their lives and their freedom so that we might have ours. We must never forget how fortunate we are to be Americans and how wonderful it is to be free. America is calling out to you. Are you listening?

#### CONFERENCE REPORT ON S. 735, ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996

SPEECH OF

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Thursday, April 18, 1996*

Mr. STOKES. Mr. Speaker, I rise in strong opposition to the conference report for the Antiterrorism and Effective Death Penalty Act. As the recent despicable acts of terrorism in Oklahoma City clearly demonstrate, America must do all that it can to put an end to acts of terror. Unfortunately, this legislation has failed to achieve an appropriate balance between our desire to take action against terrorist acts and our desire to protect the fundamental civil rights of all Americans.

In my view, the attacks on habeas corpus included in this legislation that purports to address the terrorist threat is so objectionable I must oppose this bill. I do support my Democratic colleagues' carefully crafted genuine antiterrorism bill, that is unencumbered by the provisions hostile to our constitutional rights that have been included in S. 735.

Throughout my career, I have believed in and fought for the protection of all Americans' fundamental rights under habeas corpus. As Chief Justice Salmon P. Chase described it in *ex parte Yerger* U.S. (1868), habeas corpus is the most important human right in the Constitution and the best and only sufficient defense of personal freedom. As a nation, we cannot afford to compromise the cherished habeas corpus protections guaranteed each of us in the U.S. Constitution.

Mr. Speaker, the arbitrary 1-year limitation on the filing of general Federal habeas corpus appeals after all State remedies have been exhausted entirely fails to address real problems inherent in the current capital punishment system. For example, S. 735 does virtually nothing to deal with the lack of competent counsel at the trial level and on direct appeal which constitutes the primary basis for the delay of many appeals.

It is also no secret that I am opposed to the death penalty. S. 735, among other things, would greatly expand the reach of the Federal death penalty which I believe is overly harsh—particularly because it fails to address the economic and social basis of crime in our most



troubled communities. Furthermore, when closely examined, the sentencing history of the death penalty has clearly been arbitrary, inconsistent, and racially biased. Regardless of whether this double standard is intentional or not, the result clearly establishes that there continues to be an impermissible use of race as a key factor in determining imposition of

the death penalty. This measure fails to include any provisions to end the repugnant practice of the disproportionate application of the death penalty on minorities.

Mr. Speaker, I share the national outrage expressed against terrorism. America should and must act swiftly and decisively to end these despicable acts. We must not, however,

under the guise of fighting acts of terror, sacrifice our constitutional rights. As legislators, we must judiciously seek a balanced strategy to diminish the dangers of terrorism and injustice. I urge my colleagues to therefore vote down this measure; preserve our ability to enforce the Bill of Rights.