turned record surpluses into record deficits and that has floated us down a river of red ink, we have the bill that is before us. It gives no real help to our debt and deficits, and it targets programs that need help the most.

By cutting less than one half of one percent of the projected $14.3 trillion in federal spending over the next five years, we are not returning to fiscal sanity, as supporters of this bill claim.

And despite what some on the other side of the aisle might think, slashing programs that help low-income Americans and our seniors stay healthy and help our young go to college is not sound policy. A $12.7 billion cut to student loans will not help educate Americans. A $6.9 billion cut in Medicaid and the State Children’s Health Insurance Program will not keep low-income Americans healthy. And a $6.4 billion cut in Medicare is not beneficial to the well-being of our nation’s seniors.

Instead, this bill shows a lack of compassion and a lack of vision for the long-term health and productivity of our Nation. It would be more beneficial if we returned to the sound, balanced-budget budgetation that guided us through the prosperous ‘90s.

I urge my colleagues to vote “no” on this uncompassionate bill and to instead focus on a revision of our economic direction.

CONFERENCE REPORT ON H.R. 3199, USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT OF 2005

SPEECH OF
HON. JEFF FLAKE
OF ARIZONA
IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 14, 2005

Mr. FLAKE. Madam Speaker, I would like to comment on section 507 of today’s PATRIOT Act conference report, which authorizes the U.S. Attorney General to certify whether a state has qualified for the expedited habeas corpus procedures in chapter 154 of title 28 of the U.S. Code. Section 507 is of particular importance to my home State of Arizona, which for many years has satisfied the post-conviction counsel requirements of chapter 154, but which has been unfairly denied the procedural benefits of that chapter by the Ninth Circuit.

Section 507 is similar to a section of the Streamlined Procedures Act, a general habeas corpus reform bill that was introduced earlier this year in the House by Mr. LUNGREN of California, and in the Senate by my Home state colleague, Senator Kyl. Section 507 is also virtually identical to an amendment that I filed and sought to offer last month to H.R. 1751, the Secure Access to Justice and Court Security Act of 2005. My amendment had been made in order by the Rules Committee and was listed in House Report 109-279. At the last minute, however, various political objections were made to my amendment and Chairman SENSENBRENNER asked me not to offer it to H.R. 1751. The Chairman assured me that he would accommodate me with regard to this matter on some other legislation. I am pleased to report that he was able to do so on the PATRIOT Act conference report, and that my amendment to that bill will be enacted into law sooner than H.R. 1751.

My amendment is designed to give States a real incentive to provide quality counsel to death row prisoners in State habeas proceedings. It is also designed to keep a bargain that the Federal Government made with the States in 1996. The amendment assigns the U.S. Attorney General to evaluate whether a State is providing qualified counsel to capital defendants, under the condition for receiving the benefits of the expedited habeas procedures of chapter 154 of the U.S. Code. The amendment thus gives States a real chance to qualify for chapter 154 treatment.

By ensuring that States will receive streamlined treatment in Federal court if they provide quality counsel in State habeas court, the amendment will reduce delays in death penalty appeals.

This is a goal that everyone, left and right, should agree with. Even those who passionately oppose the death penalty should want the system to be fair to victims. No one should support a system that routinely forces the family of a murder victim to endure 10, 15, or even 20 years of appeals. Yet in too many cases, that is exactly how our current system works even in cases where there is no real dispute over guilt. In the State of Arizona, over two-thirds of death row prisoners have finished all of their State appeals and are engaged in Federal habeas litigation. Most of these cases have now been in the Federal courts for five years or more. Ten cases have been in Federal courts for more than 15 years. And this is all on top of the time that it takes to complete all State appeals, which usually requires 5 or 6 years.

Under the current system, victims’ families are forced to endure an awful event throughout the progress of this lengthy litigation. During that process, they must wonder if they will be forced to appear at another hearing, if there will be another trial, or if the person who killed their son or daughter will even be released. They literally are denied closure, the right to forget about the person who killed their loved one and to move on with their lives. And this frequently goes on for more than 15 years. A system that treats crime victims this way is intolerable.

The decision of the Spears three-judge panel, I offer today is particularly important to my home State of Arizona. Arizona is both a State that has experienced extreme delays in Federal-court review of capital cases, and a State that has acted to provide quality counsel in state habeas proceedings in response to the offer that the Congress made in 1996. The habeas reform of that year created chapter 154 of title 28. This chapter told the States that, if they provide qualified state habeas counsel to capital defendants, the Federal government would streamline Federal-court review of capital cases, and a State that has complied with chapter 154. The court concluded that Arizona’s system sets mandatory and binding competency standards for counsel, provides reasonable compensation to counsel, pays reasonable litigation expenses, and ensures each counsel to all capital defendants. The court furthered that it is plain to find that Arizona could not receive the benefits of chapter 154 because of a delay in appointing counsel. Defense lawyers initially had boycotted this system, and in some cases this resulted in delays. The defendant in Spears did not even allege that this delay prejudiced his case. But the Ninth Circuit found this delay a sufficient excuse to deny Arizona the benefits of chapter 154, even though Arizona’s system complied with that chapter.

The decision of the Spears three-judge panel is troubling. The chapter 154 qualification decision is supposed to be a one-time decision. Once a State’s system qualifies, the issue is not supposed to be litigated again on a case-by-case basis. Even more disturbing than the three-judge panel’s decision, however, is a dissent from the full court’s refusal to rehear the case that was signed by 11 active judges of the Ninth Circuit. These 11 judges stated that the panel’s decision that Arizona’s system qualifies for chapter 154 is merely dicta and not binding in future cases. And the Arizona system qualified for chapter 154 status was squarely before the three-judge panel and was decided by that panel, this gang of 11 judges declared that they would not follow that decision in future cases. As they said: “To put it bluntly, neither we, nor any other court is bound by the panel’s advisory pronouncements in this case.” Spears, 283 F.3d at 998 (Reinhart, J., dissenting from denial of rehearing).

A statement by 11 judges that they will refuse to follow their own court’s final decision itself is extraordinary, as several other judges noted in Spears a concurrence to the denial of rehearing. If a court refuses to abide by its own precedents, litigants can have no way of knowing what the law is and how they should
arrange their affairs. Such behavior does substantial damage to the rule of law.

What such behavior also demonstrates is a refusal to enforce the laws enacted by Congress. It shows that chapter 154 will remain a dead letter so long as the obligation to enforce it remains in the hands of courts such as the Ninth Circuit. It is clear that, if any two of the 11 judges who joined the Spears rehearing dissent are assigned to a future Arizona chapter 154 case, they will not feel obligated to follow Spears and the State will be relitigating the issue of its status from scratch. Indeed, portions of the dissent argue that Arizona’s “statutory scheme did not comply with Chapter 154’s requirements.”

Moreover, however, some courts construe 2265(a)(2) to mean that while the chapter 154 system thereafter governs Federal habeas applications that have already been filed, the actual procedural benefits of that chapter—especially the claims limitations and amendment limits—apply on a go-forward basis, i.e., only to claims or amendments filed after the date of enactment of this law. Thus, when I added a few other provisions to the amendment, I also inserted subsection (g), which is the same as subsection (d) of section 507. This subsection by explicitly applying section 507 and the changes that it makes to all qualified pending Federal habeas cases, should make clear that when Congress says that it wants the new law to apply retroactively, it means that the law will apply retroactively—that it will govern new claims as if it had been in effect as of the effective date of the chapter 154 certification.

Any non-retroactive application of chapter 154 would be fundamentally unfair to States such as Arizona, which has been providing post-conviction counsel to State prisoners for nearly a decade but has been inappropriately denied the benefits of chapter 154 for some cases that already have progressed to Federal habeas. In the Spears case, for example, the Ninth Circuit even found that Arizona’s counsel system—a system that the court nevertheless came up with an excuse for refusing to apply chapter 154 to that case. If the Attorney General and the DC Circuit conclude that Arizona met chapter 154 standards prior to Spears’s receipt of counsel, as I am confident they will, Arizona should receive all of the benefits of chapter 154 for that case and subsequent cases, as if chapter 154 had governed the Federal petition as of the day it had been filed (as it should have). Chapter 154, for example, does not allow cases to be remanded to State court to exhaust new claims (a considerable source of delay on Federal habeas), and it places very sharp limits on amendment to petitions. Arizona should not be forced to litigate claims in Spears’s petition that were defaulted, that were unexhausted and sent back to State court, or that were interposed but not addressed by State courts when Spears first filed the petition (unless those claims meet the narrow exceptions in subsection 2264(a)). Nor should the State be forced to litigate claims that were added to the petition in amendments that do not satisfy chapter 154’s limits on amendments.

Applying chapter 154 retroactively may seem harsh, but it is important to recall that any prisoner whose Federal petition will be governed by 154 necessarily received counsel in State post-conviction proceedings. Unlike the troops in the service of our country, the habeas petitioner, who may not have been aware of State procedural rules or of all the potential legal claims available to him, a chapter 154 habeas petitioner will have no excuse for not making sure that all of his claims were addressed on the merits in State court. (Or rather, any excuse will be limited to those authorized in 28 U.S.C. 2264(a),) I believe that, given the resources Arizona has devoted to providing post-conviction counsel, the State should easily qualify for chapter 154. The Ninth Circuit has treated Arizona unfairly by denying it any retroactivity in its chapter 154 status. If the U.S. Attorney General and DC Circuit agree that Arizona should have been 154-certified when Spears filed his Federal petition, Arizona should be placed in the same position that it would be in today had the Spears case proceeded under chapter 154 from the beginning.

My amendment also extends the time for a district court to rule on a petition from 6 months to 15 months. I have been informed that the U.S. Attorney General Act originally authorized 6 months as the limit as an initial briefing position. The intention had to be to eventually extend this to 12 months, but because of the politics of the enactment of AEDPA, it was not possible to change this deadline later in the legislative process. My amendment is an effort to give the original authors’ intention, giving the district courts 15 months, in recognition of their burdensome caseloads and the fact that they do the real work in Federal habeas cases—they are the courts that hold hearings, if necessary, to identify the truth of a case. This same change was included in subsection (e) of section 507.

Personal Explanation

HON. LOUISE MCINTOSH SLAUGHTER
OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, December 30, 2005

Ms. SLAUGHTER. Mr. Speaker, I was unavoidably detained and missed rollcall votes Nos. 664 and 671. Had I been present, I would have voted “aye.” Mr. Speaker, I ask unanimous consent that my statement appear in the permanent RECORD immediately following these votes.

H. Res. 2520, on Passage, rollcall No. 664, “aye.”
H. Con. Res. 275, rollcall No. 671, “aye.”

Conference Report on H.R. 2863, Department of Defense Appropriations Act, 2006

SPEECH OF

HON. JOSEPH CROWLEY
OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Sunday, December 18, 2005

Mr. CROWLEY. Mr. Speaker, shame! That is all I can say—both on the way the Republican leadership has governed this country this year—and on how they are using the troops as a political tool to provide huge taxpayer benefits to the oil and gas industry.

Over 2,100 Americans killed in Iraq, and the Republican leadership waits until the last night of Congress—3 months after we needed to fund the military—to pass the spending bill for our troops.

This is called a “must pass” bill, as it is one Congress MUST pass as if we don’t, the military will literally run out of money and not be