

108TH CONGRESS }
2d Session

HOUSE OF REPRESENTATIVES

{ REPT. 108-443
Part 1

TO AMEND TITLE 10, UNITED STATES CODE, AND THE HOMELAND SECURITY ACT OF 2002 TO IMPROVE THE ABILITY OF THE DEPARTMENT OF DEFENSE TO ESTABLISH AND MAINTAIN SENIOR RESERVE OFFICER TRAINING CORPS UNITS AT INSTITUTIONS OF HIGHER EDUCATION, TO IMPROVE THE ABILITY OF STUDENTS TO PARTICIPATE IN SENIOR ROTC PROGRAMS, AND TO ENSURE THAT INSTITUTIONS OF HIGHER EDUCATION PROVIDE MILITARY RECRUITERS ENTRY TO CAMPUSES AND ACCESS TO STUDENTS THAT IS AT LEAST EQUAL IN QUALITY AND SCOPE TO THAT PROVIDED TO ANY OTHER EMPLOYER

R E P O R T

OF THE

COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES

ON

H.R. 3966

together with
ADDITIONAL VIEWS



MARCH 23, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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WASHINGTON : 2004

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ONE HUNDRED EIGHTH CONGRESS

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ROTC AND MILITARY RECRUITER EQUAL ACCESS TO
CAMPUS ACT OF 2004

MARCH 23, 2004.—Committed to the Committee of the Whole House on the State
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Mr. HUNTER, from the Committee on Armed Services,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3966]

The Committee on Armed Services, to whom was referred the bill (H.R. 3966) to amend title 10, United States Code, and the Homeland Security Act of 2002 to improve the ability of the Department of Defense to establish and maintain Senior Reserve Officer Training Corps units at institutions of higher education, to improve the ability of students to participate in Senior ROTC programs, and to ensure that institutions of higher education provide military recruiters entry to campuses and access to students that is at least equal in quality and scope to that provided to any other employer, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “ROTC and Military Recruiter Equal Access to Campus Act of 2004”.

SEC. 2. FINDINGS.

Congress makes the following findings:

- (1) The Reserve Officers Training Corps (ROTC) program is the most common path for undergraduates to become United States military officers.
- (2) The inclusion of both public and private undergraduate institutions in the ROTC program insures a more racially, ethnically, and socially diverse pool for leadership in the higher ranks of the Armed Forces.

(3) The majority of both minority officers and female officers in the Armed Forces are acquired through undergraduate ROTC programs.

(4) The presence of ROTC programs on college campuses benefits even those students who are not enrolled by making them aware of the presence and role of the United States military.

(5) Land-grant colleges received land from the United States on the condition that they offer some military instruction in addition to their regular curriculum, forming the basis for the Nation's tradition of college and university acceptance of responsibility to contribute to the Nation's readiness.

(6) The Armed Forces face a constant challenge in recruiting top-quality personnel that ROTC programs are ideally suited to meet.

(7) Military recruiters should have access to college campuses and to college students equal in quality and scope to that provided all other employers.

(8) If any college or university discriminates against ROTC programs or military recruiters, then under current law that college or university becomes ineligible for certain Federal taxpayer support, especially funding for many military and defense programs.

(9) The personnel and programs of the Department of Homeland Security and the Department of Energy are mutually dependent upon a high caliber of well-educated, professional leadership in the Armed Forces in order to protect the people and territory of the United States.

(10) In order to more fully promote the ability of the Nation's Armed Forces to recruit on college campuses and to facilitate the ability of students to participate in ROTC programs on campus, the laws to prevent discrimination against ROTC and military recruiters should be updated.

SEC. 3. CERTIFICATION OF COMPLIANCE WITH ROTC ACCESS PROVISIONS.

Subsection (a) of section 983 of title 10, United States Code, is amended—

(1) by inserting “(1)” before “No funds”;

(2) by striking “prevents—” and inserting “prevents, either (or both) of the following.”;

(3) by striking “(1) the” and inserting “(A) The”;

(4) by striking “; or” and inserting a period;

(5) by striking “(2) a” and inserting “(B) A”;

(6) by adding at the end the following:

“(2)(A) Not later than 180 days after the date of the enactment of the ROTC and Military Recruiter Equal Access to Campus Act of 2004 and annually thereafter, the Secretary of Defense shall request from each institution of higher education that has students participating in a Senior Reserve Officer Training Corps program during the then-current academic year of that institution a certification that such institution, during the next academic year of the institution, will—

“(i) permit the Secretary of each military department to maintain a unit of the Senior Officer Training Corps (in accordance with subsection (a)) at that institution (or any subelement of that institution), should such Secretary elect to maintain such a unit; and

“(ii) if the Secretary of the military department concerned elects not to establish or maintain a unit of the Senior Reserve Officer Training Corps at that institution, permit a student of that institution (or any subelement of that institution) to enroll in a unit of the Senior Reserve Officer Training Corps at another institution of higher education.

“(B) Any certification under subparagraph (A) shall be made by the president of the institution (or equivalent highest ranking administrative official) and shall be submitted to the Secretary of Defense no later than 90 days after receipt of the request from the Secretary.

“(C) In the case of any institution from which a certification is requested under subparagraph (A), if the Secretary of Defense does not receive a certification in accordance with subparagraph (B), or if the certification does not state that the university will comply with both clauses (i) and (ii) of subparagraph (A) during its next academic year, the Secretary shall make a determination under paragraph (1) as to whether the institution has a policy or practice described in that paragraph.”.

SEC. 4. EQUAL TREATMENT OF MILITARY RECRUITERS WITH OTHER RECRUITERS.

Subsection (b)(1) of section 983 of title 10, United States Code, is amended—

(1) by striking “entry to campuses” and inserting “access to campuses”; and

(2) by inserting before the semicolon at the end the following: “in a manner that is at least equal in quality and scope to the degree of access to campuses and to students that is provided to any other employer”.

SEC. 5. PROHIBITION OF FUNDING FOR POST-SECONDARY SCHOOLS THAT PREVENT ROTC ACCESS OR MILITARY RECRUITING.

(a) COVERED FUNDS.—Subsection (d) of section 983 of title 10, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking “limitation established in subsection (a) applies” and inserting “limitations established in subsections (a) and (b) apply”;

(B) in subparagraph (B), by inserting “for any department or agency for which regular appropriations are made” after “made available”; and

(C) by adding at the end the following new subparagraphs:

“(C) Any funds made available for the Department of Homeland Security.

“(D) Any funds made available for the National Nuclear Security Administration of the Department of Energy.

“(E) Any funds made available for the Department of Transportation.

“(F) Any funds made available for the Central Intelligence Agency.”; and

(2) by striking paragraph (2).

(b) CONFORMING AMENDMENTS.—(1) Subsection (b) of such section is amended by striking “subsection (d)(2)” and inserting “subsection (d)(1)”.

(2) Subsection (e) of such section is amended by inserting “, to the head of each other department and agency the funds of which are subject to the determination,” after “Secretary of Education”.

SEC. 6. EXCLUSION OF AMOUNTS TO COVER INDIVIDUAL PAYMENTS.

(a) CODIFICATION AND EXTENSION OF EXCLUSION.—Subsection (d) of section 983 of title 10, United States Code, as amended by section 5(a), is further amended—

(1) by striking “The” after “(1)” and inserting “Except as provided in paragraph (2), the”; and

(2) by adding at the end the following new paragraph:

“(2) Any Federal funding specified in paragraph (1) that is provided to an institution of higher education, or to an individual, to be available solely for student financial assistance, related administrative costs, or costs associated with attendance, may be used for the purpose for which the funding is provided.”.

(b) CONFORMING AMENDMENTS.—Subsections (a) and (b) of such section are amended by striking “(including a grant of funds to be available for student aid)”.

(c) CONFORMING REPEAL OF CODIFIED PROVISION.—Section 8120 of the Department of Defense Appropriations Act, 2000 (Public Law 106–79; 10 U.S.C. 983 note), is repealed.

SEC. 7. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to funds appropriated for fiscal year 2005 and thereafter.

Amend the title so as to read:

A bill to amend title 10, United States Code, to improve the ability of the Department of Defense to establish and maintain Senior Reserve Officer Training Corps units at institutions of higher education, to improve the ability of students to participate in Senior ROTC programs, and to ensure that institutions of higher education provide military recruiters entry to campuses and access to students that is at least equal in quality and scope to that provided to any other employer.

PURPOSE AND BACKGROUND

The purpose of H.R. 3966, the ROTC and Military Recruiter Equal Access to Campus Act of 2004, is to amend section 983 of title 10, United States Code, the so-called Solomon Law. The bill would improve the ability of the Department of Defense (DOD) to establish and maintain Senior Reserve Officer Training Corps (ROTC) units at institutions of higher education, to improve the ability of students to participate in Senior ROTC programs, and to ensure that institutions of higher education provide military recruiters entry to campuses and access to students that is at least equal in quality and scope to that provided to any other employer.

The committee believes that at no time since World War II, has our Nation’s freedom and security relied more upon our military than now as we engage in the global war on terrorism. Our Nation’s all volunteer armed services have been called upon to serve

and they are performing their mission at the highest standard. The military's ability to perform at this standard can only be maintained with effective and uninhibited recruitment programs.

Successful recruitment relies heavily on the ability of military recruiters to have access to students on the campuses of colleges and universities that is equal to other employers. In addition, students must have the option available, if they so choose, to join the Reserve Officer Training Program at their school or one nearby. H.R. 3966, as amended, helps achieve both of these objectives. The bill is based on a simple principle: colleges and universities that accept federal funding should also be willing to permit military recruiters equal access to students and ROTC scholarship programs.

Congress reasserted this principle in the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337) that denied DOD funds to colleges and universities that prohibited military recruiters' access to campus, to students and to school directory information. The following year, Congress, through the enactment of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106), imposed the loss of DOD funding on institutions of higher learning that had an "anti-ROTC" policy. That same year Congress, in the enactment of the Omnibus Consolidated Appropriations Act, 1997 (Public Law 104-208), added the Departments of Education, Labor, and Health and Human Services to the list of funding sources that could be terminated. Further revisions, enacted as part of the National Defense Authorization Act of 2000 (Public Law 106-65), added Transportation Department funding to the list of covered funds. More recently the Homeland Security Act of 2002 (Public Law 107-296), added funding from the Department of Homeland Security to the list.

H.R. 3966 continues the refinement of the Solomon Law, and addresses some specific issues that have recently arisen. Specifically, H.R. 3966 would:

(1) Require colleges and universities to give military recruiters access to campus and to students that is equal in quality and scope as that provided to any other employer.

(2) Require an annual verification from colleges and universities who already support ROTC that they will continue to do so in the upcoming academic year.

(3) Add two additional defense-related funding sources, the Central Intelligence Agency and the National Nuclear Security Administration of the Department of Energy, to the list of covered funds that potentially could be terminated. It also restores Department of Transportation to the list of funds that might be terminated. These were inadvertently deleted as a result of confirming changes to the Solomon Law generated by the Homeland Security Act of 2002.

LEGISLATIVE HISTORY

H.R. 3966 was introduced on March 12, 2004, and referred to the Committee on Armed Services, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

On March 17, 2004, the Committee on Armed Services held a mark-up session to consider H.R. 3966. The committee adopted the bill with amendments and reported the same favorably by a voice vote.

SECTION-BY-SECTION ANALYSIS

The following is a section-by-section analysis of those sections of H.R. 3966 as amended by the Armed Services Committee.

SECTION 1—SHORT TITLE

This section would establish the short title of the bill as the “ROTC and Military Recruiter Access to Campus Act of 2004.”

SECTION 2—FINDINGS

This section would establish several Congressional findings with regard to the value to the nation and to the military services of the Reserve Officer Training Corps being able to produce qualified officers in sufficient numbers and from diverse social backgrounds for the armed forces. The section would also explicitly establish Congress’ intent that military recruiters should have access to university and college campuses and students that is equal in quality and scope to any other employer.

SECTION 3—CERTIFICATION OF COMPLIANCE WITH ROTC ACCESS PROVISIONS

This section would amend section 983 of title 10, United States Code, the so-called Solomon Law. It would require the Secretary of Defense to annually request from colleges and universities that either host Reserve Officer Training Corps (ROTC) programs, or that allow their students to participate in an ROTC program at another university or college, a certification for the next academic year. That certification would state whether the college or university will allow ROTC to be operated on campus if a military service desires to do so, or if the military services elect not to operate a detachment on campus, whether the college or university will permit its students to participate in an ROTC program at another college or university.

If the certification is not provided, then the Secretary of Defense would be required to determine whether such lack of certification constitutes a violation of section 983 of title 10, United States Code.

Thus, this section would provide a means for the Secretary of Defense to determine in advance whether colleges and universities, with ROTC detachments, or whose students participate in another ROTC detachment, intend in the upcoming academic year to change policy with regard to ROTC access. Such notification facilitates the Department of Defense planning process for ROTC and minimizes the potential for negative impacts on students who, in the midst of an academic year, might otherwise be faced with the effects of a decision by a school or university to change policy with regard to ROTC access.

SECTION 4—EQUAL TREATMENT OF MILITARY RECRUITERS WITH
OTHER RECRUITERS

This section would require colleges and universities to give military recruiters access to campuses and to students that is at least equal in quality and scope as that provided to any other employer.

For the last several years, a growing number of university law schools and colleges of law have treated military recruiters in ways significantly different from the recruiters of other employers, apparently with the objective of making recruiting difficult, or to frustrate its objectives.

A November 2003 decision by the U.S. District Court in the District of New Jersey in the case of *Forum for Academic and Institutional Rights, Inc., et. al. v. Donald Rumsfeld* upheld the constitutionality of the Solomon Law and denied the motion by a group of law schools and others aimed at stopping the enforcement of the Solomon Law. However, the court also determined that the Solomon Law did not give the Department of Defense a basis for asserting, as it had in the Code of Federal Regulations that implemented the Solomon Law, that universities and colleges must give military recruiters the same degree of access to campuses and students that was provided to other employers. This section would address the court's opinion and codify the equal access standard.

SECTION 5—PROHIBITION OF FUNDING FOR POST-SECONDARY SCHOOLS
THAT PREVENT ROTC ACCESS OR MILITARY RECRUITING

This section would add two categories of defense-related funding that would be terminated for violations under the Solomon Law. Those added categories of funds are those made available to the Central Intelligence Agency, and those made available to the National Nuclear Security Administration of the Department of Energy.

The section would also restore the funds made available to the Department of Transportation as being liable for termination for violations of the Solomon Law. Prior to the enactment of the Homeland Security Act of 2002 (Public Law 107–296), funds made available to the entire Department of Transportation were subject to termination for violations of the Solomon Law. Conforming changes to title 10, United States Code, that resulted from enactment of the Homeland Security Act of 2002 substituted the words “Department of Homeland Security” for “Department of Transportation.” The unintended effect of this conforming change was to narrow the scope of funding that might be affected by violations of the Solomon Law.

SECTION 6—EXCLUSION OF AMOUNTS TO COVER INDIVIDUAL
PAYMENTS

This section would incorporate into section 983, title 10, United States Code, the provision of the Department of Defense Appropriations Act, 2000 (Public Law 106–79) that excluded any Federal student aid from funding that might be terminated for violations of the Solomon Law.

EXECUTIVE COMMUNICATION

DEPARTMENT OF DEFENSE,
Washington, DC, March 16, 2004.

Hon. DUNCAN L. HUNTER,
*Chairman, Committee on Armed Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: Our nation's colleges and universities soon will graduate another class of accomplished, talented students seeking rewarding employment. The Department of Defense is proud to offer extraordinary opportunities to deserving students who seek more than a paycheck—they seek the honor of serving their country. Regrettably, some colleges and universities have taken actions to ensure that the Department is placed at a pronounced competitive disadvantage in relation to other prospective employers. Although Congress previously enacted legislation to ensure military recruiters receive access to students, some colleges and universities remain intransigent or outright opposed to compliance with this law. Under normal circumstances, such intransigence and opposition to the established laws of the land would be unacceptable—but now, at a time when our nation is at war, this situation is intolerable.

Certain colleges and universities continue to restrict access or limit opportunities for military recruiters to participate fully in job fairs, placement office services, and interview programs. In a few particularly egregious circumstances, military recruiters and prospective recruits have been forced to endure verbal abuse and harassment, gauntlets of taunting fellow students and faculty impeding the path to designated interview rooms, and austere, remote interview locations.

Consistent with Congress's unequivocal direction, the Department of Defense seeks only the opportunity to compete for students on a footing equal with other prospective employers. For this reason, the Department urges your support of section 531 of the Department's proposed provisions for the National Defense Authorization Act for Fiscal Year 2005, which makes clear the military recruiters must be provided access to campuses and students that is at least equal in quality and scope to that provided any other employer.

The Department of Defense deeply appreciates your continued support of military recruitment programs. The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of this committee.

Sincerely,

DAVID S. C. CHU, *Under Secretary of Defense.*

COMMITTEE POSITION

On March 17, 2004, the Committee on Armed Services ordered H.R. 3966, as amended, reported to the House with a favorable recommendation by a voice vote, a quorum being present.

COMMUNICATIONS FROM OTHER COMMITTEES

HOUSE OF REPRESENTATIVES,
 COMMITTEE ON EDUCATION AND THE WORKFORCE,
Washington, DC, March 18, 2004.

Hon. DUNCAN HUNTER,
*Chairman, Committee on Armed Services,
 House of Representatives, Washington, DC.*

DEAR CHAIRMAN HUNTER: I am writing to confirm our mutual understanding with respect to consideration of H.R. 3966, the ROTC and Military Recruiter Equal Access to Campus Act of 2004, which was referred to the Committee on Armed Services and in addition the Committee on Education and the Workforce. Provisions of this bill are within the jurisdiction of the Committee on Education and the Workforce. I understand the desire to have this legislation considered expeditiously by the House; hence, I do not intend to hold a hearing or markup on this legislation.

However, I do so only with the understanding that this procedural route should not be construed to prejudice the Committee on Education and the Workforce's jurisdictional interest and prerogatives on these provisions or any other similar legislation and will not be considered as precedent for consideration of matters of jurisdictional interest to my Committee in the future. Furthermore, should this provision or similar provisions be included in any Senate amendments thereto and considered in a conference with the Senate, I would expect Members of the Committee on Education and the Workforce to be appointed as conferees on those provisions. Finally, I would ask that you include a copy of our exchange of letters on this matter in your report to accompany the bill. If you have questions regarding this matter, please do not hesitate to call me. I thank you for your consideration.

Sincerely,

JOHN BOEHNER, *Chairman.*

HOUSE OF REPRESENTATIVES,
 COMMITTEE ON ARMED SERVICES,
Washington, DC, March 19, 2004.

Hon. JOHN BOEHNER,
*Chairman, Committee on Education and the Workforce,
 House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter of March 18, 2004, regarding H.R. 3966, the ROTC and Military Recruiter Equal Access to Campus Act of 2004.

I agree that the Committee on Education and the Workforce has valid jurisdictional claims to certain provisions in this important legislation, and I am most appreciative of your decision not to request such a referral in the interest of expediting consideration of the bill.

I agree that by foregoing a sequential referral, the Committee on Education and the Workforce is not waiving its jurisdiction. Further, I will support your request to the Speaker for appointment as conferees on the provisions over which your committee has jurisdiction during any House-Senate conference. As you requested, this

exchange of letters will be included in the Committee on Armed Services' report on the bill.

With best wishes.

Sincerely,

DUNCAN HUNTER, *Chairman.*

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON HOMELAND SECURITY,
Washington, DC, March 19, 2004.

Hon. DUNCAN HUNTER,
*Chairman, Committee on Armed Services,
House of Representatives, Washington, DC.*

DEAR CHAIRMAN HUNTER: In recognition of the desire to expedite floor consideration of H.R. 3966, the "ROTC and Military Recruiter Equal Access to Campus Act of 2004," the Select Committee on Homeland Security hereby waives consideration of the bill. H.R. 3966's provisions directly impact the programs and operations of the Department of Homeland Security, by limiting its ability to distribute funds to institutions of higher education by grant or contract. Accordingly, these provisions fall within the jurisdiction of the Select Committee under H. Res. 5. However, given the need to expedite this legislation, I will not seek a sequential referral of this bill.

The Select Committee on Homeland Security takes this action with the understanding that its jurisdiction over this provision is in no way diminished or altered. I would appreciate your including this letter in the Committee Report on the bill. Thank you for your consideration.

Sincerely,

CHRISTOPHER COX, *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Washington, DC, March 19, 2004.

Hon. CHRISTOPHER COX,
*Chairman, Select Committee on Homeland Security,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter of March 19, 2004, regarding H.R. 3966, the ROTC and Military Recruiter Equal Access to Campus Act of 2004.

I agree that the Select Committee on Homeland Security has valid jurisdictional claims to certain provisions in this important legislation, and I am most appreciative of your decision not to request such a referral in the interest of expediting consideration of the bill.

I agree that by foregoing a sequential referral, the Select Committee on Homeland Security is not waiving its jurisdiction. Further, I will support your request to the Speaker for appointment as conferees on the provisions over which your committee has jurisdiction during any House-Senate conference. As you requested, this exchange of letters will be included in the Committee on Armed Services' report on the bill.

With best wishes.
Sincerely,

DUNCAN HUNTER, *Chairman.*

HOUSE OF REPRESENTATIVES,
PERMANENT SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC, March 22, 2004.

Hon. DUNCAN HUNTER,
*Chairman, Committee on Armed Services,
House of Representatives, Washington, DC.*

DEAR CHAIRMAN HUNTER: I am writing to confirm our mutual understanding with respect to consideration of H.R. 3966, the ROTC and Military Recruiter Equal Access to Campus Act of 2004. Provisions of this bill are within the jurisdiction of the House Permanent Select Committee on Intelligence. I support the legislation and share your desire to have it considered expeditiously by the House; hence, I do not intend to seek referral of this legislation to the House Intelligence Committee.

However, I do so only with the understanding that this procedural route should not be construed to prejudice the Intelligence Committee's jurisdictional interest and prerogatives on these provisions or any other similar legislation and will not be considered as precedent for consideration of matters of jurisdictional interest to the House Intelligence Committee in the future. Furthermore, should these provisions or similar provisions be included in any Senate amendments thereto and considered in a conference with the Senate, I would request that the Speaker appoint Members of the House Intelligence Committee as conferees on those provisions. Finally, I would ask that you include a copy of our exchange of letters on this matter in your report to accompany the bill. I thank you for your consideration.

Sincerely,

PORTER GOSS, *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Washington, DC, March 23, 2004.

Hon. PORTER GOSS,
*Chairman, Permanent Select Committee on Intelligence,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter of March 22, 2004, regarding H.R. 3966, the ROTC and Military Recruiter Equal Access to Campus Act of 2004.

I agree that the Permanent Select Committee on Intelligence has valid jurisdictional claims to certain provisions in this important legislation, and I am most appreciative of your decision not to request such a referral in the interest of expediting consideration of the bill.

I agree that by foregoing a sequential referral, the Permanent Select Committee on Intelligence is not waiving its jurisdiction. Further, I will support your request to the Speaker for appointment as conferees on the provisions over which your committee has jurisdiction during any House-Senate conference. As you requested,

this exchange of letters will be included in the Committee on Armed Services' report on the bill.

With best wishes.
Sincerely,

DUNCAN HUNTER, *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SCIENCE,
Washington, DC, March 22, 2004.

Hon. DUNCAN HUNTER,
*Chairman, Committee on Armed Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: I write regarding the jurisdictional interest of the Committee on Science in H.R. 3966, the "ROTC and Military Recruiter Equal Access to Campus Act of 2004."

Our Committee recognizes the importance of H.R. 3966. Therefore, while the Committee has a valid claim to jurisdiction over certain provisions that include the Department of Homeland Security and the Department of Transportation within the scope of the bill, I agree to forego a sequential referral. This decision does not waive the jurisdiction of the Committee on Science in future dealings regarding this bill or similar provisions in other bills.

I request that a copy of this letter and of your response acknowledging the Committee's jurisdiction over these provisions be included as part of the legislative report. The Committee on Science also asks that you support our request to be conferees on the provisions over which we have jurisdiction during any House-Senate conference.

Thank you for your cooperation in this matter.

SHERWOOD L. BOEHLERT, *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Washington, DC, March 22, 2004.

Hon. SHERWOOD L. BOEHLERT,
*Chairman, Committee on Science,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter of March 22, 2004, regarding H.R. 3966, the ROTC and Military Recruiter Equal Access to Campus Act of 2004.

I agree that the Committee on Science has valid jurisdictional claims to certain provisions in this important legislation, and I am most appreciative of your decision not to request such a referral in the interest of expediting consideration of the bill.

I agree that by foregoing a sequential referral, the Committee on Science is not waiving its jurisdiction. Further, I will support your request to the Speaker for appointment as conferees on the provisions over which your committee has jurisdiction during any House-Senate conference. As you requested, this exchange of letters will be included in the Committee on Armed Services' report on the bill.

With best wishes.
Sincerely,

DUNCAN HUNTER, *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC, March 17, 2004.

Hon. DUNCAN HUNTER,
*Chairman, Committee on Armed Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: I am writing to you concerning the jurisdictional interest of the Transportation and Infrastructure Committee in H.R. 3966, the ROTC and Military Recruiter Equal Access to Campus Act of 2004.

Our Committee recognizes the importance of H.R. 3966 and the need for the legislation to move expeditiously. Therefore, while we have a valid claim to jurisdiction over the bill, I do not intend to request a sequential referral. This, of course, is conditional on our mutual understanding that nothing in this legislation or my decision to forego a sequential referral waives, reduces or otherwise affects the jurisdiction of the Transportation and Infrastructure Committee, and that a copy of this letter and of your response acknowledging our jurisdictional interest will be included in the Committee Report on the bill.

The Committee on Transportation and Infrastructure also asks that you support our request to be conferees on the provisions over which we have jurisdiction during any House-Senate conference.

Thank you for your cooperation in this matter.

DON YOUNG, *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Washington, DC, March 18, 2004.

Hon. DON YOUNG,
*Chairman, Committee on Transportation and Infrastructure,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter of March 17, 2004, regarding H.R. 3966, the ROTC and Military Recruiter Equal Access to Campus Act of 2004.

I agree that the Committee on Transportation and Infrastructure has valid jurisdictional claims to certain provisions in this important legislation, and I am most appreciative of your decision not to request such a referral in the interest of expediting consideration of the bill.

I agree that by foregoing a sequential referral, the Committee on Transportation and Infrastructure is not waiving its jurisdiction. Further, I will support your request to the Speaker for appointment as conferees on the provisions over which your committee has jurisdiction during any House-Senate conference. As you requested, this exchange of letters will be included in the Committee on Armed Services' report on the bill.

With best wishes.
Sincerely,

DUNCAN HUNTER, *Chairman.*

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d) of rule XIII of the Rules of the House of Representatives, the committee estimates the costs of implementing the resolution would be minimal. The Congressional Budget Office did not provide a cost estimate for the resolution.

OVERSIGHT FINDINGS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities pursuant to clause 2(b)(1) of rule X, are incorporated in the descriptive portions of this report.

With respect to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, this legislation does not include any new spending or credit authority, nor does it provide for any increase or decrease in tax revenues or expenditures.

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the bill does not authorize specific program funding.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article I, section 8 of the United States Constitution.

STATEMENT OF FEDERAL MANDATES

Pursuant to section 423 of Public Law 104–4, this legislation contains no federal mandates with respect to state, local, and tribal governments, nor with respect to the private sector. Similarly, the bill provides no unfunded federal intergovernmental mandates.

RECORD VOTES

In accordance with clause 3(b) of rule XIII of the Rules of the House of Representatives, no record votes were taken or requested during the committee's consideration of H.R. 3966. This measure was ordered reported by voice vote, a majority of committee members present.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 983 OF TITLE 10, UNITED STATES CODE

§ 983. Institutions of higher education that prevent ROTC access or military recruiting on campus: denial of grants and contracts from Department of Defense, Department of Education, and certain other departments and agencies

(a) DENIAL OF FUNDS FOR PREVENTING ROTC ACCESS TO CAMPUS.—(1) No funds described in subsection (d)(1) may be provided by contract or by grant [(including a grant of funds to be available for student aid)] to an institution of higher education (including any subelement of such institution) if the Secretary of Defense determines that that institution (or any subelement of that institution) has a policy or practice (regardless of when implemented) that either prohibits, or in effect [prevents—] *prevents, either (or both) of the following:*

[(1) the] (A) *The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (in accordance with section 654 of this title and other applicable Federal laws) at that institution (or any subelement of that institution)[; or].*

[(2) a] (B) *A student at that institution (or any subelement of that institution) from enrolling in a unit of the Senior Reserve Officer Training Corps at another institution of higher education.*

(2)(A) *Not later than 180 days after the date of the enactment of the ROTC and Military Recruiter Equal Access to Campus Act of 2004 and annually thereafter, the Secretary of Defense shall request from each institution of higher education that has students participating in a Senior Reserve Officer Training Corps program during the then-current academic year of that institution a certification that such institution, during the next academic year of the institution, will—*

(i) permit the Secretary of each military department to maintain a unit of the Senior Officer Training Corps (in accordance with subsection (a)) at that institution (or any subelement of that institution), should such Secretary elect to maintain such a unit; and

(ii) if the Secretary of the military department concerned elects not to establish or maintain a unit of the Senior Reserve Officer Training Corps at that institution, permit a student of that institution (or any subelement of that institution) to enroll in a unit of the Senior Reserve Officer Training Corps at another institution of higher education.

(B) *Any certification under subparagraph (A) shall be made by the president of the institution (or equivalent highest ranking administrative official) and shall be submitted to the Secretary of Defense no later than 90 days after receipt of the request from the Secretary.*

(C) *In the case of any institution from which a certification is requested under subparagraph (A), if the Secretary of Defense does not receive a certification in accordance with subparagraph (B), or if the certification does not state that the university will comply with both clauses (i) and (ii) of subparagraph (A) during its next academic year, the Secretary shall make a determination under para-*

graph (1) as to whether the institution has a policy or practice described in that paragraph.

(b) DENIAL OF FUNDS FOR PREVENTING MILITARY RECRUITING ON CAMPUS.—No funds described in [subsection (d)(2)] subsection (d)(1) may be provided by contract or by grant [(including a grant of funds to be available for student aid)] to an institution of higher education (including any subelement of such institution) if the Secretary of Defense determines that that institution (or any subelement of that institution) has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents—

(1) the Secretary of a military department or Secretary of Homeland Security from gaining [entry] access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting *in a manner that is at least equal in quality and scope to the degree of access to campuses and to students that is provided to any other employer*; or

* * * * *

(d) COVERED FUNDS.—(1) [The limitation established in subsection (a) applies] *Except as provided in paragraph (2), the limitations established in subsections (a) and (b) apply to the following:*

(A) * * *

(B) Any funds made available for any department or agency for which regular appropriations are made in a Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act.

(C) Any funds made available for the Department of Homeland Security.

(D) Any funds made available for the National Nuclear Security Administration of the Department of Energy.

(E) Any funds made available for the Department of Transportation.

(F) Any funds made available for the Central Intelligence Agency.

[(2) The limitation established in subsection (b) applies to the following:

[(A) Funds described in paragraph (1).

[(B) Any funds made available for the Department of Homeland Security.]

(2) Any Federal funding specified in paragraph (1) that is provided to an institution of higher education, or to an individual, to be available solely for student financial assistance, related administrative costs, or costs associated with attendance, may be used for the purpose for which the funding is provided.

(e) NOTICE OF DETERMINATIONS.—Whenever the Secretary of Defense makes a determination under subsection (a), (b), or (c), the Secretary—

(1) shall transmit a notice of the determination to the Secretary of Education, to the head of each other department and agency the funds of which are subject to the determination, and to Congress; and

(2) shall publish in the Federal Register a notice of the determination and the effect of the determination on the eligibility

of the institution of higher education (and any subelement of that institution) for contracts and grants.

* * * * *

**SECTION 8120 OF THE DEPARTMENT OF DEFENSE
APPROPRIATIONS ACT, 2000**

【SEC. 8120. During the current fiscal year and hereafter, any Federal grant of funds to an institution of higher education to be available solely for student financial assistance or related administrative costs may be used for the purpose for which the grant is made without regard to any provision to the contrary in section 514 of the Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Act, 1997 (10 U.S.C. 503 note), or section 983 of title 10, United States Code.】

ADDITIONAL VIEWS OF REPRESENTATIVE JIM MARSHALL

Mr. Abercrombie and Mr. Hunter engaged in a helpful debate prior to our vote to ensure that institutions of higher education provide military recruiters access to campuses and students that is at least equal in quality and scope to that provided any other employer. I voted for the bill although I share the reservations expressed by Mr. Abercrombie in explanation of his vote against the bill.

The bill amends existing law that gives the Department of Defense the sole authority to terminate federal funding of an educational institution that does not provide access to military recruiters. The factual inquiry is pretty simple. Was access provided to military recruiters? Yes or no? A dispute about such a black and white factual inquiry is very unlikely.

The same cannot be said about the amended law. Whether DoD was granted “equal access” will be an after-the-fact inquiry with enormous financial consequences hanging on the answer. Factual disputes will involve murky comparisons of the totality of the conditions for access offered to military recruiters and those offered to other recruiters, which may include, for example, judgments about locations, timing, public notice and the like. And it may involve some factors beyond the control of the educational institution, for example, the actions of protestors.

Our notions of due process rarely warrant establishing the aggrieved party as prosecutor, judge, and jury. This law does that, perhaps permissibly, so long as the factual dispute is simply whether a military recruiter has been allowed on campus. But given the severe consequences to the institution—the loss of federal funding—both our legal tradition and simple fairness dictate that, when evaluating equal access complaints, DoD, the immediately aggrieved party, not act as prosecutor, judge and jury. Such a complex and subjective judgment requires evaluation by a neutral third party.

If the law is to be amended to impose an equal access requirement, then it should be further amended to provide some fair process for making that determination. No doubt there are many examples of reasonable and fair process elsewhere in federal law that may be adopted here without reinventing the wheel. But even if we add an amendment that includes appropriate procedural safeguards, I believe we also should add additional substantive safeguards.

I am concerned that, literally applied, the law as amended could result in the removal of an educational institution’s funding if it merely was inadvertent or made a good faith error in judgment with no real intent to discriminate against military recruiters or failed to provide equal access as a result of the actions of inde-

pendent third parties. Perhaps this concern already is addressed. If not, it certainly should be.

That we expect DoD to act in good faith and with fair judgment is no answer to these concerns. The expectation “proves too much” as they say. Such an assertion or argument can be offered against all procedural safeguards in any setting.

Finally, Mr. Abercrombie observed that this law offers us only a sledgehammer even if the offender is less than a flea. If I understand our committee deliberations, complete loss of federal funding is the only penalty available even if the offense is a slight inequality of access. Fair penalties match the degree of wrong. This evidently does not. The law should also be amended to provide a range of penalty options as well as declaratory and injunctive relief.

Again, we needn’t reinvent the wheel. Consultation with Judiciary Committee staff would provide us with many analogous laws that contain well-conceived and tested procedural and remedial schemes that would fairly meet our objective of assuring equal access. These concerns are easy to address. We should do it.

JIM MARSHALL.

