

Message to the House of Representatives Returning Without Approval the Private Securities Litigation Reform Act of 1995

December 19, 1995

To the House of Representatives:

I am returning herewith without my approval H.R. 1058, the "Private Securities Litigation Reform Act of 1995." This legislation is designed to reform portions of the Federal securities laws to end frivolous lawsuits and to ensure that investors receive the best possible information by reducing the litigation risk to companies that make forward-looking statements.

I support those goals. Indeed, I made clear my willingness to support the bill passed by the Senate with appropriate "safe harbor" language, even though it did not include certain provisions that I favor—such as enhanced provisions with respect to joint and several liability, aider and abettor liability, and statute of limitations.

I am not, however, willing to sign legislation that will have the effect of closing the courthouse door on investors who have legitimate claims. Those who are the victims of fraud should have recourse in our courts. Unfortunately, changes made in this bill during conference could well prevent that.

This country is blessed by strong and vibrant markets and I believe that they function best when corporations can raise capital by providing investors with their best good-faith assessment of future prospects, without fear of costly, unwarranted litigation. But I also know that our markets are as strong and effective as they are because they operate—and are seen to operate—with integrity. I believe that this bill, as modified in conference, could erode this crucial basis of our markets' strength.

Specifically, I object to the following elements of this bill. First, I believe that the pleading requirements of the Conference Report with regard to a defendant's state of mind impose an unacceptable procedural hurdle to meritorious claims being heard in Federal courts. I am prepared to support the high pleading standard of the U.S. Court of Appeals for the Second Circuit—the highest pleading standard of any Federal circuit court. But the conferees make crystal clear in the Statement of Managers their intent to raise the standard even beyond that level. I am not prepared to accept that.

The conferees deleted an amendment offered by Senator Specter and adopted by the Senate that specifically incorporated Second Circuit case law with respect to pleading a claim of fraud. Then they specifically indicated that they were *not* adopting Second Circuit case law but instead intended to "strengthen" the existing pleading requirements of the Second Circuit. All this shows that the conferees meant to erect a higher barrier to bringing suit than any now existing—one so high that even the most aggrieved investors with the most painful losses may get tossed out of court before they have a chance to prove their case.

Second, while I support the language of the Conference Report providing a "safe harbor" for companies that include meaningful cautionary statements in their projections of earnings, the Statement of Managers—which will be used by courts as a guide to the intent of the Congress with regard to the meaning of the bill—attempts to weaken the cautionary language that the bill itself requires. Once again, the end result may be that investors find their legitimate claims unfairly dismissed.

Third, the Conference Report's Rule 11 provision lacks balance, treating plaintiffs more harshly than defendants in a manner that comes too close to the "loser pays" standard I oppose.

I want to sign a good bill and I am prepared to do exactly that if the Congress will make the following changes to this legislation: first, adopt the Second Circuit pleading standards and reinsert the Specter amendment into the bill. I will support a bill that submits all plaintiffs to the tough pleading standards of the Second Circuit, but I am not prepared to go beyond that. Second, remove the language in the Statement of Managers that waters down the nature of the cautionary language that must be included to make the safe harbor safe. Third, restore the Rule 11 language to that of the Senate bill.

While it is true that innocent companies are hurt by frivolous lawsuits and that valuable information may be withheld from investors when companies fear the risk of such suits, it is also true that there are innocent investors who are defrauded and who are able to recover their

losses only because they can go to court. It is appropriate to change the law to ensure that companies can make reasonable statements and future projections without getting sued every time earnings turn out to be lower than expected or stock prices drop. But it is not appropriate to erect procedural barriers that will keep wrongly injured persons from having their day in court.

I ask the Congress to send me a bill promptly that will put an end to litigation abuses while still protecting the legitimate rights of ordinary

investors. I will sign such a bill as soon as it reaches my desk.

WILLIAM J. CLINTON

The White House,
December 19, 1995.

NOTE: This message was released by the Office of the Press Secretary on December 20. H.R. 1058, passed December 22 over the President's veto, was assigned Public Law No. 104-67.

The President's News Conference *December 20, 1995*

Budget Impasse

The President. Good afternoon. Yesterday, Speaker Gingrich, Senator Dole, and I reached an agreement to work together in good faith to balance the budget and to reopen the Government. Today the most extreme Members of the House of Representatives rejected that agreement.

These Republicans want to force the Government to stay closed until I accept their deep and harmful cuts in Medicare and Medicaid, in education, in the environment, and agree to raise taxes on the hardest pressed working families, all, in part, to pay for their very large tax cut.

I won't yield to these threats. I'm determined to balance the budget. But I won't be forced into signing a budget that violates our values, not today or tomorrow, not ever.

This is a very troubling development. The President and the leaders of the two Chambers of Congress reached an agreement on a matter of great national urgency. But a small minority in the House of Representatives is determined to keep the Government closed until they get exactly their way. Their way is the wrong way for America.

We should reopen the Government now. We should work to balance the budget now. We should start the negotiations without any threats, without more ultimatums, without continuing this shutdown. This shutdown hurts the very people we are duty-bound to serve. If Congress doesn't vote to reopen the Government by to-

morrow morning, 3.3 million veterans will not receive their benefits on time. If Congress fails to act by Friday, 8 million children will not receive their benefits on time. Every day of the shutdown, 20,000 college loan and scholarship applications go unprocessed. Air and water pollution goes unstopped because they've taken all the environmental protectors off the job.

Christmas is only days away. I have said before and I will say again, we ought to be guided by the spirit of the season, not the spirit of partisanship. We can balance the budget in a way that reflects our values and is good for our future, but only if we put aside rancor and extremism. I say again, I hope that we can go to work.

Q. Mr. President, what can you do about this? Do you have any recourse to get these benefit checks to these poor people?

The President. Well, I'm hoping that Congress will move on the veterans benefits today. And of course, I hope they will move on the other thing.

Q. Can they do that independently—

The President. Apparently, they can. I have talked to Senator Dole twice today. I just got off the phone with him a few minutes ago, and we have—I don't want to reveal exactly what we said because I think that he's making a good-faith effort here to honor the agreement we made.

Q. Can you clear up the question, Mr. President, about whether you're willing to score your budget on the CBO? There seems to be some