A VOTE FOR H.R. 3539 IS A VOTE IN FAVOR OF RACE AND GENDER PREFERENCES

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

Mr. CANADY of Florida. Mr. Speaker, I rise this afternoon to inform Members about an aspect of one of the bills on today's Suspension Calendar of which they may not be aware.

Today the House will consider, and tomorrow we will vote on, H.R. 3539, the Federal Aviation Authorization Act of 1996. For the most part, this bill merely authorizes the appropriation of new funds for various programs designed to improve our Nation's airports and airways. I have no objection to the funding provisions of this legislation.

But embedded within the programs we will be reauthorizing a regime of race and gender preferences that is both unconstitutional and profoundly unwise.

One of the programs we will be reauthorizing is the Airport Improvement Program. Under the AIP, airports applying for Federal funds in connection with an airport project must guarantee the Department of Transportation that at least 10 percent of all companies doing business at that airport will be owned by so-called ''socially and economically disadvantaged individuals.'' The statute then proceeds to presume that women or members of certain racial minority groups are ''socially and economically disadvantaged individuals.''

Mr. Speaker, I can hardly imagine a more offensive example of Government-mandated group preferences. Under this AIP preference program, the Government is simply using its Federal dollars to force airport authorities to treat concessionaires differently based upon the skin color or sex of their ownership. You can have our money, we are telling them, but only if you agree to discriminate based on race and sex.

The bill we will vote on tomorrow reauthorizes these preference provisions without changing them in any way, so the unfortunate fact is that a vote in favor of H.R. 3539 constitutes an endorsement of racial and gender preferences.

To Members who are opposed in principle to group preferences, this is truly a troubling development. It was well over 1 year ago now that the Supreme Court held in the Adarand case that racial classifications are presumptively unconstitutional. The Clinton administration, of course, has fought tooth and nail to preserve preference programs, even to the point of pursuing a scorched Earth litigation strategy in defense of the most offensive racial set-aside schemes.

But Adarand strongly bolstered the expectation, highlighted by the results of the 1994 elections, that Congress would finally begin to remove the Federal Government from the business of classifying American citizens on the basis of skin color and sex.

But legislation that would have furthered that objective has stalled in Congress, and it now appears obvious that no legislation will move this session to repeal even a single Federal preference program.

It is bad enough, in my opinion, that we have failed to repeal existing preferences. But now we are moving in the opposite direction, for by voting to reauthorize the AIP preference provisions, we are actually extending and endorsing them.

This is a mistake for at least two powerful reasons. First, the preferences contained in the AIP are unconstitutional. In Adarand and other cases, the Supreme Court has made it clear that the Equal Protection clause prohibits the Government from classifying citizens on the basis of race unless the program is narrowly tailored to remedy proven instances of racial discrimination by the relevant governmental actors. The court has also held that the enacting authority, in this case Congress, must have had a strong basis in evidence to conclude that remedial action was necessary before it embarks on such race-based legislation.

The AIP preference provisions cannot meet these constitutional standards. They were added to the underlying statute during a floor debate in 1987. There was thus absolutely no effort to identify any discrimination that the requirements were designated to remedy. This conclusion is reinforced by the completely arbitrary nature of the 10-percent quota requirement.

I am sure the Clinton administration and other proponents of preferences will strain to come up with an argument in defense of the constitutionality of this program, but the simple fact is this: the AIP preference provisions are an example of the Government gratuitously requiring Federal grantees to engage in race and sex-conscious activity. This the Constitution forbids.

In the report accompanying H.R. 3539, the Committee on Transportation and Infrastructure notes these potential constitutional problems, but then states a preference for leaving the issue to the courts to resolve. I do not believe such an abdication of responsibility is consistent with the oath we have taken as Members of Congress to uphold the Constitution. If we believe a program is unconstitutional, as I believe this one plainly is, then we should not vote to reauthorize it.

But even apart from its constitutional flaws, the preference provisions of the AIP constitute extremely unwise public policy. Simply stated, it is wrong for the Government to grant benefits and impose burdens based on skin color and sex. The fact is that Government-mandated group preferences necessarily send the message that it is both permissible and desirable to treat persons differently based on race and sex. That is not the sort of message our Federal Government should be sending. It is a message that will only reinforce prejudice and discrimination in our society.

Mr. Speaker, I understand that because this bill is on the suspension calendar, we will not have an opportunity to vote separately on whether to reauthorize these unconstitutional and unwise provisions. We should therefore defeat this bill so these offensive provisions will not be reenacted.

RECESS

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

Accordingly (at 12 o'clock and 41 minutes p.m.), the House stood in recess until 2 p.m.

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Ms. GREENE of Utah) at 2 p.m.

PRAYER

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

As we contemplate our lives and the lives of those people that we know, we realize how cluttered are the agendas of daily living and how hurried is the pace that each day brings. Yet, O gracious God, we are thankful that we have our vocations, our work, our responsibilities, and our tasks by which we can support ourselves and serve others in their need. We remember in our prayer those who have no work and yet who wish to use the abilities that You have given in ways that support themselves and those they love. As You have called us to do the works of justice in our world, so may we be appreciative of the opportunities we have to do the works of justice in our lives. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House her approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

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

Mr. BALLENGER led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.