transform the IRS into a modern service organization. I believe they will vastly enhance service and accountability to the taxpayer.

I look forward to working with my colleague from Maryland, Mr. CARDIN, Members of the House and Senate, and the administration to improve and refine this bill during the legislative process so that, together, we can transform the Internal Revenue Service into a modern, efficient organization that truly serves the American taxpayer.

## NEW FEDERAL FIREARMS LICENSE CATEGORY FOR GUNSMITHS

### HON. GERALD D. KLECZKA

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

*Thursday, July 31, 1997*

Mr. KLECZKA. Mr. Speaker, I call the attention of the House to a problem affecting gunsmiths as a result of the 1994 Crime Act.

The 1994 law contained a provision requiring applicants for a new Federal firearms license, or renewal of an existing one, to prove that they are in compliance with any State or local zoning ordinances. Many States and localities have zoning laws that prevent individuals from obtaining dealers' licenses. For licensing purposes, the term ''dealer'' includes any person who makes or repairs firearms, which includes gunsmiths. Therefore, many gunsmiths are now being denied their Federal firearms license.

One of my constituents, who is a gunsmith, informed me about his difficulties in complying with the Crime Act. As a result, I have introduced legislation to create a new Federal firearms license category for gunsmiths. The Bureau of Alcohol, Tobacco, and Firearms, which administers the Federal license categories, supports creating this new category.

My legislation will not allow gunsmiths to sell or transfer firearms, but it will permit them to continue to work in their profession. I urge my colleagues to support this bill.

## UNITED STATES INVESTORS IN LLOYD'S OF LONDON DESERVE THEIR DAY IN UNITED STATES COURT

### HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, July 31, 1997*

Mr. HYDE. Mr. Speaker, as chairman of the House Judiciary Committee, I am interested in matters concerning Federal court jurisdiction. For many years, citizens of Illinois and other States were solicited in their States to invest in Lloyd's of London insurance syndicates. In many instances, these investors have been denied access to the Federal courts where they attempted to assert their rights and remedies under the Federal securities statutes. Investors asserting securities claims against Lloyd's have seen their cases thrown out of court based on clauses in Lloyd's investment contracts which provide for the application of English law and the forum of the English courts. (Choice Clauses). I am heartened, however, by the recent appeals court ruling in *Richards* v. *Lloyd's of London* and strong pronouncements by the Securities and Exchange Commission in that appeal, which recognize the statutory bar against agreements which waive compliance with the Federal securities laws. The *Richards* decision, unless set aside by the full ninth circuit court of appeals or the Supreme Court, clears the way for the investors to have the chance to prove their case where it belongs—in U.S. district court.

The plaintiffs in *Richards*—known as ''Names''—allege that Lloyd's defrauded them by concealing that the insurance syndicates to which they furnished capital were saddled with massive asbestos and toxic waste liabilities. They assert that, for two decades, Lloyd's undertook a major recruitment program in the United States by offering investment contracts by which residents of the United States could become ''External Names'' at Lloyd's—passive investors who were prohibited from being involved with the operations and management of Lloyd's syndicates or business operations. Plaintiffs in *Richards* claim that Lloyd's alleged fraud cost them many million of dollars. They also seek rescission of their agreements with Lloyd's on the grounds that Lloyd's allegedly sold them unregistered, nonexempt securities and made material representatives or omitted material facts.

Mr. Speaker, for over 60 years there has been a statutory bar against contracts with investors that waive compliance with the Federal securities laws. Section 14 of the Securities Act of 1933 provides:

> Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this title or of the rules and regulations of the Commission [the SEC] shall be void.

15 U.S.C. §77 n. The bar of Section 29(a) of the 1934 Act is substantially the same. 15 U.S.C. §78cc(a).

In *Richards,* a panel of the Ninth Circuit ruled, 2–1, that because of the Choice Clauses would strip plaintiffs of all their rights under the Federal securities laws, they violate the anti-waiver statutes and are thus void. The court remanded the case to the federal district court where the plaintiffs will have the opportunity to present a case that Lloyd's fraudulently sold them unregistered securities and that the court should order rescission of their investment contacts with Lloyd's and other relief.

I would like to cite several portions of the *Richards* opinion which show the eminent logic of this result:

> The district court made an error of law in supposing that the Choice Clauses were unenforceable only if unreasonable. Congress had already determined that such clauses were void. It was not for a court to weigh their reasonableness, not for a court to say whether they offended any policy of the United States. The policy decision had been made by the legislature.
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> Is there a significant difference between a *policy* objection to enforcement of the antiwaiver bars and a *statutory* obstacle to such enforcement? We believe there is. Where a statute exists, a policy has been given form and focus and precise force. A statute represents a decision by the elected representatives of the people as to what particular policy should prevail, and how.
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> There is no question that the Choice Clauses operate in tandem as a prospective waiver of the plaintiffs' remedies under the 1933 and 1934 Acts. If the Supreme Court would condemn such clauses where they work against a public policy embodied in statutes even through the statutes themselves do not void the clauses, a fortiori the Supreme Court would condemn similar clauses when the run in the teeth of two precise statutory provisions making them void.
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> Congress was no ignorant of the potential international character of securities transactions. Congress specifically modified the 1933 Act to cover transactions in foreign commerce. S. Rep. No. 47, 73d Cong., 1st Sess. (1933) (accompanying S. 875.) A court should not apply the reasonableness test or say whether the clauses offended any policy of the United States when Congress has expressly made that determination. We do not believe that we should turn the clock back to 1929 or introduce caveat emptor as a rule governing the solicitation in the United States of investments in securities by residents of the United States.

In addition, the SEC filed two briefs, amicus curiae in *Richards* and participated in oral argument in favor of reversing the district court's enforcement of the Choice Clauses. The SEC's position is correct in my view, and I would like to share some of the SEC's compelling statements:

> The issue addressed is an important one to the enforcement of the federal securities laws. The district court's decision, if upheld, would allow foreign promoters of securities undertaking large scale selling efforts in the United States to avoid private liability under the securities laws simply by requiring the American investors to agree to resolve disputes in a foreign jurisdiction under foreign law, even if the remedies available under the foreign law were far less effective than those available under United States law. Such a holding would seriously impair the ability of defrauded investors to obtain compensation for their losses, and would hamper the deterrent function of the federal securities laws by discouraging private actions. The Commission strongly urges this court to reverse the district court's erroneous dismissal of this action.
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> The fact that the investors agreed to these provision is irrelevant, since the very objective of the antiwaiver provisions is to invalidate such agreements. As the Supreme Court held in *Shearson/American Express Inc.* v. *McMahon,* 482 U.S. 220, 230 (1987), ''[t]he voluntariness of the agreement is irrelevant to this inquiry: if a stipulation waives compliance with a statutory duty, it is void under [the antiwaiver provisions], whether voluntary or not.
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> In this case, in contrast, the requirement that investors litigate in England, coupled with the requirement that they do so under English law, not only ''weakens'' the investors' ability to recover, but in fact precludes any possibility of recovery under the federal securities laws. These clauses are directly contrary to express statutory prohibitions in the antiwaiver provisions and should be held void.
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> The antiwaiver provisions, however, are not simply an expression of public policy that favors United States securities laws unless other comparable laws are available. Rather, they are an express and unequivocal directive that the rights and obligations under the securities laws cannot be waived.

This determination has been made by Congress, and the courts are not free to substitute their own public policy determinations.

The *Richards* court is not alone in its interpretation of this statutory bar to waiver. In *Leslie* v. *Lloyd's of London*, a Federal district court, after hearing evidence, struck down the Choice Clauses, stating that they were procured by fraud and violated public policy. The case is currently on appeal to the Fifth Circuit, where the SEC has participated in oral argument, arguing that the Choice Clauses are void.

Mr. Speaker, what is involved here is a very basic proposition. When foreign promoters come into Illinois and other States to raise capital, they cannot effectuate waivers of substantive rights under the securities laws that belong to those form whom they solicit capital. Congress has said no and that should be the end of the story.

## INTERNATIONAL DOLPHIN CONSERVATION PROGRAM ACT

SPEECH OF

### HON. WILLIAM D. DELAHUNT

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, July 31, 1997*

Mr. DELAHUNT. Mr. Speaker, much of the controversy surrounding H.R. 408 concerns the redefinition of the ''dolphin safe'' label—an issue of particular significance to me and to the residents of the 10th Congressional District of Massachusetts, home of the Center for Coastal Studies in Provincetown, a world-class marine mammal research facility.

One of the reasons I opposed this bill when it was first brought to the House floor was that there is no scientific justification for a change in the dolphin-safe label. Common sense suggests that the repeated harassment and chasing of dolphins jeopardizes their well-being. Along with a number of my colleagues, I wanted to see evidence that chasing and netting dolphins in the course of tuna fishing was safe for dolphins before agreeing to change the definition of the ''dolphin safe'' label.

The bill before us is a compromise between proponents of an immediate label change and those of us who contend instead that policy should reflect scientific method. The bill mandates a 3-year study on the effect of the intentional chase and encirclement on dolphins and dolphin stocks taken in the course of tuna fishing.

Based on the initial results of this study, the Secretary of Commerce is required to make a finding between March 1 and March 30, 1999, as to whether the intentional chasing and netting is having a significant adverse impact on any depleted dolphin stocks. If the Secretary does not make a finding of significant adverse impact, then the label will be redefined to allow its use on tuna harvested with the encirclement method. At the conclusion of the 3-year study, section (5) requires the Secretary to make a similar finding and if significant adverse impact is found, then the definition would revert back to its current meaning as defined in the Dolphin Protection Consumer Information Act.

Mr. Speaker, the bill does not include a definition of the term ''significant adverse impact,'' but it is my understanding that it would include any impact that retards or impedes the recovery of the depleted dolphin stocks. For example, in the recovery of the grey whale, scientists observed population growth rates of between 4 and 6 percent. Similar growth rates are expected in the depleted dolphin stocks. Therefore, if the study shows that the depleted stocks of dolphins are not growing at the expected rates of 4 to 6 percent, I presume the Secretary will be required to make a finding that chase and encirclement is having a significant adverse impact on the dolphins and the label will not change.

The bill is an imperfect attempt to help make certain, above all, that dolphins are not put at unnecessary risk—and that marine mammal policy derives from sound science.

## KEEPING AMERICA COMPETITIVE

### HON. JOE KNOLLENBERG

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Thursday, July 31, 1997*

Mr. KNOLLENBERG. Mr. Speaker, I rise today to introduce a resolution expressing the sense of the House of Representatives that America not be placed at a competitive disadvantage during the climate change negotiations in Kyoto, Japan in December, 1997.

The Clinton-Gore-Browner administration is notorious for pushing forward far-reaching environmental initiatives without adequately consulting the legislative branch or the scientific community. As you may remember, on September 19, 1996, President Clinton declared 1.7 million acres of Utah wilderness as a national monument without the endorsement of a single elected official from Utah, let alone any legislative action by the U.S. Congress. More recently, the Clinton administration announced radically expensive air quality standards for ozone and the fine particulate matter without any causal proof of their risk to health.

Now it appears that the Clinton administration once again is trying to pull a political end-run. This December, it will represent the United States at an international meeting in Kyoto to discuss revisions to the United Nations Framework Convention on Climate Change. The essence of the meeting is to discuss new compliance mandates to limit and/or reduce the global emission of greenhouse gases.

While the greenhouse effect as a concept has been generally accepted as scientific fact, there are widely varying estimates of humankind's impact on the temperature of the Earth's atmosphere. Therefore, it is impossible to judge what impact, if any, efforts to curb greenhouse gas emissions will have on global warming.

In keeping with this uncertainty, the United States signed the United Nations Framework Convention on Climate Change in 1992, which called on all industrialized nations to adopt policies and programs to limit greenhouse gas emissions on a voluntary basis by the year 2000. In April 1995, the industrialized nations agreed to the Berlin Mandate, which set December 1997 as a target date to establish legally binding commitments from industrialized nations on the emission of greenhouse gas while exempting 129 developing nations, including China, Mexico, India, Brazil, and South Korea, from its provisions.

If taken to its logical conclusion, the Berlin Mandate would create a two-tiered environmental obligation, forcing the entire burden to reduce greenhouse emissions on industrialized nations while turning the developing world into a pollution enterprise zone. This would truly create a ''giant sucking sound'' of jobs leaving America to the Third World.

It's not too late for the Clinton administration to alter its potentially disastrous policy course. My resolution would express the sense of the House that:

1. The administration will not sign any protocol or agreement to limit or reduce greenhouse gas emissions unless the protocol or agreement also mandates developing countries to limit or reduce greenhouse gas emissions within the same period.

2. The United States will not sign any protocol or agreement regarding global climate change that would result in serious harm to the economy of the United States.

3. Any protocol or agreement which must be sent to the Senate for advice and consent for ratification should:

(a) Be accompanied by a detailed explanation of any legislation or regulatory actions that would be required to implement the protocol or agreement; and

(b) Be accompanied by an analysis of the detailed financial costs and other impacts on the economy of the United States that would be incurred by implementation of the protocol or agreement.

Last week, the other body passed a nearly identical resolution on a vote of 95 to 0. The House should express its will as well, since we would have to consider and pass legislation to remain in compliance with any such treaty.

As the Kyoto Conference draws near, thousands of American jobs are on the chopping block. Any over-reaching and/or inequitable effort to limit the level of $CO_2$ emissions would be tantamount to pink slips to the American worker. We cannot allow this to happen.

I urge my colleagues to cosponsor this resolution.

## IN HONOR OF U.S. DISTRICT JUDGE CLARKSON S. FISHER, JR.

### HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Thursday, July 31, 1997*

Mr. PALLONE. Mr. Speaker, I rise today to pay tribute to the late U.S. District Judge Clarkson S. Fisher, Jr. Judge Fisher passed away on Sunday, July 27, at the age of 76, after battling cancer for the past several months.

Mr. Speaker, the death of Judge Fisher is for me the cause of great personal sadness. I was an intern for Judge Fisher in law school, and he had a major impact on my career. Judge Fisher instilled in me a deep appreciation for how the law can and should be a means for attempting to resolve the real difficulties and conflicts that touch people's lives, and for achieving justice in the very best sense of that word. He was a great inspiration.

Judge Fisher was a native of my hometown of Long Branch, NJ. He was active in local government in the neighboring community of West Long Branch, served in the New Jersey