for small businesses as they face an aggressive National Labor Relations Board [NLRB] with vast expertise and resources. The Fair Access to Indemnity and Reimbursement Act—the FAIR Act—is about being fair to small businesses. It is about giving small entities, including labor organizations, the incentive they need to fight meritless claims brought against them by an intimidating bureaucracy which often strongarms those who have limited resources to defend themselves.

The FAIR Act amends the National Labor Relations Act to provide that a small business or labor organization which prevails in an action against the NLRB will automatically be allowed to recoup the attorney's fees and expenses it spent defending itself. The FAIR Act applies to any employer who has not more than 100 employees and a net worth of not more than $1.4 million. It is these small entities which are most in need of the FAIR Act's protection.

Mr. Speaker, the FAIR Act ensures that those with modest means will not be forced to capitulate in the face of frivolous actions brought by the NLRB, while making the agency's bureaucrats think long and hard before they start an action against a small business. By granting attorney's fees and expenses to small businesses who know the case against them is a loser, who know that they have done nothing wrong, the FAIR Act gives these entities an effective means to fight against abusive and unwarranted intrusions by the NLRB. A government agency the size of the NLRB—well-staffed, with numerous lawyers—should more carefully evaluate the merits of a case before bringing a complaint against a small business, which is ill-equipped to defend itself against an opponent with such superior expertise and resources. The FAIR Act will provide protection for an employer who feels strongly that its case merits full consideration. It will ensure the fair presentation of the issues.

The FAIR Act says to the NLRB that if it brings a case against a little guy it had better make sure the case is a winner, because if the Board loses, if it puts the small entity through the time, expense and hardship of an action only to have the business or labor organization come out a winner in the end, then the Board itself will have to reimburse the employer for its attorney's fees and expenses.

The FAIR Act's 100-employee/$1.4 million net worth eligibility limits represent a mere 20 percent of the 500-employee/$7 million net worth limits that are in the Equal Access to Justice Act [EAJA]—an act passed in 1980 with strong bipartisan support to level the playing field for small businesses by awarding fees and expenses to parties prevailing against agencies. Under the EAJA, however, the Board—even if it loses its case—is able to escape paying fees and expenses to the winning party if the Board can show it was substantially justified in bringing the action.

When the EAJA was made permanent law in 1985, the Congress made it clear in committee report language that the NLRB should have to meet a high burden in order to escape paying fees and expenses to winning parties. Congress said that for the agency to be considered substantially justified it must have more than a reasonable basis for bringing the action. Unfortunately, however, courts have undermined that 1985 directive from Congress and have interpreted substantially justified to mean that the Board does not have to reimburse the winner if it had any reasonable basis in law or fact for bringing the action. The result of all this is that the Board easily is able to win an EAJA claim and the prevailing business is almost always left high and dry. Even though the employer wins its case against the Board, the Board can still avoid paying fees and expenses under the EAJA if it meets this lower burden. This low threshold has led to egregious cases in which the employer has won its NLRB case—or even where the NLRB has withdrawn its complaint after forcing the employer to endure a costly trial or changed its legal theory in the middle of its case—and the employer has lost its followup EAJA claim for fees and expenses.

Since a prevailing employer faces such a difficult task when attempting to recover fees under the EAJA, very few even try to recover. For example, Mr. Speaker, in fiscal year 1996, the NLRB received only eight EAJA fee applications, and awarded fees to a single applicant—for a little more than $11,000. In fiscal year 1995, the Board received only nine fee applications from prevailing parties and awarded fees to only four applicants totaling less than $50,000. Indeed, during the 10-year period from fiscal year 1987 to fiscal year 1996, the NLRB received a grand total of 100 applications for fees. This small number of EAJA awards arises in an overall context of thousands of cases each year. In fiscal year 1996 alone, for example, the NLRB received nearly 33,000 unfair labor practice charges and issued more than 2,500 complaints, 2,204 of them settled at some point post-complaint.

The NLRB understandably argues the lack of successful EAJA claims is due to it carefully issuing only worthy complaints—those it is substantially justified in bringing. Does anyone believe this? Of 2,500 complaints last year the Board was unreasonable one time? In fact, Mr. Speaker, employers who have prevailed against the Board recognize the long odds of winning, and high expense of undertaking, additional EAJA litigation. Since it is clear the EAJA is underutilized at best, and at worst simply not working, the FAIR Act imposes a flat rule: If you are a small business, or a small labor organization, and you prevail against the Board, then you will automatically get your attorney's fees and expenses.

The FAIR Act adds to new section 20 to the National Labor Relations Act. Section 20(a) simply states that a business or labor organization which has not more than 100 employees and a net worth of not more than $1.4 million and is a prevailing party against the NLRB in administrative proceedings shall be awarded fees as a prevailing party under the EAJA without regard to whether the position of the Board was substantially justified.

The FAIR Act awards fees and expenses in accordance with the provisions of the EAJA and would thus require a party to file a fee application pursuant to existing NLRB EAJA regulations, but the prevailing party would not be precluded from receiving an award by any burden the NLRB could show. If the Board loses an action against the small entity, the Board pays the fees and expenses of the prevailing party.

Section 20(b) of the FAIR Act applies the same rule regarding the awarding of fees and expenses to a small employer or labor organization engaged in a civil court action with the NLRB. This covers situations in which the party wins a case against the Board in civil court, including a proceeding for judicial review of Board action. The section also makes clear that fees and expenses incurred appealing an actual fee determination under section 20(a) would also be awarded to a prevailing party without regard to whether or not the Board could show it was substantially justified.

In adopting EAJA case law and regulations for counting number of employees and assessing net worth, an employer's eligibility under the FAIR Act is determined as of the date of the complaint in an unfair labor practice proceeding or the date of the notice in a backpay proceeding. In addition, in determining the 100-employee limit, the FAIR Act adopts the NLRB's EAJA regulations, which count part-time employees on a proportional basis.

Mr. Speaker, the FAIR Act will arm small entities—businesses and labor organizations alike—with the incentive to defend themselves against the NLRB. The FAIR Act will help prevent spurious lawsuits and ensure that small employers have the ability to effectively fight for themselves when they have actions brought against them by a vast bureaucracy with vast resources.

If the NLRB wins its case against a small employer than it has nothing to fear from the FAIR Act. If, however, the NLRB drags an innocent small employer through the burden, expense, heartache and intrusion of an action that the employer ultimately wins, reimbursing the employer for its attorney's fees and expenses is the very least that should be done. It's the FAIR thing to do. I urge my colleagues in the House to support this important legislation and look forward to working with all Members in both the House and Senate in passing this bill.

FLORIDA INTERNATIONAL UNIVERSITY'S 25TH ANNIVERSARY

HON. LINCOLN DIAZ-BALART

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1997

Mr. DIAZ-BALART. Mr. Speaker, I rise today to congratulate Florida International University for 25 years of academic excellence and exciting growth.

Florida International University [FIU] has distinguished itself by becoming a center for intellectual inquiry and research that emphasizes the link between basic and applied scholarship. The university's interdisciplinary centers have acted as a catalyst for creativity in the arts, the sciences, and the professions by encouraging interaction among its students, faculty, staff, and the communities it serves.

Florida International University is ranked among the top 10 public commuter colleges in the United States by Money Magazine and is also cited in several leading college guides, including Barron's Guide to the Most Prestigious Colleges; and U.S. News & World Report's annual survey of America's Best Colleges.

Under the tenure of Dr. Modesto Mitch Madique, the university has made tremendous inroads. Dr. Madique, the first Cuban-American to be president of a 4-year college, became president in 1986. He has had the vision and the initiative to push the institution toward the 21st century.

When it opened its doors in 1972, FIU had an enrollment of 6,000 students. Today, with 13 schools and colleges, FIU has grown to over 28,000 students from all 50 States and 120 countries. As a major center of international education, FIU prides itself on the cultural and ethnic diversity of its students and faculty. It is, indeed, as many of its faculty and students like to say, ''a gateway of the Americas.''

FIU's College of Engineering and Design bears witness to the university's overall success. Under Dean Gordon R. Hopkins, the college of engineering has earned international recognition for its research programs, drawing scholars from all over the world. Similarly, in the College of Arts and Sciences, Dr. Dario Moreno, associate professor of political science, helped create a Ph.D. program in this discipline which works in conjunction with the university's renowned Latin American and Caribbean Center [LACC] and the Cuban Research Institute [CRI] to produce first-rate research in these areas of such great interest to our region.

The people of the 21st Congressional District are proud to claim Florida International University as our own. We look forward to the university's bright future of intellectual achievement built upon a foundation of integrity, creativity, and openness to the exploration of new ideas.

THERE'S TOO MUCH TO LOSE

HON. ADAM SMITH

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1997

Mr. ADAM SMITH of Washington. Mr. Speaker, a few days ago this House passed a good foreign operations bill, a bill which was structured to help ensure stability, prosperity, equality, and peace to our neighbors and allies around the world. But on that very same day, we witnessed an outrageous and cowardly act of terrorism, a triple bombing that shook the city of Jerusalem. And we were reminded that there are those who do not want peace, people who would destroy and tear down rather than resolving differences through negotiation and compromise.

Such actions are completely intolerable, and so I stand here today to reiterate what Secretary of State Madeleine Albright has already stated, that the United States expects a ''100 percent effort'' by the Palestinian Authority to stop militants from using areas under Palestinian self-rule as a springboard for attacks on Israel. On this issue there can be no compromise. A serious discussion of peace can not take place while terrorists are receiving nods and winks by the negotiators who are sitting at the bargaining tables.

And let us not confuse the issue, bombs are not the same as bulldozers. Recently, many papers have printed that this new wave of bombings is the result of controversial housing policies. While the Middle East peace process has had to overcome many obstacles, and will certainly have to continue to overcome many more, we can not begin to compare the actions of terrorists to the building policies of a government. There is no moral equivalency.

So as Secretary of State Madeleine Albright begins her visit to the Middle East today, I call upon all the parties involved to bring their issues to the bargaining table. The terrorists are waging war, and it is a war on peace. As difficult as it may be, we must find a compromise because we cannot let the terrorists win. There is much too much to lose.

CAMPAIGN FINANCE REFORM

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1997

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, September 10, 1997 into the CONGRESSIONAL RECORD:

REFORMING THE CAMPAIGN FINANCE SYSTEM

The hearings in Congress have now built a powerful case for fundamental changes in the way we finance our political campaigns in America. They have uncovered negligence by both political parties, with the abuses unearthed going back several elections. These parties were desperate for campaign dollars. They did not take care to look at the origin of the dollars, but simply encouraged their flow to the party coffers. There has been a lot of partisan jockeying in Washington, each party trying to blame the other, and the result, at least so far, has been that Congress has done nothing. If that pattern continues, it would be a tragedy for the American political system.

PUBLIC PERCEPTIONS

Americans may not understand the details or even the basics of the campaign finance system. But they are clearly troubled by the role that money plays in the American political system. They believe that money has an excessive influence on government policy and that elected officials who solicit and accept political contributions while making policy decisions are under a conflict of interest.

They understand that the search for money distracts elected officials from the jobs they are elected to do, and that money often buys access for one group while denying another group a fair opportunity to influence the process. They appreciate that the well-to-do and powerful special interest groups have access to Members of Congress that they do not have.

They understand that the problem is systemic and that it is not associated with a single party or a single elected official. It affects all of them. The public clearly understands that the present system of campaign finance does not serve them well. They overwhelmingly want reform, and they want it now.

''SOFT'' MONEY

The campaign finance hearings have raised serious concerns about foreign fundraising, but I do not think the problems are limited to that. A large number of people and groups were able to abuse the current laws, simply because those laws invite abuse. The biggest abuse is the so-called ''soft money'' that flowed in huge amounts to both political parties during 1996 from American donors. Under current law, both foreign and American money from wealthy individuals and corporations can be given in unlimited amounts to the parties as opposed to individual candidates. Although these funds are supposed to be for party-building purposes, they are easily diverted to individual campaigns. What happened in 1996 was that the whole system simply spun out of control as both parties aggressively sought soft money.

Soft money has become the key source of funding for political campaigns. It amounts to large-scale, unregulated donations. I do not think prohibiting soft money will solve all the problems of campaign finance, but it is certainly an essential part of a meaningful reform package.

IMPORTANCE OF LEGISLATION

I believe it is simply time for Congress to legislate. We do not need a lot of additional information or documentation about the ease with which money has flowed into campaigns or the vigor and ingenuity with which candidates have sought the money from whatever source. The investigating committees are correct in trying to get to the bottom of the many questions that have been raised by the investigations, and the possibility of bringing some criminal charges should be pursued by the Justice Department. The country deserves a full accounting of how the political system got corrupted in 1996, and those investigations should be done in as bipartisan a way as possible. But before Congress goes home in 1997, we should enact a tough campaign finance reform law curbing the role of money in campaigns. What is needed now is legislation, not more data, not more information.

At this point, I think Congress should promptly ban soft money. That would do much to slow the flood of campaign money and alleviate the worst problems in campaign finance. Disclosure rules should be broadened to ensure that voters know who is responsible for the accuracy and fairness of campaign advertising and also know who makes all the contributions and how much they are. Even the most minute contributions and expenditures should be revealed before election day.

And no reform is worth anything unless it has effective enforcement. The Federal Election Commission has to be strengthened with strong, independent-minded commissioners, and with a more adequate budget. Penalties should be strengthened for violators. Further reforms will undoubtedly be necessary. But these should not delay action on those measures that can pass now.

It is important to note that the money-raising process goes on even as politicians talk about campaign finance reform. They are vigorously raising money under the old system, including soft money. Already in 1997 about 2½ times as much has been raised as at the same point in the election cycle four years ago.

Time is of the essence with the congressional year concluding and congressional elections coming up next year. Each day that the elections come closer, the passage of campaign finance reform becomes more difficult.

CONCLUSION

Almost every week now we learn more about the selling of government. Political offices from the White House down are being demeaned, if not corrupted. There seems to be a ''For Sale'' sign on government, and that includes Congress and the Executive Branch. We simply must have reform, and that especially means imposing limits on the giving and receiving of soft money. I see the potential for the current system, if it continues its present pattern, to do serious harm to our system of government.

Now is the time for Congress to act. The campaign finance issues are very well known to every Member. We deal with them every day. I believe we simply have to set aside the efforts to gain or maintain a partisan advantage. We have to focus now on the integrity of our national government. That integrity demands that we have honest, bipartisan campaign finance reform.