

for purposes of a vote on a referendum into one voting block. The Congressional Research Service estimates that these 3-judge courts would be required less than 10 times in a decade under this bill, causing a very insubstantial burden on the Federal judiciary, while substantially protecting the rights of the voters of a State.

This bill recognizes that State referenda reflect, more than any other process, the one-person-one-vote system, and seeks to protect a fundamental part of our national foundation. This bill will implement a fair and effective policy that preserves a proper balance in Federal-State relations. I applaud Mr. BONO for his efforts in extending the protection afforded to Voting Rights Act cases to direct initiatives of the people.

The second reform contained in this bill was developed by the chairman of the Subcommittee on the Constitution, Representative CANADY of Florida. It allows immediate [interlocutory] appeals of class action certifications by a Federal district judge.

When a district judge determines that an action may be maintained as a class action, the provisions contained in the Judicial Reform Act allow a party to that case to appeal that decision immediately to the proper court of appeals without delaying the progress of the underlying case. This prevents automatic certification of class actions by judges whose decisions to certify may go unchallenged because the parties have invested too many resources into the case before an appeal is allowed.

This bill will also prevent abuses by attorneys who bring class action suits when they are not warranted, and provides protection to defendants who may be forced to expend unnecessary resources at trial, only to find that a class action was improperly brought against them in the first place.

The third reform contained in this bill was developed by another valued member of the committee, Representative BRYANT of Tennessee. It requires that a complaint brought against a Federal judge be sent to a circuit other than the one in which the judge who is the object of the complaint sits for review. This will provide for a more objective review of the complaint and improve the efficacy of the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, 28 U.S.C. 372—The 1980 Act—which established a mechanism for the filing of complaints against Federal judges.

Under those procedures, a complaint alleging that a Federal judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts may be filed with the clerk of the U.S. Court of Appeals for the circuit in which the Federal judge to be complained against sits. Under the act, a special committee will report to the judicial council of the circuit, which will decide what action, if any, should be taken.

By requiring that complaints filed under the 1980 act be transferred to a circuit other than the circuit in which the alleged wrongdoer sits, more objectivity and accountability will exist for litigants who find themselves in need of relief from a judge who is not properly performing his or her functions.

The fourth reform contained in this bill prohibits a Federal court from imposing taxes, a function reserved to legislative bodies, for the purpose of enforcing a legal decision. Mr. Speaker, seizing the power of the public purse by imposing taxes on any community is an

egregious example of how some members of the judiciary have breached this Nation's founding principle of separation of powers and undermined the concept of self-rule.

In some cases, judges have designed in specific detail local school systems and public housing systems, and then ordered tax increases to finance the spending bills disguised in their judicial rulings. State and Federal laws leave budget and spending authority to legislative bodies, because only a body which represents the will of the people can decide properly how to spend the people's taxes. While rulings on due process are important to protect the rights of litigants, any remedy which would force the public to pay more in taxes must come from the House of the people and not from the authority of the bench. The judiciary is not equipped nor given the power to make such decisions. To allow otherwise is to usurp self-rule and replace it with self-appointed authority. As four Justices of the U.S. Supreme Court have stated, the imposition of taxes by courts "disregards fundamental precepts for the democratic control of public institutions. The power of taxation is one that the Federal judiciary does not possess."

This bill will restore the proper balance defined in the Constitution between the Federal branches and Federal-State relations by prohibiting courts from imposing taxes on any community. It retains accountability by legislatures to the electorate, and not to judges.

The fifth reform contained in this bill was also developed by Representative CANADY. It allows all parties on one side of a civil case brought in Federal district court to agree, after initial assignment to a judge, to bring a motion requiring that the case by reassigned to a different judge. Each side of the case may exercise this option only once.

This substitution of judge, or, as referred to in the bill, "reassignment of case as of right" provision mirrors similar State laws and allows litigants on both sides of a case to avoid being subjected to a particular Federal judge, appointed for life, in any specific case. It might be used by litigants in a community to avoid forum shopping by the other side in a case, or to avoid a judge who is known to engage in improper courtroom behavior or who regularly exceeds judicial authority.

This provision is not meant to replace appellate review of trial judges' decisions, but rather to complement appellate review by encouraging judges to fairly administer their oaths of office to uphold the Constitution. Many judges face constant reversals on appeal, but still force litigants to bear extraordinary costs before them and further bear the burden of overcoming standards of review on appeal. This provision allows litigants some freedom in ensuring that due process will be given to their case before they bear the costs associated with litigating in trial court and will encourage the judiciary to be as impartial as required by their charge.

Mr. Speaker, this bill is limited in scope. It reforms the procedures of the Federal courts to ensure fairness in the hearing of cases without stripping jurisdiction, or reclaiming any powers granted by Congress to the lower courts. It does assure that litigants in Federal courts will be entitled to fair rules of practice and procedure leading to the due process of claims.

I commend the entire Committee on the Judiciary for their work in procuring these re-

forms to our courts, and look forward to hearings on this bill in the middle of May by the Subcommittee on Courts and Intellectual Property, chaired by Representative HOWARD COBLE.

#### SALUTE TO THE DEVIL PUP PROGRAM

**HON. ELTON GALLEGLY**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, April 9, 1997*

Mr. GALLEGLY. Mr. Speaker, I would like to pay tribute to the Devil Pups, an outstanding program that has served Ventura County and California for over 40 years.

The Devil Pups Program was started in 1954 with the objective of developing the qualities of good citizenship, self-control, confidence, personal discipline, teamwork, respect for family and country in young men 14 through 17 years of age. Through interaction with Marine Corps leaders and observation of Marine training, Devil Pups instill a greater sense of pride and personal accomplishment in each of the program's graduates.

As one of the first Devil Pup recruits in 1958, I can personally speak of its merits. I began the program a young boy and emerged a young man. We trained like Marines and we felt like Marines—except we occasionally had access to water while the Marines carried canteens.

Devil Pups gain insight into the principles on which our Nation was founded and thus enhance their pride of country and its flag. During their 10 days at camp, Devil Pups learn first aid, physical conditioning, attend educational lectures on the dangers of drug and alcohol abuse, and much more.

In this time of reliance on Government Expenditure, the Devil Pups are unique. The program is financed entirely by donations from charitable foundations, business corporations, and individuals. They do not accept nor solicit grants from the Federal Government. And, more importantly, there is no cost to the pup or his family.

The Devil Pups and the fine volunteers who operate the program are models for our community and our youth. I wish each of them many more successes.

#### PROPERTY CLAIMS IN CENTRAL AND EASTERN EUROPE

**HON. CHRISTOPHER H. SMITH**

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, April 9, 1997*

Mr. SMITH of New Jersey. Mr. Speaker, at the end of the last Congress, I introduced a resolution on the difficult subject of property claims arising from Fascist- and Communist-era confiscations in Central and Eastern Europe. As with the previous resolution, I am joined by my colleagues from the Helsinki Commission in introducing this resolution. Mr. PORTER, Mr. WOLF, Mr. SALMON, Mr. CHRISTENSEN, Mr. HOYER, Mr. MARKEY, and Mr. CARDIN have agreed to be original cosponsors of this resolution.

This resolution stemmed from a hearing I convened in July with Under Secretary of

Commerce Stuart Eizenstat and Chairwoman of the Foreign Claims Settlement Commission Delissa Ridgway. In compelling testimony presented to the Helsinki Commission, these two individuals outlined the maze of programs and procedures which govern property claims in Central and Eastern Europe today. Chairwoman Ridgway's Commission is primarily concerned with adjudicating agreements on behalf of American claimants in those instances where agreements between the United States and foreign governments have already been reached. Under Secretary Eizenstat has sought to engage these governments in a dialog about these issues, to foster a greater acknowledgment of past wrongs, and to discern the ways in which the process of making compensation or restitution can be further advanced. I commend both of these people for the strong leadership they have shown in their work.

Mr. Speaker, the procedures that exist for compensation or restitution differ from country to country, often requiring claimants to travel a road so encumbered with conditions and qualifications that it must be a miracle for anyone to have any property returned. And that, of course, is only in those countries which have actually adopted restitution or compensation laws—many countries in this region have not even taken that step. I am particularly anxious to ensure that the survivors of Nazi persecution—people who, in many instances, were unable to receive compensation made available to their counterparts in the West or in Israel—receive the belated compensation that may enable them to live their remaining days in dignity. Moreover, I am deeply troubled that several countries in this region have adopted compensation or restitution laws that discriminate on the basis of citizenship or residency, a move that clearly and unfairly discriminates against American claimants.

I hope other Members of Congress will join me in signaling the countries of Central and Eastern Europe and, in particular, calling for the urgent return of property formerly belonging to Jewish communities as a means of redressing the especially compelling problems of aging and often destitute survivors of the Holocaust. In addition, this resolution calls for countries to remove from their books restrictions which require claimants seeking compensation or restitution to have the citizenship of, or residency in, the country from which they seek compensation or restitution.

Mr. Speaker, I would ask that the text of the resolution be printed in the RECORD at this point.

H. CON. RES.—

Whereas Fascist and Communist dictatorships have caused immeasurable human suffering and loss, degrading not only every conceivable human right, but the human spirit itself;

Whereas the villainy of communism was dedicated, in particular, to the organized and systematic destruction of private property ownership;

Whereas the wrongful and illegal confiscation of property perpetrated by Fascist and Communist regimes was often specifically designed to victimize people because of their religion, national or social origin, or expressed opposition to the regimes which repressed them;

Whereas Fascists and Communists often obtained possession of properties confiscated from the victims of the systems they actively supported;

Whereas Jewish individuals and communities were often twice victimized, first by the Nazis and their collaborators and then by the subsequent Communist regimes;

Whereas churches, synagogues, mosques, and other religious properties were also destroyed or confiscated as a means of breaking the spiritual devotion and allegiance of religious adherents;

Whereas Fascists, Nazis, and Communists have used foreign financial institutions to launder and hold wrongfully and illegally confiscated property and convert it to their own personal use;

Whereas some foreign financial institutions violated their fiduciary duty to their customers by converting to their own use financial assets belonging to Holocaust victims while denying heirs access to these assets;

Whereas refugees from communism, in addition to being wrongly stripped of their private property, were often forced to relinquish their citizenship in order to protect themselves and their families from reprisals by the Communists who ruled their countries;

Whereas the participating states of the Organization for Security and Cooperation in Europe have agreed to give full recognition and protection to all types of property, including private property, as well as the right to prompt, just, and effective compensation in the event private property is taken for public use;

Whereas the countries of Central and Eastern Europe, as well as the Caucasus and Central Asia, have entered a post-Communist period of transition and democratic development, and many countries have begun the difficult and wrenching process of trying to right the past wrongs of previous totalitarian regimes;

Whereas restrictions which require those whose properties have been wrongly plundered by Nazi or Communist regimes to reside in or have the citizenship of the country from which they now seek restitution or compensation are arbitrary and discriminatory in violation of international law; and

Whereas the rule of law and democratic norms require that the activity of governments and their administrative agencies be exercised in accordance with the laws passed by their parliaments or legislatures and such laws themselves must be consistent with international human rights standards: Now, therefore, be it

*Resolved by the House of Representatives (the Senate concurring), That the Congress—*

(1) welcomes the efforts of many post-Communist countries to address the complex and difficult question of the status of plundered properties;

(2) urges countries which have not already done so to return plundered properties to their rightful owners or, as an alternative, pay compensation, in accordance with principles of justice and in a manner that is just, transparent, and fair;

(3) calls for the urgent return of property formerly belonging to Jewish communities as a means of redressing the particularly compelling problems of aging and destitute survivors of the Holocaust;

(4) calls on the Czech Republic, Latvia, Lithuania, Romania, Slovakia and any other country with restrictions which require those whose properties have been wrongly plundered by Nazi or Communist regimes to reside in or have the citizenship of the country from which they now seek restitution or compensation to remove such restrictions from their restitution or compensation laws;

(5) calls upon foreign financial institutions, and the states having legal authority over their operation, that possess wrongfully and illegally property confiscated from Holo-

caust victims, from residents of former Warsaw Pact states who were forbidden by Communist law from obtaining restitution of such property, and from states that were occupied by Nazi, Fascist, or Communist forces, to assist and to cooperate fully with efforts to restore this property to its rightful owners; and

(6) urges post-Communist countries to pass and effectively implement laws that provide for restitution of, or compensation for, plundered property.

IN SUPPORT OF H.R. 582: THE MEDICARE HOSPITAL OUTPATIENT REFORM ACT OF 1997

**HON. FORTNEY PETE STARK**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, April 9, 1997*

Mr. STARK. Mr. Speaker, on February 4, Representative COYNE and myself introduced a bill to provide for an immediate correction of a serious Medicare beneficiary problem: the overcharging of seniors and the disabled by hospital outpatient departments [HOPD].

The President's budget also calls for a correction of this problem, but phases in the correction over a 10-year period.

In Medicare, the program generally pays 80 percent of part B bills and the patient pays 20 percent. But because of the way the HOPD benefit was drafted, currently beneficiaries are paying about 45 percent and Medicare 55 percent. Simply put, the problem arises because Medicare pays the hospital on the basis of reasonable cost, while the beneficiary is stuck with 20 percent of charges—and charges can be anything the hospital wants to say they are.

Recently, the American Association of Retired Persons asked its members for examples of problems they had had with HOPD billings. They received an overwhelming response, and over the coming weeks, I would like to enter some of these letters in the RECORD.

These examples are the proof of why we need to fix this problem ASAP.

The first is from Mrs. Patterson of Chico, CA, who was in the hospital 5 hours, and Medicare paid the full bill—less than 20 percent—of over \$4,000, including \$900 of pharmacy.

Curious to me on the hospital bill is the box at bottom right, showing expected payment of Medicare \$327.52, estimated amount not paid by Medicare \$3016.18. In questioning the hospital bookkeeping office, I was told that Medicare actually pays only the small amount and the hospital absorbs the rest.

Mrs. Patterson, or her medigap policy if she had one, paid \$818.80 on total charges of \$4094—20 percent of charges. Medicare then determined that the fair cost of the procedure was \$1146.32, but since Mrs. Patterson had already paid \$818.80, Medicare only paid the rest of the fair cost—or \$327.52. What the bookkeeper didn't tell Mrs. Patterson was that what the hospital "absorbed" was an outrageous and unjustified charge that no one should have paid—sort of like the sticker price on an auto at a used car dealership. Yet in this case, the beneficiary paid 71.5 percent of the fair cost and Medicare 28.5 percent—a far cry from Medicare's "promise" of a 20–80 percent split.

The second letter printed below is from the Robertson family of Alhambra, CA, for cataract