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My congratulations go to the Viejas Bank of Kumeyaay Indians for these significant contributions.

# FAMILY AND MEDICAL LEAVE CLARIFICATION ACT

**HON. WILLIAM F. GOODLING**

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, May 19, 2000*

Mr. GOODLING. Mr. Speaker, today I introduce a bill that would make reasonable, and much needed change to the Family and Medical Leave Act (FMLA) of 1993. The Family and Medical Leave Clarification Act will help implement and enforce the FMLA in a manner consistent with Congress' original intent.

I do not think anyone would dispute that the FMLA has helped those with serious family and medical crisis. However, some of the troublesome results are difficult to ignore. There is compelling evidence of problems with the implementation and the FMLA, problems affecting both employers and employees. The FMLA is still a relatively young law. In fact, the final rule implementing the Act was not published until 1995. As with any new law, there are some growing pains that need to be sorted out.

Testimony before the Committee on Education and the Workforce has established evidence of myriad problems in the workplace caused by the FMLA. These problems include: the administrative burden of allowing leave to be taken in increments of as little as six minutes; the additional burdens from overly broad and confusing regulations of the FMLA, not the least of which is the Department of Labor's ever-expanding definition of "serious health condition;" and inequities stemming from employers with generous leave policies in effect being penalized under the FMLA for having those policies.

Mr. Speaker, the FMLA created a Commission on Leave, which was charged with reporting the FMLA's impact. Upon release of the Commission's report in April 1996, we were told that all was well with the FMLA. But contrary to these assertions, the report was not a complete picture. In fact the Family and Medical Leave Act Commission admitted its report was only an "initial assessment." Its two year study began in November of 1993, just three months after the Act even applied to most employers and more than a year before the release of final FMLA regulations in January of 1995.

Simply put, the Commission's report was based on old and incomplete data studies long before employers or employees could have been fully aware of the FMLA's many requirements and responsibilities.

Mr. Speaker, the first area the FMLA Clarification Act addresses is the Department of Labor's overly broad interpretation of the term "serious health condition." In passing the FMLA, Congress stated that the term "serious health condition" was not intended to cover short-term conditions for which treatment and recovery were very brief, recognizing specifically in Committee report language that "it is

expected that such conditions will fall within the most modest sick leave policies."

Despite Congressional intent, the Department of Labor's current regulations are extremely expansive, defining the term "serious health condition" as including, among other things, any absence of more than three days in which the employee sees any health care provider and receives any type of continuing treatment, including a second doctor's visit, or a prescription, or a referral to a physical therapist. Such a broad definition potentially mandates FMLA leave where an employee sees a health care provider once, receives a prescription drug, and is instructed to call the health care provider back if the symptoms do not improve.

The FMLA Clarification Act elects Congress' original intent for the meaning of the term "serious health condition," by taking word-for-word from the Democrat Committee report, and adding to the status, the then-Majority's explanation of what types of conditions it intended the Act to cover. It also repeals the Department's current regulations on the issue and directs the agency to go back to the drawing board and issue regulations consistent with the new definition.

My bill also minimizes tracking and administrative burdens while maintaining the original intent of the law, by permitting employers to require employees to take "intermittent" leave, which is FMLA leave taken in separate blocks of time due to a single qualifying reason, in increments of up to one-half of a work day.

Congress drafted the FMLA to allow employees to take leave less than full-day increments. Congress also intended to address situations where an employee needed to take leave for intermittent treatments, e.g., for chemotherapy or radiation treatments, or other medical appointments. Granting leave for these conditions has not been a significant problem.

However, the regulations provide that an employer "may limit leave increments to the shortest period of time that the employer's payroll system uses to account for absences or use of leave, provided it is one hour or less." Since some employers track in increments as small as six or eight minutes, the regulations have resulted in a host of problems related to tracking the leave and in maintaining attendance control policies. In many situations, it is difficult to know when the employee will be at work.

In many positions, employees with frequent, unpredictable absences can severely impact an employer's productivity and overburden their co-workers when employers do not know if certain employees will be at work. Allowing an employer to require an employee to take intermittent leave in increments of up to one-half of a work day would ease the burden significantly for employers, both in terms of necessary paperwork and with respect to being able to provide effective coverage for absent employees.

Where the employer does not exercise the right to require the employee to substitute other employer-provided leave under the FMLA, the FMLA Clarification Act shifts to the employee the requirement to request leave to be designated as FMLA leave. In addition, the Act requires the employee to provide written application of foreseeable leave within five working days, and within a time period extended as necessary for unforeseeable leave,

if the employee is physically or mentally incapable of providing notice or submitting the application.

Requiring the employee to request that leave be designated as FMLA leave eliminates the need for the employer to question the employee and pry into the employee's private and family matters, as required under current law. This requirement helps eliminate personal liability for employer supervisors who should not be expected to be experts in the vague and complex regulations which even attorneys have a difficult time understanding.

With respect to leave taken because of the employee's own serious health condition, the FMLA Clarification Act permits an employer to require the employee to choose between taking unpaid leave provided by the FMLA or paid absence under an employer's collective bargaining agreement or other sick leave, sick pay, or disability plan, program, or policy of the employer.

This change provides incentive for employers to continue their generous sick leave policies while providing a disincentive to employers considering discontinuing such employee-friendly plans, including those negotiated by the employer and the employees' union representative. Paid leave would be subject to the employer's normal work rules and procedures for taking such leave, including work rules and procedures dealing with attendance requirements.

Despite the common belief that leave under the FMLA is necessarily unpaid, employers having generous sick leave policies, or that have worked out employee-friendly sick leave programs with unions in collective bargaining agreements, are being penalized by the FMLA. In fact, for many companies, most FMLA leave has become paid leave because the regulations state that an employer must observe any employment benefit program or plan that provides rights greater than the FMLA.

Because employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions, nor can they count FMLA leave under "no fault" attendance policies, the regulations prohibit employers from using disciplinary attendance policies to manage employees' absences.

Mr. Speaker, the Family and Medical Leave Clarification Act relieves many of the unnecessary and unreasonable burdens imposed on employers and employees by the Department of Labor's implementing regulations, without rolling back the rights of employees under the FMLA. Finally, my bill encourages employers to continue to provide generous paid leave policies to their employees.

I urge my colleagues in joining me in co-sponsoring this measured and necessary mid-course correction to providing effective FMLA processes.

HONORING THE LATE STATE  
SENATOR DONALD L. GRUNSKY

**HON. SAM FARR**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, May 19, 2000*

Mr. FARR of California. Mr. Speaker, today I honor an outstanding legislator and trial lawyer who was a long time resident of Santa

Cruz County. Former State Senator Donald L. Grunsky passed away at the age of 84.

Born in San Francisco, Donald received a bachelor's degree from the University of California, Berkeley, in 1936 and a law degree from Boalt Hall in 1939. He practiced law in the Bay Area for two years before entering the U.S. Navy during World War II. After being released from the service as a Lieutenant Commander in 1945, Grunsky established his law practice in Watsonville. He was the founder of Grunsky, Ebey, Farrar & Howell, one of the largest and most highly respected law firms in the Central Coast counties. Donald began his political career at age 32, serving as an Assemblyman from 1947 to 1952 and a Senator from 1953 to 1976. During his tenure Donald authored important legislation including measures to revise the state's divorce laws, the prohibition of off-shore drilling, a master plan for education and important water conservation measures. Donald also served as a chairman of seven Senate committees, some of which included the Finance and Judiciary committees.

Donald will be sorely missed by the many people who were privileged to know him both personally and professionally. He will forever be remembered by dear family and friends. Donald is survived by his wife Mary Lou Grunsky of Watsonville; brother-in-laws, Al Rushton and Joe Meidi; and several nieces and nephews.

STATEMENT ON PERMANENT NORMAL TRADE RELATIONS BY REVEREND RICHARD CIZIK, VICE PRESIDENT FOR GOVERNMENTAL AFFAIRS, NATIONAL ASSOCIATION OF EVANGELICALS

**HON. JOSEPH R. PITTS**

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, May 19, 2000*

Mr. PITTS. Mr. Speaker, I would like to draw to the attention of the House the following statement from Reverend Richard Cizik, Vice President for Governmental Affairs at the National Association of Evangelicals. Reverend Cizik, who has 30 years of experience on religious issues in China, believes that granting permanent normal trade relations with China will ultimately result in greater religious freedom for the Chinese people.

NATIONAL ASSOCIATION OF  
EVANGELICALS,  
Azusa, CA, May 16, 2000.

Re: Permanent Normal Trade Relations with China

Hon. J. DENNIS HASTERT,  
*Speaker of the House, House of Representatives,  
Washington, DC.*

DEAR MR. SPEAKER: The National Association of Evangelicals is officially neutral on the topic of permanent normal trade relations with China. Evangelicals are not of one mind on how best to encourage China to move toward greater religious freedom. However, I write to express my own concerns.

The NAE has been vocal about the religious persecution of Christians and others around the world. Its 1996 "Statement of Conscience Concerning Worldwide Religious Persecution," was the touchstone of a movement culminating in the passage of the

International Religious Freedom Act. (I helped draft that statement and have been involved with China for more than twenty-five years, most recently participating as a staff member to President Clinton's "Religious Leaders' Delegation To the People's Republic of China.")

Millions of evangelicals, many within our 51 denominations and 43,000 churches, are convinced that we need to end the fractious debate over China trade policy which is damaging confidence in the United States among the Chinese people and elsewhere. Moreover, to have an effective policy that can actually achieve several goals—including gains in human rights and cooperative rather than hostile relations—requires a consistent policy that can only come from bipartisan consensus based on public support.

I respectfully suggest the following might help to create that new consensus.

Send clear signals to the government of the PRC of its primary responsibility to protect human rights and bring about social justice in China. For example, officials in Beijing and in Henan Province should immediately grant full freedom to Pastor and evangelist Peter Xu Yongzhe. Freeing Xu and other prisoners of conscience who have been unjustly detained or imprisoned would be an important step by China in terms of improving human rights, strengthening the rule of law, and building better relations with the United States. (The persecution of people of faith was raised by the members of the Religious Delegation in all of our meetings with government officials—including President Jiang Zemin.)

Recognize that there are no instant solutions but that progress is being made. China's cultural legacy of authoritarianism, the complexity of change, and the lagging of political reform behind economic developments requires a long-term struggle for human dignity and social justice. We should affirm the far-reaching improvements in personal freedoms and social-economic livelihood achieved over the past twenty years by the Chinese people in their attempt to leave behind the horrors of Maoism and to create a more democratic society.

Keep in mind that the key agents of change in China are Chinese citizens whose opinions will have growing impact on government action. We must ensure that our actions support rather than damage their efforts. In recent years, our annual debate over trade and human rights, while drawing attention to the religious liberty violations that should concern all Americans, has fueled hostility between Chinese and Americans rather than bringing about positive change in China. Additionally, it has served to strengthen the hand of Communist hardliners who oppose economic and political reform, as well as an improvement in US-Sino relations.

Listen carefully to the views of Chinese citizens, Americans living and working in China, and citizens of Hong Kong and Taiwan, all whom will be the most affected by the outcome. Many Chinese Christians, including those in the unregistered house churches and those in the US, call for expanded trade through the World Trade Organization because it helps create acceptance of international norms and keeps the door open to religious exchanges and cooperation. Trade sanctions increase social discrimination and government pressure against these believers.

Pay more attention to the real impact of our actions inside China. Using trade restrictions to send a signal of disapproval to the PRC government is likely to fuel widespread

public resentment of the United States. Restrictions on trade will be interpreted as an effort to block China's membership in the World Trade Organization and thus to stymie progress or even destabilize China. This will inevitably arouse anti-American sentiment, especially among younger generations.

Recognize that the United States government is only one actor and that many American institutions exert great influence in China, especially on moral and social issues. Religious groups, businesses, nonprofit institutions, academic, and medical organizations, as they interact with their Chinese counterparts, need to raise our concerns about human rights abuses. They also need to find constructive ways to assist efforts to speed up the restructuring of social and political institutions necessary to underpin the rule of law.

Let me make some specific suggestions on what should be done next.

(1) This administration and the next should make greater efforts to work multilaterally, especially with Asian nations, both to enforce China's compliance with WTO standards over the next decade and to create regional support for human rights. This will help create internal pressures for government conformity with international standards.

(2) Congress should work to establish good working relations with the National People's Congress of China in order to encourage good legislative practices. Congress should fully fund all the functions it has mandated to the Department of State and other government agencies.

(3) The Commission on International Religious Freedom (CIRF) should organize and fund a cooperative government-nongovernmental effort to improve the accuracy of reporting on the religious situation in China. It should encourage reporting by province and major city to highlight the responsibilities of local officials.

(4) The formation of a new bipartisan commission to coordinate all the goals (including religious freedom) of a consistent long-term policy toward China would be most effective if it focuses not on a single set of issues or short-term aims, but on effective strategy and tactics, and fosters dialogue with representatives of all the diverse sectors in our society that are involved with China.

(5) Congress should demonstrate the strength of its resolve on matters of human rights and religious freedom by enacting—not broad and blanket sanctions—but targeted and measured sanctions designed to accomplish their intended objective. For example, firm action against China National Petroleum Company's role in financing genocide in Sudan would send an indirect signal to China about our commitment to deal with religious persecution.

It is especially disturbing to me that during the past year there has been an escalation of harassment, intimidation, and persecution of people of faith. However, in my opinion (and that of organizations such as China Source, which represents dozens of Christian organizations working in China), granting permanent normal trade relations with China will ultimately result in greater religious freedom for the Chinese people, not less.

Sincerely Yours,

REV. RICHARD CIZIK,  
Vice President for Governmental Affairs.