

authorizing the use of force following September 11.

Third, we include the same sunset clause contained in the PATRIOT Act: December 31, 2005.

Fourth, we make clear that *habeas corpus* is not waived. Article 1, Section 9 of the Constitution requires action by Congress to suspend this right: a President cannot waive it by military order.

Congressional action will contribute to public and international acceptance of the use of military tribunals by making sure they are done right.

In our nation's history, military tribunals have had an important place in our prosecution of war criminals, but always in conjunction with Congressional action. Our legislation ensures the right balance between protecting our Constitutional principles and taking strong action against terrorists, and I urge all of my colleagues to support it.

#### TRIBUTE TO KATHY NGUYEN

##### HON. JOSÉ E. SERRANO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 12, 2001*

Mr. SERRANO. Mr. Speaker, I rise today to pay tribute to Ms. Kathy Nguyen, a dedicated hospital worker and resident of the Bronx for over 20 years. Ms. Nguyen became an innocent victim of unfortunate circumstances on October 31, 2001 at the age of 61.

Ms. Nguyen has been described as a loyal and caring woman who was well-known and well-loved in her South Bronx community. Like most Americans, I was shocked and saddened to hear of Ms. Nguyen's passing. I had remained hopeful that she would recover when it was determined that she had contracted Anthrax. Ms. Nguyen was a victim of horrible circumstance and while no family members could be located, she continues to be mourned by a host of friends and neighbors who miss her deeply. Ms. Nguyen will be remembered by the entire nation. While each of the lives lost in the past few months have reminded us of exactly how precious life is, Kathy Nguyen's passing brought home the reality of how vulnerable we all are, whether we are members of Congress, TV personalities, or hospital workers. That is one of the reasons that she will be remembered by the nation for years to come. Mr. Speaker, it is important that she be remembered more than as the first mysterious Anthrax victim, but as a unique and well-loved individual whose presence is missed by many. I am truly grateful for this opportunity to honor her memory.

Mr. Speaker, Ms. Nguyen had encountered adversity more than once in her life. She escaped a war-torn Vietnam in 1975 in search of solace in the United States. She left behind her slain family and friends and began a new life, on her own, in a new country. Ms. Nguyen had been a business woman in her native country, owning and operating a bar in Saigon. The strength and courage this woman must have possessed in order to successfully overcome obstacles in her life are worthy of admiration. Besides Ms. Nguyen's quiet strength, she will be most remembered by her friends and neighbors for being a dear friend. Her friend Gina Ramjassigh was quoted as

saying, "Everyone that she touched loved her. She was an aunt to my children and she was the best friend I ever had." Other people who knew Ms. Nguyen have said that she was always reaching out to others.

I ask my colleagues to join me today in honoring a life that was needlessly cut short and in memorializing Ms. Kathy Nguyen.

#### THE FOREIGN TERRORIST MILITARY TRIBUNAL AUTHORIZATION ACT

##### HON. ZOE LOFGREN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 12, 2001*

Ms. LOFGREN. Mr. Speaker, Congresswoman JANE HARMAN and I support our Commander-in-Chief in the fight against terrorism. We agree that we may need to convene military tribunals and the bill that we are introducing today would specifically authorize that.

Article 1, Section 8 of our Constitution provides that Congress shall constitute tribunals inferior to the Supreme Court and that Congress shall make rules concerning captures on land and water in time of war.

On September 11th, international criminals terrorized and killed many innocent Americans. These murderers must face swift and unyielding justice if they are not killed in combat and, if we are going to try combatants on Afghan soil, it is likely that a military tribunal is the right forum.

Congress needs to act so that there will be no question that this is legal.

But, as the Supreme Court pointed out in *Ex Parte Milligan*, 71 U.S. 2, 18 L. Ed. 281 (1866), when courts are operational here in America they need to be used for the trial of criminals. That's why this bill limits tribunals to those being prosecuted abroad. If Osama bin Laden is captured overseas, he will face a military tribunal. If your neighbor is arrested tomorrow in San Jose, he will go to court like any other accused person in America. It is important to note that American law already provides for the safekeeping of classified information and the security of trials. The Classified Information Procedures Act (CIPA) has been part of American law for two decades. It rightly insures that criminal prosecution won't jeopardize national security.

The President's recent military order also appeared to suspend the right of the accused to appeal to courts. In essence, this would suspend the Writ of *Habeas Corpus*. The Order stated that any individual subject to a military tribunal "shall not be privileged to seek any remedy or maintain any proceeding, directly or indirectly, or to have any such remedy or proceeding sought on the individual's behalf, in (i) any court of the United States, or any State thereof, (ii) any court of any foreign nation, or (iii) any international tribunal."

We are a nation of laws. The most important, our original law, is our Constitution.

Article 1, Section 9 provides that the writ of *Habeas Corpus* may only be suspended when the public safety may require it and then only in cases of rebellion or invasion. Suspension require Congress to act. It is not the President's prerogative. Even President Lincoln, who felt the need to suspend *Habeas* during the civil war, had to seek and obtain approval

from Congress to do so. We have expressly preserved *habeas corpus* in our bill.

We have also required the President to report to the Congress about the use of these tribunals and on a classified basis if necessary.

There is a sunset provision for these extraordinary procedures. The use of military tribunals expires on December 31, 2005 with the use of force authorization that Congress granted the President. As with the Use of Force authorization itself, if it is necessary to take further military action, Congress will need to act to extend the war as well as the war tribunals.

We need to make this bill the law so that there will be no question that military tribunals are valid.

We also need to once again mobilize America behind our Commander in Chief in the prosecution of the war against terrorists.

I believe this bill would receive overwhelming support in Congress and we hope it can be swiftly considered.

#### TRIBUTE TO OVERBROOK ELEMENTARY

##### HON. SHELLEY MOORE CAPITO

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 12, 2001*

Mrs. CAPITO. Mr. Speaker, I rise today in honor of Overbrook Elementary in recognition of their achievement as an "exemplary" school.

Overbrook Elementary has been selected as one of the top 50 schools of West Virginia. "Exemplary" status is based on Stanford Achievement Test results, attendance, drop out rates, and writing exam scores.

I commend the leadership and faculty on their dedication to the children that walk through their doors each day. They have set an incredible example for the other 817 schools in West Virginia.

I equally commend the students and parents of Overbrook Elementary for their commitment to a quality education and a bright future.

Efforts to bring superior education to all of West Virginia and America are among our top priorities. Mr. Speaker, I urge my colleagues to join me in honoring Overbrook Elementary.

#### PUBLIC HEALTH SECURITY AND BIOTERRORISM RESPONSE ACT OF 2001

SPEECH OF

##### HON. TED STRICKLAND

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 11, 2001*

Mr. STRICKLAND. Mr. Speaker, I would like to thank Chairman Tauzin and Ranking Member Dingell for their hard work on a significant step towards this country's ability to strongly defend itself against bioterrorist threats. The Public Health Security and Bioterrorism Response Act of 2001 makes important progress toward effective planning and preparedness by our public health system for a bioterrorist attack and the security of our food and water supplies.

I am pleased that the bill includes direct funding of grants that will help our state and

local public health departments implement emergency response plans, educate health care personnel, and equip the first responders in our emergency rooms and police and fire departments. The bill will do much to make sure our food supply is protected from attempts at contamination by increasing inspection and tightening port security; it also ensures that we have the tools to investigate any suspected contamination of the food supply by the increasing record keeping and requiring registration by the food industry.

While I support the legislation we are considering today, I look forward to future work on bioterrorism legislation that will expand on this bill. We must require country of origin labeling at the retail level so that consumers can know the source of retail food offerings and consider that knowledge when selecting their purchases. We should ensure that we enact common sense requirements to protect our food supply that are responsible, not overly burdensome. We must expand on provisions in this bill to facilitate the development, production, and distribution of vaccinations that could protect our population against either an intentional bioterrorist attack or the devastating spread of an infectious disease. I believe we should create a national vaccine authority, as recommended by the National Academy of Sciences, to coordinate and aid in these efforts. Finally, we must continue to listen to those who will be on the front lines of any bioterrorist attack, including the doctors and nurses in emergency rooms, hospitals, and health centers and the members of fire and other emergency rescue teams, and help their local communities to meet their needs, restricting federal programs to coordination of these crucial local resources.

Again, I support this legislation and thank my colleagues for their work in crafting it.

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**STOP CANNED HUNTING, THE RESPONSIBLE THING TO DO**

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**HON. SAM FARR**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 12, 2001*

Mr. FARR of California. Mr. Speaker, Tooday I am introducing the “Captive Exotic Animal Protection Act of 2001” It is a bill to combat the unfair and inhumane practice of “canned hunting.”

At more than 1,000 commercial “canned hunt” operations across the country, trophy hunters pay a fee to shoot captive exotic animals—from African lions to giraffes to blackbuck antelope—in fenced enclosures in which the animals have no reasonable chance of escape. Most of the hunts are guaranteed—in that the ranch owner assures the “client” that he will secure an exotic trophy. It’s a “no kill, no pay” arrangement. The animals on hunting ranches—procured from exotic animal dealers—have often lived a life being fed by hand and have little or no fear of humans; that fact, coupled with their confinement in a fenced area, all but assure a successful “hunt.”

This bill will complement the efforts undertaken by states to restrict this practice. California and other states already outlaw this practice. In November 2000, voters in Montana approved a ballot initiative to ban the

practice of shooting animals in fenced enclosures. The individuals who spearheaded this campaign were, it is important to note, lifelong hunters. They were members of groups such as the Rocky Mountain Elk Foundation, the Montana Wildlife Federation, and the Montana Bowhunters’ Association—all of which avidly support hunting, but oppose canned hunts. This is a strong indicator that “canned hunts” are out of step with common principles governing responsible hunting.

The regulation of the transport and treatment of exotic mammals on shooting preserves, however, falls outside the traditional domains of state agriculture departments and state fish and game agencies. In short, these animals often fall into regulatory limbo at the state level. In order to address this problem, which directly involves an issue of interstate commerce, since exotic mammals are those which typically are sold across state lines or imported because they are not native to the United States, I am introducing the “Captive Exotic Animal Protection Act.”

This bill will halt the interstate shipment of exotic mammals for the purpose of being shot in a fenced enclosure for entertainment or a trophy. It is sensible legislation that is backed by responsible hunters, animal protection advocates, wildlife scientists, environmentalists, and zoological professionals. The Senate has the same bill before it for consideration.

This bill will not limit the licensed hunting of any native mammals or any native or exotic birds. The state fish and game agencies regulate and license the hunting of native species. A federal remedy is needed, however, to deal with the purely commercial interstate movement of exotics destined to be killed at “canned hunting” ranches.

This bill supports responsible hunting, while curbing something so out-of-bounds with hunting norms that hunters and animal advocates alike view it as unfair and inhumane.

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**TRIBUTE TO SHOALS ELEMENTARY**

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**HON. SHELLEY MOORE CAPITO**

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 12, 2001*

Mrs. CAPITO. Mr. Speaker, I rise today in honor of Shoals Elementary in recognition of their achievement as an “exemplary” school.

Shoals Elementary has been selected as one of the top 50 schools of West Virginia. “Exemplary” status is based on Stanford Achievement Test results, attendance, drop out rates, and writing exam scores.

I commend the leadership and faculty on their dedication to the children that walk through their doors each day. They have set an incredible example for the other 817 schools in West Virginia.

I equally commend the students and parents of Shoals Elementary for their commitment to a quality education and a bright future.

Efforts to bring superior education to all of West Virginia and America are among our top priorities. Mr. Speaker, I urge my colleagues to join me in honoring Shoals Elementary.

ANALYSIS OF SECTION II OF H.R. 2887

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**HON. SHEILA JACKSON-LEE**

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 12, 2001*

Ms. JACKSON-LEE of Texas. Mr. Speaker, on October 11, 2001, the Committee on Energy and Commerce favorably reported H.R. 2887, the “Best Pharmaceuticals for Children Act.” I commend the Committee for its great work to reauthorize legislation to promote labeling of prescription drugs for use in children. However, I am concerned that a section of this legislation may violate the Takings Clause of the United States Constitution. As a member of the Committee on the Judiciary, I have vigorously sought to protect private property rights and to pursue just compensation for those whose property rights are violated. My analysis of section 11 of H.R. 2887, brings me to the conclusion that it would violate current exclusive rights of manufacturers and in turn expose the U.S. government to substantial claims for just compensation. Attached are legal memoranda by Professor Laurence Tribe of Harvard University that validate my concerns:

MEMORANDUM TO THE UNITED STATES CONGRESS—CONSTITUTIONAL ANALYSIS OF H.R. 2887’S PROPOSED AMENDMENT TO HATCH-WAXMAN ACT ELIMINATING THREE-YEAR CLINICAL STUDIES EXCLUSIVITY PERIOD

(By Laurence H. Tribe)

I have been asked to address the implications under the Fifth Amendment Just Compensation Clause (sometimes called the Takings Clause) of H.R. 2887, which proposes to eliminate the three-year clinical studies exclusivity period under the Hatch-Waxman Act. Section 11(a) of the reported version of H.R. 2887 provides that a generic drug may be approved under the Federal Food, Drug and Cosmetic Act (“FDCA”) even when its labeling omits a pediatric use that is protected by patent or marketing exclusivity under Section 505(j)(5)(D)(iii) and (iv). Section 11(b) of H.R. 2887 implies that Section 11(a) applies to already running three-year exclusivity periods.

The FDCA establishes a quid pro quo that H.R. 2887 would retroactively abrogate. In order to gain regulatory approval from the FDA, a pharmaceutical company must invest enormous time, money, and human resources to develop extensive clinical data regarding its drug. At the end of a three-year period, the protected data is opened to the public and may be used by competitors. In exchange, Section 505(j)(5)(D)(iii) and (iv) provide that the FDA “may not make the approval of [a competitor application] . . . for three years.” H.R. 2887 now proposes to undo the bargain struck by current law.

Under the Supreme Court’s decision in *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984), and related precedent, the retroactive elimination of the exclusivity period qualifies as a taking of private property for public use and therefore triggers the right to just compensation.

ANALYSIS

1. The Ruckelshaus Decision.

Fifth Amendment analysis must begin with the text of the Clause: “nor shall private property be taken for public use, without just compensation.” The meaning of that text as most authoritatively set forth in the Supreme Court’s decision in *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984), which held