

Some important facts about these industries should be noted. The construction industry represents 8 percent of our Nation's gross domestic product and accounts for 5 percent of total U.S. employment. The construction industry puts more than \$850 billion of products in place annually and employs more than 8.6 million people. Even in a recession, the construction and construction materials industries added 63,000 jobs. These numbers are staggering and impressive and result from the very successful TEA 21 Act that funds the federal highway road program.

These are America's builders. Through their hard work, the wilderness that was America was transformed into a stronghold of productivity and commerce.

These groups build our roads and highways, airports, and rail beds—the networks that connect our cities, our communities, and our families. They build our homes, our workplaces, our churches, our schools, and our hospitals.

They build and maintain our utilities, including water and sewer facilities, natural gas pipelines and telecommunications systems. They build these underground lifelines that keep America secure and thriving.

Not only do they build—they rebuild. In the true spirit of America they responded after September 11 by sending manpower, materials, equipment, and money to the New York City World Trade Center and the Pentagon to help heal the wounds inflicted on America by the terrorist attacks. Members of these associations continue their efforts to erase these scars that mar our landscape.

The construction and construction materials industries have built Americans' a quality of life and ensured a prosperous future for our country and its people.

We all take pride in the work these "Builders of America" do every day. On the eve of CONEXPO-CON/AGG 2002, we extend our sincerest thanks and best wishes to the construction and construction materials industries for a successful trade shows that is "An Experience to Build On."

#### CLASS ACTION FAIRNESS ACT OF 2002

SPEECH OF

**HON. GREGORY W. MEEKS**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, March 13, 2002*

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 2341) to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, to outlaw certain practices that provide inadequate settlements for class members, to assure that attorneys do not receive a disproportionate amount of settlements at the expense of class members, to provide for clearer and simpler information in class action settlement notices, to assure prompt consideration of interstate class actions, to amend title 28, United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions, and for other purposes.

Mr. MEEKS of New York. Mr. Chairman, in an age when corporate wrongdoing is a daily front page headline, now is not the time for

Congress to bend the rules that allow injured consumers and workers access to the civil justice system.

Proponents of H.R. 2341 insist that a class action crisis threatens the well being of U.S. courts this is simply not true. There is no statistical evidence of a class action crisis. In fact, the Federal and State judiciaries have consistently opposed efforts to "federalize" class actions believing that state courts are perfectly capable of handling their own matters without interference from the Federal judiciary. There is simply no need for massive civil justice reform, especially reform like H.R. 2341 that limits the rights of consumers to seek redress against wrongdoers.

Currently, class action suits provide access to justice for thousands of American consumers and small businesses that would otherwise have no realistic means of taking their case to court. Unfortunately this legislation is an attempt to deny American consumers and small businesses by making plaintiffs jump through multiple hurdles to bring class actions, allowing proponents of this bill to accomplish their policy goal at the expense of consumers who have been harmed by corporate wrongdoers.

Today we are given the opportunity to make a clear choice between the legal rights of powerful corporations that break the rules, and the legal rights of the families, retirees and consumers they harm. Today we cannot turn our backs on those who depend on us. Today we must stand up for those who stand the greater harm by opposing H.R. 2341.

#### CONGRATULATIONS, GIRL SCOUTS, ON 90 YEARS OF WONDERFUL SERVICE

**HON. DAVID VITTER**

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, March 14, 2002*

Mr. VITTER. Mr. Speaker, I rise today to celebrate the 90th anniversary of the Girl Scouts of America. In March 1912, Juliette Gordon Low, a visionary from Savannah, GA, formed an organization that has become the world's preeminent organization dedicated solely to girls.

Girl Scouting encourages girls to develop their full potential, to believe in themselves, to respect others, and to make a contribution to the world around them. In an accepting and nurturing environment, girls build character and skills for success in the real world. In partnership with committed adults, girls develop qualities that will serve them all of their lives—like strong values, a social conscience and conviction about their own potential and self worth.

The Girl Scout Council of Southeast Louisiana provides a positive impact on our entire region by the services and activities they provide. I salute the adult troop leaders who volunteer their time to serve as role models for the thousands of Girl Scouts in our community. As the father of a Brownie, I see first hand the enjoyment and enrichment that Girl Scouting provides.

Could Juliette Gordon Low have known in 1912 when she sold her pearls to give Girl Scouting financial backing that millions of girls would benefit from her generosity? She would

be proud to know that Girl Scouting is still going strong and shaping lives. Congratulations Girl Scouts on 90 years of wonderful service.

#### INTRODUCTION OF THE "GENOMIC RESEARCH AND DIAGNOSTIC ACCESSIBILITY ACT OF 2002" H.R. 3967 AND THE "GENOMIC SCIENCE AND TECHNOLOGY INNOVATION ACT OF 2002" H.R. 3966

**HON. LYNN N. RIVERS**

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Thursday, March 14, 2002*

Ms. RIVERS. Mr. Speaker, evidence is mounting that the patenting of human genes is both inhibiting important biomedical research and interfering with patient care. Today I am introducing two bills that address these increasingly troublesome effects of human gene patenting.

Despite resistance from many of our European allies and the popular view in this country that owning the rights to a part of the human body is inappropriate and even immoral, patenting of human genetic sequences is accelerating rapidly. Eight thousand patents on genes or genetic material have already been issued by the Patent and Trademark Office (PTO), including at least 1,500 on human genetic material. Tens of thousands of additional human gene patents await examination by the PTO. And while the criteria for awarding gene patents have been marginally tightened in recent years, progress toward patenting of the entire human genetic sequence continues unabated. There is little doubt that most of the significant claims on our genetic code will be tied up as private property within a very few years.

What does it mean to own a human gene patent? It means that the gene patent holder controls any use of "its" gene, a gene that is found in virtually every human being on the planet. The patent holder can prevent my doctor from looking in my body to see if I have that gene. The patent holder can prevent anyone else from doing research to improve a genetic test or to develop a gene therapy based on that gene.

PTO's grant of total ownership in genes has already led to some very unusual moral and medical dilemmas. In one well-publicized case, Miami Children's Hospital—the owner of the gene responsible for the fatal neurological disorder Canavan disease—is being sued by the families of dead and dying children who provided the tissue samples which enabled the hospital's researchers to discover the gene's function. The Canavan parents had sought the help of hospital researchers in order to develop testing that was accessible and affordable to the public. Instead, when Miami Children's Hospital discovered the Canavan gene, it secretly filed a patent and now prevents doctors from testing or examining patients for the gene without paying the hospital a fixed royalty fee, even though those doctors could do so without using any product or device invented by MCH. The Canavan families claim that the terms under which the hospital is licensing use of the gene are slowing progress into finding a cure or therapy for the disease.

In another example, several European laboratories have refused to recognize—and are attempting to overturn—a patent held by a U.S. company on a gene that is strongly linked to breast and ovarian cancer. The patent holder requires that all tests be shipped to its lab in the United States under the theory that it has the most accurate genetic test available. However, at least one European lab found additional mutations for which the patent holder was not testing. European geneticists claim that the testing fee charged by the patent holder (\$2,680) is exorbitant, since they can offer an even more sophisticated test for half that price, and that the terms of the gene license are choking off discovery of other medically important mutations of the gene.

In yet another example, a U.S. firm obtained a patent on a gene by specifying its sequence and its possible importance in a number of diseases. The firm did not mention AIDS in its patent application. Several research groups subsequently discovered the gene's importance in the AIDS infection mechanism. These groups now have to deal with the gene's patent holder to develop their discoveries, even though that owner had no idea of the gene's relevance to AIDS. In a final example, Jonathan Shestack, the producer of the movie *Air Force One*, began raising money to fund autism researchers. He learned that progress was slow because certain researchers were hoarding patients' tissue samples. They wanted to be the first ones to find the gene and gain commercially.

These and other similar results from the patenting of human genes have led many in the medical and religious communities to conclude that patents should simply not be granted on human genetic sequences. Prohibiting gene patents would of course require a major change to the patent law, an unlikely outcome given the biotechnology industry's strenuous assertion that gene patents are essential to genetic and medical innovation. This is an interesting but debatable proposition. The two bills that I am introducing today, however, do not directly challenge the viability or legality of gene patents. What I seek to do, rather, is to carve out some limited exemptions to the applicability of gene patents. These exemptions are designed to minimize some of the negative impacts of patents on the practice of medicine and the advancement of science. They aim to broaden the availability and usefulness of gene-based diagnostics in the overall health care system, while allowing essential medical progress to continue unabated.

The "Genomic Research and Diagnostic Accessibility Act of 2002" has three major provisions.

#### RESEARCH EXEMPTION

Section 2 exempts from patent infringement those individuals who use patented genetic sequence information for non-commercial research purposes. This provision would apply to all genetic sequence patents, not just human gene patents. Contrary to the understanding of many scientists, patent law does not protect from patent infringement scientists doing basic, fundamental, non-commercial research when they use patented tools, techniques, and materials. Surveys performed by researchers at Stanford University have shown that many universities and hospitals are avoiding promising genetic research areas because of patent infringement concerns. Another study published earlier this year in the *Journal of the*

American Medical Association found that a majority of geneticists are being denied access to colleagues' data. The JAMA study concluded that withholding data may hinder scientists' ability to replicate the results of published studies and to pursue their own research, and may hurt the education of new scientists. Creating a research exemption would make genetic patent law comparable to copyright law, which has a "fair use" defense that permits socially valuable uses without a license.

It is important to note that this section would not overturn the commercial rights of patent holders. If a research utilizing the exemption makes a commercially viable finding, he or she would still have to negotiate any rights to market the new discovery with the patent holder.

#### DIAGNOSTIC USE EXEMPTION

Section 3 would exempt medical practitioners utilizing genetic diagnostic tests from patent infringement remedies. This section builds on a provision in patent law, enacted in 1996 after its passage in the House by an overwhelming majority, which exempts health care providers from patent infringement suits when they use a patented medical or surgical procedure. The 1996 law was authored by two legislators/doctors—Representative GANSKE and Senator FRIST—and eliminated the distasteful possibility that doctors would use a less safe surgical procedure rather than risk infringing a patent.

Some biotechnology companies and researchers argue that monopolistic control of genetic diagnostic tests is essential. They claim that without significant investment—investment made possible only by the prospect of total control of the diagnostic revenues—the tests never would have been developed in the first place.

This argument begs the question of whether current patenting policies are in fact serving the broader interests of patients. In my view, they are not. Costs for patented tests can become prohibitive, especially when licensing fees are stacked through a series of tests. Negotiating licenses and fees can be time-consuming and can limit genuine medical progress. And most importantly, control of testing protocols and results in a single laboratory can retard medical knowledge, which has historically progressed through the free exchange of information among the entire medical community. The prospect of owning a profitable genetic test may indeed drive some early innovation, but monopolistic control of a genetic test will ultimately stifle innovation.

I have referred to some of the problems that patents have caused in the field of genetic diagnostics. In a February 7, 2002 article in the journal *Nature*, four U.S. bioethicists concluded that "gene patents affect the cost and availability of clinical-diagnostic testing." One of the authors, Mildred Cho from Stanford University, has conducted broader surveys suggesting that nearly half of all diagnostic labs have been forced to quit doing certain tests because of gene patents. This is not an outcome that promotes broad, fairly priced diagnostic medicine.

I believe that the interests of patients and the overall health care system in this country will be far better served if laboratories, universities, and the private sector are free to use patented information for the development of diagnostics tests. To those who argue that

medical innovation will be stifled by this approach, I would point out that surgeons have been refining their techniques for centuries without patent protection. Furthermore, many genetic advances have and will continue to be made without the allure of profits. Dr. Francis Collins discovered and patented a cystic fibrosis gene at the University of Michigan over ten years ago. Dr. Collins, the current director of the Federal gene-mapping effort, was not motivated by profits and neither was the university. That test is broadly licensed today at a nominal fee and remains an easily affordable service available to thousands of expectant parents.

#### INFORMATION DISCLOSURE

Section 4 of the bill would require public disclosure of genomic sequence information contained within a patent application when federal funds were used in the development of the invention. The data would be released within 30 days of patent filing, rather than the current 18 months.

This provision is one that should be applied broadly to federally funded research programs, although I have limited it to genomic data in this bill. Legislation enacted in the 1980's enabled universities and small businesses to patent discoveries made with federal funding—a change in patent law that has driven much high-technology innovation in the U.S. economy. Section 4 would not affect the patent rights of these universities and small businesses. It would, however, require that genetic data in a patent application be disclosed promptly through normal scientific channels, both to preclude wasteful duplication of effort by other research teams and to promote broad dissemination. Since the public funded the research, it seems only reasonable that the patent applicant be asked to share the publicly funded results as broadly and as quickly as possible.

#### THE "GENOMIC SCIENCE AND TECHNOLOGY INNOVATION ACT OF 2002"

This bill provides for an in-depth study by the White House Office of Science and Technology Policy on the impact of Federal policies, especially patent policies, on the rate of innovation, the cost, and the availability of genomic technologies.

A 5–4 Supreme Court ruling in 1980 opened the door for gene patents, which have been central to the development of the U.S. biotechnology industry. Ever since, except for a few minor changes like the Ganske-Frist amendment, genes and other genetic sequences have been treated pretty much like chemicals by the Patent Office. This is not surprising because the Patent Office responds to the will of the Congress and the courts. What is surprising is that there has been almost no thoughtful or scholarly study of the effect of human gene patenting on either scientific progress or the overall health care system. Do patents serve patients well? Do they help or hinder scientific progress? Do they promote innovation? These are fundamental questions that would perhaps have engaged the attention of the Office of Technology Assessment had the Congress not foolishly abolished it in 1995. The Human Genome Program, who has spent nearly \$100 million over the past 10 years on "Ethical, Legal, and Social Implications" of the genome project, has funded almost nothing in this area. Meanwhile, the Patent Office continues to review and grant patents, almost by blind momentum

alone, without serious consideration of whether these human gene patents are helping us achieve our broader societal goals.

Congress has the ability to change the patent law if it is not serving the public interest. We do so in small or large ways nearly every Congress. It is clearly time to review whether this body of law is working. It is obvious from some of the anecdotes that I have cited that the current system is causing strains. Many labs and universities are steering in the biomedical sciences is becoming increasingly sticky. Genetic tests could become prohibitively costly or inaccessible, or could become engulfed in wasteful, legalistic cross-licensing scrammages.

This bill would direct the OSTP, through the National Academy of Sciences if it wishes, to study these issues, to report to the Congress with its findings, and to lead the development of Federal policies based on these findings. This would be the first systematic study of where human gene patenting policy is taking us, and it is long overdue.

Some may see a contradiction between these two bills—namely, that the second bill calls for a study of problems for which I have already proposed solutions in the first bill. However, I believe there is ample justification for the limited reforms I propose in the “Research and Diagnostic Act” and that in short order these steps will be shown to serve the public good. A decision on whether Congress should make even more dramatic changes to the genetic patenting regime (for example, by making the diagnostic exemption retroactive) should await further study and discussion. The study called for in the second bill would provide us with guidance for those additional steps.

Abraham Lincoln described the patent system as “adding the fuel of interest to the fire of genius”. I am concerned that the current Federal patent policy as applied to genetic sequences may be smothering the fire of genius. Patents are intended to encourage openness and to prevent trade secrets. Current policy, however, appears to be inhibiting research and information sharing, and choking off innovation and the broad availability of novel genetic technologies. I hope that the two bills being introduced today will serve to focus attention on these issues. More importantly, I hope that they will ensure that the fantastic advances in medical genetics are fully harnessed for the benefit not just of patent holders, but also of the broader public.

PROCLAMATION RECOGNIZING  
FIRE-FIGHTER GERALD L.  
BAPTISTE—LADDER NO. 9

### HON. MAJOR R. OWENS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 14, 2002

Mr. OWENS. Mr. Speaker, as a Tribute to Firefighter Gerald L. Baptiste of Ladder Number 9, a member of the Vulcan's Society and one of the fallen heroes of September 11th, I would like to insert the following proclamation into the record:

Whereas, September 11, 2001 was a day of horror and tragedy that will forever live in the memory of Americans, and;

Whereas, more than 3,000 people from many occupations, nationalities, ethnic

groups, religions and creeds were brutally murdered by terrorists, and;

Whereas, members of the New York City Fire Department, New York City Police Department, Port Authority and other Public Safety Personnel, through their valiant, courageous and heroic efforts saved the lives of thousands under unprecedented destructive circumstances, and;

Whereas, more than 300 New York City Firefighters lost their lives in the effort to save others, and

Whereas, Congressman Major R. Owens and the people of the 11th Congressional District salute the bravery and dedication of all who gave their full measure of devotion, and;

Whereas, we deem it appropriate to highlight the courage and valor of individuals and groups in a variety of forms and ceremonies. Now therefore be it

*Resolved:* That on this 10th Day of March, Two Thousand and Two, Congressman Major R. Owens, and representatives of the people of the 11th Congressional District, pause to salute the sacrifices of these honored men, and to offer their heartfelt condolences to families of these African American Firefighters who died at the World Trade Center on September 11, 2001.

That the text of this resolution shall be placed in the Congressional Record of the United States House of Representatives.

Given by my hand and seal this 10th day of March, Two Thousand and Two in the Year of our Lord.

### TRIBUTE TO GAIL TORREANO

### HON. SANDER M. LEVIN

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 14, 2002

Mr. LEVIN. Mr. Speaker, I rise today to reflect on the contributions of SBC Ameritech Michigan and its President Gail Torreano, as they are both honored on March 22nd by the Oak Park Business and Education Alliance for their outstanding work in the community of Oak Park, Michigan. The Oak Park Business and Education Alliance was established in 1993, and is a nonprofit organization of educators, businesses and government entities that provide assistance to the Oak Park School District to improve the individual education experiences of students and prepare them for the modern workforce.

Ms. Torreano's career and other accomplishments demonstrate her strong commitment to community activism. A graduate of Central Michigan University, she has served as Associate Director of the Michigan Special Olympics in Mount Pleasant. Among the many boards she has served on are the Detroit Chamber of Commerce, Detroit Chapter for the NAACP Fight for Freedom Fund dinner for 2002, Michigan Virtual University, and the Economic Club of Detroit.

SBC Ameritech Michigan has been the recipient of numerous honors and awards including the Michigan Deaf Association “Employer of the Year” in 2001 for their contribution to the professional growth and development of its deaf and hard of hearing employees. They also received the highest commendation from the NAACP 2001 Telecommunications Report Card—a program aimed at measuring corporate America's commitment to people of color. In addition, the American Society on Aging and the National Minority Supplier Development Council named SBC “Corporation of the Year” in 2000.

Ms. Torreano's and SBC's commitment and support of the communities where they serve is, indeed, commendable.

Mr. Speaker, I ask my colleagues to join me in honoring the commitment of SBC Ameritech Michigan and its President, Gail Torreano, to the community of Oak Park and the Business and Education Alliance.

### CHINA'S MILITARY EXPANSION

### HON. BOB SCHAFFER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 14, 2002

Mr. SCHAFFER. Mr. Speaker, I rise today to discuss an issue of utmost importance to our national security. On Tuesday, March 5th, the Washington Post reported the People's Republic of China has increased its military spending by over 17% for the second consecutive year.

As I have pointed out many times on the House Floor, China's desire is for complete dominance and hegemony in the Asian-Pacific region.

Communist China's attempts to build a nuclear arsenal capable of defeating the United States are undeniable. In that regard, the addition of multiple independently targeted re-entry vehicles is the PRC's most significant threat to the United States. This targeted spending increase is clearly designed to close the nuclear gap that exists between the United States and China.

China's military buildup is especially disconcerting considering its much publicized goal of controlling Taiwan. Mr. Speaker, as you know, China has said it will take back Taiwan by whatever means necessary. Along these lines, Chinese military leaders have openly questioned whether the United States would be willing to sacrifice Los Angeles in our attempts to protect Taipei. We must be prepared to defend ourselves against this type of overt aggression.

Mr. Speaker, this is why I have been so vehement in articulating the need to act decisively to build a ballistic missile defense. The fact that our country remains completely vulnerable to a ballistic missile attack is a reflection of our lack of political will to build an adequate defense. The technology for a ballistic missile defense is available, and has been for years and even decades. It is obvious China will neither lay aside its obsessive quest to build and maintain an offensive nuclear missile program, nor cut its massive military spending. There is only one acceptable response to this threat. We need to fully fund a robust ballistic missile defense program, encompassing a variety of technologies and defenses, and we must accomplish this without delay.

Mr. Speaker, at this point in the Record I submit the text of the March 5th article to which I have been referring. I commend this article to our colleagues and all observers of these proceedings.

[From the Washington Post Foreign Service, Mar. 5, 2002]

### CHINA RAISES DEFENSE BUDGET AGAIN

(By John Pomfret)

BEIJING.—China will announce another 17 percent rise in defense spending this week, completing a one-third increase in acknowledged military expenditures over the last