



McGovern	Porter	Smith (WA)
McHugh	Portman	Snyder
McInnis	Price (NC)	Solis
McIntyre	Pryce (OH)	Souder
McKeon	Putnam	Spratt
McNulty	Quinn	Stark
Meehan	Radanovich	Stearns
Meek (FL)	Rahall	Stenholm
Meeks (NY)	Ramstad	Strickland
Menendez	Rangel	Stupak
Mica	Regula	Sullivan
Michaud	Rehberg	Sweeney
Millender-	Renzi	Tancredo
McDonald	Reyes	Tanner
Miller (FL)	Reynolds	Tauscher
Miller (MI)	Rodriguez	Tauzin
Miller (NC)	Rogers (AL)	Taylor (MS)
Miller, Gary	Rogers (KY)	Taylor (NC)
Mollohan	Rogers (MI)	Terry
Moore	Rohrabacher	Thomas
Moran (KS)	Ros-Lehtinen	Thompson (CA)
Moran (VA)	Ross	Thompson (MS)
Murphy	Rothman	Thornberry
Murtha	Roybal-Allard	Tiahrt
Musgrave	Royce	Tiberi
Myrick	Ruppersberger	Tierney
Nadler	Rush	Toomey
Napolitano	Ryan (OH)	Towns
Neal (MA)	Ryan (WI)	Turner (OH)
Nethercutt	Ryun (KS)	Turner (TX)
Ney	Sabo	Udall (CO)
Northup	Sanchez, Linda	Udall (NM)
Norwood	T.	Upton
Nunes	Sanchez, Loretta	Van Hollen
Oberstar	Sanders	Velazquez
Obey	Sandlin	Visclosky
Olver	Saxton	Vitter
Ortiz	Schakowsky	Walden (OR)
Osborne	Schiff	Walsh
Ose	Schrock	Wamp
Otter	Scott (GA)	Waters
Owens	Scott (VA)	Watson
Oxley	Sensenbrenner	Watt
Pallone	Serrano	Waxman
Pascarell	Sessions	Weiner
Pastor	Shadegg	Weldon (FL)
Paul	Shaw	Weldon (PA)
Payne	Shays	Weller
Pearce	Sherman	Wexler
Pelosi	Sherwood	Whitfield
Pence	Shinkus	Wicker
Peterson (MN)	Shuster	Wilson (NM)
Peterson (PA)	Simmons	Wilson (SC)
Petri	Simpson	Wolf
Pickering	Skelton	Woolsey
Pitts	Slaughter	Wu
Platts	Smith (MI)	Wynn
Pombo	Smith (NJ)	Young (AK)
Pomeroy	Smith (TX)	Young (FL)

## NOT VOTING—15

Bachus	Clay	John
Becerra	Combest	McCarthy (MO)
Berman	Fletcher	McCotter
Brown, Corrine	Gephardt	Miller, George
Buyer	Hyde	Nussle

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1346

So (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

#### AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN EN-GROSSMENT OF H.R. 1104, CHILD ABDUCTION PREVENTION ACT OF 2003

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, H.R. 1104, the Clerk be authorized to make technical corrections and conforming changes to the bill.

The SPEAKER pro tempore (Mr. SIMPSON). Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

#### PROSECUTORIAL REMEDIES AND TOOLS AGAINST THE EXPLOITATION OF CHILDREN TODAY ACT OF 2003 OR "PROTECT ACT"

Mr. SENSENBRENNER. Mr. Speaker, pursuant to House Resolution 160, I call up the Senate bill (S. 151) to amend title 18, United States Code, with respect to the sexual exploitation of children, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The text of S. 151 is as follows:

S. 151

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003" or "PROTECT Act".

#### SEC. 2. FINDINGS.

Congress finds the following:

(1) Obscenity and child pornography are not entitled to protection under the First Amendment under *Miller v. California*, 413 U.S. 15 (1973) (obscenity), or *New York v. Ferber*, 458 U.S. 747 (1982) (child pornography) and thus may be prohibited.

(2) The Government has a compelling state interest in protecting children from those who sexually exploit them, including both child molesters and child pornographers. "The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance," *New York v. Ferber*, 458 U.S. 747, 757 (1982) (emphasis added), and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain. *Osborne v. Ohio*, 495 U.S. 103, 110 (1990).

(3) The Government thus has a compelling interest in ensuring that the criminal prohibitions against child pornography remain enforceable and effective. "[T]he most expeditious if not the only practical method of law enforcement may be to dry up the market for this material by imposing severe criminal penalties on persons selling, advertising, or otherwise promoting the product." *Ferber*, 458 U.S. at 760.

(4) In 1982, when the Supreme Court decided *Ferber*, the technology did not exist to: (A) computer generate depictions of children that are indistinguishable from depictions of real children; (B) use parts of images of real children to create a composite image that is unidentifiable as a particular child and in a way that prevents even an expert from concluding that parts of images of real children were used; or (C) disguise pictures of real children being abused by making the image look computer generated.

(5) Evidence submitted to the Congress, including from the National Center for Missing and Exploited Children, demonstrates that technology already exists to disguise depictions of real children to make them unidentifiable and to make depictions of real children appear computer generated. The technology will soon exist, if it does not already, to computer generate realistic images of children.

(6) The vast majority of child pornography prosecutions today involve images contained

on computer hard drives, computer disks, or related media.

(7) There is no substantial evidence that any of the child pornography images being trafficked today were made other than by the abuse of real children. Nevertheless, technological advances since *Ferber* have led many criminal defendants to suggest that the images of child pornography they possess are not those of real children, insisting that the government prove beyond a reasonable doubt that the images are not computer-generated. Such challenges increased significantly after the *Ashcroft v. Free Speech Coalition* decision.

(8) Child pornography circulating on the Internet has, by definition, been digitally uploaded or scanned into computers and has been transferred over the Internet, often in different file formats, from trafficker to trafficker. An image seized from a collector of child pornography is rarely a first-generation product, and the retransmission of images can alter the image so as to make it difficult for even an expert conclusively to opine that a particular image depicts a real child. If the original image has been scanned from a paper version into a digital format, this task can be even harder since proper forensic assessment may depend on the quality of the image scanned and the tools used to scan it.

(9) The impact on the government's ability to prosecute child pornography offenders is already evident. The Ninth Circuit has seen a significant adverse effect on prosecutions since the 1999 Ninth Circuit Court of Appeals decision in *Free Speech Coalition*. After that decision, prosecutions generally have been brought in the Ninth Circuit only in the most clear-cut cases in which the government can specifically identify the child in the depiction or otherwise identify the origin of the image. This is a fraction of meritorious child pornography cases. The National Center for Missing and Exploited Children testified that, in light of the Supreme Court's affirmation of the Ninth Circuit decision, prosecutors in various parts of the country have expressed concern about the continued viability of previously indicted cases as well as declined potentially meritorious prosecutions.

(10) Since the Supreme Court's decision in *Free Speech Coalition*, defendants in child pornography cases have almost universally raised the contention that the images in question could be virtual, thereby requiring the government, in nearly every child pornography prosecution, to find proof that the child is real. Some of these defense efforts have already been successful.

(11) In the absence of congressional action, this problem will continue to grow increasingly worse. The mere prospect that the technology exists to create computer or computer-generated depictions that are indistinguishable from depictions of real children will allow defendants who possess images of real children to escape prosecution, for it threatens to create a reasonable doubt in every case of computer images even when a real child was abused. This threatens to render child pornography laws that protect real children unenforceable. Moreover, imposing an additional requirement that the Government prove beyond a reasonable doubt that the defendant knew that the image was in fact a real child—as some courts have done—threatens to result in the de facto legalization of the possession, receipt, and distribution of child pornography for all except the original producers of the material.

(12) To avoid this grave threat to the Government's unquestioned compelling interest