modify, impair, or supersede the applicability of any of the antitrust laws.''

The inadequacy of regulation to fully deter anticompetitive misconduct is widely recognized. In fact, Federal Communications Commission Chairman Michael Powell, whose agency has authority to implement the Telecom Act, concluded in a 2001 letter to the Senate Appropriations Committee that the FCC's current fining authority for anticompetitive violations is ''insufficient to punish and deter violations in many instances . . . given the vast resources of many of the nation's [incumbents.]''

Despite Congress's unmistakable resolve to preserve the vital role of the antitrust laws in this field, a record of considerable judicial confusion has developed in our nation's courts. In 2000, the Seventh Circuit issued the Goldwasser decision, ignoring the plain language of the antitrust savings clause and holding that the Telecom Act ''must take precedence over the general antitrust laws.''

In Law Offices of Curtis Trinko v. Verizon, the Second Circuit Court of Appeals sharply departed from Goldwasser's flawed reasoning and upheld the plain language of the Telecom Act, thus preserving an antitrust cause of action for anticompetitive misconduct in the telecommunications market in addition to the regulatory regime created by the Telecom Act.

In March of 2003, the Supreme Court granted certiorari to review the case. In November of 2003, the Committee on the Judiciary conducted an oversight hearing titled: ''Saving the Savings Clause: Congressional Intent, the Trinko Case, and the Role of the Antitrust Laws in Promoting Competition in the Telecom Sector.'' This hearing examined the need to preserve an antitrust remedy for anticompetitive misconduct that may also violate provisions of the Telecom Act. During the committee's hearing, I stated that ''judicial circumvention or erosion of the savings clause contained in the 1996 Act will necessitate a swift and decisive legislative correction from this Committee and Congress.''

In January, 2004, the Supreme Court handed down its Trinko decision. While the Court upheld the antitrust savings clause on its face, the decision makes it nearly impossible to state an antitrust claim for anticompetitive conduct within the regulatory ambit of the Telecom Act.

In reaching its conclusion, the majority looked to the perceived institutional capacity of regulators to remedy anticompetitive misconduct. Specifically, the majority decision stated: ''One factor of particular importance is the existence of a regulatory structure designed to deter and remedy anticompetitive harm. Where such a structure exists, the additional benefit to competition provided by antitrust enforcement will tend to be small, and it will be less plausible that the antitrust laws contemplate such additional scrutiny. . . .'' The Court also stated that the ''regulatory framework that exists in this case demonstrates how, in certain circumstances, 'regulations significantly diminished the likelihood of major antitrust harm.' '' The Court then concluded that ''against the slight benefits of antitrust intervention here, we must weigh a realistic assessment of its costs.''

This is precisely the judicial analysis that the antitrust savings clause in the Telecom Act precluded. This fundamental judicial error ignores the plain meaning of the antitrust savings clause contained in the Telecom Act and the intent of Congress, and undermines remedial antitrust enforcement in a manner that threatens continued competitive gains in the telecommunications marketplace.

Last November, I stated that ''judicial circumvention of the antitrust savings clause in the Telecom Act will necessitate a decisive legislative correction from this Committee and Congress.'' The legislation I introduce today, with the consponsorship of Ranking Member CONYERS, delivers on this commitment. This bill reiterates Congress's intent that the full force of the antitrust laws apply to the telecommunications field. The ''Clarification of Antitrust Remedies in Telecommunications Act of 2004'' merely provides that unlawful monopolistic behavior that may also violate the regulatory obligations of the Telecom Act may constitute an antitrust violation. The legislation provides an antitrust remedy for these violations irrespective of the existence of regulations that apply to this industry. In so doing, the legislation merely reiterates the plain meaning of the antitrust savings clause and the broad bipartisan intent of Congress to preserve the application of the antitrust laws in the telecommunications field irrespective of the existence of the Telecom Act.

To be clear, the legislation does not automatically transform violations of the 1996 Act into antitrust violations: this is not, nor has it even been, the intent of preserving application of the antitrust laws in the regulatory scheme created by the Telecom Act. The ''Clarification of Antitrust Remedies in Telecom Act of 2004'' merely reaffirms that violations of the Telecommunications Act may constitute an antitrust violation in appropriate circumstances: this legislation restores the result Congress intended; it does not transform the antitrust laws nor create antitrust obligations that the Telecommunications Act did not contemplate.

Over the last five decades, the Committee on the Judiciary has played a central role promoting competition in the telecommunications market. It has drafted procompetitive legislation and overseen its implementation. The committee has also diligently preserved the application of the antitrust laws in the telecommunications marketplace. The ''Clarification of Antitrust Remedies in Telecommunications Act of 2004'' continues this important tradition by ensuring that the antitrust laws continue to provide a catalyst to promote competition and consumer choice in this vital marketplace.

In that vein, I wish to comment briefly on a related matter. The committee continues to monitor the status of negotiations between incumbent and competitive local exchange carriers requested by the Federal Communications Commission in light of the D.C. Circuit Court of Appeals March 2, 2004, invalidation of key aspects of the most recent FCC Triennial Review Order. While the Committee on the Judiciary does not intend to prejudice the outcome of these continuing talks, it reserves the right to review these agreements to ensure that they are consistent with the antitrust laws and promote competition and consumer choice in the telecommunications marketplace.

I look forward to working with my colleagues to ensure that the antitrust laws produce the irreversibly open telecommunications markets that we all seek, and urge their support for this critical legislation.

PROVIDING FOR CONSIDERATION OF H.R. 4200, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

HON. JOHN F. TIERNEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 20, 2004

Mr. TIERNEY. Mr. Speaker, I rise today to oppose the Republican Majority's proposed rule that would limit debate on a matter as important as the Department of Defense Authorization bill, which purports to provide spending in excess of $400 billion for Fiscal Year 2005. At a time when Members of the United States House of Representatives claim to be supporting the extension of democracy in Afghanistan and Iraq, it is unconscionable for the leadership to limit debate in the House.

There were times in the not too distant past, where a bill of this magnitude would have been debated for at least two weeks. Members would have had the opportunity to voice their position on hundreds of amendments important to their constituents and the nation. It appears that keeping with the Republican Majority's fear that reasonable Republicans will join Democrats in actually improving the underlying bill, the Rules Committee has acceded to the Majority Leadership's pressure and only allowed 28 of 127 amendments for debate and vote. This institution—the People's House—deserves better, and the American people deserve better. Had the Rules Committee and the Leadership followed a practice from a time before the current Majority was in power, most if not all of the proposed amendments would have been made in order, including two amendments which I proposed and which, I firmly believe are in our common interest.

We should be able to agree that American defense workers are 100 percent committed to our armed forces and to ensuring that America has the best trained, best equipped, best led forces in the world. Unfortunately, these workers have seen their jobs vanish at an alarming rate without explanation or justification. Over the past 15 years, defense-related employment is said to have fallen by some 67 percent. This translates into over a million lost jobs. We need to do more to reverse this disturbing trend.

The Amendment I sought would place us standing firmly in solidarity with these workers. First, we would find out where the jobs have gone, and second, fight to keep them in this country.

We made a similar fight last year. We were partially successful. The House-passed version of the Defense Department Authorization bill established a ''Defense Industrial Base Assessment Program'' to collect new information about where defense contracts are being performed; to determine what percentage of the contract is being completed overseas; and to learn the business rationale for why contractors are sending contract work out of the United States. The bill then called for the Secretary of Defense to recommend a plan for getting back as much of the off-shored work as possible in future years. Unfortunately, that program was significantly weakened when the Senate version of last year's authorization bill failed to include the language, and the conference report only required the Department to

use existing data to study the problem and eliminated the mandate to look at where and why these contracts are leaving this country. Some suggested that the mere existence of that program would allow us to get a better understanding of the strength and capacity of our defense base; such is not the case. A program that relies exclusively on existing data and only asks rudimentary questions will not provide the most complete assessment of our industrial base.

The Department of Defense is required by the National Defense Authorization Act of 1997 to submit, on an annual basis, a report to Congress on the amount of purchases from foreign entities for the previous fiscal year.

That, however, was inadequate, as shown when the most recent report submitted to the Armed Services Committee exposed the shortcomings with relying on 'existing data' to monitor prime contracts. The report stated, ''In some instances, the exact information required by Section 827 is not available, and the Department of Defense had made assumptions to complete the report.'' It goes on to say that some of the other information needed to complete the report was, ''not readily available in the Department of Defense database.''

If we know the Pentagon's use of existing data does not fully capture our country's purchases from foreign entities, why should we have any greater confidence that it will accurately assess our country's defense industrial base? We must put the teeth back into this much-needed program—new data must be collected and the right questions must be asked.

Still, knowing what happened to this work is only the first step. We must do more than close the barn doors after the horses have left. Strategies must be implemented that restore and revitalize the defense-manufacturing base and they must be implemented right now.

My amendment also required that the Secretary, as a condition of procurement, mandate that the contractor perform substantially all, and in no event less than 65 percent, of the primary and secondary manufacturing contracts in the United States. The Secretary would be allowed to waive this requirement only in cases where products and services were not available in this country or where concerns of national security necessitated a waiver. Even when waived, the Secretary would have to notify Congress, citing the business rationale or relevant threat information for the determination. The amendment also would have required, on an annual basis, that the General Accounting Office study the number of waivers and submit a report to Congress offering recommendations on how the United States can increase capacity and further strengthen our industrial base.

It is long past time that we move beyond rhetoric about appropriately prioritizing the work to be completed in the United States and require the Secretary of Defense to work toward that goal.

Just as we in Congress continue to fulfill our patriotic promise to our men and women in uniform, we must also demonstrate an equal commitment to those men and women who build, repair, and operate the machines that sustain and strengthen our security here at home. Mr. Speaker, while I am disappointed that Congressional Republicans denied my colleagues the opportunity to vote on my important Build America amendment, I would like to commend the dedicated advocates who work tirelessly everyday to ensure American defense jobs do not go overseas. I would like to commend Armed Services Chairman DUNCAN HUNTER and Senior Democrat IKE SKELTON for inserting provisions into this bill that are intended to address the systemic problem of defense offsets. U.S. defense exports with offset agreements in excess of 100 percent are now happening regularly and it is long past time we level the playing field and ensure that our defense workers are no longer in jeopardy of losing their jobs because of their companies' offset arrangements.

The Hunter-Skelton provision is a good first step, and while it doesn't go as far as my Build America amendment does, it should, at the very least, be included within the final version of the Defense Authorization bill.

GROUND MISSILE DEFENSE

Mr. Speaker, the second amendment that I proposed, and which should have been considered today, deals with the need for operational testing and evaluation for a realistic ballistic missile defense system. The commonsense amendment would allow Members of Congress to be on record in support of operational testing before the ground-based system is hastily deployed.

As we all know, this country has already spend in excess of $130 billion chasing the ''Star Wars'' scheme from the Nixon Administration to the current Administration. We have disagreements about the level of funding for ballistic missile defense; about the number of interceptors that should be deployed if the system is ever proven to work; and about how this matter should be prioritized as opposed to other critical threat related defense programs. But Mr. Speaker, no system should be hastily built and recklessly deployed prior to adequate testing.

This is a matter where there should be unanimous agreement. It simply defies common sense that we would stand idle and allow the most expensive item in the Defense Department's $400 billion plus budget before it has been rigorously scrutinized and evaluated. The people of this country have a right to know what they are getting. So far, what they are going to get is a system that has not been consistently or realistically tested in a way that demonstrates it can handle even some of the simplest threats it may encounter.

My colleagues do not have to just take my word on this matter. Allow me to cite just a few of the most recent voices that have weighed in on this matter and arrived at a similar opinion.

In March, the GAO issued a report revealing that the tests that have been completed to date occurred under repetitive and scripted scenarios, fully repeating the same technical and atmospheric conditions over and over again. Critical parts of the system have yet to be flight-tested together.

That report goes on to say that, ''only two flight tests under improved test conditions . . . are planned to be conducted before September 2004.'' It remains unclear, however, if the Missile Defense Agency will even go ahead with these flight tests, or if they will be cancelled or replaced with simulations.

Later in the month of March, 49 generals and admirals, including former Joint Chiefs of Staff Chairman Admiral William Crowe, Retired United States Air Force General Alfred G. Hansen, and Retired United States Marine Corps General Joseph P. Hoar, wrote to the President that he ''postpone operational deployment of the expensive and untested ground based missile defense system and transfer the associated funding to accelerated programs to secure the multitude of facilities containing nuclear weapons and materials to protect our ports and borders against terrorists who may attempt to smuggle weapons of mass destruction into the United States.''

In plain English, these respected military authorities state some basic facts of life: (1) the system that is now proposed is not only expensive but is largely untested; (2) money being spent on building such an untested system would be better spent accelerating programs that would secure the many nuclear weapons facilities and materials around the world as well as protecting our ports and borders against terrorists who may attempt to smuggle weapons of mass destruction into the United States; and (3) essentially every threat assessment performed for us by intelligence agencies indicate that the latter threat is far more pertinent to the United States than is an attack by a continental ballistic missile.

In April, a General Accounting Office report warned that the system due to be fielded later this year would be ''largely unproven'' because of a lack of realistic testing.

On May 7th, 31 former government officials wrote a letter to President Bush. These officials served under Presidents Eisenhower, Kennedy, Johnson, Nixon, Carter, Reagan, George H.W. Bush, and Clinton. They had worked in the Pentagon, the Department of State, National Security Council, Office of Management and Budget, and the Arms Control and Disarmament Agencies. Their letter stated clearly that ''the initial defense capability being advertised by the Missile Defense agency is a sham'' and they recommended that the President ''drop the 2004 deployment and commit instead to a sensible research and development schedule.''

Last week, the Union of Concerned Scientists released a comprehensive report that found, ''no basis for believing that the system will have any capability to defend against a real attack.''

Fielding a system at this time will do little more than foster a false sense of security among the American people misleading our constituents to believe they will be appropriately protected from a ballistic missile attack when the reality is they may not be.

The amendment, quite simply, enforces a 1983 statue, which the Missile Defense Agency has seemingly decided to openly ignore. Without holding the Missile Defense Agency to some standards of independent, realistic operational testing, Congress would not be fulfilling its proper oversight duties.

Mr. Speaker, because the Republican Majority chose to close down debate on this important bill, Members of Congress are missing their opportunity to represent the people of this country in demanding that the Director of the Missile Defense Agency may not proceed with the initial deployment, or any phase thereof, of a ballistic missile defense system until: (1) the Director of Operational Testing and Evaluation of the Department of Defense approves, in writing, the plans for the operational testing to be conducted; (2) the operational testing is completed; (3) the Director analyzes the results of that testing; and (4) the

Director submits a report on the results of that testing to the Secretary of Defense and to the Congressional Defense Committees.

In short, Mr. Speaker, Congress is once again abdicating its responsibilities of oversight of this Administration and marching lockstep with the Administration, wasting billions of dollars (some $10 billion in this budget alone) on a system that military and scientific experts agree is untested, unproven and a sham.

I have to add, Mr. Speaker, that upon my request the General Accounting Office requested a review of some 50 deficiencies in the testing of this ground-based missile defense system that were identified by the former Director of Operational Testing and Evaluation, Mr. Philip Coyle. I had asked the General Accounting Office to determine whether any or which of those issues had been addressed, their current status, their status as anticipated in September 2004 (when the President indicated he intends to start wastefully building this untested project), and the degree of confidence that we might have in such a system if deployed at that time. After incredible resistance in cooperation from the Department of Defense, the report was done some 18 months later. Unfortunately, in keeping with its reputation as the most secretive Administration in history, the Administration—apparently so displeased with the results and conclusions—classified the report. At my further insistence, and again after much resistance, the General Accounting Office was able to produce an unclassified version of the report. That unclassified report, Mr. Speaker, was entirely uncomplimentary of the program and clearly indicated that the program is not ready to be deployed as a working system in which this country could have confidence. The classified version, which went into much greater detail with regards to specifics, should be de-classified. All of the information in it has essentially been known for some time and been the subject of open hearings in this Congress. The information has appeared on numerous web sites at various agency and entity locations. However, the Administration, seemingly so fearful that the actual assessment of this system's sorry state would be known to the public, has actually classified the 50 items pointed out by Mr. Coyle.

Mr. Speaker, given recent history, if the classified report had been at all complimentary we can assume that the Administration would have de-classified it in a nanosecond. As it has not, we might assume the reasons are clear. It is not right that billions of dollars will be misspent at a time when this nation's needs are so great. It is not right that the American people will be presented with false confidence at a time when security concerns are so high. It is not right that so much time, money, and resources will be concentrated on an unproven, unworkable, sham of a system that does not even address what all of our intelligence sources tell us is the primary threat that faces this nation.

Mr. Speaker, from No Child Left Behind to the Sarbanes-Oxley bill concerning accounting reforms, this Congress has not been shy about requiring testing and ensuring accountability. However, it seems when it comes to spending over $10 billion, one of the most expensive items in this year's defense budget, there will be no accountability and testing.

As quoted above, ''the initial defense capability being advertised by the Missile Defense Agency is a sham'' and the President should ''drop the 2004 deployment and commit instead to a sensible research and development schedule.''

This Congress should live up to its responsibilities and insist on that.

NATIONAL TOURETTE SYNDROME AWARENESS MONTH

HON. C.W. BILL YOUNG

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 20, 2004

Mr. YOUNG of Florida. Mr. Speaker, earlier this week I introduced House Concurrent Resolution 430 to support the goals and ideals of a National Tourette Syndrome Awareness Month.

This resolution recognizes the importance of an early and accurate diagnosis of Tourette Syndrome, appropriate treatment, and educational outreach. In short, it would enhance public awareness of this very misunderstood and often misdiagnosed disease.

Tourette Syndrome, or TS—is an inherited neurobiological disorder that affects children and adults in all racial and ethnic groups. The symptoms of TS are manifested as ''tics''—rapid, repeated, and involuntary movements and sounds. In a large percentage of cases TS is accompanied by other co-occurring disorders, the most common of which are Obsessive-Compulsive Disorder, Attention Deficit Hyperactivity Disorder and nonverbal learning disabilities.

It is estimated that as many as 200,000 Americans have what is called substantially impairing TS, and more have milder symptoms of the disorder. Many of these individuals endure the stigma, isolation, and the psychological impact of a chronic disorder on a daily basis. There is no cure for this condition, although some individuals benefit from medication and other clinical treatment. Scientific researchers have made some significant advances in recent years in trying to understand the causes of the condition, but many scientific challenges still remain.

Mr. Speaker, in January of this year, the Appropriations Committee I chair appropriated funds for a new research program by the Centers for Disease Control, as well as an educational outreach program. This effort is designed to provide intensive training for the public, physicians, allied healthcare workers and teachers about Tourette Syndrome. It is our hope that this program will begin to remove the stigma and other obstacles associated with living with this complex disorder. I personally have been inspired by meeting many children and adults with Tourette Syndrome who, despite coping with the condition, are wonderfully successful in their own endeavors and provide examples of determination, perseverance and hope to their families and to us all.

Mr. Speaker, the Tourette Syndrome Association, the only national nonprofit membership organization dedicated to identifying the cause, finding a cure, and controlling the effects of Tourette Syndrome, has designated May 15 through June 15 as National Tourette Syndrome Awareness Month. The goal of this effort is to educate the public about the nature and effects of TS.

Mr. Speaker, enactment of the legislation I have introduced to recognize National Tourette Syndrome Awareness Month would give all of us an opportunity to familiarize ourselves with the condition. It will help us better understand the impact that TS can have on people living with the disorder, as well as recognize the importance of early diagnosis and proper treatment.

FREEDOM FOR MIGUEL GALVÁN GUTIERREZ

HON. LINCOLN DIAZ-BALART

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 20, 2004

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I rise today to speak about Miguel Galván Gutierrez, a prisoner of conscience in totalitarian Cuba.

Mr. Galván Gutierrez is an engineer by profession and thus a student of transforming ideas and concepts into concrete reality. As a man who studied how things work, he quickly grasped the broken and irreparable nature of Castro's infernal totalitarian regime. As a prodemocracy activist, Mr. Galván Gutierrez has committed himself to portraying the true horrors of life under the tyrant in Cuba. He has written articles for Havana Press and served as president of the College of Independent Engineers and Architects of Cuba.

As a leading advocate for freedom for every Cuban, Mr. Galván Gutierrez has been constantly harassed by Castro's thugs. According to Amnesty International, he has endured numerous interrogations and short term detentions. On March 18, 2003, Mr. Galván Gutierrez was arrested and he was subsequently ''sentenced'' to 26 years in the totalitarian gulag.

Mr. Galván Gutierrez is languishing in the nightmarish conditions of the totalitarian gulag because he believes in freedom for every Cuban citizen. According to Reporters Without Borders, Mr. Galván Gutierrez is suffering from abdominal and joint pain, together with an inflammation of the feet and a paralyzed arm. Reporters Without Borders has also reported that Mr. Galván Gutierrez was put in solitary confinement and deprived of water and light because he staged hunger strikes to protest the inhuman conditions in the totalitarian gulag.

Mr. Speaker, today is May 20 and on this day, 102 years ago, the Cuban people obtained their independence; the Republic of Cuba was born. Today the Cuban people, led by heroic activists such as Mr. Galván Gutierrez, continue to fight for freedom. It is my fervent hope that next year, on May 20, the Cuban people will be able to celebrate the anniversary of Cuba's independence and also celebrate the return of freedom to that long suffering island.

Mr. Speaker, we must constantly demand freedom for the Cuban people. My Colleagues, today, on Cuban Independence Day, we must demand the immediate release of Miguel Galván Gutierrez and every political prisoner in totalitarian Cuba.