

But if we must delay further action for six more months, that is six more months where criminals can steal cargo and make billions. That is half a year of handicapping our law enforcement, hurting our businesses and passing the cost on to American consumers.

Mr. Speaker, I commend Chairman SENSENBRENNER for his tireless efforts providing oversight over the PATRIOT Act and working on reauthorizing this critical legislation, including by now extending the PATRIOT Act for just one month. This allows us to work on making these provisions permanent and on including the cargo theft measures as soon as possible.

I also commend Chairman COBLE, Mr. FORBES and Mr. SCHIFF, as well as all the law enforcement and industry groups that worked on the port security and cargo theft provisions.

I say to our fellow Americans and our law enforcement communities, that I will do everything that I can to make the PATRIOT Act permanent, and that I will not rest until we finally enact these cargo theft prevention measures into law.

The amendment was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

#### GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill, S. 2167, just passed.

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

There was no objection.

#### CORRECTING ENROLLMENT OF H.R. 2863, DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2006

Mr. WOLF. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate concurrent resolution (S. Con. Res. 74) making appropriation for the Department of Defense for the fiscal year ending September 30, 2006, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate concurrent resolution.

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

Mr. OBEY. Mr. Speaker, reserving the right to object, more than a year ago when Mr. LEWIS was elected chairman of the Appropriations Committee, he came to me and asked if we could have an understanding that we would express our substantive differences, but still cooperate in moving bills forward in an orderly way once those differences were expressed. We did that.

Time and time again, the minority was denied the opportunity to offer different sets of priorities, priorities that did not offer huge tax cuts for those who have the most in society, paid for with cuts in education, health care,

and worker protection for those who have the least. Despite the fact that the rules of the House were used to block our efforts to obtain on-the-record votes on a number of our alternatives, Democrats continued to cooperate procedurally even as we made clear our differences on policy.

The Republican majority wanted to finish all of these bills by the end of the fiscal year, and we did not procedurally obstruct them, because while we differed strongly with the values that lie behind their budget priorities, we respected the fact that they are in the majority, and we respect and revere this institution. But because of internal divisions between the majority party, divisions within the House GOP caucus, and divisions between House and Senate Republicans, the fiscal year ended with the Labor-HHS bill and the Defense appropriations bill that represents 67 percent of the discretionary spending in our budget bill still being hung up in the legislative process.

Now in the closing days of this Congress, the Republican leadership has decided to use the must-pass Defense appropriations bill to force down the throats of the American people a number of wholly unrelated gifts to special interests. They decided to hold funds for our troops hostage in order to force Congress into removing protections against oil drilling in ANWR.

To make room for their tax giveaways, they even imposed a second round of cuts on education, health, worker protection, and even imposed a \$4 billion additional cut in military spending. Senate action yesterday has corrected one provision inserted in the bill by the abuse of power, the strong-arm attempts at drilling in ANWR, and for that I applaud the Senate. I led the opposition to ANWR's inclusion in the conference, and I am happy that the Congress was not blackmailed into accepting it.

But, frankly, Mr. Speaker, continuing under my reservation, ANWR was not the biggest problem with the conference report. The biggest problem is that it shortchanges our economic future by refusing to make adequate investments in education. And it cruelly neglects to strengthen support for programs that help provide critical health care services to people who desperately need them.

But we have lost that fight. This Congress has made the decision to cut critical health, education, worker protection, and social service funding by \$3 billion below last year's level. What I find so gutless about Congress' performance on this bill is that those cuts could not pass the Senate on a rollcall vote, so the majority party had to arrange for their Senators to duck this vote, thereby hiding from accountability by arranging for the bill to be passed through the Senate without a rollcall vote. That means the majority party has denied critical help to families most in need of help, but has not had the courage to forthrightly defend

their votes to the people affected in the public arena.

This bill makes that problem \$1.4 billion worse for those programs and because of the across-the-board cut, it makes other ill-advised cuts in critical funding for the FBI and local law enforcement, and it even cuts an additional \$4 billion out of the Defense bill. If I could do anything to change that, I would; but it is clear the die is cast.

Continuing under my reservation, Mr. Speaker, there is a second outrageous problem with this bill. The majority has turned the proposal to prepare for a flu pandemic into a giveaway to the pharmaceutical industry. When the President requested \$7 billion to begin a much-belated crash program to develop a new generation of vaccines and antiviral drugs to combat a potential flu pandemic, the Republican majority responded by cutting it in half. When I asked Senator STEVENS in conference why we shouldn't fund the rest of the administration's request so that it was clear that the government had a long-term commitment to the development of needed vaccines and antivirals, he responded that because liability protection language for manufacturers was not being adopted, long-range funding should be withheld.

The conference committee ended its work with the understanding, both verbal and in writing, that there would be no legislative liability protection language inserted in this bill. And because the majority told us it did not want any compensation program for victims to be applied against the discretionary portion of the budget, no funding was provided for that, either.

But after the conference was finished at 6 p.m., Senator FRIST marched over to the House side of the Capitol about 4 hours later and insisted that over 40 pages of legislation, which I have in my hand, 40 pages of legislation that had never been seen by conferees, be attached to the bill. The Speaker joined him in that assistance so that, without a vote of the conferees, that legislation was unilaterally and arrogantly inserted into the bill after the conference was over in a blatantly abusive power play by two of the most powerful men in Congress.

We then discovered that this language provided all sorts of insulation for pharmaceutical companies and that this insulation applied not just to drugs developed to deal with the flu but in fact applied to a far broader range of products. In essence, the provisions allowed the Secretary of HHS to issue a declaration that has the effect of almost completely prohibiting lawsuits in State or Federal courts by persons whose health was injured against manufacturers and various others for compensation for injuries caused by the use of covered countermeasures.

That determination would bar lawsuits against a wide range of covered persons involved with the countermeasures including manufacturers and

their suppliers, their distributors, State and local governments and their employees involved with the use of those countermeasures, medical personnel prescribing and administering the countermeasures, and so forth.

That is very broad power, indeed, to ban lawsuits. Unlike the language requested by the administration, the division E language is not limited to products to combat a flu pandemic. Rather, it applies to any drug, vaccine, medical device, or other products useful in dealing with anything the Secretary considers to constitute a health emergency or that could constitute an emergency in the future.

Although a rationale often offered for lawsuit protection is that it is needed to encourage manufacturers to develop and produce new treatments, the protections of division E are not limited to new or experimental products. Rather, nothing in the language would prevent the Secretary from providing protection against lawsuits to drugs that have been on the market for decades. Further, the language explicitly prohibits any judicial review in either Federal or State court of the Secretary's decisions to grant immunity from lawsuits.

If anyone believes that the power is being exercised too broadly, or even in violation of the law, they apparently would have no remedy other than asking the Secretary to change his mind or asking Congress to amend the law.

Although proponents point to provisions of this language that make an exception and allow lawsuits in cases of willful misconduct, that exception is so narrowly drawn as to be almost meaningless. First, the provision defines "willful misconduct" as acts taken intentionally to achieve a wrongful purpose, knowing there is no legal or factual justification, and in disregard of known or obvious great risk. Basically, Mr. Speaker, the only conduct that would permit a lawsuit under this definition is probably conduct so egregious as to be criminal in nature.

However, even this highly restrictive definition of "willful misconduct" doesn't seem to have been enough restriction on lawsuits to satisfy the authors of division E. They added yet another provision that allows the Secretary of HHS to promulgate regulations further narrowing the scope of actions that could give rise to a right to sue. Then there is yet another provision that says that if the conduct in question is regulated under the Food and Drug Act or Public Health Service Act, a lawsuit for willful misconduct can be brought only if the Federal Government has taken enforcement action against that conduct.

Finally, the language makes various changes to the normal rules of civil procedure to add further obstacles and difficulties in front of a potential plaintiff. In short, as a practical matter, there is virtually no right for anyone to sue about anything covered by a secretarial determination under this language.

In summary, the administration asked for some very broad liability protections for manufacturers and others involved with countermeasures against pandemic flu, and the administration's proposal was widely criticized as going too far. With division E of the Defense appropriations conference report, Congress would be providing even broader protection, potentially covering a wide range of drugs, vaccines, and devices far beyond what is needed to deal with flu. Further, this denial of the right to sue is more sweeping than provided in the case of childhood vaccines or in the case of smallpox vaccine. In the smallpox case, manufacturers were protected by basically substituting the Federal Government as defendant, with the scope of potential lawsuits against the Federal Government narrowed, but not eliminated.

Now, Mr. Speaker, I recognize that some sort of liability protection or indemnification is necessary and appropriate to encourage development and manufacture of some measures to deal with pandemic flu; and I would support such reasonable language, language that has been reviewed by a committee that knows what it is doing in a process that allows for public comments. But there are real doubts about whether it needs to be this broad. It is worth noting that Sanofi Pasteur, our only domestic flu vaccine manufacturer, has already signed contracts with the Federal Government to make avian flu vaccine and has already delivered some lots, rather than refusing to proceed until legislation like this is enacted. Similarly, Roche has been supplying Tamiflu for the national stockpile and actively seeking contracts to supply more.

The result of this legislative action was a provision in the pending bill that prevents anyone who is a victim of a faulty vaccine from being able to obtain compensation in the courts. It says, in effect, that if you become seriously ill because of mistakes in manufacturing that you lose your right to sue for compensation, but you can as an alternative seek compensation from the government. The problem is that no funds were provided, or no money was provided, for that fund. So anyone who gets sick would have to lobby Congress to put money in the fund before they can collect. Thus, people injured lose their right to sue, but are not guaranteed any alternative means of covering their medical bills, lost earnings, and other costs.

Mr. Speaker, the committee system was created years ago to ensure that, to protect the public interest, legislation would be carefully reviewed before it was placed before the body for consideration. But that protection was arbitrarily bypassed by the leadership in both Houses.

This is the second time that this Congress has supinely done the bidding of the pharmaceutical industry in the dead of night. The first time a vote was held open for 3 hours while the Repub-

lican majority twisted arms to create the complex and ridiculously confusing prescription drug bill that our seniors are now so desperately trying to understand, a bill that was ushered through this institution by over 600 lobbyists and that protected companies by preventing the government from even attempting to negotiate lower drug prices.

If I thought that denying unanimous consent on this bill would force the majority to eliminate that language, I would object. But, Mr. Speaker, it has also been made quite clear to me that the majority will not relent on the language that insulates drug companies. So, Mr. Speaker, I want it to be clear that the action to insert this special interest language in the bill is, in my view, a corruption of the legislative practices of the House.

When Congress returns in January, I intend to raise a question about the privileges of the House that are highlighted by this action because it has brought discredit to the House and should disturb every Member who serves here. No Member of Congress, no matter how powerful, should be able to unilaterally insist that provisions that were never discussed and never debated in the conference should wind up being slipped into that conference report without a vote of that same conference.

This is what happens when there are no checks and balances and when one party controls the White House, the Senate, and the House and respects no limits on its own use of power. We have been placed in this position because the House Republican leadership has sent Members home for the Christmas holidays with the message to the Senate that we would not be here even if the Senate changed the legislation the House sent. That was irresponsible, and the country will pay the price. This institution, unfortunately, will also pay a price in terms of diminished respect from the people we were elected to represent.

This is a shameful and shabby way to end the worst session of Congress I have experienced in my 36 years in this House. So, Mr. Speaker, I most reluctantly withdraw my reservation, because lodging an objection at this point would simply delay the shameful inevitable.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

Mr. FITZPATRICK of Pennsylvania. Mr. Speaker, further reserving the right to object, last week as American soldiers continued to bravely wage the war on terror in Iraq and Afghanistan, the House of Representatives passed a Defense appropriations bill containing a nongermane provision, language that would open up the Arctic National Wildlife Refuge to exploration. The agreement to include ANWR in the Defense appropriation turned what was essentially a bipartisan bill into a fight on the floor of both legislative bodies,

placing at risk the timely funding of our troops. Defense appropriations bills are historically the most protected type of legislation considered by the United States Congress. The Defense bill is usually the first piece of appropriations legislation passed by the House and Senate, and its language is kept clean from unnecessary and non-germane add-ons and amendments. That is why the addition of ANWR was so surprising to so many Members.

Prior to the vote earlier this week, I wrote a letter to the Rules Committee chairman expressing in the strongest terms possible my opposition and disappointment at the decision to place ANWR in the bill before the House. Mr. Speaker, I was not alone in my concern. Prior to Senate debate on the House-approved Defense bill, a group of high-ranking officers, including General Anthony Zinni, United States Marine Corps, sent a letter stating their concern over ANWR's inclusion in the legislation.

They wrote, and I quote: "With 160,000 troops fighting in Iraq, another 18,000 in Afghanistan and tens of thousands more around the world defending this country, Congress must finish its work and provide them the resources they need to do their job. We believe that any effort to attach controversial legislative language authorizing drilling in the Arctic National Wildlife Refuge to the Defense appropriations conference report will jeopardize Congress's ability to provide our troops and their families the resources they need in a timely fashion."

They continued, saying that "the passion and energy of the debate about drilling in ANWR is well known, and a testament to vibrant debate in our democracy. But it is not helpful to attach such a controversial nondefense legislative issue to a Defense appropriations bill. It only invites delay for our troops as Congress debates an important, but controversial, nondefense issue on a vital bill providing critical funding for our Nation's security."

As I speak, our brave men and women in the Armed Forces are serving in every corner of the globe. The work our servicemen and -women do each day will create a safer world, a world where liberty and democracy will take root in regions of the world untouched by freedom and choice. Our military deserves our support and the best equipment, training, armament, and reward our government can offer them. That is why I am here today, to lend my strong support to the legislation. The Senate made the right choice yesterday to strip this bill of unnecessary ornaments. ANWR does not belong in the Defense bill, and I am proud to support the Senate version without it.

The Defense appropriation bill being considered by the House today is a good bill. It will enable our troops to stand down as Iraqi security forces stand up. This legislation provides \$403.5 billion for our troops during this transition, equipping them with \$8 bil-

lion to replace damaged equipment, \$1.2 billion for force protection, and \$500 million to train new security forces in Iraq and in Afghanistan. Also, this legislation provides an essential 3.1 percent military pay increase for our soldiers effective January 1, 2006. This legislation honors our military and is deserving of all of our support.

As good as this legislation is, Congress must remain vigilant in our responsibility to support our troops. The Associated Press recently ran an article questioning the amount of money needed to address emergency combat operations in Iraq and Afghanistan. The article reported that the military informally indicated to the House Armed Services Committee that they would need an additional 80 to \$100 billion to fund operations in Iraq and Afghanistan. This request is made in addition to the \$50 billion appropriated through the Defense bill. This request is still being drafted by the Department of Defense and will most likely come to the floor as an additional spending package after we return next year.

I call on my colleagues to support this additional funding when it arrives in the House. We cannot afford to leave our military unprotected and underfunded, especially at this important time in our Nation's history.

Next week, Mr. Speaker, I will travel to Iraq to see the progress the Iraqi security forces are making to take the fight to the insurgents and to take their nation's future into their own hands. I will also visit our troops to give them our thanks from a grateful Nation for the work that they are doing to fight the terrorists, to secure the nation and pave the way for a new and vibrant democracy in Iraq. Our troops must have a clear understanding that our support for them is unwavering. The American people must know that our support for our Armed Forces is strong. That is why this legislation must pass clean, devoid of any needless add-ons. I call on my colleagues to support the legislation and pass the Defense appropriation bill.

With that, Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 74

*Resolved by the Senate (the House of Representatives concurring).* That, in the enrollment of the bill (H.R. 2863) making appropriations for the Department of Defense for the fiscal year ending September 30, 2006, and for other purposes, the Clerk of the House of Representatives shall make the following corrections:

Strike Division C, the American Energy Independence and Security Act of 2005 and Division D, the Distribution of Revenues and Disaster Assistance.

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

CONDITIONAL ADJOURNMENT TO MONDAY, DECEMBER 26, 2005

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that when the House adjourns today pursuant to this order, it adjourn to meet at 11 a.m. on Monday, December 26, 2005, unless it sooner has received a message from the Senate transmitting its adoption of House Concurrent Resolution 326, in which case the House shall stand adjourned sine die pursuant to that concurrent resolution.

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

There was no objection.

OMISSION FROM THE CONGRESSIONAL RECORD OF SUNDAY, DECEMBER 18, 2005 (BOOK II) AT PAGE H12641

#### CHAPTER 7

#### DEPARTMENT OF TRANSPORTATION

#### FEDERAL HIGHWAY ADMINISTRATION

#### FEDERAL-AID HIGHWAYS

#### (HIGHWAY TRUST FUND)

#### (RESCISSION)

The conference agreement includes a rescission of \$1,143,000,000 of the unobligated balances of funds apportioned to the States under chapter 1 of title 23, United States Code, excluding safety programs and funds set aside within the State for population areas. The conferees direct the Federal Highway Administration to administer the rescission by allowing each State maximum flexibility in making adjustments among the apportioned highway programs.

#### FEDERAL RAILROAD ADMINISTRATION

#### EFFICIENCY INCENTIVE GRANTS TO THE

#### NATIONAL RAILROAD PASSENGER CORPORATION

#### (RESCISSION)

The conference agreement rescinds \$8,300,000 from Efficiency Incentive Grants to the National Railroad Passenger Corporation and repeals section 135 of Division A of Public Law 109-115.

#### CHAPTER 8

#### GOVERNMENT-WIDE RESCISSIONS

The conference agreement includes a 1 percent across-the-board rescission to discretionary budgetary resources provided in fiscal year 2006 regular appropriations Acts, as well as to any previously enacted fiscal year 2006 advance appropriation and to any contract authority subject to limitation. The rescission does not apply to the Department of Veterans Affairs or spending designated as an emergency requirement.

#### TITLE IV—HURRICANE EDUCATION RECOVERY ACT

#### SUBTITLE A—ELEMENTARY AND SECONDARY EDUCATION HURRICANE RELIEF

The conference agreement includes language that authorizes assistance to elementary and secondary students and schools impacted by the hurricanes in the Gulf of Mexico in calendar year 2005. Funding to carry out this authority is included in chapter 6 of title 1.

#### SUBTITLE B—HIGHER EDUCATION HURRICANE RELIEF

The conference agreement includes temporary waivers to and modifications of certain higher education act requirements in order to provide flexibility to and ease financial burdens on postsecondary students and institutions impacted by the hurricanes in the Gulf of Mexico in calendar year 2005.