

This could not only make these cases more expensive, more time-consuming and more difficult for injured parties, but could also result in the dismissal of legitimate cases by federal judges who are unfamiliar with, or less respectful of, state-law claims. For example, in at least one MTBE class action, a federal court dismissed the case based on oil companies' claims that the action was barred by the federal Clean Air Act (even though that law contains no tort liability waiver for MTBE). Yet a California state court rejected a similar federal preemption argument and let the case go to a jury, which found oil refineries, fuel distributors, and others liable for damages. These cases highlight how a state court may be more willing to uphold legitimate state law claims. Other examples of state-law cases that would be weakened by this bill include lead contamination cases, mercury contamination, perchlorate pollution and other "toxic tort" cases.

In a letter to the Senate last year, the U.S. Judicial Conference expressed their continued opposition to such broadly written class action removal legislation. Notably, their letter states that, even if Congress determines that some "significant multi-state class actions" should be brought within the removal jurisdiction of the federal courts, Congress should include certain limitations and exceptions, including for class actions "in which plaintiff class members suffered personal injury or personal property damage within the state, as in the case of a serious environmental disaster." The Judicial Conference's letter explains that this "environmental harm" exception should apply "to all individuals who suffered personal injuries or losses to physical property, whether or not they were citizens of the state in question."

We agree with the Judicial Conference that cases involving environmental harm are not even close to the type of cases that proponents of S. 5 cite when they call for reforms to the class action system. Including such cases in the bill penalizes injured parties in those cases for no reason other than to benefit the polluters. No rationale has been offered by the bill's supporters for including environmental cases in S. 5's provisions. We are unaware of any examples offered by bill supporters of environmental harm cases that represent alleged abuses of the state class actions.

More proof of the overreaching of this bill is that the so-called "Class Action Fairness Act" is not even limited to class action cases. The bill contains a provision that would allow defendants to remove to federal court all environmental "mass action" cases involving more than 100 people—even though these cases are not even filed as class actions. For example, the bill would apply to cases similar to the recently concluded state-court trial in Anniston, Alabama, where a jury awarded damages to be paid by Monsanto and Solutia for injuring more than 3,500 people that the jury found had been exposed over many years—with the companies' knowledge—to cancer-causing PCBs.

There is little doubt in the Anniston case that, had S. 5 been law, the defendants would have tried to remove the case from the state court that serves the community that suffered this devastating harm. Even in the best-case scenario, S. 5 would put plaintiffs like those in Anniston in the position of having to fight costly and time-consuming court battles in order to preserve their chosen forum for litigating their claims. In any case, it would reward the kind of reckless corporate misbehavior demonstrated by Monsanto and Solutia by giving defendants in such cases the right to remove state-law cases to federal court over the objections of those they have injured.

The so-called "Class Action Fairness Act" would allow corporate polluters who harm the public's health and welfare to exploit the availability of a federal forum whenever they perceive an advantage to doing so. It is nothing more than an attempt to take legitimate state-court claims by injured parties out of state court at the whim of those who have committed the injury.

Cases involving environmental harm and injury to the public from toxic exposure should not be subject to the bill's provisions; if these environmental harm cases are not excluded, we strongly urge you to vote against S. 5.

Sincerely,

S. Elizabeth Birnbaum, Vice President for Government Affairs, American Rivers.

Doug Kendall, Executive Director, Community Rights Counsel.

Mary Beth Beetham, Director of Legislative Affairs, Defenders of Wildlife.

Sara Zdeb, Legislative Director, Friends of the Earth.

Anne Georges, Acting Director of Public Policy, National Audubon Society.

Karen Wayland, Legislative Director, Natural Resources Defense Council.

Tom Z. Collina, Executive Director, 20/20 Vision.

Linda Lance, Vice President for Public Policy, The Wilderness Society.

Paul Schwartz, National Campaigns Director, Clean Water Action.

James Cox, Legislative Counsel, Earthjustice.

Ken Cook, Executive Director, Environmental Working Group.

Rick Hind, Legislative Director, Toxics Campaign, Greenpeace U.S.

Kevin S. Curtis, Vice President, National Environmental Trust.

Ed Hopkins, Director, Environmental Quality Programs, Sierra Club.

Julia Hathaway, Legislative Director, The Ocean Conservancy.

Anna Aurilio, Legislative Director, U.S. Public Interest Research Group.

Mr. MCGOVERN. Mr. Speaker, I yield back the balance of my time.

Mr. GINGREY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is a fair rule for legislation that will help restore fairness and common sense to the current class action system.

Like H.R. 1115, which overwhelmingly passed the House last Congress, S. 5 expands Federal diversity jurisdiction over interstate class actions in a manner consistent with the framers' constitutional intent that Federal court preside over controversies between citizens of different States. S. 5 also protects consumers from these bogus coupon settlements that reward trial lawyers with millions in windfall fees while clients who never hired them get coupons in the mail.

Mr. Speaker, I want to call attention to this slide before me. This is from the Washington Post, November of 2002. The Washington Post is not exactly the most conservative newspaper in the country: "The clients get token payments while the lawyers get enormous fees. This is not justice. It is an extortion racket that only Congress can fix."

□ 1215

The Senate's overwhelming passage of S. 5 by a vote of 72 to 26 just last

week reflects a strong bipartisan consensus in favor of reforming a class-action system that is prone to systematic abuse. Of those 26, 18 were Democrats, and each one of those provisions in that amendment in the nature of a substitute were offered in the Senate, and each one of them were voted down in a bipartisan fashion.

I think we all, in both the Senate and the House, and both Republicans and Democrats, we want to do the right thing here, and we want to make sure that, as the Washington Post says, that we eliminate this extortion racket and bring some fairness to this class-action system. After all, it is the injured person, it is the plaintiff that deserves a fair and just settlement, and it should not be just a lottery windfall for lawyers who venue shop, looking for places like, and we have heard it during this hour's discussion, Madison County, Illinois, the epicenter of this class-action lawsuit abuse. What happens in Madison County, Illinois, affects the whole country.

So I encourage my colleagues to vote for the rule, vote for S. 5 tomorrow.

Mr. Speaker, I yield back the remaining portion of my time.

The SPEAKER pro tempore (Mr. LATOURETTE). Without objection, the previous question is ordered.

There was no objection.

The SPEAKER pro tempore. The question is the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

#### BROADCAST DECENCY ENFORCEMENT ACT OF 2005

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the pending business is the vote on ordering the previous question on House Resolution 95, on which the yeas and nays were ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for electronic voting, if ordered, on the question of adoption of the resolution.

The vote was taken by electronic device, and there were—yeas 230, nays 198, not voting 5, as follows:

[Roll No. 34]

YEAS—230

Aderholt	Boehert	Calvert
Akin	Boehner	Camp
Alexander	Bonilla	Cannon
Bachus	Bonner	Cantor
Baker	Bono	Capito
Barrett (SC)	Boozman	Carter
Bartlett (MD)	Boustany	Castle
Barton (TX)	Bradley (NH)	Chabot
Bass	Brady (TX)	Chocola
Beauprez	Brown (SC)	Coble
Biggert	Brown-Waite,	Cole (OK)
Bilirakis	Ginny	Conaway
Bishop (UT)	Burgess	Cox
Blackburn	Burton (IN)	Crenshaw
Blunt	Buyer	Cubin

Culberson Jindal  
 Cunningham Johnson (CT)  
 Davis (KY) Johnson (IL)  
 Davis, Jo Ann Johnson, Sam  
 Davis, Tom Jones (NC)  
 Deal (GA) Keller  
 DeLay Kelly  
 Dent Kennedy (MN)  
 Diaz-Balart, L. King (IA)  
 Diaz-Balart, M. King (NY)  
 Dingell Kingston  
 Doolittle Kirk  
 Drake Kline  
 Dreier Knollenberg  
 Duncan Kolbe  
 Ehlers Kuhl (NY)  
 Emerson LaHood  
 English (PA) Latham  
 Everett LaTourette  
 Feeney Leach  
 Ferguson Lewis (CA)  
 Fitzpatrick (PA) Lewis (KY)  
 Flake Linder  
 Foley LoBiondo  
 Forbes Lucas  
 Fortenberry Lungren, Daniel  
 Fossella E.  
 Foxx Mack  
 Franks (AZ) Manzullo  
 Frelinghuysen Marchant  
 Gallegly McCaul (TX)  
 Garrett (NJ) McCotter  
 Gerlach McCrery  
 Gibbons McHenry  
 Gilchrest McHugh  
 Gillmor McKeon  
 Gingrey McMorris  
 Gohmert Mica  
 Goode Miller (FL)  
 Goodlatte Miller (MI)  
 Granger Miller, Gary  
 Graves Moran (KS)  
 Green (WI) Murphy  
 Gutknecht Musgrave  
 Hall Myrick  
 Harris Neugebauer  
 Hart Ney  
 Hastings (WA) Northup  
 Hayes Norwood  
 Hayworth Nunes  
 Hefley Nussle  
 Hensarling Osborne  
 Herger Otter  
 Hobson Paul  
 Hoekstra Pearce  
 Hostettler Pence  
 Hulshof Peterson (PA)  
 Hunter Petri  
 Hyde Pickering  
 Inglis (SC) Pitts  
 Issa Platts  
 Istook Poe  
 Jenkins Pombo

**NAYS—198**

Abercrombie Clyburn  
 Ackerman Conyers  
 Allen Cooper  
 Andrews Costa  
 Baca Costello  
 Baird Cramer  
 Baldwin Crowley  
 Barrow Cuellar  
 Bean Cummings  
 Becerra Davis (AL)  
 Berkeley Davis (CA)  
 Berman Davis (FL)  
 Berry Davis (IL)  
 Bishop (GA) Davis (TN)  
 Bishop (NY) DeFazio  
 Blumenauer DeGette  
 Boren Delahunt  
 Boswell DeLauro  
 Boucher Dicks  
 Boyd Doggett  
 Brady (PA) Doyle  
 Brown (OH) Edwards  
 Brown, Corrine Emanuel  
 Butterfield Engel  
 Capps Etheridge  
 Capuano Evans  
 Cardin Farr  
 Cardoza Fattah  
 Carnahan Filner  
 Carson Ford  
 Case Frank (MA)  
 Chandler Gonzalez  
 Clay Gordon  
 Cleaver Green, Al

Porter Levin  
 Portman Lewis (GA)  
 Price (GA) Lipinski  
 Pryce (OH) Lofgren, Zoe  
 Putnam Lowey  
 Radanovich Lynch  
 Ramstad Maloney  
 Regula Markey  
 Rehberg Marshall  
 Renzi Matheson  
 Reynolds McCarthy  
 Rogers (AL) McCollum (MN)  
 Rogers (KY) McDermott  
 Rogers (MI) McGovern  
 Rohrabacher McIntyre  
 Ros-Lehtinen McKinney  
 Royce McNulty  
 Ryan (WI) Meehan  
 Ryun (KS) Meek (FL)  
 Saxton Meeks (NY)  
 Schwarz (MI) Melancon  
 Sensenbrenner Menendez  
 Sessions Michaud  
 Shadegg Millender-  
 Shaw McDonald  
 Shays Miller (NC)  
 Sherwood Miller, George  
 Shimkus Mollohan  
 Shuster Moore (KS)  
 Simmons Moore (WI)  
 Simpson Moran (VA)  
 Smith (NJ) Murtha  
 Smith (TX) Nadler  
 Sodrel Napolitano

**NOT VOTING—5**

Eshoo Reichert Wynne  
 Oxley Stupak

□ 1242

Ms. VELÁZQUEZ and Mr. BOYD changed their vote from “yea” to “nay.”

Mr. BURTON of Indiana changed his vote from “nay” to “yea.”

So the previous question was ordered. The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. LATOURETTE.) The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. BARTON of Texas. Mr. Speaker, pursuant to House Resolution 95, I call up the bill (H.R. 310) to increase the penalties for violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent, and profane material, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 95, the bill is considered read.

The text of H.R. 310 is as follows:

**H.R. 310**

*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 “Broadcast Decency Enforcement Act of 2005”.

**SEC. 2. INCREASE IN PENALTIES FOR OBSCENE, INDECENT, AND PROFANE BROADCASTS.**

Section 503(b)(2) of the Communications Act of 1934 (47 U.S.C. 503(b)(2)) is amended—

(1) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively;

(2) by inserting after subparagraph (B) the following new subparagraph:

“(C) Notwithstanding subparagraph (A), if the violator is (i) a broadcast station licensee or permittee, or (ii) an applicant for

any broadcast license, permit, certificate, or other instrument or authorization issued by the Commission, and the violator is determined by the Commission under paragraph (1) to have broadcast obscene, indecent, or profane material, the amount of any forfeiture penalty determined under this section shall not exceed \$500,000 for each violation.”; and

(3) in subparagraph (D), as redesignated by paragraph (1) of this subsection—

(A) by striking “subparagraph (A) or (B)” and inserting “subparagraph (A), (B), or (C)”;

(B) by adding at the end the following: “Notwithstanding the preceding sentence, if the violator is determined by the Commission under paragraph (1) to have uttered obscene, indecent, or profane material (and the case is not covered by subparagraph (A), (B), or (C)), the amount of any forfeiture penalty determined under this section shall not exceed \$500,000 for each violation.”.

**SEC. 3. ADDITIONAL FACTORS IN INDECENCY PENALTIES; EXCEPTION.**

Section 503(b)(2) of the Communications Act of 1934 (47 U.S.C. 503(b)(2)) is further amended by adding at the end (after subparagraph (E) as redesignated by section 2(1) of this Act) the following new subparagraphs:

“(F) In the case of a violation in which the violator is determined by the Commission under paragraph (1) to have uttered obscene, indecent, or profane material, the Commission shall take into account, in addition to the matters described in subparagraph (E), the following factors:

“(i) With respect to the degree of culpability of the violator, the following:

“(I) whether the material uttered by the violator was live or recorded, scripted or unscripted;

“(II) whether the violator had a reasonable opportunity to review recorded or scripted programming or had a reasonable basis to believe live or unscripted programming may contain obscene, indecent, or profane material;

“(III) if the violator originated live or unscripted programming, whether a time delay blocking mechanism was implemented for the programming;

“(IV) the size of the viewing or listening audience of the programming; and

“(V) whether the programming was part of a children’s television program as described in the Commission’s children’s television programming policy (47 CFR 73.4050(c)).

“(ii) With respect to the violator’s ability to pay, the following:

“(I) whether the violator is a company or individual; and

“(II) if the violator is a company, the size of the company and the size of the market served.

“(G) A broadcast station licensee or permittee that receives programming from a network organization, but that is not owned or controlled, or under common ownership or control with, such network organization, shall not be subject to a forfeiture penalty under this subsection for broadcasting obscene, indecent, or profane material, if—

“(i) such material was within live or recorded programming provided by the network organization to the licensee or permittee; and

“(ii) (I) the programming was recorded or scripted, and the licensee or permittee was not given a reasonable opportunity to review the programming in advance; or—

“(II) the programming was live or unscripted, and the licensee or permittee had no reasonable basis to believe the programming would contain obscene, indecent, or profane material.

The Commission shall by rule define the term 'network organization' for purposes of this subparagraph."

**SEC. 4. INDECENCY PENALTIES FOR NON-LICENSEES.**

Section 503(b)(5) of the Communications Act of 1934 (47 U.S.C. 503(b)(5)) is amended—

(1) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively;

(2) by inserting "(A)" after "(5)";

(3) by redesignating the second sentence as subparagraph (B);

(4) in such subparagraph (B) as redesignated—

(A) by striking "The provisions of this paragraph shall not apply, however," and inserting "The provisions of subparagraph (A) shall not apply (i)";

(B) by striking "operator, if the person" and inserting "operator, (i) if the person";

(C) by striking "or in the case of" and inserting "(iii) in the case of"; and

(D) by inserting after "that tower" the following: ", or (iv) in the case of a determination that a person uttered obscene, indecent, or profane material that was broadcast by a broadcast station licensee or permittee, if the person is determined to have willfully or intentionally made the utterance"; and

(5) by redesignating the last sentence as subparagraph (C).

**SEC. 5. DEADLINES FOR ACTION ON COMPLAINTS.**

Section 503(b) of the Communications Act of 1934 (47 U.S.C. 503(b)) is amended by adding at the end thereof the following new paragraph:

"(7) In the case of an allegation concerning the utterance of obscene, indecent, or profane material that is broadcast by a station licensee or permittee—

"(A) within 180 days after the date of the receipt of such allegation, the Commission shall—

"(i) issue the required notice under paragraph (3) to such licensee or permittee or the person making such utterance;

"(ii) issue a notice of apparent liability to such licensee or permittee or person in accordance with paragraph (4); or

"(iii) notify such licensee, permittee, or person in writing, and any person submitting such allegation in writing or by general publication, that the Commission has determined not to issue either such notice; and

"(B) if the Commission issues such notice and such licensee, permittee, or person has not paid a penalty or entered into a settlement with the Commission, within 270 days after the date of the receipt of such allegation, the Commission shall—

"(i) issue an order imposing a forfeiture penalty; or

"(ii) notify such licensee, permittee, or person in writing, and any person submitting such allegation in writing or by general publication, that the Commission has determined not to issue either such order."

**SEC. 6. ADDITIONAL REMEDIES FOR INDECENT BROADCAST.**

Section 503 of the Communications Act of 1934 (47 U.S.C. 503) is further amended by adding at the end the following new subsection:

"(c) **ADDITIONAL REMEDIES FOR INDECENT BROADCASTING.**—In any proceeding under this section in which the Commission determines that any broadcast station licensee or permittee has broadcast obscene, indecent, or profane material, the Commission may, in addition to imposing a penalty under this section, require the licensee or permittee to broadcast public service announcements that serve the educational and informational needs of children. Such announcements may be required to reach an audience that is up

to 5 times the size of the audience that is estimated to have been reached by the obscene, indecent, or profane material, as determined in accordance with regulations prescribed by the Commission."

**SEC. 7. LICENSE DISQUALIFICATION FOR VIOLATIONS OF INDECENCY PROHIBITIONS.**

Section 503 of the Communications Act of 1934 (47 U.S.C. 503) is further amended by adding at the end (after subsection (c) as added by section 6) the following new subsection:

"(d) **CONSIDERATION OF LICENSE DISQUALIFICATION FOR VIOLATIONS OF INDECENCY PROHIBITIONS.**—If the Commission issues a notice under paragraph (3) or (4) of subsection (b) to a broadcast station licensee or permittee looking toward the imposition of a forfeiture penalty under this Act based on an allegation that the licensee or permittee broadcast obscene, indecent, or profane material, and either—

"(1) such forfeiture penalty has been paid, or

"(2) a court of competent jurisdiction has ordered payment of such forfeiture penalty, and such order has become final,

then the Commission shall, in any subsequent proceeding under section 308(b) or 310(d), take into consideration whether the broadcast of such material demonstrates a lack of character or other qualifications required to operate a station."

**SEC. 8. LICENSE RENEWAL CONSIDERATION OF VIOLATIONS OF INDECENCY PROHIBITIONS.**

Section 309(k) of the Communications Act of 1934 (47 U.S.C. 309(k)) is amended by adding at the end the following new paragraph:

"(5) **LICENSE RENEWAL CONSIDERATION OF VIOLATIONS OF INDECENCY PROHIBITIONS.**—If the Commission has issued a notice under paragraph (3) or (4) of section 503(b) to a broadcast station licensee or permittee with respect to a broadcast station looking toward the imposition of a forfeiture penalty under this Act based on an allegation that such broadcast station broadcast obscene, indecent, or profane material, and—

"(A) such forfeiture penalty has been paid, or

"(B) a court of competent jurisdiction has ordered payment of such forfeiture penalty, and such order has become final,

then such violation shall be treated as a serious violation for purposes of paragraph (1)(B) of this subsection with respect to the renewal of the license or permit for such station."

**SEC. 9. LICENSE REVOCATION FOR VIOLATIONS OF INDECENCY PROHIBITIONS.**

Section 312 of the Communications Act of 1934 (47 U.S.C. 312) is amended by adding at the end the following new subsection:

"(h) **LICENSE REVOCATION FOR VIOLATIONS OF INDECENCY PROHIBITIONS.**—

"(1) **CONSEQUENCES OF MULTIPLE VIOLATIONS.**—If, in each of 3 or more proceedings during the term of any broadcast license, the Commission issues a notice under paragraph (3) or (4) of section 503(b) to a broadcast station licensee or permittee with respect to a broadcast station looking toward the imposition of a forfeiture penalty under this Act based on an allegation that such broadcast station broadcast obscene, indecent, or profane material, and in each such proceeding either—

"(A) such forfeiture penalty has been paid, or

"(B) a court of competent jurisdiction has ordered payment of such forfeiture penalty, and such order has become final,

then the Commission shall commence a proceeding under subsection (a) of this section to consider whether the Commission should

revoke the station license or construction permit of that licensee or permittee for such station.

"(2) **PRESERVATION OF AUTHORITY.**—Nothing in this subsection shall be construed to limit the authority of the Commission to commence a proceeding under subsection (a)."

**SEC. 10. REQUIRED CONTENTS OF ANNUAL REPORTS OF THE COMMISSION.**

Each calendar year beginning after the date of enactment of this Act, the Federal Communications Commission shall submit to the Congress an annual report that includes the following:

(1) The number of complaints received by the Commission during the year covered by the report alleging that a broadcast contained obscene, indecent, or profane material, and the number of programs to which such complaints relate.

(2) The number of those complaints that have been dismissed or denied by the Commission.

(3) The number of complaints that have remained pending at the end of the year covered by the annual report.

(4) The number of notices issued by the Commission under paragraph (3) or (4) of section 503(b) of the Communications Act of 1934 (47 U.S.C. 503(b)) during the year covered by the report to enforce the statutes, rules, and policies prohibiting the broadcasting of obscene, indecent, or profane material.

(5) For each such notice, a statement of—

(A) the amount of the proposed forfeiture;

(B) the program, station, and corporate parent to which the notice was issued;

(C) the length of time between the date on which the complaint was filed and the date on which the notice was issued; and

(D) the status of the proceeding.

(6) The number of forfeiture orders issued pursuant to section 503(b) of such Act during the year covered by the report to enforce the statutes, rules, and policies prohibiting the broadcasting of obscene, indecent, or profane material.

(7) For each such forfeiture order, a statement of—

(A) the amount assessed by the final forfeiture order;

(B) the program, station, and corporate parent to which it was issued;

(C) whether the licensee has paid the forfeiture order; and

(D) the amount paid by the licensee.

(8) In instances where the licensee has refused to pay, whether the Commission referred such order to the Department of Justice to collect the penalty.

(9) In cases where the Commission referred such order to the Department of Justice—

(A) the number of days from the date the Commission issued such order to the date the Commission referred such order to the Department;

(B) whether the Department has commenced an action to collect the penalty, and if such action was commenced, the number of days from the date the Commission referred such order to the Department to the date the action by the Department commenced; and

(C) whether the collection action resulted in a payment, and if such action resulted in a payment, the amount of such payment.

**SEC. 11. GAO STUDY OF INDECENT BROADCASTING COMPLAINTS.**

(a) **INQUIRY AND REPORT REQUIRED.**—The General Accounting Office shall conduct a study examining—

(1) the number of complaints concerning the broadcasting of obscene, indecent, and profane material to the Federal Communications Commission;

(2) the number of such complaints that result in final agency actions by the Commission;

(3) the length of time taken by the Commission in responding to such complaints;

(4) what mechanisms the Commission has established to receive, investigate, and respond to such complaints; and

(5) whether complainants to the Commission are adequately informed by the Commission of the responses to their complaints.

(b) SUBMISSION OF REPORT.—The General Accounting Office shall submit a report on the results of such study within one year after the date of enactment of this Act to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.

#### SEC. 12. SENSE OF THE CONGRESS.

(a) REINSTATEMENT OF POLICY.—It is the sense of the Congress that the broadcast television station licensees should reinstate a family viewing policy for broadcasters.

(b) DEFINITION.—For purposes of this section, a family viewing policy is a policy similar to the policy that existed in the United States from 1975 to 1983, as part of the National Association of Broadcasters' code of conduct for television, and that included the concept of a family viewing hour.

#### SEC. 13. IMPLEMENTATION.

(a) REGULATIONS.—The Commission shall prescribe regulations to implement the amendments made by this Act within 180 days after the date of enactment of this Act.

(b) PROSPECTIVE APPLICATION.—This Act and the amendments made by this Act shall not apply with respect to material broadcast before the date of enactment of this Act.

(c) SEPARABILITY.—Section 708 of the Communications Act of 1934 (47 U.S.C. 608) shall apply to this Act and the amendments made by this Act.

The SPEAKER pro tempore. After 1 hour of debate on the bill, it shall be in order to consider an amendment without demand for division of the question printed in House Report 109-6 if offered by the gentleman from Michigan (Mr. UPTON), or his designee, which shall be considered read, and shall be debatable for 20 minutes, equally divided and controlled by the proponent and an opponent.

The gentleman from Texas (Mr. BARTON) and the gentleman from Massachusetts (Mr. MARKEY) each will control 30 minutes of debate on the bill.

The Chair recognizes the gentleman from Texas (Mr. BARTON.)

#### GENERAL LEAVE

Mr. BARTON of Texas. 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 H.R. 310.

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

There was no objection.

Mr. BARTON of Texas. I yield myself such time as I may consume.

Mr. Speaker, today the Energy and Commerce Committee brings its first major bill of the 109th Congress to the floor, H.R. 310, the Broadcast Decency Enforcement Act of 2005.

This is a bill that we brought up in the last Congress and passed in the last Congress, but were not able to conference successfully with the Senate. We passed it in the last Congress with a vote of 391 to 22, so we are going to

bring this up as our first major bill this year.

This legislation makes great strides in making it safe for families to come back again into their living rooms. After the year-before-last Super Bowl half-time show, an unprecedented 500,000 citizens filed complaints with the FCC, 500,000. The level of disgust in the use of our public airwaves was then at an all-time high. The 2004 Super Bowl crystallized the notion that something needs to be done. Today, we are going to answer those calls.

H.R. 310 gives the FCC all of the tools necessary to encourage broadcasters to take these fines seriously. For too long, broadcasters have pushed the envelope. In light of the paltry fines under current law, broadcasters have been willing to take the risk that programming may be deemed indecent. Currently, the most the FCC may fine a broadcaster is \$32,500. It is a mere drop in the bucket, a slap on the wrist. This bill would raise the stakes by giving the FCC the ability to fine a maximum of \$500,000 for an indecent broadcast infraction. A \$500,000 penalty gets people's attention.

The bill also takes the additional step to address the performers who may exploit the airwaves to promote their own popularity. Under H.R. 310, if a performer, and I quote, "willfully and intentionally makes an indecent statement or action that he or she knows will be broadcast, that performer can be held personally liable for up to \$500,000." There is a clear need to hold a performer responsible for his or her own actions, and this bill does that in a reasonable manner.

The goal is not to bankrupt anyone, but rather make the penalties do what they are supposed to do, provide a disincentive to utter indecent material on broadcast television and radio.

Additionally, H.R. 310 would allow the FCC to use remedies other than fines. For instance, if a broadcaster is found liable for three separate indecency violations during an 8-year license term, the bill requires the FCC to hold a revocation hearing to consider revoking the broadcaster's license. It is not an automatic revocation, but the FCC would have to hold the hearing to consider revocation.

Today, the FCC has the power to hold a license revocation hearing only after one indecency offense, but rarely uses it. H.R. 310 would make it clear that after three such offenses, it is time to examine the license. Again, this is a penalty that will make the broadcasters sit up and take notice.

□ 1245

I would like to thank the gentleman from Michigan (Mr. UPTON), chairman of the Subcommittee on Telecommunications and the Internet; the gentleman from Michigan (Mr. DINGELL), the ranking member of the full committee; and the gentleman from Massachusetts (Mr. MARKEY), the ranking member of the subcommittee, for their

hard work on this bill. It is a good bill. It is firm, it is fair, and it is reasonable. Most importantly and unfortunately, it is necessary. I am an original cosponsor of H.R. 310. I would strongly urge my colleagues to support the bill.

Mr. Speaker, I yield the balance of my time to the gentleman from Michigan (Mr. UPTON), and I ask unanimous consent for him to control the floor debate on the majority time on this bill.

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

There was no objection.

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to commend the gentleman from Michigan (Mr. UPTON) for this legislation and commend as well the gentleman from Texas (Mr. BARTON), the gentleman from Michigan (Mr. DINGELL) and members of the committee on both the Democrat and Republican side who have crafted this bill. It has been handled in a bipartisan fashion. This bill is brought to the floor today in that spirit.

Mr. Speaker, this legislation is essentially identical to the bill which overwhelmingly passed the House in the last Congress. Simply put, this bill raises the cap on possible fines that the FCC can levy for violations of its broadcast indecency rules from \$32,500 for licensees and \$11,000 for non-licensees to up to \$500,000 in both categories.

I would like to emphasize that this legislation does not make indecent broadcasts illegal, nor does the bill define what is or is not indecent material.

Indecent content aired over broadcast TV and radio is already illegal between the hours of 6 a.m. and 10 p.m., 7 days a week. What speech constitutes indecent material will be left to the Federal Communications Commission and to the courts of the United States of America.

Again, this legislation simply updates the statute with regard to the amount of money that the FCC can levy as a fine for violations of its rules and establishes procedures for considering broadcast license awards, renewal or revocation when repeated violations are found.

Mr. Speaker, I reserve the balance of my time.

Mr. UPTON. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I rise in support of this legislation. I want to particularly thank a number of Members. I want to thank the gentleman from Texas (Mr. BARTON). Without his dedicated effort, we would not have this bill through the fast track that we have it today, and his support means quite a bit. I also want to thank my friends on the other side of the aisle. I look at the gentleman from Massachusetts (Mr. MARKEY), my ranking member on the subcommittee; the gentleman from Michigan (Mr. DINGELL) who is on the floor, the ranking member of the full committee. This is a bipartisan effort.

I would remind my colleagues that last year this legislation passed 391–22. Out of our committee this last week, it passed 46–2. That is true bipartisan spirit and we are delighted that it is up on the floor as early as it is. A little bit more than a year ago, I introduced similar legislation that had all five FCC commissioners, Republican and Democrat, on board. Each of them had lamented in a very public way that the current level of fines was way too low, and with that we moved the legislation that we introduced a couple of weeks ago. We passed it, as I said, 391–22. The Senate passed similar legislation last year, 99–1. I would note that that one that voted against it wanted the bill to be tougher. In essence, unanimous support.

Currently, fines for indecency often go uncollected because the cost for the Department of Justice to collect the fines is often greater than the fines themselves. This is no longer going to be the case under H.R. 310. The current cap for fines is \$32,500. To put that into perspective, a 30-second ad during the Super Bowl just a couple of weeks ago cost \$80,000 a second, \$2.4 million for 30 seconds.

What we are talking about today is about the public airwaves which are, of course, owned by the U.S. taxpayer. Using the public airwaves comes with the responsibility to follow the FCC decency standards that apply to programming that airs during the family hours from 6 in the morning until 10 at night, the likeliest time that kids might be tuned in.

When broadcasters sign on the dotted line to receive their licenses, they agree to follow those decency standards, and I would note that the courts, including the highest in the land, ruled in support of that standard. There has to be a level of expectation when a parent turns on the TV or the radio between those family hours that the content will be suitable for children. A parent should not have to think twice about the content on public airwaves. Unfortunately, the situation is far from reality.

I would note very strongly that we do not change the standard in this legislation. We raise the fines. I have asked for the FCC to look for the transcripts of what they have fined. I am not going to put this in the RECORD under unanimous consent or any other, but I will tell any Member that is here or watching on the floor, if you want to see what the FCC has fined, I have got the transcript here and it is awful, it is vulgar, it has no place on the public airwaves, and I would defy anyone to come over and look at the reading of these transcripts and say that should not be banned. It should be. And broadcasters who violate the standard ought to be fined and it ought to be more than a slap on the wrist, and that is exactly what this legislation does.

By significantly increasing the fines for indecency, the fines will be at a level where they no longer are going to

be ignored and parents across the country can rest easy. With the passage of this legislation I am confident that broadcasters will think twice and, by the way, the talent themselves as well, the disk jockeys or anybody else, will think twice about pushing that envelope because they are going to be liable as well, and ultimately our kids are going to be better off for it.

Mr. Speaker, I rise in strong support of H.R. 310, the Broadcast Decency Enforcement Act of 2005. At the outset, I want to thank Chairman BARTON, Ranking Member DINGELL, and Mr. MARKEY for their tremendous bipartisan cooperation on this bill. I also want to thank those Members of the House who have co-sponsored the bill.

I would tell my colleagues that H.R. 310 mirrors the bill which, last year, the House passed by a vote of 391–22.

For the record, we introduced this bill last year weeks before the infamous Super Bowl halftime show featuring Janet Jackson and Justin Timberlake. I was motivated to introduce this bill in large part because I read the transcripts of those broadcasts which the FCC found to contain indecent content. When I read some of those transcripts, I was absolutely sickened and shocked by the filth which had passed over the public's airwaves. Today, I have with me every broadcast indecency Notice of Apparent Liability and Forfeiture Order issued by the FCC since 2000. Each order contains a transcript of the offending content. If any Member is uncertain about the merit of what we are doing here today, I would urge them to read these transcripts. I am confident that you will be as sickened as I am.

This legislation would significantly enhance the Federal Communications Commission's broadcast decency enforcement authority. As stewards of the public's airwaves, radio and television broadcasters have an obligation to abide by the decency laws which have been on the books for decades and have been upheld in the courts. Most of our local broadcasters act responsibly, but there are still too many who continue to push the envelope of indecency during the hours of 6 a.m. to 10 p.m., when children are most likely to be in the audience. I would note that some broadcasters have taken to heart the seriousness of this debate and, on their own, have adopted internal policies to better control what goes over the public's airwaves over which they have stewardship. Clear Channel's "zero tolerance" policy as part of its "Responsible Broadcast Initiative" is one such example of this good corporate citizenship.

But for those broadcasters who continue to act irresponsibly, the FCC needs adequate authority to enforce the law, and this bill would deliver that.

Currently, the maximum fine which the FCC can impose for violations of the decency laws is \$32,500 per violation, which, to some broadcasters, is merely the "cost of doing business" and, as such, is hardly a deterrent. H.R. 310 would increase the maximum fine to \$500,000 per violation.

In addition, under current law, the FCC may hold a license revocation hearing for any broadcaster who is found liable for an indecency violation. However, the FCC has never held such a license revocation hearing. H.R. 310, among other things, would require the FCC to hold a license revocation hearing for

any broadcaster who has been found liable for three indecency violations; this is the so-called "three strikes" provision. Importantly, in order for a "strike" to count toward the three strikes triggering a license revocation hearing under the bill, each finding of liability must have gone through an exhaustive legal process—all the way to final judgment. This is an important element to protect broadcasters' legitimate due process rights. Also, it is important to note that this provision does not require the FCC to revoke the license of a broadcaster after the third strike, it merely requires a hearing to consider the matter with no prejudice toward the outcome of such hearing. Of course, under current law, the FCC can hold a license revocation hearing after the first strike, second strike, or third strike, so all this provision does is require, at a minimum, that such a hearing is held after the third strike.

Other provisions in the bill would:

Ensure that the FCC, when setting penalties, takes into consideration the degree of culpability of the violator, whether the violator is a company or individual, and if it is a company, the size of the company and market served.

Permit the FCC to fine an individual on the first indecency offense.

Require the FCC to complete action on indecency complaints within 180 days.

Force the FCC to take indecency violations into account during license application, renewal and modifications, and

Compel the FCC to report to Congress annually regarding the agency's broadcast decency enforcement activities.

This bill significantly strengthens the FCC's enforcement authority, but does not change the underlying broadcast indecency standard which has withstood judicial scrutiny throughout the decades. Later in this debate, I, along with my colleague ED MARKEY, will be offering a bipartisan manager's amendment, which makes some non-controversial changes to the bill, in large part clarifying our intent in a number of areas. But for now, I will simply close by urging my colleagues to support the bill and the manager's amendment which will be offered to it.

Mr. Speaker, I include for printing in the CONGRESSIONAL RECORD the statement of administration policy from the administration in support of this legislation.

EXECUTIVE OFFICE OF THE PRESIDENT,  
OFFICE OF MANAGEMENT  
AND BUDGET.

Washington, DC, February 16, 2005.

STATEMENT OF ADMINISTRATION POLICY  
H.R. 310—BROADCAST DECENCY ENFORCEMENT  
ACT OF 2005 (REP. UPTON (R) MICHIGAN AND 56  
COSPONSORS)

The Administration strongly supports House passage of H.R. 310. This will make broadcast television and radio more suitable for family viewing by giving the Federal Communications Commission (FCC) the authority to impose stiffer penalties on broadcasters that air obscene or indecent material over the public airwaves. In particular, the Administration applauds the inclusion in the bill of its proposal to require that the FCC consider whether inappropriate material has been aired during children's television programming in determining the fine to be imposed for violations of the law. The Administration looks forward to continuing to work with the Congress to make appropriate adjustments to the language of the bill as it moves through the legislative process.

Mr. Speaker, I reserve the balance of my time.

Mr. MARKEY. Mr. Speaker, I yield 3 minutes to the gentlewoman from Illinois (Ms. SCHAKOWSKY), a member of the committee.

Ms. SCHAKOWSKY. Mr. Speaker, I thank the gentleman for yielding me this time.

I rise in opposition to H.R. 310, the Broadcast Decency Act. While I acknowledge and appreciate that this is a bipartisan effort in bringing this bill, I believe that this attempt to address the quality of broadcasting is both overreaching and off the mark and I urge my colleagues to vote against this bill.

There is already a law on the books that addresses indecency, and my view is that we need to get a grip and not embrace a solution that could cause more harm than good. I believe that H.R. 310 is one of those solutions.

H.R. 310 would essentially in my view put Big Brother in charge of deciding what is art and what is free speech. If enacted, especially with the increased fines against individual artists, we will see self- and actual censorship reach new and undesirable heights. Even the threat of this legislation has already led to that kind of censorship.

For instance, on Veterans Day of 2001 and 2002, ABC aired "Saving Private Ryan," a movie about World War II, to honor those who served. In 2004, with the threat of almost identical legislation to the one we are considering hanging over their heads, 66 ABC affiliates refused to run the show. They were afraid that the award-winning salute to our veterans would be deemed indecent. They were concerned that it might trigger at least one incident, maybe three, of indecency because it is unclear whether saying one indecent word three times in the same broadcast might trigger license revocation proceedings.

As we can see, the threats to our Constitution and to artistic expression are all too real with H.R. 310. Do we not want to have sensational performances, sensational in the best sense of the word? Do we want a blanding down? Once we do this kind of censorship, can political speech be far behind?

I am concerned about the continual refusal to address what I believe is really behind the decline in broadcasting and that is the overconcentration of media ownership. Broadcasting content has been getting worse, not because of low fines and out-of-control talent, but because of the shift away from local control to ownership by media conglomerates that have no regard for the varying community standards.

Additionally, much of the furor over indecency has been explained by a desire to protect our children. And there are many programs on TV that I believe are inappropriate for my little grandchildren, particularly the many which depict graphic violence over and over and over again. But I do not want

H.R. 310 or Big Brother making that decision for me or their parents.

If I could just say that I happen to be much more concerned about the first amendment than I am about my grandchildren seeing Janet Jackson's nipple. I would say, let us get a grip and we can do without this legislation. I urge a "no" vote.

Mr. UPTON. Mr. Speaker, I yield 2¼ minutes to the gentleman from Florida (Mr. STEARNS), a member of the subcommittee and a cosponsor of the legislation.

(Mr. STEARNS asked and was given permission to revise and extend his remarks.)

Mr. STEARNS. Mr. Speaker, I thank the distinguished chairman of the subcommittee for yielding me this time. I think it is appropriate that I speak after the gentlewoman from Illinois (Ms. SCHAKOWSKY) spoke in opposing the bill, because I support the bill. There is going to be opposition from a few people. They are going to complain that this bill is arbitrary; that the fine on individuals, which is \$500,000, is too much, too expensive.

But I think the gentleman from Texas (Mr. BARTON) and the gentleman from Michigan (Mr. UPTON) have reached the right balance on this bill, so let us talk a little bit about it. It is not arbitrary. There is a lot of flexibility involved. It is not unfair or excessive.

We establish a separate standard for individuals above and beyond how we deal with licensees so that we can go that extra mile to protect their first amendment rights.

We should note that the penalty is up to \$500,000. That means that the FCC has the discretion to fine much lower if it needs to. We all know that Janet Jackson is a person who can afford these fines, but if a local small-time entertainer violates our decency laws, the FCC can take into consideration that fact and that these individuals cannot afford \$500,000. So maybe they will issue something like \$5,000 or \$10,000 or \$25,000, still stiff enough to punish them for violating our laws and maybe enough to dissuade them from doing it again. In fact, the FCC has the discretion to fine them \$1 if they see fit. So there is a lot of flexibility.

In order to be penalized under this legislation, the individual must have a willful and intentional profanity in order to be penalized. This means that individuals have to act deliberately and consciously knowing that their indecent comments will be broadcast. In other words, if an entertainer is unaware that they are on camera and that they are profane, they would not be held responsible for this.

The FCC can also check the list of aggravating factors that were established and then in turn determine the fine accordingly. The FCC will have to look at whether the comments were scripted or unscripted or live or recorded.

Mr. Speaker, this is a reasonably balanced bill that backs our decency

standards, I think, with force. For too long, the penalties associated with our decency laws were considered just a cost of doing business. That is simply what they were. We will now have the potential to have individuals put their money where their mouth is. I urge my colleagues to support this language, support this bill and pass it.

Mr. MARKEY. Mr. Speaker, I yield 4 minutes to the gentleman from Vermont (Mr. SANDERS).

Mr. SANDERS. I thank the gentleman for yielding me this time.

Mr. Speaker, this is a bad bill. It is a dangerous bill. I get a little bit tired of people in Congress talking about freedom, freedom, freedom. But apparently they do not want to give the American people the freedom to make the decisions with regard to what radio and television programs they can watch or hear.

I am not a conservative, but let me quote from an honest conservative who does not want government regulating what the American people see and hear. This is a gentleman from the Cato Institute, Mr. Adam Thierer:

"Those of us who are parents understand that raising a child in today's modern media marketplace is a daunting task at times. But that should not serve as an excuse for inviting Uncle Sam in to play the role of surrogate parent for us and the rest of the public without children.

□ 1300

"Even if lawmakers have the best interest of children in mind, I take great offense at the notion that government officials must this job for me and every other American family.

"Censorship on an individual/parental level is a fundamental part of being a good parent. But censorship at a government level is an entirely different matter because it means a small handful of individuals get to decide what the whole Nation is permitted to see, hear, or think." Cato Institute. Honest conservatives.

Mr. Speaker, the specter of censorship is growing in America today, and we have got to stand firmly in opposition to it. What America is about is not my agreeing to what one says; it is my agreeing that they have the right to say it. That is what we fought for.

I am particularly outraged when I read in Reuters on December 13, "Sixty-six ABC affiliates refused to air the uncut movie on Veterans Day last month" of "Saving Private Ryan," "citing concerns they could face fines for profanity and graphic violence from the FCC."

The men who fought in World War II against Hitler, who gave their lives on D-Day, we cannot see that film because ABC is afraid to show us, and that is under the old rules.

In addition to the self-censorship imposed by ABC on "Saving Private Ryan," there is more. In January of 2004, CBS refused to air a political advertisement, paid political advertisement, during the Super Bowl by

MoveOn.org that was critical of President Bush's role in creating the Federal deficit. They could not pay to get an ad on because CBS was nervous. Last November, CBS and NBC refused to run a 30-second ad from the United Church of Christ because it suggested that gay couples were welcome into their church. They were afraid to run that. And just last month many PBS stations refused to air an episode of "Postcards with Buster" because they showed a lesbian couple.

In other words, this legislation cannot be taken out of context with the overall move towards censorship which is taking place in this country. And I would hope that my conservative friends who get up here every day talking about government regulators, get those government regulators off the backs of the people, I hope they will remember their rhetoric today. Let us not have a handful of government bureaucrats telling radio and TV stations and the American people what they can see and hear.

Mr. UPTON. Mr. Speaker, I yield myself 15 seconds.

I would just remind my friend in the well that the FCC specifically dismissed complaints against "Saving Private Ryan," and with regards to the ad that was trying to be run by United Church of Christ, that was a first amendment right that the station made themselves. I do not think anyone thought that the FCC would fine them for the airing of that commercial.

Mr. Speaker, I reserve the balance of my time.

Mr. MARKEY. Mr. Speaker, I yield 30 seconds to the gentleman from Vermont (Mr. SANDERS).

Mr. SANDERS. Mr. Speaker, my friend from Michigan raises an important point about ABC, not a small company. They self-censored themselves. He is right. He is absolutely right. The FCC said that they would not fine them, and yet 66 affiliates said, We are still nervous. ABC, not a small station. In my State we have got small stations who are very nervous. The issue here, and the gentleman just really said it, is self-censorship.

Is he happy about the fact that affiliates are afraid of showing "Saving Private Ryan"?

Mr. UPTON. Mr. Speaker, will the gentleman yield?

Mr. SANDERS. I yield to the gentleman from Michigan.

Mr. UPTON. Mr. Speaker, I would just say that the FCC said they were not going to fine them.

Mr. SANDERS. But they did not, Mr. Speaker. ABC affiliates took it off the air. Is the gentleman happy? Does he think that is good?

The SPEAKER pro tempore (Mr. LATOURETTE). The gentleman from Vermont's (Mr. SANDERS) time has expired.

Mr. UPTON. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. PITTS), a member of the subcommittee, who is very active on this issue, a co-sponsor.

Mr. PITTS. Mr. Speaker, I thank the gentleman from Texas (Mr. BARTON) and the gentleman from Michigan (Mr. UPTON) for moving this important legislation so early in the session.

This is not a new issue. But parents have been pleading with us to take action on this for years.

Mr. Speaker, studies show that children are impacted by what they watch on television. A study last year released by Rand shows that children pick up sexual attitudes and behaviors from television programs, and we know that children are very impressionable; and to allow broadcasters to circumvent the role of parents in teaching their children right from wrong when it comes to sexuality, violence, and profanity is wrong; and not to act is to do just that.

Our decency laws are based on our view that society is partly responsible for making sure public airwaves are filled with safe material, and programs depicting profanity, sexuality, and violence influence how kids act and see the world; and that is why we have adopted decency standards that have withstood legal challenge and the test of time.

This bill updates the penalties for violating those standards. For too long government has allowed broadcasters to profit from the use of public airwaves with little or no public accountability. We have in effect abandoned American families in doing that. H.R. 310 sends a clear message to the entertainment industry that we are no longer going to idly stand by and force our parents to put up with this unacceptable programming. H.R. 310 reaffirms our commitment to ensure safe programming for children.

Mr. Speaker, families are tired of worrying about what their children may hear and see every time they turn on television. They are frustrated that the media industry has seemingly been able to broadcast any type of behavior or speech that they feel will bring in advertising dollars. Meanwhile, they feel that the Federal Government has sided with the media elites and turned a blind eye to the concerns of ordinary moms and dads. So finally Congress has heard. We are acting for American families. We are not going to stand idly by on this topic.

I urge support for the bill.

Mr. MARKEY. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. WAXMAN).

Mr. WAXMAN. Mr. Speaker, I rise in opposition to this so-called Broadcast Decency Enforcement Act. It increases the power of government to censor programming that some might consider indecent and others might not. We are already seeing the corrosive effect of this legislation on free speech as broadcasters anticipate its enactment. Faced with the potentially ruinous fines and the loss of their licenses, broadcasters have begun to self-censor even permissible speech.

Last Veterans Day, 65 ABC affiliates declined to air "Saving Private Ryan"

in response to an organization's campaign against it even though the movie had aired two previous years without any indecency complaints from the public. And the Federal Communications Commission has provided no constructive guidance to broadcasters. It is creating greater confusion by applying an already-vague indecency standard in an inconsistent and arbitrary manner.

No one knows when one person's creative work will become a violation of another person's definition of decency. Creative works that tackle challenging themes that are controversial but important are threatened by this legislation. Everything is objectionable to someone. A few years ago one of our colleagues took to the House floor to condemn the broadcast of the Oscar award-winning film "Schindler's List." He was outraged that scenes portraying Holocaust victims contained some nudity. Legislation such as this can lead us to these kinds of absurd results. Let us trust parents to know better than government officials what material they want their children to be exposed to. And let us have adults be able to watch television programming that is not so watered down, that the only thing we will see on television is suitable for a 5-year-old whose parents are prudes.

I reject this legislation. I plan to vote against it, and I urge my colleagues to join me.

Mr. UPTON. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. SHIMKUS), again a cosponsor of the legislation, very active in pursuing its goal today.

Mr. SHIMKUS. Mr. Speaker, I am a parent of a 5-year-old and I am a prude; so I guess I meet the gentleman from California's (Mr. WAXMAN) definition.

Willfully and intentionally, the use of public airwaves for indecent material or conduct, that is what we are addressing today. And I want to congratulate the committee, the gentleman from Texas (Chairman BARTON); the gentleman from Michigan (Mr. DINGELL), ranking member; the gentleman from Massachusetts (Mr. MARKEY), ranking member; and the gentleman from Michigan (Mr. UPTON), for their good work. It is not easy, because we hear the debate, but it is very important.

The outcry of the Nation has been finally heard. This was the number one issue that my office was contacted on in the whole last Congress. Nothing raised the ire of the people in my district more than the indecent use of the public airwaves, and finally we are doing something about it.

But I do not want to lull the public into a false sense of security, because this is addressing only one venue, the public airwaves, the people of the broadcast communities free over-the-air TV, which is now a minority of the use of how people receive TV shows in their home. By far most people receive it through cable, direct satellite, we

are going to have cellular, it is over broadband. And do my colleagues know what this does to those venues? Nothing. Maybe it will exclude those broadcasters in their ability, but these other venues are still going to be held free, and I think that creates an unfair playing field, and I am concerned.

The local broadcasters in most of our districts do a fair and upright job. They understand the problem that the big broadcasters have imposed upon them. They are willing to accept these stringent standards and tighten their belts for the good of the public. But they are not going to be able to compete with billions of channels, with other types of broadcasters who are going to get away scot-free.

So I applaud the bill. I am excited about it. I lament the fact that it does not go far enough.

Mr. MARKEY. Mr. Speaker, I reserve the balance of my time.

Mr. UPTON. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. FERGUSON), a member of the subcommittee.

Mr. FERGUSON. Mr. Speaker, I appreciate the gentleman's leadership on this issue. I thank the gentleman from Massachusetts (Mr. MARKEY) for his work on this important legislation. It is a pleasure to serve on the subcommittee, and I look forward to continued work in this Congress.

As a father of four young children, I am glad to see that the Broadcast Decency Enforcement Act has once again come to the House floor and it is on its way to passage and signature by President Bush. While I ultimately believe that it is parents' responsibility to closely monitor what their children watch on television, it is difficult even for conscientious parents when programs that feature explicit language or other subject matter are shown during times when children are commonly watching television.

Often, parents are in the position of having to be reactive, hoping that children will not fall victim to offensive images and words on their TVs. Congress must act to ensure that the FCC has the tools that it needs to prevent offensive images in our living rooms, and I believe we have done so with this bill and this legislation.

It has been fueled by bipartisan desire to ensure that broadcasters take responsibility for what is transmitted over their airwaves. It is timely and it is completely appropriate considering what the American public and our families have witnessed recently over our airwaves. We have seen the public airwaves turned into a race to the bottom. Who can be more offensive? Who can be more vulgar? Who can push the envelope a little further than the next guy? Who can do whatever they can to create a stir and to draw increased ratings by creating a buzz in our society?

Do we not have something better to offer to American families and American children? It is difficult to argue that our society and our culture has

not become more coarsened over the course of the last few decades. Let us try to stop the coarsening of our culture. Let us try to offer our families and our children something better, something more healthy, something more wholesome.

Can we not do better? I think we can. And I think it can begin by passing this legislation.

Mr. MARKEY. Mr. Speaker, I yield back the balance of my time.

□ 1315

Mr. UPTON. Mr. Speaker, I just want to remind my colleagues we are not changing the standard; we are simply raising the fines on the existing standard. This is not about "Saving Private Ryan." Those charges were dismissed some time ago. It has aired a number of times.

But it is about what some Members have looked at, the transcripts from broadcasts that have been fined, and I would dare to say that there is not a Member of this body who wants some of this filth to ever be said or broadcast again. That is what this legislation is intended to stop, so that when we are listening to the radio or watching TV, particularly with our kids, that they are not going to be exposed to stuff that has been on the books for decades and the courts have affirmed.

Mr. NEUGEBAUER. Mr. Speaker, I rise today to express my strong support for H.R. 310, the Broadcasting Decency Enforcement Act. While the House passed this bill last year by an overwhelming majority, unfortunately it did not become law. As a result, the House must reconsider this issue.

During my service in Congress, this is one of the top two issues my constituents have mentioned in their e-mails, phone calls and letters. My constituents are telling me that enough is enough. When broadcasters violate indecency rules and a complaint is filed, my constituents want it to be taken seriously by the Federal Communications Commission, FCC. They want meaningful penalties that will make broadcasters think twice before airing objectionable programs. They want broadcasters to be held accountable.

Above all, they want to be able to watch an entertainment program with their families without having them exposed to content unsuitable for children. When supposedly family-friendly programming such as the Super Bowl becomes a program many families don't want their children to see, we have a problem. As a grandfather, I worry about being able to turn on the TV and watch a program or sports event with my 3- and 5-year-old grandsons.

The bill before us today increases penalties for broadcasters and performers who violate decency standards over the airwaves. Raising the cap on fines to \$500,000 for broadcasts that violate the rules helps show that Congress and the FCC are serious about punishing offenses. The current cap is only \$27,000 per violation, a drop in the bucket for most broadcasters. When broadcasters know that indecency violations will be taken into consideration when they ask the FCC to renew their broadcast licenses, they are going to take additional precautions to prevent instances of indecency. If a broadcaster accu-

mulates three violations, a hearing will be triggered to review revoking that station's license.

This legislation sends a strong signal that Congress is serious about enforcement of broadcast indecency regulations. If all Members, constituents care about this issue as much as mine do, then this should be an easy bill for us to support.

Mr. Speaker, in closing, I urge my colleagues to support this legislation.

Mr. HOLT. Mr. Speaker, I rise in support of the Broadcast Decency Enforcement Act (H.R. 310).

Like many Americans, I have been personally offended by the crudeness and licentiousness of some material that has made its way on the public airwaves. Television and radio networks that benefit from free use of the public airwaves have a responsibility to refrain from airing obscene material. Likewise, licensees must refrain from airing programming that is indecent or profane during normal family viewing hours. Parents should not be forced to dive for the remote control in order to protect their children from material that they are too young to see or hear.

Since 1978, the Federal Communications Commission has had the authority to "impose sanctions on licensees who engage in obscene, indecent, or profane broadcasting." Under current law, the maximum amount that a network can be fined for airing such content is \$27,500. For huge broadcasting companies that reap billions in advertising revenue each year, this sum is an insufficient deterrent from breaking the law.

I am happy to see that this legislation does not change existing law regarding the standards by which television or radio programming is judged to be indecent, profane, or obscene. I am wary of the Federal Government overstepping its boundaries by becoming a kind of moral police. This legislation merely bolsters the ability of the FCC to levy appropriate punitive actions against networks that flagrantly violate the law.

I am disappointed that Congress has declined to use this occasion to address an equally important issue in broadcasting—diversity of viewpoints. Until 1985, broadcasters benefiting from use of the public airwaves had a responsibility to demonstrate that their programming presented multiple viewpoints on issues of public interest. The repeal of the Fairness Doctrine by the Reagan administration has hurt the objectivity of the media and the breadth of opinions that the public gets to hear. Americans deserve better than propaganda masquerading as news journalism.

Though I intend to vote in favor of this legislation, the situation in which Congress finds itself is hardly ideal. Any time the Federal Government is forced by circumstances to strengthen limitations on the media, it must act with extreme caution at the risk of violating this country's most essential freedoms. It would be best if broadcasters would voluntarily adhere to high standards of decency with regard to the public airwaves. If broadcasters demonstrated the willingness and capacity to regulate themselves, this legislation would not be necessary. Unfortunately, some television and radio broadcasters have chosen to violate decency standards, judging that the ratings boon would be worth any fines that a violation would inevitably generate.

It is my hope that the FCC will not be forced to use the authority that this legislation grants.

I hope that passage of this legislation will provide an adequate deterrent to ensure that television and radio programming on public airwaves reflects public values. I support H.R. 310, imperfect though it may be.

Mrs. BONO. Mr. Speaker, it has been over a year since the infamous Super Bowl incident where a supposed "wardrobe malfunction" set this Nation spinning backwards wondering why our children were exposed to a misogynistic display of public nudity during a football game. The provocative dancing, and sexual lyrics were a far cry from an afternoon watching a football game. While I have the utmost respect for artists and their artistic expressions, I am also a mother of two children and last year the line between acceptable and unacceptable was crossed on national television.

Hollywood has long been about us pushing the borders of artistic expression and pushing the limits. I was married to an entertainer and I have a family, an extended family, who are still in this business and we know that this is about pushing the envelope. The American people have finally said "enough" you've pushed too far—and the truth is, corporate profit is increasingly becoming the bottom line. This is what this is about at the end of the day. Janet Jackson, as I understand, came out with a new album shortly after this tasteless stunt—surprise, surprise.

I have always supported artists, and want to protect their ability to express themselves and protect them against unfair legislation. Recently, I entered into a colloquy with Chairman BARTON and he assured me that artists have a means test where their intent and ability to pay a fine is taken into consideration under the current Communications Act. Also, the chairman assured me that the \$500,000 fine is merely a cap and that there is discretion based upon certain factors so a violation is not automatically going to cost an artist that amount of money. Furthermore, an artist is not likely to be fined for a broadcaster placing their recorded performance on the air unless they had knowledge that it would be played or that they intended for that performance to be played on the public airwaves. Such an example demonstrates that an artist would have to be involved in the process with a broadcaster in order to be found in violation of this bill. Lastly, this bill implements the ability to pay test so that both licensees and nonlicensees ability to pay fines will be taken into consideration.

I would like to personally thank the Creative Coalition and the Grammy Foundation for their attention to these issues and bringing them to the forefront. I hope that their specific concerns with these provisions have been addressed and that they feel comfortable with the intentions of this bill. I look forward to working with both groups in the future and will continue to support artist's rights as they pertain to these issues. There is a difference between protecting artists and upholding laws and standards on our public airwaves and I believe this bill strikes the right balance.

While there has been an outcry from some members of the public suggesting that this was not a big deal, the vote on this bill last year tells a different story. This bill was voted out of the House of Representatives last year by a vote of 399–22. That type of bipartisan support demonstrates the outrage that each Member felt and what each Member heard from their constituents. Entertainers, producers

and the corporate giants pushing profits have pushed the envelope too far and are seeing the backlash from Congress, public officials, and concerned parents and constituents. Something had to be done to scale back this type of behavior and this bill accomplishes that goal.

Mrs. CUBIN. Mr. Speaker, it's been about a year since we last debated broadcast indecency before the House. I was pleased to have supported the passage of the Broadcast Decency Enforcement Act then, and I look forward to its passage again this year.

Sometimes it takes a couple of swings of the bat before we can get a hit and enact a bill into law. That's why I want to recognize Chairman UPTON and Chairman BARTON for sticking to their guns on this bill and bringing it before the House so promptly this year. Hopefully this time, the other body will choose to debate and pass this bill, so it can become the law of the land.

Many have come to the floor to explain what the Broadcast Decency Enforcement Act will do. But, instead of rehashing the nuts and bolts of this bill, I would rather discuss how it will improve the airwaves. No one questions that there is an increasing coarseness in broadcast media. And by increasing fines so they will actually act as a deterrent, instead of a slap on the wrist, I am confident we will see real results. In fact, since this bill was first introduced in the last Congress, people have actually been more conscientious about what they send over the airwaves, and the FCC has been more active in penalizing those who have violated the standard. Passing this bill will lock that in, and serve as a benchmark in an improving broadcast medium.

I also want to urge passage of the manager's amendment that incorporates an amendment that I proposed to the bill. My amendment will ensure that the FCC regularly updates its Industry Guidance Regarding Broadcast Decency document, which was last updated April 6, 2001. This document helps illustrate precedents to FCC licensees, and I imagine it is required reading for anyone who is affected by the increase in indecency fines. Since we are increasing the fines in this bill, it only seems right to ensure there are clear guidelines.

My amendment will make certain these guidelines are contemporary, and I want to thank Chairman UPTON for working with me to incorporate the Cubin language into his amendment.

I urge passage of H.R. 310, and the manager's amendment.

Ms. GINNY BROWN-WAITE of Florida. Mr. Speaker, like many of my colleagues, last year, I received hundreds of calls from angered constituents after the obscene display at the Super Bowl.

What was most frustrating was that I had to explain that the FCC's hands were tied; the FCC wanted to punish the broadcasters who allowed this material to be displayed before our children during prime time, but they could not.

A \$27,500 fine does nothing to deter networks that generate billions of dollars in revenue.

Today, however, I can tell my constituents that I voted in favor of the Broadcast Decency Act.

Introduced by my colleague, Representative UPTON, this bill increases the slap on the wrist

in penalties to a fair punishment of \$500,000 for broadcasters who break the rules.

Freedom of speech should be protected but not at the cost of our children who simply want to catch a football game.

I look forward to voting in favor of this bill and thank Representative UPTON for his efforts.

Mr. BACA. Mr. Speaker, I rise in full support of H.R. 310, a bill that would increase the fines the Federal Communications Commission can impose for the broadcast of obscene, indecent, or profane material.

The level of violent and sexual content in all forms of media has reached a point where Congress has no choice but to act.

The proliferation of indecent content in the media continues not only through television and movies but also through video games and the Internet—mediums that our children now have easier access to. A growing body of evidence suggests that these messages can be harmful to a child's development.

As Democrats and Republicans we must continue to work together to address these issues. That is the only way we will be able prevent our children from being needlessly exposed to violent and sexual content.

The failure of the FCC to adequately scrutinize Spanish-language radio broadcasts for indecent content has been particularly troubling. In the last decade alone, the number of Spanish-language outlets in television and radio nationwide has nearly doubled. With this growth comes an increasing necessity to improve the FCC's ability to enforce its decency standards in an increasingly diverse market place. The Spanish-speaking community is no less deserving of protection from blatant indecency than other audiences.

As the co-chair of the Congressional Sex and Violence in the Media Caucus with my friend and colleague, Congressman TOM OSBORNE, I believe that we must prevent violence by and against children through legislation, education, outreach and advocacy.

I hope that other Members of Congress and the public will continue to work to protect our children from obscene and inappropriate media.

I commend Congressman UPTON and Congressman MARKEY for their sponsorship of this bill and support its passage.

Mr. DINGELL. Mr. Speaker, I rise in support of H.R. 310, the Broadcast Decency Enforcement Act of 2005.

I commend my full committee and subcommittee chairmen, Representatives BARTON and UPTON, and Subcommittee Ranking Member MARKEY for their work and efforts to bring this ever-improving bill to the House floor so quickly. H.R. 310 is strong, bipartisan legislation worthy of support. This legislation is nearly identical to the bill passed by the House almost 1 year ago by a vote of 391 to 22. That bill failed to become law.

The need for this legislation, however, has not diminished in the past year. For too long, the Federal Communications Commission, FCC, has been asleep at the wheel when it came to incidents of public broadcast indecency and the ensuing complaints. Congress's attention to the issue of broadcast indecency last year awakened the commission from its years of slumber. We finally saw an FCC that more properly understood the need to enforce laws against indecency over the public airwaves.

Unfortunately, consumer complaints continue to receive haphazard treatment at the commission. Moreover, there continues to be a betrayal of the public trust. Some broadcasters persist in crossing the line, putting their own drive for ratings and profits ahead of their responsibilities to the public. This is regrettable behavior. Most broadcasters are decent and proper stewards of the public airwaves, but the poor judgment of a select few casts a dark shadow on the entire industry. Perhaps these wayward broadcasters mistakenly thought that the kickoff of a new Super Bowl would see this issue recede and lawmakers would "let it be." Let me be clear, the need to enforce the indecency laws is greater than any one malfunction.

It is important for Congress to ensure that the FCC not only maintains its newfound alertness, but that it also has the right tools to ensure proper enforcement against indecency over the public airwaves.

H.R. 310 will ensure that the FCC has such tools. First, the bill responds to the overriding need to raise the maximum indecency fine to a level that will deter even the largest companies. Second, the bill compels the FCC to use the license renewal and revocation processes to examine more closely the fitness of certain licensees, particularly broadcasters that repeatedly violate the FCC's rules. Third, needed attention is also paid to the consumer complaint process by compelling the FCC to act on complaints within a specific time-frame. Fourth, this bill will make the FCC more accountable by requiring regular reports to Congress on its enforcement activities. This reporting requirement should encourage any new FCC chairman to carry on the moral virtue that came rather late to the outgoing chairman.

Our constituents have made it clear that they are fed up with the level of sex and violence on television and radio. They deserve to be able to turn on their television or radio at appropriate times without being bombarded by filth and smut. The increased oversight and penalties contained in H.R. 310 should provide the proper incentive to broadcasters to keep it clean. Accordingly, I urge my colleagues to support this sensible bill.

Mr. PAUL. Mr. Speaker, Americans are right to be outraged at much of the content of broadcast television and radio today. Too many television and radio programs regularly mock the values of millions of Americans and feature lewd, inappropriate conduct. It is totally legitimate and even praiseworthy for people to use market forces, such as boycotts of the sponsors of the offensive programs, to pressure networks to remove objectionable programming. However, it is not legitimate for Congress to censor broadcast programs.

The First Amendment says, "Congress shall make no law . . . abridging the freedom of speech. . . ." It does not make an expectation for broadcast television. Some argue that broadcast speech is different because broadcasters are using the "people's airwaves." Of course, the people do not really control the airwaves any more than the people control the government in the People's Republic of China. Instead, the people's airwaves is a euphemism for government control of the airwaves. Of course, government exceeded its Constitutional authority when it nationalized the broadcast industry.

Furthermore, there was no economic justification for Congress determining who is, and

is not, allowed to access the broadcast spectrum. Instead of nationalizing the spectrum, the Federal Government should have allowed private parties to homestead parts of the broadcast spectrum and settle disputes over ownership and use through market processes, contracts, and, if necessary, application of the common law of contracts and torts. Such a market-based solution would have provided a more efficient allocation of the broadcast spectrum than has government regulation.

Congress used its unconstitutional and unjustified power-grab over the allocation of broadcast spectrum to justify imposing Federal regulations on broadcasters. Thus, the Federal Government used one unconstitutional action to justify another seizing of regulatory control over the content of a means of communication in direct violation of the first amendment.

Congress should reject H.R. 310, the Broadcast Decency Enforcement Act, because, by increasing fines and making it easier for governments to revoke the licenses of broadcasters who violate Federal standards, H.R. 310 expands an unconstitutional exercise of Federal power. H.R. 310 also establishes new frontiers in censorship by levying fines on individual artists for violating FCC regulations.

Congress should also reject H.R. 310 because the new powers granted to the FCC may be abused by a future administration to crack down on political speech. The bill applies to speech the agency has determined is "obscene" or "indecent." While this may not appear to include political speech, I would remind my colleagues that there is a serious political movement that believes that the expression of certain political opinions should be censored by the government because it is "hate speech." Proponents of these views would not hesitate to redefine indecency to include hate speech. Ironically, many of the strongest proponents of H.R. 310 also hold views that would likely be classified as "indecent hate speech."

The new FCC powers contained in H.R. 310 could even be used to censor religious speech. Last year, a group filed a petition with the United States Department of Justice asking the agency to use Federal hate crimes laws against the directors, producers, and screenwriters of the popular movie, "The Passion of the Christ." Can anyone doubt that, if H.R. 310 passes, any broadcaster who dares show "The Passion" or similar material will risk facing indecency charges? Our founders recognized the interdependence of free speech and religious liberty; this is why they are protected together in the first amendment. The more the Federal Government restricts free speech, the more our religious liberties are endangered.

The reason we are considering H.R. 310 is not unrelated to questions regarding state censorship of political speech. Many of this bill's supporters are motivated by the attacks on a Member of Congress, and other statements critical of the current administration and violating the standards of political correctness, by "shock jock" Howard Stern. I have heard descriptions of Stern's radio program that suggest this is a despicable program. However, I find even more troubling the idea that the Federal Government should censor anyone because of his comments about a Member of Congress. Such behavior is more suited for members of a Soviet politburo than members of a representative body in a constitutional republic.

The Nation's leading conservative radio broadcaster, Rush Limbaugh, has expressed opposition to a Federal crackdown on radio broadcast speech that offends politicians and bureaucrats:

If the government is going to "censor" what they think is right and wrong. . . what happens if a whole bunch of John Kerrys . . . start running this country. And decide conservative views are leading to violence?

I am in the free speech business. It's one thing for a company to determine if they are going to be party to it. It's another thing for the government to do it.

Mr. Speaker, I am also concerned that the new powers H.R. 310 creates will be applied in a manner that gives an unfair advantage to large media conglomerates. While the FCC will occasionally go after one of the major media conglomerates when it does something especially outrageous, the agency will likely spend most of its energies going after smaller outlets such as college and independent radio stations. Because college and independent stations lack the political clout of the large media companies, the FCC can prosecute them without incurring the wrath of powerful politicians. In addition, because these stations often cater to a small, niche audience, FCC actions against them would not incur the public opposition it would if the agency tried to kick "Desperate Housewives" off the air. Most significantly, college and independent stations lack the financial and technical resources to absolutely guarantee that no violations of ambiguous FCC regulations occur and to defend themselves adequately if the FCC attempts to revoke their licenses. Thus, college and independent radio stations make tempting targets for the FCC. My colleagues who are concerned about media concentration should consider how giving the FCC extended power to revoke licenses might increase media concentration.

H.R. 310 should also be rejected because it is unnecessary. Major broadcasters' profits depend on their ability to please their audiences and thus attract advertisers. Advertisers are oftentimes "risk adverse," that is, afraid to sponsor anything that might offend a substantial portion of the viewing audience, who they hope to turn into customers. Therefore, networks have a market incentive to avoid offending the audience. It was fear of alienating the audience, and thus losing advertising revenue, that led to CBS's quick attempt at "damage control" after the last year's Super Bowl. Shortly before the 2004 Super Bowl, we witnessed a remarkable demonstration of the power of private citizens when public pressure convinced CBS to change plans to air the movie "The Reagans," which outraged conservatives concerned about its distortion of the life of Ronald Reagan.

Clearly, the American people do not need the government to protect them from "indecent" broadcasts. In fact, the unacknowledged root of the problem is that a large segment of the American people has chosen to watch material that fellow citizens find indecent. Once again, I sympathize with those who are offended by the choices of their fellow citizens. I do not watch or listen to the lewd material that predominates on the airwaves today, and I am puzzled that anyone could find that sort of thing entertaining. However, my colleagues should remember that government action cannot improve the people's morals; it can only reduce liberty.

Mr. Speaker, H.R. 310 is the latest in an increasing number of attacks on free speech. For years, those who wanted to regulate and restrict speech in the commercial marketplace relied on the commercial speech doctrine that provides a lower level of protection to speech designed to provide a profit to the speaker. However, this doctrine has no constitutional authority because the plain language of the first amendment does not make any exceptions for commercial speech.

Even the proponents of the commercial speech doctrine agreed that the Federal Government should never restrict political speech. Yet, this Congress, this administration, and this Supreme Court have restricted political speech with the campaign finance reform law. Meanwhile, the Department of Justice has indicated it will use the war against terrorism to monitor critics of the administration's foreign policy, thus chilling anti-war political speech. Of course, on many college campuses students have to watch what they say lest they run afoul of the rules of "political correctness." Even telling a "politically incorrect" joke can bring a student up on charges before the thought police. Now, self-proclaimed opponents of political correctness want to use Federal power to punish colleges that allow the expression of views they consider "unpatriotic" and/or punish colleges when the composition of the facility does not meet their definition of diversity.

These assaults on speech show a trend away from allowing the free and open expression of all ideas and points of view toward censoring those ideas that may offend some politically powerful group or upset those currently holding government power. Since censorship of speech invariably leads to censorship of ideas, this trend does not bode well for the future of personal liberty in America.

In conclusion, Mr. Speaker, because H.R. 310 is the latest assault in a disturbing pattern of attacks on the first amendment, I must vote against it and urge my colleagues to do the same.

Mr. STARK. Mr. Speaker, I rise in opposition to H.R. 310, the so-called Broadcast Decency bill.

I am as concerned as any parent about the content on television. I do not want my young children or grandchildren exposed to programming that is unsuitable for them. Yet, nowhere in this bill is there a definition of indecent material. All this bill does is increase fines over tenfold for what the Bush administration deems to be indecent.

Our laws are only as good as the people enforcing them and I do not trust this administration to exercise the appropriate judgment without clear standards. I'm concerned they'll use this new enforcement authority as a Trojan horse to arbitrarily target programming they deem unacceptable.

I could not possibly give this administration more leeway to choke free speech. We have reached the point in this country where questioning our leaders is called unpatriotic and characterized as aiding the terrorists; columnists are paid our tax dollars by the Federal Government to spout the Bush administration's official propaganda; the very agency charged with maintaining a diversity of ideas on the airwaves wants to give free rein to a handful of corporations to control information; and where stations refuse to air the movie "Saving Private Ryan" lest the Chairman of

the Federal Communications Commission might be ordered to find a sacrificial lamb to appease the religious right.

I do not support the rush to media conglomeration and I do not trust religious zealots to decide for every American what they can and can not watch. Since that is who this administration is serving, I vote "no" on giving them more authority to undermine freedom of speech.

Mr. UPTON. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. LATOURETTE). All time for debate on the bill has expired.

AMENDMENT OFFERED BY MR. UPTON

Mr. UPTON. Mr. Speaker, I offer an amendment.

The SPEAKER pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. UPTON:

In section 503(b)(2)(F)(ii) of the Communications Act of 1934 as amended by section 3 of the bill, strike "and" at the end of subclause (I), strike the period at the end of subclause (II) and insert "; and", and after subclause (II) insert the following new subclause:

(III) if the violator is an individual, the financial impact of a forfeiture penalty on that individual.

In section 503(b)(5)(B)(iv) of the Communications Act of 1934 as amended by section 4(4)(D) of the bill, strike "willfully or intentionally made the utterance" and insert "willfully and intentionally made the utterance, knowing or having reason to know that the utterance would be broadcast".

In paragraphs (1), (3), (4), and (6) of section 10, strike "year covered" and insert "years covered".

In section 10, by strike "Each calendar" and insert the following:

(a) REQUIRED CONTENTS.—Each calendar Add at the end of section 10 the following new subsection:

(b) YEARS COVERED.—For purposes of this section, the "years covered" by the report required under this section shall be the years beginning with calendar year 2000 through the calendar year preceding the year in which the report is submitted.

In section 11 of the bill, strike "General Accounting Office" each place it appears and insert "Government Accountability Office".

In section 11(a) of the bill, after "study examining" insert the following: "with respect to calendar year 2000 through the calendar year preceding the year in which the report is submitted".

After section 10, insert the following new section (and redesignate the succeeding sections accordingly):

**SEC. 11. UPDATING GUIDANCE TO THE BROADCAST INDUSTRY REGARDING INDECENCY.**

Within 9 months after the date of enactment of this Act, and at least once every 3 years thereafter, the Federal Communications Commission shall revise, on the basis of recent developments in the Commission indecency case law, the Commission's policy statement to provide industry guidance on the Commission's interpretation of, and enforcement policies regarding, the laws and regulations concerning broadcast indecency, as contained in the policy statement adopted March 14, 2001, and released April 6, 2001 (FCC 01-90).

The SPEAKER pro tempore. Pursuant to House Resolution 95, the gentleman from Michigan (Mr. UPTON) and

a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Michigan (Mr. UPTON).

Mr. UPTON. Mr. Speaker, I yield myself 4 minutes.

Mr. Speaker, I rise in support of this manager's amendment offered by me and the gentleman from Massachusetts (Mr. MARKEY). I want to again thank the gentleman from Massachusetts (Mr. MARKEY), the gentleman from Texas (Chairman BARTON), and the gentleman from Michigan (Mr. DINGELL) for their bipartisan cooperation on this amendment, as well as the entire legislation.

What this amendment does is it makes seven noncontroversial changes to the underlying bill.

First, the amendment clarifies that the liability standard for non-licensees is willful and intentional.

Second, the amendment clarifies that for individual non-licensees to be found liable, their indecent statements must have made knowing or having reason to know that the statements would be broadcast.

Third, the amendment requires the FCC to look at the impact of a forfeiture penalty on an individual.

I want to pay a special tribute to the gentlewoman from California (Mrs. BONO) for her work on these three issues during the committee consideration of this bill. These three changes simply clarify our intent to ensure that performers as non-licensees are treated fairly.

During the committee consideration, there were some concerns expressed that the individual-performer liability provisions in H.R. 310 could be used to fine artists that use offensive language when their recordings are played on the radio. The phrase "willfully and intentionally" in this amendment is meant to include those situations where an individual intentionally utters material consciously and deliberately which he or she knows or has reason to know will be broadcast. For instance, a live interview of a player at a basketball game or Janet Jackson's performance at the Super Bowl are clear examples where the performer intentionally said or did something knowing it would be broadcast.

Alternatively, when an artist records a song in a studio, he or she perhaps has a hope that the song will be broadcast, but does not sing the lyrics with the intent to broadcast at that moment or even knowing that it will be broadcast in the future.

Similarly, if an athlete or a coach in the heat of a sporting event, such a baseball player being hit by a pitch, reflexively yells out an obscene, indecent, profane utterance caught by a field microphone, the situation would also not be captured by the willful and intentional standard, as his or her actions were not intentionally done and knowing that they would be broadcast.

In addition, the manager's amendment underscores the FCC's requirement that when setting penalties for

individual performers, it must look at the ability of that individual to pay, as required by existing law, and the FCC must take into consideration the impact of the forfeiture penalties on that individual.

Clearly, not all individuals who may run afoul of the law have the same ability to pay. A pro athlete or a blockbuster recording artist may have significantly greater worth than a struggling artist or college athlete. That is why we require the FCC to factor this in when setting such penalties, and underscore that in this amendment.

Fourth, the amendment changes the General Accounting Office to its new name of Government Accountability Office.

Fifth, the amendment requires the FCC's annual indecency enforcement report to include data going back to 2000.

Sixth, it requires the GAO's indecency enforcement report to include data going back to 2000.

Lastly, the amendment requires the FCC to update its broadcast indecency enforcement guidelines at least every 3 years.

I want to thank the gentlewoman from Wyoming (Mrs. CUBIN) for her work on that issue, I want to thank the gentleman from Massachusetts (Mr. MARKEY) for his bipartisan cooperation and cosponsoring this amendment with me, and thank the Committee on Rules for making it in order. I would urge all of my colleagues to support it.

Mr. Speaker, I reserve the balance of my time.

Mr. MARKEY. Mr. Speaker, although not opposed to the amendment, I ask unanimous consent to claim the time in opposition.

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

There was no objection.

The SPEAKER pro tempore. The gentleman from Massachusetts (Mr. MARKEY) is recognized for 10 minutes.

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I fully support this amendment, which incorporates a number of changes to the bill. We have worked together in a bipartisan fashion to develop this package of refinements to the legislation. These are non-controversial changes, and I urge Members to support the amendment.

The first change further clarifies that we intend for the FCC when levying a fine on a non-licensee to take into account the financial impact of a particular fine on an individual when considering an individual's ability to pay.

The second change merely adjusts the standard for an utterance of an indecency so that it reads "willfully and intentionally uttered," so that there is no confusion.

As the gentleman from Michigan has pointed out, it is not the intention of either the majority or the minority to have an act which is not intentional to

be penalized by this legislation. The gentleman from Michigan did outline a good example of how such an occurrence could be wrongly interpreted unless the language "intentionally" was added to the legislation.

We thank the majority for accommodating the concern which the minority had on that issue. We think that it definitely strengthens the legislation, and it ensures that it will be used only for the purpose for which the legislation is intended and not to reach unintentional behavior which may have incidentally been uttered.

Thirdly, the GAO study in the bill will be limited to looking back and analyzing indecency issues at the FCC only to the year 2000.

Finally, the amendment includes a provision offered by our colleague, the gentlewoman from Wyoming (Mrs. CUBIN), which tasks the FCC with updating its guidance for broadcast licensees with regard to these issues.

Again, these are noncontroversial changes, and I thank the gentleman from Michigan (Chairman UPTON) for his assistance on these clarifications, and I urge Members to support the amendment. Again, I thank all of the Members for their cooperation in this legislative process.

Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Speaker, I do not oppose this amendment, but I do oppose this bill. Like many Americans, I exercise my right not to view programming I find offensive by using that miracle of modern technology, the remote control. It lets you change the channel or even turn off the TV entirely. I recommend everyone buy one and learn how to use it. If you want to protect your children, there is the V-chip for that purpose. People ought to use that too.

But the Puritans of this House and elsewhere in government are not satisfied with free choice and the free market. Instead, they want the government to decide what is or is not appropriate for the public to watch or listen to.

Just recently, for example, the Secretary of Education on his second day on the job snapped into action and threatened public broadcasting funding if they dared air a show in which real live families with real live same-sex parents would appear. It was actually a show about making maple syrup, not an advocacy piece about family arrangements. But it was too much for the Secretary of Education.

"Many parents would not want their young children exposed to the lifestyles portrayed in this episode," Spellings wrote in her threatening letter to the CEO of PBS. Who asked her?

Then there was the strange case of SpongeBob Square Pants, a cartoon character who appeared in a video promoting tolerance entitled "We Are Family." Who were the purveyors of this objectionable material? Well, among others, the Anti-Defamation League's

successful "World of Difference" program and Sesame Street's "Sesame Foundation." It seems some self-appointed guardians of our morals are fine with the idea of tolerance, unless it includes people they don't like. "We see the video as an insidious means by which the organization is manipulating and potentially brainwashing kids," Paul Batura, a spokesman for Focus on the Family, told the New York Times. "It is a classic bait and switch."

A former Member of this House condemned NBC for airing "Schindler's List," saying that the Holocaust film took network television "to an all time low, with full-frontal nudity, violence and profanity" during family viewing time. He said that NBC's decision to air the movie on Sunday evening should outrage parents and decent-minded individuals everywhere.

Then-Senator Alfonse D'Amato properly replied that "to equate the nudity of Holocaust victims in the concentration camps with any sexual connotation is outrageous and offensive." But with this bill, where would we be if that former Member of the House were a member of the FCC?

So what next? We are already seeing a great deal of self-censorship as the self-appointed guardians of public decency go after anything that offends them personally. We saw recently many affiliates of ABC refuse to show "Saving Private Ryan" because they were afraid of the fines that the FCC might, might, levy. So there is self-censorship because of the chilling effect.

Evidently, the Members of this House do not trust Americans to make up their own minds and the large corporations that own media conglomerates are not about to risk profits by running afoul of the people with power and their own agenda.

I would suggest that if my colleagues are looking for obscene and indecent material, they can turn off their televisions and log on to WWW.Congress.Gov. On the Committee on the Judiciary Web site you can find sexually graphic material, including graphic sexual accounts in the Starr Report of several years ago. Children doing their homework everywhere can read this.

In this last Congress, a Member of this House introduced legislation containing eight words that would probably draw half a million dollar fines under this legislation. Our Legislative Information System still has this up for anyone to read.

Mr. Speaker, Congress and the FCC have no business telling people what they can or cannot watch, what sorts of tolerance it will or will not tolerate, or what values parents may or may not desire to instill in their children. You do not have to love indecency to oppose this bill. You merely have to have faith in and respect for the judgment of the American people, and a distrust in the omnipotent judgment of government bureaucrats. I urge the defeat of this bill.

Mr. UPTON. Mr. Speaker, I yield 1 minute to the gentleman from Alabama (Mr. ADERHOLT).

Mr. ADERHOLT. Mr. Speaker, I rise today in strong support of H.R. 310. Passage of this bill will mark a very important step, in my opinion, toward protecting American children.

I especially do want to thank the committee for their work on this bill, and the gentleman from Texas (Chairman BARTON) and the gentleman from Michigan (Chairman Upton) for their work on this legislation.

The purpose, of course, of the legislation that we are discussing today is to return decent, family-friendly broadcast television and radio to families across America. I should note that this legislation in no way changes the FCC's current definition of obscenity, indecency, or profanity. Rather, it enables the agency to enforce the existing rules.

As has been stated here already on the floor today, it would allow the FCC to impose a fine of half a million dollars against broadcasters for every violation of obscene, indecent, and profane material. Of course, additionally the bill will allow the FCC to fine networks and entertainers for up to half a million dollars if they willfully or intentionally violate indecency standards by airing obscene, indecent, or profane material.

Mr. Speaker, I would urge the passage of H.R. 310 today and would urge my colleagues to wholeheartedly support this legislation.

Mr. MARKEY. Mr. Speaker, I have no further speakers, so I yield back the balance of my time, with thanks to the chairman of the committee for his great work.

Mr. UPTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I just want to thank the staff, Kelly Cole, Will Nordwind and Howard Waltzman. They have been terrific working with staffs on both sides.

I remind my colleagues this passed overwhelmingly in not only the committee, but last year as well, and also in the Senate. I urge my colleagues to support it.

Mr. UPTON. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Pursuant to House Resolution 95, the previous question is ordered on the bill and the amendment offered by the gentleman from Michigan (Mr. UPTON).

The question is on the amendment offered by the gentleman from Michigan (Mr. UPTON).

The amendment was agreed to.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. UPTON. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.  
The vote was taken by electronic device, and there were—yeas 389, nays 38, not voting 6, as follows:

[Roll No. 35]

YEAS—389

Aderholt	Deal (GA)	Johnson (IL)
Akin	DeFazio	Johnson, E. B.
Alexander	DeGette	Johnson, Sam
Allen	DeLauro	Jones (NC)
Andrews	DeLay	Jones (OH)
Baca	Dent	Kanjorski
Bachus	Diaz-Balart, L.	Keller
Baker	Diaz-Balart, M.	Kelly
Baldwin	Dicks	Kennedy (MN)
Barrett (SC)	Dingell	Kennedy (RI)
Barrow	Doggett	Kildee
Bartlett (MD)	Doolittle	Kilpatrick (MI)
Barton (TX)	Doyle	Kind
Bass	Drake	King (IA)
Bean	Dreier	King (NY)
Beauprez	Duncan	Kingston
Becerra	Edwards	Kirk
Berkley	Ehlers	Kline
Berry	Emanuel	Knollenberg
Biggett	Emerson	Kolbe
Bilirakis	Engel	Kuhl (NY)
Bishop (GA)	English (PA)	LaHood
Bishop (NY)	Etheridge	Langevin
Bishop (UT)	Evans	Lantos
Blackburn	Everett	Larsen (WA)
Blumenauer	Feeney	Larson (CT)
Blunt	Ferguson	Latham
Boehlert	Filner	LaTourette
Boehner	Fitzpatrick (PA)	Leach
Bonilla	Flake	Levin
Bonner	Foley	Lewis (CA)
Bono	Forbes	Lewis (KY)
Boozman	Ford	Linder
Boren	Fortenberry	Lipinski
Boswell	Fossella	LoBiondo
Boucher	Fox	Lowe
Boustany	Franks (AZ)	Lucas
Boyd	Frelinghuysen	Lungren, Daniel
Bradley (NH)	Gallegly	E.
Brady (PA)	Garrett (NJ)	Lynch
Brady (TX)	Gerlach	Mack
Brown (OH)	Gibbons	Maloney
Brown (SC)	Gilchrest	Manzullo
Brown (CA)	Gillmor	Marchant
Brown-Waite,	Gingrey	Markey
Ginny	Gohmert	Marshall
Burgess	Gonzalez	Matheson
Burton (IN)	Goode	McCarthy
Butterfield	Goodlatte	McCaul (TX)
Buyer	Gordon	McCollum (MN)
Calvert	Granger	McCotter
Camp	Graves	McCrery
Cannon	Green (WI)	McGovern
Cantor	Green, Al	McHenry
Capito	Green, Gene	McHugh
Capps	Gutierrez	McIntyre
Capuano	Gutknecht	McKeon
Cardin	Hall	McKinney
Cardoza	Harris	McMorris
Carnahan	Hart	McNulty
Carson	Hastings (WA)	Meehan
Carter	Hayes	Meek (FL)
Case	Hayworth	Meeks (NY)
Castle	Hefley	Melancon
Chabot	Hensarling	Menendez
Chandler	Herger	Mica
Chocola	Herseth	Michaud
Cleaver	Higgins	Millender-
Clyburn	Hinojosa	McDonald
Coble	Hobson	Miller (FL)
Conaway	Hoekstra	Miller (MI)
Cooper	Holden	Miller (NC)
Costa	Holt	Miller, Gary
Costello	Hooley	Miller, George
Cox	Hostettler	Mollohan
Cramer	Hoyer	Moore (KS)
Crenshaw	Hulshof	Moore (WI)
Crowley	Hunter	Moran (KS)
Cubin	Hyde	Moran (VA)
Cuellar	Inglis (SC)	Moran
Culberson	Inslee	Murphy
Cummings	Israel	Murtha
Cunningham	Issa	Musgrave
Davis (AL)	Istook	Myrick
Davis (CA)	Jackson (IL)	Napolitano
Davis (FL)	Jackson-Lee	Neal (MA)
Davis (IL)	(TX)	Neugebauer
Davis (KY)	Jefferson	Ney
Davis (TN)	Jenkins	Northup
Davis, Jo Ann	Jindal	Norwood
Davis, Tom	Johnson (CT)	Nunes
		Nussle

Oberstar	Rohrabacher	Sullivan
Obey	Ros-Lehtinen	Sweeney
Olver	Ross	Tancredo
Ortiz	Rothman	Tanner
Osborne	Roybal-Allard	Tauscher
Otter	Royce	Taylor (MS)
Oxley	Ruppersberger	Taylor (NC)
Pallone	Rush	Terry
Pascrell	Ryan (OH)	Thomas
Pastor	Ryan (WI)	Thompson (CA)
Pearce	Ryun (KS)	Thompson (MS)
Pelosi	Salazar	Thornberry
Pence	Sanchez, Loretta	Tiahrt
Peterson (MN)	Saxton	Tiberi
Peterson (PA)	Schiff	Tierney
Petri	Schwartz (PA)	Towns
Pickering	Schwarz (MI)	Turner
Pitts	Scott (GA)	Udall (CO)
Platts	Sensenbrenner	Udall (NM)
Poe	Sessions	Upton
Pombo	Shadegg	Van Hollen
Pomeroy	Shaw	Visclosky
Porter	Shays	Walden (OR)
Portman	Sherwood	Walsh
Price (GA)	Shimkus	Wamp
Price (NC)	Shuster	Watt
Pryce (OH)	Simmons	Weiner
Putnam	Simpson	Weldon (FL)
Radanovich	Skelton	Weldon (PA)
Rahall	Slaughter	Weller
Ramstad	Smith (NJ)	Westmoreland
Rangel	Smith (TX)	Wexler
Regula	Smith (WA)	Whitfield
Rehberg	Snyder	Wicker
Renzi	Sodrel	Wilson (NM)
Reyes	Solis	Wilson (SC)
Reynolds	Souder	Wolf
Rogers (AL)	Spratt	Wu
Rogers (KY)	Stearns	Young (AK)
Rogers (MI)	Strickland	Young (FL)

NAYS—38

Abercrombie	Honda	Schakowsky
Ackerman	Kucinich	Scott (VA)
Baird	Lee	Serrano
Berman	Lewis (GA)	Sherman
Clay	Lofgren, Zoe	Stark
Conyers	McDermott	Velázquez
Delahunt	Nadler	Wasserman
Farr	Owens	Schultz
Fattah	Paul	Waters
Frank (MA)	Payne	Watson
Grijalva	Sabo	Waxman
Harman	Sánchez, Linda	Woolsey
Hastings (FL)	T.	
Hinchey	Sanders	

NOT VOTING—6

Cole (OK)	Kaptur	Stupak
Eshoo	Reichert	Wynn

□ 1400

Mr. HASTINGS of Florida changed his vote from "yea" to "nay."

Mr. ISRAEL and Ms. BERKLEY changed their vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

The motion to reconsider is laid upon the table.

Stated for:

Mr. COLE of Oklahoma. Mr. Speaker, on Wednesday, February 16, 2005, I was unavoidably detained due to a prior obligation.

Had I been present and voting, I would have voted as follows: (1) Rollcall No. 35: "Yes" (Final Passage of H.R. 310).

#### RESIGNATION AS MEMBER OF COMMITTEE ON SCIENCE

The SPEAKER pro tempore laid before the House the following resignation as a member of the Committee on Science: