

Mr. President, thank you, sir. We need you, with the stroke of a pen, please reinforce the Border Patrol. Help our local law enforcement authorities defend the peace and prosperity of the United States or our way of life may, indeed, change.

Thank you, Mr. President. The American people are way beyond the tipping point in frustration and outrage at the unprotected borders and this flood of illegal immigration, and we are very grateful to you, sir, for stepping up to protect our borders.

#### ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mrs. MILLER of Michigan). Members are advised to address their comments to the Chair and not to the President.

#### A SIGNIFICANT STEP TOWARDS DEMOCRACY IN IRAQ

(Mr. KINGSTON asked and was given permission to address the House for 1 minute.)

Mr. KINGSTON. Madam Speaker, I want the previous speaker to know that I think I can get a Members tour for both of us to the White House if my friend wants to join me sometime. I will get back with the gentleman from Washington on that.

I want to say in Iraq this weekend, it was a historic and very significant day: over 60 percent voter turnout to adopt a new constitution; less violence than ever before on the election compared to June; greater participation by everybody, including the Sunni minority.

It is my hope that the constitution will pass and that in December we will have an election and the new government will take hold. And under that new government, their troops, of which we have trained 177,000, can start taking a bigger role in the war and then our troops can step back and draw down.

Last weekend was very significant. It is too bad the press is begrudgingly only covering good stuff when it comes to Iraq, but do not let the day go by without realizing its significance. A great election, great participation, less violence, a significant step towards democracy.

#### CANCELLATION OF LIBERAL RADIO SHARE ON AN UNBALANCED ARMED FORCES NETWORK

(Ms. WATSON asked and was given permission to address the House for 1 minute.)

Ms. WATSON. Madam Speaker, today our troops abroad have very few choices when they turn on their radios. If they are looking for political talk on the Armed Forces Network, all they get is the conservative spin machine from Rush Limbaugh. That was all supposed to change on Monday when lib-

eral radio talk show host Ed Schultz's show was set to debut.

However, 15 minutes before our soldiers could finally hear a differing opinion, the Pentagon abruptly cancelled the show. Ed Schultz's producer received a call from a Pentagon official informing him that the show would not be debuting on AFN.

Why exactly is the Pentagon keeping our troops from hearing differing opinions? Could it be that the Pentagon is a little embarrassed by the staging of a Presidential teleconference last week? We see the same staffer that informed Schultz of his cancellation was the same woman seen coaching American troops last week in what was supposed to be an unscripted conversation with our troops in Iraq. Schultz was critical of that stage show.

President Bush says our troops are fighting to bring democracy to Iraq. It would be nice if our own troops could exercise some of that freedom.

#### ANTI-TERRORISM INSURANCE

(Mrs. MALONEY asked and was given permission to address the House for 1 minute.)

Mrs. MALONEY. Madam Speaker, our leaders are telling us on both sides of the aisle that terrorism is here to stay. If they believe that, if they know that, then why are we not preparing for it?

Anti-terrorism insurance passed this House after 9/11 and put this country on a stronger economic foundation, and it is set to expire this January. Businesses in my district are telling me that if their policies have expired since September, they cannot find coverage anywhere in the United States of America; they are seeking insurance in England.

Part of homeland security, part of being prepared or not is putting our economic policy in shape. And an important part of homeland security is anti-terrorism insurance. It is important to the economic foundation of this country. It is important to combating terrorism. We need to extend it. We need to do it now. The program expires in January.

#### GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 554.

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

There was no objection.

#### PERSONAL RESPONSIBILITY IN FOOD CONSUMPTION ACT OF 2005

The SPEAKER pro tempore. Pursuant to House Resolution 494 and rule

XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 554.

□ 1036

#### IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 554) to prevent legislative and regulatory functions from being usurped by civil liability actions brought or continued against food manufacturers, marketers, distributors, advertisers, sellers, and trade associations for claims of injury relating to a person's weight gain, obesity, or any health condition associated with weight gain or obesity, with Mrs. MILLER of Michigan in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered read the first time.

Under the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from North Carolina (Mr. WATT) each will control 30 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, I rise in support of H.R. 554, the Personal Responsibility in Food Consumption Act of 2005.

The food service industry employs some 12 million people, making it the Nation's largest private sector employer. This vital sector of our economy has recently come under attack by lawsuits alleging it should pay monetary damages based upon legal theories holding it liable for the overconsumption of its products.

H.R. 554, the Personal Responsibility in Food Consumption Act, would correct this disturbing trend. Introduced by the gentleman from Florida (Mr. KELLER), this legislation would generally prohibit frivolous obesity- or weight gain-related claims against the food industry. It would, however, allow obesity-related claims to go forward in several circumstances, including cases in which a State or Federal law was broken and as a result a person suffered harm. Under H.R. 554, cases could go forward in which a company violates an expressed contract or warranty.

Also, because H.R. 554 applies only to claims based on weight gain or obesity, lawsuits could still proceed if, for example, someone gets sick from consuming tainted food.

This legislation passed the House of Representatives during the 108th Congress in the form of H.R. 339 with a large bipartisan vote of 276 to 139.

According to a recent Gallup Poll, 'Nearly nine in 10 Americans oppose holding the fast-food industry legally responsible for diet-related health problems of people who eat that kind of food on a regular basis . . . those who

describe themselves as overweight are no more likely than others to blame the fast-food industry for obesity-related health problems or to favor lawsuits against the industry."

As one judge put it: "If a person knows or should know that eating copious orders of supersized McDonald's products is unhealthy and may result in weight gain, it is not the place of the law to protect them from their own excesses."

Even the Los Angeles Times has editorialized against such lawsuits, stating: "If kids are chowing down to excess on junk food, aren't their parents responsible for cracking down? And if parents or other grown-ups overindulge, isn't it their fault, not that of the purveyors of fast food? . . . Why boost their food bills just because of legal jousting? People shouldn't get stuffed, but this line of litigation should."

The threat posed to our national economy is clear. Personal injury attorney and obesity lawsuit litigator John Banzhaf said recently, "You may not like it . . . but we'll find a judge. And then we'll find a jury" that will find restaurants liable for their customers' overeating. According to news reports of a recent legal conference, a panel of four lawyers argued that the overweight lawsuit movement "would need to extend beyond the obvious targets like restaurants, fast-food chains, and food manufacturers to bring about substantial policy changes . . ."

Dr. Gerald Musante, a clinical psychologist who trained at Duke University Medical Center, has worked for more than 30 years with thousands of obese patients. He is the founder of the Structure House, a residential weight loss facility in Durham, North Carolina. Dr. Musante said the following at a hearing in the other body on this legislation: "Through working with obese patients, I have learned that the worst thing one can do is to blame an outside force to get themselves 'off the hook,' to say it's not their fault and that they are a victim . . . Congress has rightly recognized the danger of allowing Americans to continue blaming others for the obesity epidemic. It is imperative that we prevent lawsuits from being filed against any industry for answering consumer demands."

Even the chairman of the American Council for Fitness and Nutrition, Susan Finn, has written that "if you're obese, you don't need a lawyer; you need to see your doctor, a nutritionist, and a physical trainer. Playing the courtroom blame game won't make anyone thinner or healthier . . ."

Besides threatening to erode values of personal responsibility, the lawsuit campaign against the food industry threatens the separation of powers. Nationally coordinated lawsuits seek to accomplish through litigation what has not been achieved by legislation and the democratic process. As one mastermind behind the lawsuits against the food industry has stated, "If the legis-

latures won't legislate, then the trial lawyers will litigate."

Madam Chairman, the Personal Responsibility in Food Consumption Act will help preserve the separation of powers, support the principle of personal responsibility, and help protect the largest private sector employer in the United States. I urge all my colleagues to support this important legislation.

Madam Chairman, I reserve the balance of my time.

Mr. WATT. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, I rise in opposition to this legislation. And as I said the last time we debated it, I do not rise because I am a supporter of frivolous lawsuits or lawsuits even that some of the people have used the legal system to pursue. I rise in opposition to the bill because I think it is an overreaction; and, indeed, I think it is perhaps an ultimate attestation to the fact that many of my colleagues have lost confidence and faith in the legal system on the one hand or that, regardless of what the legal system does, if it does not yield for them the result that they are seeking, they are willing to compromise any principle that they have professed to stand for to achieve the result that they wish to achieve.

H.R. 554 goes much further than its stated purpose of banning the small handful of private suits brought against the food industry. It also bans suits for harm caused by dietary supplements and mislabeling, which have nothing to do with excess food consumption; and it would prevent State law enforcement officials from bringing legal claims to enforce their own consumer protection laws.

Simply look at the provisions of the bill. Section 4(5) would prevent any legal action related to any "health condition that is associated with a person's weight gain or obesity."

□ 1045

As a result, the bill would prevent persons who develop heart disease and diabetes from dietary supplements such as Ephedra and Phen-fen from being able to obtain redress if they gained weight. Even worse, the bill bans these lawsuits in a retroactive way. So it would throw out dozens of Ephedra and Phen-fen cases currently pending before courts. This is a far cry from the concerns that led to this legislation originally, some of which I have the same concerns about.

H.R. 554 would also prevent State law enforcement officials from enforcing their own laws. Under section 4(3), the bill applies to legal actions brought by any "person," and the term "person" is defined to include any "governmental entity." That means States attorneys general will be prevented from pursuing actions for deceptive practices and false advertising and other practices that are illegal against the food industry.

Again, this is a vast departure from most of the so-called tort reform bills

considered by the Congress, which are drafted to apply to private lawsuits, and is a vast departure from the original purpose of this bill and the problems it was designed to deal with.

Since the predecessor to H.R. 554 was first introduced last term, 18 State legislatures have enacted so-called cheeseburger laws to prohibit certain claims from their courts. While most of those enacted apply retroactively, others, that is, Kansas, Arizona, Colorado, do not. Some provide for a stay of discovery; others do not. Some establish affirmative defenses; others do not. That is our State law taking effect.

In short, in the considered judgment of each of these 18 State legislatures, laws have been enacted that best serve their States. The bill completely preempts those laws and brings to a screeching halt the work of 26 other States that have been working on pending legislation. It also disrupts the process in some States that have combined obesity bills with menu labeling requirements as part of their overall health enhancing legislative scheme.

What is the price that we are willing to pay to get the result that we are seeking? Have we lost confidence in our State and Federal court systems that have systematically thrown out most of the lawsuits that have been filed against the food industry using this "fat theory," as it is commonly referred to? Have we lost confidence in our whole federalist form of government in which tort law has been particularly the province of the States? Have we lost confidence in our State legislatures that are in the middle of responding in their particular States to any problems that may be on the horizon in this area?

We have instead cast ourselves as the imperial Congress because the same people who came to this Congress, saying that they believe in States rights, have now shown they do not care about States rights. What they want is a result that they can control and they can dictate.

That is really what this bill is about, and it is unfortunately not only this bill. There is another bill right behind this one that will be up today or tomorrow that does the same thing in the gun context.

So I do not think we are going to hear a lot of people out here talking about this bill today. I do not see many people on the floor. It will be like a tree falling in the forest. We do not know whether it is having any impact out there or not. We will pass it out of here. It will become a political vehicle to cozy up to the food industry, but at what price? At what price?

I would just say the people who maintain that H.R. 554 is necessary to make people responsible for their own choices and to thwart the unwarranted imposition of legal costs and fees on the food industry are just not being upfront with us about this one.

This bill insulates an entire industry from liability; and more importantly,

it undermines our State judicial and legislative systems that should be and are in the process of dealing with this to the extent that they have identified it as a problem.

In that sense, the bill represents yet another arrogant attempt by this Congress to impose its will on the States, and I urge my colleagues to get a grip and understand what we are about to do here. There are some things that are more important, and our judicial system is working its way through these cases, is dismissing them where they need to be dismissed; and where that is not happening, our State legislatures are taking care of this problem. This is not a Federal issue, nor should it be.

I urge opposition to the bill.

Madam Chairman, I reserve the balance of my time.

Mr. SENSENBRENNER. Madam Chairman, I yield 2 minutes to the gentleman from Ohio (Mr. CHABOT).

Mr. CHABOT. Madam Chairman, I am pleased to be a cosponsor of this legislation that will help curtail frivolous lawsuits. It is reassuring to see the Congress is taking measures to help rid our court system of lawsuits that are costly and hurt those consumers and businesses in our country. Twelve million people in this country are employed by businesses in the food industry, making it the Nation's largest private sector employer. This is an industry that has a direct impact on the Nation's economy, and these fast-food obesity lawsuits are opposed by nearly nine in 10 Americans.

The idea that holding the food industry liable for the excess of some individuals will combat obesity is unfounded. Individuals, not restaurants, are responsible for food choices that they make freely in their own daily lives.

In addition, the food addressed by this legislation is legal and unadulterated, and the rights of individuals to pursue lawsuits resulting from claims like the mislabeling of food or food safety issues is preserved. Our country has a history of providing its citizens with a safe and affordable food supply. It is unacceptable to make arguments that certain types of food that are sold in certain types of restaurants as a result of consumer demand are somehow dangerous and that the average consumer must bear the burden in higher food costs because of the overindulgence by some individuals who file these types of lawsuits.

This bill is not about whether fast food causes obesity. The bill is about self-responsibility.

Today, the Congress of the United States is saying to a select group of lawyers that laws are not intended to protect people from these types of excesses, from essentially eating too much, and the courtrooms were never meant for that reason. It is really pretty simple. If you eat too much, you get fat. It is your fault. Do not try to blame somebody else.

Mr. WATT. Madam Chairman, I yield 5 minutes to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Madam Chairman, I thank the gentleman for yielding me time.

Madam Chairman, in addition to the violation of principles of federalism outlined by my colleague from North Carolina, this piece of legislation is another piece in which we are taking upon ourselves the right to try a case in the legislative branch instead of respecting the separation of powers by allowing cases to be tried in the judicial branch where they belong.

Instead of respecting separation of powers and honoring the rule of law and standing behind the principle that laws should be applied equally to all, we are once again giving special treatment to special cases.

The majority in Congress has apparently already decided the proper outcome of these cases and is adjusting the law accordingly just for these cases, rather than trusting our laws and our courts to hear evidence from both sides and decide the cases on their merits. If these are losing cases, then let the judicial process make that decision. Even if they are frivolous cases, the judicial branch has ways to sanction people for bringing frivolous cases; but once again, special interests are receiving, in these cases, special treatment.

Instead of having to go through the courts like everybody else, where they do not know the outcome of the case until evidence is presented and the law is applied, these defendants will get to try their cases in the legislative branch, where popularity and politics prevail. Even financial contributions are allowed.

Meanwhile, everyone else without special privileges is stuck trying their cases in the courts, where they have an unbiased judge and jury, instead of favorable politicians, and they are stuck with the same law that applies to everybody else.

This is not the only recent example of special treatment. Just a few months ago, we changed the law for Terri Schiavo because her parents knew how to reach someone in Congress; and we ignored the multitude of judicial decisions that had already been decided, and we changed the law for that case, not cases like that, just for that case.

A few years ago, in a child custody case in the Washington, DC, area that case was decided by special legislative language in a transportation appropriations bill. The Committee on Education and the Workforce likewise considered a case on appeal between the Department of Labor and a bank and voted to retroactively change the law to fix the result on behalf of the bank. Later today, as my colleague from North Carolina has pointed out, the House will probably pass legislation to fix the result in firearms legislation so that the firearms industry will get to

try their cases and their issues in the legislative branch, rather than being stuck with the law that applies to everybody else.

Mr. Chairman, trying cases in the legislative branch is bad policy. We should honor the rule of law and apply the law in all cases. There will always be special interests, but we should not make special laws for those who can get to a Congressman to introduce a bill on their behalf. Let us honor and respect the rule of law to be applied equally to all and reject this legislation.

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from Utah (Mr. CANNON).

Mr. CANNON. Mr. Chairman, I thank the gentleman from Wisconsin for the time.

Unfortunately, the food industry has been targeted by a variety of unfounded legal claims which allege businesses should pay monetary damages and be subject to equitable remedies based on novel legal theories of liability for the overconsumption of its legal products.

Obesity is a problem in America, but it is not evident that the availability of high-fat food or restaurants are the sole cause. A number of studies have shown that a lack of physical activity, that is, not exercising, has contributed to the rise of obesity and not solely one's caloric intake.

In the Subcommittee on Commercial and Administrative Law, which I chaired last Congress, we explored the threat the food industry and its workers face from frivolous litigation, the threat to personal responsibility posed by the proliferation of such litigation, and the need for passage of the Personal Responsibility in Food Consumption Act.

□ 1100

Since the gentleman from Florida (Mr. KELLER) introduced a similar bill last year, 21 States have passed laws banning these so-called obesity lawsuits.

The opponents of this bill will claim that this shows that Congress should not intervene. In reality, it means we must. Without a complete ban on these frivolous lawsuits, rogue trial lawyers, and I have many trial lawyers who are friends and who work very hard to get the appropriate kind of compensation for people who are injured, but many of these rogue trial lawyers will forum shop until they find a State and a district that gets them the exorbitant payday that they seek.

I would remind my colleagues that John Banzhaf, an attorney who testified last year against this bill, stated in 2003, "Somewhere, there is going to be a judge and a jury that will buy this, and once we get the first verdict, as we did with tobacco, it will open the floodgates."

It is unlikely that lawsuits against food establishments over their menus will make us healthier. Such lawsuits

will threaten thousands of jobs and, more importantly, such lawsuits send the wrong message regarding personal choices and personal responsibility. Do we want our kids growing up believing it is always someone else's fault?

Mr. Chairman, it is not only important, but also fundamental that Americans have access to courts to address their legitimate wrongs and the harms that they cause. The trial bar serves an invaluable purpose in helping average Americans gain rightful and proportionate compensation when harm is done. However, frivolous lawsuits such as the ones this legislation seeks to prevent serve only to undermine our legal system and those who truly need its protections and the moral fiber of Americans who should be self-reliant and responsible for their choices.

Mr. Chairman, I urge my colleagues to support the underlying bill, H.R. 554.

Mr. WATT. Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia (Mr. GOODLATTE), the chairman of the Committee on Agriculture.

Mr. GOODLATTE. Mr. Chairman, I rise in strong support of H.R. 554, the Personal Responsibility in Food Consumption Act, and I thank the gentleman from Wisconsin for moving this legislation to the floor. This legislation will help prevent frivolous lawsuits that allege that the consumption of lawful food products caused injuries resulting from obesity or weight gain.

The food service industry employs some 11.7 million people, making it the Nation's largest employer outside of the government. However, this vital industry has recently come under attack by waves of lawsuits arguing that it should be liable for the misuse or "over-consumption" of its legal food products by others.

It is common sense that individuals should take responsibility for their own dietary and eating habits. Unfortunately, trial lawyers have ulterior motives for these lawsuits. They have made their intentions quite clear, calling the fast food industry the next tobacco. They estimate potential profits of \$40 billion from obesity-related lawsuits. It is crucial that something be done to guard against these aggressive attacks.

These ill-conceived lawsuits require businesses to devote hard-earned dollars to litigate unmerited claims. In order to help ensure that America continues to be a good place to do business, and to help create and maintain American jobs, it is important that we not allow opportunistic trial lawyers to extort money from legitimate companies.

This bill also protects our Nation's farmers and ranchers from the potentially far-reaching effects of these lawsuits. American agriculture produces the safest, most affordable and abundant food supply in the world and should be protected from trial lawyers'

attempts to reach as far up the food chain as possible with unfounded claims seeking unjust enrichment.

While preventing frivolous claims, this legislation would protect legitimate lawsuits. It would allow claims to go forward in several circumstances, including cases in which a State or Federal law was broken. Other types of food-related lawsuits not dealing with obesity would also be protected.

The American public understands the importance of this effort. According to a recent Gallup poll, almost 90 percent of Americans oppose holding restaurant owners responsible for the diet-related health problems of regular fast food consumers.

H.R. 554 is a common sense bill that will protect legitimate businesses from frivolous lawsuits, and I urge my colleagues to support this important legislation.

Mr. WATT. Mr. Chairman, I yield 5 minutes to the gentleman from Arkansas (Mr. SNYDER).

Mr. SNYDER. Mr. Chairman, I appreciate this discussion today. The points I want to make are really more in the spirit of questions. I come out of a State legislative body where the proponents of a bill such as the gentleman from Wisconsin would have to undergo a rigorous, almost cross-examination. We function here differently. But I do have some questions, and I think I will just present them in my comments and if somebody wants to comment on them they can.

I heard one of the previous speakers say, well, this is a simple bill. If you eat something and get fat, you should be responsible for it. I think that is the attitude of the great majority of Americans, that you should be responsible for what you eat. But I want to make two broad points.

First of all, I want to read the definition of food, and it refers to another section of code. It is very short. This is from section 201(f), 21 U.S.C. 301, section 201(f). "The term 'food' means (1) articles used for food or drink for man or other animals, (2), chewing gum, and (3) articles used for components of any such article."

So we are having a discussion here today about the fact, as the previous speaker had said, it is simple, you eat, you get fat, you should be responsible.

The problem is, this bill language makes no reference to only the caloric containing components of food. It is very deliberately written I believe to include all food additives, no matter how small amounts, and the fact that the great majority of food additives have zero caloric intake and would have no relationship to obesity, I think that is a flaw in the bill. That leads to the second point.

The bill specifically mentions weight gain and obesity. Well, I think most of us have a sense of what obesity is. Weight gain is a whole different issue, and weight gain may occur not from obesity, not from getting fat, not from putting on too many calories; weight

gain can occur for a variety of medical reasons related to a variety of different causes.

For example, I mean probably all of us have had a mom or a grandmom or an uncle to whom we say, hey, I noticed your legs are swelling again. Fluid retention. Fluid retention. Now, that can be from a variety of causes. That is not from increased caloric intake. That could have been, for example, from a food additive, maybe a cause that was not known to the public of some kind of additive in something that they had eaten or drank. It may have been something that interfered with one of their medications and led to fluid retention. I am just making up hypotheticals here. Or, the hypothetical, perhaps you have something that is actually a heart poison from some food additive that has no calories in it, zero calories in it, but over a period of time does bad things to the ability of your heart to function. The pump does not work so well, you start having fluid retention. What happens? You put on weight. As a family doctor, one of the reasons when you go in, I would weigh people, as you want to see what is going on with their fluid status. That is weight gain.

Under this bill, which I believe is so broadly written, it would include those kinds of situations. The word "caloric" or "caloric intake" or "caloric content" is nowhere in this bill, and I again refer my colleagues, it is not in the bill itself, you have to go to the code, the term "food" means, articles used for food or drink for man or other animals, chewing gum, and articles used for components of any such article.

Anything you drink, anything in it, regardless of caloric intake, is covered by this bill. Anything that leads to weight gain is covered by this bill, even if it has nothing to do with caloric intake. I think that is far abroad. I think this is probably one of the reasons why it died in the Senate and will die again, but I would encourage people to look at these kinds of details if there is intent to move this bill forward.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. MURPHY).

Mr. MURPHY. Mr. Chairman, I thank the chairman for yielding me this time.

Mr. Chairman, opponents of this legislation have said we do not need this bill. They said, we need a debate on health care, and I am pleased to engage in that debate. I am reminded of the book that talks about everything I need to know in life I learned in kindergarten. I have learned a few things here.

Lawsuits do not lower obesity rates. Lawsuits do not improve the nutrition habits of children. Lawsuits do not reduce the \$127 million annual medical costs that our Nation incurs on obesity-related conditions in children and the increase in obesity rates.

Mr. Chairman, parents need to teach their children at early ages to eat healthy meals and to establish exercise routines for their families. School districts need to make sure they have gym classes and serve the right kinds of food as an option. Proper diet and exercise will help reduce medical complications that are increasingly common in children, such as hypertension, diabetes, high cholesterol, and heart disease which were once found almost exclusively in adults.

In my years working as a psychologist and oftentimes consulting with courts, I have yet to find a court that can replace a parent. When will we learn we cannot litigate compassion, we cannot mandate common sense, and we certainly cannot legislate personal responsibility.

H.R. 554 will do more than restrict lawsuits against food and manufacturers for weight-related cases. It forces us to take personal responsibility for ourselves and our families and put a priority on establishing healthy lifestyles.

Here are the facts. If you touch a flame, you are going to get burned. If you eat a lot and do not exercise, you are going to gain weight. We need to take personal responsibility for that.

The bill before us directly protects individual freedoms of all Americans from a tiny minority who try to exploit the legal system for personal gain. I strongly support H.R. 554, and I commend the chairman for his work.

Mr. WATT. Mr. Chairman, I yield myself such time as I may consume.

This is where I think we are. Some of us are frustrated by some of the litigation that has taken place in this area. I said it when we debated this bill the last time on the floor. I am not a fan of fat litigation either, but sometimes we have to be patient enough in a legislative body to let the institutions that are supposed to work, work. They are working. Most of the lawsuits that have been filed in this area have been dismissed. Most of them have been dismissed. That is what the courts are for. We do not always get the result we want, but the courts are there to make a determination of what results are appropriate and not under the laws that exist.

The State legislatures are responding. Mr. Chairman, there are 26 pending laws out there in the States. A number of them have different components, different nuances. Some of them are retroactive, some of them are not. Whatever happened to our belief that the State legislatures, the States are a laboratory of good legislation? I thought that is what my colleagues who are supporting this bill believed in more heartily than anything else they came to Congress to talk about. When it is convenient for them, when it is convenient for them, there is no more important mantra to them than the mantra of States rights. What are we doing to States rights here, in an area that throughout history has been the province of the States?

I do not understand. We cannot be so intent on getting a particular result, so results-oriented that we disregard everything that we have set up in place to deal with problems of this kind: Our judiciary, our State legislatures, our common sense.

Mr. SCHWARZ of Michigan. Mr. Chairman, I rise today in strong support of H.R. 554, the Personal Responsibility in Food Consumption Act.

As a physician, and just as someone who can read the data, I can tell you that we have an epidemic of obesity in this country. Obesity is a serious health problem, with very serious consequences.

The most important step we can take to curb obesity is to impart to everyone in this country that obesity can be controlled when we take personal responsibility. A healthy and consistent diet, with an adequate amount of exercise, will work wonders. That's the simple truth.

We must get away from the notion there is anything remotely approaching a quick fix to obesity. Maintaining a healthy lifestyle requires a life-long dedication to one's own well-being. A lawsuit will not help anyone lose weight. Allowing consumers to sue their local restaurant, to sue half the food industry, means that we are telling our citizens, "It's not your fault that you are obese."

Mr. Chairman, that's the wrong tack to take. I support this legislation because it sends the message to everyone in the United States, young and old, that taking control of your weight is your responsibility, and taking personal responsibility is the only way that weight control can be achieved.

I commend the gentleman from Florida, Mr. KELLER, and Chairman SENENBRENNER, for their work on this legislation, and I urge passage of the bill.

Mr. PAUL. Mr. Chairman, Congress is once again using abusive litigation at the State level as a justification nationalizing tort law. In this case, the Personal Responsibility in Food Consumption Act (H.R. 554) usurps State jurisdiction over lawsuits related to obesity against food manufacturers.

Of course, I share the outrage at the obesity lawsuits. The idea that a fast food restaurant should be held legally liable because some of its customers over indulged in the restaurant's products, and thus are suffering from obesity-related health problems, is the latest blow to the ethos of personal responsibility that is fundamental in a free society. After all, McDonald's does not force anyone to eat at its restaurants. Whether to make Big Macs or salads the staple of one's diet is totally up to the individual. Furthermore, it is common knowledge that a diet centering on super-sized cheeseburgers, French fries, and sugar-filled colas is not healthy. Therefore, there is no rational basis for these suits. Some proponents of lawsuits claim that the fast food industry is "preying" on children. But isn't making sure that children limit their consumption of fast foods the responsibility of parents, not trial lawyers? Will trial lawyers next try to blame the manufacturers of cars that go above 65 miles per hour for speeding tickets?

Congress bears some responsibility for the decline of personal responsibility that led to the obesity lawsuits. After all, Congress created the welfare state that popularized the notion that people should not bear the costs of

their mistakes. Thanks to the welfare state, too many Americans believe they are entitled to pass the costs of their mistakes on to a third party—such as the taxpayers or a corporation with "deep pockets."

While I oppose the idea of holding food manufacturers responsible for their customers' misuse of their products, I cannot support addressing this problem by nationalizing tort law. It is long past time for Congress to recognize that not every problem requires a Federal solution. This country's founders recognized the genius of separating power among Federal, State, and local governments as a means to maximize individual liberty and make government most responsive to those persons who might most responsibly influence it. This separation of powers strictly limits the role of the Federal Government in dealing with civil liability matters; and reserves jurisdiction over matters of civil tort, such as food related negligence suits, to the State legislatures.

Finally, Mr. Chairman, I would remind the food industry that using unconstitutional Federal powers to restrict State lawsuits makes it more likely those same powers will be used to impose additional Federal control over the food industry. Despite these lawsuits, the number one threat to business remains a Federal government freed of its Constitutional restraints. After all, the Federal government imposes numerous taxes and regulations on the food industry, often using the same phony "pro-consumer" justifications used by the trial lawyers. Furthermore, while small business, such as fast-food franchises, can move to another State to escape flawed State tax, regulatory, or legal policies, they cannot as easily escape destructive Federal regulations. Unconstitutional expansions of Federal power, no matter how just the cause may seem, are not in the interests of the food industry or of lovers of liberty.

In conclusion, while share the concern over the lawsuits against the food industry that inspired H.R. 554, this bill continues the disturbing trend of federalizing tort law. Enhancing the power of the Federal government is in no way in the long-term interests of defenders of the free market and Constitutional liberties. Therefore, I must oppose this bill.

Mr. HENSARLING. Mr. Chairman, I rise today in support of H.R. 554, the Personal Responsibility in Food Consumption Act.

You may have heard about the overweight maintenance worker from New York, who sued McDonald's, Wendy's, Burger King, and KFC for causing his two heart attacks and diabetes. Or the class-action lawsuit against McDonald's where the lawyers named children as the defendants.

These stories may sound funny, but the facts show these types of frivolous lawsuits bankrupt businesses, deplete pensions, gouge consumers and deprive Americans with real complaints access to their day in court.

American consumers actually pay \$1,200 more for goods and services every year because of lawsuit abuse. Studies also found that the cost of litigation accounts for one-third of the price of an 8-foot aluminum ladder, it doubles the price of a football helmet, it adds \$500 to the sticker price of a new car, and increases the cost of a pacemaker by \$3,000. We all end up paying a huge price for lawsuit abuse.

But perhaps the most potentially disastrous effect of frivolous lawsuits is the cost of American jobs. American businesses are a consistent target of frivolous claims, which bleed the essential capital they need to create jobs. And with such a lawsuit happy nation, many companies simply choose to pack up shop and move overseas.

At what point will we say enough is enough? At what point will we start supporting personal responsibility and stop supporting personal injury lawyers?

Options on a menu do not lead to obesity, but unhealthy habits do. At what point are we going to stop the frivolous lawsuits from personal injury trial lawyers that are simply trying to make an easy buck off of overweight Americans?

Mr. Chairman, I urge all my colleagues to pass H.R. 554. Let's take a stand for personal responsibility and freedom. Let's stamp out frivolous lawsuits. Let's preserve the integrity of our judicial system, and let's stop personal injury trial lawyers from ripping off American consumers.

Mr. HONDA. Mr. Chairman, I rise today to express my concern that we are again dealing with a notion that there is a crisis in our courts with obesity lawsuits. H.R. 554, the so-called "Personal Responsibility in Food Consumption Act" is a measure that seeks to give federal immunity to food manufacturers, sellers, and advertisers for obesity-related claims. The reality is there is only one such pending suit in the entire country, so I am hard pressed to see why we need to take up this measure today, especially since there are so many other important issues we need to address.

I do not think it is the role of the United States Congress to intervene in every individual and private issue in America. Our Nation is plagued by childhood obesity and heart disease, and we should be looking into real solutions to this problem, we should not be focusing our efforts on getting rid of one lawsuit currently pending against a fast food outlet.

Furthermore, the language in H.R. 554 is so broad it would cut off legitimate claims against the food industry, even where the industry acted to deceive the public and even where it violated State or Federal law. For instance, those in the food industry who fraudulently or deceptively market or sell low-fat products that are not really low-fat should be held accountable but this measure would let them off the hook. Lawsuits aimed at unscrupulous tactics help to change the behavior of the bad actors in the industry we should allow our legal system to process these legitimate cases.

Mr. Chairman, our legal system has multiple procedural safeguards to ensure that frivolous litigation is thrown out and that meritorious claims are preserved. That is why I oppose H.R. 554.

Mr. STARK. Mr. Chairman, I rise in opposition to the Personal Responsibility in Food Consumption Act because I don't think that any industry should have the right to conduct its business without the oversight of the judicial system. What the lawyer-bashers don't want you to know is that frivolous lawsuits, by definition, get thrown out of court. In other words, the much-feared million-dollar settlement for someone who eats 12 Big Macs a day is not going to happen.

That's why there are only a few obesity cases in court right now and why the only reason we're considering this bill today is be-

cause the well-heeled McDonald's Corporation doesn't want to face a legitimate lawsuit for false advertising. Many of the pending cases are for false advertising, claiming food is low fat when it's really not, and this bill is so broadly worded that it would preclude such cases from going forward.

The threat of legitimate lawsuits against fast-food corporations is as much a part of creating social change as is the threat of a Congressional investigation. I believe that both are equally legitimate and democratic. We wouldn't want judges to ban us from holding hearings and nor should we ban them from hearing cases.

Even more important than the issue of obesity or Congressional meddling in the judicial branch is the fundamental right of every American to have their day in court. Even if you eat 12 Big Macs a day, you have a right to plead your case before a judge. And the judge has the right to throw the case out, but Congress has no business preemptively closing the courthouse doors to a particular group of Americans.

Mr. WATT. Mr. Chairman, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN (Mr. PUTNAM). All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill shall be considered as an original bill for the purpose of amendment under the 5-minute rule, and shall be considered read.

The text of the committee amendment in the nature of a substitute is as follows:

#### H.R. 554

*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 "Personal Responsibility in Food Consumption Act of 2005".*

#### SEC. 2. FINDINGS; PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the food and beverage industries are a significant part of our national economy;

(2) the activities of manufacturers and sellers of foods and beverages substantially affect interstate and foreign commerce;

(3) a person's weight gain, obesity, or a health condition associated with a person's weight gain or obesity is based on a multitude of factors, including genetic factors and the lifestyle and physical fitness decisions of individuals, such that a person's weight gain, obesity, or a health condition associated with a person's weight gain or obesity cannot be attributed to the consumption of any specific food or beverage; and

(4) because fostering a culture of acceptance of personal responsibility is one of the most important ways to promote a healthier society, lawsuits seeking to blame individual food and beverage providers for a person's weight gain, obesity, or a health condition associated with a person's weight gain or obesity are not only legally frivolous and economically damaging, but also harmful to a healthy America.

(b) PURPOSE.—The purpose of this Act is to allow Congress and regulatory agencies to determine appropriate laws, rules, and regulations to address the problems of weight gain, obesity, and health conditions associated with weight gain or obesity.

#### SEC. 3. PRESERVATION OF SEPARATION OF POWERS.

(a) IN GENERAL.—A qualified civil liability action may not be brought in any Federal or State court.

(b) DISMISSAL OF PENDING ACTIONS.—A qualified civil liability action that is pending on the date of the enactment of this Act shall be dismissed immediately by the court in which the action was brought or is currently pending.

#### (c) DISCOVERY.—

(1) STAY.—In any action that is allegedly of the type described in section 4(5)(B) seeking to impose liability of any kind based on accumulative acts of consumption of a qualified product, the obligation of any party or non-party to make disclosures of any kind under any applicable rule or order, or to respond to discovery requests of any kind, as well as all proceedings unrelated to a motion to dismiss, shall be stayed prior to the time for filing a motion to dismiss and during the pendency of any such motion, unless the court finds upon motion of any party that a response to a particularized discovery request is necessary to preserve evidence or to prevent undue prejudice to that party.

(2) RESPONSIBILITY OF PARTIES.—During the pendency of any stay of discovery under paragraph (1), the responsibilities of the parties with regard to the treatment of all documents, data compilations (including electronically recorded or stored data), and tangible objects shall be governed by applicable Federal or State rules of civil procedure. A party aggrieved by the failure of an opposing party to comply with this paragraph shall have the applicable remedies made available by such applicable rules, provided that no remedy shall be afforded that conflicts with the terms of paragraph (1).

(d) PLEADINGS.—In any action that is allegedly of the type described in section 4(5)(B) seeking to impose liability of any kind based on accumulative acts of consumption of a qualified product, the complaint initiating such action shall state with particularity—

(1) each element of the cause of action;

(2) the Federal and State statutes or other laws that were allegedly violated;

(3) the specific facts alleged to constitute the claimed violation of law; and

(4) the specific facts alleged to have caused the claimed injury.

(e) RULE OF CONSTRUCTION.—No provision of this Act shall be construed to create a public or private cause of action or remedy.

#### SEC. 4. DEFINITIONS.

In this Act:

(1) ENGAGED IN THE BUSINESS.—The term "engaged in the business" means a person who manufactures, markets, distributes, advertises, or sells a qualified product in the person's regular course of trade or business.

(2) MANUFACTURER.—The term "manufacturer" means, with respect to a qualified product, a person who is lawfully engaged in the business of manufacturing the product.

(3) PERSON.—The term "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

(4) QUALIFIED PRODUCT.—The term "qualified product" means a food (as defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(f))).

#### (5) QUALIFIED CIVIL LIABILITY ACTION.—

(A) IN GENERAL.—Subject to subparagraph (B), the term "qualified civil liability action" means a civil action brought by any person against a manufacturer, marketer, distributor, advertiser, or seller of a qualified product, or a trade association, for damages, penalties, declaratory judgment, injunctive or declaratory relief, restitution, or other relief arising out of, or related to a person's accumulated acts of consumption of a qualified product and weight gain, obesity, or a health condition that is associated with a person's weight gain or obesity,

including an action brought by a person other than the person on whose weight gain, obesity, or health condition the action is based, and any derivative action brought by or on behalf of any person or any representative, spouse, parent, child, or other relative of that person.

(B) EXCEPTION.—A qualified civil liability action shall not include—

(i) an action based on allegations of breach of express contract or express warranty, provided that the grounds for recovery being alleged in such action are unrelated to a person's weight gain, obesity, or a health condition associated with a person's weight gain or obesity;

(ii) an action based on allegations that—

(I) a manufacturer or seller of a qualified product knowingly violated a Federal or State statute applicable to the marketing, advertisement, or labeling of the qualified product with intent for a person to rely on that violation;

(II) such person individually and justifiably relied on that violation; and

(III) such reliance was the proximate cause of injury related to that person's weight gain, obesity, or a health condition associated with that person's weight gain or obesity; or

(iii) an action brought by the Federal Trade Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) or by the Federal Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(6) SELLER.—The term “seller” means, with respect to a qualified product, a person lawfully engaged in the business of marketing, distributing, advertising, or selling a qualified product.

(7) STATE.—The term “State” includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, and any political subdivision of any such place.

(8) TRADE ASSOCIATION.—The term “trade association” means any association or business organization (whether or not incorporated under Federal or State law) that is not operated for profit, and 2 or more members of which are manufacturers, marketers, distributors, advertisers, or sellers of a qualified product.

The Acting CHAIRMAN. No amendment to the committee amendment is in order except those printed in House Report 109-249. Each amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified, equally divided and controlled by the proponent and an opponent of the amendment, shall not be subject to amendment and shall not be subject to a demand for division of the question.

It is now in order to consider amendment No. 1 printed in House Report 109-249.

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AMENDMENT NO. 1 OFFERED BY MR. SENSENBRENNER

Mr. SENSENBRENNER. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN (Mr. PUTNAM). The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. SENSENBRENNER:

Page 4, line 8, strike “(B)”.

Page 5, line 9, strike “(B)”.

Page 5, line 12, insert “for each defendant and cause of action” before the dash.

Page 5, line 13, insert “and the specific facts alleged to satisfy each element of the cause of action” before the semicolon.

Page 5, line 15, strike “were allegedly violated;” and insert “allegedly create the cause of action; and”.

Page 5, line 16, strike “the specific facts” and all that follows through the end of line 19 and insert “the section 4(5)(B) exception being relied upon and the specific facts that allegedly satisfy the requirements of that exception.”.

The Acting CHAIRMAN. Pursuant to House Resolution 494, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from North Carolina (Mr. WATT) each will control 5 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this manager's amendment makes technical changes to the section of the bill that sets forth the information plaintiffs must provide in order for a judge to determine whether the lawsuit is banned by the bill or allowed to go forward under one of the bill's exceptions.

These minor changes are meant to provide a judge with a clear understanding of the type of information the judge is to consider in deciding a motion to dismiss under H.R. 554.

The pleading provision in H.R. 554 is meant to apply to any action claiming obesity-related damages, and this amendment makes clear that the pleading requirements will apply to all cases seeking obesity-related damages.

Also adding the phrase “for each defendant and cause of action” clarifies that a judge must apply H.R. 554's pleading requirements to each specific claim. This prevents a plaintiff from improperly using a claim that is not barred by H.R. 554 as a means of pursuing obesity-related claims that are barred by the bill against the same or other defendants. This change would prevent entire industries from being ensnared in lawsuits where the relevant facts relate to only one company.

Finally, other technical changes would simply ensure consistency by using the same terms in the pleading sections as are used elsewhere in the bill.

I would ask all of my colleagues to support these common sense, technical amendments.

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

Mr. WATT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, normally when we see a manager's amendment come to the floor, it is an improving amendment. Unfortunately this one makes a bad bill actually worse than it was originally drawn, and it does so in this way. There are already pleading requirements in every State, and basically what this amendment does is make those pleading requirements higher for the food industry than for anybody else

in America. And, in essence, where you end up is that lawyers who represent people who are claiming to have a cause of action are not only now, under this language, called upon to represent their clients and make a reasonable effort to determine whether there is a basis for their claim, they have to be the jury also. They have to go out and decide, are there enough facts here on each and every cause of action against each and every defendant to win this case and win it profoundly. They have to allege specific facts.

I mean, that is the kind of stuff that normally gets done at a trial if a case even gets that far. Most of these cases are being dismissed really. So most of them are not going to get that far anyway.

But I am not sure what role discovery or any other aspect of our legal process is playing anymore if we pass this manager's amendment. This is much, much more than a technical amendment. This is a very substantive amendment. And, unfortunately, I think it makes a bill that is already a very, very bad bill, it makes it a very, very, very bad bill. I oppose this amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Wisconsin (Mr. SENSENBRENNER).

The amendment was agreed to.

The Acting CHAIRMAN. It is now in order to consider amendment No. 2 printed in House Report 109-249.

AMENDMENT NO. 2 OFFERED BY MS. JACKSON-LEE OF TEXAS

Ms. JACKSON-LEE of Texas. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Ms. JACKSON-LEE of Texas:

Page 6, line 24, insert after “trade association,” the following: “or a civil action brought by a manufacturer or seller of a qualified product, or a trade association, against any person.”

The Acting CHAIRMAN. Pursuant to House Resolution 494, the gentlewoman from Texas (Ms. JACKSON-LEE) and the gentleman from Utah (Mr. CANNON) each will control 5 minutes.

The Chair recognizes the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me thank my distinguished ranking member of the subcommittee, the gentleman from North Carolina (Mr. WATT) both for his kindness and his astuteness.

Let me thank the chairman of the full committee, the gentleman from Wisconsin (Mr. SENSENBRENNER), and the ranking member of the full committee, the gentleman from Michigan

(Mr. CONYERS), which gives me a chance to catch my breath.

We were in a Homeland Security hearing which is going on, as many of my colleagues know, assessing the circumstances with Hurricane Rita and Hurricane Katrina.

I know the gentleman from Wisconsin (Mr. SENSENBRENNER) is well aware of great intention in our committee to always work together, and so I offer this amendment recognizing that my colleagues will consider this as an opportunity to work together.

One could argue that in the backdrop of Hurricane Wilma now reaching a Category 5, that this Congress should be addressing many, many other issues, particularly enhanced funding for homeland security, and, of course, how we can do things better.

This legislation that is before us needs to be improved. My amendment would prohibit the food industry, which enjoys broad immunity under this bill, from initiating lawsuits against any person for damages or other relief due to injury or potential injury based on a person's consumption of a qualified product, and weight gain, obesity, or any health condition that is associated with a person's weight gain or obesity.

In essence, this is an amendment to protect against consumer retaliation. My colleagues realize that this particular bill, whether or not it rises to the level of a national crisis or even needs fixing, really immunes, if you will, the vast fast food industry.

Now, those of us who have raised children during this timeframe will never know until the final tests are in, studies are done 10 and 20 years from now, as to whether or not the eating of fast food that many of us took our young children to for play and excitement, is going to be long-lasting in its damage.

But yet we believe that this industry now needs a blanket protection from those who may be negatively impacted, obesity, weight gain or any other health problems. Yet there is no similar protection against consumers who may desire to petition these grievances.

It allows the industry to willy-nilly and randomly sue consumers. This amendment is necessary to ensure that the public debate on the health and nutritious effects of mass-marketed food and products is not completely quelled by this bill.

In 1996, Oprah Winfrey was sued under my home State's food disparagement laws by the beef industry for comments she made following the first "Mad cow" scare this country witnessed, albeit she was denied her first amendment rights.

After years of litigation in my State, transfer of her television show to Texas and expenditure of over \$1 million, Ms. Winfrey prevailed at trial and on appeal. Proponents of this bill assert that the food industry will incur significant costs defending frivolous lawsuits.

They took Ms. Winfrey to court, the trial lawyers, but neglect the staggering costs that may be borne by private citizens should they dare question the health effects of any qualified food product under this bill. Where are the first amendment rights and consumer rights? My amendment ensures that what is good for the geese is good for the gander. Those advancing healthy diets by discouraging the consumption of certain foods because of their adverse effects on a person's health and weight gain should not be subject to litigation from the food industry while it stands immunized from any accountability under this bill.

Again, I wish we were on the floor talking about restoring the drastic cuts in the budget reconciliation bill that deal with health care and deal with housing and deal with the various issues of education and special grants to help the least of those, but we are on the floor talking about McDonald's and Burger King, certainly friends of young parents who, through their professions and other responsibilities did a lot of eating at Burger King and McDonald's, but it does not in any way give them the privilege of denying consumer rights and the rights of consumers not to be retaliated against because they have expressed their viewpoint and the rights of the first amendment.

I do not recall any hue and cry in this body during or in the aftermath against Ms. Winfrey to ban food liability suits. The system worked. But if we are to end the public's right to a jury trial on issues of food safety, we cannot end the public's right to freedom of speech by leaving food critics, who play an important role in educating the public, as I close, stimulating positive change on good sound eating habits.

I ask my colleagues to support this amendment.

Mr. Chairman, this amendment would prohibit the food industry—which enjoys broad immunity under this bill—from initiating lawsuits against any person for damages or other relief due to injury or potential injury based on a person's consumption of a qualified product and weight gain, obesity, or any health condition that is associated with a person's weight gain or obesity.

This amendment is necessary to insure that the public debate on the health and nutritious effects of mass marketed food products is not completely squelched by this bill.

In 1996, Oprah Winfrey was sued under my home State's "food disparagement" laws by the beef industry for comments she made following the first "Mad cow" scare this country witnessed. After years of litigation, transfer of her television show to Texas, and an expenditure of over one million dollars, Ms. Winfrey prevailed at trial and on appeal.

Proponents of this bill assert that the food industry will incur significant cost defending "frivolous" lawsuits by the trial lawyers, but neglect the staggering costs that may be borne by private citizens should they dare question the health effects of any "qualified food product" under this bill.

My amendment insures that what's good for the geese is good for the gander. Those advancing healthy diets by discouraging the consumption of certain foods because of their adverse effects on a person's health and weight gain should not be subject to litigation from the food industry while it stands immunized from any accountability under this bill.

I don't recall any hue and cry in this body during or in the aftermath of the lawsuit against Ms. Winfrey to ban food libel laws. The system worked. But if we are to end the public's right to a jury trial on issues of food safety, we cannot end the public's right to freedom of speech by leaving food critic who play an important role in educating the public, stimulating positive change, and promoting sound eating habits open to lawsuits from an immunized industry.

This amendment addresses this concern and insures that every American can engage in or has access to an open and honest debate on matters of public health.

Once again, Mr. Chairman, I urge my colleagues to support my amendment.

Mr. CANNON. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the amendment was defeated last year on the floor by voice vote. It should be defeated again this year. This amendment would add to the list of qualified civil liability actions that cannot be brought under the bill, civil actions brought by a manufacturer or seller of a qualified product or trade association against any person for obesity-related claims.

Whatever the rhetorical purpose the sponsor of this amendment seeks to accomplish, it should be defeated because it is badly drafted, and in the context of the bill, its application would be nonsensical. The bill only operates to prohibit lawsuits brought by people because they ate too much and got fat.

The amendment would add corporations to the list of those who cannot sue because they got fat. But whatever the intent of the amendment is, the fundamental problem is that corporations cannot gain weight and suffer from obesity, which is the term used in the bill. A corporation, for example, cannot eat too much and a trade association cannot gain weight over the holidays.

For all of these reasons this amendment should be defeated.

Mr. Chairman, I yield the balance of my time to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Chairman, I oppose this amendment but support the underlying bill, H.R. 554, the Personal Responsibility in Food Consumption Act.

It is an important piece of legislation that continues a series of tort reform measures considered in Congress this year. We passed this bill during the 108th Congress, and we should pass it again today. I am an original cosponsor of H.R. 554, which will prevent a few lawyers from seeking to destroy another industry that employs millions of people and provides a welcome service to individuals who choose to use it.

In general, the bill prohibits weight gain related claims against the food industry. It allows such claims only

where a person gained weight as a result of the food industry breaking a State or Federal law. I remember in 2002, when individuals filed a lawsuit against McDonald's alleging that the fast food chain had made them overweight and unhealthy.

I remember thinking that people should take responsibility for their own eating habits. But it is no longer just one suit against one company. Now there are suits against all types of the 900,000 restaurants in the food industry from small local eateries to giant fast food chains.

We must set a limit as to what litigation is allowed. A nonfrivolous claim should proceed, but a suit dictating the food choices of Americans should be stopped before it is even filed.

The reality is that restaurant meals will change according to what people prefer to eat. In recent years we have seen fast food chains add more healthy choices, like salad and fruit, to their menus, but people should have the freedom to eat what they want.

□ 1130

Mr. Chairman, we should encourage personal responsibility and healthy eating in our society, but we should not encourage lawsuits that blame others for our own choices and that could bankrupt entire industries. Because Americans should have the freedom to eat what they want and because we should take responsibility for our own actions, I support the passage of the Personal Responsibility in Food Consumption Act.

Mr. CANNON. Mr. Chairman, how much time remains?

The Acting CHAIRMAN (Mr. PUTNAM). The gentleman from Utah has 2 minutes remaining.

Mr. CANNON. Mr. Chairman, I yield 1 minute to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, I simply ask the question, in this bill consumers are left vulnerable, and I would ask the gentleman would he not work with me in this amendment to ensure that they are not left vulnerable as we are protecting our fast-food industry?

Mr. CANNON. Mr. Chairman, will the gentlewoman yield?

Ms. JACKSON-LEE of Texas. I yield to the gentleman from Utah.

Mr. CANNON. I am not sure when we would work together on the amendment. I suppose perhaps in conference we could work on the issue, but I am loath to commit the chairman to that process.

Ms. JACKSON-LEE of Texas. I thank the gentleman. I just want to acknowledge that the bill does not protect consumers, and I ask Members to support my amendment.

Mr. CANNON. Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE).

The question was taken; and the Acting Chairman announced that the noes appeared to have it.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE) will be postponed.

The Acting CHAIRMAN. The Committee will rise informally.

The SPEAKER pro tempore (Mr. TERRY) assumed the Chair.

adolescents. But apparently few here in Washington seem to have taken notice or cared, and predictably rates have continued to rise across the country.

Today, one in three children is overweight. Yes, Mr. Chairman, I said one in three, almost 35 percent. And what has been Congress's response to the growing epidemic? Has it provided more funding for obesity awareness or tried to implement programs to improve nutrition in schools? No. Instead, Congress brings forwards a bill to immunize fast food companies. Where is the logic?

Those supporting the bill talk about choice, the freedom to eat. Well, we are talking about young children and, of course, we want them to eat correctly, healthy, and that is not the primary responsibility of the fast food industry. Childhood obesity is best tackled at home through improved parental involvement, increased physical exercise, better diet and restraint from eating.

However, as a parent, as a grandparent, as a former educator, I know that these practices alone when we are dealing with young children are insufficient. We will never control this rising epidemic without greater accountability from the food industry.

Congress is headed in the wrong direction with this bill which removes any and all incentives from the food industry to improve their products for children. Congress has allowed the greed of big corporations to come before the need of our children. Today, the younger generation faces a litany of health issues that generations before just never did. Heart disease, high blood pressure, hypertension, joint problems, asthma, diabetes and cancer are on the increase with these young children; and a steady diet of fast food is the last thing they need. Unfortunately, fast food restaurants are bombarding our children with advertisements that encourage overconsumption of unhealthy eating choices.

The average child views 20,000 television commercials every year. That is about 55 a day. More disturbingly, the commercials for candy, snacks, sugared cereals and other food with poor nutritional content far out-number commercials for more healthy food choices. So it is not just a matter of individual responsibility, of individual choice when we are talking about young children under 8.

Studies indicate that these children are more susceptible to advertising and even less likely to understand the purpose of this advertising. So why is so much advertising at home done during the cartoon hours? It is no coincidence that major fast food chains routinely run their advertisements during this time. Experts in this field unequivocally state that the fear of litigation and regulation prompts the industry to rethink how it markets and sells food to children. This has been evidenced by some of the recent changes made within the industry.

Unfortunately, the bill as presently written forecloses the opportunity to

#### MESSAGE FROM THE SENATE

A message from the Senate by Ms. Curtis, one of its clerks, announced that the Senate has passed a bill of the following title in which the concurrence of the House is requested:

S. 1886. An act to authorize the transfer of naval vessels to certain foreign recipients.

The SPEAKER pro tempore. The Committee will resume its sitting.

#### PERSONAL RESPONSIBILITY IN FOOD CONSUMPTION ACT OF 2005

The Committee resumed its sitting. The Acting CHAIRMAN (Mr. PUTNAM). It is now in order to consider amendment No. 3 printed in House Report 109-249.

##### AMENDMENT NO. 3 OFFERED BY MR. FILNER

Mr. FILNER. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

##### Amendment No. 3 offered by Mr. FILNER:

At the end of the bill, add the following new section:

##### SEC. \_\_\_\_\_. LIMITATION.

Notwithstanding any other provision of this Act, this Act does not apply to an action brought by, or on behalf of, a person injured at or before the age of 8, against a seller that, as part of a chain of outlets at least 20 of which do business under the same trade name (regardless of form of ownership of any outlet), markets qualified products to minors at or under the age of 8.

The Acting CHAIRMAN. Pursuant to House Resolution 494, the gentleman from California (Mr. FILNER) and the gentleman from Utah (Mr. CANNON) each will control 5 minutes.

The Chair recognizes the gentleman from California (Mr. FILNER).

Mr. FILNER. Mr. Chairman, the purpose of this amendment today is two-fold: one, to protect young children and, two, to force better accountability from the fast food industry.

My amendment exempts those 8 years of age and under from the provisions of this bill as it relates to fast food restaurants.

Mr. Chairman, in 2001 the U.S. Surgeon General proclaimed childhood obesity a health issue rivaling cigarette smoking. The Surgeon General further stated that the rate of overweight children in America doubled in the past 20 years and tripled among its