

benefiting from the many attributes of hull design, other than shape, that are structurally relevant, including those related to quality and safety.

It is also highly unlikely that a consumer will know if a boat had been copied from an existing design. More importantly for the purposes of promoting intellectual property rights, if manufacturers are not permitted to recoup at least some of their research and development costs, they may no longer invest in new, innovative boat designs that boaters eagerly await.

In response to this problem and a Supreme Court case called *Bonito Boats* that prohibits State action on the matter, we wrote the Vessel Hull Design Protection Act a decade ago. The statute has functioned well during this time, but its continued viability is complicated by an eleventh circuit opinion, *Maverick Boat Company v. American Marine Holding*.

*Maverick* involves a dispute under the vessel hull statute between two marine manufacturers. Unfortunately, the holding of the case has created a loophole that knock-off manufacturers may well exploit. Because the statute protects the design of a vessel hull, and a hull is defined as the frame or body of a vessel, including the deck, exclusive of masts, sails, yards, and rigging, the court presumably reasoned that a hull must be examined in its totality. In other words, when assessing the design attributes of a hull under the statute, one may not examine its components, meaning the frame or body and the deck, separately.

This reasoning subverts Congress' intent when we passed the Vessel Hull Design Protection Act. At the time, proponents of reform were responding to the Supreme Court's ruling in *Bonito Boats*, which struck down State plug-mold statutes that effectively banned hull splashing as a method for copying hull designs. That is, the very practice, that is, hull splashing, that Congress sought to prescribe in 1998 would, in part, be legitimized by the eleventh circuit's decision in the *Maverick* case.

In brief, H.R. 6531 cures this problem by amending the definition of vessel hulls. The new definition will prevent knock-off manufacturers from indulging in hull splashing or misappropriation of either an original design of a hull or a deck. The bill specifies that only the hull's exterior frame or body is protected and clarifies other terms under the statute.

Importantly, H.R. 6531 contains a provision that was omitted from an earlier draft, S. 1640, that the other body passed last October. The new provision creates an exception to the vessel hull statute for the Armed Forces. This is necessary because the United States Navy, the United States Coast Guard, and perhaps the United States Marines, often have vessels built to specifications. It is not unthinkable that a vessel constructed for use by the Armed Forces might infringe a registered design.

Nothing in the legislative history of the statute suggests that Congress intended to complicate national security in any way. This is especially true since a separate provision of the U.S. Code, section 2320 of title X, addresses the rights of the Armed Forces and private parties to use patented inventions, copyrighted works, and technical data related to defense projects.

H.R. 6531, therefore, ensures this provision or a contract between the government and relevant third parties will determine the rights of the Armed Forces in a registered hull design.

Mr. Speaker, this is a noncontroversial bill that has received process in the form of hearings in this Congress, as well as the 109th Congress. It is a technical fix that allows the Vessel Hull Design Protection Act to operate as Congress intended.

I urge my colleagues to support H.R. 6531.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise today in support of H.R. 6531, the Vessel Hull Design Protection Amendments of 2008. This bill amends the United States Code, in the section relating to the vessel hull design protection, to clarify the definitions of a hull and a deck.

Industrial designs, like other forms of intellectual property, originated in Europe and have a long history. The objective of industrial design protection is similar to other intellectual property protections: promoting the creation of new, unique, and appealing designs for products by granting exclusive economic rights for a limited time. Many countries have established industrial design laws that are separate and distinct from other forms of intellectual property rights. The United States provides protection for industrial designs through design patents, trade dress, copyright and vessel hull design protection.

There have been several efforts to provide a sui generis form of protection for industrial designs at least since the 1976 Copyright Act. However, it was not until 1998 that some limited success in these efforts took the form of the Vessel Hull Design Protection Act. This Act was passed as part of the Digital Millennium Copyright Act. While the scope of protection in the Act was limited to vessel hulls, the act took much of its language and structure from previous legislative proposals establishing a general design right.

The Vessel Hull Design Protection Act grants exclusive rights to the design of an original vessel hull. To be original, a vessel hull design must be a non-trivial variation over prior vessel hulls, which is the result of the designer's creative endeavor and is not copied from another source. The Vessel Hull Design Protection Act does not provide any protection to non-original designs, staple or commonplace designs, and designs dictated solely by utilitarian function. The Vessel Hull Design Protection Act defines a "hull" as the frame or body of a vessel, including a deck.

Significantly, H.R. 6531, makes changes to this Act and excludes "deck" from the definition of a "hull". By H.R. 6531, "hull" is simply defined as the exterior frame or body of a vessel, exclusive of the deck, superstructure, masts, sails, yards, rigging, hardware, fixtures, and other attachments. The "deck" is defined as the horizontal surface of the vessel that covers the hull.

This refined definition should add more clarity to vessel hull protection. To secure vessel hull design protection, an application for the design must be submitted to the Copyright Office that sets forth the salient features of the design. According to the Copyright Office, applicants generally provided only a minimal description and rely heavily upon references to photographs they provide in their applications to define the designs they want protected. The Copyright Office must then decide whether the application, on its face, appears to be subject to protection. The definitional change provided by H.R. 6531 should simplify this process.

The Copyright Office's review focuses upon on making sure formal requirements are met, such as ensuring that the subject is a vessel and not a car, for instance. The review does not, however, look at the compliance with substantive requirements such as determining whether the design is original.

A registered vessel hull design gives the designer exclusive rights to make, sell, import, or use in trade, vessel hulls embodying the design. Certainly, the definitional change will make it easier to determine the design of the vessel and to ascertain whether any infringement has occurred. An infringing hull design is one that has been copied without the consent of the designer. A vessel hull design will not be considered copied if it is original and not substantially similar in appearance to a protected vessel hull design. When infringement is proven, a vessel hull designer may seek injunctive relief and either damages adequate to compensate for the infringement or the infringer's profits.

Mr. Speaker, I urge my colleagues to support H.R. 6531 because it simplifies the definition of a hull and makes it easier to determine whether there has been infringement.

Mr. COBLE. I have no further requests for time, Mr. Speaker, so I yield back my time.

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

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. SCOTT) that the House suspend the rules and pass the bill, H.R. 6531.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

#### COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

JULY 22, 2008.

Hon. NANCY PELOSI,  
*Speaker, House of Representatives,*  
*Washington, DC.*

DEAR MADAM SPEAKER: Pursuant to the permission granted in Clause 2(h) of rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on July 22, 2008, at 10:21 a.m.:

That the Senate passed S. 901.  
That the Senate passed S. 3294.

With best wishes, I am,  
Sincerely,

LORRAINE C. MILLER,  
*Clerk of the House.*

CONGRATULATING ENSIGN  
DECAROL DAVIS

Mr. OBERSTAR. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 1241) congratulating Ensign DeCarol Davis upon serving as the valedictorian of the Coast Guard Academy's class of 2008 and becoming the first African American female to earn this honor, as amended.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

H. RES. 1241

Whereas Ensign DeCarol Davis is the first African American female to serve as the valedictorian of the Coast Guard Academy;

Whereas Ensign Davis is from Woodbridge, Virginia, and was the 2004 Forest Park High School valedictorian;

Whereas Ensign Davis's academic and military achievements at the Coast Guard Academy in a class of more than 200 cadets earned her the honor of graduating as valedictorian of the Coast Guard Academy's class of 2008;

Whereas Ensign Davis's accomplishments include selection as a 2007 Truman Scholar, receipt of the 2008 Connecticut Technology Council Women of Innovation Award, selection as a 2006 Arthur Ashe, Jr. Womens Basketball First Team Sports Scholar, and selection to the 2007 ESPN The Magazine Academic All-District I College Women's Basketball First Team;

Whereas Ensign Davis's community outreach during her four years at the Coast Guard Academy significantly impacted the lives of others, including those at a local elementary school where Ensign Davis wrote and directed a play that introduced engineering as a career to the students;

Whereas the Coast Guard Academy serves a critical role in training future leaders of the Coast Guard to carry out the service's missions, including protecting the lives and safety of those at sea and ensuring the safe operation of the marine transportation system; protecting the United States ports, waterways, and coastal communities and defending the United States homeland and United States national interests against hostile acts; enforcing United States maritime sovereignty and United States law, international conventions, and treaties including securing our borders against unlawful aliens and drugs; safeguarding United States marine resources; and responding to the threat of terrorism at ports and incidents of national significance, including transportation security incidents, to preserve life and to ensure the continuity of commerce and critical port and waterway functions;

Whereas the Coast Guard Academy has few minorities within the cadet population;

Whereas on April 24, 2008, the House of Representatives approved H.R. 2830, the Coast Guard Authorization Act of 2008, which included several provisions to improve the diversity of the Coast Guard Academy; and

Whereas Ensign Davis gave her valedictorian address on May 21, 2008: Now therefore be it

*Resolved*, That the House of Representatives—

(1) congratulates Ensign DeCarol Davis for becoming the first African American to serve as valedictorian of the Coast Guard Academy; and

(2) encourages the Coast Guard to seek diverse candidates for the cadet corps at the Coast Guard Academy and to continue to train and graduate cadets of a quality that the Coast Guard needs to fulfill each of its missions.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Minnesota (Mr. OBERSTAR) and the gentleman from Ohio (Mr. LATOURETTE) each will control 20 minutes.

The Chair recognizes the gentleman from Minnesota.

GENERAL LEAVE

Mr. OBERSTAR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolution, H. Res. 1241.

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

There was no objection.

Mr. OBERSTAR. I yield myself such time as I may consume.

Ensign DeCarol Davis was the valedictorian of the Coast Guard Academy, Class of 2008, the first African American to graduate as valedictorian of the Coast Guard Academy. But this is not the first time that Ensign Davis graduated at the top of her class. She was valedictorian of Forest Park High School, Woodbridge, Virginia, in 2004.

Ensign Davis is a very impressive young lady, a Truman Scholar. She won the 2008 Connecticut Technology Council Women of Innovation Award. She is a standout basketball player. She was a 2006 Arthur Ashe, Jr. Women's Basketball First Team Sports Scholar, and she was selected to the ESPN The Magazine Academic All-District I College Women's Basketball First Team.

She's now a commissioned officer in the Coast Guard. Ensign Davis will join 41,000 men and women wearing that unique color of blue, enforcing the Nation's laws on our waterways, making the waterways safe as well as secure, and has chosen to begin her career in the Coast Guard Marine Safety Program. I'm delighted to see that future leaders of the Coast Guard value that program.

I was at the Coast Guard Academy just 3 months ago, met with the Commandant of Cadets and the director of the academic program at the Coast Guard Academy, met with several of the cadets and sat in on one of the classes. And I must say each time I do, each time I hold a session with the Coast Guard, and each time I meet the cadets, I have enormous confidence in the future of the Coast Guard and its service to boating, to maritime safety, and to the future needs of the Coast Guard and our country.

I reserve the balance of my time.

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

Mr. Speaker, House Resolution 1241 recognizes Ensign DeCarol Davis for her extraordinary achievements as a cadet at the United States Coast Guard Academy. Ensign Davis graduated in May of this year as the valedictorian of her class of 2008, and is currently stationed with the Prevention Department at Coast Guard Sector New York.

During her 4 years as a cadet, Ensign Davis was selected as the Academy's

first Truman Scholar, honored as the 2007 Arthur Ashe, Jr. Female Sports Scholar of the Year, and served as the president of her Academy class. Ensign Davis also became very involved with student activities on campus and in the surrounding community of New London.

Ensign Davis is a shining example of the quality of men and women who make up the leaders and ranks of our Coast Guard, and I hope that the House's action today will encourage our young people to learn more about the Coast Guard Academy and the Coast Guard.

I support this resolution honoring Ensign Davis for her achievements.

I reserve the balance of my time.

Mr. OBERSTAR. Mr. Speaker, I yield such time as he may consume to the distinguished chairman of the Homeland Security Committee, the gentleman from Mississippi (Mr. THOMPSON).

□ 1430

Mr. THOMPSON of Mississippi. Mr. Speaker, today I rise in support of legislation I authored to recognize a remarkable young woman, Ensign DeCarol Davis.

On May 21, 2008, Ensign Davis graduated from the Coast Guard Academy with a grade point average of 3.96 in electrical engineering. She earned the distinction of being the first African American valedictorian of the Coast Guard Academy.

The Coast Guard Academy was founded in 1876, but the first African American did not graduate from the institution until 1966. Women were not admitted to the school until 1976. Today, we honor Ensign Davis, who, through her hard work and perseverance, accomplished what no African American has done before her, she achieved the Academy's highest honor.

This achievement is remarkable, given that over the past three decades the number of minorities graduating from the Coast Guard Academy has not kept pace with the other military service academies. Legislation approved by the House earlier this year, Mr. Speaker, would bring about more diversity within the Coast Guard Academy by allowing Members of Congress to nominate individuals for this academy, just as we do all other military service academies.

I would also note that outside of the classroom Ensign Davis has distinguished herself as a community leader. On her own initiative, in the little spare time that she had, Ensign Davis wrote and directed a play for a local elementary school that introduced engineering as a possible career to the students.

During her time at the academy, Ensign Davis also excelled in sports. In fact, she was selected to be the 2006 Arthur Ashe First Team Sports Scholar for basketball. She was also selected to be on the 2007 ESPN Academic Women's Basketball Team for All-District