

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

I just want to reflect on the fact that this bill probably couldn't have gotten as far as it had without the outstanding work of the gentleman from Massachusetts (Mr. DELAHUNT). The gentleman from Massachusetts has been an invaluable member of the Judiciary Committee for many years, contributed much to First Amendment rights, and participated as the vice chairman of the Commercial and Administrative Law subcommittee this year, an invaluable role that he actively engaged in.

On this bill in particular, he was very instrumental in its passage. I thank him for his service on this particular bill and in general. All the publishers and the authors also should know that the gentleman from Massachusetts was very involved in this bill.

With that, I would like to reserve the balance of my time for the purpose of closing.

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

Mr. COHEN. Mr. Speaker, it is with great pleasure that this bill comes to a conclusion. We passed this in the 110th Congress, we couldn't get the Senate to agree on the language, and we did it in this Congress. It was a victory for writing, said the New York Times, a rare achievement for the Senate to pass this particular bill by a unanimous vote. It was an important bill that protects Americans from the whims of foreign libel judgments. This bill will safeguard authors and publishers threatened with ruinous foreign judgments. These particular First Amendment rights have been jeopardized in places like Britain, Australia and Singapore where the burden was shifted.

So it is important, as the New York Times suggested in what is an outstanding editorial endorsing and praising the passage of this bill, mentioning Ms. Rachel Ehrenfeld who wrote a 2003 book "Funding Evil: How Terrorism is Financed—and How to Stop It," where she was the object of a libel tourism action by an individual that got a judgment against her which was improper. She has been a very active and important citizen in seeing that this bill was passed along with the publishers over the years.

It's important that we pass this. The New York Times editorial was so complete, it only failed to mention Mr. DELAHUNT's role in the passage of the bill. I wish it would have. With that, I would ask for the unanimous passage of the bill.

I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Tennessee (Mr. COHEN) that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 2765.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

## NATIONAL CRIMINAL JUSTICE COMMISSION ACT OF 2010

Mr. SCOTT of Virginia. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5143) to establish the National Criminal Justice Commission, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 5143

*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 "National Criminal Justice Commission Act of 2010".

### SEC. 2. FINDINGS.

Congress finds that—

(1) it is in the interest of the Nation to establish a commission to undertake a comprehensive review of the criminal justice system;

(2) there has not been a comprehensive study since the President's Commission on Law Enforcement and Administration of Justice was established in 1965;

(3) that commission, in a span of 18 months, produced a comprehensive report entitled "The Challenge of Crime in a Free Society," which contained 200 specific recommendations on all aspects of the criminal justice system involving Federal, State, tribal, and local governments, civic organizations, religious institutions, business groups, and individual citizens; and

(4) developments over the intervening 45 years require once again that Federal, State, tribal, and local governments, civic organizations, religious institutions, business groups, and individual citizens come together to review evidence and consider how to improve the criminal justice system.

### SEC. 3. ESTABLISHMENT OF COMMISSION.

There is established a commission to be known as the "National Criminal Justice Commission" (referred to in this Act as the "Commission").

### SEC. 4. PURPOSE OF THE COMMISSION.

The Commission shall undertake a comprehensive review of the criminal justice system, encompassing current Federal, State, local, and tribal criminal justice policies and practices, and make reform recommendations for the President, Congress, State, local, and tribal governments.

### SEC. 5. REVIEW AND RECOMMENDATIONS.

(a) GENERAL REVIEW.—The Commission shall undertake a comprehensive review of all areas of the criminal justice system, including Federal, State, local, and tribal governments' criminal justice costs, practices, and policies.

(b) FINDINGS AND RECOMMENDATIONS.—After conducting a review of the United States criminal justice system as required by section 5(a), the Commission shall make findings regarding such review and recommendations for changes in oversight, policies, practices, and laws designed to prevent, deter, and reduce crime and violence, reduce recidivism, improve cost-effectiveness, and ensure the interests of justice at every step of the criminal justice system.

(c) REPORT ADVISORY IN NATURE.—No finding or recommendation made by the Commission in its report shall be binding on any Federal, State, Tribal, or local unit of government. The findings and recommendations of the Commission are advisory in nature.

(d) STATE AND LOCAL GOVERNMENT.—In making its recommendations, the Commis-

sion should consider the financial and human resources of State and local governments. Recommendations shall not infringe on the legitimate rights of the States to determine their own criminal laws or the enforcement of such laws.

(e) PUBLIC HEARINGS.—The Commission shall conduct public hearings in various locations around the United States.

(f) CONSULTATION WITH GOVERNMENT AND NONGOVERNMENT REPRESENTATIVES.—

(1) IN GENERAL.—The Commission shall—

(A) closely consult with Federal, State, local, and tribal government and nongovernmental leaders, including State, local, and tribal law enforcement officials, legislators, public health officials, judges, court administrators, prosecutors, defense counsel, victims' rights organizations, probation and parole officials, criminal justice planners, criminologists, civil rights and liberties organizations, formerly incarcerated individuals, professional organizations, and corrections officials; and

(B) include in the final report required by subsection (g) summaries of the input and recommendations of these leaders.

(2) UNITED STATES SENTENCING COMMISSION.—To the extent the review and recommendations required by this section relate to sentencing policies and practices for the Federal criminal justice system, the Commission shall conduct such review and make such recommendations in consultation with the United States Sentencing Commission.

(g) REPORT.—

(1) REPORT.—Not later than 18 months after the first meeting of the Commission, the Commission shall prepare and submit a final report that contains a detailed statement of findings, conclusions, and recommendations of the Commission to Congress, the President, State, local, and tribal governments.

(2) GOAL OF UNANIMITY.—It is the sense of the Congress that, given the national importance of the matters before the Commission, the Commission should work toward unanimously supported findings and recommendations.

(3) PUBLIC AVAILABILITY.—The report submitted under this subsection shall be made available to the public.

(4) VOTES ON RECOMMENDATIONS IN REPORT.—Consistent with paragraph (2), the Commission shall state the vote total for each recommendation contained in its report to Congress.

### SEC. 6. MEMBERSHIP.

(a) IN GENERAL.—The Commission shall be composed of 14 members, as follows:

(1) 1 member shall be appointed by the President, who shall serve as co-chairman of the Commission.

(2) 1 member shall be appointed by the minority leader of the Senate, in consultation with the minority leader of the House of Representatives, who shall serve as co-chairman of the Commission.

(3) 2 members appointed by the majority leader of the Senate, in consultation with the Chairman of the Committee on the Judiciary.

(4) 2 members appointed by the minority leader of the Senate, in consultation with the ranking member of the Committee on Judiciary.

(5) 2 members appointed by the Speaker of the House of Representatives, in consultation with the Chairman of the Committee on Judiciary.

(6) 2 members appointed by the minority leader of the House of Representatives, in consultation with the ranking member of the Committee on Judiciary.

(7) 2 members, who shall be State and local representatives, shall be appointed by the

President in agreement with the minority leader of the Senate and the minority leader of the House of Representatives.

(8) 2 members, who shall be State and local representatives, shall be appointed by the President in agreement with the majority leader of the Senate and the Speaker of the House of Representatives.

(b) MEMBERSHIP.—

(1) QUALIFICATIONS.—The individuals appointed from private life as members of the Commission shall be individuals with distinguished reputations for integrity and nonpartisanship who are nationally recognized for expertise, knowledge, or experience in such relevant areas as—

- (A) law enforcement;
- (B) criminal justice;
- (C) national security;
- (D) prison and jail administration;
- (E) prisoner reentry;
- (F) public health, including physical and sexual victimization, drug addiction and mental health;
- (G) victims' rights;
- (H) civil liberties;
- (I) court administration;
- (J) social services; and
- (K) State, local, and tribal government.

(2) DISQUALIFICATION.—An individual shall not be appointed as a member of the Commission if such individual possesses any personal financial interest in the discharge of any of the duties of the Commission.

(3) TERMS.—Members shall be appointed for the life of the Commission.

(c) APPOINTMENT; FIRST MEETING.—

(1) APPOINTMENT.—Members of the Commission shall be appointed not later than 45 days after the date of the enactment of this Act.

(2) FIRST MEETING.—The Commission shall hold its first meeting on the date that is 60 days after the date of enactment of this Act, or not later than 30 days after the date on which funds are made available for the Commission, whichever is later.

(3) ETHICS.—At the first meeting of the Commission, the Commission shall draft appropriate ethics guidelines for commissioners and staff, including guidelines relating to conflict of interest and financial disclosure. The Commission shall consult with the Senate and House Committees on the Judiciary as a part of drafting the guidelines and furnish the Committees with a copy of the completed guidelines.

(d) MEETINGS; QUORUM; VACANCIES.—

(1) MEETINGS.—The Commission shall meet at the call of the co-chairs or a majority of its members.

(2) QUORUM.—Seven members of the Commission, including at least 2 members chosen by either the Senate Majority Leader, Speaker of the House, or Senate Majority Leader and Speaker of the House in agreement with the President and 2 members chosen by either the Senate Minority Leader, House Minority Leader, or Senate Minority Leader and House Minority Leader in agreement with the President, shall constitute a quorum for purposes of conducting business, except that 2 members of the Commission shall constitute a quorum for purposes of receiving testimony.

(3) VACANCIES.—Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made. If vacancies in the Commission occur on any day after 45 days after the date of the enactment of this Act, a quorum shall consist of a majority of the members of the Commission as of such day, so long as at least 1 Commission member chosen by a member of each party, Republican and Democratic, is present.

(e) ACTIONS OF COMMISSION.—

(1) IN GENERAL.—The Commission—

(A) shall act by resolution agreed to by a majority of the members of the Commission voting and present; and

(B) may establish panels composed of less than the full membership of the Commission for purposes of carrying out the duties of the Commission under this title—

(i) which shall be subject to the review and control of the Commission; and

(ii) any findings and determinations made by such a panel shall not be considered the findings and determinations of the Commission unless approved by the Commission.

(2) DELEGATION.—Any member, agent, or staff of the Commission may, if authorized by the co-chairs of the Commission, take any action which the Commission is authorized to take pursuant to this Act.

## SEC. 7. ADMINISTRATION.

(a) STAFF.—

(1) EXECUTIVE DIRECTOR.—The Commission shall have a staff headed by an Executive Director. The Executive Director shall be paid at a rate established for the Certified Plan pay level for the Senior Executive Service under section 5382 of title 5, United States Code.

(2) APPOINTMENT AND COMPENSATION.—The co-chairs of the Commission shall designate and fix the compensation of the Executive Director and, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(3) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Commission who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) MEMBERS OF COMMISSION.—Subparagraph (A) shall not be construed to apply to members of the Commission.

(4) THE COMPENSATION OF COMMISSIONERS.—Each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level V of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States, State, or local government shall serve without compensation in addition to that received for their services as officers or employees.

(5) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

(b) EXPERTS AND CONSULTANTS.—With the approval of the Commission, the Executive Director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(c) DETAIL OF GOVERNMENT EMPLOYEES.—Upon the request of the Commission, the

head of any Federal agency may detail, without reimbursement, any of the personnel of such agency to the Commission to assist in carrying out the duties of the Commission. Any such detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(d) OTHER RESOURCES.—The Commission shall have reasonable access to materials, resources, statistical data, and other information such Commission determines to be necessary to carry out its duties from the Library of Congress, the Department of Justice, the Office of National Drug Control Policy, the Department of State, and other agencies of the executive and legislative branches of the Federal Government. The co-chairs of the Commission shall make requests for such access in writing when necessary.

(e) VOLUNTEER SERVICES.—Notwithstanding the provisions of section 1342 of title 31, United States Code, the Commission is authorized to accept and utilize the services of volunteers serving without compensation. The Commission may reimburse such volunteers for local travel and office supplies, and for other travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5, United States Code. A person providing volunteer services to the Commission shall be considered an employee of the Federal Government in performance of those services for the purposes of chapter 81 of title 5 of the United States Code, relating to compensation for work-related injuries, chapter 171 of title 28 of the United States Code, relating to tort claims, and chapter 11 of title 18 of the United States Code, relating to conflicts of interest.

(f) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any agency of the United States information necessary to enable it to carry out this Act. Upon the request of the co-chairs of the Commission, the head of that department or agency shall furnish that information to the Commission. The Commission shall not have access to sensitive information regarding ongoing investigations.

(g) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(h) ADMINISTRATIVE REPORTING.—The Commission shall issue bi-annual status reports to Congress regarding the use of resources, salaries, and all expenditures of appropriated funds.

(i) CONTRACTS.—The Commission is authorized to enter into contracts with Federal and State agencies, private firms, institutions, and individuals for the conduct of activities necessary to the discharge of its duties and responsibilities. A contract, lease or other legal agreement entered into by the Commission may not extend beyond the date of the termination of the Commission.

(j) GIFTS.—Subject to existing law, the Commission may accept, use, and dispose of gifts or donations of services or property.

(k) ADMINISTRATIVE ASSISTANCE.—The Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this Act. These administrative services may include human resource management, budget, leasing, accounting, and payroll services.

(1) NONAPPLICABILITY OF FAC AND PUBLIC ACCESS TO MEETINGS AND MINUTES.—

(1) IN GENERAL.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(2) MEETINGS AND MINUTES.—

(A) MEETINGS.—

(i) **ADMINISTRATION.**—All meetings of the Commission shall be open to the public, except that a meeting or any portion of it may be closed to the public if it concerns matters or information described in section 552b(c) of title 5, United States Code. Interested persons shall be permitted to appear at open meetings and present oral or written statements on the subject matter of the meeting. The Commission may administer oaths or affirmations to any person appearing before it.

(ii) **NOTICE.**—All open meetings of the Commission shall be preceded by timely public notice in the Federal Register of the time, place, and subject of the meeting.

(B) **MINUTES AND PUBLIC AVAILABILITY.**—Minutes of each open meeting shall be kept and shall contain a record of the people present, a description of the discussion that occurred, and copies of all statements filed. The minutes and records of all open meetings and other documents that were made available to or prepared for the Commission shall be available for public inspection and copying at a single location in the offices of the Commission.

(m) **ARCHIVING.**—Not later than the date of termination of the Commission, all records and papers of the Commission shall be delivered to the Archivist of the United States for deposit in the National Archives.

#### SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

(a) **IN GENERAL.**—There are authorized to be appropriated for fiscal years 2011 and 2012 such sums as are necessary to carry out the purposes of this Act, not to exceed \$7,000,000 per year for each fiscal year, and not more than \$14,000,000 total. None of the funds appropriated under this Act may be utilized for international travel.

(b) **AVAILABILITY.**—Any sums appropriated under the subsection (a) shall remain available, without fiscal year limitation, until expended.

#### SEC. 9. SUNSET.

The Commission shall terminate 60 days after it submits its report to Congress.

#### SEC. 10. COMPLIANCE WITH PAYGO.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Committee on the Budget of the House of Representatives, provided that such statement has been submitted prior to the vote on passage.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Virginia (Mr. SCOTT) and the gentleman from Texas (Mr. SMITH) each will control 20 minutes.

The Chair recognizes the gentleman from Virginia.

#### GENERAL LEAVE

Mr. SCOTT of Virginia. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extraneous material on the bill under consideration.

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

There was no objection.

Mr. SCOTT of Virginia. I yield myself such time as I may consume.

Mr. Speaker, the goal of H.R. 5143 is to examine the criminal justice system in its entirety in order to make recommendations for appropriate reform

to the President and Congress as well as State, local and tribal governments. The United States depends on the criminal justice system to maintain our safety and security and we expect it to be reliable, fair and effective. It must provide a sense of justice for all Americans, and must treat victims and their families with compassion.

The last comprehensive review of our criminal justice system was President Johnson’s Commission on Law Enforcement and Administration of Justice conducted more than 45 years ago. Despite the progress in achieving fair and effective outcomes in the criminal justice system since President Johnson’s commission was convened, there is still work that needs to be done to fulfill these objectives.

Currently, the United States has the highest reported incarceration rate in the world. Whereas most countries lock up between 50 and 200 people for every 100,000 in their population, and only a handful of countries lock up more than 300 per 100,000, the United States leads the world in over 700 per 100,000 locked up today. This number is particularly egregious when you review the recent study conducted by Pew Research Center that concluded that for any rate that exceeds 300 per 100,000, the cost of additional incarceration produced diminishing returns; and any rate over 500 per 100,000 is actually counterproductive. The United States’ rate again is over 700 per 100,000. Minorities make up an alarmingly disproportionate share of the incarcerated population of adults and juveniles. In fact, the incarceration rate for African Americans approaches 4,000 per 100,000 in several States. And when you consider the Pew study that anything over 500 was counterproductive, we can see that a lot of money is being wasted in counterproductive incarceration. In fact, in those 10 States with the incarceration rate of African Americans approaching 4,000, you could spend thousands of dollars for every child in those communities with the money that’s being wasted now on counterproductive incarceration. That money could be put in evidence-based programs that have been shown and proven not only to reduce crime but save more money than the programs cost. We know that those comprehensive plans work. They work everywhere you put them into effect; and we need to invest in those rather than counterproductive incarceration.

H.R. 5143 calls for a distinguished, nonpartisan group of experts to undertake a comprehensive review of the criminal justice system to promote broad reform. While this bill calls for an examination of the criminal justice system, it is intended to advance a national conversation and facilitate policy changes to complement, not replace, ongoing reform efforts.

The companion bill to this bill was introduced in the Senate by my Virginia colleague, Senator JIM WEBB, who has been a tireless and strong ad-

vocate for this study commission. This bill in the House has been introduced by a former prosecutor, the gentleman from Massachusetts (Mr. DELAHUNT), who has also been a strong advocate for intelligent criminal justice policies. For these reasons, I urge my colleagues to support this important legislation.

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

Mr. SMITH of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5143 establishes a National Criminal Justice Commission consisting of a bipartisan panel of 14 experts appointed by the President, the Majority and Minority Leaders in the Senate, the Speaker and Minority Leader in the House. The commission will review all areas of the criminal justice system at the Federal, State, local and tribal levels. It will also examine national trends in criminal justice costs, practices and policies.

Further, the commission will provide recommendations for changes to prevent, defer and reduce crime and violence. The recommendations should also help to reduce recidivism, improve cost effectiveness and ensure the interests of justice at every step of the criminal justice system.

H.R. 5143 expresses the sense of Congress that the commission should work towards unanimity in making its findings and recommendations. Senator JIM WEBB of Virginia introduced legislation to establish this commission in the Senate. The bill is cosponsored by a group of 39 Senators.

In the House, my friend from Massachusetts, BILL DELAHUNT, a colleague on the Judiciary Committee and a former district attorney himself, introduced the House companion legislation to establish the commission. As a senior member of the Judiciary Committee, the gentleman from Massachusetts reached across the aisle to Republican members, including the gentleman from California (Mr. ISSA) and the gentleman from Florida (Mr. ROONEY) as well as myself to cosponsor this important piece of legislation.

□ 1840

I must confess initially to having some concerns about the bill. Why do we need another commission to do the work and consider the issues that we in Congress and on the Judiciary Committee ought to be doing? However, my friend from Massachusetts was insistent and persuasive in convincing me that the commission will be able to consider the data and underlying policy considerations without political considerations.

Another reason, Mr. Speaker, to support the measure is that it will serve as a fitting tribute to our colleague from Massachusetts, who is retiring at the end of this Congress. Passage of this bill represents an historic opportunity to undertake a bipartisan, thorough, and comprehensive review of what works and what does not work at every

level of the criminal justice system. For this, and for his many other contributions to the American people, we can thank Congressman DELAHUNT, who I know is getting ready to speak on this legislation momentarily.

I urge my colleagues to vote in favor of H.R. 5143. And before I reserve the balance of my time, I want to thank the gentleman from Massachusetts (Mr. DELAHUNT) for being such an active and effective member of the Judiciary Committee, for being a close personal friend, whose advice I clearly take.

With that, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, I yield such time as he may consume to the lead sponsor of the House bill, former prosecutor, the gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. Thank you, Mr. Chairman.

Before I begin, let me extend a note of gratitude to the ranking member from Texas for his kind and generous words. I also want to indicate that I am wearing a tie that has "Cape Cod" emblazoned on this tie that was given to me by Mr. SMITH on behalf of the Republicans on the Judiciary Committee. At the time, I didn't know whether it was a sign of respect or affection. Later, I learned it was because I continually wear Cape Cod ties, that they were concerned that I had no tie without a stain on it.

So LAMAR, thank you. Thank you for those kind words. It's been truly an honor to serve with you and the Republicans on the Judiciary Committee these past 14 years. We've done, I think, extraordinary work. We've done it together. We've had our disagreements, but those disagreements often-times yielded a consensus that worked for the benefit of the American people.

This bill, I guess some would consider it rare for a concept that is supported not only by the American Civil Liberties Union and the National Association of Criminal Defense Attorneys, but also the Fraternal Order of Police and the International Association of Chiefs of Police to come to this floor on the suspension calendar. That truly is extraordinary. But all of those organizations, I would suggest, share the same goal, and that is how do we deal with crime in America in a way that makes us safer, but saves us money, while still protecting fundamental American liberties and values?

The bill's been described by my good friend from Virginia and by Mr. SMITH in terms of what it does. It will result in a commission that will do a comprehensive and holistic review of our criminal justice system at all levels, Federal, state, and local, and make findings and recommendations to prevent, deter, and reduce crime and violence in our country.

It's important to note, too, that the commission will be tasked with improving the cost-effectiveness of the criminal justice system, so that tax

dollars are not wasted on inefficient, ineffective programs. There are excellent programs that are working currently. And I believe that they are responsible to a large degree for the reduction that we have observed in violence in America. I think this Congress shares some of that credit. But we don't have to reinvent the wheel. We simply have to identify what works, what makes sense, and pursue it.

Because let's not forget, it's the State and local governments that bear most of the burden. That's where the action is. It's no secret that the States find themselves in profound fiscal straits. On the cover of the June 28 edition of Time magazine, a State license plate was depicted with the word "Bankrupt" emblazoned on it.

Now, the issues of safety, crime, and justice know no political party or geographic boundary, as evidenced by the bipartisan support that this bill has engendered. And let me pause again and thank Mr. ROONEY and Mr. ISSA, along with again, let me emphasize, the great leadership of my chairman, BOBBY SCOTT, on this matter. Along with Congresswoman FUDGE, who I am sure if she is not in the Chamber, will be running over to speak.

Again, we want to reduce crime. And everywhere we're concerned that the law enforcement agencies in this country and other groups have the resources to keep our streets safe. But they also insist that the system not needlessly waste taxpayer dollars. As Chairman SCOTT indicated, the United States currently incarcerates 2.3 million individuals. It's the highest incarceration rate in the world. More than 90 percent of the incarcerated adults in this country are incarcerated in the State and local systems, filling their prisons. And the Pew Center predicts that by 2011, continued State and local prison growth will cost taxpayers an additional \$75 billion. That's simply unsustainable.

This bill will help us battle those rising, escalating figures, and hopefully continue the decline that we observe in terms of crimes of violence in this country. It will allow us to take that comprehensive national review. This is not an audit of individual State systems. It's a review. There are no mandates. And the commission will issue concrete recommendations.

Again, as the chairman of the subcommittee alluded to, it's been more than four decades since a comprehensive review of criminal justice was conducted. It was 1965 when President Johnson established the Commission on Law Enforcement and Administration of Justice, the so-called Kerner Commission. The commission examined criminal justice systems in great detail, and ultimately reported over 200 recommendations to control crime and improve justice in this country. The time to take this on is now. I predict it will lead to a safer America and a smarter, more effective criminal justice system.

□ 1850

Mr. SMITH of Texas. Mr. Speaker, I will yield 3 minutes to the gentleman from Florida (Mr. ROONEY) who is an active member of the Judiciary Committee and also a cosponsor of this legislation.

Mr. ROONEY. Thanks to the ranking member for yielding.

Mr. Speaker, I rise today in support of H.R. 5143, the National Criminal Justice Commission Act. I'm proud to have been an original cosponsor joining Mr. DELAHUNT and others on such an important bill, and I would take liberty to especially thank Mr. DELAHUNT for seeking me out, being a freshman, and letting me take a leadership role in this bill, which I think is going to do a lot of good for fighting crime in this country.

As a former prosecutor, it's important to take a close look at what works and what does not work in our criminal justice system. This bipartisan bill will create a commission to study all aspects of our criminal justice system and report back on what we can do better to prevent crime, reduce violence, and control costs.

This bill will create a blue ribbon, bipartisan commission charged with undertaking an 18-month comprehensive review of the Nation's criminal justice system. The commission will study all areas of the criminal justice system, including Federal, State, local and tribal governments, criminal justice costs, practices, and policies. After conducting the review, the commission will make the recommendations for changes in or continuation of oversight policies, practices, and laws designed to prevent, deter, and reduce crime and violence, improve cost effectiveness, and ensure the interests of justice.

This bill couldn't come at a better time. Every year Congress continues to add more and more laws to our U.S. code. Yet we haven't taken a sober look at the existing laws to find what is archaic, what is out of date, and what is duplicative.

This will be the first time in over 40 years that we will undertake such a study. I'm proud and honored to be a cosponsor of this bill along with Ms. FUDGE, Mr. ISSA, Ranking Member SMITH, and especially Mr. DELAHUNT. And I encourage all of my colleagues to support it as well.

Mr. SMITH of Texas. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, in closing, this commission will study our criminal justice system to ascertain what we can do to use our resources in a more cost-effective manner to reduce crime. We know that comprehensive approaches to crime work.

In Massachusetts, they had a comprehensive approach to juvenile crime where they'd had a dozen or so murders every year. They had a comprehensive approach to the problem. They reduced juvenile murders from 13 a year to zero for 3 consecutive years.

In Pennsylvania, they invested in comprehensive programs in a hundred different localities, spent \$60 million, and they counted up a few years later and figured that they had saved over \$300 million, five times more than they spent, because they were so effective in reducing crime and other social problems.

In Virginia, they had an area where they had 19 murders one year. They came in with a comprehensive, evidence-based approach to crime reduction, and within a couple of years, they had two murders. And if you look at that \$2½ million that was invested in that program, there is no doubt that we saved at least that much in reduced medical care at the Medical College of Virginia Trauma Unit. So we know that we can reduce crime and save money.

We know that 700,000 prisoners are being released from prison—State, local, and Federal—every year, and we know that two-thirds of them are going right back to prison without intervention. So we need this opportunity for investments.

We know that the United States' incarceration rate is number 1 in the world and is already so high that the Pew Research Center says it's counterproductive. It causes more crime than it cures. And this study will show what we can do with our resources by showing what works and what does not and how we can have an intelligent focus on crime policy.

I want to thank the gentleman from Massachusetts (Mr. DELAHUNT) and my colleague from Virginia, Senator WEBB, for their vision to create a commission to outline effective strategies to reduce crime. I would hope that we adopt the bill, create the commission, and reduce crime.

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. 5143, as amended.

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

A motion to reconsider was laid on the table.

#### REMOVAL CLARIFICATION ACT OF 2010

Mr. JOHNSON of Georgia. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5281) to amend title 28, United States Code, to clarify and improve certain provisions relating to the removal of litigation against Federal officers or agencies to Federal courts, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 5281

*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 "Removal Clarification Act of 2010".

#### SEC. 2. REMOVAL OF CERTAIN LITIGATION TO FEDERAL COURTS.

(a) CLARIFICATION OF INCLUSION OF CERTAIN TYPES OF PROCEEDINGS.—Section 1442 of title 28, United States Code, is amended by adding at the end the following:

"(c) As used in subsection (a)—

"(1) the terms 'civil action' and 'criminal prosecution' include any proceeding (whether or not ancillary to another proceeding) to the extent that in such proceeding a judicial order, including a subpoena for testimony or documents, is sought or issued; and

"(2) the term 'against' when used with respect to such a proceeding includes directed to."

(b) CONFORMING AMENDMENTS.—Section 1442(a) of title 28, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking "capacity for" and inserting "capacity, for or relating to"; and

(B) by striking "sued"; and

(2) in each of paragraphs (3) and (4), by inserting "or relating to" after "for".

(c) APPLICATION OF TIMING REQUIREMENT.—Section 1446 of title 28, United States Code, is amended by adding at the end the following:

"(g)(1) Where the civil action or criminal prosecution that is removable under section 1442(a) is a proceeding in which a judicial order for testimony or documents is sought or issued, the thirty-day requirement of subsections (b) and (c) is satisfied if the person or entity desiring to remove the proceeding files the notice of removal not later than thirty days after receiving, through service, notice of that proceeding.

"(2) Where the civil action or criminal prosecution that is removable under section 1442(a) is a proceeding in which a judicial order described in paragraph (1) is sought to be enforced, the thirty-day requirement of subsections (b) and (c) is satisfied if the person or entity desiring to remove the proceeding files the notice of removal not later than thirty days after receiving, through service, notice of that proceeding."

(d) REVIEWABILITY ON APPEAL.—Section 1447(d) of title 28, United States Code, is amended by inserting "1442 or" before "1443".

#### SEC. 3. PAYGO COMPLIANCE.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled "Budgetary Effects of PAYGO Legislation" for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Georgia (Mr. JOHNSON) and the gentleman from Florida (Mr. ROONEY) each will control 20 minutes.

The Chair recognizes the gentleman from Georgia.

#### GENERAL LEAVE

Mr. JOHNSON of Georgia. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extraneous material on the bill under consideration.

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

There was no objection.

Mr. JOHNSON of Georgia. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the Removal Clarification Act of 2010 will enable Federal officials—Federal officers, in the words of the statute—to remove cases filed against them to Federal court in accordance with the spirit and intent of the current Federal officer removal statute.

Under the Federal officer removal statute, 28 U.S.C. 1442(a), Federal officers are able to remove a case out of State court and into Federal court when it involves the Federal officer's exercise of his or her official responsibilities. However, more than 40 States have pre-suit discovery procedures that require individuals to submit to deposition or respond to discovery requests even when a civil action has not yet been filed. Courts are split on whether the current Federal officer removal statute applies to pre-suit discovery. This means that Federal officers can be forced to litigate in State court despite the Federal statute's contrary intent.

This bill will clarify that a Federal officer may remove any legally enforceable demand for his or her testimony or documents if the basis for contesting the demand has to do with the officer's exercise of his or her official responsibilities. It will also allow for appeal to the Federal circuit court if the district court remands the matter back to the State court over objection of the Federal officer.

Some clarity issues were raised by witnesses during a Courts and Competition Policy Subcommittee hearing on the bill. Since the subcommittee markup, we have worked to address those issues, and the bill before us today clarifies the bill without making substantive changes. In particular, the addition of "whether or not ancillary to another proceeding" helps clarify that the bill will not result in the removal of entire State court actions to Federal court simply because a Federal officer is sent a discovery request. In this type of situation, the Federal court is to consider the discovery request as a separate proceeding from the underlying State court case so that it will now be removed and dealt with separately without removing the underlying case.

Nor will this bill lead to cases being dismissed in Federal court on the grounds that there is no Federal corollary to pre-suit discovery. Application of the State pre-suit discovery law will be considered as substantive under the Erie doctrine. The Federal court will apply the State substantive law. This legislation does not create a substantive loophole. It merely makes a procedural clarification.

Finally, the bill makes clear that the timing requirement under 28 U.S.C., section 1446 is not affected. It restates the 30-day requirement for removing the case after the judicial order is sought as well as after the judicial