File Biden bill

tleman from New York [Mr. FISH], as a member of the subcommittee, for his contributions, as well as my other colleagues and the other members of the subcommittee.

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

The SPEAKER pro tempore. (Mr. MCNULTY). The question is on the motion offered by the gentleman from Wisconsin [Mr. KASTENMEIER] that the House suspend the rules and pass the bill, H.R. 5381, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5381, the bill just passed.

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

There was no objection.

CIVIL JUSTICE REFORM ACT OF 1990

Mr. KASTENMEIER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3898) to require certain procedural changes in U.S. district courts in order to promote the just, speedy and inexpensive determination of civil actions, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3898

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 "Civil Justice Reform Act of 1990".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the problems of cost and delay in civil litigation in any United States district court must be addressed in the context of the full range of demands made on the district court's resources by both civil and criminal matters;

(2) the courts, the litigants, the litigants' attorneys, and the Congress and the executive branch, share responsibility for cost and delay in civil litigation and its impact on access to the courts, adjudication of cases on the merits, and the ability of the civil justice system to provide proper and timely judicial relief for aggrieved parties;

(3) the solutions to problems of cost and delay must include significant contributions by the courts, the litigants, the litigants' attorneys, and by the Congress and the executive branch;

(4) in identifying, developing, and implementing solutions to problems of cost and delay in civil litigation, it is necessary to achieve a method of consultation so that individual judicial officers, litigants, and litigants' attorneys who have developed techniques for litigation management and cost and delay reduction can effectively and promptly communicate those techniques to all participants in the civil justice system;

(5) evidence suggests that an effective litigation management and cost and delay reduction program should incorporate several interrelated principles, including—

(A) the differential treatment of cases that provides for individualized and specific management according to their needs, complexity, duration, and probable litigation careers;

(B) early involvement of a judicial officer in planning the progress of a case, controlling the discovery process, and scheduling hearings, trials, and other litigation events;

(C) regular communication between a judicial officer and attorneys during the pretrial process;

(D) utilization of alternative dispute resolution programs in appropriate cases; and

(6) because the increasing volume and complexity of civil and criminal cases imposes increasingly heavy workload burdens on judicial officers, clerks of court, and other court personnel, it is necessary to create an effective administrative structure to ensure ongoing consultation and communication regarding effective litigation management and cost and delay reduction principles and techniques.

SEC. 3. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS.—Title 28, United States Code, is amended by inserting after chapter 21 the following new chapter:

"CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

"Sec.
"471. Requirement for a district court civil justice expense and delay reduction plan.
"472. Development and implementation of a civil justice expense and delay reduction plan.
"473. Content of civil justice expense and delay reduction plans.
"474. Review of district court action.
"475. Periodic district court assessment.
"476. Enhancement of judicial information dissemination.
"477. Model civil justice expense and delay reduction plan.
"478. Advisory groups.
"479. Information on litigation management and cost and delay reduction.
"480. Training programs.
"481. Automated case information.
"482. Definitions.

"§471. Requirement for a district court civil justice expense and delay reduction plan

"There shall be implemented by each United States district court, in accordance with this chapter, a civil justice expense and delay reduction plan. The plan may be a plan developed by such district court or a model plan developed by the Judicial Conference of the United States. The purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes.

"§472. Development and implementation of a civil justice expense and delay reduction plan

"(a) The civil justice expense and delay reduction plan implemented by a district court shall be developed or selected, as the case may be, after consideration of the recommendations of an advisory group appointed in accordance with section 478.

"(b) The advisory group of a United States district court shall submit to the court a report, which shall be made available to the public and which shall include—

"(1) an assessment of the matters referred to in subsection (c)(1);

"(2) the basis for its recommendation that the district court develop a plan or select a model plan;

"(3) recommended measures, rules and programs; and

"(4) an explanation of the manner in which the recommended plan complies with section 473.

"(c)(1) In developing its recommendations, the advisory group of a district court shall promptly complete a thorough assessment of the state of the court's civil and criminal dockets. In performing the assessment for a district court, the advisory group shall—

"(A) determine the condition of the civil and criminal dockets;

"(B) identify trends in case filings and in the demands being placed on the court's resources; and

"(C) identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation.

"(2) In developing its recommendations, the advisory group of a district court shall take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys.

"(3) The advisory group of a district court shall ensure that its recommended actions include significant contributions to be made by the court, the litigants, and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts.

"(d) The chief judge of the district court shall transmit a copy of the plan implemented in accordance with subsection (a) and the report prepared in accordance with subsection (b) to—

"(1) the Director of the Administrative Office of the United States Courts;

"(2) the judicial council of the circuit in which the district court is located; and

"(3) the chief judge of each of the other United States district courts located in such circuit.

"§473. Content of civil justice expense and delay reduction plans

"(a) A civil justice expense and delay reduction plan developed and implemented under this chapter may include provisions applying the following principles and guidelines of litigation management and cost and delay reduction:

"(1) systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case;

"(2) early and ongoing control of the pretrial process through involvement of a judicial officer in—

"(A) assessing and planning the progress of a case;

"(B) setting early, firm trial dates, such that the trial is scheduled to occur within 18 months after the filing of the complaint, unless a judicial officer certifies that—

"(i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or

"(ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

"(C) controlling the extent of discovery and the time for completion of discovery,

and ensuring compliance with appropriate requested discovery in a timely fashion; and

"(D) setting at the earliest practical time deadlines for filing motions and a time framework for their disposition;

"(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—

"(A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

"(B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

"(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to—

"(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

"(ii) phase discovery into two or more stages; and

"(D) sets the earliest practicable time deadlines for filing motions and a time framework for their disposition;

"(4) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;

"(5) conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion; and

"(6) authorization to refer appropriate cases to alternative dispute resolution programs that—

"(A) have been designated for use in a district court; or

"(B) the court may make available, including mediation, minitrial, and summary jury trial.

"(b) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478, shall consider adopting the following litigation management and cost and delay reduction techniques:

"(1) a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;

"(2) a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters;

"(3) a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request;

"(4) a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation;

"(5) a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference; and

"(6) such other features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a).

"(c) Nothing in a district plan prescribed under this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, or any delegation of the Attorney General.

"§474. Review of district court action

"(a)(1) The chief judges of each district court in a circuit and the chief judge of the court of appeals for such circuit shall, as a committee—

"(A) review each plan and report submitted pursuant to section 472(d); and

"(B) make such suggestions for additional actions or modified actions of that district court as the committee considers appropriate for reducing cost and delay in civil litigation in the district court.

"(2) The chief judge of a court of appeals and the chief judge of a district court may designate another judge of such court to perform the chief judge's responsibilities under paragraph (1).

"(b) The Judicial Conference of the United States—

"(1) shall review each plan and report submitted by a district court pursuant to section 472(d); and

"(2) may request the district court to take additional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court's advisory group.

"§475. Periodic district court assessment

"After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478.

"§476. Enhancement of judicial information dissemination

"(a) The Director of the Administrative Office of the United States Courts shall prepare a semiannual report, available to the public, that discloses for each judicial officer—

"(1) the number of motions that have been pending for more than 6 months and the name of each case in which such motion has been pending;

"(2) the number of bench trials that have been submitted for more than 6 months and the name of each case in which such trials are under submission; and

"(3) the number and names of cases that have not been terminated within 3 years of filing.

"(b) To ensure uniformity of reporting, the standards for categorization or characterization of judicial actions to be prescribed in accordance with section 481 shall apply to the semiannual report prepared under subsection (a).

"§477. Model civil justice expense and delay reduction plan

"(a)(1) Based on the plans developed and implemented by the United States district courts designated as Early Implementation District Courts pursuant to section 103(c) of the Civil Justice Reform Act of 1990, the Judicial Conference of the United States may develop one or more model civil justice and expense delay reduction plans. Any such model plan shall be accompanied by a report explaining the manner in which the plan complies with section 473.

"(2) The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations to the Judicial Conference regarding the development of any model civil justice expense and delay reduction plan.

"(b) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives copies of any model plan and accompanying report.

"§478. Advisory groups

"(a) Within 90 days after the date of the enactment of this chapter, the advisory group required in each United States district court in accordance with section 472 shall be appointed by the chief judge of each district court, after consultation with the other judges of such court.

"(b) The advisory group of a district court shall be balanced and include attorneys and other persons who are representative of major categories of litigants in such court, as determined by the chief judge of such court.

"(c) Subject to subsection (d), in no event shall any member of the advisory group serve longer than 4 years.

"(d) Notwithstanding subsection (c), the United States Attorney for a judicial district, or his or her designee, shall be a permanent member of the advisory group for that district court.

"(e) The chief judge of a United States district court may designate a reporter for each advisory group, who may be compensated in accordance with guidelines established by the Judicial Conference of the United States.

"(f) The members of an advisory group of a United States district court and any person designated as a reporter for such group shall be considered as independent contractors of such court when in the performance of official duties of the advisory group and may not, solely by reason of service on or for the advisory group, be prohibited from practicing law before such court.

"§479. Information on litigation management and cost and delay reduction

"(a) Within 4 years after the date of the enactment of this chapter, the Judicial Conference of the United States Courts shall prepare a comprehensive report on all plans received pursuant to section 472(d). The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding such report to the Judicial Conference during the preparation of the report. The Judicial Conference shall transmit copies of the report to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives.

"(b) The Judicial Conference of the United States shall, on a continuing basis—

"(1) study ways to improve litigation management and dispute resolution services in the district courts; and

"(2) make recommendations to the district courts on ways to improve such services.

"(c)(1) The Judicial Conference of the United States shall prepare, periodically revise, and transmit to the United States district courts a Manual for Litigation Management and Cost and Delay Reduction. The Director of the Federal Judicial Center

and the Director of the Administrative Office of the United States Courts may make recommendations regarding the preparation of and any subsequent revisions to the Manual.

"(2) The Manual shall be developed after careful evaluation of the plans implemented under section 472 and the demonstration program conducted under section 4 of the Civil Justice Reform Act of 1990.

"(3) The Manual shall contain a description and analysis of the litigation management, cost and delay reduction principles and techniques, and alternative dispute resolution programs considered most effective by the Judicial Conference, the Director of the Federal Judicial Center, and the Director of the Administrative Office of the United States Courts.

"§480. Training programs

"The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts shall develop and conduct comprehensive education and training programs to ensure that all judicial officers, clerks of court, courtroom deputies, and other appropriate court personnel are thoroughly familiar with the most recent available information and analyses about litigation management and other techniques for reducing cost and expediting the resolution of civil litigation. The curriculum of such training programs shall be periodically revised to reflect such information and analyses.

"§ 481. Automated case information

"(a) The Director of the Administrative Office of the United States Courts shall ensure that each United States district court has the automated capability readily to retrieve information about the status of each case in such court.

"(b)(1) In carrying out subsection (a), the Director shall prescribe—

"(A) the information to be recorded in district court automated systems; and

"(B) standards for uniform categorization or characterization of judicial actions for the purpose of recording information on judicial actions in the district court automated systems.

"(2) The uniform standards prescribed under paragraph (1)(B) shall include a definition of what constitutes a dismissal of a case and standards for measuring the period for which a motion has been pending.

"(c) Each United States district court shall record information as prescribed under subsection (b).

"§482. Definitions

"As used in this chapter, the term 'judicial officer' means a United States district court judge or a United States magistrate.".

(b) IMPLEMENTATION.—(1) Within 3 years after the date of the enactment of this Act, each United States district court shall implement a civil justice expense and delay reduction plan under section 471 of title 28, United States Code, as added by subsection (a) of this section.

(2) The requirements set forth in sections 471 through 478 of title 28, United States Code, as added by subsection (a) of this section, shall remain in effect for 7 years after the date of the enactment of this Act.

(c) EARLY IMPLEMENTATION DISTRICT COURTS.—

(1) Any United States district court that, not earlier than 6 months and not later than 12 months after the date of the enactment of this Act, develops and implements a civil justice expense and delay reduction plan under chapter 23 of title 28, United States Code, as added by subsection (a) of this section, shall be designated by the Judicial Conference of the United States as an Early Implementation District Court.

(2) The chief judge of a district court so designated may apply to the Judicial Conference for additional resources, including technological and personnel support and information systems, necessary to implement its civil justice expense and delay reduction plan. The Judicial Conference may provide such resources out of funds appropriated pursuant to section 5(a).

(3) Within 18 months after the date of the enactment of this Act, the Judicial Conference shall prepare a report on the plans developed and implemented by the Early Implementation District Courts.

(4) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and House of Representatives—

(A) copies of the plans developed and implemented by the Early Implementation District Courts;

(B) the reports submitted by such districts pursuant to section 472(d) of title 28, United States Code, as added by subsection (a) of this section; and

(C) the report prepared under paragraph (3) of this subsection.

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part I of title 28, United States Code, is amended by adding at the end thereof the following:

"23. Civil justice expense and delay reduction plans ..... 471".

SEC. 4. DEMONSTRATION PROGRAM.

(a) IN GENERAL.—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a demonstration program in accordance with subsection (b).

(2) A district court participating in the demonstration program may also be an Early Implementation District Court under section 3(c).

(b) PROGRAM REQUIREMENT.—(1) The United States District Court for the Western District of Michigan and the United States District Court for the Northern District of Ohio shall experiment with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate under distinct and explicit rules, procedures, and timeframes for the completion of discovery and for trial.

(2) The United States District Court for the Northern District of California, the United States District Court for the Northern District of West Virginia, and the United States District Court for the Western District of Missouri shall experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution, that such district courts and the Judicial Conference of the United States shall select.

(c) STUDY OF RESULTS.—The Judicial Conference of the United States, in consultation with the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall study the experience of the district courts under the demonstration program.

(d) REPORT.—Not later than March 31, 1995, the Judicial Conference of the United States shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report of the results of the demonstration program.

SEC. 5. AUTHORIZATION.

(a) EARLY IMPLEMENTATION DISTRICT COURTS.—There is authorized to be appropriated not more than $15,000,000 for fiscal year 1991 to carry out the resource and planning needs necessary for the implementation of section 3(c).

(b) IMPLEMENTATION OF CHAPTER 23.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to implement chapter 23 of title 28, United States Code.

(c) DEMONSTRATION PROGRAM.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to carry out the provisions of section 4.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Wisconsin [Mr. KASTENMEIER] will be recognized for 20 minutes, and the gentleman from California [Mr. MOORHEAD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Wisconsin [Mr. KASTENMEIER].

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

Mr. Speaker, H.R. 3898, the Civil Justice Reform Act, is an initiative of Senator BIDEN's, that was introduced in the House by Mr. BROOKS, Mr. FISH, Mr. MOORHEAD and myself at Senator BIDEN's request. The House Judiciary Committee's Subcommittee on Courts, Intellectual Property, and the Administration of Justice, which I chair, held hearings on the bill on September 6, 1990. On September 14, it reported favorably an amendment in the nature of a substitute, and on September 18, the substitute amendment was reported favorably by the full committee.

The Civil Justice Reform Act is designed to reduce some of the cost and delay associated with civil litigation. It does so principally through the creation of advisory groups, which together with the district courts are to develop expense and delay reduction plans as a means to streamline civil case management. The bill also calls for periodic reporting by the judiciary of cases that have had motions or trials pending longer than a specified period of time. Finally, it provides for experimentation with various case management techniques, as well as collection and dissemination of information concerning developments in case management.

There is no disagreement as to the important role that case management plays in allocating scarce judicial resources. As the judiciary becomes flooded with a steadily increasing volume of criminal cases, precious little time remains to adjudicate civil cases. It is thus critical that what time is available be managed effectively. There is likewise no disagreement as to the importance of reducing unnecessary litigation costs. To the extent that excessive discovery costs, attorneys fees and related costs make litigation an option available only to the very wealthy, access to justice has, in a very real sense, been denied.

As originally introduced, this legislation met with considerable resistance from the judiciary. The bill was opposed by the Judicial Conference and

the Federal Judges Association, and I have received numerous letters from individual judges and members of this body writing on behalf of judges in their districts, expressing deep reservations with the legislation introduced in the House and with companion legislation reported out of the Senate Committee on the Judiciary. While the judiciary is prepared to accept the responsibility of formulating expense and delay reduction plans in coordination with local advisory groups, it has opposed a section of the bill requiring each plan to include six specific components. In the judges' view, such a requirement would constitute micromanagement, and they urged that the contents of the expense and delay reduction plans be made discretionary. These same concerns with the bill have been echoed by the American Bar Association.

I respect the effort that Senator BIDEN has made in developing this legislation, and am optimistic that the fruit of his labors will be enacted into law. At the same time, I am sympathetic to the concerns of the judiciary, and was reluctant to require that district courts implement specific case management guidelines which the judges believe are overly restrictive and sometimes unnecessary.

Accordingly, at subcommittee, I offered an amendment in the nature of a substitute to H.R. 3898, that preserved the essential features of Senator BIDEN's legislation, but was at the same time unobjectionable to the judicial conference. The amendment that I offered retained the six components of expense and delay reduction plans but made their inclusion discretionary with the district courts. The result is a bill which satisfies the concerns raised by the federal judiciary and the American Bar Association, and is deserving of your support.

In closing, I would like to thank the gentleman from California [Mr. MOORHEAD] for his unflagging cooperation in processing this bill. I urge your support for H.R. 3498.

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

Mr. Speaker, I rise in support of H.R. 3898 and would like to commend the gentleman from Wisconsin [Mr. KASTENMEIER] on bringing the text of a Civil Justice Reform Act before this House of Representatives. The time contraints and various pressures that he and the committee have operated under have been considerable and to bring this important issue to the House reflects highly on his deep concerns for civil justice.

Last January the gentleman from Wisconsin and I joined as cosponsors on H.R. 3898, the Civil Justice Reform Act introduced by our chairman, the gentleman from Texas [Mr. BROOKS] and the gentleman from New York [Mr. FISH] which was the counterpart to a bill introduced in the other body. Since that time an enormous amount of discussion has occurred in the legal community over nearly every aspect of that bill. Nobody challenges the goals of the bill; namely, to cut cost and delay in civil litigation. However, the bill has engendered strong feelings from bench and bar as to whether some of the provisions of the bill are needed and whether the bill has unduly intruded into the procedural workings that should uniquely be within the domain of the judiciary.

Through very productive negotiations between the other body and the judicial branch the bill has been improved. Despite these improvements, the Judicial Conference at our hearings on September 6, 1990 through testimony delivered by Judge Robert Peckham of the northern district of California, still felt that it could not endorse the legislation. What his testimony all boiled down to was that this was good legislation but to impose every aspect of it on the judicial branch simply could not work. The Department of Justice also expressed some constitutional concerns about the separation of powers. The committee's substitute will take away the mandatory nature of those provisions of the bill, which will also remove the opposition of our Federal judges and the Judicial Conference. This is important legislation and I urge its adoption.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. FISH].

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

Mr. FISH. Mr. Speaker, as an original cosponsor of H.R. 3898, I have followed its progress with considerable interest. Given the pressures that a litigious society continues to place on the administration of justice in the Federal courts, it is important that Congress recognizes the pressing need for procedural reform. We need an expedited discovery process, firm trial dates and the expanded use of alternative dispute resolution mechanisms.

But, the basic issue boils down to whether the provisions contained in H.R. 3898 should be made mandatory for each judiciary district. I know that many of our colleagues in the other body feel strongly that, to be effective, H.R. 3898 must be made mandatory. They may well be right. I think the subcommittee chairman and the ranking Republican have made the right decision in opting to keep the legislation alive, rather than forcing a confrontation with the Federal judiciary on this matter. This is important legislation and hopefully we can work out our differences with the other body in conference. I urge the adoption of H.R. 3898.

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

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

The SPEAKER pro tempore (Mr. MCNULTY). The question is on the motion offered by the gentleman from Wisconsin [Mr. KASTENMEIER] that the House suspend the rules and pass the bill, H.R. 3898, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 3898, the bill just passed.

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

There was no objection.

COPYRIGHT AMENDMENTS ACT OF 1990

Mr. KASTENMEIER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5498) to amend title 17, United States Code, relating to computer software, fair use, and architectural works, as amended.

The Clerk read as follows:

H.R. 5498

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 "Copyright Amendments Act of 1990".

TITLE I—COMPUTER SOFTWARE

SEC. 101. SHORT TITLE.

This title may be cited as the "Computer Software Rental Amendments Act of 1990".

SEC. 102. RENTAL OF COMPUTER PROGRAMS.

Section 109(b) of title 17, United States Code, is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(2) by striking paragraph (1) and inserting the following:

"(b)(1)(A) Notwithstanding the provisions of subsection (a), unless authorized by the owners of copyright in the sound recording or the owner of copyright in a computer program (including any tape, disk, or other medium embodying such program), and in the case of a sound recording in the musical works embodied therein, neither the owner of a particular phonorecord nor any person in possession of a particular copy of a computer program (including any tape, disk, or other medium embodying such program), may, for the purposes of direct or indirect commercial advantage, dispose of, or authorize the disposal of, the possession of that phonorecord or computer program (including any tape, disk, or other medium embodying such program) by rental, lease, or lending, or by any other act or practice in the nature of rental, lease, or lending. Nothing in the preceding sentence shall apply to the rental, lease, or lending of a phonorecord for nonprofit purposes by a nonprofit library or nonprofit educational institution. The

Marcia Shields of Silver Spring, MD, testifying on behalf of this bill, told an all-too-familiar tale to the subcommittee. Terrified that her abusive husband would carry out his threats to quit his job and disappear with their children—he had already announced plans to leave the area and left airplane tickets where she could find them—Shields agreed to his demands for joint custody. She soon realized her mistake.

After an incident involving the physical abuse of one of Shield's sons, Montgomery County Protective Services reprimanded her husband. When her husband was reported a second time for abusing her daughter, protective services refused to intervene because Shields and her husband were about to go to court for a custody trial in which Shields planned to ask for full custody. "Let the courts handle it," she was told.

To her shock and disbelief, the courts handled it by upholding the original joint custody agreement. Evidence of spousal abuse was deemed not pertinent to the issue of custody. "A person may be violent and vindictive towards a spouse and yet be the best, most loving parent in the world," the judge told her.

Last year, when her exhusband came to pick up the children for an unscheduled visit, Shields refused. He assaulted her in front of their children. Found guilty of battery and assault and sentenced to 2 years of probation, he still has joint custody of the children. The criminal court judge, however, ordered that a third party pick up and deliver the children for the duration of his probation.

Many woman are not as lucky as Marcia Shields. Carole Lutgen was one of the more than 4,000 women in the United States who are killed each year by their spouses or intimate partners. Closer to home, in 1989, more than 120 women were killed by their husbands or boyfriends in the District of Columbia, Maryland, and in Virginia.

And what about the children? How many of our children are learning from their first and best teachers, their parents, that violence is the expected, accepted, and most expedient way to solve life's problems?

Today, only a handful of States and the District of Columbia require judges to consider evidence of spousal abuse in determining child custody. By enacting House Concurrent Resolution 172, Congress will focus national attention on domestic violence and its terrible toll on our society. By approving this resolution, Congress has the opportunity to provide the leadership and direction needed for the remaining States to revise custody statutes that for too long have failed to recognize the tragic consequences of family violence.

Mr. Speaker, our families and children deserve no less.

Mr. MILLER of California. Mr. Speaker, I rise in support of House Concurrent Resolution 172, which expresses the sense of the Congress that, for purposes of determining child custody, evidence of spousal abuse should create a statuory presumption that it is detrimental to children to be placed in the custody of an abusive parent.

I want to thank my colleague from Maryland [Mrs. MORELLA] for her leadership on this issue and her hard work on the resolution. I would also like to thank the members of the Judiciary Committee for their efforts on its behalf.

This resolution is an outgrowth of the work of the Select Committee on Children, Youth, and Families on violence against women and children. Many witnesses who have come before the committee have testified about the fear and violence that have permeated their lives. This resolution is designed to focus national attention on one of the most traumatic problems that far too many families in America five with on a daily basis: Domestic violence. Ninety-five percent of the victims of domestic violence are women; more than 2 million are battered each year by their husbands or partners. Domestic violence affects all cultural and socioeconomic groups in our society.

We have been slow to respond to this problem in local communities throughout the country. Police and the courts often do not take incidents of domestic violence seriously, and even when abusing spouses are incarcerated, they frequently return on their families upon their release from jail.

Abused spouses, 95 percent of whom are women, often have difficulty in separating from their abuser because of the tremendous insecurity that such abuse fosters and a lack of financial resources to leave the family home. Moreover, many women fear that if they seek a divorce, they will lose custody of their children. Shelters for abused women and their children exist in many, but not all communities, and they often are forced to turn away those seeking shelter because of a lack of resources.

This resolution will encourage States to help the victims of domestic violence escape from it.

We know that in approximately one-half of the situations where spouse abuse exists, child abuse is present as well. Some of this abuse happens when children attempt to protect their parents from abuse. Even in those instances where the children are not physically harmed, their emotional well-being is jeopardized by witnessing such abuse against their parent.

Domestic violence is an ugly consequence of the violent nature of our society. Its impact on children is severe and longlasting. Children who experience violence in their homes, are more likely to turn to violent behavior when they are parents. Given its physical and emotional consequences, it is inexcusable that in only a handful of States, family courts take evidence of domestic violence into account when determining custody.

Opposition to this resolution comes primarily from organizations whose members believe that unfounded allegations of spouse abuse will hinder the ability of fathers to obtain custody of their children. Language added to the resolution by the subcommittee addresses this concern by making it clear that credible evidence of physical abuse must be present to trigger the statutory presumption.

This resolution sends a clear, basic message to spouse abusers: No longer will you t able to hold an untenable marriage togeth because of your threats to take custody of t children. This resolution provides an oppor nity for Congress to lead the way in say that spouse abusers will not be rewarded their behavior.

This resolution will not cost the Fede Government any money to implement. It v not cost the States any money to enact leg lation based on this resolution. The only co of this resolution is to batterers, who will longer be able to stand in court on equal foo ing with the spouse that they have abuse and seek custody of their children.

I ask you to vote with me in favor of Hou Congressional Resolution 172 and show yo commitment to America's children. Tell c children that you don't want them to have live in fear of violence in their own home Adoption of this resolution will encoura states to take action. It is the least we can d to protect America's children.

Mr. JAMES. Mr. Speaker, I have n further requests for time, and I yie back the balance of my time.

Mr. FRANK. Mr. Speaker, I have n further requests for time, and I yie back the balance of my time.

The SPEAKER pro tempore. Th question is on the motion offered t the gentleman from Massachuset [Mr. FRANK] that the House suspen the rules and agree to the concurrer resolution, House Concurrent Resol tion 172, as amended.

The question was taken; and (two thirds having voted in favor thereof the rules were suspended and the con current resolution, as amended, wa agreed to.

The title of the House concurren resolution was amended so as to rea

Concurrent resolution expressing th sense of the Congress that, for purposes determining child custody, credible evidenc of physical abuse of one's spouse shou create a statutory presumption that it detrimental to the child to be placed in th custody of the abusive spouse.

A motion to reconsider was laid o the table.

□ 1520

GENERAL LEAVE

Mr. FRANK. Mr. Speaker, I as unanimous consent that all Member may have 5 legislative days in which t revise and extend their remarks o House Concurrent Resolution 172, th concurrent resolution just agreed to.

The SPEAKER pro tempore (Mr McNULTY]. Is there objection to th request of the gentleman from Massa chusetts?

There was no objection.

FEDERAL JUDGESHIP ACT OF 1990

Mr. BROOKS. Mr. Speaker, I mov to suspend the rules and pass the bil (H.R. 5316) to provide for the appoint ment of additional Federal circuit and

district judges, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5316

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 "Federal Judgeship Act of 1990".

SEC. 2. CIRCUIT JUDGES FOR THE CIRUCIT COURT OF APPEALS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 2 additional circuit judges for the third circuit court of appeals;

(2) 2 additional circuit judges for the fourth circuit court of appeals;

(3) 1 additional circuit judge for the fifth circuit court of appeals;

(4) 1 additional circuit judge for the sixth circuit court of appeals;

(5) 1 additional circuit judge for the eighth circuit court of appeals; and

(6) 2 additional circuit judges for the tenth circuit court of appeals.

(b) TABLES.—In order that the table contained in section 44(a) of title 28, United States Code, will, with respect to each judicial circuit, reflect the changes in the total number of permanent circuit judgeships authorized as a result of subsection (a) of this section, such table is amended to read as follows:

"Circuit	Number of Judges
District of Columbia	12
First	6
Second	13
Third	14
Fourth	13
Fifth	17
Sixth	16
Seventh	11
Eighth	11
Ninth	28
Tenth	12
Eleventh	12
Federal	12.".

SEC. 3. DISTRICT JUDGES FOR THE DISTRICT COURTS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 2 additional district judges for the northern district of California;

(2) 5 additional district judges for the central district of California;

(3) 1 additional district judge for the district of Connecticut;

(4) 1 additional district judge for the middle district of Florida;

(5) 1 additional district judge for the southern district of Florida;

(6) 1 additional district judge for the northern district of Illinois;

(7) 1 additional district judge for the southern district of Iowa;

(8) 1 additional district judge for the southern district of Mississippi;

(9) 1 additional district judge for the eastern district of Missouri;

(10) 3 additional district judges for the district of New Jersey;

(11) 3 additional district judges for the eastern district of New York;

(12) 1 additional district judge for the southern district of New York;

(13) 1 additional district judge for the southern district of Ohio;

(14) 1 additional district judge for the district of Oregon;

(15) 3 additional district judges for the eastern district of Pennsylvania;

(16) 1 additional district judge for the eastern district of Tennessee;

(17) 2 additional district judges for the northern district of Texas;

(18) 1 additional district judge for the eastern district of Texas;

(19) 5 additional district judges for the southern district of Texas; and district of Texas; and

(20) 3 additional district judges for the western district of Texas; and

(21) 1 additional district judge for the eastern district of Washington.

(b) EXISTING JUDGESHIPS.—(1) The existing district judgeships for the western district of Arkansas, the northern district of Illinois, the district of Massachusetts, the western district of New York, the northern district of Ohio, and the western district of Washington authorized by section 202(b) of the Bankruptcy Amendments and Federal Judgeship Act of 1984 (Public Law 98-353; 98 Stat. 347-348) shall, as of the effective date of this Act, be authorized under section 133 of title 28, United States Code, and the incumbents in those offices shall hold the office under section 133 of title 28, United States Code, as amended by this Act.

(2)(A) The existing two district judgeships for the eastern and western districts of Arkansas (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this Act) shall be district judgeships for the eastern district of Arkansas only, and the incumbents of such judgeships shall hold the offices under section 133 of title 28, United States Code, as amended by this Act.

(B) The existing district judgeship for the northern and southern districts of Iowa (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this Act) shall be a district judgeship for the northern district of Iowa only, and the incumbent of such judgeship shall hold the office under section 133 of title 28, United States Code, as amended by this Act.

(C) The existing district judgeship for the northern, eastern, and western districts of Oklahoma (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this Act), the occupant of which has his or her official duty station at Oklahoma City on the date of enactment of this Act, shall be a district judgeship for the western district of Oklahoma only, and the incumbent of such judgeship shall hold the office under section 133 of title 28, United States Code, as amended by this Act.

(c) TEMPORARY JUDGESHIPS.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 1 additional district judge for the middle district of Florida;

(2) 1 additional district judge for the central district of Illinois;

(3) 1 additional district judge for the western district of Michigan;

(4) 1 additional district judge for the district of Nebraska;

(5) 1 additional district judge for the district of New Mexico;

(6) 1 additional district judge for the northern district of New York;

(7) 1 additional district judge for the northern district of Oklahoma;

(8) 1 additional district judge for the western district of Oklahoma

(9) 1 additional district judge for the eastern district of Pennsylvania;

(10) (9) 1 additional district judge for the middle district of Tennessee;

(11) 1 additional district judge for the eastern district of Virginia;

(12) 1 additional district judge for the southern district of West Virginia; and

(13) 1 additional district judge for the northern district of West Virginia.

The first vacancy in the office of district judge in each of the judicial districts named in this subsection, occurring 5 years or more after the effective date of this Act, shall not be filled.

(d) TABLES.—In order that the table contained in section 133 of title 28, United States Code, will, with respect to each judicial district, reflect the changes in the total number of permanent district judgeships authorized as a result of subsections (a) and (b) of this section, such table is amended to read as follows:

"Districts	Judges
"Alabama:	
"Northern	7
"Middle	3
"Southern	3
"Alaska	3
"Arizona	8
"Arkansas:	
"Eastern	5
"Western	2
"California:	
"Northern	14
"Eastern	6
"Central	27
"Southern	7
"Colorado	7
"Connecticut	7
"Delaware	4
"District of Columbia	15
"Florida:	
"Northern	3
"Middle	10
"Southern	16
"Georgia:	
"Northern	11
"Middle	3
"Southern	3
"Hawaii	3
"Idaho	2
"Illinois:	
"Northern	22
"Central	3
"Southern	3
"Indiana:	
"Northern	4
"Southern	5
"Iowa:	
"Northern	2
"Southern	3
"Kansas	5
"Kentucky:	
"Eastern	4
"Western	4
"Eastern and Western	1
"Louisiana:	
"Eastern	13
"Middle	2
"Western	6
"Maine	2
"Maryland	10
"Massachusetts	12
"Michigan:	
"Eastern	15
"Western	4
"Minnesota	7
"Mississippi:	
"Northern	3
"Southern	6
"Missouri:	
"Eastern	6
"Western	5
"Eastern and Western	2
"Montana	3
"Nebraska	3
"Nevada	4
"New Hampshire	2
"New Jersey	17
"New Mexico	4
"New York:	
"Northern	4
"Southern	28
"Eastern	15
"Western	4

"Districts	Judges
"North Carolina	
"Eastern	3
"Middle	3
"Western	3
"North Dakota	2
"Ohio:	
"Northern	11
"Southern	8
"Oklahoma:	
"Northern	2
"Eastern	1
"Western	5
"Northern, Eastern, and Western	1
"Oregon	6
"Pennsylvania:	
"Eastern	22
"Middle	5
"Western	10
"Puerto Rico	7
"Rhode Island	3
"South Carolina	8
"South Dakota	3
"Tennessee:	
"Eastern	5
"Middle	3
"Western	4
"Texas:	
"Northern	12
"Eastern	7
"Southern	18
"Western	10
"Utah	4
"Vermont	2
"Virginia:	
"Eastern	9
"Western	4
"Washington:	
"Eastern	4
"Western	7
"West Virginia:	
"Northern	2
"Southern	4
"Wisconsin:	
"Eastern	4
"Western	2
"Wyoming	2".

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including such sums as may be necessary to provide appropriate space and facilities for the judicial positions created by this Act.

SEC. 5. STUDY BY GENERAL ACCOUNTING OFFICE.

(a) IN GENERAL.—The Comptroller General of the United States shall review the policies, procedures, and methodologies used by the Judicial Conference of the United States in recommending to the Congress the creation of additional Federal judgeships. In conducting such review the Comptroller General shall, at a minimum, determine the extent to which such policies, procedures, and methodologies—

(1) provide an accurate measure of the workload of existing judges;

(2) are applied consistently to the various circuit courts of appeals and district courts; and

(3) provide an accurate indicator of the need for additional judgeships.

(b) REPORT TO CONGRESS.—The Comptroller General shall, not later than 18 months after the date of the enactment of this Act, report the results of the review conducted under subsection (a) to the Committees on the Judiciary of the House of Representatives and the Senate. The report shall include such recommendations as the Comptroller General considers appropriate for revisions of the policies, procedures, and methodologies used by the Judicial Conference that were reviewed in the report.

SEC. 6. EFFECTIVE DATE.

This Act shall take effect on the date of the enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. MOORHEAD. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Texas [Mr. BROOKS] will be recognized for 20 minutes, and the gentleman from California [Mr. MOORHEAD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Chairman, I yield to myself such time as I may need.

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

Mr. BROOKS. Mr. Speaker, H.R. 5316, the Federal Judgeship Act of 1990, is a bill to provide badly needed additional resources to the Federal judiciary. The bill creates 9 new judgeships for the circuit courts of appeals and 52 for the district courts. It also converts to permanent status six district court judgeships currently classified as temporary. In addition, the bill requires the General Accounting Office to review the process used by the Judicial Conference of the United States in developing its periodic recomendations to Congress for the creation of new judgeships. The principal purpose of this study provision is to help the Conference improve its methodologies to more accurately reflect the need for additional judicial resources.

In developing this legislation, the Judiciary Committee has carefully analyzed recent trends in Federal court caseloads. Contrary to what the casual observer might believe from reading the newspaper or watching the evening news, there has not been an across-the-board explosion in the number of cases. In fact, according to statistics compiled by the U.S. Judicial Conference, the total number of cases filed annually in Federal district courts actully declined between 1985 and 1989.

At the same time, however, some district courts—particularly those in border and coastal States with a large number of drug prosecutions—have experienced a tremendous increase in their caseloads. This increase in drug caseloads has also had the unfortunate effect of backing up the civil docket in these districts as well.

H.R. 5316 will provide much needed assistance for courts overrun by criminal cases as they perform their vital role in the war on drugs. While the bill includes a smaller number of new judgeships than recommended by the Judicial Conference, it targets these new positions to the circuits and districts most in need of help.

I must also point out—as I have on numerous occasions over the past several months—that creating new judgeships is just one part of the solution to court overcrowding. The other necessary component is decisive action by the President to fill vacancies among existing judgeships. As of September 1, there were 42 vacant district and appellate judgeships—including one that has been vacant for over 3½ years. For 30 of these positions, the President has not even submitted a nomination. It is clear that neither this bill nor any other judgeship proposal will do much to ease the courts' caseload burden unless the President acts promptly to fill both the new positions and these current vacancies.

The committee has produced a solid piece of legislation that addresses the critical problem of court ovecrowding in a fair and equitable manner, and I urge my colleagues to support this bill.

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

Mr. Speaker, I rise in support of the Federal Judgeship Act of 1990—H.R. 5316—legislation which would authorize additional Federal district court and Federal circuit court judgeships.

While this bill does not go as far as the Bush administration and Judicial Conference hoped it would, it is nevertheless a significant step toward dealing with the serious caseload problem faced in our Federal courts. The bill before the House of Representatives today would establish a total of 61 Federal judgeships—9 U.S. courts of appeals judges and 52 new district court judgeships—39 permanent and 13 temporary. H.R. 5316 also converts six temporary judgeships, created in 1984, to permanent status. Again, while the Judicial Conference recommendations were higher, these new additional judgeships will go a long way toward providing the additional resources so badly needed in the judiciary.

Mr. Speaker, it has been over 6 years since additional judgeships were last authorized for the Federal courts. During that time we have seen tremendous changes in both the volume and the complexity of the workload of the Federal courts. Numerous pieces of legislation in recent years have had a major impact on the workload of our courts. The implementation of the sentencing guidelines, new initiatives to fight the war on drugs, and the advent of mandatory minimum sentences, have all resulted in substantial additional work for the courts, and all have the potential to increase the burdens even more in the coming years.

Since the last judgeships were authorized in 1984, the number of criminal cases filed in the district courts has grown by nearly 30 percent. Drug cases alone have increased by nearly 130 percent and now represent approximately 30 percent of all criminal cases. In the courts of appeals, the situation is similar to that of the district courts. New filings have grown by

nearly 30 percent since 1984 and by 13 percent in just the last 2 years.

On June 6, 1990, the Judicial Conference approved recommendations for 96 additional judgeships, 20 for the courts of appeals and 76 for the district courts. The Judicial Conference recommendations are predicated on past filings, but also implicity anticipate prosecutorial priorities such as the war on drugs, financial institutions fraud and defense procurement fraud. The legislation before the House today reflects that the Federal courts most in need of additional resources are in the South, the Southwest, and in my own State of California. I am pleased to note that during the markup of H.R. 5316 in the Subcommittee on Economic and Commercial Law, I sponsored an amendment to add an additional district court judgeship for the central district of California. The legislation introduced by Chairman BROOKS had called for four additional judges in the central district, but as a result of my amendment, there will now be five. This Moorhead amendment was agreed to in subcommittee.

The Attorney General has stated many times that the justice system is a pipeline—investigators need prosecutors to bring cases and prosecutors need judges to try the cases. The new judgeships provided for in H.R. 5316 are badly needed and overdue resources. Congress must recognize that the war on drugs and the S&L prosecutions necessitate these on-going commitments. I urge the adoption of this legislation.

Mr. BROOKS. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from California [Mr. EDWARDS], a subcommittee chairman.

Mr. EDWARDS of California. Mr. Speaker, the people of northern California are grateful to the chairman of our committee, the gentleman from Texas [Mr. BROOKS] for taking into consideration the very real problem we have in the northern district of California where we have an enormous backlog and where the trials are particularly difficult, with 20 of the cases recently taking more than 10 days and 11 of which, extended civil cases, took over 20 days.

□ 1530

We needed two judges. Originally it was intended that we would only get one, but through the kindness of the gentleman from Texas [Mr. BROOKS], our chairman, and with the cooperation of the ranking Republican, my friend and colleague, the gentleman from California [Mr. MOORHEAD], we were able to add the extra judge to the bill for which we are enormously grateful.

I urge that this bill be enacted. It is really very important so that these cases can be handled.

Sometimes we are waiting years to try civil cases in the Federal courts. That is justice being denied. This is a very important bill.

Mr. MOORHEAD. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. FISH], the ranking member of the subcommittee and of the full committee.

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

Mr. FISH. Mr. Speaker, I am pleased that we are considering legislation authorizing additional Federal judgeships. An evaluation of current information relating to the capacities of Federal courts to handle their caseloads leads to the inescapable conclusion that relief is urgently needed for U.S. district courts and U.S. courts of appeals.

During our markup in the Subcommittee on Economic and Commercial Law, I offered an amendment providing a third new district court judgeship for the eastern district of New York and converting a new temporary judgeship for the southern district of New York into a permanent position. I was pleased that the subcommittee, in recognition of caseload demands in these districts, approved my amendment.

Congress last acted 6 years ago to increase article III judicial positions for the district courts and the courts of appeals. We now must respond to the realities of caseloads today—including an upsurge in time-consuming drug-related criminal cases, referred to by Chairman BROOKS, by providing the judiciary with the necessary positions to handle adjudications expeditiously.

Long delays in judicial dispositions leave disputes unresolved and undermine the administration of justice. Improvements in case management techniques, in some situations, may provide the key to increases in judicial productivity—but new judgeships become essential when other mechanisms for addressing caseload pressures prove inadequate.

The Judicial Conference assessment of judgeship needs—based on detailed study of caseload factors—is helpful. The legislation before us incorporates many of the Judicial Conference's recommendations.

I urge my colleagues to join me in voting for passage of H.R. 5316.

Mr. BROOKS. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Nevada [Mr. BILBRAY].

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

Mr. BILBRAY. Mr. Speaker, I would like to take this opportunity to commend the distinguished chairman of the Committee on the Judiciary, Mr. BROOKS, for his efforts on H.R. 5316, the Federal Judgeship Act of 1990. This bill would create 9 new judgeships for the courts of appeal and 50 new district court judgeships. These new judgeships are critical if this Nation is going to win the war against drugs and have, at the same time, enough judges to manage the civil caseloads which our courts face.

Although I support the bill, I must point out that I believe it lacks one extremely important judgeship and that is a temporary judgeship for the district of Nevada. The statistics support my contention. In 1989, the workload in the district of Nevada rose to 492 total filings, 462 weighted filings, and 551 pending cases per judgeship. The 551 pending cases is well above the national average of 468 and the 492 total filings exceeds the national average of 459 by 33 filings. The district court itself requested one additional permanent judgeship based on the level of weighted filings, the number of triable pending defendants, and the burdens associated with serving several places of holding court. In particular, 19 percent of the Las Vegas caseload must be assigned to the judge stationed in Reno. This requires him to make the 480-mile, one way trip between the two cities frequently.

One additional judgeship would reduce 1989 workload levels to 393 filings, 370 weighted filings, and 441 pending cases per judgeship. When the weighted caseload is considered in conjunction with the high criminal caseload, the large pending caseload, and the regular travel requirements that now exist, the court is clearly in need of one position. Based on the above statistical and geographic data in its Biennial Judgeship Survey, the Judicial Conference of the United States has made a recommendation for one additional temporary judgeship and I urge the chairman to accept that recommendation.

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

Mr. Speaker, in closing, I want to especially thank the chairman of the committee, the gentleman from Texas [Mr. BROOKS]. He really worked hard on this bill. He was very generous with handing out the judgeships as he determined where they were needed. I think he worked very carefully on the legislation, and I think he has done a remarkably good job on it. I want to commend him for his work and his efforts.

I want to thank the gentleman from New York, the ranking Republican on the subcommittee and on the full committee, for his efforts in helping us get this bill out.

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

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

Mr. Speaker, I want to thank my beloved friends, the gentleman from California [Mr. MOORHEAD] and the gentleman from New York [Mr. FISH], and say that whatever we do is based on the outstanding work of an illustrious and dedicated staff.

Mr. MORRISON of Connecticut. Mr. Speaker, I rise today to support H.R. 5316, the Fed-

eral Judgeship Act of 1990, which will create a new judgeship for the Federal District of Connecticut. I also want to offer my thanks to my friend and colleague, Representative JACK BROOKS, the chairman of the Judiciary Committee, for his customary outstanding work on this bill.

The citizens of Connecticut know what we need to do to take on drug crime. we need to lock up drug dealers. We need to go after drug buyers. We need to seize property used in drug transactions. We need to make sure that anyone convicted of a drug-related murder is thrown in prison and will never threaten the general public again. To realize any of these goals, we need to use the courts. We need to use them a lot.

During this year alone, the number of criminal and civil suits filed in Federal court in Connecticut has increased by 7 percent. At the same time, the number of cases handled by the District's senior judges has declined appreciably. Thus, although the average number of trials completed by Connecticut's six Federal judges ranks the district in the top quarter of all Federal courts, we also have one of the largest backlogs. The six judges now on the court cannot keep up with the trial load. Connecticut simply needs more judges.

This growing backlog threatens our ability to deal swiftly with criminal cases that come before the courts. Research demonstrates that speedy resolution of criminal cases is a substantial factor in deterring crime. Moreover, the right to speedy trial is guaranteed by the sixth amendment of the U.S. Constitution.

The Judicial Conference of the United States has recommended two new judges for Connecticut, and the Senate counterpart to this bill follows that recommendation. Frankly, I hope that the Senate position prevails on this point. However, regardless of the outcome of this question, I am proud to support H.R. 5316. I hope that my colleagues will do the same.

Mr. SMITH of Texas. Mr. Speaker, without enough Federal judges, our legal system is limited in its ability to stop crime. It is one thing to catch a wanted criminal, but unless this criminal is convicted in court and sentenced, future crime will continue unabated—the criminal will be right back on public streets free to repeat the offense.

Supporting H.R. 5316, the Federal Judgeship Act of 1990, will stop crime by strengthening a weak link in the criminal justice system.

Crime is a national problem. By adding 38 new Federal judgeships across the Nation, approximately 3,000 more drug related criminal cases can be tried per year.

Since 1984, the number of criminal case filings has grown by 30 percent, while drug cases have increased by 130 percent, and now represent almost 30 percent of all criminal cases. Despite this growing workload of the courts, Congress has not created any new Federal judgeships since 1984.

The lack of Federal judgeships has reached crisis levels in many parts of the country. For example, the Federal judges in the western district of Texas, bear the burden of a criminal caseload 300 percent above the national average.

The backlog in Texas Federal courts is so severe that at least five U.S. district judges can no longer attend any civil cases currently pending on their dockets.

The Federal Judgeship Act of 1990, would help solve this problem by adding 11 additional judgeships for the State of Texas. These judges will provide welcome relief for the currently overloaded judges, while improving our criminal justice system as a whole.

I urge my colleagues to support this bill. Let's get tough on crime.

Mrs. JOHNSON of Connecticut. Mr. Speaker, I rise in strong support of H.R. 5316, the Federal Judgeship Act and commend the chairman and members of the House Committee on the Judiciary for bringing this measure to the floor today. As an early supporter of this bill, I am very pleased to know that it will be approved by the House of Representatives today.

My particular interest in this bill is rooted in the severe understaffing in the Judicial Conference of the United States, Connecticut's Federal courts are straining under the weight of increased caseloads and have relied on the valuable services of senior judges to carry the load. Thousands of cases await review in our courts and this bill will help provide the manpower to meet the growing demand exacerbated by the recent loss of one of our senior judges.

Though this bill provides for one additional judgeship in the district of Connecticut, I am pleased to note that a similar Senate bill includes two judgeships for my State. Since this more accurately reflects the needs of the Connecticut judiciary. I hope the House managers of the bill will acknowledge this fact and agree to accept the Senate language regarding Connecticut's needs.

On behalf of the hard-working men and women of the Connecticut district, I would like to thank my colleagues, especially Chairman BROOKS and ranking member FISH, for their diligence in bringing this important legislation to the floor.

Mr. LIVINGSTON. Mr. Speaker, today in an attempt to finish our business we have a suspension calendar consisting of 21 bills. Most of us have a good working knowledge about only a few of these bills. The rest have been rushed to the floor so quickly that we are essentially voting on legislation that we know little about. We are trusting the leadership to include only noncontroversial measures.

Mr. Speaker, the inclusion of H.R. 5316, the Federal Judgeship Act of 1990, on this fast-track list of supposedly noncontroversial measures is perplexing to me. This bill authorizes 59 new Federal judgeships. Its Senate counterpart authorizes 77 new judgeships. It has been 6 years since this body last created new Federal judgeships and we have done so only twice in the last 12 years.

Yet we are here ready to pass this legislation without serious debate. There is no doubt that our great country needs new judgeships. And there is no doubt that we should move quickly to provide means by which our justice system can put criminals behind bars. My complaint, rather, is with the distribution of these judgeships. My State, Louisiana, inexplicably gains no judgeship. This is so despite the recommendation of the Judicial Conference that Louisiana receive a judgeship and despite the fact that the Senate bill contains a judgeship for Louisiana.

I do not plan to oppose this legislation because I think it imperative to provide these judgeships as soon as possible. I am disgruntled, though, that such an important piece of legislation would be rushed to the floor and placed on the suspension calendar with little opportunity for meaningful debate. Lastly, I want to ask Chairman BROOKS to instruct the conferees to include in the conference report a Federal district court judgeship for the western district of Louisiana.

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

The SPEAKER pro tempore (Mr. MCNULTY). The question is on the motion offered by the gentleman from Texas [Mr. BROOKS] that the House suspend the rules and pass the bill, H.R. 5316, as amended.

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

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

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5316, the bill just under consideration, and on S. 84, the Senate bill considered previously today.

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

There was no objection.

CAPITOL POLICE RETIREMENT ACT

Ms. OAKAR. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5641) to amend title 5, United States Code, with respect to retirement of members of the Capitol Police.

The Clerk read as follows:

H.R. 5641

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "Capitol Police Retirement Act".

(b) REFERENCES.—Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of title 5, United States Code.

SEC. 2. AMENDMENTS TO CHAPTER 83.

(a) IMMEDIATE RETIREMENT.—Section 8336 is amended by redesignating subsection (m) as subsection (n) and inserting after subsection (l) the following new subsection:

"(m) A member of the Capitol Police who is separated from the service after becoming 50 years of age and completing 20 years of service as a member of the Capitol Police or as a law enforcement officer, or any combi-

from the Clerk of the House of Representatives:

WASHINGTON, DC, *September* 26, 1990.
Hon. THOMAS S. FOLEY,
The Speaker, U.S. House of Representatives, Washington, DC.

DEAR MR. SPEAKER: I have the honor to transmit herewith a copy of the unofficial results received from the Honorable Benjamin J. Cayetano, Lieutenant Governor, State of Hawaii, certifying that, according to the unofficial returns of the Special Election held on September 22, 1990, the Honorable PATSY T. MINK was elected to the Office of Representative in Congress, from the Second Congressional District, State of Hawaii.

With great respect, I am
Sincerely yours,
DONNALD K. ANDERSON,
Clerk, House of Representatives.

OFFICE OF THE LIEUTENANT GOVERNOR, STATE CAPITOL,
Honolulu, HI, September 24, 1990.
Mr. DONNALD K. ANDERSON,
Clerk, U.S. of Representatives, Office of the Clerk, H105, The Capitol, Washington, DC.

DEAR MR. ANDERSON: This is to certify that on September 22, 1990 a Special Election was held in the State of Hawaii for the Second Congressional District of the U.S. House of Representatives. The unofficial results of the Special Election Election are as follows:

Mink, Patsy Takemoto (D)	51,841
Hanneman, Mufi Francis (D)	50,164
Menor, Ron (D)	23,629
Poepoe, Andy (R)	8,872
Monsef, Stanley (R)	2,264
Black, A. Duane (D)	1,242
Mallan, Lloyd Jeffrey (L)	791
Blank votes	9,928
Over votes	1,195

The contest period for a special election in the State of Hawaii is 20 days. A certificate of election will be issued to Patsy Takemoto Mink after the contest period expires on October 12, 1990.

Aloha,
BENJAMIN J. CAYETANO,
Lieutenant Governor.

□ 1700

SWEARING IN OF HON. PATSY T. MINK AS A MEMBER OF THE HOUSE

Mr. MOAKLEY. Mr. Speaker, I ask unanimous consent that the gentlewoman from Hawaii, Mrs. PATSY T. MINK, be permitted to take the oath of office today. Her certificate of election has not arrived, but there is no contest, and no question has been raised with regard to her election.

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

There was no objection.

The SPEAKER. Will the gentlewoman from Hawaii [Mrs. MINK] the Member-elect, come forward.

Mrs. MINK appeared at the bar of the House and took the oath of office.

The SPEAKER. Congratulations. You are again a Member of the House of Representatives.

HON. MRS. PATSY T. MINK

(Mrs. MINK asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. MINK. Mr. Speaker, I cannot begin to tell you how thrilled and honored I am today to take the oath of office once again and to be able to join this very distinguished body as it meets the numerous problems that confront our Nation and the world.

It is almost an unbelievable experience today that my constituents made it possible for me to return. I have had a wonderful few minutes here greeting Members that I knew when I served here for six terms previously and I look forward to some very interesting last few days of this session.

Some people have been saying I should have postponed this ceremony until at least Monday, but I could not resist the temptation to come back here and engage you all in what is perhaps the most historic debate that is to ensue in the next few days. I am truly honored to be back here amongst you and to be able to call you all my colleagues once again.

Thank you very, very much for this honor.

FEDERAL JUDGESHIP ACT OF 1990

The SPEAKER. The pending business is the question of suspending the rules and passing the bill, H.R. 5316, as amended.

The Clerk read the title of the bill.

The SPEAKER. The question is on the motion offered by the gentleman from Texas [Mr. BROOKS] that the House suspend the rules and pass the bill, H.R. 5316, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 387, nays 18, answered "present" 1, not voting 27, as follows:

[Roll No. 391]

YEAS—387

Ackerman
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Aspin
Atkins
AuCoin
Baker
Barnard
Bartlett
Barton
Bateman
Bates
Bennett
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Billey
Boehlert
Boggs
Bonior
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Broomfield
Browder
Brown (CA)
Brown (CO)
Bruce
Bryant
Buechner
Bunning
Burton
Bustamante
Byron
Callahan
Campbell (CA)
Campbell (CO)
Cardin
Carper
Carr
Chandler
Chapman
Clarke
Clement
Clinger
Coleman (MO)
Coleman (TX)
Collins
Combest
Condit
Conte
Cooper
Costello
Coughlin
Courter
Cox
Coyne
Craig
Crane
Dannemeyer
Darden
Davis
de la Garza
DeFazio
DeLay
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dornan (CA)
Douglas
Downey
Dreier
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
Engel
English
Erdreich
Espy
Evans
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Flippo
Foglietta
Ford (MI)
Frank
Frenzel
Frost
Gallegly
Gallo
Gaydos
Gejdenson
Gephardt
Geren
Gibbons
Gillmor
Gilman
Gonzalez
Goodling
Gordon
Goss
Gradison
Grandy
Grant
Gray
Green
Guarini
Gunderson
Hall (TX)
Hamilton
Hansen
Harris
Hastert
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hertel
Hiler
Hoagland
Holloway
Hopkins
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
James
Jenkins
Johnson (CT)
Johnson (SD)
Johnston
Jones (GA)
Jones (NC)
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
Laughlin
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Levine (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Lloyd
Long
Lowery (CA)
Lowey (NY)
Lukens, Donald
Madigan
Manton
Markey
Marlenee
Martin (IL)
Martin (NY)
Matsui
Mavroules
Mazzoli
McCloskey
McCollum
McCurdy
McDade
McDermott
McEwen
McHugh
McMillan (NC)
McMillen (MD)
McNulty
Meyers
Mfume
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Mink
Moakley
Molinari
Mollohan
Montgomery
Moody
Moorhead
Morella
Morrison (WA)
Mrazek
Murtha
Myers
Nagle
Natcher
Neal (MA)
Neal (NC)
Nielson
Nowak
Oakar
Oberstar
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Packard
Pallone
Panetta
Parris
Pashayan
Patterson
Paxon
Payne (NJ)
Payne (VA)
Pease
Pelosi
Perkins
Pickett
Pickle
Porter
Poshard
Price
Pursell
Quillen
Rahall
Rangel
Ravenel
Ray
Regula
Rhodes
Richardson
Ridge
Rinaldo
Ritter
Roberts
Roe
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Sangmeister
Sarpalius
Savage
Sawyer
Saxton
Scheuer
Schiff
Schneider
Schroeder
Schulze
Schumer
Serrano
Sharp
Shaw
Shays
Shumway
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (VT)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Solarz
Solomon
Spence
Spratt
Staggers
Stallings
Stangeland
Stark
Stearns
Stenholm
Stokes
Studds
Stump
Swift
Synar
Tallon
Tanner
Tauke
Tauzin
Taylor
Thomas (CA)
Thomas (GA)
Thomas (WY)
Torres
Torricelli
Traficant
Traxler
Unsoeld
Upton
Valentine
Vander Jagt
Vento
Volkmer
Vucanovich
Walgren
Walker
Walsh
Washington
Watkins
Waxman
Weber
Weiss
Weldon
Wheat
Whittaker
Whitten
Williams

Wilson	Wyden	Young (AK)
Wise	Wylie	Young (FL)
Wolf	Yates	
Wolpe	Yatron	

NAYS—18

Armey	Glickman	Obey
Ballenger	Hancock	Penny
Coble	Jacobs	Petri
Dorgan (ND)	Jontz	Sensenbrenner
Duncan	Livingston	Sundquist
Gekas	Murphy	Visclosky

ANSWERED "PRESENT"—1

Udall

NOT VOTING—27

Alexander	Hochbrueckner	Nelson
Bellenson	Lewis (CA)	Parker
Clay	Luken, Thomas	Robinson
Conyers	Machtley	Rostenkowski
Crockett	Martinez	Rowland (CT)
Ford (TN)	McCandless	Schaefer
Gingrich	McCrery	Schuette
Hall (OH)	McGrath	Smith (FL)
Hammerschmidt	Morrison (CT)	Towns

□ 1722

Mr. JONTZ changed his vote from "yea" to "nay".

So (two-thirds having voted in favor thereof) the rules were suspended and the bill as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

REQUEST FOR APPOINTMENT OF CONFEREES ON S. 1430, NATIONAL AND COMMUNITY SERVICE ACT OF 1990

Mr. HAWKINS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1430) to enhance national and community service, and for other purposes, with House amendments thereto, insist on the House amendments and request a conference with the Senate thereon.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from California?

Mr. WALKER. Mr. Speaker, reserving the right to object, on our side we do not know anything about this bill coming up. We do not have any clearance from our people on the Committee on Education and Labor. We do not have any Committee on Education and Labor people from the leadership here on the floor. We are a little confused about what we are doing and would appreciate an explanation.

The SPEAKER. It is for the purpose of going to conference.

Mr. WALKER. It is a motion to go to conference?

The SPEAKER. Yes.

Mr. WALKER. Further reserving the right to object, Mr. Speaker, may I ask the gentleman from California [Mr. HAWKINS] whether or not this has been cleared by the minority?

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

Mr. WALKER. I yield to the gentleman from California.

Mr. HAWKINS. Mr. Speaker, the bill under consideration is the National and Community Service Act of 1990. I have discussed it with the ranking minority member, the gentleman from Pennsylvania [Mr. GOODLING], who agrees with going to conference.

Mr. WALKER. Mr. Speaker, until we have a chance to consult with the ranking member on our side, we would appreciate the gentleman from California [Mr. HAWKINS] withdrawing the motion at the moment so we do not have to object.

Mr. HAWKINS. Mr. Speaker, the gentleman desires to leave. I have an urgent appointment. I have cleared it with everyone. Nobody has objected.

The SPEAKER. The Chair would suggest that the gentleman from California [Mr. HAWKINS] proceed with the matter of the conferees on H.R. 4653. The Chair hopes that the minority would be able to clear the consideration of the request of the gentleman from California in a few minutes, if that is possible. The Chair has received recommendations from the minority on the appointment of conferees.

Is there objection?

Mr. PORTER. Mr. Speaker, I object.

The SPEAKER. Objection is heard.

EXPORT FACILITATION ACT OF 1990

Mr. FASCELL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4653) to reauthorize the Export Administration Act of 1979, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Florida? The Chair hears none, and appoints the following conferees and without objection reserves the right to appoint additional conferees:

From the Committee on Foreign Affairs, for consideration of the House bill, and the Senate amendment, and modifications committed to conference: Messrs. FASCELL, GEJDENSON, LEVINE, FEIGHAN, JOHNSTON of Florida, ENGEL, BERMAN, BROOMFIELD, GILMAN, ROTH, and BEREUTER.

From the Committee on Ways and Means, for consideration of section 120 of the Senate amendment, and modifications committed to conference: Messrs. ROSTENKOWSKI, GIBBONS, JENKINS, DOWNEY, PEASE, RUSSO, GUARINI, ARCHER, VANDER JAGT, CRANE, and FRENZEL.

From the Committee on Banking, Finance and Urban Affairs, for consideration of sections 205 through 209 and 302 of the Senate amendment, and modifications committed to conference: Messrs. FAUNTROY, NEAL of North Carolina, LAFALCE, and KLECZKA, Ms. Pelosi, and Messrs. FLAKE, MCDERMOTT, LEACH, BEREUTER, SHUMWAY and MCCANDLESS.

There was no objection.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 5649, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION MULTIYEAR AUTHORIZATION ACT OF 1990

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 100-765) on the resolution (H. Res. 480) providing for the consideration of the bill (H.R. 5649) National Aeronautics and Space Administration Multiyear Authorization Act of 1990, which was referred to the House Calendar and ordered to be printed.

APPOINTMENT OF CONFEREES ON H.R. 3045, COPYRIGHT REMEDY CLARIFICATION ACT

Mr. BROOKS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3045) to amend chapters 5 and 9 of title 17, United States Code, to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of copyright and infringement of exclusive rights in mask works, and that all the remedies can be obtained in such suit that can be obtained in a suit against a private person or against other public entities, with a Senate amendment thereto, disagree to the Senate amendment and request a conference with the Senate thereon.

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

Mr. WALKER. Mr. Speaker, reserving the right to object, I would simply ask the gentleman from Texas if this has been cleared by the minority.

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

Mr. WALKER. I yield to the gentleman from Texas.

Mr. BROOKS. Mr. Speaker, it is my understanding that the chief counsel for the Republican Party on the Committee on the Judiciary and the minority staff have said that it was.

Mr. WALKER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Texas? The Chair hears none, and appoints the following conferees: Messrs. KASTENMEIER, CROCKETT, BERMAN, MOORHEAD, and COBLE.

□ 1730

LEGISLATIVE PROGRAM

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

Mr. MICHEL. Mr. Speaker, I asked for this time for the purpose of inquiring of the distinguished majority leader the program for the balance of this day and the weekend.

judgments entered in favor of the United States.".

SEC. 217. Section 1963 of title 28, United States Code, is amended by adding the following after the first sentence thereof: "Such a judgment entered in favor of the United States may be registered as specified any time after judgment is entered.".

SEC. 218. (a) Chapter 129 of title 28, United States Code, is amended by adding at the end thereof the following section:

"§ 2044. Payment of fine with bond money

"Upon motion of the United States attorney, the court shall order any money belonging to and deposited by the defendant with the court for the purposes of a criminal appearance bail bond (trial or appeal) to be held and paid over to the United States attorney to be applied to the payment of any assessment, fine, restitution or penalty imposed upon the defendants. The court shall not release any money deposited for bond purposes after a plea or a verdict of the defendant's guilt has been entered and before sentencing, except upon a showing that an assessment, fine, restitution or penalty cannot be imposed for the offense the defendant committed or that the defendant would suffer an undue hardship. This does not apply to any third party sureties.".

(b) The table of sections for chapter 129 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"2044. Payment of fine with bond money.".

SEC. 219. Section 2410(c) of title 28, United States Code, is amended by adding at the end thereof the following: "In any case where the United States is a bidder at the judicial sale, it may credit the amount determined to be due it against the amount it bids at such sales.".

SEC. 220. Section 2413 of title 28, United States Code, and the item relating to section 2413 in the table of sections for chapter 161, are repealed.

MOTION OFFERED BY MR. BROOKS

Mr. BROOKS. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BROOKS moves to strike out all after the enacting clause of the Senate bill, S. 84, and to insert in lieu thereof the provisions of the bill, H.R. 5640, as passed by the House.

The motion was agreed to.

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

A motion to reconsider was laid on the table.

A similar House bill (H.R. 5640) was laid on the table.

FEDERAL COURTS STUDY COMMITTEE IMPLEMENTATION ACT OF 1990

Mr. KASTENMEIER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5381) to implement certain proposals of the Federal Courts Study Committee, and for other purposes; as amended.

The Clerk read as follows:

H.R. 5381

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled,

TITLE I—FEDERAL COURTS STUDY COMMITTEE IMPLEMENTATION

SECTION 101. SHORT TITLE.

This title may be cited as the "Federal Courts Study Committee Implementation Act of 1990".

SEC. 102. STUDIES OF INTERCIRCUIT CONFLICTS AND APPELLATE STRUCTURE.

(a) INTERCIRCUIT CONFLICTS.—The Board of the Federal Judicial Center is requested to conduct and submit to the Congress, within 12 months after the date of the enactment of this Act, a study on—

(1) the number and frequency of conflicts among the judicial circuits in interpreting the law that remain unresolved because they are not heard by the Supreme Court; and

(2) how many of such conflicts are "intolerable" based on factors such as whether the conflict—

(A) imposes economic costs or other harm on persons engaging in interstate commerce;

(B) encourages forum shopping among circuits;

(C) creates unfairness to litigants in different circuits, as in allowing Federal benefits in one circuit that are denied in other circuits; or

(D) encourages nonacquiescence by Federal agencies in the holdings of the courts of appeals for different circuits,

but are unlikely to be resolved by the Supreme Court.

(b) STRUCTURAL ALTERNATIVES FOR THE COURTS OF APPEALS.—The Board of the Federal Judicial Center is requested to study the full range of structural alternatives for the Federal Courts of Appeals and to submit to the Congress and the Judicial Conference of the United States, not later than 2 years after the date of the enactment of this Act, a report on such study.

SEC. 103. APPOINTMENT OF DIRECTOR AND DEPUTY DIRECTOR OF THE ADMINISTRATIVE OFFICE.

Section 601 of title 28, United States Code, is amended in the second sentence by striking "Supreme Court" and inserting "Chief Justice of the United States, in consultation with the Judicial Conference".

SEC. 104. POWER OF SUPREME COURT TO DEFINE FINAL DECISION FOR PURPOSES OF SECTION 1291.

Section 2072 of title 28, United States Code, is amended by adding at the end the following:

"(c) Such rules shall define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.".

SEC. 105. STUDY OF CRIMINAL JUSTICE ACT PROGRAM.

(a) STUDY REQUIRED.—The Judicial Conference of the United States shall establish a special committee to conduct a study of the Federal defender program established under section 3006A of title 18, United States Code, including its implementation and administration.

(b) ASSESSMENT OF PROGRAM.—In conducting the study under subsection (a), the special committee shall assess the effectiveness of the Federal defender program under section 3006A of title 18, United States Code, including the following:

(1) The impact of judicial involvement in the selection and compensation of the Federal public defenders and the independence of Federal defender organizations, including the establishment and termination of Federal defender organizations and the Federal public defender and the community defender options.

(2) Equal employment and affirmative action procedures in the various Federal defender programs.

(3) Judicial involvement in the appointment and compensation of panel attorneys and experts.

(4) Adequacy of compensation for legal services provided under section 3006A of title 18, United States Code.

(5) The quality of representation under such section.

(6) The adequacy of administrative support for defender services programs.

(7) Maximum amounts of compensation for attorneys with regard to appeals of habeas corpus proceedings.

(8) Contempt, sanctions, and malpractice representation of panel attorneys.

(9) Appointment of counsel in multidefendant cases.

(10) Early appointment of counsel in general, and before the pretrial services interview in particular.

(11) The method and source of payment of the fees and expenses of fact witnesses for defendants with limited funds.

(12) The provisions of services or funds to financially eligible persons who have been arrested but not convicted, for noncustodial transportation and subsistence expenses, including food and lodging, both before and during judicial proceedings.

(c) REPORT.—Not later than September 30, 1992, the special committee shall transmit to the Judicial Conference and to the Committees on the Judiciary of the Senate and the House of Representatives a report on the results of the study required under subsection (a). The report shall include—

(1) any recommendations for legislation that the special committee finds appropriate;

(2) a proposed formula for compensation of counsel appointed pursuant to section 3006A of title 18, United States Code, that includes an amount to cover reasonable overhead and a reasonable hourly fee; and

(3) a discussion of any procedural or operational changes that the special committee finds appropriate for implementation by the courts of the United States.

SEC. 106. EFFECT OF APPOINTMENT OF JUDGE AS DIRECTOR OF CERTAIN JUDICIAL BRANCH AGENCIES.

Section 133 of title 28, United States Code, is amended—

(1) by inserting "(a)" before "The President"; and

(2) by adding at the end the following:

"(b)(1) In any case in which a judge of the United States (other than a senior judge) assumes the duties of a full-time office of Federal judicial administration, the President shall appoint, by and with the advice and consent of the Senate, an additional judge for the court on which such judge serves. If the judge who assumes the duties of such full-time office leaves that office and resumes the duties as an active judge of the court, then the President shall not appoint a judge to fill the first vacancy which occurs thereafter in that court.

"(2) For purposes of paragraph (1), the term 'office of Federal judicial administration' means a position as Director of the Federal Judicial Center, Director of the Administrative Office of the United States Courts, or administrative assistant to the Chief Justice.".

SEC. 107. WITNESS AND JUROR FEES.

(a) WITNESS FEES.—Section 1821(b) of title 28, United States Code, is amended by striking "$30" and inserting "$40".

(b) JUROR FEES.—Section 1871(b) of title 28, United States Code, is amended—

(1) in paragraph (1) by striking "$30" and inserting "$40";

(2) in paragraph (2) by striking "$5" and inserting "$10"; and

(3) in paragraph (3) by striking "$5" and inserting "$10".

SEC. 108. PRISONER REVIEW AND SUPERVISION.

(a) IN GENERAL.—(1) Title 18, United States Code, is amended by inserting before chapter 313 the following:

"CHAPTER 312—PRISONER REVIEW AND SUPERVISION

"Sec.
"4220. Federal Offender Review Board; members.
"4221. Authority and jurisdiction of the Board.
"4222. Powers and duties of the Chairman.
"4223. Decisions of the Board.

"§4220. Federal Offender Review Board

"There is established as an independent agency in the Department of Justice a Federal Offender Review Board, which shall consist of 5 members appointed by the President, by and with the advice and consent of the Senate. The term of office of each member appointed to the Board shall expire on November 1, 1997. A member who is appointed to fill a vacant but unexpired term shall be appointed for the remainder of the vacant term. The President shall designate one member of the Board to serve as Chairman. The Chairman of the Board shall be compensated at the rate now or hereafter prescribed for Executive Level IV and the members of the Board shall be compensated at the rate now or hereafter prescribed for Executive Level V.

"§4221. Authority and jurisdiction of the Board

"The Board shall have the independence of, be subject to the statutory procedures governing, and have and exercise the powers, duties, and jurisdiction vested in, the former United States Parole Commission by statutes of the United States and the District of Columbia in effect, or saved as to particular offenders, on October 31, 1992.

"§4222. Powers and duties of the Chairman

"The Chairman of the Board shall have and exercise the powers and duties vested in the Chairman of the United States Parole Commission by section 4204 of chapter 311 of this title as such section existed immediately before the repeal of that section took effect.

"§4223. Decisions of the Board

"The Board shall be empowered to render and reconsider decisions in the case of any individual within the Board's jurisdiction, to prescribe regulations and guidelines to carry out the Board's responsibilities, and to delegate authority to hearing examiners. The decisions of the Board shall be considered actions committed to agency discretion for the purpose of section 701(a)(2) of title 5.".

(2) The table of chapters at the beginning of part III of title 18, United States Code, is amended by inserting before the item relating to chapter 313 the following new item:

"312. Prisoner review and supervision.....4220".

(b) TRANSFER OF PERSONNEL.—There are transferred to the Federal Offender Review Board all personnel (except the Commissioners), liabilities, contracts, property and records, as are employed, held, used, arising from, or available to, the United States Parole Commission on October 31, 1992. This transfer shall be governed by section 3503(b) of title 5, United States Code.

(c) REPEAL OF OLD RULE RELATING TO CONTINUATION IN EFFECT OF PREVIOUS LAW.—Section 235(b)(4) of the Comprehensive Crime Control Act of 1984 is repealed.

(d) NEW RULE RELATING TO CONTINUATION IN EFFECT OF PREVIOUS LAW.—

(1) Chapter 311 continuation.—Section 235(b)(1) of the Comprehensive Crime Control Act of 1984 is amended to read as follows:

"(b)(1) Chapter 311 of title 18, United States Code, shall remain in effect for 5 years after the effective date as to an individual who committed an offense or an act of juvenile delinquency before the effective date, and as to a term of imprisonment described in subsection (a)(1)(B).".

(2) CONTINUATION OF CRIMINAL PENALTIES AS TO INDIVIDUAL OFFENDERS.—Section 235(b)(3) of the Comprehensive Crime Control Act of 1984 is amended to read as follows:

"(3) All laws in effect on the day before an effective date set forth in subsection (a)(1) of this section, and which are applicable to a person who committed an offense or an act of juvenile delinquency before such effective date, shall remain in effect as to such person until the expiration of such person's sentence.".

(e) CONFORMING AMENDMENTS.—

(1) SECTION 4106.—Section 4106 of title 18, United States Code, is amended—

(A) by striking "United States Parole Commission" each place it appears and inserting "Federal Offender Review Board";

(B) in subsection (b) by striking "Commission" and inserting "Board";

(C) in subsection (c) by striking "Parole Commission" and inserting "Federal Offender Review Board"; and

(D) in subsection (d)—

(i) by striking "and the Parole Commission's performance of its responsibilities under this section shall be subject to section 235 of the Comprehensive Crime Control Act of 1984"; and

(ii) by striking the comma after "November 1, 1987".

(2) SECTION 4106A.—Section 4106A of title 18, United States Code, is amended—

(A) in the section caption by striking "parole offenders" and inserting "parole of offenders";

(B) by striking "United States Parole Commission" each place it appears and inserting "Federal Offender Review Board";

(C) in subsection (b)(1)(C) by adding a period at the end; and

(D) in subsection (b)(2)(A) by striking "Commission" and inserting "Board".

(3) SECTION 3522.—Section 3522(c) of title 18, United States Code, is amended by striking "United States Parole Commission" and "Commission" and inserting "Federal Offender Review Board" and "Board", respectively.

(f) TRANSFER OF FUNCTIONS IN 1997.—

(1) IN GENERAL.—(A)(i) Effective November 1, 1997, the functions of the Federal Offender Review Board are transferred to 3 Federal Offender Review Commissioners.

(ii) Each such Federal Offender Review Commissioner shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The President shall designate one of those appointed as Chief Commissioner.

(B) A Commissioner may be reappointed at the expiration of that Commissioner's term. A Commissioner who is appointed to fill a vacancy shall be appointed for the remainder of the vacant term.

(C) Each Commissioner shall be compensated at the highest rate now or hereafter prescribed for Executive Level V, except that the Chief Commissioner shall be compensated at the highest rate now or hereafter prescribed for Executive Level IV.

(D) If the President determines that the anticipated caseload for the Federal Offender Review Commissioners is unlikely to equal or exceed the per capita caseload experienced by the Commissioners during the 12-month period ending October 31, 2002, the President may set the number of Commissioners at 1 rather than 3 as of November 1, 2002.

(2) INDEPENDENCE.—The Commissioners shall be independent adjudicators within the Department of Justice, and a decision of the Commissioners shall be considered an action committed to agency discretion for the purpose of section 701(a)(2) of title 5, United States Code.

(3) RELATED TRANSFERS.—Effective November 1, 1997, all liabilities, contracts, property and records, as are employed, held, used, arising from, or available to, the Federal Offender Review Board are transferred to the Department of Justice. The Department of Justice shall thereafter provide such administrative support, including the employment of hearing examiners, as may be required by the Commissioners to fulfill the Commissioners' functions.

SEC. 109. REMOVAL OF SEPARATE AND INDEPENDENT CLAIMS.

Section 1441(c) of title 28, United States Code, is amended—

(1) by striking ", which would be removable if sued upon alone," and inserting "within the jurisdiction conferred by section 1331 of this title"; and

(2) by striking "remand all matters not otherwise within its original jurisdiction" and inserting "may remand all matters in which State law predominates".

SEC. 110. VENUE.

Section 1391 of title 28, United States Code, is amended—

(1) in subsection (a), by striking "the judicial district" and all that follows through "arose" and inserting the following: "(1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which the defendants are subject to personal jurisdiction at the time the action is commenced";

(2) in subsection (b), by striking "may be brought" and all that follows through "law" and inserting the following: "may, except as otherwise provided by law, be brought only in (1 a judicial district where any defendant resides, if all defendants reside in the same State, (2 a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought";

(3) in subsection (e), by striking "or (2)" and all that follows through "(4)" and inserting "(2) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3)".

SEC. 111. STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Chapter 111 of title 28, United States Code, is amended by adding at the end the following:

"§ 1658. Time limitations on the commencement of civil actions arising under Acts of Congress

"Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 111 of title 28, United States Code, is amended by adding at the end the following new item:

"1658. Time limitations on the commencement of civil actions arising under Acts of Congress.".

SEC. 112. RETIREMENT PROGRAM FOR CLAIMS COURT JUDGES.

(a) NEW RETIREMENT SYSTEM.—

(1) IN GENERAL.—Chapter 7 of title 28, United States Code, is amended by adding at the end the following new section:

"§ 178. Retirement of judges of the Claims Court

"(a) RETIREMENT BASED ON AGE AND YEARS OF SERVICE.—A judge of the United States Claims Court who retires from office after attaining the age and meeting the service requirements, whether continuously or otherwise, of this subsection shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's lifetime, an annuity equal to the salary payable to Claims Court judges in regular active service. The age and service requirements for retirement under this subsection are as follows:

"Attained Age:	Years of Service:
"65	15
"66	14
"67	13
"68	12
"69	11
"70	10.

"(b) RETIREMENT UPON FAILURE OF REAPPOINTMENT.—A judge of the Claims Court who is not reappointed following the expiration of the term of office of such judge, and who retires upon the completion of such term shall, subject to subsection (f), be entitled to receive, during the remainder of such judge's lifetime, an annuity equal to the salary payable to Claims Court judges in regular active service, if—

"(1) such judge has served at least 1 full term as judge of the Claims Court, and

"(2) not earlier than 9 months before the date on which the term of office of such judge expired, and not later than 6 months before such date, such judge advised the President in writing that such judge was willing to accept reappointment as a judge of the Claims Court.

"(c) RETIREMENT FOR DISABILITY.—A judge of the Claims Court who has served at least 5 years, whether continuously or otherwise, as such a judge, and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's lifetime—

"(1) an annuity equal to 50 percent of the salary payable to Claims Court judges in regular active service, if before retirement such judge served less than 10 years, or

"(2) an annuity equal to the salary payable to Claims Court judges in regular active service, if before retirement such judge served at least 10 years.

"(d) RECALLING OF RETIRED JUDGES.—A judge who retires under subsection (a) or (b), may, at or after such retirement, be called upon by the chief judge of the Claims Court to perform such judicial duties with the Claims Court as may be requested of the retired judge for any period or periods specified by the chief judge, except that in the case of any such judge—

"(1) the aggregate of such periods in any one calendar year shall not (without his or her consent) exceed 90 calendar days; and

"(2) he or she shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a Claims Court judge in regular active service. Any individual performing judicial duties pursuant to this subsection shall receive the allowances for official travel and other expenses of a judge in regular active service.

"(e) DESIGNATION AND ALLOCATION OF RETIRED JUDGES.—

"(1) DESIGNATION.—Any judge who retires under the provisions of subsection (a) or (b) shall be designated 'senior judge'.

"(2) ALLOCATION OF REGULAR ACTIVE JUDGES.—Any judge who retires under this section shall not be counted as a judge of the Claims Court for purposes of the number of judgeships authorized by section 171 of this title.

"(f) ELECTION; ANNUITY IN LIEU OF CIVIL SERVICE ANNUITY.—

"(1) ELECTION.—A judge shall be entitled to an annuity under this section if the judge elects an annuity under this section by notifying the Director of the Administrative Office of the United States Courts in writing. Such an election—

"(A) may be made only while an individual is a judge of the Claims Court (except that in the case of an individual who fails to be reappointed as judge at the expiration of a term of office, such election may be made at any time before the day after the day on which his or her successor takes office); and

"(B) once made, shall, subject to subsection (k), be irrevocable.

"(2) ANNUITY IN LIEU OF CIVIL SERVICE ANNUITY.—A judge who elects to receive an annuity under this section shall not be entitled to receive—

"(A) any annuity to which such judge would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84, of title 5, for service performed as a judge or otherwise;

"(B) an annuity or salary in senior status or retirement under section 371 or 372 of this title;

"(C) retired pay under section 7447 of the Internal Revenue Code of 1986; or

"(D) retired pay under section 4096 of title 38.

"(g) CALCULATION OF SERVICE.—(1) For purposes of calculating the years of service of an individual under subsections (a) and (c), only those years of service as a judge of the Claims Court or a commissioner of the United States Court of Claims shall be credited, and that portion of the aggregate number of years of such service that is a fractional part of 1 year shall not be credited if it is less than 6 months, and shall be credited if it is 6 months or more.

"(h) TIME AND MANNER OF ANNUITY PAYMENTS.—An annuity under this section shall be payable at the times and in the same manner as the salary of a Claims Court judge in regular active service. Such annuity shall begin to accrue on the day following the day on which the annuitant's salary as a judge in regular active service ceases to accrue.

"(i) PAYMENTS PURSUANT TO COURT DECREES.—(1) Payments under this section which would otherwise be made to a judge of the Claims Court based upon his or her service shall be paid (in whole or in part) by the Director of the Administrative Office of the United States Courts to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

"(2) Paragraph (1) shall apply only to payments made by the Director of the Administrative Office of the United States Courts after the date of receipt by the Director of written notice of such decree, order, or agreement, and such additional information as the Director may prescribe.

"(3) As used in this subsection, the term 'court' means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court or court of Indian offense.

"(j) ANNUITY AFFECTED IN CERTAIN CASES.—

"(1) FORFEITURE OF ANNUITY.—Any judge of the Claims Court who retires under this section and who thereafter in the practice of law represents (or supervises or directs the representation of) a client in making any civil claim against the United States or any agency thereof shall forfeit all rights to an annuity under this section for all periods beginning on or after the first day on which he or she so practices law.

"(2) TEMPORARY FORFEITURE IN CERTAIN CASES.—If a judge of the Claims Court who retires under this section fails during any calendar year to perform judicial duties required of such judge by subsection (d), such judge shall forfeit all rights to an annuity under this section for the 1-year period which begins on the first day on which he or she so fails to perform such duties.

"(3) SUSPENSION OF ANNUITY DURING PERIOD OF COMPENSATED GOVERNMENT SERVICE.—If a judge of the Claims Court who retires under this section accepts compensation for civil office or employment under the Government of the United States (other than the performance of judicial duties under subsection (d)), such judge shall forfeit all rights to an annuity under this section for the period for which such compensation is received.

"(4) FORFEITURE NOT TO APPLY WHERE INDIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNUITY.—(A) If a judge makes an election under this paragraph—

"(i) paragraphs (1) and (2) (and subsection (d)) shall not apply to such judge beginning on the date such election takes effect, and

"(ii) the annuity payable under this section to such judge, for periods beginning on or after the date such election takes effect shall be equal to the annuity to which such judge is entitled on the day before such effective date.

"(B) An election under subparagraph (A)—

"(i) may be made by a judge only if such judge meets the age and service requirements for retirement under subsection (a),

"(ii) may be made only during the period during which such judge may make an election to receive an annuity under this section or while the judge is receiving an annuity under this section, and

"(iii) shall be filed with the Director of the Administrative Office of the United States Courts.

Such an election, once it takes effect, shall be irrevocable.

"(C) Any election under this paragraph shall take effect on the first day of the first month following the month in which the election is made.

"(k) REVOCATION OF ELECTION TO RECEIVE ANNUITY.—

"(1) IN GENERAL.—Notwithstanding subsection (f)(1)(B), an individual who has filed an election under subsection (f) to receive an annuity may revoke such election at any time before the first day on which such annuity would (but for such revocation) begin to accrue with respect to such individual.

"(2) MANNER OF REVOKING.—Any revocation under this subsection shall be made by

filing a notice thereof in writing with the Director of Administrative Office of the United States Courts.

"(3) EFFECT OF REVOCATION.—In the case of any revocation under this subsection—

"(A) for purposes of this section, the individual shall be treated as not having filed an election under subsection (f) to receive an annuity,

"(B) for purposes of section 376 of this title—

"(i) the individual shall be treated as not having filed an election under section 376(a)(1), and

"(ii) section 376(g) shall not apply, and the amount credited to such individual's account (together with interest at 3 percent per annum, compounded on December 31 of each year to the date on which the revocation is filed) shall be returned to such individual,

"(C) no credit shall be allowed for any service as a judge of the Claims Court or as a commissioner of the United States Court of Claims unless with respect to such service either there has been deducted and withheld the amount required by chapter 83 or 84 (as the case may be) of title 5 or there has been deposited in the Civil Service Retirement and Disability Fund an amount equal to the amount so required, with interest,

"(D) the Claims Court shall deposit in the Civil Service Retirement and Disability Fund an amount equal to the additional amount it would have contributed to such Fund but for the election under subsection (f), and

"(E) if subparagraph (D) is complied with, service on the Claims Court or as a commissioner of the United States Court of Claims shall be treated as service with respect to which deductions and contributions had been made during the period of service.

"(l) JUDICIAL OFFICERS RETIREMENT FUND.—

"(1) ESTABLISHMENT.—There is established in the Treasury a fund which shall be known as the 'Claims Court Judges Retirement Fund'. The Fund is appropriated for the payment of annuities and other payments under this section.

"(2) INVESTMENT OF FUND.—The Secretary of the Treasury shall invest, in interest bearing securities of the United States, such currently available portions of the Claims Court Judges Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

"(3) UNFUNDED LIABILITY.—(A) There are authorized to be appropriated to the Claims Court Judges Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

"(B) For purposes of subparagraph (A), the term 'unfunded liability' means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, of the present value of all benefits payable from the Claims Court Judges Retirement Fund, over the balance in the Fund as of the date the unfunded liability is determined. In making any determination under this subparagraph, the Comptroller General shall use the applicable information contained in the reports filed pursuant to section 9503 of title 31, with respect to the retirement annuities provided for in this section.

"(C) There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.".

(2) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 7 of title 28, United States Code, is amended by adding at the end the following new item:

"178. Retirement of judges of the Claims Court.".

(b) JUDICIAL SURVIVORS' ANNUITIES.—

(1) ANNUITIES FOR SURVIVORS OF JUDGES RETIRING UNDER NEW SYSTEM.—Section 376 of title 28, United States Code, is amended as follows:

(A) Subsection (a)(1) is amended—

(i) by striking "or" at the end of subparagraph (E);

(ii) by adding "or" at the end of subparagraph (F);

(iii) by inserting after subparagraph (F) the following:

"(G) a judge of the United States Claims Court;";

(iv) by striking ", or (v)" and inserting "(v)"; and

(v) by inserting before the semicolon at the end the following: ", or (vi) the date of the enactment of the Federal Courts Study Committee Implementation Act of 1990, in the case of a full-time judge of the Claims Court in active service on that date".

(B) Subsection (a)(2) is amended—

(i) by striking "and" at the end of subparagraph (E);

(ii) by adding "and" at the end of subparagraph (F); and

(iii) by adding at the end the following:

"(G) in the case of a judge of the United States Claims Court, an annuity paid under section 178 of this title;".

(C) Subsection (b) is amended in the last sentence by striking "section 377" each place it appears and inserting "section 178 or 377".

(c) CONFORMING AMENDMENTS.—

(1) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—

(A) Section 402(a)(1) of the Judicial Improvements and Access to Justice Act (102 Stat. 4650) is amended by striking "redesignating paragraph (18)" and inserting "redesignating paragraph (19)".

(B) Section 604(a) of title 28, United States Code, (relating to the duties of the Director of the Administrative Office of the United States Courts), as amended pursuant to the amendment made by subparagraph (A) of this paragraph, is amended—

(i) in paragraph (7) by inserting "judges of the United States Claims Court," after "judges of the United States,";

(ii) by redesignating paragraph (23) as paragraph (24); and

(iii) by inserting after paragraph (22) the following:

"(23) Regulate and pay annuities to judges of the United States Claims Court in accordance with section 178 of this title; and".

(2) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8334(i) of title 5, United States Code, is amended by adding at the end the following new paragraph:

"(6) Notwithstanding any other provision of law, a judge of the United States Claims Court who is covered by section 178 of title 28 shall not be subject to deductions and contributions to the Fund if the judge notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under such section. Upon such an election, the judge shall be entitled to a lump-sum credit under section 8342(a) of this title.".

(3) FEDERAL EMPLOYEES RETIREMENT SYSTEM.—Section 8402 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(g) A judge of the United States Claims Court who is covered by section 178 of title 28 shall be excluded from the operation of this chapter, other than subchapters III and VII of such chapter, if the judge notifies the Director of the Administrative office of the United States Courts of an election of a retirement annuity under such section. Upon such election, the judge shall be entitled to a lump-sum credit under section 8424 of this title.".

(d) THRIFT SAVINGS PLAN.—

(1) PARTICIPATION IN THE PLAN.—Subchapter III of chapter 84 of title 5, United States Code, is amended by adding at the end the following:

"§8440c. Claims court judges

"(a)(1) A judge of the United States Claims Court who is covered by section 178 of title 28 may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund.

"(2) An election may be made under paragraph (1) only during a period provided under section 8432(b) for individuals subject to this chapter.

"(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII shall apply with respect to Claims Court judges who make contributions to the Thrift Savings Fund under subsection (a) of this section.

"(2) The amount contributed by a Claims Court judge for any pay period shall not exceed 5 percent of basic pay for such pay period.

"(3) No contributions shall be made under section 8432(c) of this title for the benefit of a Claims Court judge making contributions under subsection (a) of this section.

"(4)(A) Section 8433(b) of this title applies to a Claims Court judge who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires entitled to an annuity under section 178 of title 28 (including a disability annuity under subsection (c) of such section).

"(B) Section 8433(d) of this title applies to any Claims Court judge who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before becoming entitled to an annuity under section 178 of title 28.

"(5) With respect to Claims Court judges to whom this section applies, retirement under section 178 of title 28 is a separation from service for purposes of this subchapter and subchapter VII.

"(6) For purposes of this section, the terms 'retirement' and 'retire' include removal from office under section 178(c) of title 28 on the sole ground of mental or physical disability.

"(7) Sums contributed pursuant to this section by Claims Court judges, as well as all previous contributions to the Thrift Savings Fund by those judges, and earnings attributable to such sums and contributions, may be invested and reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of this title.

"(8) In the case of a Claims Court judge who receives a distribution from the Thrift Savings Plan and who later receives an annuity under section 178 of title 28, that annuity shall be offset by an amount equal to the amount which represents the Government's contribution to that person's Thrift Savings Account, without regard to earnings attributable to that amount. Where such an offset would exceed 50 percent of the annuity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity.".

(2) TECHNICAL AND CONFORMING AMENDMENTS.—(A) The section 8440a of title 5, United States Code, that is entitled "Justices and Judges" is amended in paragraphs (1) and (4) of subsection (b) by striking "subchapters III and VII of chapter 84 of this title" and inserting "this subchapter and subchapter VII".

(B) The section 8440a of title 5, United States Code, that is entitled "2Bankruptcy judges and magistrates" is amended by redesignating such section as section 8440b.

(C) The table of sections at the beginning of chapter 84 of title 5, United States Code, is amended by striking

"8440a Bankruptcy judges and magistrates."

and inserting

"8440b. Bankruptcy judges and magistrates."

"8440c. Claims Court judges.".

(e) CIVIL SERVICE RETIREMENT SYSTEM.—

(1) DEFINITIONS.—Section 8331 of title 5, United States Code, is amended—

(A) by striking "and" at the end of paragraph (24);

(B) by striking the period at the end of paragraph (25) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(26) 'Claims Court judge' means a judge of the United States Claims Court who is appointed under chapter 7 of title 28 or who has served under section 167 of the Federal Courts Improvement Act of 1982.".

(2) DEDUCTIONS, CONTRIBUTIONS, AND DEPOSITS.—Section 8334 of title 5, United States Code, is amended—

(A) in subsection (a)(1), by inserting "a Claims Court judge," after "Member,"; and

(B) in subsection (c), by inserting at the end of the table the following:

"Claims Court Judge:	
2½	August 1, 1920, to June 30, 1926.
3½	July 1, 1926, to June 30, 1942.
5	July 1, 1942, to June 30, 1948.
6	July 1, 1948, to October 31, 1956.
6½	November 1, 1956, to December 31, 1969.
7	January 1, 1970, to September 30, 1988.
8	After September 30, 1988.".

(3) IMMEDIATE RETIREMENT.—Section 8336(k) of title 5, United States Code, is amended to read as follows:

"(k) A bankruptcy judge, United States magistrate, or Claims Court judge who is separated from service, except by removal, after becoming 62 years of age and completing 5 years of civilian service, or after becoming 60 years of age and completing 10 years of service as a bankruptcy judge, United States magistrate, or Claims Court judge, is entitled to an annuity.".

(4) COMPUTATION OF ANNUITY.—Section 8339(n) of title 5, United States Code, is amended to read as follows:

"(n) The annuity of an employee who is a Claims Court judge, bankruptcy judge, or United States magistrate is computed, with respect to service as a Claims Court judge, as a commissioner of the Court of Claims, as a referee in bankruptcy, as a bankruptcy judge, as a United States magistrate, and as a United States commissioner and with respect to the military service of any such individual (not exceeding 5 years) creditable under section 8332 of this title, by multiplying 2 1/2 percent of the individual's average pay by the years of that service.".

(f) EFFECTIVE DATE.—This section and the amendments made by this section shall apply to judges of, and senior judges in active service with, the United States Claims Court on or after the date of the enactment of this Act.

SEC. 113. MAGISTRATES.

(a) CONSENT TO TRIAL IN CIVIL ACTIONS.—Section 636(c)(2) of title 28, United States Code, is amended—

(1) in the first sentence, by striking "their right to consent to the exercise of" and inserting "the availability of a magistrate to exercise"; and

(2) by striking the third sentence and inserting the following: "Thereafter, either the district court judge or the magistrate may again advise the parties of the availability of the magistrate, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences.".

(b) EXTENSION OF TERMS OF OFFICE OF MAGISTRATES.—Section 631(f) of title 28, United States Code, is amended by striking "60" and inserting "180".

SEC. 114. SUPPLEMENTAL JURISDICTION.

(a) GRANT OF JURISDICTION.—Chapter 85 of title 28, United States Code, is amended by adding at the end the following:

"§1367. Supplemental jurisdiction

"(a) IN GENERAL.—Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

"(b) DIVERSITY CASES.—In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

"(c) AUTHORITY OF COURTS TO DECLINE SUPPLEMENTAL JURISDICTION.—The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

"(1) the claim raises a novel or complex issue of State law,

"(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

"(3) the district court has dismissed all claims over which it has original jurisdiction, or

"(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

"(d) TOLLING OF TIME LIMITATIONS.—The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

"(e) DEFINITION.—As used in this section, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 85 of title 28, United States Code, is amended by adding at the end the following new item:

"1367. Supplemental jurisdiction.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to civil actions commenced on or after the date of the enactment of this Act.

TITLE II—MISCELLANEOUS PROVISIONS AND TECHNICAL AMENDMENTS

SEC. 201. PLACE OF HOLDING COURT.

Section 112(a) of title 28, United States Code, is amended by striking "and Utica" in the last sentence and inserting "Utica, and Watertown".

SEC. 202. BIENNIAL CIRCUIT JUDICIAL CONFERENCE.

The first paragraph of section 333 of title 28, United States Code, is amended—

(1) in the first sentence, by striking "annually" and inserting "biennially, and may summon annually,"; and

(2) in the last sentence—

(A) by striking "the United States District Court for the District of the Canal Zone,"; and

(B) by striking "and the District Court of the Virgin Islands shall also be summoned annually" and inserting "the District Court of the Virgin Islands, and the District Court of the Northern Mariana Islands shall also be summoned biennially, and may be summoned annually,".

SEC. 203. RETIREMENT AGE OF CERTAIN FEDERAL JUDGES.

(a) JUSTICES AND JUDGES OF THE UNITED STATES.—Section 371(c) of title 28, United States Code, is amended by inserting before:

"65 ..... 15"

the following:

"62 to 64 ..... 25".

(b) JUDGES IN TERRITORIES AND POSSESSIONS.—Section 373(b) of title 28, United States Code, is amended by inserting before:

"65 ..... 15"

the following:

"62 to 64 ..... 25".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to any justice or judge who retires on or after the date of the enactment of this Act.

SEC. 204. CHANGE OF NAME OF UNITED STATES MAGISTRATES.

After the enactment of this Act, each United States magistrate appointed under section 631 of title 28, United States Code, shall be known as a United States magistrate judge, and any reference to any United States magistrate or magistrate that is contained in title 28, United States Code, in any other Federal statute, or in any regulation of any department or agency of the United States in the executive branch that was issued before the enactment of this Act, shall be deemed to refer to a United States magistrate judge appointed under section 631 of title 28, United States Code.

SEC. 205. LENGTH OF SERVICE REQUIRED FOR ELIGIBILITY UNDER THE JUDICIAL SURVIVORS' ANNUITIES ACT.

(a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINATION.—Section 376(h)(1) of title 28, United States Code, is amended—

(1) in the matter preceding subparagraph (A)—

(A) by inserting "(A)" before "after having completed"; and

(B) by inserting after "have actually been made" the following: ", or (B) if the death of such judicial official was by assassination, before having satisfied the requirements of

clause (A) if, for the period of such service, the deductions provided by subsection (b) or, in lieu thereof, the deposits required by subsection (d) have actually been made";

(2) by redesignating existing subparagraph (A) as clause (i);

(3) in existing subparagraph (B)—

(A) by striking "(B)" and inserting "(ii)";

(B) by striking "(i)" and inserting "(I)"; and

(C) by striking "(ii)" and inserting "(II)";

(4) in existing subparagraph (C)—

(A) by striking "(C)" and inserting "(iii)";

(B) in clause (i)—

(i) by striking "(i)" and inserting "(I)";

(ii) by striking "subparagraph (1)(A) of this subsection" and inserting "clause (i) of this paragraph";

(iii) by striking "(ii)" and inserting "(II)"; and

(iv) by striking "(iii)" and inserting "(III)"; and

(5) by adding at the end of subsection (h) the following:

"(6) In the case of the survivor or survivors of a judicial official to whom paragraph (1)(B) applies, there shall be deducted from the annuities otherwise payable under this section an amount equal to the amount of salary deductions that would have been made if such deductions had been made for 18 months prior to the judicial official's death.".

(b) DEFINITION OF ASSASSINATION.—Section 376(a) of title 28, United States Code, is amended—

(1) in paragraph (5)(C) by striking "and" after the semicolon;

(2) in paragraph (6) by striking the period and inserting "; and"; and

(3) by inserting at the end the following new paragraph:

"(7) 'assassinated' and 'assassination' mean the killing of a judicial official described in paragraph (1) (A), (B), (F), or (G) of this section that is motivated by the performance by that judicial official of his or her official duties.".

(c) DETERMINATION OF ASSASSINATION BY DIRECTOR.—Section 376(i) of title 28, United States Code, is amended—

(1) by inserting "(1)" after "(i)"; and

(2) by adding at the end the following:

"(2) The Director of the Administrative Office of the United States Courts shall determine whether the killing of a judicial official was an assassination, subject to review only by the Judicial Conference of the United States. The head of any Federal agency that investigates the killing of a judicial official shall provide information to the Director that would assist the Director in making such determination.".

(d) COMPUTATION OF WIDOW'S AND WIDOWER'S ANNUITY.—Section 376(l)(1)(ii) of title 28, United States Code, is amended by striking "but more than eighteen months,".

(e) REFUND OF CONTRIBUTIONS TO FUND.—Section 376(o) of title 28, United States Code, is amended—

(1) by inserting "(1)" after "(o)";

(2) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(3) in subparagraph (A) as so redesignated, by inserting "subject to paragraph (2) of this subsection," before "before having completed"; and

(4) by adding at the end the following new paragraph:

"(2) In cases in which a judicial official dies as a result of assassination and leaves a survivor or survivors who are entitled to receive the annuity benefits provided by subsection (h) or (t) of this section, paragraph (1)(A) of this subsection shall not apply.".

(f) OTHER BENEFITS.—Section 376 of title 28, United States Code, is amended by adding at the end the following:

"(u) In the case of a judicial official who is assassinated, an annuity shall be paid under this section notwithstanding a survivor's eligibility for or receipt of benefits under chapter 81 of title 5, except that the annuity for which a surviving spouse is eligible under this section shall be reduced to the extent that the total benefits paid under this section and chapter 81 of title 5 for any year would exceed the current salary for that year of the office of the judicial official.".

(g) EFFECTIVE DATE AND TRANSITION.—

(1) EFFECTIVE DATE.—Subject to paragraph (2), the amendments made by this Act shall apply to all judicial officials assassinated on or after May 28, 1979.

(2) RULES FOR RETROACTIVE APPLICATION.—(A) In the case of a judicial official who was assassinated on or after May 28, 1979, and before the date of the enactment of this Act, if the salary deductions provided by subsection (b) of section 376 of title 28, United States Code, or the deposits required by subsection (d) of such section, have been withdrawn pursuant to subsection (o) of such section, there shall be deducted from the annuities otherwise payable to the survivor or survivors of such judicial official, and the payment authorized by subparagraph (C) of this paragraph, an amount equal to the amount so withdrawn, with interest on the amount withdrawn at 3 percent per annum compounded on December 31 of each year.

(B) In the case of the survivor or survivors of a judicial official to whom this paragraph applies who had less than 18 months of service before being assassinated, there shall be deducted from the annuities otherwise payable to the survivor or survivors of such judicial official, and the payment authorized by subparagraph (C) of this paragraph, an amount equal to the amount of salary deductions that would have been made if such deductions been made for 18 months before the judicial official's death, plus interest as described in subparagraph (A).

(C) Subject to subparagraphs (A) and (B), the survivor or survivors of a judicial official to whom this paragraph applies shall be entitled to the payment of annuities they would have received under section 376 of title 28, United States Code, for the period beginning on the date such judicial official was assassinated and ending the date of the enactment of this Act. The Secretary of the Treasury shall pay into the Judicial Survivors' Annuities fund, out of any money in the Treasury not otherwise appropriated, the amount of the annuities to which the survivor or survivors are entitled under this subparagraph.

(3) DEFINITION.—For purposes of this subsection, the term—

(A) "assassinated" and "assassination" have the meanings given those terms in section 376(a)(7) of title 28, United States Code, as added by this section; and

(B) "judicial official" has the meaning given that term in section 376(a)(1)(A) and (B) of title 28, United States Code.

(g) CONFORMING AMENDMENTS.—Section 376 of title 28, United States Code, is amended as follows:

(1) Subsection (h) is amended—

(A) in paragraph (2) by striking "subparagraphs (1)(A) or (1)(B)" and inserting "clause (i) or (ii) of paragraph (1)";

(B) in paragraph (3) by striking "subparagraph" each place it appears and inserting "paragraph";

(C) in paragraph (4)—

(i) by striking "subparagraph (1)(B)" each place it appears and inserting "paragraph (1)(ii)"; and

(ii) by striking "subparagraph (1)(C)" and inserting "paragraph (1)(iii)".

(2) Subsection (a)(5)(C) is amended by striking "subparagraph" and inserting "paragraph".

SEC. 206. COMPOSITION OF JUDICIAL COUNCILS.

(a) COMPOSITION OF COUNCILS.—Section 332(a)(1) of title 28, United States Code, is amended to read as follows:

"(a)(1) The chief judge of each judicial circuit shall call, at least twice in each year and at such places as he or she may designate, a meeting of the judicial council of the circuit, consisting of the chief judge of the circuit, who shall preside, and an equal number of circuit judges and district judges of the circuit, as such number is determined by majority vote of all such judges of the circuit in regular active services.".

(b) CONFORMING AMENDMENT.—Section 332(a) of title 28, United States Code, is amended by striking paragraph (3) and redesignating paragraphs (4) through (7) as paragraphs (3) through (6), respectively.

SEC. 207. MISCELLANEOUS TECHNICAL AMENDMENTS.

(a) TITLE 9, UNITED STATES CODE.—

(1) The section 15 of title 9, United States Code, that is designated "Appeals" is amended by redesignating such section as section 16.

(2) The table of sections at the beginning of chapter 1 of title 9, United States Code, is amended by striking "15. Appeals."

and inserting

"15. Inapplicability of the Act of State doctrine.

"16. Appeals.".

(b) TITLE 28, UNITED STATES CODE.—Title 28, United States Code, is amended as follows:

(1) Section 332(f)(1) is amended by striking "(5 U.S.C. 5316)" and inserting "under section 5315 of title 5".

(2) Section 375(a)(1) is amended by striking "377 of title" and inserting "377 of this title".

(3) Section 377 is amended—

(A) in subsection (f) by striking "any annuity to which" and all that follows through the end of the subsection and inserting the following:

"(1) any annuity to which such judge or magistrate would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84, of title 5, for service performed as such a judge or magistrate or otherwise;

"(2) an annuity or salary in senior status or retirement under section 371 or 372 of this title;

"(3) retired pay under section 7447 of the Internal Revenue Code of 1986; or

"(4) retired pay under section 4096 of title 38."; and

(B) in subsection (h) by striking "in or after" and inserting "on or after".

"(4) Section 602(b) is amended by striking "604(a)(15)(B)" and inserting "604(a)(16)(B)".

(5) Section 995(a)(22) is amended by striking "and" after the semicolon.

(6) Section 996(b) is amended by striking "89 (Health Insurance), and 91 (Conflicts of Interest)" and inserting "and 89 (Health Insurance)".

(7) Section 1499 is amended by inserting "and Safety" after "Hours".

(8 Section 1605(a)(6) is amended by striking "State" and inserting "state".

(9) Section 1610 is amended—

(A) in subsection (a)(6) by striking "State" and inserting "state"; and

(B) in subsection (e) by striking "State" and inserting "state".

(c) OTHER PROVISIONS OF LAW.—

(1) Section 1011 of the Judicial Improvements and Access to Justice Act (102 Stat. 4668) is amended—

(A) by striking "inserting a comma in lieu of the semicolon at the end thereof and adding thereafter" and inserting "adding at the end"; and

(B) in the text of section 604(a)(7) of title 28, United States Code, that is inserted by such section 1011, by striking "*Provided, That*" and inserting "except that".

(2) Section 2044(b)(5)(A)(ii) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1989 (102 Stat. 2291) is amended by striking "whichever occurs later," and inserting

"whichever occurs later,".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Wisconsin [Mr. KASTENMEIER] will be recognized for 20 minutes, and the gentleman from California [Mr. MOORHEAD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Wisconsin.

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

Mr. Speaker over the course of the past several years, the problems confronting the Federal courts have increased dramatically. The so-called wars that the legislative and executive branches of government have waged on drugs and crime have taken their toll on the judiciary. As the courts have been called upon to devote more and more of their time to their burgeoning criminal caseload, the less and less time remains available to decide civil cases. In an effort to gain a fresh and independent perspective on how best to cope with this increase in caseload and commensurate decline in access to justice, the Congress passed the Federal Courts Study Act of 1988, as part of the Judicial Improvements and Access to Justice Act. The Federal Courts Study Committee Act called for the creation of a 15 member committee to study the problems of the Federal courts for a period of 15 months, and report its results to the Congress, among others.

That report was issued on April 2 of this year. Mr. MOORHEAD and I had the privilege of serving on the Study Committee. H.R. 5381, the Federal Courts Study Committee Implementation Act, was introduced by Mr. MOORHEAD and myself, as a means to implement some of the noncontroversial recommendations of the Federal Courts Study Committee.

The House Judiciary Committee's Subcommittee on Courts, Intellectual Property, and the Administration of Justice, which I chair, held a hearing on this bill on September 6. In light of comments received by the subcommittee, a number of deletions and revisions were made to the bill which were incorporated into an amendment in the nature of a substitute that Mr. MOORHEAD and I developed. That amendment addressed the primary concerns raised by the Department of Justice, the Judicial Conference and the American Bar Association. The substitute amendment was reported favorably by my subcommittee and the full committee without objection, and the result is a bill that—consistent with our original intentions—remains essentially noncontroversial.

The recommendations implemented in this legislation touch upon a wide range of issues, that include: The study of intercircuit conflicts and appellate structure; appointment procedures for the Director and Deputy Director of the Administrative Office of the U.S. Courts; the power of the Supreme Court to define the scope of final decisions from which appeals may be taken; the study of the Federal Defender Program; the procedure for filling vacancies created by the appointment of Federal judges to head certain judicial branch agencies; creating a successor entity to the Parole Commission; removal of separate and independent claims; venue; statutes of limitations; the retirement program for claims court judges; procedures for obtaining parties' consent to civil trials before magistrates; supplemental jurisdiction; Watertown, NY, as a place of holding court; authorization for biennial circuit judicial conferences; adjusting the retirement age for certain Federal judges; and the eligibility for benefits under the Judicial Survivors' Annuities act.

At the request of the Judicial Conference, a section has been added that did not appear in the bill as reported by the Committee on the Judiciary. That section modifies the membership on circuit judicial councils, so that an equal number of district and circuit judges participate. Under current law, the membership of circuit judicial councils is weighted in favor of the circuit judges. The purpose of the new section is to equalize the voice of the circuit and district judges in administration of the circuit's business. It should be noted, however, that because the section provides that the council is to consist of the chief judge of the circuit together with an equal number of district and circuit judges, the net effect is that there will still be one more circuit judge than district judge on each judicial council.

I would like to commend the gentleman from California [Mr. MOORHEAD] for his assistance and cooperation in developing this piece of legislation, which I believe will make a number of important improvements in the operation of the Federal courts. I urge your support for H.R. 5381.

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

The Speaker, I want to commend the gentleman from Wisconsin [Mr. KASTENMEIER] and our staff members, Mike Remington, Charles Geyh, Tom Mooney, and Joe Wolf for all of the work done on this legislation.

We spent many months working on the study committee to come up with these changes. As pointed out earlier, most of the problems that the Department of Justice had with the original bill have been deleted or modified.

These proposals are not controversial. This legislation deals with institutional rather than substantive changes. This legislation, along with H.R. 3898, civil justice reform, and H.R. 5316, creating additional Federal judgeships, are directed at fine tuning our Federal court system in order to secure a just, speedy, and inexpensive determination of every action. Our Fedeal judiciary has problems in all three of these areas, delay, caused by rising caseloads and insufficient support services; spiraling costs, caused by litigation expenses and attorney fees; and inconsistent decisions, caused by the pressures placed on judges who must cope with the torrent of litigation.

In a modest way, this legislation will go a long way in helping to correct these problems and by so doing improve the delivery of justice in our Federal courts.

Other bills will follow which we will try to bring before this body with other recommendations of the Federal Court Study Committee. I welcome and applaud the expeditious manner in which the gentleman from Wisconsin has brought this legislation to the floor, and I urge support of H.R. 5381.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. FISH], our ranking member of the committee.

Mr. FISH. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in support of H.R. 5381 and I would like to commend our courts subcommittee chairman KASTENMEIER and ranking member, CARLOS MOORHEAD, for their diligent efforts as members of the Federal Courts Study Committee.

The study committee's recommendations provide us with a useful, comprehensive list of key problems—both substantive and procedural—currently facing the Federal judiciary. Their recommendations deal with topics ranging from mandatory minimum sentences to civil rights suits to intercircuit conflicts to the resource needs of the Federal courts.

House Judiciary Committee members know first hand about court congestion, delay, and the ever escalating cost of litigation. H.R. 5381 would, in part, implement the recommendations of the Federal Courts Study Committee so as to deal with these problems.

I urge an "aye" vote on H.R. 5381.

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

Mr. KASTENMEIER. Mr. Speaker, I would also like to commend the gen-

tleman from New York [Mr. FISH], as a member of the subcommittee, for his contributions, as well as my other colleagues and the other members of the subcommittee.

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

The SPEAKER pro tempore. (Mr. MCNULTY). The question is on the motion offered by the gentleman from Wisconsin [Mr. KASTENMEIER] that the House suspend the rules and pass the bill, H.R. 5381, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5381, the bill just passed.

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

There was no objection.

CIVIL JUSTICE REFORM ACT OF 1990

Mr. KASTENMEIER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3898) to require certain procedural changes in U.S. district courts in order to promote the just, speedy and inexpensive determination of civil actions, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3898

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 "Civil Justice Reform Act of 1990".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the problems of cost and delay in civil litigation in any United States district court must be addressed in the context of the full range of demands made on the district court's resources by both civil and criminal matters;

(2) the courts, the litigants, the litigants' attorneys, and the Congress and the executive branch, share responsibility for cost and delay in civil litigation and its impact on access to the courts, adjudication of cases on the merits, and the ability of the civil justice system to provide proper and timely judicial relief for aggrieved parties;

(3) the solutions to problems of cost and delay must include significant contributions by the courts, the litigants, the litigants' attorneys, and by the Congress and the executive branch;

(4) in identifying, developing, and implementing solutions to problems of cost and delay in civil litigation, it is necessary to achieve a method of consultation so that individual judicial officers, litigants, and litigants' attorneys who have developed techniques for litigation management and cost and delay reduction can effectively and promptly communicate those techniques to all participants in the civil justice system;

(5) evidence suggests that an effective litigation management and cost and delay reduction program should incorporate several interrelated principles, including—

(A) the differential treatment of cases that provides for individualized and specific management according to their needs, complexity, duration, and probable litigation careers;

(B) early involvement of a judicial officer in planning the progress of a case, controlling the discovery process, and scheduling hearings, trials, and other litigation events;

(C) regular communication between a judicial officer and attorneys during the pretrial process;

(D) utilization of alternative dispute resolution programs in appropriate cases; and

(6) because the increasing volume and complexity of civil and criminal cases imposes increasingly heavy workload burdens on judicial officers, clerks of court, and other court personnel, it is necessary to create an effective administrative structure to ensure ongoing consultation and communication regarding effective litigation management and cost and delay reduction principles and techniques.

SEC. 3. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS.—Title 28, United States Code, is amended by inserting after chapter 21 the following new chapter:

"CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

"§471. Requirement for a district court civil justice expense and delay reduction plan

"There shall be implemented by each United States district court, in accordance with this chapter, a civil justice expense and delay reduction plan. The plan may be a plan developed by such district court or a model plan developed by the Judicial Conference of the United States. The purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes.

"§472. Development and implementation of a civil justice expense and delay reduction plan

"(a) The civil justice expense and delay reduction plan implemented by a district court shall be developed or selected, as the case may be, after consideration of the recommendations of an advisory group appointed in accordance with section 478.

"(b) The advisory group of a United States district court shall submit to the court a report, which shall be made available to the public and which shall include—

"(1) an assessment of the matters referred to in subsection (c)(1);

"(2) the basis for its recommendation that the district court develop a plan or select a model plan;

"(3) recommended measures, rules and programs; and

"(4) an explanation of the manner in which the recommended plan complies with section 473.

"(c)(1) In developing its recommendations, the advisory group of a district court shall promptly complete a thorough assessment of the state of the court's civil and criminal dockets. In performing the assessment for a district court, the advisory group shall—

"(A) determine the condition of the civil and criminal dockets;

"(B) identify trends in case filings and in the demands being placed on the court's resources; and

"(C) identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation.

"(2) In developing its recommendations, the advisory group of a district court shall take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys.

"(3) The advisory group of a district court shall ensure that its recommended actions include significant contributions to be made by the court, the litigants, and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts.

"(d) The chief judge of the district court shall transmit a copy of the plan implemented in accordance with subsection (a) and the report prepared in accordance with subsection (b) to—

"(1) the Director of the Administrative Office of the United States Courts;

"(2) the judicial council of the circuit in which the district court is located; and

"(3) the chief judge of each of the other United States district courts located in such circuit.

"§473. Content of civil justice expense and delay reduction plans

"(a) A civil justice expense and delay reduction plan developed and implemented under this chapter may include provisions applying the following principles and guidelines of litigation management and cost and delay reduction:

"(1) systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case;

"(2) early and ongoing control of the pretrial process through involvement of a judicial officer in—

"(A) assessing and planning the progress of a case;

"(B) setting early, firm trial dates, such that the trial is scheduled to occur within 18 months after the filing of the complaint, unless a judicial officer certifies that—

"(i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or

"(ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

"(C) controlling the extent of discovery and the time for completion of discovery,

and ensuring compliance with appropriate requested discovery in a timely fashion; and

"(D) setting at the earliest practical time deadlines for filing motions and a time framework for their disposition;

"(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—

"(A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

"(B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

"(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to—

"(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

"(ii) phase discovery into two or more stages; and

"(D) sets the earliest practicable time deadlines for filing motions and a time framework for their disposition;

"(4) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;

"(5) conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion; and

"(6) authorization to refer appropriate cases to alternative dispute resolution programs that—

"(A) have been designated for use in a district court; or

"(B) the court may make available, including mediation, minitrial, and summary jury trial.

"(b) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478, shall consider adopting the following litigation management and cost and delay reduction techniques:

"(1) a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;

"(2) a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters;

"(3) a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request;

"(4) a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation;

"(5) a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference; and

"(6) such other features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a).

"(c) Nothing in a district plan prescribed under this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, or any delegation of the Attorney General.

"§474. Review of district court action

"(a)(1) The chief judges of each district court in a circuit and the chief judge of the court of appeals for such circuit shall, as a committee—

"(A) review each plan and report submitted pursuant to section 472(d); and

"(B) make such suggestions for additional actions or modified actions of that district court as the committee considers appropriate for reducing cost and delay in civil litigation in the district court.

"(2) The chief judge of a court of appeals and the chief judge of a district court may designate another judge of such court to perform the chief judge's responsibilities under paragraph (1).

"(b) The Judicial Conference of the United States—

"(1) shall review each plan and report submitted by a district court pursuant to section 472(d); and

"(2) may request the district court to take additional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court's advisory group.

"§475. Periodic district court assessment

"After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478.

"§476. Enhancement of judicial information dissemination

"(a) The Director of the Administrative Office of the United States Courts shall prepare a semiannual report, available to the public, that discloses for each judicial officer—

"(1) the number of motions that have been pending for more than 6 months and the name of each case in which such motion has been pending;

"(2) the number of bench trials that have been submitted for more than 6 months and the name of each case in which such trials are under submission; and

"(3) the number and names of cases that have not been terminated within 3 years of filing.

"(b) To ensure uniformity of reporting, the standards for categorization or characterization of judicial actions to be prescribed in accordance with section 481 shall apply to the semiannual report prepared under subsection (a).

"§477. Model civil justice expense and delay reduction plan

"(a)(1) Based on the plans developed and implemented by the United States district courts designated as Early Implementation District Courts pursuant to section 103(c) of the Civil Justice Reform Act of 1990, the Judicial Conference of the United States may develop one or more model civil justice expense delay reduction plans. Any model plan shall be accompanied by report explaining the manner in which plan complies with section 473.

"(2) The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts make recommendations to the Judicial Conference regarding the development of model civil justice expense and delay reduction plan.

"(b) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary the Senate and the House of Representatives copies of any model plan and accompanying report.

"§478. Advisory groups

"(a) Within 90 days after the date of enactment of this chapter, the advisory group required in each United States district court in accordance with section shall be appointed by the chief judge each district court, after consultation with the other judges of such court.

"(b) The advisory group of a district court shall be balanced and include attorneys and other persons who are representative of major categories of litigants in such court as determined by the chief judge of such court.

"(c) Subject to subsection (d), in no event shall any member of the advisory group serve longer than 4 years.

"(d) Notwithstanding subsection (c), the United States Attorney for a judicial district, or his or her designee, shall be a permanent member of the advisory group for that district court.

"(e) The chief judge of a United States district court may designate a reporter for each advisory group, who may be compensated in accordance with guidelines established by the Judicial Conference of the United States.

"(f) The members of an advisory group for a United States district court and a person designated as a reporter for such group shall be considered as independent contractors of such court when in the performance of official duties of the advisory group and may not, solely by reason of service on or for the advisory group, be precluded from practicing law before such court.

"§479. Information on litigation management and cost and delay reduction

"(a) Within 4 years after the date of the enactment of this chapter, the Judicial Conference of the United States Courts shall prepare a comprehensive report on all plans received pursuant to section 472(d). The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding such report to the Judicial Conference during the preparation of the report. The Judicial Conference shall transmit copies of the report to the United States district courts and to the Committee on the Judiciary of the Senate and the House of Representatives.

"(b) The Judicial Conference of the United States shall, on a continuing basis—

"(1) study ways to improve litigation management and dispute resolution services in the district courts; and

"(2) make recommendations to the district courts on ways to improve such services.

"(c)(1) The Judicial Conference of the United States shall prepare, periodically revise, and transmit to the United States district courts a Manual for Litigation Management and Cost and Delay Reduction. The Director of the Federal Judicial Cente

and the Director of the Administrative Office of the United States Courts may make recommendations regarding the preparation of and any subsequent revisions to the Manual.

"(2) The Manual shall be developed after careful evaluation of the plans implemented under section 472 and the demonstration program conducted under section 4 of the Civil Justice Reform Act of 1990.

"(3) The Manual shall contain a description and analysis of the litigation management, cost and delay reduction principles and techniques, and alternative dispute resolution programs considered most effective by the Judicial Conference, the Director of the Federal Judicial Center, and the Director of the Administrative Office of the United States Courts.

"§ 489. Training programs

"The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts shall develop and conduct comprehensive education and training programs to ensure that all judicial officers, clerks of court, courtroom deputies, and other appropriate court personnel are thoroughly familiar with the most recent available information and analyses about litigation management and other techniques for reducing cost and expediting the resolution of civil litigation. The curriculum of such training programs shall be periodically revised to reflect such information and analyses.

"§ 481. Automated case information

"(a) The Director of the Administrative Office of the United States Courts shall ensure that each United States district court has the automated capability readily to retrieve information about the status of each case in such court.

"(b)(1) In carrying out subsection (a), the Director shall prescribe—

"(A) the information to be recorded in district court automated systems; and

"(B) standards for uniform categorization or characterization of judicial actions for the purpose of recording information on judicial actions in the district court automated systems.

"(2) The uniform standards prescribed under paragraph (1)(B) shall include a definition of what constitutes a dismissal of a case and standards for measuring the period for which a motion has been pending.

"(c) Each United States district court shall record information as prescribed under subsection (b).

"§ 482. Definitions

"As used in this chapter, the term 'judicial officer' means a United States district court judge or a United States magistrate.".

(b) IMPLEMENTATION.—(1) Within 3 years after the date of the enactment of this Act, each United States district court shall implement a civil justice expense and delay reduction plan under section 471 of title 28, United States Code, as added by subsection (a) of this section.

(2) The requirements set forth in sections 471 through 478 of title 28, United States Code, as added by subsection (a) of this section, shall remain in effect for 7 years after the date of the enactment of this Act.

(c) EARLY IMPLEMENTATION DISTRICT COURTS.—

(1) Any United States district court that, not earlier than 6 months and not later than 12 months after the date of the enactment of this Act, develops and implements a civil justice expense and delay reduction plan under chapter 23 of title 28, United States Code, as added by subsection (a) of this section, shall be designated by the Judicial Conference of the United States as an Early Implementation District Court.

(2) The chief judge of a district court so designated may apply to the Judicial Conference for additional resources, including technological and personnel support and information systems, necessary to implement its civil justice expense and delay reduction plan. The Judicial Conference may provide such resources out of funds appropriated pursuant to section 5(a).

(3) Within 18 months after the date of the enactment of this Act, the Judicial Conference shall prepare a report on the plans developed and implemented by the Early Implementation District Courts.

(4) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and House of Representatives—

(A) copies of the plans developed and implemented by the Early Implementation District Courts;

(B) the reports submitted by such districts pursuant to section 472(d) of title 28, United States Code, as added by subsection (a) of this section; and

(C) the report prepared under paragraph (3) of this subsection.

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part I of title 28, United States Code, is amended by adding at the end thereof the following:

"23. Civil justice expense and delay reduction plans..... 471".

SEC. 4. DEMONSTRATION PROGRAM.

(a) IN GENERAL.—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a demonstration program in accordance with subsection (b).

(2) A district court participating in the demonstration program may also be an Early Implementation District Court under section 3(c).

(b) PROGRAM REQUIREMENT.—(1) The United States District Court for the Western District of Michigan and the United States District Court for the Northern District of Ohio shall experiment with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate under distinct and explicit rules, procedures, and timeframes for the completion of discovery and for trial.

(2) The United States District Court for the Northern District of California, the United States District Court for the Northern District of West Virginia, and the United States District Court for the Western District of Missouri shall experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution, that such district courts and the Judicial Conference of the United States shall select.

(c) STUDY OF RESULTS.—The Judicial Conference of the United States, in consultation with the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall study the experience of the district courts under the demonstration program.

(d) REPORT.—Not later than March 31, 1995, the Judicial Conference of the United States shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report of the results of the demonstration program.

SEC. 5. AUTHORIZATION.

(a) EARLY IMPLEMENTATION DISTRICT COURTS.—There is authorized to be appropriated not more than $15,000,000 for fiscal year 1991 to carry out the resource and planning needs necessary for the implementation of section 3(c).

(b) IMPLEMENTATION OF CHAPTER 23.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to implement chapter 23 of title 28, United States Code.

(c) DEMONSTRATION PROGRAM.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to carry out the provisions of section 4.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Wisconsin [Mr. KASTENMEIER] will be recognized for 20 minutes, and the gentleman from California [Mr. MOORHEAD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Wisconsin [Mr. KASTENMEIER].

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

Mr. Speaker, H.R. 3898, the Civil Justice Reform Act, is an initiative of Senator BIDEN's, that was introduced in the House by Mr. BROOKS, Mr. FISH, Mr. MOORHEAD and myself at Senator BIDEN's request. The House Judiciary Committee's Subcommittee on Courts, Intellectual Property, and the Administration of Justice, which I chair, held hearings on the bill on September 6, 1990. On September 14, it reported favorably an amendment in the nature of a substitute, and on September 18, the substitute amendment was reported favorably by the full committee.

The Civil Justice Reform Act is designed to reduce some of the cost and delay associated with civil litigation. It does so principally through the creation of advisory groups, which together with the district courts are to develop expense and delay reduction plans as a means to streamline civil case management. The bill also calls for periodic reporting by the judiciary of cases that have had motions or trials pending longer than a specified period of time. Finally, it provides for experimentation with various case management techniques, as well as collection and dissemination of information concerning developments in case management.

There is no disagreement as to the important role that case management plays in allocating scarce judicial resources. As the judiciary becomes flooded with a steadily increasing volume of criminal cases, precious little time remains to adjudicate civil cases. It is thus critical that what time is available be managed effectively. There is likewise no disagreement as to the importance of reducing unnecessary litigation costs. To the extent that excessive discovery costs, attorneys fees and related costs make litigation an option available only to the very wealthy, access to justice has, in a very real sense, been denied.

As originally introduced, this legislation met with considerable resistance from the judiciary. The bill was opposed by the Judicial Conference and

the Federal Judges Association, and I have received numerous letters from individual judges and members of this body writing on behalf of judges in their districts, expressing deep reservations with the legislation introduced in the House and with companion legislation reported out of the Senate Committee on the Judiciary. While the judiciary is prepared to accept the responsibility of formulating expense and delay reduction plans in coordination with local advisory groups, it has opposed a section of the bill requiring each plan to include six specific components. In the judges' view, such a requirement would constitute micromanagement, and they urged that the contents of the expense and delay reduction plans be made discretionary. These same concerns with the bill have been echoed by the American Bar Association.

I respect the effort that Senator BIDEN has made in developing this legislation, and am optimistic that the fruit of his labors will be enacted into law. At the same time, I am sympathetic to the concerns of the judiciary, and was reluctant to require that district courts implement specific case management guidelines which the judges believe are overly restrictive and sometimes unnecessary.

Accordingly, at subcommittee, I offered an amendment in the nature of a substitute to H.R. 3898, that preserved the essential features of Senator BIDEN's legislation, but was at the same time unobjectionable to the judicial conference. The amendment that I offered retained the six components of expense and delay reduction plans but made their inclusion discretionary with the district courts. The result is a bill which satisfies the concerns raised by the federal judiciary and the American Bar Association, and is deserving of your support.

In closing, I would like to thank the gentleman from California [Mr. MOORHEAD] for his unflagging cooperation in processing this bill. I urge your support for H.R. 3498.

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

Mr. Speaker, I rise in support of H.R. 3898 and would like to commend the gentleman from Wisconsin [Mr. KASTENMEIER] on bringing the text of a Civil Justice Reform Act before this House of Representatives. The time contraints and various pressures that he and the committee have operated under have been considerable and to bring this important issue to the House reflects highly on his deep concerns for civil justice.

Last January the gentleman from Wisconsin and I joined as cosponsors on H.R. 3898, the Civil Justice Reform Act introduced by our chairman, the gentleman from Texas [Mr. BROOKS] and the gentleman from New York [Mr. FISH] which was the counterpart to a bill introduced in the other body. Since that time an enormous amount of discussion has occurred in the legal community over nearly every aspect of that bill. Nobody challenges the goals of the bill; namely, to cut cost and delay in civil litigation. However, the bill has engendered strong feelings from bench and bar as to whether some of the provisions of the bill are needed and whether the bill has unduly intruded into the procedural workings that should uniquely be within the domain of the judiciary.

Through very productive negotiations between the other body and the judicial branch the bill has been improved. Despite these improvements, the Judicial Conference at our hearings on September 6, 1990 through testimony delivered by Judge Robert Peckham of the northern district of California, still felt that it could not endorse the legislation. What his testimony all boiled down to was that this was good legislation but to impose every aspect of it on the judicial branch simply could not work. The Department of Justice also expressed some constitutional concerns about the separation of powers. The committee's substitute will take away the mandatory nature of those provisions of the bill, which will also remove the opposition of our Federal judges and the Judicial Conference. This is important legislation and I urge its adoption.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. FISH].

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

Mr. FISH. Mr. Speaker, as an original cosponsor of H.R. 3898, I have followed its progress with considerable interest. Given the pressures that a litigious society continues to place on the administration of justice in the Federal courts, it is important that Congress recognizes the pressing need for procedural reform. We need an expedited discovery process, firm trial dates and the expanded use of alternative dispute resolution mechanisms.

But, the basic issue boils down to whether the provisions contained in H.R. 3898 should be made mandatory for each judiciary district. I know that many of our colleagues in the other body feel strongly that, to be effective, H.R. 3898 must be made mandatory. They may well be right. I think the subcommittee chairman and the ranking Republican have made the right decision in opting to keep the legislation alive, rather than forcing a confrontation with the Federal judiciary on this matter. This is important legislation and hopefully we can work out our differences with the other body in conference. I urge the adoption of H.R. 3898.

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

Mr. KASTENMEIER. Mr. Spe have no further requests for tim I yield back the balance of my ti

The SPEAKER pro tempore McNULTY). The question is o motion offered by the gentlema Wisconsin [Mr. KASTENMEIER] th House suspend the rules and pa bill, H.R. 3898, as amended.

The question was taken; and thirds having voted in favor th the rules were suspended and th as amended, was passed.

A motion to reconsider was la the table.

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Spea ask unanimous consent that all bers may have 5 legislative da which to revise and extend the marks on H.R. 3898, the bill passed.

The SPEAKER pro tempore there objection to the request o gentleman from Wisconsin?

There was no objection.

COPYRIGHT AMENDMENTS OF 1990

Mr. KASTENMEIER. Mr. Spea move to suspend the rules and the bill (H.R. 5498) to amend tit United States Code, relating to puter software, fair use, and arc tural works, as amended.

The Clerk read as follows:

H.R. 5498

Be it enacted by the Senate and Hou Representatives of the United Stat America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Copy Amendments Act of 1990".

TITLE I—COMPUTER SOFTWARE

SEC. 101. SHORT TITLE.

This title may be cited as the "Com Software Rental Amendments Act of 199

SEC. 102. RENTAL OF COMPUTER PROGRAMS.

Section 109(b) of title 17, United St Code, is amended—

(1) by redesignating paragraphs (2) (3) as paragraphs (3) and (4), respectivel

(2) by striking paragraph (1) and inser the following:

"(b)(1)(A) Notwithstanding the provisi of subsection (a), unless authorized by owners of copyright in the sound recor or the owner of copyright in a computer gram (including any tape, disk, or o medium embodying such program), and the case of a sound recording in the mus works embodied therein, neither the ow of a particular phonorecord nor any pe in possession of a particular copy of a c puter program (including any tape, disk other medium embodying such progra may, for the purposes of direct or indi commercial advantage, dispose of, or thorize the disposal of, the possession of phonorecord or computer program (incl ing any tape, disk, or other medium embo ing such program) by rental, lease, or l ing, or by any other act or practice in nature of rental, lease, or lending. Noth in the preceding sentence shall apply to rental, lease, or lending of a phonorecord nonprofit purposes by a nonprofit librar nonprofit educational institution.

transfer of possession of a lawfully made copy of a computer program by a nonprofit educational institution to another nonprofit educational institution or to faculty, staff, and students does not constitute rental, lease, or lending for direct or indirect commercial purposes under this subsection.

"(B) This subsection does not apply to—

"(i) a computer program which is embodied in a machine or product and which cannot be copied during the ordinary operation or use of the machine or product; or

"(ii) a computer program embodied in or used in conjunction with a limited purpose computer that is designed for playing video games and may be designed for other purposes.

"(C) Nothing in this subsection affects any provision of chapter 9 of this title.

"(2)(A) Nothing in this subsection shall apply to the lending of a computer program for nonprofit purposes by a nonprofit library, if each copy of a computer program which is lent by such library has affixed to the packaging containing the program a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

"(B) Not later than three years after the date of the enactment of the Computer Software Rental Amendments Act of 1990, and at such times thereafter as the Register of Copyright considers appropriate, the Register of Copyrights, after consultation with representatives of copyright owners and librarians, shall submit to the Congress a report stating whether this paragraph has achieved its intended purpose of maintaining the integrity of the copyright system while providing nonprofit libraries the capability to fulfill their function. Such report shall advise the Congress as to any information or recommendations that the Register of Copyrights considers necessary to carry out the purposes of this subsection."; and

(3) by striking paragraph (4), as redesignated by paragraph (1) of this section, and inserting the following:

"(4) Any person who distributes a phonorecord or a copy of a computer program (including any tape, disk, or other medium embodying such program) in violation of paragraph (1) is an infringer of copyright under section 501 of this title and is subject to the remedies set forth in sections 502, 503, 504, 505, and 509. Such violation shall not be a criminal offense under section 506 or cause such person to be subject to the criminal penalties set forth in section 2319 of title 18.".

SEC. 802. PUBLIC DISPLAY OF ELECTRONIC VIDEO GAMES.

Section 109 of title 17, United States Code, is amended by adding at the end the following:

"(e) Notwithstanding the provisions of sections 106(4) and 106(5), in the case of an electronic audiovisual game intended for use in coin-operated equipment, the owner of a particular copy of such a game lawfully made under this title, is entitled, without the authority of the copyright owner of the game, to publicly perform or display that game in coin-operated equipment, except that this subsection shall not apply to any work of authorship embodied in the audiovisual game if the copyright owner of the electronic audiovisual game is not also the copyright owner of the work of authorship.".

SEC. 803. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsection (b), the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) PROSPECTIVE APPLICATION.—Section 109(b) of title 17, United States Code, as amended by section 102 of this Act, shall not affect the right of a person in possession of a particular copy of a computer program, who acquired such copy before the date of the enactment of this Act, to dispose of the possession of that copy on or after such date of enactment in any manner permitted by section 109 of title 17, United States Code, as in effect on the day before such date of enactment.

(c) TERMINATION.—The amendments made by section 102 shall not apply to rentals, leasings, or lendings (or acts or practices in the nature of rentals, leasings, or lendings) occurring on or after October 1, 1991.

SEC. 805. RECORDATION OF SHAREWARE.

(a) IN GENERAL.—The Register of Copyrights is authorized, upon receipt of any document designated as pertaining to computer shareware and the fee prescribed by section 708 of title 17, United States Code, to record the document and return it with a certificate of recordation.

(b) MAINTENANCE OF RECORDS; PUBLICATION OF INFORMATION.—The Register of Copyrights is authorized to maintain current, separate records relating to the recordation of documents under subsection (a), and to compile and publish at periodic intervals information relating to such recordations. Such publications shall be offered for sale to the public at prices based on the cost of reproduction and distribution.

(c) DEPOSIT OF COPIES IN LIBRARY OF CONGRESS.—In the case of public domain computer shareware, at the election of the person recording a document under subsection (a), 2 complete copies of the best edition (as defined in section 101 of title 17, United States Code) of the computer shareware as embodied in machine-readable form may be deposited for the benefit of the Machine-Readable Collections Reading Room of the Library of Congress.

(d) REGULATIONS.—The Register of Copyrights is authorized to establish regulations not inconsistent with law for the administration of the functions of the Register under this section. All regulations established by the Register are subject to the approval of the Librarian of Congress.

TITLE II—ARCHITECTURAL WORKS

SEC. 201. SHORT TITLE.

This title may be cited as the "Architectural Works Copyright Protection Act".

SEC. 202. DEFINITIONS.

(a) ARCHITECTURAL WORKS.—Section 101 of title 17, United States Code, is amended by inserting after the definition of "anonymous work" the following:

"An 'architectural work' is the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features.".

(b) BERNE CONVENTION WORK.—Section 101 of title 17, United States Code, is amended in the definition of "'Berne Convention work'"—

(1) in paragraph (3)(B) by striking "or" after the semicolon;

(2) in paragraph (4) by striking the period and inserting "; or"; and

(3) by inserting after paragraph (4) the following:

"(5) in the case of an architectural work embodied in a building, such building is erected in a country adhering to the Berne Convention.".

SEC. 203. SUBJECT MATTER OF COPYRIGHT.

Section 102(a) of title 17, United States Code, is amended—

(1) in paragraph (6) by striking "and" after the semicolon;

(2) in paragraph (7) by striking the period and inserting "; and"; and

(3) by adding after paragraph (7) the following:

"(8) architectural works.".

SEC. 204. SCOPE OF EXCLUSIVE RIGHTS IN ARCHITECTURAL WORKS.

(a) IN GENERAL.—Chapter 1 of title 17, United States Code, is amended by adding at the end the following:

"§120. Scope of exclusive rights in architectural works

"(a) PICTORIAL REPRESENTATIONS PERMITTED.—The copyright in an architectural work that has been constructed does not include the right to prevent the making, distributing, or public display of pictures, paintings, photographs, or other pictorial representations of the work, if the building in which the work is embodied is located in or ordinarily visible from a public place.

"(b) ALTERATIONS TO AND DESTRUCTION OF BUILDINGS.—Notwithstanding the provisions of section 106(2), the owners of a building embodying an architectural work may, without the consent of the author or copyright owner of the architectural work, make or authorize the making of alterations to such building, and destroy or authorize the destruction of such building.".

(b) CONFORMING AMENDMENTS.—(1) The table of sections at the beginning of chapter 1 of title 17, United States Code, is amended by adding at the end the following:

"120. Scope of exclusive rights in architectural works.".

(2) Section 108 of title 17, United States Code, is amended by striking "119" and inserting "120".

SEC. 205. PREEMPTION.

Section 301(b) of title 17, United States Code, is amended—

(1) in paragraph (2) by striking "or" after the semicolon;

(2) in paragraph (3) by striking the period and inserting "; or"; and

(3) by adding after paragraph (3) the following:

"(4) State and local landmarks, historic preservation, zoning, or building codes, relating to architectural works protected under section 102(a)(8).".

SEC. 206. EFFECTIVE DATE.

The amendments made by this title apply to—

(1) any architectural work created on or after the date of the enactment of this Act; and

(2) any architectural work that, on the date of the enactment of this Act, is unconstructed and embodied in unpublished plans or drawings, except that protection for such architectural work under title 17, United States Code, by virtue of the amendments made by this title, shall terminate on December 31, 2002, unless the work is constructed by that date.

TITLE III—VISUAL ARTISTS RIGHTS

SECTION 301. SHORT TITLE.

This Title may be cited as the "Visual Artists Rights Act of 1990".

SEC. 302. WORK OF VISUAL ART DEFINED.

Section 101 of title 17, United States Code, is amended by inserting after the paragraph defining "widow" the following:

"A 'work of visual art' is—

"(1) a painting, drawing, print, or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of two hundred or fewer that are consecutively numbered by the author and bear the signa-

ture or other identifying mark of the author; or

"(2) a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.

A work of visual art does not include—

"(A)(i) any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or similar publication;

"(ii) any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container;

"(iii) any portion or part of any item described in clause (i) or (ii);

"(B) any work made for hire; or

"(C) any work not subject to copyright protection under this title.".

SEC. 103. RIGHTS OF ATTRIBUTION AND INTEGRITY.

(a) RIGHTS OF ATTRIBUTION AND INTEGRITY.— Chapter 1 of title 17, United States Code, is amended by inserting after section 106 the following new section:

"§ 106A. Rights of certain authors to attribution and integrity

"(a) RIGHTS OF ATTRIBUTION AND INTEGRITY.—Subject to section 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art—

"(1) shall have the right—

"(A) to claim authorship of that work, and

"(B) to prevent the use of his or her name as the author of any work of visual art which he or she did not create;

"(2) shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work as described in paragraph (3); and

"(3) subject to the limitations set forth in section 113(d), shall have the right to prevent any destruction, distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and which is the result of an intentional or negligent act or omission with respect to that work, and any such destruction, distortion, mutilation, or modification of that work is a violation of that right.

"(b) SCOPE AND EXERCISE OF RIGHTS.—Only the author of a work of visual art has the rights conferred by subsection (a) in that work, whether or not the author is the copyright owner. The authors of a joint work of visual art are coowners of the rights conferred by subsection (a) in that work.

"(c) EXCEPTIONS.—(1) The modification of a work of visual art which is a result of the passage of time or the inherent nature of the materials is not a destruction, distortion, mutilation, or other modification described in subsection (a)(3) unless the modification was the result of gross negligence in maintaining or protecting the work.

"(2) The modification of a work of visual art which is the result of conservation, or of the presentation, including lighting and placement, of the work is not a destruction, distortion, mutilation, or other modification described in subsection (a)(3) unless the modification is caused by gross negligence.

"(3) The rights described in paragraphs (1) and (2) of subsection (a) shall not apply to any reproduction, depiction, portrayal, or other use of a work in, upon, or in any connection with any item described in subparagraph (A) or (B) of the definition of 'work of visual art' in section 101, and any such reproduction, depiction, portrayal, or other use of a work is not a destruction, distortion, mutilation, or other modification described in paragraph (3) of subsection (a).

"(d) DURATION OF RIGHTS.—(1) With respect to works of visual art created on or after the effective date set forth in section 9(a) of the Visual Artists Rights Act of 1990, the rights conferred by subsection (a) shall endure for a term consisting of the life of the author and fifty years after the author's death.

"(2) With respect to works of visual art created before the effective date set forth in section 9(a) of the Visual Artists Rights Act of 1990, but copyright in which has not, as of such effective date, been transferred from the author or, if the author is deceased, from the person or persons to whom copyright in such work passes by bequest of the author or by the applicable laws of intestate succession, the rights conferred by subsection (a) shall be coextensive with, and shall expire at the same time as, the rights conferred by section 106.

"(3) In the case of a joint work prepared by two or more authors, the rights conferred by subsection (a) shall endure for a term consisting of the life of the last surviving author and fifty years after such last surviving author's death.

"(4) All terms of the rights conferred by subsection (a) run to the end of the calendar year in which they would otherwise expire.

"(e) TRANSFER AND WAIVER.—(1) Except as provided in paragraph (2), the rights conferred by subsection (a) may not be transferred, but those rights may be waived if the author expressly agrees to such waiver in a written instrument signed by the author. Such instrument shall specifically identify the work, and uses of that work, to which the waiver applies, and the waiver shall apply only to the work and uses so identified. In the case of a joint work prepared by two or more authors, a waiver of rights under this paragraph made by one such author waives such rights for all such authors.

"(2) After the death of an author, the rights conferred by subsection (a) on the author, and the authority of the author to waive those rights under paragraph (1) of this subsection, shall vest in the person to whom such rights pass by bequest of the author or by the applicable laws of intestate succession.

"(3) Ownership of the rights conferred by subsection (a) with respect to a work of visual art is distinct from ownership of any copy of that work, or of a copyright or any exclusive right under a copyright in that work. Transfer of ownership of any copy of a work of visual art, or of a copyright or any exclusive right under a copyright, shall not constitute a waiver of the rights conferred by subsection (a). Except as may otherwise be agreed by the author in a written instrument signed by the author, a waiver of the rights conferred by subsection (a) with respect to a work of visual art shall not constitute a transfer of ownership of any copy of that work, or of ownership of a copyright or of any exclusive right under a copyright in that work.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 1 of title 17, United States Code, is amended by inserting after the item relating to section 106 the following new item:

"106A. Rights of certain authors to attribution and integrity.".

SEC. 104. REMOVAL OF WORKS OF VISUAL ART FROM BUILDINGS.

Section 113 of title 17, United States Code, is amended by adding at the end thereof the following:

"(d)(1) In a case in which—

"(A) a work of visual art has been incorporated in or made part of a building in such a way that removing the work from the building will cause the destruction, di tion, mutilation, or other modificatic the work as described in section 106A(a and

"(B) the author or, if the author h ceased, the person described in se 106A(e)(2), consented to the installatic the work in the building either before t fective date set forth in section 9(a) o Visual Artists Rights Act of 1990, or written instrument executed on or after effective date that is signed by the own the building and the author or such pe and that specifies that installation of work may subject the work to destruc distortion, mutilation, or other modi tion, by reason of its removal,

then the rights conferred by paragraph and (3) of section 106A(a) shall not appl

"(2) If the owner of a building wishe remove a work of visual art which is a of such building and which can be rem from the building without the destruc distortion, mutilation, or other modi tion of the work as described in se 106A(a)(3), the author's rights under p graphs (2) and (3) of section 106A(a) s apply unless—

"(A) the owner has made a diligent, good faith attempt without success to notify author or, if the author is deceased, person described in section 106A(e)(2), o owner's intended action affecting the w of visual art, or

"(B) the owner did provide such notic writing and the person so notified fa within 90 days after receiving such no either to remove the work or to pay fo removal.

For purposes of subparagraph (A), an ow shall be presumed to have made a dilig good faith attempt to send notice if owner sent such notice by registered mai the author or, if the author is deceased the person described in section 106A(e)(2) the most recent address, of the autho such person, that was recorded with the C ister of Copyrights pursuant to paragr (3). If the work is removed at the expens the author or the person described in sec 106A(e)(2), title to that copy of the w shall be deemed to be in the author or s person, as the case may be.

"(3) The Register of Copyrights shall es lish a system of records whereby any aut of a work of visual art that has been in corporated in or made part of a building, or person described in section 106A(e)(2) w respect to that work, may record their id tities and addresses with the Copyri Office. The Register shall also establish p cedures under which any such author person may update the information so corded, and procedures under which own of buildings may record with the Copyri Office evidence of their efforts to com with this subsection.".

SEC. 105. PREEMPTION.

Section 301 of title 17, United States Co is amended by adding at the end the foll ing:

"(f)(1) On or after the effective date forth in section 9(a) of the Visual Art Rights Act of 1990, all legal or equit rights that are equivalent to any of rights conferred by section 106A with resp to works of visual art to which the rig conferred by section 106A apply are g erned exclusively by section 106A and s tion 113(d) and the provisions of this t relating to such sections. Thereafter, person is entitled to any such right or equ alent right in any work of visual art un the common law or statutes of any State.

"(2) Nothing in paragraph (1) annuls limits any rights or remedies under

common law or statutes of any State with respect to—

"(A) any cause of action from undertakings commenced before the effective date set forth in section 9(a) of the Visual Artists Rights Act of 1990; or

"(B) activities violating legal or equitable rights that are not equivalent to any of the rights conferred by section 106A with respect to works of visual art.".

SEC. 308. INFRINGEMENT ACTIONS.

(a) IN GENERAL.—Section 501(a) of title 17, United States Code, is amended—

(1) by inserting after "118" the following: "or of the author as provided in section 106A(a)"; and

(2) by striking out "copyright." and inserting in lieu thereof "copyright or right of the author, as the case may be. For purposes of this chapter (other than section 506), any reference to copyright shall be deemed to include the rights conferred by section 106A(a).".

(b) EXCLUSION OF CRIMINAL PENALTIES.—Section 506 of title 17, United States Code, is amended by adding at the end thereof the following:

"(f) RIGHTS OF ATTRIBUTION AND INTEGRITY.—Nothing in this section applies to infringement of the rights conferred by section 106A(a).".

(c) REGISTRATION NOT A PREREQUISITE TO SUIT AND CERTAIN REMEDIES.—(1) Section 411(a) of title 17, United States Code, is amended in the first sentence by inserting after "United States" the following: "and an action brought for a violation of the rights of the author under section 106A(a)".

(2) Section 412 of title 17, United States Code, is amended by inserting "an action brought for a violation of the rights of the author under section 106A(a) or" after "other than".

SEC. 307. FAIR USE.

Section 107 of title 17, United States Code, is amended by striking out "section 106" and inserting in lieu thereof "sections 106 and 106A".

SEC. 308. STUDIES BY COPYRIGHT OFFICE.

(a) STUDY ON WAIVER OF RIGHTS PROVISION.—

(1) STUDY.—The Register of Copyrights shall conduct a study on the extent to which rights conferred by subsection (a) of section 106A of title 17, United States Code, have been waived under subsection (e)(1) of such section.

(2) REPORT TO CONGRESS.—Not later than 2 years after the date of the enactment of this Act, the Register of Copyrights shall submit to the Congress a report on the progress of the study conducted under paragraph (1). Not later than 5 years after such date of enactment, the Register of Copyrights shall submit to the Congress a final report on the results of the study conducted under paragraph (1), and any recommendations that the Register may have as a result of the study.

(b) STUDY ON RESALE ROYALTIES.—

(1) NATURE OF STUDY.—The Register of Copyrights, in consultation with the Chair of the National Endowment for the Arts, shall conduct a study on the feasibility of implementing—

(A) a requirement that, after the first sale of a work of art, a royalty on any resale of the work, consisting of a percentage of the price, be paid to the author of the work; and

(B) other possible requirements that would achieve the objective of allowing an author of a work of art to share monetarily in the enhanced value of that work.

(2) GROUPS TO BE CONSULTED.—The study under paragraph (1) shall be conducted in consultation with other appropriate departments and agencies of the United States, foreign governments, and groups involved in the creation, exhibition, dissemination, and preservation of works of art, including artists, art dealers, collectors of fine art, and curators of art museums.

(3) REPORT TO CONGRESS.—Not later than 18 months after the date of the enactment of this Act, the Register of Copyrights shall submit to the Congress a report containing the results of the study conducted under this subsection.

SEC. 309. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsection (b) and except as provided in subsection (c), this Act and the amendments made by this Act take effect 6 months after the date of the enactment of this Act.

(b) APPLICABILITY.—The rights created by section 106A of title 17, United States Code, shall apply to—

(1) works created before the effective date set forth in subsection (a) but copyright in which has not, as of such effective date, been transferred from the author or, if the author is deceased, from the person or persons to whom copyright in such work passes by bequest of the author or by the applicable laws of interstate succession, and

(2) works created on or after such effective date,

but shall not apply to any destruction, distortion, mutilation, or other modification (as described in section 106A(a)(3) of such title) of any work which occurred before such effective date.

(c) SECTION 8.—Section 8 takes effect on the date of the enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. MOORHEAD. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Wisconsin [Mr. KASTENMEIER] will be recognized for 20 minutes, and the gentleman from California [Mr. MOORHEAD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Wisconsin [Mr. KASTENMEIER].

Mr. KASTENMEIER. Mr. Speaker, this afternoon I bring before the House the bill, H.R. 5498, the Copyright Amendments Act of 1990, for purposes of passage. This omnibus copyright reform measure includes two titles, both of which were fully considered by my subcommittee: the Subcommittee on Courts, Intellectual Property, and the Administration of Justice. All in all, H.R. 5498 is a significant piece of intellectual property legislation. A copy of the House report, which explains the bill in great detail, has been made available to the Members.

At the outset, I would like to express appreciation to the members of my subcommittee, particularly the ranking minority member, Mr. MOORHEAD, Mr. SYNAR for his work on computer software rental, and the ranking minority member of the full committee, Mr. FISH.

Let me briefly describe the bill.

Title I relates to computer software rental and owes its genesis to a bill, H.R. 2740, originally introduced by Mr. SYNAR.

Computers have become commonplace in government, our homes and offices, and business enterprises. Software—the technology that makes computers work—is of pivotal importance to the United States, which is the world's leader in this unique form of creativity.

We do not write on a clean legal slate. In 1980 Congress—through effortgs of my subcommittee—amended the copyright law to provide a definition of computer program, while at the same time adding certain limitations on computer program copyright owners' rights to protect the public interest. In 1984 we passed legislation crafted by this subcommittee that created a freestanding, or sui generis, protection of 10 years' duration for mask works. As a result of the reciprocity provisions in section 914 of this legislation, the U.S. law became the model for semiconductor chip laws throughout the world. Additionally, in 1984, in response to evidence that the record industry was threatened by rental of phonorecords, we prohibited the direct or indirect commercial rental of phonorecords, while preserving the rights of nonprofit libraries to lend phonorecords to the public.

Last Congress, the United States took a giant step forward in its international intellectual property relations by adhering to the Berne Convention for the Protection of Literary and Artistic Works, the world's premier copyright convention. Adherence was made possible by implementing legislation carefully drafted by my subcommittee after 2 years of hearings.

Earlier this Congress my subcommittee held 2 days of oversight hearings on computers and intellectual property. On July 30, 1990, we had a legislative hearing on computer software and first sale reform. The record of these hearings and the proposed legislation reveal that computer software is not readily pigeonholed as certain literary works—novels and short stories, for example—in our copyright law. Indeed, H.R. 5498 proceeds on the assumption that for purposes of rental software is more analogous to sound recordings. Whatever the analogy—and there are many false ones floating around—my subcommittee will continue during the next Congress to examine the questions that are raging internationally and domestically about intellectual property protection for computer programs.

In short, the work of my subcommittee over the past decade has been intense, focusing on both international considerations, and domestic problems resulting from the continuing introduction of new technologies. Title I of H.R. 5498, like the 1984 Record Rental Amendment, is directed toward a particular domestic problem: the effect that rental of copyright computer programs has on the sales market for such programs. Section 109 of the

Copyright Act, which codifies the so-called first sale doctrine, forms the legal basis for resolving the problem.

The first sale doctrine is one of the most important limitations on copyright owners' exclusive rights. Under this doctrine, the owner of a lawfully made copy of a copyrighted work is entitled to sell or otherwise dispose of that copy and to display the copy publicly without the copyright owner's permission. It is this provision in the copyright law that permits a student who purchases an anthology of poetry for a literature class to sell that anthology to a secondhand bookstore, which may in turn sell the copy to the public. A grocery store may purchase copies of video cassettes and rent those copies to its customers. A museum may display a painting it purchases from an art dealer.

Legislation to reform the first sale doctrine frequently arises from a collision course between intellectual property law and technological change, and computer programs are found on this path.

My subcommittee worked hard to reduce definitional uncertainties in the bill and to make other improvements. A substitute amendment was approved to narrow the scope of the proposed legislation, to protect educational activities, establish a shareware recordation system in the Copyright Office, and clarify the right to play video games in public places. The rental reform is subjected to a 7-year legislative sunset.

Title I is supported by the administration, the Copyright Office, and the Software Publishers Association.

The purpose of title II is to amend the Copyright Act in order to protect works of architecture, thereby placing the United States in full compliance with its multilateral treaty obligations as specified in the Berne Convention for the Protection of Literary and Artistic Works. This is accomplished by creating a new category of copyright subject matter for the constructed design of buildings. Title II has received the strong support of the administration, the Copyright Office, the Frank Lloyd Wright Foundation, and the American Institute of Architects.

Title II—which finds its roots in a bill that I introduced (H.R. 3990) with Mr. MOORHEAD—reflects the testimony of witnesses at the hearing held on March 14, 1990 by the subcommittee. It is a consensus piece of legislation without known opposition. Among the many important provisions in title II are those included by the subcommittee to protect the interests of homeowners and the real estate industry. For example, the bill permits owners of buildings embodying a copyrighted architectural work to alter the building in any way, including destroy it. Similarly, the bill ensures that State and local zoning and landmark laws are not preempted. I am pleased to announce that architects, in a spirit of cooperation, agreed to both of these amendments.

Architecture plays a central role in our daily lives, not only as a form of shelter or investment, but also as a work of art. Title II pays appropriate homage to this important art form, and I urge your support of it.

I do want to mention former title II of H.R. 5498, as introduced, which sought to reform the "fair use" doctrine, codified in section 107 of the Copyright Act, as regards unpublished works. By amendment in subcommittee, I deleted title II from the bill as not having adequately jelled. I had hoped that an agreement could be reached between interested parties—authors, publishers and the computer industry—but unfortunately this did not occur. This is an issue of great concern, not only to me, but to authors and publishers as well. Although there are indications that the Federal courts are evolving their approach to the use of unpublished material, this remains an important policy issue for the Congress.

We have added a new title to H.R. 5498. I am pleased to have my colleagues' support on adding the Visual Artists Rights Act. The Visual Artists' Rights Act of 1990 has already passed the House, and we are now adding it to the copyright bill before us. The language of this title is exactly the same as the bill that has previously passed the House and has sent to the Senate.

In conclusion, H.R. 5498 is worthy of your undivided support. I urge an affirmative vote.

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Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume. Mr. Speaker, I would like to commend the gentleman from Wisconsin. [Mr. KASTENMEIER] and the gentleman from Oklahoma [Mr. SYNAR] for their leadership in bringing H.R. 5498 to the floor.

Intellectual property accounts for a very large share of American exports. But because these works are inadequately protected in many parts of the world, the U.S. international trade commission estimates that copyright holders lose almost $25 billion a year in income. Losses suffered by writers, artists, computer software creators, and other are important not only to those individuals but to the country as well, because they affect the balance of trade. Royalties paid to the U.S. film and video industry alone, for example, account for a net $1 billion surplus in the balance.

The potential loss to the U.S. economy should the rental of software become anymore widespread can be seen clearly when we look to the losses suffered by the U.S. software developers by virtue of their inability to restrict commericial copying of their products in many foreign market. The office of the U.S. Trade Representative has estimated losses to U.S. software developers due to inadequate copyright protecton to be appr mately $4.1 billion a year.

Section 103 of title I is very narro drawn to apply only to the videoga that are sold exclusively for use in cades. The committee by amendm made clear that it would not appl other copyrighted works, for exam motion pictures, records, or books.

I also want to commend the gen man form Wisconsin for his supp on title II, a design protection bill believe that given the opportunity, can make a strong case for limited p tection of certain other types design.

Architectural design is an import area where I think Congress needs make a statement to bring this m in line with the Berne Treaty. T legislation has been carefully craft to ensure that title II, in no way, corporates directly or indirectly, called moral or noneconomic rig into the Copyright Act.

I believe that at a minimum should provide the equivalent kind protection to our American design and architects as is provided to th counterparts in foreign countries.

At the same time this legislation sensitive to long established practi and traditions among architects a others in the building industry.

I urge support for H.R. 5498.

Mr. Speaker, I yield such time as may consume to our ranking membe the gentleman from New York [M FISH].

(Mr. FISH asked and was given pe mission to revise and extend his r marks.)

Mr. FISH. Mr. Speaker, I would li to commend the gentleman from Wi consin and the gentleman from Cal fornia for their work on this legisl tion—which is intended to provid much needed protection for the com puter software industry and the d signers of architectural works.

The explosion in the developmen and use of computers and compute programs has given rise to legitimat concerns about protecting the intelle tual property rights of the softwar creators and manufacturers. Wide spread illegal copying of programs, fa cilitated through inexpensive rental will seriously damage software produc ers' revenue base and reduce the fi nancial incentive to create new pro grams. It is important to note that th United States currently holds 70 per cent of the world market in softwar sales. So, there is a significant balance of trade aspect to this problem as well

In the wake of the Berne adherenc legislation of the last Congress, w asked the Copyright Office to conduct a study of the architectural works pro tection issue. In response, the Registe of Copyrights concluded that while ar chitectural blueprints, plans, drawings and models are adequately protected by U.S. copyright law, the adequacy of protection under Berne convention standards for the constructed design

of architectural structures remains in doubt. Title II of H.R. 5498 places the United States unequivocally in compliance with its Berne obligations.

Mr. Speaker, this is needed legislation and we are acting quickly here today to prevent what could become a serious problem for the computer and architectural design industries.

I urge support for H.R. 5498.

Mr. KASTENMEIER. Mr. Speaker, I yield 3 minutes to the author of the original software computer rental provisions, the gentleman from Oklahoma [Mr. SYNAR], a member of the committee.

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

Mr. SYNAR. Mr. Speaker, the impetus for changes in copyright law occur primarily because of economic and technological change. Restricting consumer access to copyrighted materials should be done only in cases where the testimony and documentation establishes a number of cumulative facts which mandate the change. With respect to the computer software covered by this bill, however, I have been persuaded that the case has been made for these restrictions.

Having been around for the debate both on audio and video works, I am conscious of the need for careful consideration and for the need of an adequate record which justifies such a change. The software industry is faced with a threat similar to that faced by the record industry 5 years ago. Copying of software packages is even more easily accomplished than that of records and could seriously damage the computer industry and reduce innovation in this critical industry.

This bill addresses this problem while taking into account the needs of the educational and library community to have access to these materials. I urge you to support H.R. 5498.

Mr. MARKEY. Mr. Speaker, the bill before us today, H.R. 5498, includes a title that incorporates H.R. 2690, the Visual Artists' Rights Act of 1990. This is a new milestone for American artists which has reached the House floor only through the hard work of many people. As the original sponsor of H.R. 2690, I would particularly like to commend the gentleman from Wisconsin, Chairman KASTENMEIER, for his assiduous work on the legislation as well as the ranking minority member of the subcommittee, Representative MOORHEAD. I am proud to have both Chairman KASTENMEIER and Representative MOORHEAD as cosponsors of the legislation.

I first introduced the Visual Artists' Rights Act in the 100th Congress in order to fill a gap in copyright law by recognizing that artists who work in painting, drawing, and sculpture are intellectual authors who deserve protection for their works, just as do authors of novels, plays, and songs. This was the House companion to S. 1619, introduced by Senator KENNEDY.

The issue of visual artists' rights has come of age in America. As the art historian Helen Gardner said:

> A work of art • • • is a form created by the artist out of human experience. At the same time it has a cultural context. It exists in time, and its form reflects the forces of that time—social, economic, political, and religious.

Or, more concisely, Harold Clurman once stated:

> Man is in this world to do more than pay taxes and brush his teeth—and that is where the arts come in • • •.

There is an unfortunate problem, however, in that too often a work is treated simply as a physical piece of property, rather than as an intellectual work, like a novel. But artworks are intellectual expression, not just physical property. It is time that visual artists receive the fundamental copyright protection for the integrity of their work already provided to authors.

Indeed, it is paramount to the very integrity of our culture that we preserve the integrity of our art works as expressions of the creativity of the artist. This bill recognizes that title to the soul of an art work does not pass with the sale of the art work itself.

The Visual Artists' Rights Act would give artists the right to claim authorship of their works; to disclaim authorship of a distorted or mutilated work; and to bring a civil copyright claim for willful destruction or mutilation of their works. This bill precisely defines the types of art works that will be covered, extending legal protections to include limited editions of 200 copies or fewer of paintings, drawings, prints, scultures, and still photographs. Furthermore, this bill explicitly excludes from coverage any motion picture, video or other audio-visual work, poster, periodical, book, electronic publication, advertising item, or any work made for hire.

The bill now differs from the one that I introduced in the 100th Congress in one significant respect in that it calls for a feasibility study of resale royalties for certain works of art instead of a resale royalty provision. This represents a compromise to meet previous objections and permits this artists rights legislation to proceed without controversy. The House passed H.R. 2690 earlier this year on suspension, and is being offered again today in the hope that we may expedite Senate consideration of this legislation in the few days remaining in this Congress.

In 1987, at the time I first offered the bill, an example of irretrievable and irreparable damage had recently occurred—damage which passage of the bill we are discussing today will protect against.

Two mail-order entrepreneurs bought a Picasso print entitled "Three Women." They cut this Picasso into 500 pieces, each 1-inch square, to be sold at $135 apiece, complete with a certificate of authenticity and a 30-day money back guarantee. They placed newspaper ads which read:

> Yes, your very own beautiful framed Picasso piece, in the most original and exciting offer • • • and you can own a piece of the work yourself.

One of these entrepreneurs was quoted as saying:

> If this thing takes off, we may buy other masters as well and give them the chop.

We don't want profiteers roaming the world giving artistic masterpieces the chop.

Unquestionably, none of us would like to see our name attached to intellectual works presented to the public in an altered or mutilated form. This is the moral standard that H.R. 2690 upholds.

The legislation addresses this gap in copyright law by recognizing that, as original expressions of the artists' creativity, works of visual fine art embody intellectual property which can and should be protected by copyright law.

A work of art is not a utilitarian object like a toaster. It is an intellectual work like a song, a novel or a poem. We must not permit the connection between the artist and his or her work to be severed the first time the work is sold.

It is important to realize that moral rights laws already have been enacted in several States, including California, New York, Massachusetts, and others, thereby already affecting the major art markets of New York, Boston, and Los Angeles.

However, copyright protection is properly a matter for the Federal Government, and Federal law on moral rights would be far preferable to a hodge-podge of State statutes.

In fact, as of March 1, 1989, the United States joined the Berne Convention for the protection of literary and artistic works. As a result, copyright in the works of U.S. authors are now protected automatically in all member nations of the Berne union. Similarly, works of foreign authors who are nationals of a Berne union country and works first published in a Berne union country are automatically protected in the United States.

Because our adherence to the Berne Convention does not specifically incorporate visual artists rights, I believe it is all the more appropriate and timely to enact Federal legislation establishing these rights for visual artists.

It is also important to recognize that this legislation is limited to a class of copyrighted works that is unique and clearly distinguishable from every other class of copyrighted material. The specific language of the bill addresses only works of which there is no multiplicity. Thus, the bill is not applicable to forms such as video tapes, for the damage to one tape ruins only that particular copy.

In the last part of the 20th century, the United States has become the financial, political, and intellectual capital of the world. We also have become the arts capital of the world. With that leading status comes the responsibility for fostering, protecting and encouraging the arts. As Hugh Trevor Roper said:

> Art and literature are the true witness of all history that is worth preserving: they are the spiritual deposit which reminds us that we are the heirs of a living civilization.

I believe that the bill before you is a solid step in that direction, and I urge your support.

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

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

The SPEAKER pro tempore (Mr. MCNULTY). The question is on the motion offered by the gentleman from Wisconsin (Mr. KASTENMEIER] that the House suspend the rules and pass the bill (H.R. 5498), as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of the Senate bill (S. 198), to amend title 17, United States Code, the Copyright Act to protect certain computer programs.

The Clerk read the title of the Senate bill.

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

There was no objection.

The Clerk read the Senate bill, as follows:

S. 198

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Computer Software Rental Amendments Act of 1989".

SEC. 2. Section 109(b) of title 17, United States Code, is amended by—

(1) amending paragraph (1) to read as follows:

"(b)(1)(A) Notwithstanding the provisions of subsection (a), unless authorized by the owners of copyright in the sound recording or the owner of copyright in a computer program (including any tape, disk, or other medium embodying such program), and in the case of a sound recording in the musical works embodied therein, neither the owner of a particular phonorecord nor any program any person in possession of a particular copy of a computer program (including any tape, disk, or other medium embodying such program), may, for the purposes of direct or indirect commercial advantage, dispose of, or authorize the disposal of, the possession of that phonorecord or computer program (including any tape, disk, or other medium embodying such program) by rental, lease, or lending, or by any other act or practice in the natural of rental, lease, or lending. Nothing in the preceding sentence shall apply to the rental, lease, or lending of a phonorecord for nonprofit purposes, by a nonprofit library or nonprofit educational institution. The transfer of possession of a lawfully made copy of a computer program by a nonprofit educational institution to another nonprofit educational institution or to faculty, staff and students does not constitute rental, lease or lending for direct or indirect commercial purposes under this Act.

"(B) The term 'computer program', for purposes of this subsection, does not include any computer program embodied in electronic circuitry which is contained in, or used in conjuction with, a limited purpose computer designed primarily for playing home video games.";

(2) redesignating paragraphs (2) and (3), as paragraph (3) and (4), respectively;

(3) inserting between paragraph (1) and paragraph (3), as redesignated herein, the following:

"(2)(A) Nothing in this subsection shall apply to the lending of a computer program by a nonprofit library, providing that each copy of a copyrighted computer program which is lent by such library shall have affixed to the packaging containing the program the following notice:

"WARNING: THIS COMPUTER PROGRAM IS PROTECTED UNDER THE COPYRIGHT LAW. MAKING A COPY OF THIS PROGRAM WITHOUT PERMISSION OF THE COPYRIGHT OWNER IS PROHIBITED. ANYONE COPYING THIS PROGRAM WITHOUT PERMISSION OF THE COPYRIGHT OWNER MAY BE SUBJECT TO PAYMENT OF UP TO $100,000 DAMAGES AND, IN SOME CASES, IMPRISONMENT FOR UP TO ONE YEAR.

"(B) Three years after the effective date of this paragraph, and at such times subsequently as he or she may deem appropriate, the Register of Copyrights, after consultation with representatives of copyright owners and librarians, shall submit to the Congress a report stating whether the provisions of this paragraph have achieved the intended purpose of maintaining the integrity of the copyright system while providing nonprofit libraries the capability to fulfill their function. Such report shall advise the Congress as to any information or recommendations the Register of Copyrights shall deem necessary to effectuate the purposes of this Act."; and

(4) amending paragraph (4) to read as follows:

"(4) Any person who distributes a phonorecord or a copy of a computer program (including any tape, disk, or other medium embodying such program) in violation of clause (1) is an infringer of copyright under section 501 of this title and is subject to the remedies set forth in sections 502, 503, 504, 505, and 509. Such violation shall not be a criminal offense under section 506 or cause such person to be subject to the criminal penalties set forth in section 2319 of title 18.".

MOTION OFFERED BY MR. KASTENMEIER

Mr. KASTENMEIER. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. KASTENMEIER moves to strike out all after the enacting clause of the Senate bill, S. 198, and to insert in lieu thereof the text of H.R. 5498, as passed by the House.

The motion was agreed to.

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

The title of the Senate bill was amended so as to read: "A bill to amend title 17, United States Code, relating to computer software, fair use, and architectural works."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 5498) was laid on the table.

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 5498 and S. 198, the bills just passed.

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

There was no objection.

RADIATION EXPOSURE COMPENSATION ACT

Mr. FRANK. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 2372) to provide jurisdiction and procedures for claims for compassionate payments for injuries due to exposure to radiation from nuclear testing.

The Clerk read as follows:

Senate amendment: Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Radiat Exposure Compensation Act".

SEC. 2. FINDINGS, PURPOSE, AND APOLOGY.

(a) FINDINGS.—The Congress finds that—

(1) fallout emitted during the Gov ment's above-ground nuclear tests Nevada exposed individuals who lived the downwind affected area in Neva Utah, and Arizona to radiation that is sumed to have generated an excess of cers among these individuals;

(2) the health of the individuals who unwitting participants in these tests put at risk to serve the national security terests of the United States;

(3) radiation released in underground nium mines that were providing urani for the primary use and benefit of the nu ar weapons program of the United Sta Government exposed miners to large do of radiation and other airborne hazards the mine environment that together are sumed to have produced an increased i dence of lung cancer and respiratory eases among these miners;

(4) the United States should recognize assume responsibility for the harm done these individuals; and

(5) the Congress recognizes that the h and health of uranium miners and of in cent individuals who lived downwind fr the Nevada tests were involuntarily sub ed to increased risk of injury and diseas serve the national security interests of United States.

(b) PURPOSE.—It is the purpose of this to establish a procedure to make partial titution to the individuals described in s section (a) for the burdens they have bo for the Nation as a whole.

(c) APOLOGY.—The Congress apologizes behalf of the Nation to the individuals scribed in subsection (a) and their famil for the hardships they have endured.

SEC. 3. TRUST FUND.

(a) ESTABLISHMENT.—There is established the Treasury of the United States, a tr fund to be known as the "Radiation Ex sure Compensation Trust Fund" (here after in this Act referred to as the "Fund which shall be administered by the Secret of the Treasury.

(b) INVESTMENT OF AMOUNTS IN THE FUND. Amounts in the Fund shall be invested in cordance with section 9702 of title United States Code, and any interest and proceeds from any such investm shall be credited to and become a part of t Fund.

(c) AVAILABILITY OF THE FUND.—Amounts the Fund shall be available only for d bursement by the Attorney General un section 6.

(d) TERMINATION.—The Fund shall ter nate not later than the earlier of the date which an amount has been expended fr the Fund which is equal to the amount o thorized to be appropriated to the Fund subsection (e), and any income earned such amount, or 22 years after the date the enactment of this Act. If all of t amounts in the Fund have not been expe ed by the end of that 22-year period, inve ments of amounts in the Fund shall be liq dated and receipts thereof deposited in t Fund and all funds remaining in the Fu shall be deposited in the miscellaneous ceipts account in the Treasury.

(e) AUTHORIZATION OF APPROPRIATIONS. There are authorized to be appropriated the Fund $100,000,000. Any amounts appr priated pursuant to this section are auth ized to remain available until expended.

SEC. 4. CLAIMS RELATING TO OPEN AIR NUCLEAR TESTING.

(a)(1) CLAIMS RELATING TO CHILDHOOD LEUKEMIA.—Any individual who was physically present in the affected area for a period of at least 1 year during the period beginning on January 21, 1951, and ending on October 31, 1958, or was physically present in the affected area for the period beginning on June 30, 1962, and ending on July 31, 1962, and who submits written medical documentation that he or she, after such period of physical presence and between 2 and 30 years of first exposure to the fallout, contracted leukemia (other than chronic lymphocytic leukemia), shall receive $50,000 if—

(A) initial exposure occurred prior to age 21,

(B) the claim for such payment is filed with the Attorney General by or on behalf of such individual, and

(C) the Attorney General determines, in accordance with section 6, that the claim meets the requirements of this Act.

(2) CLAIMS RELATING TO SPECIFIED DISEASES.—Any individual who was physically present in the affected area for a period of at least 2 years during the period beginning on January 21, 1951, and ending on October 31, 1958, or was physically present in the affected area for the period beginning on June 30, 1962, and ending on July 31, 1962, and who submits written medical documentation that he or she, after such period of physical presence, contracted a specified disease, shall receive $50,000 if—

(A) the claim for such payment is filed with the Attorney General by or on behalf of such individual, and

(B) the Attorney General determines, in accordance with section 6, that the claim meets the requirements of this Act.

Payments under this section may be made only in accordance with section 6.

(b) DEFINITIONS.—For purposes of this section, the term—

(1) "affected area" means—

(A) in the State of Utah, the counties of Washington, Iron, Kane, Garfield, Sevier, Beaver, Millard, and Piute;

(B) in the State of Nevada, the counties of White Pine, Nye, Lander, Lincoln, Eureka, and that portion of Clark County that consists of townships 13 through 16 at ranges 63 through 71; and

(C) that part of Arizona that is north of the Grand Canyon and west of the Colorado River; and

(2) "specified disease" means leukemia (other than chronic lymphocytic leukemia), provided that initial exposure occurred after the age of 20 and the onset of the disease was between 2 and 30 years of first exposure, and the following diseases, provided onset was at least 5 years after first exposure: multiple myeloma, lymphomas (other than Hodgkin's disease), and primary cancer of: the thyroid (provided initial exposure occurred by the age of 20), female breast (provided initial exposure occurred prior to age 40), esophagus (provided low alcohol consumption and not a heavy smoker), stomach (provided initial exposure occurred before age 30), pharynx (provided not a heavy smoker), small intestine, pancreas (provided not a heavy smoker and low coffee consumption), bile ducts, gall bladder, or liver (except if cirrhosis or hepatitis B is indicated).

SEC. 5. CLAIMS RELATING TO URANIUM MINING.

(a) ELIGIBILITY OF INDIVIDUALS.—Any individual who was employed in a uranium mine located in Colorado, New Mexico, Arizona, Wyoming, or Utah at any time during the period beginning on January 1, 1947, and ending on December 31, 1971, and who, in the course of such employment—

(1)(a) if a nonsmoker, was exposed to 200 or more working level months of radiation and submits written medical documentation that he or she, after such exposure, developed lung cancer, or

(b) if a smoker, was exposed to 300 or more working level months of radiation and cancer incidence occurred before age 45 or was exposed to 500 or more working level months of radiation, regardless of age of cancer incidence, and submits written medical documentation that he or she, after such exposure, developed lung cancer; or

(2)(a) if a nonsmoker, was exposed to 200 or more working level months of radiation and submits written medical documentation that he or she, after such exposure, developed a nonmalignant respiratory disease, or

(b) if a smoker, was exposed to 300 or more working level months of radiation and the nonmalignant respiratory disease developed before age 45 or was exposed to 500 or more working level months of radiation, regardless of age of disease incidence, and submits written medical documentation that he or she, after such exposure, developed a nonmalignant respiratory disease,

shall receive $100,000, if—

(A) the claim for such payment is filed with the Attorney General by or on behalf of such individual, and

(B) the Attorney General determines, in accordance with section 6, that the claim meets the requirements of this Act.

Payments under this section may be made only in accordance with section 6.

(b) DEFINITIONS.—For purposes of this section—

(1) the term "working level month of radiation" means radiation exposure at the level of one working level every work day for a month, or an equivalent exposure over a greater or lesser amount of time;

(2) the term "working level" means the concentration of the short half-life daughters of radon that will release (1.3×10^5) million electron volts of alpha energy per liter of air;

(3) the term "nonmalignant respiratory disease" means fibrosis of the lung, pulmonary fibrosis, and corpulmonale related to fibrosis of the lung; and if the claimant, whether Indian or non-Indian, worked in an uranium mine located on or within an Indian Reservation, the term shall also include moderate or severe silicosis or pneumoconiosis; and

(4) the term "Indian tribe" means any Indian tribe, band, nation, pueblo, or other organized group or community, that is recognized as eligible for special programs and services provided by the United States to Indian tribes because of their status as Indians.

SEC. 6. DETERMINATION AND PAYMENT OF CLAIMS.

(a) ESTABLISHMENT OF FILING PROCEDURES.—The Attorney General shall establish procedures whereby individuals may submit claims for payments under this Act.

(b) DETERMINATION OF CLAIMS.—

(1) IN GENERAL.—The Attorney General shall, in accordance with this subsection, determine whether each claim filed under this Act meets the requirements of this Act.

(2) CONSULTATION.—The Attorney General shall—

(A) in consultation with the Surgeon General, establish guidelines for determining what constitutes written medical documentation that an individual contracted a specified disease under section 4 or other disease specified in section 5; and

(B) in consultation with the Director of the National Institute for Occupational Safety and Health, establish guidelines for determining what constitutes documentation that an individual was exposed to the working level months of radiation under section 5.

The Attorney General may consult with the Surgeon General with respect to making determinations pursuant to the guidelines issued under subparagraph (A), and with the Director of the National Institute for Occupational Safety and Health with respect to making determinations pursuant to the guidelines issued under subparagraph (B).

(c) PAYMENT OF CLAIMS.—

(1) IN GENERAL.—The Attorney General shall pay, from amounts available in the Fund, claims filed under this Act which the Attorney General determines meet the requirements of this Act.

(2) OFFSET FOR CERTAIN PAYMENTS.—A payment to an individual, or to a survivor of that individual, under this section on a claim under section 4 or 5 shall be offset by the amount of any payment made pursuant to a final award or settlement on a claim (other than a claim for worker's compensation), against any person, that is based on injuries incurred by that individual on account of—

(A) exposure to radiation, from open air nuclear testing, in the affected area (as defined in section 4(b)(1)) at any time during any period specified in section 4(a), or

(B) exposure to radiation in a uranium mine at any time during the period described in section 5(a).

(3) RIGHT OF SUBROGATION.—Upon payment of a claim under this section, the United States Government is subrogated for the amount of the payment to a right or claim that the individual to whom the payment was made may have against any person on account of injuries referred to in paragraph (2).

(4) PAYMENTS IN THE CASE OF DECEASED PERSONS.—

(A) IN GENERAL.—In the case of an individual who is deceased at the time of payment under this section, such payment may be made only as follows:

(i) If the individual is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.

(ii) If there is no surviving spouse described in clause (i), such payment shall be made in equal shares to all children of the individual who are living at the time of payment.

(iii) If there is no surviving spouse described in clause (i) and if there are no children described in clause (ii), such payment shall be made in equal shares to the parents of the individual who are living at the time of payment.

(iv) If there is no surviving spouse described in clause (i), and if there are no children described in clause (ii) or parents described in clause (iii), such payment shall be made in equal shares to all grandchildren of the individual who are living at the time of payment.

(v) If there is no surviving spouse described in clause (i), and if there are no children described in clause (ii), parents described in clause (iii), or grandchildren described in clause (iv), then such payment shall be made in equal shares to the grandparents of the individual who are living at the time of payment.

(B) INDIVIDUALS WHO ARE SURVIVORS.—If an individual eligible for payment under section 4 or 5 dies before filing a claim under this Act, a survivor of that individual who may receive payment under subparagraph (A) may file a claim for such payment under this Act.

(C) DEFINITIONS.—For purposes of this paragraph—

(i) the "spouse" of an individual means a wife or husband of that individual who was married to that individual for at least one year immediately before the death of that individual;

(ii) a "child" includes a recognized natural child, a stepchild who lived with an individual in a regular parent-child relationship, and an adopted child;

(iii) a "parent" includes fathers and mothers through adoption;

(iv) a "grandchild" of an individual is a child of a child of that individual; and

(v) a "grandparent" of an individual is a parent of a parent of that individual.

(d) ACTION ON CLAIMS.—The Attorney General shall complete the determination on each claim filed in accordance with the procedures established under subsection (a) not later than twelve months after the claim is so filed.

(e) PAYMENT IN FULL SETTLEMENT OF CLAIMS AGAINST THE UNITED STATES.—The acceptance of payment by an individual under this section shall be in full satisfaction of all claims of or on behalf of that individual against the United States, or against any person with respect to that person's performance of a contract with the United States, that arise out of exposure to radiation, from open air nuclear testing, in the affected area (as defined in section 4(b)(1)) at any time during any period described in section 4(a), or exposure to radiation in a uranium mine at any time during the period described in section 5(a).

(f) ADMINISTRATIVE COSTS NOT PAID FROM THE FUND.—No costs incurred by the Attorney General in carrying out this section shall be paid from the Fund or set off against, or otherwise deducted from, any payment under this section to any individual.

(g) TERMINATION OF DUTIES OF ATTORNEY GENERAL.—The duties of the Attorney General under this section shall cease when the Fund terminates.

(h) CERTIFICATION OF TREATMENT OF PAYMENTS UNDER OTHER LAWS.—Amounts paid to an individual under this section—

(1) shall be treated for purposes of the internal revenue laws of the United States as damages for human suffering; and

(2) shall not be included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits.

(i) USE OF EXISTING RESOURCES.—The Attorney General should use funds and resources available to the Attorney General to carry out his or her functions under this Act.

(j) REGULATORY AUTHORITY.—The Attorney General may issue such regulations as are necessary to carry out this Act.

(k) ISSUANCE OF REGULATIONS, GUIDELINES, AND PROCEDURES.—Regulations, guidelines, and procedures to carry out this Act shall be issued not later than 180 days after the date of the enactment of this Act.

SEC. 7. CLAIMS NOT ASSIGNABLE OR TRANSFERABLE; CHOICE OF REMEDIES.

(a) CLAIMS NOT ASSIGNABLE OR TRANSFERABLE.—No claim cognizable under this Act shall be assignable or transferable.

(b) CHOICE OF REMEDIES.—No individual may receive payment under both sections 4 and 5 of this Act.

SEC. 8. LIMITATIONS ON CLAIMS.

A claim to which this Act applies shall be barred unless the claim is filed within 20 years after the date of the enactment of this Act.

SEC. 9. ATTORNEY FEES.

Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the claim of an individual under this Act, more than 10 per centum of a payment made under this Act on such claim. Any such representative who violates this section shall be fined not more than $5,000.

SEC. 10. CERTAIN CLAIMS NOT AFFECTED BY AWARDS OF DAMAGES.

A payment made under this Act shall not be considered as any form of compensation or reimbursement for a loss for purposes of imposing liability on any individual receiving such payment, on the basis of such receipt, to repay any insurance carrier for insurance payments, or to repay any person on account of worker's compensation payments; and a payment under this Act shall not affect any claim against an insurance carrier with respect to insurance or against any person with respect to worker's compensation.

SEC. 11. BUDGET ACT.

No authority under this Act to enter into contracts or to make payments shall be effective in any fiscal year except to such extent or in such amounts as are provided in advance in appropriations Acts.

SEC. 12. REPORT.

(a) The Secretary of Health and Human Services shall submit a report on the incidence of radiation related moderate or severe silicosis and pneumoconiosis in uranium miners employed in the uranium mines that are defined in section 5 and are located off of Indian reservations.

(b) Such report shall be completed not later than September 30, 1992.

The SPEAKER pro tempore. Is a second demanded?

Mr. JAMES. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. FRANK] will be recognized for 20 minutes, and the gentleman from Florida [Mr. JAMES] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Masschusetts [Mr. FRANK].

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

We are revisiting this bill. The House passed it earlier this year. The Senate took it up, made some changes, and it is now back from the Senate. The Senate version was a compromise involving several Members in the Senate. It is the judgment of those who care strongly about this bill that given the inherent difficulty of passing anything through the U.S. Senate, it would be well for Members to concur and not send it back. That is what we propose to do. The differences are not major. The principles remain the same.

This first came to my attention at a conversation I had with the gentleman from Utah [Mr. OWENS], who sits here and who will be speaking, and who has been on this side and I believe in the Congress as a whole, the major proponent of this bill. He was the one who called my attention to it, and marshaled the evidence that convinced all Members that an injustice had been done. Not out of intent, but an injustice had been done, to two groups of people.

□ 1430

One group was miners who provided uranium when this country very much needed it for its national security from 1947 to 1971. They were sent into the mines without even the slightest protection against the material they were being forced to mine—not forced, they were there voluntarily to earn a living, but that they were being asked to mine.

Second, we have people who lived in areas very close to nuclear testsites. We now know that nuclear radiation can be dangerous. Earlier we did not know. At some point we probably knew and were not acting on the information in sufficient time, American citizens going about their business of living, working, raising families, were exposed to radiation in degress that we would not allow now.

I should point out that in both cases we are dealing with groups of people who would not by today's standards be treated anything like this.

This is an example of what we do from time to time, and I think it is something of which we should be proud. We admit mistakes. We are a great Nation, a Nation that is the envy of most of the rest of the world, and justly so, but we are not a perfect society and from time to time we make mistakes.

We are here saying that as a Nation in the dangerous and difficult postwar period confronted with a brandnew technology, feeling very much threatened, needing that technology, we felt I think accurately for our defense, we acted hastily. We acted with insufficient knowledge, and as a result many of our fellow citizens became ill. That was not a malign act on the part of anybody, but it is an act which we as a just and gracious society ought to try to remedy the best that we can. Obviously we can never restore people's health that was lost.

This legislation, after careful discussion and negotiation, essentially says, if you can show that you were in the mines, if you can show that you were downwind from the radiation and you now have certain illnesses, we are prepared to compensate you.

There are details, not everyone is happy entirely with it, I have had conversations with the administration that indicate that while they preferred in some ways what we did, are prepared to accept this. A number of Members participated. A number of Members called it to our attention. I think it was the gentleman from Wyoming who first called to our attention the justice of including this own State. We were pleased when he pointed that out to concur. That is one of the amendments the Senate made, to include Wyoming. We have done that.

This is a bill that I think speaks to the essential fairness of this society. It

recognizes that we made mistakes 40 years ago or more in our haste and in our sense of insecurity dealing with a new technology, and we are doing what I think is a compassionate thing.

We should note that among those who were most heavily impacted by this in the mining areas, particularly the Navajo Indians, they very patriotically responded to this Nation's need and we think it is only fair that today we recognize what they have done.

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

Mr. Speaker, I rise in support of H.R. 2372, the Radiation Exposure Compensation Act. Although the version of the bill before us today varies slightly from that which was passed by the House on June 5, I believe that it represents an effective compromise. Therefore, I intend to continue suit and support this legislation here today as I have in the past.

Mr. Speaker, I realize that this bill, as amended by the Senate, does include additional requirements for compensation. In this light, I would like to commend our colleagues in the Senate for their attempt to address the lack of a requirement for proof of causation in the original House-passed bill. As many of you know, I, too, had some difficulty with the vagueness in the House-passed bill for this very reason. And while the amended version seeks to include new eligibility requirements for coverage, as well as additional specific requirements for six of the diseases, I do not believe that it fails to recognize those individuals who were "sacrificed" in the name of our national security. Mr. Speaker, H.R. 2372 as amended continues to represent a compassionate response from our Government.

I firmly believe that the time has come for our Government to recompense those who were affected by the nuclear testing in the West as well as those who were affected by working in the uranium mines to provide this Nation with uranium for its defense efforts. While this legislation cannot undo the damage, I believe that H.R. 2372 is a step in the right direction. Therefore, I will support this bill and look forward to its speedy enactment.

Mr. FRANK. Mr. Speaker, I yield such time as he may consume to the gentleman from Utah [Mr. OWENS], who has been not only the main sponsor of this bill, but its most faithful and skillful advocate.

(Mr. OWENS of Utah asked and was given permission to revise and extend his remarks.)

Mr. OWENS of Utah. Mr. Speaker, I am very grateful that this moment has arrived and very grateful to the committee chairman, the gentleman from Massachusetts [Mr. FRANK] who undertook to complete this bill, when he first came to understand the gross inequities and injustices that it addresses, and to Chairman BROOKS as well and to the gentleman from Florida [Mr. JAMES], I express my genuine appreciation.

I have prepared remarks which I will insert in the RECORD.

I undertook 12 years as an attorney to represent the people whose wrongs are addressed in this bill. It has been an amazing experience to win a case in court at the district level and then be turned done on appeal because the Government does not deal with these kinds of injustices, so the court said, under the Federal Tort Claims Act.

We inherited, of course, sovereign immunity from England, from Great Britain, and this is one of the oddities still in the law, that here we find causation by negligence of the Federal Government, but here we find that although justice cries out for redress, an inability under the law to provide it.

The courts in turning this case down said that there is justice needed and deserved here, but it is for the Congress to address it, rather than the courts.

So when I came to Congress 4 years ago, returned to Congress, I resigned obviously as counsel for the good people and became their advocate.

So it has been a great rewarding experience to have been able to enlist people like the gentleman from Massachusetts [Mr. FRANK] and the gentleman from Texas [Mr. BROOKS] and many others in this cause and work closely with the junior Senator of my State, Senator HATCH, in working in legislative language which could be accepted across the board and which today with this vote we send to the President for his signature.

It has been an emotional experience, because here were the good people, the victims of the cold war. It seems so appropriate, Mr. Speaker, that as we have watched in wonder over the last 12 to 15 months at the demise of the cold war that now we come and compensate the American victims of the cold war who were the downwinders from the atomic testing and the miners who mined the uranium to fuel those bombs that were being produced. They did so willingly. The fervor of the early fifties was such that we were racing against the Soviet Union for preeminence in the atomic and nuclear fields, and these good people in southern Utah, Arizona, and Nevada, really felt that they were making a contribution, a sacrifice which was assisting their Government and they felt very patriotic about it.

I was a high school student in this area and watched these early morning blasts. I know how patriotic and helpful that the citizens felt; but the Government knew, Mr. Speaker, that these people were being poisoned by nuclear fallout. The evidence is very clear, and as the gentleman from Massachusetts has said, the increased incidence of cancer has affected the downwind victims.

Amazingly, no bomb test before we went to underground testing in 1963 and no bomb test since we went underground in 1953 has been fired when the wind was blowing anywhere except to Utah and to northern Nevada and Arizona. Whenever the wind was blowing toward California and Las Vegas, the tests were not conducted, and that principle remains in practice today. The decision was made that there are fewer people who live in this direction. Therefore, the bombs shall be in essence aimed at them.

So in very real fact, Mr. Speaker, the Federal Government made the decision to bomb the people to whom this bill makes an apology today and a compensatory payment of a small amount.

□ 1440

So it is a great experience to have been so long and so deeply involved in this legislation and to see it being passed today and to send it to the White House with an apology to these good people and with this payment, which is a compassionate payment only.

Mr. Speaker, I express again deep appreciation to the gentleman from Massachusetts [Mr. FRANK] for carrying this banner

Mr. Speaker, by all accounts, the cold war is over. But the victims of that national struggle continue to suffer. The cold war did not take lives on the steppes of Russia but it did take casualties in the deserts and uranium mines of the American West. And its combatants died and continue to die of cancers inflicted on that western battlefield.

For 11 years, from 1951 to 1962, the desert wind that swept across the mesas of Nevada, Arizona, and Utah carried with it the fallout from open air atomic testing, sowing seeds of sickness and death which were often not manifest for many years. Between 1947 and 1971, uranium miners in Utah, New Mexico, Arizona, Wyoming, and Colorado raced with patriotic fervor against the Soviet nuclear program, unknowingly working in conditions that were sure to shorten their lives. In our haste to prepare ourselves for the war no one wanted, we made involuntary sacrifices of our own people, downwinders and miners alike.

Open air atomic tests would not be conducted unless the wind was blowing away from Los Angeles and Las Vegas and that practice continues to this day with underground nuclear tests. Instead, tests are held until winds blow toward "low-use segments of the population," a dehumanizing and callous euphemism used by the Government to describe the very real people of Utah, Arizona, and Nevada. Despite the Government's repeated assurances that the radioactive cloud was harmless, certain cancers associated with radiation arose at a rate up to four times the national average.

Below the ground, absolute proof shows that uranium miners were exposed to radiation levels so high that the Federal Government knew—but did not reveal—that the radiation would cause almost certain death and disease. The Government which could have mitigated these dangerous conditions did not do so, and the predictable outcome occurred. As an Arizona Federal District Court concluded:

The weight of the evidence leaves no doubt that the respiratory tract and lung cancers were caused by excessive exposure to radon in the underground uranium mines.

The House, of course has already passed this bill and already endorsed the justice of this attempt to apologize and compensate these people of the West who suffered and died as a result of our cold war mobilization. The bill that we will vote on today, as amended and passed by the Senate, deserves our complete support. I will briefly discuss the amendments the Senate made to the bill as passed by the House. The first change involves the inclusion in the bill of uranium miners from Wyoming as eligible claimants. When the bill was first introduced, only uranium miners from New Mexico, Utah, Arizona, and Colorado were included. But it recently came to our attention that there were also mines in Wyoming which supplied the Government with uranium for its nuclear programs. Other changes were made in the House version to ensure that the lung cancers and respiratory diseases for which compensation is provided are those which are most likely to have been caused by the radiation in the mines. Distinctions have been made with respect to exposure levels and whether or not the miners were smokers. Similar changes have also been included with respect to the downwinders to take into account factors such as age, duration of the exposure, and personal habits which may have influenced the onset of the disease.

Another Senate amendment changes the life of the trust fund from 6 years to 22 years, which more realistically takes into account the latency periods of some of the diseases which are covered by this legislation. Finally, the Senate has included two additional uranium-related diseases for which compensation will be available, if the miners worked in uranium mines on or within an Indian reservation. Many of these uranium miners were native Americans. Given the special trust responsibility of our Government over the activities of tribal members, it is only fair that we include compensation for these diseases. These mines were some of the earliest and most contaminated mines, not subject to any form of State regulation.

The Senate amendments make this a tighter, fairer bill, and I endorse them without reservation. Passage of this bill today will allow us to consummate this national apology with the signature of the President. A great nation must make apologies and recompense when it has wronged its people. I ask for your support as we send the Radiation Exposure Compensation Act to the White House.

Mr. JAMES. Mr. Speaker, I yield 2 minutes to the gentleman from Arizona [Mr. RHODES].

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

Mr. RHODES. Mr. Speaker, I rise in support of H.R. 2372, a bill to provide compensation for the radiation-related injuries suffered by individuals who were engaged in uranium mining in the southwestern United States from the early 1940's to the late 1970's. I understand when the Senate passed H.R. 2372, it amended certain provisions to strengthen what I already considered to be a good bill.

The Senate amended the bill to allow native American uranium miners to receive compensation for a couple of additional respiratory diseases—moderate or severe silicosis and pneumoconiosis. The Senate deliberation on this point is replete with the reasons justifying the provision, and I would like to take a minute to recap the essence of the Senate's justification.

The United States has a unique political relationship with American Indians that is often described also as a trust relationship. Based on Federal treaties and statutes, the United States exercises responsibility for management of mineral resources and mine safety on Indian reservations and since the early 19th century has assumed responsibility for providing health care to American Indians.

It is widely recognized that with regard to uranium mines on Indian reservations in the Southwest, the United States placed the national security interests above the health of the miners, both Indian and non-Indian. In doing so, the United States also did virtually nothing to warn them of and protect them from the harmful health hazards of employment in the mines. Further, very little was done to ensure that effective mine safety standards were developed and implemented.

The situation was aggravated by several factors. American Indian miners spoke almost no English, and had no understanding of the dangers presented by their employment. Most of these people were and are completely dependent upon the Indian Health Service for their health care. Many of these Indian miners live in very remote areas of Arizona, New Mexico, and Utah and have trouble getting to the Indian Health Service facilities for diagnosis and treatment for illnesses that may have been caused by the mining conditions. For those that could reach the Indian Health Service facilities, pulmonary specialists were largely not available and therefore diagnoses contained in their medical records are often ambiguous.

Given the totality of the circumstances surrounding the need for this legislation, I concur with the many eloquent statements of my colleagues in the Senate who share the belief that the Federal trust relationship to native Americans, and the Federal Government's actions and inactions reflected in this bill, compel the compensation provided in the bill. These circumstances justify further that the claims of native American miners should be reviewed liberally, and that if there are any gray areas, the claims should be reviewed in favor of granting rather than denying compensation.

If I had to use one word to describe the essence of this legislation, that word would be "compassionate". It is with compassion that I support H. 2372 as amended by the Senate, an urge my colleagues to do the same.

Mr. Speaker, there is an individu who is not a Member of the House Representatives who deserves to commended for his actions on beh of those who will benefit from this le islation. That gentleman is a form Member of the House and former Se retary of the Interior, the brother the current chairman of the Comm tee on Interior and Insular Affairs, t gentleman from Arizona, Mr. UDALL; refer to Stewart Udall.

It was Stewart's efforts which fir really brought this situation to t public eye, into the minds and co sciences of the people of this count and which ultimately led us to be here on the floor earlier this year a then again today.

I just think it would be appropria for the record, during consideration this bill, to include recognition of t efforts of Stewart L. Udall on beh of those who will benefit from this le islation.

Mr. FRANK. Mr. Speaker, I yie myself 30 seconds in order to tha the gentleman from Arizona for tho very gracious remarks.

That was an omission on my part. appreciate his being helpful.

Stewart Udall has been a zealot behalf of justice here. The gentlem from Arizona was quite correct bringing that out.

Mr. Speaker, I yield 4 minutes to t gentleman from Nevada [Mr. BI BRAY].

Mr. BILBRAY. Mr. Speaker, wholeheartedly support the bill, H. 2372, the Radiation Exposure Co pensation Act. I commend all the e forts of my respected colleague fro Utah, Mr. OWENS for introducing th act which establishes a trust fund f claims for injuries and death due exposure to radiation during certa time periods. The sources of exposu result from nuclear testing in Uta Nevada, and Arizona; or uraniu mining in Colorado, New Mexico, A zona, or Utah.

As a life-long resident and Repr sentative of the First District Nevada, I am well aware of the histo of the U.S. atomic weapons testi program. The Nevada test site is loca ed a mere 65 miles from Las Vega and the vast majority of the mo than nine thousand test site worke have their permanent resident southern Nevada.

Unfortunately, the history of t Nevada test site has been a troubl history, particularly during the atmo pheric testing program between th years 1951 to 1963. During this perio approximately 235 above-grou atomic tests were conducted in Neva and in the Pacific Ocean, exposi hundreds of thousands of civilians an military personnel to unhealthy leve of ionizing radiation.

In testimony before Congress in 1982, Mrs. Gloria Gregerson of Bunkerville, NV, recalled here own experiences:

The radioactive cloud, as it came over, was really distinct. It would usually come over our school campus between 9 and 10 in the morning * * *. Later the Government officials would come to our school to talk to us in assemblies, but they never came until after several blasts had already been shot off * * *. They would preface their remarks saying: "There is nothing to be alarmed about. There is nothing to hurt you, so don't worry, but wash your cars everday; wash your clothes twice before you wear them; don't eat the plants and the vegetables; don't drink the local milk," yet that is the only way we had to get milk, through our cows. I remember playing under the oleander trees * * * and the fallout was so thick it was like snow * * *. We liked to play under the trees and shake this fallout onto our heads and our bodies, thinking that we were playing in the snow * * *. Then I would go home and eat. If my mother caught me as a young child, I would wash my hands; if not, then I would eat with the fallout on my hands.

Mrs. Gregerson developed ovarian cancer at the age of 17, which later spread to her intestines and stomach and involved 13 major surgeries. After years of struggling ad many more surgeries, Mrs. Gregerson died the year following her congressional testimony, at the age of 42.

Mr. Chairman, it is time for our Government to own up to the pain and suffering it has inflicted upon its own citizens. If we are able to provide hundreds of millions of dollars to Panama and Eastern Europe, then surely it is our moral duty to provide for our own citizens who are actually victims of the only war waged on American soil this century. The downwinders, as they are called, are no different than the veterans of World War II, Korea, or Vietnam. They are the veterans of the cold war. For years their Government misled, concealed, covered up, and outright lied to them about the dangers of atomic testing. Now is the time for their Government to apologize and to make amends for their negligence and deceit.

Mr. JAMES. Mr. Speaker, I yield 2 minutes to the gentleman from Wyoming [Mr. THOMAS].

Mr. THOMAS of Wyoming. I thank the gentleman for yielding time to me.

Mr. Speaker, I rise today in support of H.R. 2372, the Radiation Exposure Compensation Act.

I am very pleased the legislation has been amended to include Wyoming uranium miners affected by radiation. In the late 1940's underground uranium miners often worked in unventilated conditions and were exposed to high levels of radon gas. Because the Federal Government was the primary purchaser of this uranium, intended for the country's nuclear weapons program, it seems to me the Federal Government has an obligation to those miners who were exposed and unprotected to cancer-causing gas. The miners and their families have suffered greatly. This bill is necessary and must include Wyoming.

Wyoming has been one of the highest producing States of uranium in this country and we have found that there are some Wyoming citizens whose health may have been affected due to their employment as uranium miners in the time period recognized. I now feel confident that qualifying individuals from Wyoming will be covered and compensated. Particularly Mr. FRANK, and Mr. OWENS for their consideration of the needs in Wyoming for their willingness to work with the Wyoming delegation on this extremely important issue.

Mr. FRANK. Mr. Speaker, I yield 2 minutes to the gentleman from Utah [Mr. OWENS].

Mr. OWENS of Utah. I thank the gentleman for yielding.

Mr. Speaker, I would like to engage my colleague, the gentleman from Massachusetts [Mr. FRANK], the chairman of the subcommittee which considered this legislation, in a brief colloquy, if I may, concerning the administration of the Radiation Exposure Compensation Act by the Department of Justice.

The bill establishes the radiation exposure compensation trust fund and authorizes the appropriation of $100,000,000 to the fund. The Attorney General shall pay, from amounts available in the fund, claims which the Attorney General determines meet the requirements of this act. Administrative costs, however, shall not be paid from the fund. The Attorney General shall establish procedures whereby individuals may submit claims for payments under this act, and regulations to carry out this act shall be issued not later than 180 days after the date of the enactment of this act.

As sponsor and author of H.R. 2372, it was my intention that, notwithstanding the lack of appropriations to the fund, the Attorney General should use funds and resources presently available to the Attorney General to establish procedures for submission and review of claims. And notwithstanding the lack of appropriations to the fund, the Attorney General should adjudicate claims. I would just like to confirm that this is the gentleman's understanding as well.

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

Mr. OWENS of Utah. I yield to the chairman of the subcommittee, the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK. I thank the gentleman for yielding.

Mr. Speaker, I agree with the gentleman from Utah. Obviously, the actual payout would be subject to appropriation, but we from time to time give the Department of Justice tasks to carry out and we do not regularly, specifically appropriate funds for this or that administrative task. This is an obligation now of the Federal Government, a compassionate one, not one that further obligates us; but it would be legal to pay these people.

Yes, I do believe it certainly is my intention that the Justice Department would begin the administrative process with funds on hand as they do in other areas.

□ 1450

The payments will be subject to appropriation, but I do not think the processes are, and I would add that the one reason for doing that, of course, is that we are dealing here with people who may be dying. We are dealing here with a population of people that goes back 43 years, some of whom are ill. I would hope that they would do that.

Mr. JAMES. Mr. Speaker, I yield myself such time as I may consume to comment in regard to the colloquy.

As I read the statute, there has been no money budgeted for the purposes of the Attorney General investigating this, and it would cut into the S&L investigation, et cetera. I do not know how that would be handled. We may wish and express our desire that, if funds are available for the purposes of proceeding in the manner that was suggested in the colloquy, it would be desirable, and hopefully that can be accomplished. But I do not see how we can suggest it is a mandate upon the Attorney General to do it until there is an appropriation because for all he would know there may never be an appropriation until this Congress acts, and we better move swiftly and quickly to make sure there is an appropriate appropriation because otherwise it does not seem that we have any leverage under the specific language we have inclusive in this statute to tell the Attorney General to do anything. Hopefully he might, but I do not want to engage in wishful thinking to suggest to the American public that there is anything included in that bill that will give us any leverage in regard to the Attorney General to litigate matters that have not yet, or to adjudicate; not litigate, but to adjudicate, matters that have not yet been the subject matter of appropriation.

Mr. FRANK. Mr. Speaker, I yield myself 2 minutes to respond by saying, first, we are not talking about litigation. We are talking here about a payout of claims that we have agreed, out of compassion, we ought to pay.

Second, it is not my sense that every time we, as a Congress, pass a law and the President signs it, which creates a task for the Justice Department, that a separate appropriation is necessary. It is not a separate appropriation for everything the Justice Department does. They get an appropriation, and they get a list of tasks. The specific payout is subject to appropriation, but getting ready for it does not do that, and I do not think anything in our prior practice suggests that they do not begin to go to work until they get

a specific appropriation for each administrative task.

Mr. OWENS of Utah. Mr. Speaker, will the gentleman yield?

Mr. FRANK. I yield to the gentleman from Utah.

Mr. OWENS of Utah. The legislation, if I may suggest to the gentleman from Florida [Mr. JAMES], does not provide; if fact intend, that administrative costs not be borne by the $100 billion in any case and that in fact the administrative costs be covered by the regular payment for expenses which the Attorney General receives. Our concern was that the Attorney General not wait until the funds appropriated to pay out the claims before starting this process. These people have waited now, for some of them, 30 years for this compensation. They are dying on a monthly basis, and the hope is that that administrative task can be undertaken immediately.

Mr. JAMES. Mr. Speaker, I yield myself such time as I may consume in order to respond.

That is that I agree with the gentleman, that I would like to see the claims adjudicated, and I would hope that that could occur. But none of us can suspect there has been a budget item for the Attorney General to accomplish this specific purpose, and they may take the position that because there has not yet been an appropriation, that until there is that will be an act in futility until there is an appropriation. I would hope they would not take that position, and I admit, and I realize, and I am delighted, that the funds that are appropriated specifically to be used for compensatory purposes in the adjudication process, and it is very clear in our bill that in no way should the administrative costs be taken out of those funds.

However, Mr. Speaker, I can imagine and could respect the Attorney General if they took the position that, "Look, we're not going through an adjudication process until such point in time, until Congress specifically appropriates funds so that our acts of adjudication will not be a waste of funds or time," and then I can also respect their demand that they have something included in their budget for that purpose, and, barring their willingness to proceed now, and I hope they do, we better move quickly to take care of those matters to make sure there is an appropriation and that we get the matter resolved, for those people have indeed waiting far too long.

But I just want to point out that the task is not complete for those who may be sitting here watching us on C-Span expecting something immediate to happen.

Mr. Speaker, I yield 2 minutes to the gentleman from Arizona [Mr. KYL].

Mr. KYL. Mr. Speaker, we have an opportunity today to compensate for one of the great wrongs our Government committed against our own American citizens earlier this century. I rise in support of H.R. 2372, the Radiation Exposure Compensation Act.

This legislation is only necessary because the Federal Government failed to provide adequate warning of the dangers of radiation exposure to individuals downwind from the Nevada test site during the course of the Federal Atmospheric Weapons Testing Program. It is necessary because the Government failed to take steps to protect uranium miners from exposure.

The compensation provided under the bill won't bring back loved ones who have already passed on, or even compensate adequately for the suffering victims are enduring today. But, it will ensure some measure of justice for these victims.

Mr. Speaker, this is a good and fair bill. The one flaw I did find in the House version of the measure has now been corrected by the Senate. That flaw related to diseases that may have brought on by an individual's own conduct—conduct such as tobacco or alcohol abuse. It is not our aim here to provide compensation haphazardly. We don't have the money to do that. We have to be sure that the Government's misconduct, not the individual's, is the cause. H.R. 2372 as amended by the Senate will do that.

I urge my colleagues to support these amendments and ensure that justice is finally provided to the many Americans whom the Federal Government failed to protect.

Mr. FRANK. Mr. Speaker, I yield 2 minutes to the gentleman from New Mexico [Mr. RICHARDSON] who has been another diligent supporter here, particularly with reference to Navajo Indians, but also those involved in the mining situation.

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

Mr. RICHARDSON. Mr. Speaker, as an original cosponsor of H.R. 2372, the Radiation Exposure Compensation Act, I rise in strong support. Many of the victims that this legislation seeks to help are from New Mexico. Many of the victims are native Americans—a large constituency in the congressional district I represent.

The Federal Government, knowledgeable about the hazards involved, sent uranium miners from New Mexico, Colorado, Arizona, and Utah into inadequately ventilated mines to dig for ore for the Government's nuclear arsenal and never informed them of any radiation dangers. As a result, many of these miners suffered or died from high radiation exposure.

H.R. 2372 would provide compensation for both downwind victims and uranium miners by establishing a $100 million trust fund from which damages would be paid. Upon a decision by the Department of Justice that the claim requirements of H.R. 2372 have been met, a one-time $100,000 compassionate award will be made to miners and $50,000 to downwind victims.

I am pleased to see that the Senate amended the bill to add a provision that I supported during this body's deliberations. The failure of the Federal Government to fulfill its trust responsibilities with respect to ensuring mine safety standards on trust lands is now recognized in section 5(b)(3). Since the Navajo Nation is within my congressional district, I am glad to see that the Congress is now recognizing its failure to ensure mine safety standards in mines on these lands.

I also believe that the Federal Government should recognize it breached its trust obligations to the native American miners to protect and provide for their health care. The Federal Government has an even greater responsibilities to the native American miners to alert them to the dangers because through treaties, executive orders, and various acts of the Congress, the Federal Government has assumed fiduciary duties for Indian health care.

Unfortunately, health care delivery to the miners has been inadequate primarily due to undermanned facilities, insufficient services and an inability of patients to gain access to services due to remote residences. As a result, I am concerned that many native American miners will have difficulty in proving their claims because their records may be ambiguous, and in some cases nonexistent. It is my hope that when the Department of Justice evaluates these claims, it will review them liberally and take note of the difficulty Indian claimants will have in proving their claims.

Mr. Speaker, this legislation provides modest compensation to the many victims who suffered at the hands of the Federal Government. I urge my colleagues support.

Mr. FRANK. Mr. Speaker, I yield 30 seconds to the gentleman from Utah [Mr. OWENS].

Mr. OWENS of Utah. Mr. Speaker, I want to associate myself with the remarks on the gentleman from Arizona [Mr. RHODES] who spoke so movingly of Stewart Udall, former Member of this House. It was Stewart Udall and Dale Harrison, an attorney from Tucson, to whom these people first came, and they associated me with this case some 12 years ago. Stewart has been the guiding light, the spiritual leader, of this great crusade, and I want to commend my colleague, the gentleman from Arizona [Mr. RHODES] for pointing this out. It was in my notes, but I did not speak it.

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

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

I have cause for just one more statement, and I appreciated the very conciliatory remarks of the gentleman from Florida [Mr. JAMES] about his interest in seeing this bill carried out, and I appreciate that he was urging the Justice Department to do it, and I

appreciate that. Let me just take the example of the Justice Department. There is obviously no way an injunction is going to issue to make them go right to work, but for them to take the position that when they are given a general appropriation for administrative purposes, and Congress then lays out administrative purposes, that they are not going to go forward with that until there is a specific itemized appropriation is to invite a degree of micromanagement which I would not think they would want.

□ 1500

In other words, it has never been my understanding that we would be the ones to tell them how to spend their administrative budget. We do from time to time, if we think there is some problem, but I would hope the general procedure would be that they would get a general appropriation within broad categories, and as the Congress decided and the President agreed to add tests, those tests would be assumed to be within the general administrative budget. The alternative is that I think from that standpoint there would be a degree of micromanagement in which we would say x would be spent to administer this and x-plus would be spent to administer that, and I do not think that would be a good idea.

Mr. Speaker, I yield to my friend, the gentleman from Florida, if he wants to comment.

Mr. JAMES. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, my comment is this: Of course, the way the act is written, it is quite clear that they would have to put in their budget a proper request for an appropriation for their administrative costs. There is no question about that. The question is, as a matter of precedent, as a matter of propriety, are they even authorized to do it until there is an appropriation?

We can express our wish or our desire but I assume there is precedent that they indeed would follow, and it would seem odd to me that we would proceed with an administrative procedure ordinarily until there was an appropriation to adjudicate a claim. Perhaps the gentleman has some other precedent.

The SPEAKER pro tempore (Mr. MCNULTY). All time of the gentleman from Massachusetts [Mr. FRANK] has expired. However, the gentleman from Florida still has time, and he reclaim his time and yield to the gentleman from Massachusetts if he so wishes.

Mr. JAMES. Mr. Speaker, I reclaim my time. I yield myself such time as I may consume, and I yield to the gentleman from Massachusetts [Mr. FRANK].

The SPEAKER pro tempore. Without objection, the gentleman from Florida [Mr. JAMES] reclaims his time.

There was no objection.

Mr. FRANK. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, I would say I do not understand what precedent the gentleman is referring to. What we are talking about here is this: We are talking about a general authorization that they get to administer the department. We are adding a test. The gentleman said before that he agreed they should start administering this.

Mr. JAMES. I do, Mr. Speaker. Reclaiming my time, let me say I hope the administration can proceed, the same as you do. I only question whether or not we have gone far enough, if we expect that to happen, because it is not specifically mentioned in the statute.

I am concerned because it is very clear that there has not yet been an appropriation. I question the propriety of the expenditure in the budget of an item for something we have not gotten appropriated. So let us get it appropriated, for fear that the Attorney General would not move with the alacrity and the speed we all wish to see.

Mr. FRANK. Mr. Speaker, will the gentleman yield further?

Mr. JAMES. I yield to the gentleman from Massachusetts.

Mr. FRANK. Mr. Speaker, there is an appropriation according to the payout of the claims, but when the President signs this bill, the law says these claims should be dealt with, and I do not understand the notion that before they carry out the test of beginning the process, they need a specific appropriation. I think a mountain is being made here of a rather small hill.

Mr. JAMES. Reclaiming my time, Mr. Speaker, would the gentleman give me an example of where the Attorney General has proceeded to adjudicate claims prior to an appropriation? I am not familiar with one, and the gentleman may well be. If that be the case, I hope there is precedent so that may occur. I ask the gentleman to give me one example here that that has occurred. I cannot think of one; maybe the gentleman can. I hope that it happens that way.

Mr. FRANK. Mr. Speaker, if the gentleman will yield further, in the first place, we are not talking simply about the adjudication of the claim but the creation of a mechanism for the submission of that. I think by the time it comes to adjudication, that will happen. What we are saying is that having established this policy, they ought to go ahead and start getting the information and setting up a mechanism for the submission of the claim.

Mr. JAMES. Mr. Speaker, reclaiming my time, the gentleman, I think, will admit and concede that it will take an attorney's expenses and time and a budget to proceed the way we would wish him to proceed. It was my understanding during our colloquy that the gentleman wanted a full adjudication of the claim, if possible, but whether the gentleman is talking about just starting or beginning or setting up the administrative proceeding to allow claims to be filed, we are still talking about expenditures of money. I am only asking for a precedent. If you have none, say so. I am merely asking the question. I know of no example——

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

Mr. JAMES. No, I will not yield until I finish my sentence. I will finish my sentence, and then I will yield.

I know of no example, although you might, where, absent an appropriation, the Attorney General moves in that procedure. The gentleman may well know of a precedent. If so, let me know, and we can use that to encourage the administration to move now, although they may otherwise be hesitant.

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

Mr. JAMES. I yield to the gentleman from Massachusetts.

Mr. FRANK. First, I will say with regard to the Japanese claims that we did tell them prior to the appropriation to begin to collect the information and start getting the recordkeeping done. I do not know of too many precedents for this kind of Government payment of a compassionate sort.

On the Japanese-American one where I worked, we did do that.

Second, I would say to the gentleman that I think he has allowed the Justice Department to get him excessively riled up. All we are asking them to do is to start enforcing the law once it is passed. I am sorry that that has been the cause of such agitation.

Mr. JAMES. Mr. Speaker, I am pointing out to the gentleman that I agree with him, and I hope they do, but let us not create unreasonable expectations with the public if they do not.

Mr. Speaker, I yield 2½ minutes to the gentlewoman from Nevada [Mrs. VUCANOVICH].

Mrs. VUCANOVICH. Mr. Speaker, I stand in the well of this Chamber in strong support of H.R. 2372, the Radiation Exposure Compensation Act, of which I am an original cosponsor. I am especially pleased to see the unfortunate burden of radiation related diseases slightly eased for those military and civilian personnel who were involved in the Atomic Testing Program.

I commend Mr. OWENS and the Judiciary Committee for their hard work bringing H.R. 2372 to the floor, and I thank the other body for its support in making this long awaited compensation a reality.

Mr. Speaker, for too long, the Federal Government has ignored and even evaded responsibility to workers, miners, and families, who are suffering various radiation associated sicknesses begat at the hands of the Federal Government.

In recent years, many military and civilian personnel who were involved

in the Atomic Testing Program have suffered various long-term medical injuries, primarily leukemia and other forms of cancer, due to their participation in these tests.

The victims generally fall into two classes. They are either Southwest uranium miners and families who were unwittingly exposed to extraordinary levels of radiation in underground uranium mines, where ore for the Government's weapons industry was mined during the 1950's; or they are fallout victims from the Government's nuclear weapons testing in my district during this same era.

Both types of victims have presented their cases to the judicial system. In both cases, Federal court opinions were issued that the deaths and injuries were caused by radiation exposures generated by activities of the Federal Government, and that Government officials knew of the risks but failed to act.

However, because the courts also found that the Federal decision to conduct weapons testing and mine uranium were discretionary and within the scope of the function of the Federal Government, Federal sovereign immunity laws could be applied to bar radiation victims' claims, thus allowing no means of recourse.

These radiation victims have not been compensated because their deaths and injuries were the result of a policy decision. Their health, Mr. Speaker, was seen as secondary to the national security interest of our country, the same security interest which seeks to protect Americans.

Unlike other war victims, these victims of the cold war could have chosen to live or work elsewhere, had they been informed. Both the 9th and 10th Circuit Courts of Appeal agreed that these cases cry out for redress, but that unfairly restrictive sovereign immunity laws precluded the courts from providing an equitable judgement. Mr. Speaker, H.R. 2372 begins that redress.

This legislation, Mr. Speaker, offers a long overdue Federal apology and provides a modest compassionate payment to the victims and the families of those who have suffered pain and bodily harm in the name of national security.

Legislation and money can never right the wrong, restore lost family members, take the pain from these innocent victims, or make these victims victimless; however, it can help make life a little easier.

Mr. Speaker, once again I stand here to urge my colleagues to support this measure and support the closing of an unfair and unfortunate chapter in the history of our Nation.

Mr. JAMES. Mr. Speaker, may I inquire, how much time do I have left?

The SPEAKER pro tempore. The gentleman from Florida [Mr. JAMES] has 90 seconds remaining.

Mr. JAMES. Mr. Speaker, I yield myself the balance of my time.

I want to make one comment on this issue. I want to make it perfectly clear that I hope we move with great speed to resolve all matters, including the adjudication of these claims. I hope we can get all assistance needed to have a speedy adjudication of these claims in light of the clear mandate of the statute that the Attorney General have and is provided funds for his own expenses. I hope that be the case. This statute is a little different, though, because there is not a specific pocket of funds provided for that specific purpose.

□ 1510

Most statutes have that. This one does not for the administrative process. Because of that, we are depending upon them out of their general budget to proceed quickly. I think it is mandated that it be budgeted there, but I am only mentioning this so we speed up the appropriations part of it to get that going in case there is otherwise any kind of delay perceived or feared by any of us. We need to do that anyway.

So that is what I hope we do as quickly as possible.

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

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

The SPEAKER pro tempore (Mr. MCNULTY). The question is on the motion offered by the gentleman from Massachusetts [Mr. FRANK] that the House suspend the rules and concur in the Senate amendment to H.R. 2372.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FRANK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include therein extraneous material on the Senate amendment to H.R. 2372.

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

There was no objection.

SENSE OF CONGRESS ON STATUTORY PRESUMPTION IN DETERMINING CHILD CUSTODY

Mr. FRANK. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 172) expressing the sense of the Congress that, for purposes of determining child custody, evidence of spousal abuse should create a statutory presumption that it is detrimental to the child to be placed in the custody of an abusive parent, as amended.

The Clerk read as follows:

H. RES. 172

Whereas State courts have often failed to recognize the determinental effects of having as a custodial parent an individual who physically abuses his or her spouse, insofar as the courts do not hear or weigh evidence of domestic violence in child custody litigation;

Whereas there is an alarming bias against battered spouses in comtemporary child custody trends such as joint custody and mandatory mediation;

Whereas joint custody guarantees the batterer continued access and control over the battered spouse's life through their children;

Whereas joint custody forced upon hostile parents can create a dangerous psychological environment for a child;

Whereas a batterer's violence toward an estranged spouse often escalates during or after a divorce, placing both the abused spouse and children at risk through shared custody arrangements and unsupervised visitation;

Whereas physical abuse of a spouse is relevant to child abuse in child custody disputes;

Whereas the effects of physical abuse of a spouse on children include actual and potential emotional and physical harm, the negative effects of exposure to an inappropriate role model, and the potential for future harm where contact with the batterer continues;

Whereas children are emotionally traumatized by witnessing physical abuse of a parent;

Whereas children often become targets of physical abuse themselves or are injured when they attempt to intervene on behalf of a parent;

Whereas even children who do not directly witness spousal abuse are affected by the climate of violence in their homes and experience shock, fear, guilt, long lasting impairment of self-esteem, and impairment of developmental and socialization skills;

Whereas research into the intergenerational aspects of domestic violence reveals that violent tendencies may be passed on from one generation to the next;

Whereas witnessing an aggressive parent as a role model may communicate to children that violence is an acceptable tool for resolving marital conflict; and

Whereas few States have recognized the interrelated nature of child custody and battering and have enacted legislation that allows or requires courts to consider evidence of physical abuse of a spouse in child custody cases: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring),

SECTION 1. It is the sense of the Congress that, for purposes of determining child custody, credible evidence of physical abuse of a spouse should create a statutory presumption that it is deterimental to the child to be placed in the custody of the abusive spouse.

SEC. 2. This resolution is not intended to encourage States to prohibit supervised visitation.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Massachusetts [Mr. FRANK] will be recognized for 20 minutes, and the gentleman from Florida [Mr. JAMES] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. FRANK].

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

Mr. Speaker, let me reassure Members that this resolution calls on the Justice Department to do nothing whatsoever and is unlikely to be at all controversial or time consuming. It is a matter that was brought to our attention by the gentlewoman from Maryland [Mrs. MORELLA]. She has been very much concerned with the matter of equity and been concerned with the problem of violence, particularly against women, but obviously not exclusively.

The gentlewoman brought this to our subcommittee as an important concern. We had a long hearing in a session in which the gentleman from New Hampshire [Mr. DOUGLAS] took a very important role. We certainly have cast this in a way that I think makes a contribution to the consideration of an important issue. It is a recommendation by the House of Representatives to State judges. It has no binding force, but it is a very thoughtful recommendation, and one that will reflect a very important public policy, particularly that those who commit violence in any context, family or otherwise, ought to be required to bear the consequences of that violence.

Mr. Speaker, there has been historically in our Nation a tendency to treat somewhat more lightly violence that might have occurred in a family setting. That is a wholly unjustified attitude, and this resolution is one further confirmation of that fact.

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

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

Mr. Speaker, I rise in support of House Concurrent Resolution 172 as amended. I would like to compliment the subcommittee chairman, Mr. FRANK, for convening the hearings on this legislation. I would also like to commend Mr. FRANK and Mr. DOUGLAS for their efforts to address the concerns we shared with a number of our colleagues over the original legislation. The resulting bill before us today is a good one that will address legitimate concerns in child custody cases.

Mr. Speaker, domestic violence has reached epidemic proportions in this Nation. Statistics reflect that between 12 to 15 million adult women have been the victims of physical assault by an adult intimate. According to testimony given before the subcommittee by our distinguished colleague from Maryland, the Honorable CONSTANCE MORELLA, nearly one-third of these women are killed each year by their husbands or partners. It is clear that the devastating effects of such abuse extend far into the future, not only for the abused spouse, but also for the children living in such an atmosphere of violence.

The bill before us today clearly recognizes the detrimental effects that domestic violence has on the welfare of children. House Concurrent Resolution 172 as amended, expressed the sense of Congress that, for purposes of determining child custody, credible evidence of spousal abuse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive parent.

I do understand the concerns of those individuals who contend that spousal abuse and child abuse are two, unrelated actions focused on two, different targets. However, I firmly believe that both actions reflect brutal crimes and are detrimental to the welfare of the children exposed to such violent behavior. While there is no guarantee that a battering spouse will become a battering parent, I would prefer to err on the side of the child rather than on the side of a parent who practices violent behavior.

Again, I would like to express my support for this measure and I hope that the policy reflected in this legislation will be implemented by the States.

Mr. Speaker, I yield 5 minutes to the gentlewoman from Maryland [Mrs. MORELLA].

(Mrs. MORELLA asked and was given permission to revise and extend her remarks.)

Mrs. MORELLA. Mr. Speaker, I want to commend the gentleman from Massachusetts [Mr. FRANK] for his commitment to ending the silent crisis of domestic violence. He has worked to move this bill from the hearing stage through the full committee, and I thank him for his cooperation and for the conscientious work of his staff, especially David Naimon. I also appreciate the assistance of Chairman BROOKS, and the ranking minority member of the subcommittee, Mr. DOUGLAS.

Mr. Speaker, 6 years ago in Illinois, James Lutgen strangled his wife, Carole, in front of their two daughters, ages 6 and 8. He was arrested and, after plea bargaining, was charged with voluntary manslaughter. Upon his release less than 2 years later, he sought custody of his children, who have been placed in the care of his sister-in-law. Over their aunt's protests, the judge returned the children to James Lutgen because he was their natural father and because until he killed Carole, he had a good record.

If a parent's alcohol or drug abuse is a bona fide area of inquiry by the courts in custody issues, why is a parent's violent behavior irrelevant? Why is violence committed against another human being in the privacy of the home acceptable behavior? Surely, it is relevant to a determination of character, fitness, and ability to care for a child.

Domestic violence or battering is a means of establishing control over another person through fear and intimidation. Generally, battering is physical, but it also includes emotional, economic, and sexual abuse, and the kind of isolation experienced by hostages or prisoners of war.

Domestic violence is a brutal criminal act, mostly but not always committed by men against women. The shocking reality is that every 15 seconds, a woman is beaten in her home. An estimated 3 to 4 million American women are assaulted every year by their husbands or partners. Often their children watch.

Why does battering occur and why can't we stop it? There are many theories about batterers and why they resort to violence. These include career and economic stress, violence on TV and in the movies, poor socialization, and sexism in our society.

Whatever the causes, the real reason battering continues is that too many people look the other way, and our judicial system has done little to remedy the situation. For many victims of domestic violence, the courts, in fact, have become their adversaries, not their allies.

The most blatant examples of judicial indifference and negligence, however, are to be found in child custody cases. In most States, judges, who have broad discretionary powers in custody disputes, are not required to even consider evidence of spousal abuse when determining custody.

Dr. Lenore E. Walker has argued in her book, "The Battered Woman," that spousal abuse is child abuse. Dr. Walker reports that 53 percent of men who abuse their wives also abuse their children. Even if physical abuse is not present, these children live in an atmosphere of emotional trauma with longlasting effects. Such children are more prone to anxiety, depression, learning disabilities, and delinquency problems. And some learn that battering is OK.

In testimony before the House Subcommittee on Administrative Law and Governmental Relations, several witnesses underscored the terrible consequences of domestic violence on children. The bill we are considering today would put Congress on record as supporting the concept that for the purposes of determining custody, credible evidence of physical abuse of one's spouse should create a statutory presumption that it is detrimental to a child to be placed in the custody of the abusive parent.

Lorraine Chase, a social worker from the YMCA Women's Center in Annapolis, stated:

> When children are raised in homes where violence occurs, they learn two basic ways of coping with life: Aggressive behavior or passive indifference * * * passive indifference is evidenced in behaviors such as alcohol and drug abuse, teen pregnancy, and teen suicide. Aggressive behaviors are evidenced by increasing violence in our schools, truancy, and crime.

And, unfortunately, spouse abuse—and its effects on children—does not end with divorce. In fact, the abuse may increase. Custody litigation or the threat of it becomes another weapon for the batterer. Shared or joint custody, when there is a history of abuse, sets the stage for continued access to the victim and the children.

Marcia Shields of Silver Spring, MD, testifying on behalf of this bill, told an all-too-familiar tale to the subcommittee. Terrified that her abusive husband would carry out his threats to quit his job and disappear with their children—he had already announced plans to leave the area and left airplane tickets where she could find them—Shields agreed to his demands for joint custody. She soon realized her mistake.

After an incident involving the physical abuse of one of Shield's sons, Montgomery County Protective Services reprimanded her husband. When her husband was reported a second time for abusing her daughter, protective services refused to intervene because Shields and her husband were about to go to court for a custody trial in which Shields planned to ask for full custody. "Let the courts handle it," she was told.

To her shock and disbelief, the courts handled it by upholding the original joint custody agreement. Evidence of spousal abuse was deemed not pertinent to the issue of custody. "A person may be violent and vindictive towards a spouse and yet be the best, most loving parent in the world," the judge told her.

Last year, when her exhusband came to pick up the children for an unscheduled visit, Shields refused. He assaulted her in front of their children. Found guilty of battery and assault and sentenced to 2 years of probation, he still has joint custody of the children. The criminal court judge, however, ordered that a third party pick up and deliver the children for the duration of his probation.

Many woman are not as lucky as Marcia Shields. Carole Lutgen was one of the more than 4,000 women in the United States who are killed each year by their spouses or intimate partners. Closer to home, in 1989, more than 120 women were killed by their husbands or boyfriends in the District of Columbia, Maryland, and in Virginia.

And what about the children? How many of our children are learning from their first and best teachers, their parents, that violence is the expected, accepted, and most expedient way to solve life's problems?

Today, only a handful of States and the District of Columbia require judges to consider evidence of spousal abuse in determining child custody. By enacting House Concurrent Resolution 172, Congress will focus national attention on domestic violence and its terrible toll on our society. By approving this resolution, Congress has the opportunity to provide the leadership and direction needed for the remaining States to revise custody statutes that for too long have failed to recognize the tragic consequences of family violence.

Mr. Speaker, our families and children deserve no less.

Mr. MILLER of California. Mr. Speaker, I rise in support of House Concurrent Resolution 172, which expresses the sense of the Congress that, for purposes of determining child custody, evidence of spousal abuse should create a statuory presumption that it is detrimental to children to be placed in the custody of an abusive parent.

I want to thank my colleague from Maryland [Mrs. MORELLA] for her leadership on this issue and her hard work on the resolution. I would also like to thank the members of the Judiciary Committee for their efforts on its behalf.

This resolution is an outgrowth of the work of the Select Committee on Children, Youth, and Families on violence against women and children. Many witnesses who have come before the committee have testified about the fear and violence that have permeated their lives. This resolution is designed to focus national attention on one of the most traumatic problems that far too many families in America five with on a daily basis: Domestic violence. Ninety-five percent of the victims of domestic violence are women; more than 2 million are battered each year by their husbands or partners. Domestic violence affects all cultural and socioeconomic groups in our society.

We have been slow to respond to this problem in local communities throughout the country. Police and the courts often do not take incidents of domestic violence seriously, and even when abusing spouses are incarcerated, they frequently return on their families upon their release from jail.

Abused spouses, 95 percent of whom are women, often have difficulty in separating from their abuser because of the tremendous insecurity that such abuse fosters and a lack of financial resources to leave the family home. Moreover, many women fear that if they seek a divorce, they will lose custody of their children. Shelters for abused women and their children exist in many, but not all communities, and they often are forced to turn away those seeking shelter because of a lack of resources.

This resolution will encourage States to help the victims of domestic violence escape from it.

We know that in approximately one-half of the situations where spouse abuse exists, child abuse is present as well. Some of this abuse happens when children attempt to protect their parents from abuse. Even in those instances where the children are not physically harmed, their emotional well-being is jeopardized by witnessing such abuse against their parent.

Domestic violence is an ugly consequence of the violent nature of our society. Its impact on children is severe and longlasting. Children who experience violence in their homes, are more likely to turn to violent behavior when they are parents. Given its physical and emotional consequences, it is inexcusable that in only a handful of States, family courts take evidence of domestic violence into account when determining custody.

Opposition to this resolution comes primarily from organizations whose members believe that unfounded allegations of spouse abuse will hinder the ability of fathers to obtain custody of their children. Language added to the resolution by the subcommittee addresses this concern by making it clear that credible evidence of physical abuse must be present to trigger the statutory presumption.

This resolution sends a clear, basic message to spouse abusers: No longer will you be able to hold an untenable marriage together because of your threats to take custody of the children. This resolution provides an opportunity for Congress to lead the way in saying that spouse abusers will not be rewarded for their behavior.

This resolution will not cost the Federal Government any money to implement. It will not cost the States any money to enact legislation based on this resolution. The only cost of this resolution is to batterers, who will no longer be able to stand in court on equal footing with the spouse that they have abused, and seek custody of their children.

I ask you to vote with me in favor of House Congressional Resolution 172 and show your commitment to America's children. Tell our children that you don't want them to have to five in fear of violence in their own homes. Adoption of this resolution will encourage states to take action. It is the least we can do to protect America's children.

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

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

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts [Mr. FRANK] that the House suspend the rules and agree to the concurrent resolution, House Concurrent Resolution 172, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution, as amended, was agreed to.

The title of the House concurrent resolution was amended so as to read:

Concurrent resolution expressing the sense of the Congress that, for purposes of determining child custody, credible evidence of physical abuse of one's spouse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive spouse.

A motion to reconsider was laid on the table.

□ 1520

GENERAL LEAVE

Mr. FRANK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on House Concurrent Resolution 172, the concurrent resolution just agreed to.

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

There was no objection.

FEDERAL JUDGESHIP ACT OF 1990

Mr. BROOKS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5316) to provide for the appointment of additional Federal circuit and

district judges, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5316

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 "Federal Judgeship Act of 1990".

SEC. 2. CIRCUIT JUDGES FOR THE CIRUCIT COURT OF APPEALS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 2 additional circuit judges for the third circuit court of appeals;

(2) 2 additional circuit judges for the fourth circuit court of appeals;

(3) 1 additional circuit judge for the fifth circuit court of appeals;

(4) 1 additional circuit judge for the sixth circuit court of appeals;

(5) 1 additional circuit judge for the eighth circuit court of appeals; and

(6) 2 additional circuit judges for the tenth circuit court of appeals.

(b) TABLES.—In order that the table contained in section 44(a) of title 28, United States Code, will, with respect to each judicial circuit, reflect the changes in the total number of permanent circuit judgeships authorized as a result of subsection (a) of this section, such table is amended to read as follows:

"Circuit	Number of Judges
District of Columbia	12
First	6
Second	13
Third	14
Fourth	13
Fifth	17
Sixth	16
Seventh	11
Eighth	11
Ninth	28
Tenth	12
Eleventh	12
Federal	12.".

SEC. 3. DISTRICT JUDGES FOR THE DISTRICT COURTS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 2 additional district judges for the northern district of California;

(2) 5 additional district judges for the central district of California;

(3) 1 additional district judge for the district of Connecticut;

(4) 1 additional district judge for the middle district of Florida;

(5) 1 additional district judge for the southern district of Florida;

(6) 1 additional district judge for the northern district of Illinois;

(7) 1 additional district judge for the southern district of Iowa;

(8) 1 additional district judge for the southern district of Mississippi;

(9) 1 additional district judge for the eastern district of Missouri;

(10) 3 additional district judges for the district of New Jersey;

(11) 3 additional district judges for the eastern district of New York;

(12) 1 additional district judge for the southern district of New York;

(13) 1 additional district judge for the southern district of Ohio;

(14) 1 additional district judge for the district of Oregon;

(15) 3 additional district judges for the eastern district of Pennsylvania;

(16) 1 additional district judge for the eastern district of Tennessee;

(17) 2 additional district judges for the northern district of Texas;

(18) 1 additional district judge for the eastern district of Texas;

(19) 5 additional district judges for the southern district of Texas; and district of Texas; and

(20) 3 additional district judges for the western district of Texas; and

(21) 1 additional district judge for the eastern district of Washington.

(b) EXISTING JUDGESHIPS.—(1) The existing district judgeships for the western district of Arkansas, the northern district of Illinois, the district of Massachusetts, the western district of New York, the northern district of Ohio, and the western district of Washington authorized by section 202(b) of the Bankruptcy Amendments and Federal Judgeship Act of 1984 (Public Law 98-353; 98 Stat. 347-348) shall, as of the effective date of this Act, be authorized under section 133 of title 28, United States Code, and the incumbents in those offices shall hold the office under section 133 of title 28, United States Code, as amended by this Act.

(2)(A) The existing two district judgeships for the eastern and western districts of Arkansas (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this Act) shall be district judgeships for the eastern district of Arkansas only, and the incumbents of such judgeships shall hold the offices under section 133 of title 28, United States Code, as amended by this Act.

(B) The existing district judgeship for the northern and southern districts of Iowa (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this Act) shall be a district judgeship for the northern district of Iowa only, and the incumbent of such judgeship shall hold the office under section 133 of title 28, United States Code, as amended by this Act.

(C) The existing district judgeship for the northern, eastern, and western districts of Oklahoma (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this Act), the occupant of which has his or her official duty station at Oklahoma City on the date of enactment of this Act, shall be a district judgeship for the western district of Oklahoma only, and the incumbent of such judgeship shall hold the office under section 133 of title 28, United States Code, as amended by this Act.

(c) TEMPORARY JUDGESHIPS.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 1 additional district judge for the middle district of Florida;

(2) 1 additional district judge for the central district of Illinois;

(3) 1 additional district judge for the western district of Michigan;

(4) 1 additional district judge for the district of Nebraska;

(5) 1 additional district judge for the district of New Mexico;

(6) 1 additional district judge for the northern district of New York;

(7) 1 additional district judge for the northern district of Oklahoma;

(8) 1 additional district judge for the western district of Oklahoma

(9) 1 additional district judge for the eastern district of Pennsylvania;

(10) (9) 1 additional district judge for the middle district of Tennessee;

(11) 1 additional district judge for the eastern district of Virginia;

(12) 1 additional district judge for the southern district of West Virginia; and

(13) 1 additional district judge for the northern district of West Virginia.

The first vacancy in the office of district judge in each of the judicial districts named in this subsection, occurring 5 years or more after the effective date of this Act, shall not be filled.

(d) TABLES.—In order that the table contained in section 133 of title 28, United States Code, will, with respect to each judicial district, reflect the changes in the total number of permanent district judgeships authorized as a result of subsections (a) and (b) of this section, such table is amended to read as follows:

"Districts	Judges
"Alabama:	
"Northern	7
"Middle	3
"Southern	3
"Alaska	3
"Arizona	8
"Arkansas:	
"Eastern	5
"Western	2
"California:	
"Northern	14
"Eastern	6
"Central	27
"Southern	7
"Colorado	7
"Connecticut	7
"Delaware	4
"District of Columbia	15
"Florida:	
"Northern	3
"Middle	10
"Southern	16
"Georgia:	
"Northern	11
"Middle	3
"Southern	3
"Hawaii	3
"Idaho	2
"Illinois:	
"Northern	22
"Central	3
"Southern	3
"Indiana:	
"Northern	4
"Southern	5
"Iowa:	
"Northern	2
"Southern	3
"Kansas	5
"Kentucky:	
"Eastern	4
"Western	4
"Eastern and Western	1
"Louisiana:	
"Eastern	13
"Middle	2
"Western	6
"Maine	2
"Maryland	10
"Massachusetts	12
"Michigan:	
"Eastern	15
"Western	4
"Minnesota	7
"Mississippi:	
"Northern	3
"Southern	6
"Missouri:	
"Eastern	6
"Western	5
"Eastern and Western	2
"Montana	3
"Nebraska	3
"Nevada	4
"New Hampshire	2
"New Jersey	17
"New Mexico	4
"New York:	
"Northern	4
"Southern	28
"Eastern	15
"Western	4