CONFERENCE REPORT ON H.R. 4328, DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, 1999

HON. CARRIE P. MEEK

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 12, 1998

Mrs. MEEK of Florida. Mr. Speaker, as a Conferee on the Treasury-Postal Appropriations Bill for Fiscal Year 1999, I note that the legislative debates in Congress include inconsistent statements regarding the proper interpretation and application of that section, and in particular in connection with subsection (d) which allows the President to waive the ''requirements of the section'' in the interests of national security.

In their joint statement, Senators MACK, GRAHAM, LAUTENBERG, and FAIRCLOTH have accurately stated my understanding of the provision and my understanding of the intent of the conferees. Any other interpretation would allow the President to, in effect, nullify this provision as if vetoing it, and thereby eliminate the important antiterrorism statement which Congress made by enacting the provision. For these reasons, I add my voice to those of Senators MACK, GRAHAM, LAUTENBERG, and FAIRCLOTH and join them in their understanding of the proper interpretation and application of Section 117.

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HON. MICHAEL P. FORBES

OF NEW YORK

HON. FRANK R. WOLF

OF VIRGINIA

HON. ERNEST J. ISTOOK, JR.

OF OKLAHOMA

HON. ANNE M. NORTHUP

OF KENTUCKY

HON. ROBERT B. ADERHOLT

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 12, 1998

Mr. FORBES. Mr. Speaker, my colleagues, Mr. WOLF, Mr. ISTOOK, Ms. NORTHUP, Mr. ADERHOLT and I, as members of the House Appropriations Subcommittee on Treasury, Postal Service and General Government, strongly support Section 117 of the Treasury Appropriations Conference Report, now part of the FY 1999 Omnibus Appropriations Bill, which was passed by the House of Representatives on October 20, 1998 and signed into law shortly thereafter. Section 117 expands existing law to allow American victims of terrorism, who have been granted judgements against terrorists states, to attach the assets of those terrorist states that are located here in the U.S. It then requires the Secretary of State and Secretary of Treasury to assist victims of terrorism in locating assets of terrorist states here in the United States.

This provision was made necessary because of the Administration's repeated efforts in Federal Court to block terrorism victims from attaching assets of terrorist states to help satisfy judgments they had received by such courts. This misguided policy has sent exactly the wrong message to terrorist states by telling them that, in the event they are found liable for killing Americans, the U.S. government will spare no effort to prevent the seizure of their assets.

In 1996 Congress passed and the President signed the ''Anti-Terrorism and Effective Death Penalty'' Act (P.L. No: 104–132). This Act allowed victims of state-sponsored terrorism to sue foreign governments in Federal Court for damages arising from acts of terrorism. In 1997, an amendment to the Committee Report for the Omnibus Consolidated Appropriations Bill for Fiscal Year 1997 (Comm. Rept. 104–863) allowed victims of state-sponsored terrorism to recover punitive damages from states that sponsor terrorism. In enacting these two laws, Congress surely foresaw that victims would prevail in Court, and would thereafter seek to attach and execute terrorist-state assets. However, what was not foreseen was that the Administration would seek to block such attachments by arguing that such attachments violated international agreements. As a result, it was necessary to once again revisit this issue, and create Section 117.

Section 117 has a Presidential waiver, inserted only at the insistence of the Administration, which allows the President to issue a waiver over the ''requirements'' of the section in the interest of ''national security.'' The intent of this waiver was to allow the President, only in limited circumstances, to waive the requirement that the Secretary of State and Secretary of the Treasury, under Subsection (f)(2)(A), cooperate with victims in locating terrorist assets. It was never intended to allow the President to waive Subsection (f)(1)(A), the change in the law which allows victims to attach such assets they are able to find on their own. Unfortunately, shortly after signing the Omnibus Appropriations Bill, the President issued a blanket waiver, in which he invoked a national security waiver over the application of both Subsection (f)(1)(A) and Subsection (f)(2)(A).

It should be clear that the waiver provision of Section 117 only applies to Subsection (f)(2)(A). This reading of legislative intent is crucial in order to allow the victims of Pan Am 103, the families of the Brothers to the Rescue, the Cicippio and Jacobsen families and the Flatows, to go forward with their respective cases. The Court should not permit the expansive reading of Section 117 the President is attempting to invoke. Nor should the Court mistake the intent of Congress in allowing this waiver to be inserted.

It is clear to us that, at no time, did Congress intend to give the President the absolute veto power he would have over the application of Section 117 should his expansive interpretation hold.

The intent of Congress is clear. We will not tolerate the murder of our citizens in acts of state sponsored terrorism without a serious price to pay. The President has clearly exceeded his authority in exercising a blanket waiver over the application of Section 117, which would affect the victims' attempts to attach not only diplomatic assets of terrorist states, but commercial assets as well. It is our view that the Court should firmly and swiftly reject the President's interpretation of legislative intent and permit the victims to go forward in attaching and executing all property of terrorist nations they are able to locate.

CORRECTION OFFICERS HEALTH AND SAFETY ACT OF 1998

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 12, 1998

Mr. SOLOMON. Mr. Speaker, it is only fitting that on the final day of the 105th Congress, the final bill to be considered is Solomon-authored legislation. H.R. 2070, the Correction Officers Health and Safety Act of 1998, as amended, passed the House of Representatives on October 21. This legislation is absolutely vital to protect our nation's correction officers from vicious attacks by prison inmates.

Mr. Speaker, H.R. 2070 grants the Attorney General authority to test high-risk, incoming federal inmates for the presence of the human immunodeficiency virus. It also allows the testing of prisoners who may have intentionally or unintentionally transmitted the virus to any officer or employee of the United States, or to any person lawfully present in a correctional facility who is not incarcerated there. The results of any test are communicated only to the inmate tested and those whose blood came into contact with the inmate. Furthermore, the bill authorizes the Attorney General to provide the appropriate access to counseling, health care, and support services to the affected officer, employee, or other person, and to the person tested.

This bill could not have passed without the strong support of Council 82, the correction officers union in New York, AFSCME, and the Law Enforcement Alliance of America. Also, Senator ORRIN HATCH was instrumental in pushing this legislation through the Senate.

ADDING MARTIN LUTHER KING, JR., HOLIDAY TO LIST OF DAYS ON WHICH FLAG SHOULD ESPECIALLY BE DISPLAYED

HON. KEN BENTSEN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 12, 1998

Mr. BENTSEN. Mr. Speaker, this legislation corrects an oversight that occurred in the 98th Congress during the establishment of the federal holiday celebrating the birth of our Nation's greatest civil rights leader, Dr. Martin Luther King, Jr. It is customary during the establishment of an official federal holiday to signify the importance of the date through its recognition in the U.S. Flag Code. The U.S. Flag Code encourages all Americans to remember the significance of each federal holiday through the display of our Nation's banner. The Flag Code reminds people that on certain days every year, displaying the flag will show respect for the people and events that have shaped our great Nation.

I believe the American people should be afforded the opportunity to pay their respects to the memory of Dr. King and all his marvelous achievements by displaying our flag on his birthday. Dr. King is the only American besides George Washington to have a national

holiday designated for his birthday. However, of the ten permanent federal holidays, only The King Birthday lacks the notation in the U.S. Flag Code, and it is appropriate to correct this omission.

I would also like to offer my appreciation to Mr. Charles Spain, a resident of Houston and president of the North American Vexillological Association, which studies flags. Mr. Spain brought this very important matter to my attention, and I am grateful for his diligence and assistance in helping my office to correct this error. His effort demonstrates that all citizens have the ability to contact Congress and make important contributions to the legislative process.

Mr. Speaker, I rise in support of the unanimous consent request for the House to take up and pass H.R. 3216, legislation I introduced to amend the Act commonly known as the United States Flag Code and add the Martin Luther King, Jr., holiday to the list of days on which the flag should especially be displayed. I want to thank the Chairman of the Rules Committee for making this request.

While I am disappointed the Senate will not be able to consider this important legislation during the 105th Congress, I am very pleased the House will pass the legislation this evening and send a strong signal that this legislation will be enacted in the 106th Congress. I urge my colleagues to support this measure. Let us continue to honor the legacy of Dr. King and move forward with his dream.

DIGITAL MILLENIUM COPYRIGHT ACT

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 12, 1998

Mr. BERMAN. Mr. Speaker, anyone trying to discern the meaning of the anticircumvention provisions of H.R. 2281 risks bewilderment by the many pages of the CONGRESSIONAL RECORD that have been devoted to the detailed analyses submitted by one or another Member of this House. I am a member of the Judiciary Committee, which reviewed this legislation in detail, and which reported the key provisions in a form in which they ultimately received the approval of the House and of the conference committee, on which I also served.

First, the operative provisions which define the key prohibition of trafficking in the tools of circumvention of technological protection measures—section 1201(a)(2) and (a)(3), and section 1201(b)(1) and (b)(2), of Title 17—were not changed throughout the legislative process. They read almost verbatim in the final version of this legislation, which is on the way to the President's desk, as they read when the legislation was first introduced, when it was reported by the Judiciary Committee, and when it was unanimously approved by the House. Thus, statements on the floor that purport to explain how these provisions have been narrowed, or how implicit exceptions to them—not spelled out in the language of the bill—have been expanded, deserve little attention. In particular, the three-point test spelled out in sections 1201(a)(2) and 1201(b)(1) for determining whether a particular product or service runs afoul of the legislation has never been substantively amended. This test remains operative, not the test of ''no legitimate purpose'' imagined by some of my colleagues.

Second, the operative provision defining the prohibition on the act of circumvention of technological protection measures that control access to copyrighted materials—contained in section 1201(a)(1)—has also emerged from the legislative process completely unchanged. It is true that the effective date of this prohibition has been delayed, and that a rulemaking proceeding has been grafted on to this provision to determine whether, with regard to particular classes of copyrighted materials, the applicability of this particular prohibition should be delayed even further. But the prohibition itself remains unchanged, and means exactly what it meant when our committee first reported it several months ago.

Third, section 1201(c)(3)—the no mandate provision—in the final text of this legislation is identical to the provision that emerged from the Senate Judiciary Committee over six months ago. The changes proposed by the House Commerce Committee, which threatened to open a huge loophole in the protections afforded by the legislation, were rejected by the conference committee. The no mandate provision means what it says, and what it says is this: there is no design mandate in this legislation, other than the negative mandate to avoid designing a product primarily for the purpose of circumventing an effective technological measure. The addition, by the conference committee, of specific provisions concerning certain protections used to control copying of audiovisual works in analog formats does not change the meaning of section 1201(c)(3) one iota. If the conferees had intended that these new provisions were to have had any impact on the application of the ''no mandate'' provisions to other technological protection measures, we would have said so. We did not, in fact, we said the opposite.

Fourth, on the much-contested issue of playability, the language adopted in the conference report is the most definitive statement substantively on the circumstances under which product performance adjustment does or does not violate the anticircumvention provisions of this legislation. The conference report, which specifically addresses this issue, has been adopted without recorded dissent in both Houses, and any subsequent inconsistent interpretation should carry no weight.

I do not seek to put a new gloss on the words in the conference report. Those words speak for themselves. I would simply point out that nearly all the fundamental operative provisions of Title 1 of H.R. 2281, and indeed, of much of the rest of the bill as well, simply recapitulate the provisions that have been part of this legislation since it was introduced, that have remained unchanged throughout the complex and protracted legislative process, and that are amply explained by the reports of the respective Judiciary Committees, which first approved them.

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HON. ROBERT A. WEYGAND

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 12, 1998

Mr. WEYGAND. Mr. Speaker, on October 20, 1998, this House was finally able to bring to a close our Constitutionally-required duty of approving a budget for the United States. I regret, however, that while we have brought this process to a close, it is in no way complete. As a member of the House Budget Committee, I find it distressing that this year marks the first year that Congress failed to properly begin the process by not completing its work on a Budget Resolution.

While there is much to criticize about the process that produced this bill and the lack of time we had to carefully review it, the fact remains that there is much in this bill that I believe is good for Rhode Island and for Rhode Islanders.

Last year, the Balanced Budget Act created a new interim payment system (IPS) for home health care benefits under Medicare. The IPS was enacted to decrease the rate of growth of home health care spending until a prospective payment system (PPS) was implemented. Unfortunately, the IPS adversely impacted home health agencies and Medicare beneficiaries across this country. Due to the manner in which it was written into law, the IPS rewarded agencies whose costs were inflated, while effectively punishing those which had worked hard to contain their costs. In fact, it was estimated that Rhode Island lost more than $18 million in home health care reimbursement due to the IPS.

Since the passage of the Balanced Budget Act, I have been working hard with several colleagues to reform the IPS and make the system more equitable and fair. Following the passage of my amendment to the Budget Resolution calling on Congress to reform the IPS, we were able to form a bipartisan coalition to work diligently on this issue. I felt, and continue to feel that we need to do all we can to ensure home health care is available to every Medicare beneficiary who truly deserves to retain their independence and dignity by receiving care at home.

I was pleased that the Omnibus Appropriations Act includes a small measure of relief for home health care agencies throughout our nation and in Rhode Island. Provisions related to home health care were hard fought and will provide additional reimbursement to home health care agencies with per-beneficiary limits below the national average. In addition, the bill increases per-visit limits for certain home health care agencies.

One of the most significant home health care related provisions in this bill is the one year delay of the automatic 15% cut in home health care reimbursement until October 1, 2000. As my colleagues are well aware, the Balanced Budget Act mandated that an automatic cut occur on October 1, 1999 if the PPS is not fully implemented. Earlier this year, the Health Care Financing Administration stated that the PPS would not be ready and that a 15% cut would be necessary. I am pleased my colleagues joined me in recognizing the