care nurses in the years to come, and I appreciate the Chairman's willingness to work with us to get this in the bill.

Again, this is a very important piece of legislation, Mr. Speaker. It is widely supported by Members of Congress in both chambers, and by the health professions groups who fall under its jurisdiction. I urge all of my colleagues to support its passage.

Mr. BROWN of Ohio. Mr. Speaker, I ask for support of the bill, I have no further requests for time, and I yield back the balance of my time.

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

The SPEAKER pro tempore (Mr. BARRETT of Nebraska). The question is on the motion offered by the gentleman from Virginia (Mr. BLILEY) that the House suspend the rules and pass the Senate bill, S. 1754, as amended.

The question was taken.

Mr. BROWN of Ohio. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

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.

The point of no quorum is considered withdrawn.

PERSONAL EXPLANATION

Mr. SKAGGS (during debate on agreeing to the conference report to S. 1260). Mr. Speaker, I wanted for the RECORD to note my slight regret for having been absent from the proceedings of the House yesterday as I attended my dear mother's 80th birthday celebration in Kentucky.

As a result, I missed rollcall votes Nos. 521, on which I would have voted aye had I been present, 522, on which I would have voted no, and 523, on which I would have voted no.

CONFERENCE REPORT ON S. 1260, SECURITIES LITIGATION UNIFORM STANDARDS ACT OF 1998

Mr. BLILEY. Mr. Speaker, I move to suspend the rules and agree to the conference report on the Senate bill (S. 1260) to amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to limit the conduct of securities class actions under State law, and for other purposes.

The Clerk read the title of the Senate bill.

(For conference report and statement, see Proceedings of the House of Friday, October 9, 1998, at page H10266.)

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Virginia (Mr. BLILEY) and the gentleman from Michigan (Mr. DINGELL) each will control 20 minutes.

The Chair recognizes the gentleman from Virginia (Mr. BLILEY).

Mr. BLILEY. Mr. Speaker, I yield myself 5 minutes.

(Mr. BLILEY asked and was given permission to revise and extend his remarks and include extraneous material.)

Mr. BLILEY. Mr. Speaker, I rise in support of the conference report on the Senate bill, S. 1260, Securities Litigation Uniform Standards Act of 1998. This legislation we are considering today will eliminate State court as a venue for meritless securities litigation.

This legislation has broad bipartisan support. We recognize that the trial bar should not make an end run around the work we did in 1995 in overriding the President's veto of litigation reform in State court. This legislation will protect investors from baseless securities class action lawsuits in the capital markets.

The premise of this legislation is simple: lawsuits alleging violations that involve securities that are offered nationally belong in Federal court. This premise is consistent with the national nature of these markets that we recognize in the National Securities Market Improvement Act of 1995.

The legislative history accompanying the legislation makes clear that we are not disturbing the heightened pleading standard established by the 1995 Act.

The economic disruptions around the globe are reflected by the volatility that affects our markets. Stock prices are up one day, down the next. The prices are not falling due to fraudulent statements, which are the purported basis of many strike suits. The fall is due to economic conditions.

If there is intentional fraud, there is nothing in this legislation or in the Reform Act to prevent those cases from proceeding. We do not need to exacerbate market downturns by allowing companies to be dragged into court every time their stock price falls. The 1995 Reform Act remedied that problem for Federal courts, and this legislation will remedy it for State courts.

I would like to thank the gentleman from Ohio (Mr. OXLEY), the chairman of the Subcommittee on Finance and Hazardous Materials, for his hard work and leadership. I thank the gentleman from Michigan (Mr. JOHN DINGELL), the ranking member of the committee, for his constructive participation as we move the bill through committee.

I commend the gentleman from New York (Mr. TOM MANTON), the ranking member of the subcommittee, not only for his work on this legislation, but his valued service on the committee. It has been a pleasure working with him, and he will be missed.

I also commend the gentleman from Washington (Mr. RICK WHITE), the original cosponsor of the legislation, for his tireless efforts and willingness to compromise that has kept this legislation on track to becoming law.

Likewise, the gentlewoman from California (Ms. ANNA ESHOO) has been a leading proponent of this legislation, and has worked to ensure its passage, and certainly the gentleman from California (Mr. COX), the chairman of the Republican policy committee who has been working on this issue for many years.

Finally, I also commend our colleagues in the other body for their work on this important legislation. Mr. Speaker, I urge my colleagues to join me and support S. 1260.

Mr. Speaker, I ask unanimous consent to include for the RECORD a complete copy of the conference report on S. 1260.

When the conference report was filed in the House, a page from the statement of managers was inadvertently omitted. That page was included in the copy filed in the Senate, reflecting the agreement of the managers. We are considering today the entire report and statement of managers as agreed to by conferees and inserted in the RECORD.

The SPEAKER pro tempore. Since the Chair is aware that the papers filed in the Senate contain that matter as part of the joint statement, its omission from the joint statement filed in the House can be corrected by a unanimous consent request.

Is there objection to the request of the gentleman from Virginia?

There was no objection.

The text of the Conference Report on S. 1260 is as follows:

CONFERENCE REPORT (H. REPT. 105–803)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1260), to amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to limit the conduct of securities class actions under State law, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Securities Litigation Uniform Standards Act of 1998''.

SEC. 2. FINDINGS.

The Congress finds that—

(1) the Private Securities Litigation Reform Act of 1995 sought to prevent abuses in private securities fraud lawsuits;

(2) since enactment of that legislation, considerable evidence has been presented to Congress that a number of securities class action lawsuits have shifted from Federal to State courts;

(3) this shift has prevented that Act from fully achieving its objectives;

(4) State securities regulation is of continuing importance, together with Federal regulation of securities, to protect investors and promote strong financial markets; and

(5) in order to prevent certain State private securities class action lawsuits alleging fraud from being used to frustrate the objectives of the Private Securities Litigation Reform Act of 1995, it is appropriate to enact national standards for securities class action lawsuits involving nationally traded securities, while preserving the appropriate enforcement powers of State securities regulators and not changing the current treatment of individual lawsuits.

TITLE I—SECURITIES LITIGATION UNIFORM STANDARDS

SEC. 101. LIMITATION ON REMEDIES.

(a) AMENDMENTS TO THE SECURITIES ACT OF 1933.—

(1) AMENDMENT.—Section 16 of the Securities Act of 1933 (15 U.S.C. 77p) is amended to read as follows:

''SEC. 16. ADDITIONAL REMEDIES; LIMITATION ON REMEDIES.

''(a) REMEDIES ADDITIONAL.—Except as provided in subsection (b), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity.

''(b) CLASS ACTION LIMITATIONS.—No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging—

''(1) an untrue statement or omission of a material fact in connection with the purchase or sale of a covered security; or

''(2) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

''(c) REMOVAL OF COVERED CLASS ACTIONS.—Any covered class action brought in any State court involving a covered security, as set forth in subsection (b), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to subsection (b).

''(d) PRESERVATION OF CERTAIN ACTIONS.—

''(1) ACTIONS UNDER STATE LAW OF STATE OF INCORPORATION.—

''(A) ACTIONS PRESERVED.—Notwithstanding subsection (b) or (c), a covered class action described in subparagraph (B) of this paragraph that is based upon the statutory or common law of the State in which the issuer is incorporated (in the case of a corporation) or organized (in the case of any other entity) may be maintained in a State or Federal court by a private party.

''(B) PERMISSIBLE ACTIONS.—A covered class action is described in this subparagraph if it involves—

''(i) the purchase or sale of securities by the issuer or an affiliate of the issuer exclusively from or to holders of equity securities of the issuer; or

''(ii) any recommendation, position, or other communication with respect to the sale of securities of the issuer that—

''(I) is made by or on behalf of the issuer or an affiliate of the issuer to holders of equity securities of the issuer; and

''(II) concerns decisions of those equity holders with respect to voting their securities, acting in response to a tender or exchange offer, or exercising dissenters' or appraisal rights.

''(2) STATE ACTIONS.—

''(A) IN GENERAL.—Notwithstanding any other provision of this section, nothing in this section may be construed to preclude a State or political subdivision thereof or a State pension plan from bringing an action involving a covered security on its own behalf, or as a member of a class comprised solely of other States, political subdivisions, or State pension plans that are named plaintiffs, and that have authorized participation, in such action.

''(B) STATE PENSION PLAN DEFINED.—For purposes of this paragraph, the term 'State pension plan' means a pension plan established and maintained for its employees by the government of the State or political subdivision thereof, or by any agency or instrumentality thereof.

''(3) ACTIONS UNDER CONTRACTUAL AGREEMENTS BETWEEN ISSUERS AND INDENTURE TRUSTEES.—Notwithstanding subsection (b) or (c), a covered class action that seeks to enforce a contractual agreement between an issuer and an indenture trustee may be maintained in a State or Federal court by a party to the agreement or a successor to such party.

''(4) REMAND OF REMOVED ACTIONS.—In an action that has been removed from a State court pursuant to subsection (c), if the Federal court determines that the action may be maintained in State court pursuant to this subsection, the Federal court shall remand such action to such State court.

''(e) PRESERVATION OF STATE JURISDICTION.—The securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions.

''(f) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(1) AFFILIATE OF THE ISSUER.—The term 'affiliate of the issuer' means a person that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with, the issuer.

''(2) COVERED CLASS ACTION.—

''(A) IN GENERAL.—The term 'covered class action' means—

''(i) any single lawsuit in which—

''(I) damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class, without reference to issues of individualized reliance on an alleged misstatement or omission, predominate over any questions affecting only individual persons or members; or

''(II) one or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members; or

''(ii) any group of lawsuits filed in or pending in the same court and involving common questions of law or fact, in which—

''(I) damages are sought on behalf of more than 50 persons; and

''(II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

''(B) EXCEPTION FOR DERIVATIVE ACTIONS.—Notwithstanding subparagraph (A), the term 'covered class action' does not include an exclusively derivative action brought by one or more shareholders on behalf of a corporation.

''(C) COUNTING OF CERTAIN CLASS MEMBERS.—For purposes of this paragraph, a corporation, investment company, pension plan, partnership, or other entity, shall be treated as one person or prospective class member, but only if the entity is not established for the purpose of participating in the action.

''(D) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to affect the discretion of a State court in determining whether actions filed in such court should be joined, consolidated, or otherwise allowed to proceed as a single action.

''(3) COVERED SECURITY.—The term 'covered security' means a security that satisfies the standards for a covered security specified in paragraph (1) or (2) of section 18(b) at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred, except that such term shall not include any debt security that is exempt from registration under this title pursuant to rules issued by the Commission under section 4(2).''.

(2) CIRCUMVENTION OF STAY OF DISCOVERY.—Section 27(b) of the Securities Act of 1933 (15 U.S.C. 77z–1(b)) is amended by inserting after paragraph (3) the following new paragraph:

''(4) CIRCUMVENTION OF STAY OF DISCOVERY.—Upon a proper showing, a court may stay discovery proceedings in any private action in a State court as necessary in aid of its jurisdiction, or to protect or effectuate its judgments, in an action subject to a stay of discovery pursuant to this subsection.''.

(3) CONFORMING AMENDMENTS.—Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended—

(A) by inserting ''except as provided in section 16 with respect to covered class actions,'' after ''Territorial courts,''; and

(B) by striking ''No case'' and inserting ''Except as provided in section 16(c), no case''.

(b) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—

(1) AMENDMENT.—Section 28 of the Securities Exchange Act of 1934 (15 U.S.C. 78bb) is amended—

(A) in subsection (a), by striking ''The rights and remedies'' and inserting ''Except as provided in subsection (f), the rights and remedies''; and

(B) by adding at the end the following new subsection:

''(f) LIMITATIONS ON REMEDIES.—

''(1) CLASS ACTION LIMITATIONS.—No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging—

''(A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security; or

''(B) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

''(2) REMOVAL OF COVERED CLASS ACTIONS.—Any covered class action brought in any State court involving a covered security, as set forth in paragraph (1), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to paragraph (1).

''(3) PRESERVATION OF CERTAIN ACTIONS.—

''(A) ACTIONS UNDER STATE LAW OF STATE OF INCORPORATION.—

''(i) ACTIONS PRESERVED.—Notwithstanding paragraph (1) or (2), a covered class action described in clause (ii) of this subparagraph that is based upon the statutory or common law of the State in which the issuer is incorporated (in the case of a corporation) or organized (in the case of any other entity) may be maintained in a State or Federal court by a private party.

''(ii) PERMISSIBLE ACTIONS.—A covered class action is described in this clause if it involves—

''(I) the purchase or sale of securities by the issuer or an affiliate of the issuer exclusively from or to holders of equity securities of the issuer; or

''(II) any recommendation, position, or other communication with respect to the sale of securities of an issuer that—

''(aa) is made by or on behalf of the issuer or an affiliate of the issuer to holders of equity securities of the issuer; and

''(bb) concerns decisions of such equity holders with respect to voting their securities, acting in response to a tender or exchange offer, or exercising dissenters' or appraisal rights.

''(B) STATE ACTIONS.—

''(i) IN GENERAL.—Notwithstanding any other provision of this subsection, nothing in this subsection may be construed to preclude a State or political subdivision thereof or a State pension plan from bringing an action involving a covered security on its own behalf, or as a member of a class comprised solely of other States, political subdivisions, or State pension plans that are named plaintiffs, and that have authorized participation, in such action.

''(ii) STATE PENSION PLAN DEFINED.—For purposes of this subparagraph, the term 'State pension plan' means a pension plan established and maintained for its employees by the government of a State or political subdivision thereof, or by any agency or instrumentality thereof.

''(C) ACTIONS UNDER CONTRACTUAL AGREEMENTS BETWEEN ISSUERS AND INDENTURE TRUSTEES.—Notwithstanding paragraph (1) or (2), a covered class action that seeks to enforce a contractual agreement between an issuer and an indenture trustee may be maintained in a State or Federal court by a party to the agreement or a successor to such party.

''(D) REMAND OF REMOVED ACTIONS.—In an action that has been removed from a State court pursuant to paragraph (2), if the Federal court determines that the action may be maintained in State court pursuant to this subsection, the Federal court shall remand such action to such State court.

''(4) PRESERVATION OF STATE JURISDICTION.—The securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions.

''(5) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

''(A) AFFILIATE OF THE ISSUER.—The term 'affiliate of the issuer' means a person that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with, the issuer.

''(B) COVERED CLASS ACTION.—The term 'covered class action' means—

''(i) any single lawsuit in which—

''(I) damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class, without reference to issues of individualized reliance on an alleged misstatement or omission, predominate over any questions affecting only individual persons or members; or

''(II) one or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members; or

''(ii) any group of lawsuits filed in or pending in the same court and involving common questions of law or fact, in which—

''(I) damages are sought on behalf of more than 50 persons; and

''(II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

''(C) EXCEPTION FOR DERIVATIVE ACTIONS.—Notwithstanding subparagraph (B), the term 'covered class action' does not include an exclusively derivative action brought by one or more shareholders on behalf of a corporation.

''(D) COUNTING OF CERTAIN CLASS MEMBERS.—For purposes of this paragraph, a corporation, investment company, pension plan, partnership, or other entity, shall be treated as one person or prospective class member, but only if the entity is not established for the purpose of participating in the action.

''(E) COVERED SECURITY.—The term 'covered security' means a security that satisfies the standards for a covered security specified in paragraph (1) or (2) of section 18(b) of the Securities Act of 1933, at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred, except that such term shall not include any debt security that is exempt from registration under the Securities Act of 1933 pursuant to rules issued by the Commission under section 4(2) of that Act.

''(F) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to affect the discretion of a State court in determining whether actions filed in such court should be joined, consolidated, or otherwise allowed to proceed as a single action.''.

(2) CIRCUMVENTION OF STAY OF DISCOVERY.—Section 21D(b)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–4(b)(3)) is amended by adding at the end the following new subparagraph:

''(D) CIRCUMVENTION OF STAY OF DISCOVERY.—Upon a proper showing, a court may stay discovery proceedings in any private action in a State court, as necessary in aid of its jurisdiction, or to protect or effectuate its judgments, in an action subject to a stay of discovery pursuant to this paragraph.''.

(c) APPLICABILITY.—The amendments made by this section shall not affect or apply to any action commenced before and pending on the date of enactment of this Act.

SEC. 102. PROMOTION OF RECIPROCAL SUBPOENA ENFORCEMENT.

(a) COMMISSION ACTION.—The Securities and Exchange Commission, in consultation with State securities commissions (or any agencies or offices performing like functions), shall seek to encourage the adoption of State laws providing for reciprocal enforcement by State securities commissions of subpoenas issued by another State securities commission seeking to compel persons to attend, testify in, or produce documents or records in connection with an action or investigation by a State securities commission of an alleged violation of State securities laws.

(b) REPORT.—Not later than 24 months after the date of enactment of this Act, the Securities and Exchange Commission (hereafter in this section referred to as the ''Commission'') shall submit a report to the Congress—

(1) identifying the States that have adopted laws described in subsection (a);

(2) describing the actions undertaken by the Commission and State securities commissions to promote the adoption of such laws; and

(3) identifying any further actions that the Commission recommends for such purposes.

TITLE II—REAUTHORIZATION OF THE SECURITIES AND EXCHANGE COMMISSION

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is amended to read as follows:

''SEC. 35. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—In addition to any other funds authorized to be appropriated to the Commission, there are authorized to be appropriated to carry out the functions, powers, and duties of the Commission, $351,280,000 for fiscal year 1999.

''(b) MISCELLANEOUS EXPENSES.—Funds appropriated pursuant to this section are authorized to be expended—

''(1) not to exceed $3,000 per fiscal year, for official reception and representation expenses;

''(2) not to exceed $10,000 per fiscal year, for funding a permanent secretariat for the International Organization of Securities Commissions; and

''(3) not to exceed $100,000 per fiscal year, for expenses for consultations and meetings hosted by the Commission with foreign governmental and other regulatory officials, members of their delegations, appropriate representatives, and staff to exchange views concerning developments relating to securities matters, for development and implementation of cooperation agreements concerning securities matters, and provision of technical assistance for the development of foreign securities markets, such expenses to include necessary logistic and administrative expenses and the expenses of Commission staff and foreign invitees in attendance at such consultations and meetings, including—

''(A) such incidental expenses as meals taken in the course of such attendance;

''(B) any travel or transportation to or from such meetings; and

''(C) any other related lodging or subsistence.''.

SEC. 202. REQUIREMENTS FOR THE EDGAR SYSTEM.

Section 35A of the Securities Exchange Act of 1934 (15 U.S.C. 78ll) is amended—

(1) by striking subsections (a), (b), (c), and (e); and

(2) in subsection (d)—

(A) by striking ''(d)'';

(B) in paragraph (2), by striking ''; and'' at the end and inserting a period; and

(C) by striking paragraph (3).

SEC. 203. COMMISSION PROFESSIONAL ECONOMISTS.

Section 4(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78d(b)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following:

''(2) ECONOMISTS.—

''(A) COMMISSION AUTHORITY.—Notwithstanding the provisions of chapter 51 of title 5, United States Code, the Commission is authorized—

''(i) to establish its own criteria for the selection of such professional economists as the Commission deems necessary to carry out the work of the Commission;

''(ii) to appoint directly such professional economists as the Commission deems qualified; and

''(iii) to fix and adjust the compensation of any professional economist appointed under this paragraph, without regard to the provisions of chapter 55 of title 5, United States Code, or subchapters II, III, or VIII of chapter 53, of title 5, United States Code.

''(B) LIMITATION ON COMPENSATION.—No base compensation fixed for an economist under this paragraph may exceed the pay for Level IV of the Executive Schedule, and no payments to an economist appointed under this paragraph shall exceed the limitation on certain payments in section 5307 of title 5, United States Code.

''(C) OTHER BENEFITS.—All professional economists appointed under this paragraph shall be eligible for coverage under the Federal Civil Service System with respect to employee benefits.''.

TITLE III—CLERICAL AND TECHNICAL AMENDMENTS

SEC. 301. CLERICAL AND TECHNICAL AMENDMENTS.

(a) SECURITIES ACT OF 1933.—The Securities Act of 1933 (15 U.S.C. 77 et seq.) is amended as follows:

(1) Section 2(a)(15)(i) (15 U.S.C. 77b(a)(15)(i)) is amended—

(A) by striking ''3(a)(2) of the Act'' and inserting ''3(a)(2)''; and

(B) by striking ''section 2(13) of the Act'' and inserting ''paragraph (13) of this subsection''.

(2) Section 11(f)(2)(A) (15 U.S.C. 77k(f)(2)(A)) is amended by striking ''section 38'' and inserting ''section 21D(f)''.

(3) Section 13 (15 U.S.C. 77m) is amended—

(A) by striking ''section 12(2)'' each place it appears and inserting ''section 12(a)(2)''; and

(B) by striking ''section 12(1)'' each place it appears and inserting ''section 12(a)(1)''.

(4) Section 18 (15 U.S.C. 77r) is amended—

(A) in subsection (b)(1)(A), by inserting '', or authorized for listing,'' after ''Exchange, or listed'';

(B) in subsection (c)(2)(B)(i), by striking ''Capital Markets Efficiency Act of 1996'' and inserting ''National Securities Markets Improvement Act of 1996'';

(C) in subsection (c)(2)(C)(i), by striking ''Market'' and inserting ''Markets'';

(D) in subsection (d)(1)(A)—

(i) by striking ''section 2(10)'' and inserting ''section 2(a)(10)''; and

(ii) by striking ''subparagraphs (A) and (B)'' and inserting ''subparagraphs (a) and (b)'';

(E) in subsection (d)(2), by striking ''Securities Amendments Act of 1996'' and inserting ''National Securities Markets Improvement Act of 1996''; and

(F) in subsection (d)(4), by striking ''For purposes of this paragraph, the'' and inserting ''The''.

(5) Sections 27, 27A, and 28 (15 U.S.C. 77z–1, 77z–2, 77z–3) are transferred to appear after section 26, in that order.

(6) Paragraph (28) of schedule A of such Act (15 U.S.C. 77aa(28)) is amended by striking ''identic'' and inserting ''identical''.

(b) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended as follows:

(1) Section 3(a)(10) (15 U.S.C. 78c(a)(10)) is amended by striking ''deposit, for'' and inserting ''deposit for''.

(2) Section 3(a)(12)(A)(vi) (15 U.S.C. 78c(a)(12)(A)(vi)) is amended by moving the margin 2 em spaces to the left.

(3) Section 3(a)(22)(A) (15 U.S.C. 78c(a)(22)(A)) is amended—

(A) by striking ''section 3(h)'' and inserting ''section 3''; and

(B) by striking ''section 3(t)'' and inserting ''section 3''.

(4) Section 3(a)(39)(B)(i) (15 U.S.C. 78c(a)(39)(B)(i)) is amended by striking ''an order to the Commission'' and inserting ''an order of the Commission''.

(5) The following sections are each amended by striking ''Federal Reserve Board'' and inserting ''Board of Governors of the Federal Reserve System'': subsections (a) and (b) of section 7 (15 U.S.C. 78g(a), (b)); section 17(g) (15 U.S.C. 78q(g)); and section 26 (15 U.S.C. 78z).

(6) The heading of subsection (d) of section 7 (15 U.S.C. 78g(d)) is amended by striking ''EXCEPTION'' and inserting ''EXCEPTIONS''.

(7) Section 14(g)(4) (15 U.S.C. 78n(g)(4)) is amended by striking ''consolidation sale,'' and inserting ''consolidation, sale,''.

(8) Section 15 (15 U.S.C. 78o) is amended—

(A) in subsection (c)(8), by moving the margin 2 em spaces to the left;

(B) in subsection (h)(2), by striking ''affecting'' and inserting ''effecting'';

(C) in subsection (h)(3)(A)(i)(II)(bb), by inserting ''or'' after the semicolon;

(D) in subsection (h)(3)(A)(ii)(I), by striking ''maintains'' and inserting ''maintained'';

(E) in subsection (h)(3)(B)(ii), by striking ''association'' and inserting ''associated''.

(9) Section 15B(c)(4) (15 U.S.C. 78o–4(c)(4)) is amended by striking ''convicted by any offense'' and inserting ''convicted of any offense''.

(10) Section 15C(f)(5) (15 U.S.C. 78o–5(f)(5)) is amended by striking ''any person or class or persons'' and inserting ''any person or class of persons''.

(11) Section 19(c)(5) (15 U.S.C. 78s(c)(5)) is amended by moving the margin 2 em spaces to the right.

(12) Section 20 (15 U.S.C. 78t) is amended by redesignating subsection (f) as subsection (e).

(13) Section 21D (15 U.S.C. 78u–4) is amended—

(A) in subsection (g)(2)(B)(i), by striking ''paragraph (1)'' and inserting ''subparagraph (A)''.

(B) by redesignating subsection (g) as subsection (f); and

(14) Section 31(a) (15 U.S.C. 78ee(a)) is amended by striking ''this subsection'' and inserting ''this section''.

(c) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended as follows:

(1) Section 2(a)(8) (15 U.S.C. 80a–2(a)(8)) is amended by striking ''Unitde'' and inserting ''United''.

(2) Section 3(b) (15 U.S.C. 80a–3(b)) is amended by striking ''paragraph (3) of subsection (a)'' and inserting ''paragraph (1)(C) of subsection (a)''.

(3) Section 12(d)(1)(G)(i)(III)(bb) (15 U.S.C. 80a–12(d)(1)(G)(i)(III)(bb)) is amended by striking ''the acquired fund'' and inserting ''the acquired company''.

(4) Section 18(e)(2) (15 U.S.C. 80a–18(e)(2)) is amended by striking ''subsection (e)(2)'' and inserting ''paragraph (1) of this subsection''.

(5) Section 30 (15 U.S.C. 80a–29) is amended—

(A) by inserting ''and'' after the semicolon at the end of subsection (b)(1);

(B) in subsection (e), by striking ''semi-annually'' and inserting ''semiannually''; and

(C) by redesignating subsections (g) and (h), as added by section 508(g) of the National Securities Markets Improvement Act of 1996, as subsections (i) and (j), respectively.

(6) Section 31(f) (15 U.S.C. 80a–30(f)) is amended by striking ''subsection (c)'' and inserting ''subsection (e)''.

(d) INVESTMENT ADVISERS ACT OF 1940.—The Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.) is amended as follows:

(1) Section 203(e)(8)(B) (15 U.S.C. 80b–3(e)(8)(B)) is amended by inserting ''or'' after the semicolon.

(2) Section 222(b)(2) (15 U.S.C. 80b–18a(b)(2)) is amended by striking ''principle'' and inserting ''principal''.

(e) TRUST INDENTURE ACT OF 1939.—The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended as follows:

(1) Section 303 (15 U.S.C. 77ccc) is amended by striking ''section 2'' each place it appears in paragraphs (2) and (3) and inserting ''section 2(a)''.

(2) Section 304(a)(4)(A) (15 U.S.C. 77ddd(a)(4)(A)) is amended by striking ''(14) of subsection'' and inserting ''(13) of section''.

(3) Section 313(a) (15 U.S.C. 77mmm(a)) is amended—

(A) by inserting ''any change to'' after the paragraph designation at the beginning of paragraph (4); and

(B) by striking ''any change to'' in paragraph (6).

(4) Section 319(b) (15 U.S.C. 77sss(b)) is amended by striking ''the Federal Register Act'' and inserting ''chapter 15 of title 44, United States Code,''.

SEC. 302. EXEMPTION OF SECURITIES ISSUED IN CONNECTION WITH CERTAIN STATE HEARINGS.

Section 18(b)(4)(C) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)(C)) is amended by striking ''paragraph (4) or (11)'' and inserting ''paragraph (4), (10), or (11)''.

And the House agree to the same.

TOM BLILEY,
M.G. OXLEY,
BILLY TAUZIN,
CHRIS COX,
RICK WHITE,
ANNA G. ESHOO,
Managers on the Part of the House.

ALFONSE D'AMATO,
PHIL GRAMM,
CHRIS DODD,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1260) to amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to limit the conduct of securities class actions under State law, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

THE SECURITIES LITIGATION UNIFORM STANDARDS ACT OF 1998

UNIFORM STANDARDS

Title 1 of S. 1260, the Securities Litigation Uniform Standards Act of 1998, makes Federal court the exclusive venue for most securities class action lawsuits. The purpose of this title is to prevent plaintiffs from seeking to evade the protections that Federal law provides against abusive litigation by filing suit in State, rather than in Federal, court. The legislation is designed to protect the interests of shareholders and employees of public companies that are the target of meritless ''strike'' suits. The purpose of these strike suits is to extract a sizeable settlement from companies that are forced to settle, regardless of the lack of merits of the suit, simply to avoid the potentially bankrupting expense of litigating.

Additionally, consistent with the determination that Congress made in the National Securities Markets Improvement Act [1] (NSMIA), this legislation establishes uniform national rules for securities class action litigation involving our national capital markets. Under the legislation, class actions relating to a ''covered security'' (as defined by section 18(b) of the Securities Act of 1933, which was added to that Act by NSMIA) alleging fraud or manipulation must be maintained pursuant to the provisions of Federal securities law, in Federal court (subject to certain exceptions).

''Class actions'' that the legislation bars from State court include actions brought on behalf of more than 50 persons, actions brought on behalf of one or more unnamed parties, and so-called ''mass actions,'' in which a group of lawsuits filed in the same court are joined or otherwise proceed as a single action.

The legislation provides for certain exceptions for specific types of actions. The legislation preserves State jurisdiction over: (1) certain actions that are based upon the law of the State in which the issuer of the security in question is incorporated [2]; (2) actions brought by States and political subdivisions, and State pension plans, so long as the plaintiffs are named and have authorized participation in the action; and (3) actions by a party to a contractual agreement (such as an indenture trustee) seeking to enforce provisions of the indenture.

Additionally, the legislation provides for an exception from the definition of ''class action'' for certain shareholder derivative actions.

Title II of the legislation reauthorizes the Securities and Exchange Commission (SEC or Commission) for Fiscal Year 1999. This title also includes authority for the SEC to pay economists above the general services scale.

Title III of the legislation provides for corrections to certain clerical and technical errors in the Federal securities laws arising from changes made by the Private Securities Litigation Reform Act of 1995 [3] (the ''Reform Act'') and NSMIA.

The managers note that a report and statistical analysis of securities class actions lawsuits authored by Joseph A. Grundfest and Michael A. Perino reached the following conclusion:

> The evidence presented in this report suggests that the level of class action securities fraud litigation has declined by about a third in federal courts, but that there has been an almost equal increase in the level of state court activity, largely as a result of a ''substition effect'' whereby plaintiffs resort to state court to avoid the new, more stringent requirements of federal cases. There has also been an increase in parallel litigation between state and federal courts in an apparent effort to avoid the federal discovery stay or other provisions of the Act. This increase in state activity has the potential not only to undermine the intent of the Act, but to increase the overall cost of litigation to the extent that the Act encourages the filing of parallel claims.[4]

Prior to the passage of the Reform Act, there was essentially no significant securities class action litigation brought in State court.[5] In its Report to the President and the Congress on the First Year of Practice Under the Private Securities Litigation Reform

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[1] Public law 104–290 (October 11, 1996).

[2] It is the intention of the managers that the suits under this exception be limited to the state in which issuer of the security is incorporated, in the case of a corporation, or state of organization, in the case of any other entity.

[3] Public Law 104–67 (December 22, 1995).

[4] Grundfest, Joseph A. & Perino, Michael A., *Securities Litigation Reform: The First Year's Experience: A Statistical and Legal Analysis of Class Action Securities Fraud Litigation under the Private Securities Litigation Reform Act of 1995*, Stanford Law School (February 27, 1997).

[5] *Id.* n. 18.

Act of 1995, the SEC called the shift of securities fraud cases from Federal to State court ''potentially the most significant development in securities litigation'' since passage of the Reform Act.[6]

The managers also determined that, since passage of the Reform Act, plaintiffs' lawyers have sought to circumvent the Act's provisions by exploiting differences between Federal and State laws by filing frivolous and speculative lawsuits in State court, where essentially none of the Reform Act's procedural or substantive protections against abusive suits are available.[7] In California, State securities class action filings in the first six months of 1996 went up roughly five-fold compared to the first six months of 1995, prior to passage of the Reform Act.[8] Furthermore, as a state securities commissioner has observed:

It is important to note that companies can not control where their securities are traded after an initial public offering. * * * As a result, companies with publicly-traded securities can not choose to avoid jurisdictions which present unreasonable litigation costs. Thus, a single state can impose the risks and costs of its pecular litigation system on all national issuers.[9]

The solution to this problem is to make Federal court the exclusive venue for most securities fraud class action litigation involving nationally traded securities.

SCIENTER

It is the clear understanding of the managers that Congress did not, in adopting the Reform Act, intend to alter the standards of liability under the Exchange Act.

The managers understand, however, that certain Federal district courts have interpreted the Reform Act as having altered the scienter requirement. In that regard, the managers again emphasize that the clear intent in 1995 and our continuing intent in this legislation is that neither the Reform Act nor S. 1260 in any way alters the scienter standard in Federal securities fraud suits.

Additionally, it was the intent of Congress, as was expressly stated during the legislative debate on the Reform Act, and particularly during the debate on overriding the President's veto, that the Reform Act establish a heightened uniform Federal standard on pleading requirements based upon the pleading standard applied by the Second Circuit Court of Appeals. Indeed, the express language of the Reform Act itself carefully provides that plaintiffs must ''state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.'' The Managers emphasize that neither the Reform Act nor S. 1260 makes any attempt to define that state of mind.

The managers note that in Ernst and Ernst v. Hochfelder [10], the Supreme Court left open the question of whether conduct that was not intentional was sufficient for liability under the Federal securities laws. The Supreme Court has never answered that question. The Court expressly reserved the question of whether reckless behavior is sufficient for civil liability under section 10(b) and Rule 10b–5 in a subsequent case, Herman & Maclean v. Huddleston [11], where it stated, ''We have explicitly left open the question of whether recklessness satisfies the scienter requirement.''

The managers note that since the passage of the Reform Act, a data base containing many of the complaints, responses and judicial decisions on securities class actions since enactment of the Reform Act has been established on the Internet. This data base, the Securities Class Action Clearinghouse, is an extremely useful source of information on securities class actions. It can be accessed on the world wide web at http://securities.stanford.edu. The managers urge other Federal courts to adopt rules, similar to those in effect in the Northern District of California, to facilitate maintenance of this and similar data bases.

TOM BLILEY,
M.G. OXLEY,
BILLY TAUZIN,
CHRIS COX,
RICK WHITE,
ANNA G. ESHOO,

Managers on the Part of the House.

ALFONSE D'AMATO,
PHIL GRAMM,
CHRIS DODD,

Managers on the Part of the Senate.

In 1995, during the consideration of the Private Securities Litigation Reform Act and the override of the President's veto of that Act, Congress noted that in Ernst and Ernst v. Hochfelder,[1] the Supreme court expressly left open the question of whether conduct that was not intentional was sufficient for liability under section 10(b) of the Securities Exchange Act of 1934. The Supreme Court has never answered that question. The Court specifically reserved the question of whether reckless behavior is sufficient for civil liability under section 10(b) and Rule 105–5 [2] in a subsequent case, Herman & Maclean v. Huddleston,[3] where it stated, ''We have explicitly left open the question of whether recklessness satisfies the scienter requirement.''

Footnotes at end of article.

The Reform Act did not alter statutory standards of liability under the securities laws (except in the safe harbor for forward-looking statements). As Chairman of the Conference Committee that considered the Reform Act and as the bill's author, respectively, it is our view that non-intentional conduct can never be sufficient for liability under section 10(b) of the Exchange Act. We believe that the structure and history of the securities laws indicates no basis for liability under this section for non-intentional conduct. The following is a discussion of the legal reasons supporting our view that non-intentional conduct is insufficient for liability under section 10(b) of the Exchange Act.[4]

In Ernst & Ernst v. Hochfelder, the Supreme Court held that scienter is a necessary element of an action for damages under Section 10(b) and Rule 10b–5. The Supreme Court defined scienter as ''a mental state embracing intent to deceive, manipulate, or defraud.'' Hochfelder, 425 U.S. at 194 n. 12.

A. NEITHER THE TEXT NOR THE LEGISLATIVE HISTORY OF SECTION 10(B) SUPPORT LIABILITY FOR RECKLESS BEHAVIOR

''The starting point in every case involving construction of a statute is the language itself.'' [5] Because Congress ''did not create a private §10(b) cause of action and had no occasion to provide guidance about the elements of a private liability scheme,'' the Supreme Court has been forced ''to infer how the 1934 Congress would have addressed the issue[s] had the 10b–5 action been included as an express provision in the 1934 Act.'' [6]

The inference from the language of the statute is clear: Congress would not have created Section 10(b) liability for reckless behavior. Section 10(b) prohibits ''any manipulative or deceptive device or contrivance'' in contravention of rules adopted by the Commission pursuant to Section 10(b)'s delegated authority. The terms ''manipulative,'' ''device,'' and ''contrivance'' ''make unmistakable a congressional intent to proscribe a type of conduct quite different from negligence.'' Hochfelder, 425 U.S. at 199. The intent was to ''proscribe *knowing or intentional* misconduct.'' Id. (emphasis supplied). In addition, the use of the word manipulative is ''especially significant'' because ''[i]t is and was virtually a term of art when used in connection with securities markets. It connotes intentional or willful conduct designed to deceive or defraud investors by controlling or artificially affecting the price of securities.'' Id. (footnote omitted).

Section 10(b) of the Exchange Act cannot be violated through inadvertence or with lack of subjective consciousness. Nor can one construct a device or contrivance without willing to do so. The words ''manipulate,'' ''device,'' or ''contrivance,'' by their very nature, require conscious intent and connote purposive activity.[7] The mental state consistent with the statute can be achieved only if a defendant acts with a state of mind ''embracing''—an active verb—''intent''—requiring a conscious state of mind—''to deceive, manipulate or defraud.'' [8]

The legislative history compels the same conclusion. ''[T]here is no indication that §10(b) was intended to proscribe conduct not involving scienter.'' *Hochfelder*, 425 U.S. at 202; *see also Aaron v. SEC*, 446 U.S. 680, 691 (1980) (same). Indeed, ''[i]n considering specific manipulative practices left to Commission regulation . . . the [Congressional] reports indicate that liability would not attach absent scienter, supporting the conclusion that Congress intended no lesser standard under §10(b). ''*Hochfelder*, 425 U.S. at 204. Congress thus ''evidenced a purpose to proscribe only *knowing and intentional misconduct*.'' *Aaron*, 446 U.S. at 690 (emphasis supplied).

B. THE STRUCTURE OF THE STATUTE UNDERSCORES THAT THERE CAN BE NO SECTION 10(B) LIABILITY FOR RECKLESSNESS

In drafting the federal securities laws, Congress knew how to use specific language to impose liability for reckless or negligent behavior and how to create strict liability for violations of the federal securities laws.[8] But Congress did not use such language to impose Section 10(b) liability on reckless behavior. Therefore, just as there is no liability for aiding and abetting a violation of Section 10(b) because Congress knew how to create such liability but did not,[10] and just as there is no liability under Section 12(l) of the Securities Act, 17 U.S.C. §771(l), for participants who are merely collateral to an offer or sale because Congress knew how to create such liability but did not,[11] and just as there is no remedy under Section 10(b) for those who neither purchase nor sell securities because Congress knew how to create such a remedy but did not,[12] there can be no liability for reckless conduct under Section 10(b) because Congress clearly knew how to impose liability for reckless behavior but did not.

The Supreme Court has, moreover, emphasized that the securities laws ''should not be read as a series of unrelated and isolated provisions.'' [13] The federal securities laws are to be interpreted consistently and as part of an interrelated whole.'' [14] In *Virginia*

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[6] *Report to the President and the Congress on the First Year of Practice Under the Private Securities Litigation Reform Act of 1995*, U.S. Securities and Exchange Commission, Office of the General Counsel, April 1997 at 61.

[7] Testimony of Mr. Jack G. Levin before the Subcommittee on Finance and Hazardous Materials of the Committee on Commerce, House of Representatives, Serial No. 105–85, at 41–45 (May 19, 1998).

[8] *Id.* at 4.

[9] Written statement of Hon. Keith Paul Bishop, Commissioner, California Department of Corporations, submitted to the Senate Committee on Banking, Housing and Urban Affairs' Subcommittee on Securities'' ''Oversight Hearing on the Private Securities Litigation Reform Act of 1995,'' Serial No. 105–182, at 3 (July 27, 1998).

[10] 425 U.S. 185 (1976).

[11] 459 U.S. 375 (1983).

Bankshares, Inc. v. Sandberg, 501 U.S. 1083 (1991), the Court reserved ''the question whether scienter was necessary for liability under §14(a).''[15] The Court nonetheless held that statements of ''reasons, opinions or belief'' are actionable under §14(a), 15 U.S.C. 78n(a), and Rule 14a–9, 17 C.F.R. §240.14a–9, as false or misleading only if there is proof of (1) subjective ''disbelief or undisclosed motivation,'' and (2) objective falsity. 501 U.S. at 1095–96. Justice Scalia explained the Court's holding as follows:

As I understand the Court's opinion, the statement ''In the opinion of the Directors, this is a high value for the shares'' would produce liability if in fact it was not a high value and the Directors knew that. It would not produce liability if in fact it was not a high value but the Directors honestly believed otherwise. The statement ''The Directors voted to accept the proposal *because* they believe it offers a high value'' would not produce liability if in fact the Directors' genuine motive was quite different—except that it would produce liability if the proposal in fact did not offer a high value and the Directors knew that.[16]

If follows that, if: (A) a statement must be subjectively disbelieved in order to be actionable under Section 14(a), a provision that may or may not required scienter, then: (B) *a fortiori*, under Section 10(b), a provision that clearly requires scienter, plaintiffs must show subjective awareness of a scheme or device.

Any other result would lead to the anomalous conclusion that statements actionable under Section 10(b), the more restrictive ''catchall'' provision of the federal securities laws, *Hochfelder*, 425 U.S. at 203, would not be actionable under Section 14(a). Indeed, ''[t]here is no indication that Congress intended anyone to be made liable [under §10(b)] unless he acted other than in good faith [and] [t]he catchall provision of §10(b) should be interpreted no more broadly.'' *Id.* at 206[17]

The language of the text, the legislative history, and the structure of the statute therefore each compel the conclusion that intentional conduct is a prerequisite for liability under Section 10(b).

Additionally, the Reform Act established a heightened pleading standard for private securities fraud lawsuits. The Conference Report accompanying the Reform Act stated in relevant part:

The Conference Committee language is based in part on the pleading standard of the Second Circuit. The standard also is specifically written to conform the language to rule 9(b)'s notion of pleading with ''particularity.''

Regarded as the most stringent pleading standard, the Second Circuit requirement is that the plaintiff state facts with particularity, and that these facts intern must give rise a strong inference of the defendant's fraudulent intent. Because the Conference Committee intends to strengthen existing pleading requirements, it does not intend to codify the Second Circuit's case law interpreting this pleading standard. Footnote: For this reason, the conference Report chose not to include in the pleading standard certain language relating to motive, opportunity, or recklessness.[18]

The Conference Report accompanying S. 1260 is consistent with that heightened pleading standard articulated in 1995.

[1] 425 U.S. 185 (1976).

[2] 17 C.F.R. §240.10b–5.

[3] 459 U.S. 375 (1983).

[4] We are grateful to Professor Joe Grundfest and Ms. Susan French of Stanford University for guidance to us on these questions.

[5] *Hochfelder*, 425 U.S. at 197 (quoting *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 756 (1975) (Powell, J., concurring). *See also Gustafson v. Alloyd Co.*, 115 S. Ct. 1061, 1074 (1995) (Thomas, J., Dissenting). *Central Bank*, 114 S. Ct. at 1446; *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685 (1985); *Santa Fe Indus., Inc. v. Green, 430* U.S. 462, 472 (1977).

[6] *Central Bank*, 114 S. Ct. at 1441–42 (quoting *Musick, Peeler* 113 S. Ct. at 2089–90).

[7] *See Hochfelder*, 425 U.S. at 199 n. 20 (''device'' means '''that which is devised, or formed by design; a contrivance; an invention; project; scheme; often a scheme to deceive; a strategem; an artifice''') (quoting Webster's International Dictionary (2d ed. 1934)); *id* (defining ''contrivance'' as '' '[a] thing contrived or used in contrivance; a scheme . . . .'').

[8] *Hochfelder*, 425 U.S. at 193 n. 12. *Cf. Santa Fe Industries*, 430 U.S. at 478; *Schreiber* v. *Burlington Northern Inc.*, 472 U.S. 1, 5–8 (1985).

[9] Section 11 of the Securities Act of 1933, 15 U.S.C. §77k. for example, imposes strict liability on the issuer for material misstatements or omissions in a registration statement and a ''sliding scale'' negligence standard on other participants in the offering process. *See Hochfelder*, 425 U.S. at 208. Sections 17 (a)(2) and (3) of the Securities Act, 15 U.S.C. §77q(a) (2),(3), impose liability for negligent or reckless conduct in the sale of securities. *Aaron*, 446 U.S. at 697.

[10] *Central Bank, 114 S. Ct.* at 1448 (''Congress knew how to impose aiding and abetting liability when it chose to do so.'') (citing statutes).

[11] *Pinter v. Dahl*,486 U.S. 622, 650 & n.26 (1988) (Congress knew how to provide liability for collateral participants in securities offerings when it chose to do so).

[12] *Blue Chip*, 421 U.S. at 734 (''When Congress wished to provide a remedy for those who neither purchase nor sell securities, it has little trouble doing so expressly.'').

[13] *Gustafson v. Alloyd Co.*, 115 S. Ct. 1061, 1067 (1995).

[14] *See, e.g, Hochfelder*, 425 U.S. at 206 (*citing Blue Chip*, 421 U.S. at 727–30; *SEC v. National Sec., Inc., 393 U.S. 453, 466 (1969))*.

[15] 501 U.S. at 1090 n. 5 (*citing TSC Indus. Inc. v. Northway, Inc.*, 426 U.S. 438, 444 n. 7 (1976) (reserving the same question).

[16] 501 U.S. at 1108–09 (Scalia, J., concurring in part and concurring in the judgment).

[17] The Supreme Court has previously extended holdings from §14(a)'s proxy antifraud provisions to §10(b)'s general antifraud provision. *See, e.g., Basic, Inc. v. Levinson*, 485 U.S. 224, 231–32 (1988) (adopting for purposes of §10(b) liability the standard for materiality initially defined under §14(a) by *TSC*, 426 U.S. at 445).

[18] Conference Report accompanying the Private Securities Litigation Reform Act of 1995, p. 41, 48.

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

Mr. DINGELL. Mr. Speaker, I yield myself 7 minutes.

Mr. Speaker, I begin by expressing a great respect and affection for my dear friend, the gentleman from Virginia (Mr. BLILEY), the chairman of the committee. I do, however, rise in opposition to the conference report, and very frankly, I rise in opposition to the rather sorry process by which this document has been presented to this body.

Last month the House appointed 5 Members from the other side of the aisle and three Democrats as its conferees on this legislation.

There have been no meetings by the conferees. The staff of the Republican conferees have had extensive conversations with their Senate counterparts. No Democratic staff members were included or informed; not even the staff of the gentlewoman from California (Ms. ESHOO), the chief Democratic sponsor of the House bill.

To add insult to this injury, Republican staff informed us the day before this report was filed that the only Democratic amendment adopted by the conference committee, the DeGette amendment, which required the SEC to monitor and report to the Congress on the consequences of this legislation, had been unceremoniously dropped, without any justification that I can discern.

Moreover, the original conference report included, at the behest of the Senate, a rather curious nongermane study of the U.S. sheep and wool industry. While that might be appropriate, it does not seem to belong here.

I have also been told that the provision was taken out, but that is quite beside the point. The process here was exclusionary, unfair and outrageous. For that reason, I intend to vote against this conference report, and I will be urging my colleagues to do likewise.

The substance of this legislation clearly merits a no vote. We are not shearing sheep with this legislation. We are, very frankly, shamelessly, fleecing investors.

A year or so ago, the Congress passed legislation which changed startlingly the way in which ordinary investors may sue to protect their rights, and it largely stripped them of rights to protect themselves against corporate wrongdoings in the courts of the Federal Government.

We were told at the time that legislation was passed that the investors would still have access to State courts to protect their rights as owners of the corporations and to protect their rights as shareholders, and to assure that there was no wrongdoing which adversely affected either the well-being of the corporation or their interests therein.

This legislation very curiously terminates those rights. No longer can a citizen form a class action in a State court. For some strange reason, my colleagues on the other side of the aisle, great advocates of States' rights, are now saying citizens cannot go into State courts. They are changing State jurisprudence as well as Federal jurisprudence.

One of the remarkable things they do, if 50 citizens will go into court and sue, under the requirements of this legislation those suits must be combined into a class action, which is immediately then removed to the Federal courts and then subject to all of the hostile and constrictive constraints on the right of a citizen to sue to protect his interests and his property; the corporation which he as a shareholder happens to be the owner of.

This conference report nails the State courthouse door shut to little investors then, who have to band together in class action lawsuits in order to recover the money they have lost to securities fraud. By making Federal courts the exclusive venue for most of the securities class action lawsuits, the conference report imposes the standards of the Private Securities Litigation Reform Act of 1955, to which I referred earlier, on all securities class action lawsuits, except those narrow instances specifically excluded by that report.

The 1995 act imposed heightened pleading standards on defrauded investors, a stay of discovery so that the special facts necessary to meet those heightened pleading standards could not be reached. As a matter of fact, one of the interesting things is that neither a discovery proceeding nor a lawyer would protect an investor under the law as it is now written under the statute I am referring to.

It would probably be in the interest of the investor to be represented by a psychiatrist because he literally must examine the mind of the person who has defrauded him in order to prevail in a lawsuit of that sort.

These are extraordinarily high pleading standards, far higher than necessary, and that legislation also imposed an unreasonably short statute of limitations or time limit for filing a fraud claim. It included no ability under the law to fully recover from professionals, such as accountants and lawyers, who had aided and abetted in stealing funds from innocent investors.

Those same standards and shortcomings are now extended across the board by fiat of the Federal Government so that a citizen who now finds the Federal court doors nailed shut to him cannot go to the State to seek redress in a State court from wrongdoing.

Why? I do not know, but one can suspect that the scoundrels, rogues, rascals and thieves that infest our capital markets have now dressed themselves up in sheep's clothing and convinced many of the Members of this body that they are not wolves but, rather, are hapless and helpless victims of a litigation explosion. I would note that that litigation explosion does not exist.

There is no litigation explosion, particularly given the amount of securities fraud that the bull market has engendered.

There has also been a covered attempt on the part of some Members here to obliterate the ability of the SEC and defrauded investors to sue on the basis of recklessness. This is like eliminating manslaughter from the criminal laws. It would be like saying that one has to prove intentional murder or the defendant gets off scott-free. If we were to lose the reckless standard, we would leave substantial numbers of the investing public naked to attacks by schemers.

That is the remarks of Chairman Leavitt, who testified before us, speaking as chairman of the SEC last October.

Mr. Speaker, I am willing to support responsible reform. I do not think that this constitutes responsible reform. This is the active sheltering of wrongdoing. It is going to support those who would skin the American investing public. It is going to raise great questions of the trust that Americans can put in the securities market, because we have provided now a blanket of protection for wrongdoing and for wrongdoers who are engaged, on a continuing basis of taking advantage, of those who cannot protect themselves. This is a bad bill. I urge a no vote.

Mr. Speaker, I submit the dissenting views on this legislation for inclusion in the RECORD, to expand and provide data on these points.

Mr. Speaker, I rise in opposition to this conference report and the sordid process by which it was conceived.

Last month, the House appointed its conferees on this legislation, 5 Members from the other side of the aisle and 3 Democrats. There have been no meetings of the conferees. The staff of the Republican conferees have had extensive conversations with their Senate counterparts. No Democratic staff were informed or included, not even the staff of Representative ESHOO, the chief Democratic sponsor of the House bill. To add insult to injury, Republican staff informed us the day before this report was filed that the only Democratic amendment adopted by the Commerce Committee—the DeGette amendment to require the SEC to monitor and report to Congress on the consequences of this legislation—has been unceremoniously dropped without justification. However, the original conference agreement included, at the behest of the Senate, a nongermane study of the U.S. sheep and wool industry. I have been told that provision has been taken out, but that is beside the point. This process was unfair and outrageous. For that reason, I am voting against this conference report and urging my colleagues to do likewise.

The substance of this legislation also merits a ''no'' vote. We are not shearing sheep with this legislation. We are shamelessly fleecing investors.

This conference report nails the State courthouse door shut to little investors who have to band together in class action lawsuits in order to recover the monies they have lost to securities fraud.

By making Federal courts the exclusive venue for most securities class action lawsuits, the conference report imposes the standards of the Private Securities Litigation Reform Act of 1995 on all securities class action lawsuits except those narrow instances specifically excluded by the report. The 1995 Act imposed heightened pleading standards on defrauded investors, a stay of discovery so that the special facts necessary to meet those heightened pleading standards could not be reached, and an unreasonably short statute of limitations or time limit for filing a fraud claim. It included no ability under that law to fully recover from professionals such as accountants and lawyers who aided and abetted in stealing funds from innocent investors. Those same standards and shortcomings are now extended across the board by fiat of the Federal Government.

Why? Because the scoundrels, rogues, rascals, and thieves that infest our capital markets dressed themselves up in sheep's clothing and convinced too many Members that they were not wolves but rather helpless and helpless victims of a litigation explosion.

My colleagues, there is no litigation explosion, particularly given the amount of securities fraud that the bull market has engendered. I ask unanimous consent that the Dissenting Views on this legislation be included in the RECORD following my remarks to expand and provide data on these points.

There also has been a covert attempt on the other side of the aisle to obliterate the ability of the SEC and defrauded investors to sue on the basis of recklessness. Shame on my Republican colleagues. Shame, shame. As SEC chairman Levitt testified before us in October last year: ''[E]liminating recklessness * * * would be tantamount to eliminating manslaughter from the criminal laws. It would be like saying you have to prove intentional murder or the defendant gets off scot free * * * If we were to lose the reckless standard * * * we would leave substantial numbers of the investing public naked to attacks by * * * schemers.'' I ask unanimous consent to include a letter from Senator REED to the conferees on this point at the conclusion of my remarks.

Mr. Speaker, I want to support responsible reform. This is not reform and it is not responsible. I urge a ''no'' vote.

U.S. SENATE,
Washington, DC, October 2, 1998.

Ranking Member JOHN D. DINGELL,
Committee on Commerce, Rayburn House Office Building, Washington, DC.

DEAR RANKING MEMBER DINGELL: I write to you as a conferee on the Securities Litigation Uniform Standards Act of 1998, S. 1260. As you know, I supported Senate passage of this legislation, and voted to override the President's veto of the Private Securities Litigation Reform Act of 1995. While class action suits are frequently the only financially feasible means for small investors to recover damages, such lawsuits have been subject to abuse. By creating national standards, such as those in S. 1260, we recognize the national nature of our markets and encourage capital formation.

However, it is essential to recognize that preemption marks a significant change concerning the obligations of Congress. When federal legislation was enacted to combat securities fraud in 1933 and 1934, federal law augmented existing state statutes. States were free to provide greater protections, and many have. Many of our colleagues voted for the 1995 legislation knowing that if federal standards failed to provide adequate investor protections, state law would provide a necessary backup.

With passage of this legislation, Congress accepts full and sole responsibility to ensure that fraud standards allow truly victimized investors to recoup lost funds. Only a meaningful right of action against those who defraud can guarantee investor confidence in our national markets. Recently, on the international stage, we have seen all too clearly the problem of markets which fail to ensure that consumers receive truthful, complete information.

Therefore, my support for this bill rests on the presumption that the recklessness standard was not altered by either the 1995 Act or this legislation. I strongly endorsed the Senate Report which accompanies this legislation because it stated clearly that nothing in the 1995 legislation changed either the scienter standard or the most stringent pleading standard, that of the Second Circuit. This language was central to the legislation receiving the support of Chairman Levitt of the Securities and Exchange Commission. It was also central to my support.

As the Senate Banking Committee recognized at his second confirmation hearing, Chairman Levitt has a lifetime of experience as both an investor and regulator of markets. That experience has led him to be the most articulate advocate of the need for a recklessness standard concerning the scienter requirement. In October 21, 1997 testimony before a Subcommittee in the House of Representatives, Chairman Levitt said, ''[E]liminating recklessness . . . would be tantamount to eliminating manslaughter from the criminal laws. It would be like saying you have to prove intentional murder or the defendants gets off scot free. . . . If we were to lose the reckless standard . . . we would leave substantial numbers of the investing public naked to attacks by . . . schemers.''

In testimony before a Senate Banking Subcommittee, on October 20, 1997, Chairman Levitt further articulated his position regarding the impact of a loss of the recklessness standard. He said, ''A higher scienter standard (than recklessness) would lessen the incentives for corporations to conduct a full inquiry into potentially troublesome or embarrassing areas, and thus would threaten the disclosure process that has made our markets a model for nations around the world.''

The danger posed by a loss of recklessness to our citizens and markets is clear. We should not overrule the judgement of the SEC Chair, not to mention every single Circuit Court of Appeals that has adjudicated the issue. I would assume that the motives which led the SEC and the Administration to insist on the Senate Report language concerning recklessness would also apply to their views of the Conference Report.

With regard to the pleading standard, some Members of Congress, and, unfortunately, a minority of federal district courts, have made much of the President's veto measure of the 1995 legislation. Specifically, some have pointed out that the President vetoed the 1995 bill due to concerns that the Conference Report adopted a pleading standard higher than that of the Second Circuit, the most stringent standard at that time. As I, and indeed a bipartisan group of Senators and Representatives, made clear in the veto override vote, the President overreached on this point. The pleading standard was raised to the highest bar available, that of the Second Circuit, but no further. In spite of the Administration's 1995 veto, this preemption gained the support of Chairman Levitt. It is, therefore, difficult to understand how some can argue that the 1995 legislation changed the pleading standard of the Second Circuit.

The reason for allowing a plaintiff to establish scienter through a pleading of motive and opportunity or recklessness is clear. As one New York Federal District Court has stated, ''a plaintiff realistically cannot be expected to plead a defendant's actual state of mind.'' Since the 1995 Act allows for a stay of discovery pending a defendant's motion to dismiss, requiring a plaintiff to establish actual knowledge of fraud or an intent to defraud in a complaint raises the bar far higher than most legitimately defrauded investors can meet.

Firms which advocate for S. 1260 do so based on the need to eliminate the circumvention of federal standards and federal stays of discovery through state court filings. They do not argue for lessening of the obligations owed investors. I am concerned that should the conference committee include language which could be interpreted to eviscerate the ability of plaintiffs to satisfy the scienter standard by proof of recklessness or to require plaintiffs, barred from discovery, to adhere to a pleading standard requiring conscious behavior, the bill will loose the support of Chairman Levitt and many Members of Congress. I urge the Conference to support language included in the Senate Report and move forward with a bill that a bipartisan group in Congress can support and the President can sign.

Sincerely,

JACK REED,
U.S. Senator.

DISSENTING VIEWS FOR H.R. 1689 ON STATES RIGHTS AND INVESTOR PROTECTION

We abhor strike suits and frivolous litigation of any stripe. We would enthusiastically support responsible and balanced legislation narrowly targeted at ameliorating those abuses. H.R. 1689 does not meet that standard. We dissent from this bill.

As introduced, H.R. 1689 was an industry wish list devoid of proper safeguards to protect the essential rights of injured investors to pursue meritorious claims. The sponsors and proponents of H.R. 1689 adopted several amendments during Subcommittee and Full Committee markup to temper some of the bill's harshest elements. We commend our colleagues. The bill, nonetheless, is still flawed.

H.R. 1689 creates a national standard governing securities fraud class actions involving ''covered securities'' which are nationally traded securities and some that are not. The bill requires these class actions to be brought in federal court pursuant to federal law, where they would be subject to the more stringent terms of the Private Securities Litigation Reform Act of 1995. These terms include the double whammy of heightened pleading standards along with a stay of discovery pending a motion to dismiss, blocking the ability of defrauded investors to gain the special facts needed to meet the heightened pleading standards.

First, the bill is premature. The Securities and Exchange Commission (SEC) concluded in its April 1997 report to the President and Congress that: ''it is too early to assess with confidence many important effects of the Reform Act and therefore, on this basis, it is premature to propose legislative changes. The one-year time frame has not allowed for sufficient practical experience with the Reform Act's key provisions, or for many court decisions (particularly appellate court decisions) interpreting those provisions.'' The Chairman of the SEC testified before our finance subcommittee on October 21, 1997, that his agency had ''not had enough practical experience with the Act to produce the data necessary for us to measure its success.'' That is still the case.

Second, there is no national problem in need of a national solution. Data compiled by unbiased sources shows that the number of state securities class actions has declined during the last year to pre-Reform Act levels. In 1997, there were a total of 44 state class action securities cases, out of a total of 15 million civil filings. By comparison, 67 state class actions were filed in 1994, the year before the Reform Act became law, and 66 cases were filed in 1996, the year after the Reform Act was enacted. We note in passing that we have been shown no convincing proof that any of these lawsuits was without merit and was allowed to proceed notwithstanding its lack of merit. Moreover, as the attached map shows, the overwhelming majority of those cases were filed in California, with most states having zero filings. That being the case, shouldn't this ''problem'' be solved in the California legislature? We believe that state legislatures should be given time to consider laws of their own to address the issues raised in this debate.

We find it curious indeed that the Republican-led Congress that campaigns on returning power to the states and protecting individual choice, would champion a federal mandate abolishing important state prerogatives along with protections and rights. Forty-nine states, as well as the District of Columbia, allow for some form of aiding-and-abetting liability. There is no aiding-and-abetting liability in private actions for most federal securities fraud claims. In addition, private actions under the federal securities laws are subject to a short statute of limitations. Specifically, private actions under Section 10(b) of the Exchange Act must be brought within one year after discovery of the alleged violation, and no more than three years after the violation occurred. In contrast, 33 states allow for longer limitations periods. These investor protection laws available at the state level, as the attached list shows, will no longer be available to class action plaintiffs upon passage of H.R. 1689. The public should clearly understand the investor protections being wiped out by the elected representatives who vote yes on this bill.

Moreover, under H.R. 1689's unusual ''grouping'' provision, any time more than 50 individuals file state court complaints ''in the same court and involving common questions of law or fact,'' they will be deemed to be part of a ''class action'' subject to this bill, if ''the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.'' Individuals who bring suits in state court in their own name may find, if others have brought similar suits, that their claims are preempted. For instance, if an investment adviser churns the accounts of or recommends unsuitable securities to clients in a single state and more than 50 of them seek to recover in the same court, each filing their own individual action, they may be forced to constitute a class action and have to pursue their claims—if possible—in federal court. These investors may be left without a remedy. This is broader preemption than we believe is necessary or appropriate. There has been no showing that these kinds of suits, either individually or in the aggregate, present the kinds of potential abuses that have been attributed to traditional class actions and strike suits.

The debate on this legislation has been polar. It has tarred all private securities fraud litigation as meritless strike suits, and all defendant companies, accountants, and broker-dealers as innocent victims of large-sum-settlement highjackings. Through this lens, unintended harm to legitimate lawsuits is viewed as a reasonable tradeoff. We disagree on both counts.

The record shows that securities fraud is up. Many of those cases involve accounting frauds. The SEC has always taken the view that private lawsuits are a crucial adjunct to the SEC's own enforcement program. They are the principle means by which investors have recovered losses caused by fraud. Proponents of H.R. 1689 argue that investors recover only ''10 cents on the dollar'' in these cases. We agree that we need to put investors first. But nothing in this bill addresses the recovery issue in any way.

For these reasons, we oppose this bill and urge the House to do the same.

JOHN D. DINGELL.
EDWARD J. MARKEY.
BART STUPAK.
DIANA DEGETTE.

STATE BY STATE COMPARISON OF STATUTE OF LIMITATIONS AND AIDING AND ABETTING LIABILITY

Locality	Statute of limitations	Aiding and abetting
Federal	1 year after discovery/3 years from sale	No.
Alabama	2 years after discovery of the facts	Yes.
Alaska	3 years from the contract of sale	Yes.
Arizona	2 years after discovery of the facts	Yes.
Arkansas	5 years after discovery	Yes.
California	1 year after discovery/4 years from sale	Yes.
Colorado	3 years after discovery/5 years from sale	Yes.
Conneciticut	1 year after discovery/3 years from sale	Yes.
Delaware	3 years form the contract for sale	Yes.
D.C.	2 years from the transaction upon which it is based.	Yes.
Florida	2 years after discovery/5 years from sale	Yes.
Georgia	2 years from the transaction upon which it is based.	Yes.
Hawaii	2 years after discovery/5 years from sale	Yes.

STATE BY STATE COMPARISON OF STATUTE OF LIMITATIONS AND AIDING AND ABETTING LIABILITY—Continued

Locality	Statute of limitations	Aiding and abetting
Idaho	3 years from the contract of sale	Yes.
Illinois	3 years after discovery/5 years from sale	Yes.
Indiana	3 years after discovery of the facts	Yes.
Iowa	2 years after discovery/5 years from sale	Yes.
Kansas	3 years after discovery of the facts	Yes.
Kentucky	3 years from the contract for sale	Yes.
Louisiana	2 years from the transaction upon which it is based.	Yes.
Maine	2 years after discovery of the facts	Yes.
Maryland	1 year after discovery/3 years from sale	Yes.
Massachusetts	4 years after discovery	Yes.
Michigan	2 years after discovery/4 years from sale	Yes.
Minnesota	3 years from the contract for sale	Yes.
Mississippi	2 years after discovery of the facts	Yes.
Missouri	3 years from the contract for sale	Yes.
Montana	2 years after discovery/5 years from sale	Yes.
Nebraska	3 years from the contract for sale	Yes.
Nevada	1 year after discovery/5 years from sale	Yes.
New Hampshire	6 years from the contract for sale	Yes.
New Jersey	2 years after discovery of the facts	Yes.
New Mexico	2 years after discovery/5 years from sale	Yes.
New York	6 years after sale	N/A.
North Carolina	2 years after discovery of the facts	Yes.
North Dakota	5 years after discovery of the facts	Yes.
Ohio	2 years after discovery/4 years from sale	Yes.
Oklahoma	2 years after discovery/3 years from sale	Yes.
Oregon	2 years after discovery/3 years from sale	Yes.
Pennsylvania	1 year after discovery/4 years from sale	Yes.
Rhode Island	1 year after discovery/3 years from sale	Yes.
South Carolina	3 years from the contract for sale	Yes.
South Dakota	2 years after discovery/3 years from sale	Yes.
Tennessee	1 year after discovery/2 years from sale	Yes.
Texas	3 years from discovery/5 years from sale	Yes.
Utah	2 years after discovery/4 years from sale	Yes.
Vermont	6 years from the contract for sale	Yes.
Virginia	2 years from the transaction upon which it is based.	Yes.
Washington	3 years after discovery of the facts	Yes.
West Virginia	3 years from the contract for sale	Yes.
Wisconsin	3 years after discovery of the facts	Yes.
Wyoming	2 years from the transaction	Yes.

ADDITIONAL DISSENTING VIEWS OF CONGRESSMAN RON KLINK ON H.R. 1689, SECURITIES LITIGATION UNIFORM STANDARDS ACT

H.R. 1689 is a solution in search of a problem.

In 1995, the Commerce Committee developed and Congress approved, over a presidential veto, the Private Securities Litigation Reform Act, which put strict limits on federal investor class action lawsuits. I opposed that legislation because I was concerned about preventing defrauded investors from being made whole again. But my side lost, and we all moved on.

One of the arguments when we debated the 1995 Act was that truly victimized investors could still seek redress in state court. So there was some comfort in that; retirees who lost their life savings to securities fraud could still pursue legal action.

Now, however, I fear that the Committee is moving to cut off the state avenue for class action securities suits. That could mean that investors would have no ability to seek relief from securities wrongdoers, and that is unacceptable to me.

There appears to be no explosion of state securities class actions, so I see no real need for this bill. Last year there were only 44 throughout the entire country, the lowest number in five years.

Furthermore, at a time when there are more investors than at any time in history, many of them unsophisticated investors, we should not be making it easier to get away with securities fraud. We owe that to our investor constituents and we owe that to the capital markets in this country, which remain the strongest in the world.

Additionally, though the bill contains a provision similar to the Sarbanes amendment in the Senate bill, which provides for an exemption from the bill for state and local entities, this provision goes beyond Sarbanes to require those entities to be named plaintiffs in and authorize participation in state securities class actions. This assumes a level of sophistication that may be lacking in these investors.

I will provide an example. Last year, the SEC alleged that Devon Capital Management had defrauded 100 municipal clients in Pennsylvania and elsewhere. Those clients included 75 school districts, mostly in Western and Central Pennsylvania. Devon and the SEC reached a settlement, and those school districts are expected to recover a little over half of the $71 million that Devon lost.

Now how can we say that these same school districts and local governments that were unsophisticated enough to have invested with Devon in the first place and lost all this money, are, at the same time, sophisticated enough to recognize the steps they need to take to preserve their rights to bring a state securities class action under this bill?

I would prefer that, at the very least, the Sarbanes amendment exempting state and local governments and pension plans be maintained as it passed the Senate.

Finally, I am disturbed by the trend I am seeing in the Committee and Congress as a whole in our attitude toward investors, especially the mom and pop investors we all represent. As I said, I opposed the 1995 Securities Litigation Reform Act. That was followed closely by the Fields Securities Reform bill, which threatened to severely limit the ability of state securities regulators, the local cops on the beat in the securities world, to protect investors. In Committee and in conference, we were able to temper this legislation so that investors would not be left vulnerable.

We are at a point in time when Members of Congress and others are talking about privatizing Social Security. That will lead to even more unsophisticated investors and hundreds of billions of dollars going into the marketplace. And yet we continue to talk about reducing investor protections.

Another question I have is, are we now saying to the states that we in Washington, DC, know better than the states what cases should go through state courts and which should not. Are we next going to tell the states that they can't hear real estate cases? Are we going to tell them they can't hear tobacco cases? What comes next?

I never thought I would see the day when my Republican colleagues would want to dictate from on high in Washington, DC, what state law should be.

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Mr. BLILEY. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio (Mr. OXLEY), chairman of the subcommittee.

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

Mr. OXLEY. Mr. Speaker, I obviously rise in strong support of the conference report. If fraud were the only reasons that stock prices dropped, then today's volatile markets would suggest that there is not an honest company out there. That is simply not the case.

Publicly traded companies, their shareholders, and their employees lose every time a company has to pay off and their lawyers have to settle a lawsuit that is based on one fact only, that the company stock dropped in value.

In 1995, the Congress approved, with an overwhelmingly bipartisan majority that overrode a presidential veto, legislation to stop these ''blackmail settlements.'' The Private Securities Litigation Reform Act of 1995 was designed to put an end to frivolous lawsuits that drain values from public companies and wastefully diverted their resources. This conference report closes a loophole that has enabled plaintiffs' lawyers to continue to extract settlements from companies that have done absolutely nothing wrong.

The conference report prevents lawyers from evading the protections of the Reform Act by filing their lawsuit in State court. The conference report creates a national standard under which securities class actions must be filed and that standard is the one that Congress resoundingly approved back in 1995.

The conference report preserves the ability of individual investors to file suits that are appropriately brought in State courts, while preventing lawyers from using securities class actions filed in State court for their personal gains.

This legislation represents a bipartisan effort to work through our political differences and reach compromises that are responsible public policy. In fact, over the last 4 years, the Committee on Commerce has produced a number of bills which have made a significant improvement to the laws governing our financial institutions and that have enjoyed support from both sides of the aisle. I am very proud of these accomplishments. This legislation should be added to that list.

There are many who deserve credit for bringing this legislation to the floor today. Several Committee on Commerce members, including the gentleman from Washington (Mr. WHITE), the original cosponsor of the House bill, and the gentlewoman from California (Ms. ESHOO), the other original cosponsor. They not only started the ball rolling, but have worked incessantly to keep this legislation on track and have driven us crazy at the same time.

I commend our counterparticipants in the Senate for their fine work improving upon the bill as originally introduced by the gentleman from Washington (Mr. WHITE) and the gentlewoman from California (Ms. ESHOO), and for their cooperation during the conference.

I thank our full committee chair, the gentleman from Virginia (Mr. BLILEY), whose leadership and perseverance has ensured that this conference report is a strong win for American investors and American businesses and, therefore, American jobs. Thanks to his hard work, as well as that of the other conferees supporting this measure, the conference report ratifies the heightened pleading standard that was adopted in the 1995 Reform Act.

While we may disagree on this particular initiative, I appreciate the constructive work done by the gentleman from Michigan (Mr. DINGELL), who, as always, has been a true legislative craftsman in this area.

Finally, on a personal note, I would like to thank the gentleman from New York (Mr. MANTON), our retiring ranking minority member of my subcommittee, not only for his work and support for this legislation, but for his years of friendship to me and dedication to the Committee on Commerce and the House. I wish him the best. We will all miss him.

Mr. DINGELL. Mr. Speaker, I yield 3 minutes to the distinguished gentlewoman from California (Ms. ESHOO).

(Ms. ESHOO asked and was given permission to revise and extend her remarks.)

Ms. ESHOO. Mr. Speaker, I rise today in support of the conference report on the Securities Litigation Uniform Standards Act. I am very proud to have been the chief Democratic sponsor of this legislation which is narrowly focused and a bipartisan bill that closes a loophole in the 1995 Private Securities Litigation Reform Act.

With the overwhelming support, which was bipartisan in the last Congress, we passed that act. That bill significantly curbed the filing in Federal courts of costly and meritless suits against fast-growing companies. ''Strike suits'' forced companies to settle, and they did so rather than face drawn out expensive court proceedings.

These frivolous suits, traditionally filed in Federal courts, are now being filed in State courts circumventing the intent of the Congress in the 1995 legislation. Studies have shown that over a quarter of these cases were filed in State courts where the Federal reforms do not apply. The Securities Litigation Uniform Standards Act closes this loophole by assuring that lawsuits involving nationally traded securities remain in Federal courts where they have always been heard.

This legislation is limited in scope and only affects class action lawsuits involving nationally traded securities. Lawsuits traditionally heard in the Federal courts will continue to be heard there under the Federal law. State regulators would continue to have the ability to enforce State laws and bring civil actions.

The Securities Litigation Uniform Standards Act is supported by the Securities and Exchange Commission, the Clinton administration, and 231 House cosponsors. I urge the passage of this legislation.

Mr. Speaker, let me just say in closing that I would like to offer my thanks to the gentleman from Virginia (Mr. BLILEY), chairman of the full committee, who has been a wonderful partner. And I also have to acknowledge and thank him for putting up with my constant cajoling and prodding and partnering on this.

Certainly to a worthy opponent, the gentleman from Michigan (Mr. DINGELL), ranking member of the Committee on Commerce, and to my cosponsor, worthy cosponsor on the other side of the aisle, the gentleman from Washington (Mr. WHITE), to the gentleman from Louisiana (Chairman TAUZIN) of the subcommittee and the gentleman from Ohio (Mr. OXLEY), thanks for their help and accepting my prodding.

I have to say that I think all of us are ready to leave town. I am beginning to start to pack my bag this evening. I know we have some other things on the agenda. This, Mr. Speaker, has been the daily work not only of my office and staff, but also from the other side of the aisle. I want to acknowledge all that have been involved in this. I think that this Congress is distinguishing itself by the passage of this bill, and I urge passage and I thank all that have been involved in it.

Mr. Speaker, I want to add to today's debate my voice on a particular section of the Conference Report regarding scienter.

The Statement of the Managers indicates that "it was the intent of Congress, as was expressly stated during the legislative debate on the Reform Act, and particularly during the debate on overriding the President's veto, that the Reform Act establish a heightened uniform Federal standard on pleading requirements based upon the pleading standard applied by the Second Circuit Court of Appeals. Indeed, the express language of the Reform Act itself carefully provides that plaintiffs must 'state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.' The Managers emphasize that neither the Reform Act nor S. 1260 makes any attempt to define that state of mind.''

As the chief Democratic sponsor of the Securities Litigation Uniform Standards Act and of the PSLRA of 1995, and a signatory of the conference report on S. 1260, the pleading standards referred to in the Report state with great clarity the intent of Congress with respect to scienter and are ones which I wholeheartedly support.

Mr. BLILEY. Mr. Speaker, I yield 5 minutes to the gentleman from California (Mr. COX), the chairman of the Republican Policy Committee.

Mr. COX of California. Mr. Speaker, I thank the gentleman from Virginia (Mr. BLILEY) for yielding me this time.

Mr. Speaker, if the gentleman from Virginia will entertain one, I would like to engage him in a colloquy.

As the gentleman knows, I was the principal author of the 1995 Securities Litigation Reform Act. During consideration of the Securities Litigation Uniform Standards Act, which will extend the 1995 act to State courts, some questions have been raised about the pleading standard that we adopted in 1995. Specifically, some have argued post facto that we adopted the pleading standard of the Second Circuit Court of Appeals rather than a higher standard derived from it, but without the Second Circuit caselaw.

The same questions have been raised in a different way concerning the so-called Specter amendment to the 1995 act, which would have added language related to motive, opportunity, and recklessness. The House strongly disagreed with the Specter amendment and insisted that it be dropped before we would agree to the conference report.

Since we were both conferees in 1995, I would ask the gentleman his views on both points. Specifically, I would ask the gentleman whether he agrees that in 1995 we adopted a pleading standard higher than any in existing law. Although it was based on the standard from the Second Circuit, it was significantly higher because our hearings showed that even in the Second Circuit the existing standards were failing to screen out abusive cases.

As the 1995 Statement of Managers stated, ''the House and Senate hearings on securities litigation reform included testimony on the need to establish uniform and more stringent pleading requirements to curtail the filing of meritless lawsuits.'' For that reason, the 1995 Managers' Statement explained that the act incorporated a pleading standard derived from, but higher than, the highest standard in existing law, the Second Circuit standard.

Mr. Speaker, let me quote from the 1995 Managers' Statement, the most authoritative construction of the 1995 act: ''The Conference Committee language is based in part on the pleading standard of the Second Circuit . . . Because the Conference Committee intends to strengthen existing pleading requirements, it does not intend to codify the Second Circuit's caselaw interpreting this pleading standard.''

The 1995 Managers' Statement went on to explain that this was the very reason the conferees dropped the so-called Specter amendment on motive, opportunity, and recklessness, because we wanted the standard higher than the Second Circuit's, not because the Specter language authorizing shortcuts to pleading rigor was somehow implicit in the act's language. The House prevailed on this point.

Again, I quote, ''For this reason, the Conference Report chose not to include in the pleading standard certain language relating to motive, opportunity, and recklessness.''

So, the record in 1995 is clear: we adopted a higher standard than the Second Circuit and in particular we rejected the Second Circuit caselaw embodied in the Specter amendment regarding motive, opportunity, and recklessness. Indeed, the President's veto, according to his own veto message, was based on the fact that the 1995 act adopted a higher pleading standard than the Second Circuit standard, and rejected existing Second Circuit caselaw embodied in the Specter amendment. Both bodies of Congress overrode that veto.

In the conference report Managers' Statement for the bill that is before us today, the House expressly rejected Senate report language that would have rewritten the 1995 legislative history on the pleading standard. That language is not in this conference report Managers' Statement.

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

Mr. COX of California. I yield to the gentleman from Virginia.

Mr. BLILEY. Mr. Speaker, I thank the gentleman from California. His recollection of both points is the same as mine. I view the legislative history accompanying S. 1260 as consistent with that understanding.

Mr. COX of California. Mr. Speaker, reclaiming my time, I thank the gentleman. I agree with the gentleman's understanding of S. 1260's legislative history. I also note that courts correctly treat so-called post-enactment legislative history as virtually worthless. But to the extent that courts have any interest in what the 105th Congress thinks the 104th Congress did in 1995, I trust they will compare this year's Senate Banking Committee report language with what both Houses ultimately agreed to in this conference committee Managers' Statement. Where the Senate report on S. 1260 states that the 1995 act ''establish[ed] a uniform Federal standard on pleading requirements by adopting the pleading standard adopted by the Second Circuit Court of Appeals'', the more authoritative Managers' Statement states that in 1995 we ''establish[ed] a heightened uniform Federal standard based upon the pleading standard applied by the Second Circuit Court of Appeals.''

The House managers insisted on these changes to reaffirm what the conferees said in 1995: We adopted a pleading standard higher than the then-existing Second Circuit standard.

Mr. Speaker, once more, Congress is making huge strides toward protecting investors and workers in public companies. I'm pleased that the House will today complete work on S. 1260, the Securities Litigation Uniform Standards Act of 1998. I want to congratulate my colleagues, Mr. WHITE and Ms. ESHOO, for their leadership in introducing this legislation, as well as Chairmen MIKE OXLEY and TOM BLILEY for their tireless efforts on behalf of this issue.

S. 1260 builds on two landmark achievements of the 104th Congress: the 1995 Private Securities Litigation Reform Act, a key element of the Contract With America, and the 1996 National Securities Markets Improvement Act. In the 1995 Reform Act, we acted to stop the egregious perversion of federal securities laws into weapons to injure investors and companies rather than safeguards to protect investors from securities fraud. Trial lawyers, using professional plaintiffs, were filing class action lawsuits against publicly traded companies alleging fraud, often with no more evidence than a drop in the price of these companies' stock—something quite common in the highly volatile high-technology markets. Indeed, over half of the top 150 companies in California's Silicon Valley were hit by such suits. Due to the considerable cost involved in fighting such a lawsuit, innocent employers were routinely forced to pay investors' money as tribute to the trial bar. Yet the enormous price they had to pay—according to one study, on average nearly $9 million for each settlement—did little for defrauded investors. The plaintiffs, the supposed beneficiaries of this system, on average received between 6 and 14 cents on the dollar.

A strong bipartisan majority of the House and Senate acted in 1995 to reorient federal securities litigation to encourage investors to bring meritorious claims while protecting innocent employers from meritless extortion suits. We acted to protect the millions of innocent investors who were bearing the cost of abusive lawsuits while gaining little or no recompense for genuine fraud.

In 1996, strong bipartisan majorities of the House and Senate again turned to the issue of securities law, this time addressing the appropriate division of labor between state and federal securities regulators. In that historic bill we determined that ''covered securities''—basically, those traded on national exchanges—would be subject to federal regulation, while non-covered securities would be regulated by the states.

Today we are going to continue our work in this field of law by protecting the gains we made in the 1995 Reform Act from circumvention by entrepreneurial trial lawyers, and by harmonizing the 1995 Reform Act and the 1996 National Markets legislation.

Trial lawyers have sought to get around our 1995 reforms by bringing their suits in state courts, where those reforms do not apply. Yet as our capital markets are national, and thus investors may live in any of the 50 states, bringing a suit in one state unfairly imposes a financial burden on residents of another state. To address this inequity and assert that national markets require nationally applied rules, this legislation will make federal courts the exclusive venue for large-scale securities fraud lawsuits involving securities subject to federal regulation under the 1996 National Markets Act.

Like the 1995 and 1996 enactments, Representative WHITE's bill enjoys wide bipartisan support. Throughout the process leading up to enactment, we have sought to address the concerns of majority and minority members in the legislation. Our success in so doing is reflected in the wide bipartisan support this legislation received in the House and Senate.

In addition, I want to particularly thank Chairman BLILEY and Chairman OXLEY for including in the bill a technical correction to the 1996 Fields national markets legislation. This correction restores the viability of Section 3(a)(10) of the Securities Act of 1933, which provides a voluntary state-law alternative to federal securities registration. This provision—which has been an unamended part of the 1933 Act since the enactment of that legislation, exempts from federal registration securities issued in exchange for other securities, claims, or property interests, if the terms and conditions of the issuance and exchange have been approved as fair by state authorities. It is purely voluntary; issuers may still seek federal registration if they wish. Although the 1996 Act does not amend Section 3(a)(10), it inadvertently impeded its operation. I appreciate the Chairmen's consideration in including in the bill a curative technical amendment endorsed by the California Department of Corporations.

I look forward to final passage of this conference report, and I thank the Chairmen and my colleagues, RICK WHITE and ANNA ESHOO, for their tireless efforts on behalf of this legislation.

Mr. DINGELL. Mr. Speaker, I yield 6 minutes to the distinguished gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Speaker, one of the most shameful things that has occurred during the course of the debate on this bill was the covert attempt that was made to eviscerate the ability of the SEC and defrauded investors to sue reckless wrongdoers.

In the Silicon Graphics case, a Federal District Court in California actually ruled that the act had eliminated recklessness as a standard for liability under the Federal securities laws, subsequently concluding that only deliberate recklessness, a legal oxymoron, would meet the Reform Act's pleading standards.

Now, while I oppose this bill, I also feel quite strongly that if this bill is to become law, we needed to make it absolutely clear that we had not changed the scienter requirements in either the Reform Act or in this legislation.

During floor consideration of the House version of this bill, my colleague from California articulated his view that the standard did not include recklessness. I strongly disagree, and believe that this mischaracterized the intent of Congress in both the Securities and Exchange Act of 1934, and the Reform Act of 1995, for which I was a conferee, along with the gentleman from Michigan (Mr. DINGELL), and the currently pending legislation.

I am pleased to see that the Statement of Managers, which was provided to my office by the Committee on Commerce majority staff and which bears the signatures of the conferees to this act, has recognized that neither the Reform Act nor S. 1260 alters the scienter standard of the Exchange Act.

I must note with some dismay, however, that the Statement of Managers on this bill, which was filed in the CONGRESSIONAL RECORD on October 9, does not contain essential legislative history from the original Statement of Managers provided to my office. I am informed that this was due to a clerical error, which resulted in the inadvertent deletion on page 4 of the Joint Statement. While some Members on this side, including myself, find it rather curious that this particular page mysteriously turned up missing, given how much time and effort was given to working this language out, I will accept this explanation at face value and I am pleased that the gentleman has made it clear that the version has been corrected and will be filed in the RECORD in connection with today's debate.

☐ 1530

There should be absolutely no ambiguity with respect to the intent of the Congress with respect to the fact that recklessness is and always has been a part of the scienter standard.

The Federal courts have long recognized that recklessness satisfies the scienter requirement of section 10(b) and rule 10b-5, the principal antifraud provisions of the securities laws. It is true, as the statement of managers notes, that in Ernst & Ernst v. Hochfelder, the Supreme Court left open the question of whether the recklessness could satisfy the scienter requirement of section 10(b) and rule 10b-5. However, the statement of managers failed to note that the court explicitly recognized that in certain areas of the law recklessness is considered to be a form of intentional conduct for purposes of imposing liability for some act. So I agree with the statement of the managers that the 1995 Private Securities Litigation Reform Act, that the gentleman from Michigan (Mr. DINGELL) and I were conferees on, did not change the scienter requirement for liability.

I am deeply troubled, however, by attempts which were made, some late in the course of the debate on S. 1260, to suggest that the reform act had in fact raised the pleading standard beyond that of the Second Circuit which at the time the reform act was passed was the strictest pleading standard in the Nation. That clearly was not my understanding in 1995, nor the gentleman from Michigan (Mr. DINGELL).

I am pleased to that this erroneous interpretation has been rejected today. To have done otherwise would have created an illogical result. Because the antifraud provisions allow liability for reckless misconduct, it follows that plaintiffs must be allowed to plead that the defendants acted recklessly. To say that defauded investors can recover for reckless misconduct but that they must plead something more than reckless misconduct would have defied logic.

During the course of the debate on this bill, it has been suggested by some that a footnote in the statement of managers from the 1995 reform act proves that Congress had adopted in 1995 a pleading standard different from the Second Circuit court standard. This footnote, which was inserted at the last minute without our knowledge, the gentleman from Michigan (Mr. DINGELL) or I, stated that the committee chose not to include in the pleading standard certain language relating to motive, opportunity or recklessness. This footnote, and make no mistake about it, that is all it is, merely a footnote in a statement of managers drafted by a staffer without the full consideration of all the House and Senate Members appointed as conferees at that time to the 1995 act, including myself, does not mean that recklessness has been eliminated either as a basis for liability or as a pleading standard.

Existence of this footnote in no way mandated the courts not follow the second circuit approach to pleading. The conference committee and the Congress that passed the reform act also chose not to expressly include conscious behavior in the pleading standard.

Yet surely no one would suggest that in so doing the conference committee and Congress intended to eliminate liability for conscious misconduct. As the statement of managers for S. 1260 clearly indicates, it was the intent of Congress when it passed the reform act back in 1995 to adopt the Second Circuit standard.

Mr. Speaker, I insert this and additional material to clarify any misinterpretation or misunderstanding that might exist on this issue, and I must conclude in saying that I find the colloquy that just took place between the gentleman from California (Mr. COX) and the gentleman from Virginia (Mr. BLILEY) does not comport with the facts as we understand them on our side and is not in fact the intent of the law.

Mr. BLILEY. Mr. Speaker, I yield 3 minutes to the gentleman from Washington (Mr. WHITE), one of the chief sponsors of this legislation.

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

In the 18 months or so since the gentlewoman from California and I introduced this bill, I believe it was in May of 1997, we have had lots and lots of debate on the merits of this bill. Suffice it to say, it is a very good bill. It fixes a loophole that we left in the 1995 act, and I think we have had a lot of discussion today about why that is a good thing.

Admittedly there are some Members who did not like the 1995 act. They do not like this bill either. I think the gentleman from Massachusetts and the gentleman from Michigan fall into that category. But there were 300 some plus of us who did like the 1995 act, who do like this act, who passed it before, and I think it is time for us to go forward.

Rather than spending any more time talking about the merits, I think this is a time for thanks. I would like to thank some Members who have been very important in passing this bill. First and foremost, the gentlewoman from California who has been an absolutely diligent and persuasive and persevering advocate for this bill. I never minded it. I thought that was our job, and I think she did a really good job. Second, the chairman of our committee, the gentleman from Virginia (Mr. BLILEY), who always took up our case with the leadership, always made sure we had time to debate this, always was a good supporter and helper on this bill. Thirdly, the gentleman from Ohio (Mr. OXLEY) who listened to our pleas that he schedule in our committee plenty of time for hearings and was very supportive once the hearings got going, a very good supporter of this bill. I thank them all for getting this done.

I should also make sure that some of the people who did the real work, the staff, are also recognized. Here I cannot say enough about David Cavicke and Linda Rich on our side of of the aisle. I know there were many members on the minority side who also worked hard on this. I could not leave the floor without thanking Leslie Dunlap on my staff and Josh Mathis who worked very hard on this.

Mr. Speaker, I am very pleased we are at this point. It has been a long, hard road, but I think we have done something good for our country.

Mr. DINGELL. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan (Mr. STUPAK).

(Mr. STUPAK asked and was given permission to revise and extend his remarks and to include extraneous material.)

Mr. STUPAK. Mr. Speaker, I rise in strong opposition to the bill before us today.

Two years ago, Congress passed the Private Securities Litigation Reform Act—that changed all the rules for investors, like people who invest in today's stock market. Now, proponents want to extend an untested federal system that will supersede state law. If we pass this bill, Congress—will place all investors into a largely untested new federal system, that will make it very difficult for investors to prove fraud.

Many of the proponents of this bill claim that it corrects an oversight from the Private Securities Litigation Reform Act of last Congress. This claim is disingenuous and false. These same members claimed during the 1995 debate over the Private Securities Litigation Reform Act that investors would continue to have protection through the state courts. The prime sponsor of the legislation explicitly stated that state courts would continue to be an avenue for defrauded investors. Now, these members are seeking to pre-empt these laws.

If this legislation passes, it will over-rule, do away, with the aiding and abetting liability in 49 states. It will do away with 33 state statute of limitation provisions—we are now telling the states they have to protect their citizens with an untried, untested federal system—the federal government will now tell you what protections, states can afford their citizens.

It is important to remember that the state ''blue sky laws'' predate the existent of federal securities law. When Congress wrote the Securities Act of 1933 and the Securities Exchange Act of 1934, they did not impose liability and aiders and abettors or insert an adequate statute of limitations. Congress declined to take these steps because Congress felt it was necessary to allow the states to decide these state issues. Today, if you vote for this bill you will take away from investors protections they have enjoyed under state law.

Chairman Levitt of the Securities Exchange Commission, consumer groups, municipal officers all supported maintaining these provisions, but they were denied by the supporters of this bill.

Record numbers of small investors are entrusting their life savings to the stock market. There are a number of proposals to allow the Social Security Trust Fund to be invested in the stock market. Now more than ever, these small investors need to be protected from fraudulent securities transactions. 28 million Americans over the age of 65 depend on investment income to meet part of their expenses.

In fact, a number of articles that recently appeared in newspapers across the country have highlighted continuing concerns with the ''gimmicks,'' ''hocus pocus'' and ''illusions'' that companies use in their accounting practices. I am inserting into the RECORD three articles describing this problem at the end of my statement.

Proponents of this bill claim its passage will benefit investors. I am amazed/bemused by this statement because consumer groups, institutional investors, state pension boards and retirement plan administrators, county officials and many other groups oppose this bill.

This federal pre-emption is not necessary. Proponents will also argue that this bill is necessary because there has been an increase in the number of suits in state courts since the passage of the Private Securities Litigation Reform Act. Yet in 1997 there was a decrease in private securities as compared to levels before the passage of the PSLRA.

Nationwide, private security litigation state filings account for less than (100th of 1) percent of state civil filings nationwide. I believe that it is irresponsible and unnecessary to supersede the law of 50 states. The joint system of state and federal causes of action have existed for over 60 years, I do not believe we need to pre-empt 50 state laws with an untried, untested federal system.

Mr. Speaker, the process surrounding this so called ''conference'' has been nothing short of appalling. We held no conference meetings, neither my staff nor Mr. Dingell's staff were consulted on the substance of the Conference Report. Even at this point, I have not been asked whether I would like to sign the Conference Report. It is unfortunate that relations have sunk so low in this Congress, that the majority would not extend the courtesy and professional respect that we always extended them.

I want to make one final, important point this bill does not change the see-enter standard in the Securities Act as the Statement of Managers points out. In fact, Senate bill managers have made clear their view that the see-enter is the appropriate standard. I am inserting into the RECORD an exchange of letters between a number of the Banking Committee Senators, Chairman Levitt and the White House clarifying this point.

Mr. Speaker, I believe this bill will make it easier for charlatans and ''rip off'' artists to defraud investors, especially senior citizens. I hope I am wrong. But before we pass this bill, I ask all members to contemplate whether or not they want to make it easier for their constituents to become victims of fraud. I urge you to vote against this bill and protect investors.

[From the Washington Post, Sept. 29, 1998]

LEVITT TARGETS PROFIT DISTORTIONS

NEW YORK, SEPT. 28.—Securities and Exchange Commission Chairman Arthur Levitt Jr. complained today of widespread company manipulation of financial reports and outlined a series of steps to halt ''earnings management.''

''Increasingly, I have become concerned that the motivation to meet Wall Street earnings expectations may be overriding common sense business practices,'' Levitt said in a speech prepared for delivery here this evening.

Corporate executives, auditors, and Wall Street analysts are increasingly part of ''a game of nods and winks'' in which financial reports are ''distorted'' to meet analysts' projections, Levitt said.

In his broadest criticism of accounting problems, the top U.S. securities regulator said these misleading results jeopardize ''the credibility of our markets.''

Levitt said the SEC soon will issue new rules and provide better guidance on existing rules to offer clear ''do's and don'ts'' on revenue recognition, restructuring reserves, materiality and disclosure.

In addition, the New York Stock Exchange and the National Association of Securities Dealers will form a panel to issue a report on improving the performance of the audit committees of corporate boards and formulating ''best practices'' in the accounting and auditing area. The panel, headed by John C. Whitehead, former co-chairman of Goldman Sachs & Co., and corporate governance expert Ira Millstein, will make its recommendations within 90 days.

For accounting practices that aren't acceptable, Levitt promised the SEC's enforcement staff will ''aggressively act on abuses'' at public companies that appear to be managing earnings through major write-offs, restructuring reserves or other questionable practices.

Levitt described an array of accounting ''gimmicks,'' ''hocus-pocus'' and ''illusions'' companies use to manipulate earning reports. Specifically, he cited misuse of so-called ''big baths,'' which are large, one-time restructuring write-offs companies use to disguise operating expenses.

Levitt conceded the problem isn't new, but he said accounting gimmickry is on the rise, fueled by the bull market.

[From the San Jose News, Sept. 29, 1998]

SEC DINGS TECH FIRMS

It is upgrade time at America Online.

The Securities and Exchange Commission has ordered the online service and the rest of the technology industry to improve the way they account for mergers and acquisitions.

The issue is how technology companies have seized on a footnote in the accounting rules related to research expenses to write off most of the purchase price of companies as soon as they acquire them. This prevents a continuing drag on profits that would result from writing off the purchase price over several years.

The SEC's move comes as it is cracking down on a number of accounting practices it finds abusive. In comments at New York University, commission Chairman Arthur Levitt Jr. said his staff would immediately increase its scrutiny of companies that use certain aggressive accounting techniques to inflate their quarterly earnings.

In choosing to make an example of America Online, the biggest Internet company, the commission took the extreme step of blocking it from publishing its fiscal fourth-quarter earnings for nearly two months.

America Online finally reached an agreement with the SEC and published its earnings Monday. It wrote off $70.5 million related to research at two companies it acquired, representing 22 percent of the $316 million it had paid for them. Previously the company had said it planned to write off the vast majority of the purchase price, though it gave no specific figures.

Separately, Lynn Turner, the SEC's chief accountant, called on the accounting industry to tighten its rules related to writing off the cost of research. In a letter to the American Institute of Certified Public Accountants, he said that a study by the SEC had found ''significant problems in the recognition and valuation'' of the research write-offs.

The letter outlined a proposed standard for such write-offs that is much stricter than accountants have been using. And the commission threatened to make companies take the embarrassing step of restating their published earnings reports in cases where it deems their research write-offs to be ''materially misleading.''

Analysts said the change could inhibit acquisitions, especially by smaller technology companies.

''It has more significance for other companies besides AOL,'' said Keith Benjamin, an analyst at Banc-Boston Robertson Stephens Inc. ''You will see more young Internet companies forced to take lower write-offs.'' America Online is less affected, he said, because it has become big enough to absorb the additional charges.

At issue is how companies account for the value of ''in-process research and development''—research that has yet to be turned into a marketable product—at companies they buy. In an acquisition, companies estimate the value of all of the assets they are buying, both tangible ones like buildings and intangible assets like brand names and customer lists. If the purchase price is higher than the value of all of these assets—and it usually is—the remainder is added to a catch-all item known as good will.

Companies are forced to write off the value of all of these assets over a period of from three to 40 years, depending on the useful life of the asset. The one exception is in-process research, which is written off immediately.

Since technology companies are especially interested in showing investors accelerating earnings growth, many have started attributing the bulk of their acquisition costs to in-process research.

The SEC letter listed a number of what it described as ''abuses'' in this practice. In one case, for example, a company that the commission did not name wrote off nearly all the purchase price of an acquisition as in-process research, even though the target company had not spent a significant amount of money on research or development.

''If a company didn't spend significant amounts on R&D, it would raise questions in my mind,'' said Baruch Lev, a professor of accounting at New York University. He conducted a study of 400 acquisitions, mostly of technology companies, and found that the buyers wrote off 75 percent of the purchase price as in-process research.

Shares of America Online increased $2.38 Monday, to $117.13.

Jonathan Cohen, an analyst with Merrill Lynch, said the market was not concerned with the deductions from profits.

''Reported earnings is one small piece of a larger picture at technology companies that includes revenue growth, market position, audience size and brand equity,'' he said.

[From the New York Times, Sept. 29, 1998]

''TRICK'' ACCOUNTING DRAWS LEVITT CRITICISM

(By Melody Petersen)

Scolding America's companies and their accountants for using ''accounting hocus-pocus,'' Arthur Levitt, the chairman of the Securities and Exchange Commission, said yesterday that his staff would crack down on businesses that used certain controversial accounting methods to manipulate the numbers reported to shareholders.

Mr. Levitt's surprisingly harsh criticism and his far-reaching plan to stop the accounting abuses came after a string of companies have announced that the profits they previously reported were wrong. Among the companies where such announcements have led to large declines in stock prices are Cendant, Sunbeam, Livent and Oxford Health Plans.

''We see greater evidence of these illusions or tricks,'' Mr. Levitt said at a news conference at New York University. ''We intend to step in now and turn around some of these practices.''

Although he did not name any corporations, Mr. Levitt said his staff would immediately increase its scrutiny of companies that used certain aggressive accounting techniques to inflate their quarterly earnings and would soon issue new accounting rules and guidelines intended to halt the abuses.

He also called for a review of how the nation's public accounting firms audit financial statements, saying he feared that auditors might not be doing enough to find their clients' accounting shenanigans.

''We rely on auditors to put something like the Good Housekeeping Seal of Approval on the information investors receive,'' Mr. Levitt said in a speech prepared to be delivered later at the university's new Center for Law and Business. ''As I look at some of the failures today, I can't help but wonder if the staff in the trenches of the profession have the training and supervision they need to insure that audits are being done right.''

The American Institute of Certified Public Accountants and several large accounting firms praised Mr. Levitt's plan, saying they shared his concerns and were eager to work with the commission on the issue.

Mr. Levitt said that the commission's enforcement division would focus on companies that use certain accounting methods that allow them to ''manage earnings'' so that profits can be increased or decreased at will in such a way that the bottom line does not reflect actual operations.

He specifically said that the commission was frustrated with companies that used a factory closing or a work force reduction as an opportunity to take millions of dollars of one-time charges for ''restructuring.'' By inflating those write-offs, companies get the bad news out of the way at once and can clear their balance sheets of expensive assets that would otherwise reduce the bottom line for years to come. For example, Motorola announced recently that it would cut 15,000 jobs and take a restructuring charge of $1.95 billion.

The commission has also been critical of companies that acquire other companies and then write off much of the purchase price by calling it ''research and development.''

For example, the commission had blocked America Online, the biggest Internet company, from reporting its fiscal fourth-quarter earnings for nearly two months because of disagreements over how much the company should write off in its acquisitions of Mirabilis and Net Channel. America Online finally reached an agreement with the commission and published its results yesterday, greatly scaling back the size of the research write-off.

Mr. Levitt said that other companies were trying to bolster their earnings by manipulating revenue numbers. For instance, many of the companies forced to restate their financial statements this year had reported revenues that later turned out to be fictional or included sales transactions that were not yet completed. In other cases, executives had inflated earnings by manipulating the amounts set aside for future costs like loan losses, sales returns or warranty costs.

To stop the accounting abuses, Mr. Levitt said that the commission would write new accounting guidelines on the ''dos and don'ts of revenue recognition.'' The commission will also begin requiring detailed disclosures about how management estimates the value of various write-offs or reserves and the other assumptions made in preparing financial statements.

Mr. Levitt called on the Financial Accounting Standards Board to pass new accounting rules quickly, including one that would clarify when a company can record a liability. The commission has already pressed the accounting board to change the rule that allows companies to write off large amounts of an acquisition as research and development.

And, he asked both the A.I.C.P.A. and the Public Oversight Board to review whether auditors should change the procedures they use in performing an annual audit.

A blue-ribbon panel—led by John C. Whitehead, a former Deputy Secretary of State and a retired senior partner at Goldman, Sachs & Company, and Ira M. Millstein, a corporate governance expert at the law firm of Weil, Gotshal & Manges—will also develop recommendations for audit committees to follow so that investors are better protected.

''The motivation to meet Wall Street earnings expectations may be overriding common sense business practices,'' Mr. Levitt said. ''Too many corporate managers, auditors and analysts are participants in a game of nods and winks.''

U.S. SENATE,
Washington, DC, March 24, 1998.

Hon. ARCHER LEVITT,
Chairman, Securities and Exchange Commission, Washington, DC.

DEAR CHAIRMAN LEVITT AND MEMBERS OF THE COMMISSION: We are writing to request your views on S. 1260, the Securities Litigation Uniform Standards Act of 1997. As you know, our staff has been working closely with the Commission to resolve a number of technical issues that more properly focus the scope of the legislation as introduced. We attach for your review the amendments to the legislation that we intend to incorporate into the bill at the Banking Committee mark-up.

On a separate but related issue, we are aware of the Commission's long-standing concern with respect to the potential scienter requirements under a national standard for litigation. We understand that this concern arises out of certain district courts' interpretation of the Private Securities Litigation Reform Act of 1995. In that regard, we emphasize that our clear intent in 1995—and our understanding today—was that the PSLRA did not in any way alter the scienter standard in federal securities fraud suits. It was our intent, as we expressly stated during the legislative debate in 1995, particularly during the debate on overriding the President's veto, that the PSLRA adopt the *pleading* standard applied in the Second Circuit. Indeed, the express language of the statute itself carefully provides that plaintiffs must ''state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind'': the law makes no attempt to define that state of mind. We intend to restate these facts about the '95 Act in both the legislative history and the floor debate that will accompany S.1260, should it be favorably reported by the Banking Committee.

Sincerely,

ALFONSE M. D'AMATO,
Chairman, Committee on Banking, Housing and Urban Affairs.
PHIL GRAMM,
Chairman, Subcommittee on Securities.
CHRISTOPHER J. DODD,
Ranking Member, Subcommittee on Securities.

SECURITIES AND EXCHANGE COMMISSION.
Washington, DC, March 24, 1998.

Hon. ALFONSE M. D'AMATO,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, DC.

Hon. PHIL GRAMM,
Chairman, Subcommittee on Securities, U.S. Senate, Washington, DC.

Hon. CHRISTOPHER J. DODD,
Ranking Member, Subcommittee on Securities, U.S. Senate, Washington, DC.

DEAR CHAIRMAN D'AMATO, CHAIRMAN, GRAMM, AND SENATOR DODD: You have requested our views on S. 1260, the Securities Litigation Uniform Standards Act of 1997, and amendments to the legislation which you intend to offer when the bill is marked-up by the Banking Committee. This letter will present the Commission's position on the bill and proposed amendments.[1]

The purpose of the bill is to help ensure that securities fraud class actions involving certain securities traded on national markets are governed by a single set of uniform standards. While preserving the right of individual investors to bring securities lawsuits wherever they choose, the bill generally provides that class actions can be brought only in federal court where they will be governed by federal law.

As you know, when the Commission testified before the Securities Subcommittee of the Senate Banking Committee in October 1997, we identified several concerns about S. 1260. In particular, we stated that a uniform standard for securities fraud class actions that did not permit investors to recover losses attributable to reckless misconduct would jeopardize the integrity of the securities markets. In light of this profound concern, we were gratified by the language in your letter of today agreeing to restate in S. 1260's legislative history, and in the expected debate on the Senate floor, that the Private Securities Litigation Reform Act of 1995 did not, and was not intended to, alter the well-recognized and critically important scienter standard.

Our October 1997 testimony also pointed out that S. 1260 could be interpreted to preempt certain state corporate governance claims, a consequence that we believed was neither intended nor desirable. In addition, we expressed concern that S. 1260's definition of class action appeared to be unnecessarily broad. We are grateful for your responsiveness to these concerns and believe that the amendments you propose to offer at the Banking Committee mark-up, as attached to your letter, will successfully resolve these issues.

The ongoing dialogue between our staffs has been constructive. The result of this dialogue, we believe, is an improved bill with legislative history that makes clear, by reference to the legislative debate in 1995, that Congress did not alter in any way the recklessness standard when it enacted the Reform Act. This will help to diminish confusion in the courts about the proper interpretation of that Act and add important assurances that the uniform standards provided by S. 1260 will contain this vital investor protection.

We support enactment of S. 1260 with these changes and with this important legislative history.

We appreciate the opportunity to comment on the legislation, and of course remain committed to working with the Committee as S. 1260 moves through the legislative process.

Sincerely,

ARTHUR LEVITT,
Chairman.
ISAAC C. HUNT, JR.,
Commissioner.
LAURA S. UNGER,
Commissioner.

THE WHITE HOUSE,
Washington, April 28, 1998.

Hon. ALFONSE M. D'AMATO,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, DC.

Hon. PHIL GRAMM,
Chairman, Subcommittee on Securities, U.S. Senate, Washington, DC.

Hon. CHRISTOPHER J. DODD,
Ranking Member, Subcommittee on Securities, U.S. Senate, Washington, DC.

DEAR CHAIRMAN D'AMATO, CHAIRMAN GRAMM, AND SENATOR DODD: We understand

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[1] We understand that Commissioner Johnson will write separately to express his differing views. Commissioner Carey is not participating.

that you have had productive discussions with the Securities and Exchange Commission (SEC) about S. 1260, the Securities Litigation Uniform Standards Act of 1997. The Administration applauds the constructive approach that you have taken to resolve the SEC's concerns.

We support the amendments to clarify that the bill will not preempt certain corporate governance claims and to narrow the definition of class action. More importantly, we are pleased to see your commitment, by letter dated March 24, 1998, to Chairman Levitt and members of the Commission, to restate in S. 1260's legislative history, and in the expected debate on the Senate floor, that the Private Securities Litigation Reform Act of 1995 did not, and was not intended to, alter the scienter standard for securities fraud actions.

As you know, uncertainty about the impact of the Reform Act on the scienter standard was one of the President's greatest concerns. The legislative history and floor statements that you have promised the SEC and will accompany S. 1260 should reduce confusion in the courts about the proper interpretation of the Reform Act. Since the uniform standards provided by S. 1260 will provide that class actions generally can be brought only in federal court, where they will be governed by federal law, it is particularly important to the President that you be clear that the federal law to be applied includes recklessness as a basis for pleading and liability in securities fraud class actions.

So long as the amendments designed to address the SEC's concerns are added to the legislation and the appropriate legislative history and floor statements on the subject of legislative intent are included in the legislative record, the Administration would support enactment of S. 1260.

Sincerely,

BRUCE LINDSEY,
Assistant to the President and Deputy Counsel.

GENE SPERLING,
Assistant to the President for Economic Policy.

SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, October 9, 1998.

Hon. ALFONSE M. D'AMATO,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, DC.

Hon. PAUL S. SARBANES,
Ranking Minority Member, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, DC.

DEAR CHAIRMAN D'AMATO AND SENATOR SARBANES: You have requested our views on S. 1260, the Securities Litigation Uniform Standards Act of 1998. We support this bill based on important assurances in the Statement of Managers that investors will be protected.[1]

The purpose of the bill is to help ensure that securities fraud class actions involving certain securities traded on national markets are governed by a single set of uniform standards. While preserving the right of individual investors to bring securities lawsuits wherever they choose, the bill generally provides that class actions can be brought only in federal court where they will be governed by federal law. In addition, the bill contains important legislative history that will eliminate confusion in the courts about the proper interpretation of the pleading standard found in the Private Securities Litigation Reform Act of 1995 and make clear that the uniform national standards contained in this bill will permit investors to continue to recover losses attributable to reckless misconduct.

We commend the Committee for its careful efforts to strike an appropriate balance between the rights of injured investors to bring class action lawsuits and those of our capital market participants who must defend against such suits.

As you know, we expressed various concerns over earlier drafts of the legislation. In particular, we stated that a uniform standard for securities fraud class actions that did not permit investors to recover losses for reckless misconduct would jeopardize the integrity of the securities markets. We appreciate your receptivity to our concerns and believe that as a result of our mutual efforts and constructive dialogue, this bill and the Statement of Managers address our concerns. The strong statement in the Statement of Managers that neither this bill nor the Reform Act was intended to alter existing liability standards under the Securities Exchange Act of 1934 will provide important assurances for investors that the uniform national standards created by this bill will continue to allow them to recover losses caused by reckless misconduct. The additional statement clarifying that the uniform pleading requirement in the Reform Act is the standard applied by the Second Circuit Court of Appeals will likewise benefit investors by helping to end confusion in the courts about the proper interpretation of that Act. Together, these statements will operate to assure that investors' rights will not be compromised in the pursuit of uniformity.

We are grateful to you and your staffs, as well as the other Members and their staffs, for working with us to improve this legislation and safeguard vital investor protections. We believe this bill and its Statement of Managers fairly address the concerns we have raised with you and will contribute to responsible and balanced reform of securities class action litigation.

Sincerely,

ARTHUR LEVITT,
Chairman.

ISSAC C. HUNT, JR.,
Commissioner.

PAUL R. CAREY,
Commissioner.

LAURA S. UNGER,
Commissioner.

[1] Commissioner Norman S. Johnson continues to believe that this legislation is premature, at the least, for the reasons stated in his May 1998 prepared statement before the House Subcommittee on Finance and Hazardous Materials.

Mr. DINGELL. Mr. Speaker, I yield 4 minutes to the distinguished gentlewoman from Colorado (Ms. DEGETTE).

Ms. DEGETTE. Mr. Speaker, I rise in opposition to this legislation, the Securities Litigation Uniform Standards Act.

I have opposed this bill in committee and on the floor because I think that it takes a Federal meat axe to a problem that States ought to be able to solve with a State solution scalpel. I oppose this bill today not only to protect investors and to give States time to deal with this problem themselves but because along with many other problems, the conference committee stripped out important language that improved this bill.

One of the things that was stripped out, a noncontroversial or sort of noncontroversial bipartisan amendment I passed in committee that would direct the Securities and Exchange Commission to conduct an analysis of the whole issue, including the extent to which the preemption of State securities laws affects the protection of securities investors of the public interest.

This study was important to determine both what the effect is on securities investors and also to determine what the true effect is on these lawsuits going into State courts. I am concerned just like everybody else that many of these lawsuits are being pursued by a very small number of attorneys who are only looking to make money for themselves at the expense of newly emerging high tech firms.

These lawsuits can cost the company millions of dollars while they are being settled and the result is the diversion of resources away from designing of new products and the creation of jobs.

The trend is disturbing but the trend is not overwhelming. The issue needs to be addressed but it needs to be addressed at the State level.

The alleged mass migration of securities fraud class action cases to State court has actually been quite limited and as often happens in a body like Congress, when I asked for statistics about this huge mass of lawsuits going from Federal court to State courts, the evidence was either nonexistent or surprisingly small.

The numbers of suits and the number of plaintiffs in the State courts are actually quite small. Both the proponents and opponents of this bill agreed that the numbers of suits have actually gone down at the State level in the past year. I believe we would be setting a dangerous precedent by blatantly preempting State securities laws, many of which were enacted before the 1933 Federal Securities Act in order to address a very discrete, small problem that exists in basically one State, California.

Those who consider themselves supportive of State rights and those who consider themselves to be Federalists should consider the very dangerous precedent we would set if we pass this legislation.

If the industry is so concerned about the effect of going into State court, I would suggest that they go to the State legislatures in these very few States and ask the legislatures to change the law.

S. 1260 raises significant Federalism concerns and I think that it is quite clear that more time is needed to assess the effects of securities litigation reform before we willy-nilly eliminate all of the State blue sky laws. Eliminating State remedies for fraud before knowing whether the courts will end up consistently interpreting the 1995 act in a way that provides victims with a viable means to recover their losses, this bill risks not only harming innocent investors but also undermines public confidence in our securities markets. This is an issue that needs to be addressed but it needs to be addressed on a State-by-State level.

I urge my colleagues to vote against this legislation.

The SPEAKER pro tempore (Mr. BARRETT of Nebraska). The gentleman from Virginia (Mr. BLILEY) has 6 minutes remaining.

Mr. BLILEY. Mr. Speaker, I yield the balance of my time to the gentleman from Louisiana (Mr. TAUZIN).

Mr. TAUZIN. Mr. Speaker, I thank the gentleman from Virginia (Mr. BLILEY) for literally being the shepherd who has brought not only this legislation forward but the primary legislation on securities litigation reform that became law several years ago.

I think it is important to put this issue in historical perspective. I was the author of the first securities litigation reform bill in 1992. Interestingly enough, I was then a Democrat. Also interestingly enough, the lead sponsor on the Senate side was CHRISTOPHER DODD, who was then chairman of the Democratic Senate Campaign Committee. And Christopher DODD and I secured the cosponsorship not only of a majority of Members of both the House and the Senate but a huge bipartisan majority of Members on both sides. Unfortunately, we were never able to work out our differences with my good friend, the gentleman from Michigan (Mr. DINGELL), or my good friend, the ranking minority member of the subcommittee I now chair, the gentleman from Massachusetts (Mr. MARKEY) but nevertheless, we literally have had interesting hearings and interesting discussions as the years passed.

So popular was this issue of putting an end to these strike suits every time the stock market prices changed on some company, so popular both in the House and the Senate on the Democratic and Republican side was this issue, that when it was finally passed in 1995, and the President surprisingly vetoed it, this bill became the only issue that this Congress overrode a presidential veto, two-thirds of the Members of this House, two-thirds of the Senate concurring in an override to make securities litigation reform the law of the land.

Why are we back here today? We are back here today because in spite of the fact that we put an end to these strike lawsuits, these shakedown lawsuits which were settled 94 percent of the time at 10 cents on the dollar, no grandmother ever got a dime out of this, just the unscrupulous trial lawyers who brought these kinds of lawsuits, even though we put an end to these lawsuits in Federal district court, we learned that the unscrupulous members of the trial board who were pressing these cases before simply did an end around. They went to State court and increasingly used the authority of the State court to do exactly what they used to do in Federal court, to shake down companies, to shake down boards of directors, to shake down the accountants, anybody else associated with a company whenever stock market prices changed, alleging fraud and then suddenly, quickly, at 10 cents on the dollar.

In short, this bill puts an end to the end around. It says that the law we passed in 1995, with over two-thirds support of Democrats and Republicans, overriding the presidential veto, that law will have effect in this land, that strike lawsuits should come to an end whether they are brought in Federal court or in State court when they affect nationally traded firms. And secondly, the bill is carefully designed to make sure that other actions, indeed, can still be brought in State courts and that States themselves and our own Securities Exchange Commission can still exercise its authority to prevent abuses of fraud in securities trading in America.

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In short, this is carefully tailored now to stop the end runs, to make sure that the law we so successfully passed in 1995, with the enormous help of the gentlewoman from California (Ms. ESHOO), the great sponsorship of the gentleman from California (Mr. COX), they did such a good job in 1995 to make sure that that law now has real effect out there; that people who trade and who invest their pension funds are not going to lose those assets to strike lawsuits that shake down the value of those companies and shake down the people who are trying to run them successfully for this economy.

This bill will send the strongest message to those unscrupulous lawyers, start behaving yourself, stop shaking people down, stop bringing these frivolous lawsuits because they will not be permitted in Federal court, and they will not be permitted now in State court.

Mr. Speaker, this bill deserves the same kind of support that the original bill got in 1995. It deserves, as the gentlewoman from California (Ms. ESHOO) said the bipartisan vocal support of Members on both sides of this aisle so that we present it quickly to the President who has said in California that, if we would do this, he would sign it into law.

Let us send it to the President and let him have the chance to sign this bill into law and to put an end to the end around that unfortunately has tainted the great effort we made in 1995.

To all who made this bill possible today, I personally want to thank you. As I said, when I authored this bill in 1992, I did not think it was going to take this long for us to complete the journey.

But here we are today, this perhaps making the most important step in that journey to end these frivolous lawsuits and to give the securities trading of these high-tech firms which are bringing so much job and opportunity to America to give them all the sense of security and to protect them against these strike lawsuits.

Mr. KLINK. Mr. Speaker, I think this bill is a solution in search of a problem.

In 1995, the Commerce Committee developed and Congress approved, over a Presidential veto, the Private Securities Litigation Reform Act, which put strict limits on Federal investor class action lawsuits. I opposed that legislation because I was concerned about preventing defrauded investors from being made whole again. But my side lost, and we all moved on.

One of the arguments when we debated the 1995 act was that truly victimized investors could still seek redress in State court. So there was some comfort in that; retirees who lost their life savings to securities fraud could still pursue legal action.

Now, however, I fear that Congress is moving to cut off the State avenue for class action securities suits. That could mean that investors would have no ability to seek relief from securities wrongdoers, and that is unacceptable to me.

There appears to be no explosion of State securities class actions, so I see no real need for this bill. Last year there were only 44 throughout the entire country, the lowest number in five years.

Furthermore, Mr. Speaker, at a time when there are more investors than at any time in history, many of them unsophisticated investors, we should not be making it easier to get away with securities fraud. We owe that to our investor constituents and we owe that to the capital markets in this country, which remain the strongest in the world.

Additionally, Mr. Chairman, though the conference report contains a provision similar to the Sarbanes amendment in the Senate bill, which provides for an exemption from the bill for State and local entities, the provision before us goes beyond Sarbanes to require those entities to be named plaintiffs in and authorize participation in State securities class actions. This assumes a level of sophistication that may be lacking.

I will provide an example. Last year, the SEC alleged that Devon Capital management had defrauded 100 municipal clients in Pennsylvania and elsewhere. Those clients included 75 school districts, mostly in western and central Pennsylvania. Devon and the SEC reached a settlement, and those school districts are expected to recover a little over half of the $71 million that Devon lost.

Now, how can we say that these same school districts and local governments that were unsophisticated enough to have invested with Devon in the first place and lost all this money, are, at the same time, sophisticated enough to recognize the steps they need to take to preserve their rights to bring a State securities class action under this bill?

I would have preferred that, at the very least, the Sarbanes amendment exempting State and local governments and pension plans were maintained as it passed the Senate.

Finally, Mr. Speaker, I am disturbed by the trend I am seeing in this committee and Congress as a whole in our attitude toward investors, especially the mom and pop investors we all represent. As I said, I opposed the 1995 Securities Litigation Reform Act.

That was followed closely by the Fields securities reform bill, which threatened to severely limit the ability of State securities regulators, the local cops on the beat in the securities world, to protect investors. In committee and in conference, we were able to temper this legislation so that investors would not be left vulnerable.

Now however, comes this legislation. I really worry that we are going down the road to where the small investor is the last thing we think about, when they should be among the first.

We are at a point in time when Members of Congress and others are talking about privatizing Social Security. That will lead to even more unsophisticated investors and hundreds of billions of dollars going into the marketplace. And yet we continue to talk about reducing investor protections.

Another question I have is, are we now saying to the States that we in Washington, DC, know better than the States what cases should go through State courts and which should not. Are we next going to tell the States that they can't hear real estate cases? Are we going to tell them they can't hear tobacco cases? What comes next?

I never thought I would see the day when my Republican colleagues would want to dictate from on high in Washington, DC, what State law should be.

The conference report on S. 1260 is a solution in search of a problem, and I strongly oppose it.

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

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

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. BLILEY) that the House suspend the rules and agree to the conference report on the Senate bill, S. 1260.

The question was taken.

Mr. KANJORSKI. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

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

The point of no quorum is considered withdrawn.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. BARRETT of Nebraska). Pursuant to clause 5, rule I, the Chair will now put the question on each motion to suspend the rules on which further proceedings were postponed earlier today in the order in which that motion was entertained.

Votes will be taken in the following order, each of them de novo:

S. 1693,

H.Res. 494,

S. 1364,

H.R. 4756,

H.R. 4805,

H.Res. 562,

H.Res. 518,

Concurring in Senate amendment to H.R. 1274,

S. 1754,

And the conference report on S. 1260.

The Chair will reduce to 5 minutes the time for any electronic vote after the first such vote in this series.

NATIONAL PARKS OMNIBUS MANAGEMENT ACT OF 1998

The SPEAKER pro tempore. The pending business is the question de novo of spending the rules and passing the Senate bill, S. 1693, as amended.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Utah (Mr. HANSEN) that the House suspend the rules and pass the Senate bill, S. 1693, as amended.

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

A motion to reconsider was laid on the table.

SENSE OF THE HOUSE REGARDING GUAM

The SPEAKER pro tempore. The pending business is the question de novo of suspending the rules and agreeing to the resolution, H. Res. 494.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion of the gentleman from Alaska (Mr. YOUNG) that the House suspend the rules and agree to the resolution, H.Res. 494.

The question was taken.

Mr. COMBEST. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 410, nays 0, not voting 24, as follows:

[Roll No. 524]

YEAS—410

Abercrombie
Aderholt
Allen
Andrews
Archer
Armey
Bachus
Baesler
Baker
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Becerra
Bentsen
Bereuter
Berry
Bilbray
Bilirakis
Bishop
Blagojevich
Bliley
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonior
Bono
Borski
Boswell
Boyd
Brady (PA)
Brady (TX)
Brown (CA)
Brown (FL)
Brown (OH)
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Capps
Cardin
Carson
Castle
Chabot
Chambliss
Chenoweth
Christensen
Clay
Clayton
Clement
Clyburn
Coble
Coburn
Collins
Combest
Condit
Conyers
Cook
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cubin
Cummings
Cunningham
Danner
Davis (FL)
Davis (IL)
Davis (VA)
Deal
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Ensign
Eshoo
Etheridge
Evans
Everett
Ewing
Farr
Fattah
Fawell
Fazio
Filner
Foley
Forbes
Ford
Fossella
Fowler
Fox
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Furse
Gallegly
Ganske
Gejdenson
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Goodling
Gordon
Goss
Granger
Green
Greenwood
Gutierrez
Gutknecht
Hall (TX)
Hamilton
Hansen
Hastert
Hastings (FL)
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hilliard
Hinchey
Hinojosa
Hobson
Hoekstra
Holden
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hutchinson
Hyde
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (WI)
Johnson, E. B.
Johnson, Sam
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kildee
Kim
Kind (WI)
King (NY)
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
Kucinich
LaFalce
LaHood
Lantos
Latham
LaTourette
Lazio
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Lowey
Lucas
Luther
Maloney (CT)
Maloney (NY)
Manton
Manzullo
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McHale
McHugh
McInnis
McIntosh
McIntyre
McKeon
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Metcalf
Mica
Millender-McDonald
Miller (CA)
Miller (FL)
Minge
Mink
Moakley
Mollohan
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Neal
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Owens
Oxley
Packard
Pallone
Pappas
Parker
Pascrell
Pastor
Paul
Paxon
Payne
Pease
Pelosi
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Quinn
Radanovich
Rahall
Ramstad
Rangel
Redmond
Regula
Reyes
Riggs
Riley
Rivers
Rodriguez
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Roybal-Allard
Royce
Rush
Ryun
Sabo
Salmon
Sanchez
Sanders
Sandlin
Sanford
Sawyer
Saxton
Schaefer, Dan
Schaffer, Bob
Schumer
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Shimkus
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Adam
Smith, Linda
Snowbarger
Snyder
Solomon
Spence
Stabenow
Stark
Stearns
Stenholm
Stokes
Strickland
Stump
Stupak
Sununu
Talent
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thompson
Thornberry
Thune
Thurman
Tiahrt
Tierney
Torres
Towns
Traficant
Turner
Upton
Velazquez
Vento
Walsh
Wamp
Waters
Watkins
Watt (NC)
Watts (OK)
Waxman
Weldon (FL)
Weldon (PA)