Frost
Gallegly
Ganske
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grucci
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Harman
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hefley
Herger
Hill
Hilleary
Hinchey
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kerns
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kirk
Kleczka
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Luther
Lynch
Maloney (CT)
Maloney (NY)
Manzullo
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCollum
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McKinney
McNulty
Meehan
Meek (FL)
Menendez
Mica
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, George
Miller, Jeff
Mink
Mollohan
Moore
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Napolitano
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Pence
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Price (NC)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reyes
Reynolds
Rivers
Rodriguez
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roukema
Roybal-Allard
Royce
Rush
Ryan (WI)
Ryun (KS)
Sabo
Sanders
Sandlin
Sawyer
Saxton
Schaffer
Schakowsky
Schiff
Schrock
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stump
Stupak
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Tiberi
Tierney
Toomey
Towns
Turner
Udall (NM)
Upton
Velazquez
Visclosky
Vitter
Walden
Walsh
Wamp
Waters
Watkins (OK)
Watson (CA)
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NAYS—3

Nadler
Scott
Watt (NC)

NOT VOTING—22

Blagojevich
Callahan
Clyburn
Everett
Fossella
Hayworth
Hilliard
Hinojosa
Horn
Jenkins
Kennedy (RI)
LaFalce
Lucas (OK)
McCarthy (NY)
Meeks (NY)
Peterson (MN)
Pryce (OH)
Riley
Sanchez
Traficant
Udall (CO)
Watts (OK)

□ 1344

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

The result of the vote was announced as above recorded.

The title was amended so as to read: ''A bill to amend title 18, United States Code, to provide a maximum term of supervised release of life for sex offenders.''.

A motion to reconsider was laid on the table.

□ 1345

CHILD OBSCENITY AND PORNOGRAPHY PREVENTION ACT OF 2002

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4623) to prevent trafficking in child pornography and obscenity, to proscribe pandering and solicitation relating to visual depictions of minors engaging in sexually explicit conduct, to prevent the use of child pornography and obscenity to facilitate crimes against children, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4623

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Child Obscenity and Pornography Prevention Act of 2002''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Obscenity and child pornography are not entitled to protection under the First Amendment under Miller v. California, 413 U.S. 15 (1973) (obscenity), or New York v. Ferber, 458 U.S. 747 (1982) (child pornography) and thus may be prohibited.

(2) The Government has a compelling state interest in protecting children from those who sexually exploit them, including both child molesters and child pornographers. ''The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance,'' New York v. Ferber, 458 U.S. 747, 757 (1982) (emphasis added), and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain. Osborne v. Ohio, 495 U.S. 103, 110 (1990).

(3) The Government thus has a compelling interest in ensuring that the criminal prohibitions against child pornography remain enforceable and effective. ''[T]he most expeditious if not the only practical method of law enforcement may be to dry up the market for this material by imposing severe criminal penalties on persons selling, advertising, or otherwise promoting the product.'' Ferber, 458 U.S. at 760.

(4) In 1982, when the Supreme Court decided Ferber, the technology did not exist to: (A) create depictions of virtual children that are indistinguishable from depictions of real children; (B) create depictions of virtual children using compositions of real children to create an unidentifiable child; or (C) disguise pictures of real children being abused by making the image look computer generated.

(5) Evidence submitted to the Congress, including from the National Center for Missing and Exploited Children, demonstrates that technology already exists to disguise depictions of real children to make them unidentifiable and to make depictions of real children appear computer generated. The technology will soon exist, if it does not already, to make depictions of virtual children look real.

(6) The vast majority of child pornography prosecutions today involve images contained on computer hard drives, computer disks, and/or related media.

(7) There is no substantial evidence that any of the child pornography images being trafficked today were made other than by the abuse of real children. Nevertheless, technological advances since Ferber have led many criminal defendants to suggest that the images of child pornography they possess are not those of real children, insisting that the government prove beyond a reasonable doubt that the images are not computer-generated. Such challenges will likely increase after the Ashcroft v. Free Speech Coalition decision.

(8) Child pornography circulating on the Internet has, by definition, been digitally uploaded or scanned into computers and has been transferred over the Internet, often in different file formats, from trafficker to trafficker. An image seized from a collector of child pornography is rarely a first-generation product, and the retransmission of images can alter the image so as to make it difficult for even an expert conclusively to opine that a particular image depicts a real child. If the original image has been scanned from a paper version into a digital format, this task can be even harder since proper forensic delineation may depend on the quality of the image scanned and the tools used to scan it.

(9) The impact on the government's ability to prosecute child pornography offenders is already evident. The Ninth Circuit has seen a significant adverse effect on prosecutions since the 1999 Ninth Circuit Court of Appeals decision in Free Speech Coalition. After that decision, prosecutions generally have been brought in the Ninth Circuit only in the most clear-cut cases in which the government can specifically identify the child in the depiction or otherwise identify the origin of the image. This is a fraction of meritorious child pornography cases. The National Center for Missing and Exploited Children testified that, in light of the Supreme Court's affirmation of the Ninth Circuit decision, prosecutors in various parts of the country have expressed concern about the continued viability of previously indicted cases as well as declined potentially meritorious prosecutions.

(10) In the absence of congressional action, this problem will continue to grow increasingly worse. The mere prospect that the technology exists to create computer or computer-generated depictions that are indistinguishable from depictions of real children will allow defendants who possess images of real children to escape prosecution, for it threatens to create a reasonable doubt in every case of computer images even when a real child was abused. This threatens to render child pornography laws that protect real children unenforceable.

(11) To avoid this grave threat to the Government's unquestioned compelling interest in effective enforcement of the child pornography laws that protect real children, a statute must be adopted that prohibits a narrowly-defined subcategory of images.

(12) The Supreme Court's 1982 Ferber v. New York decision holding that child pornography was not protected drove child pornography off the shelves of adult bookstores. Congressional action is necessary to ensure that open and notorious trafficking in such materials does not reappear.

SEC. 3. IMPROVEMENTS TO PROHIBITION ON VIRTUAL CHILD PORNOGRAPHY.

(a) Section 2256(8)(B) of title 18, United States Code, is amended to read as follows:

''(B) such visual depiction is a computer image or computer-generated image that is, or is indistinguishable (as defined in section 1466A) from, that of a minor engaging in sexually explicit conduct; or''.

(b) Section 2256(2) of title 18, United States Code, is amended to read as follows:

''(2)(A) Except as provided in subparagraph (B), 'sexually explicit conduct' means actual or simulated—

''(i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

''(ii) bestiality;

''(iii) masturbation;

''(iv) sadistic or masochistic abuse; or

''(v) lascivious exhibition of the genitals or pubic area of any person;

''(B) For purposes of subsection 8(B) of this section, 'sexually explicit conduct' means—

''(i) actual sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, or lascivious simulated sexual intercourse where the genitals, breast, or pubic area of any person is exhibited;

''(ii) actual or lascivious simulated;

''(I) bestiality;

''(II) masturbation; or

''(III) sadistic or masochistic abuse; or

''(iii) actual or simulated lascivious exhibition of the genitals or pubic area of any person;''.

(c) Section 2252A(c) of title 18, United States Code, is amended to read as follows:

''(c)(1) Except as provided in paragraph (2), it shall be an affirmative defense to a charge of violating this section that the alleged offense did not involve the use of a minor or an attempt or conspiracy to commit an offense under this section involving such use.

''(2) A violation of, or an attempt or conspiracy to violate, this section which involves child pornography as defined in section 2256(8)(A) or (C) shall be punishable without regard to the affirmative defense set forth in paragraph (1).''.

SEC. 4. PROHIBITION ON PANDERING MATERIALS AS CHILD PORNOGRAPHY.

(a) Section 2256(8) of title 18, United States Code, is amended—

(1) in subparagraph (C), by striking ''or'' at the end and inserting ''and''; and

(2) by striking subparagraph (D).

(b) Chapter 110 of title 18, United States Code, is amended—

(1) by inserting after section 2252A the following:

''§ 2252B. Pandering and solicitation

''(a) Whoever, in a circumstance described in subsection (d), offers, agrees, attempts, or conspires to provide or sell a visual depiction to another, and who in connection therewith knowingly advertises, promotes, presents, or describes the visual depiction with the intent to cause any person to believe that the material is, or contains, a visual depiction of a minor engaging in sexually explicit conduct shall be subject to the penalties set forth in section 2252A(b)(1), including the penalties provided for cases involving a prior conviction.

''(b) Whoever, in a circumstance described in subsection (d), offers, agrees, attempts, or conspires to receive or purchase from another a visual depiction that he believes to be, or to contain, a visual depiction of a minor engaging in sexually explicit conduct shall be subject to the penalties set forth in section 2252A(b)(1), including the penalties provided for cases involving a prior conviction.

''(c) It is not a required element of any offense under this section that any person actually provide, sell, receive, purchase, possess, or produce any visual depiction.

''(d) The circumstance referred to in subsection (a) and (b) is that—

''(1) any communication involved in or made in furtherance of the offense is communicated or transported by the mail, or in interstate or foreign commerce by any means, including by computer, or any means or instrumentality of interstate or foreign commerce is otherwise used in committing or in furtherance of the commission of the offense;

''(2) any communication involved in or made in furtherance of the offense contemplates the transmission or transportation of a visual depiction by the mail, or in interstate or foreign commerce by any means, including by computer;

''(3) any person travels or is transported in interstate or foreign commerce in the course of the commission or in furtherance of the commission of the offense;

''(4) any visual depiction involved in the offense has been mailed, or has been shipped or transported in interstate or foreign commerce by any means, including by computer, or was produced using materials that have been mailed, or that have been shipped or transported in interstate or foreign commerce by any means, including by computer; or

''(5) the offense is committed in the special maritime and territorial jurisdiction of the United States or in any territory or possession of the United States.'';

(2) in the analysis for the chapter, by inserting after the item relating to section 2252A the following:

''2252B. Pandering and solicitation.''.

SEC. 5. PROHIBITION OF OBSCENITY DEPICTING YOUNG CHILDREN.

(a) Chapter 71 of title 18, United States Code, is amended—

(1) by inserting after section 1466 the following:

''§ 1466A. Obscene visual depictions of young children

''(a) Whoever, in a circumstance described in subsection (d), knowingly produces, distributes, receives, or possesses with intent to distribute a visual depiction that is, or is indistinguishable from, that of a pre-pubescent child engaging in sexually explicit conduct, or attempts or conspires to do so, shall be subject to the penalties set forth in section 2252A(b)(1), including the penalties provided for cases involving a prior conviction.

''(b) Whoever, in a circumstance described in subsection (d), knowingly possesses a visual depiction that is, or is indistinguishable from, that of a pre-pubescent child engaging in sexually explicit conduct, or attempts or conspires to do so, shall be subject to the penalties set forth in section 2252A(b)(2), including the penalties provided for cases involving a prior conviction.

''(c) For purposes of this section—

''(1) the term 'visual depiction' includes undeveloped film and videotape, and data stored on computer disk or by electronic means which is capable of conversion into a visual image, and also includes any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means;

''(2) the term 'pre-pubescent child' means that (A) the child, as depicted, is one whose physical development indicates the child is 12 years of age or younger; or (B) the child, as depicted, does not exhibit significant pubescent physical or sexual maturation. Factors that may be considered in determining significant pubescent physical maturation include body habitus and musculature, height and weight proportion, degree of hair distribution over the body, extremity proportion with respect to the torso, and dentition. Factors that may be considered in determining significant pubescent sexual maturation include breast development, presence of axillary hair, pubic hair distribution, and visible growth of the sexual organs;

''(3) the term 'sexually explicit conduct' has the meaning set forth in section 2256(2); and

''(4) the term 'indistinguishable' used with respect to a depiction, means virtually indistinguishable, in that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor engaged in sexually explicit conduct. This definition does not apply to depictions that are drawings, cartoons, sculptures, or paintings depicting minors or adults.

''(d) The circumstance referred to in subsections (a) and (b) is that—

''(1) any communication involved in or made in furtherance of the offense is communicated or transported by the mail, or in interstate or foreign commerce by any means, including by computer, or any means or instrumentality of interstate or foreign commerce is otherwise used in committing or in furtherance of the commission of the offense;

''(2) any communication involved in or made in furtherance of the offense contemplates the transmission or transportation of a visual depiction by the mail, or in interstate or foreign commerce by any means, including by computer;

''(3) any person travels or is transported in interstate or foreign commerce in the course of the commission or in furtherance of the commission of the offense;

''(4) any visual depiction involved in the offense has been mailed, or has been shipped or transported in interstate or foreign commerce by any means, including by computer, or was produced using materials that have been mailed, or that have been shipped or transported in interstate or foreign commerce by any means, including by computer; or

''(5) the offense is committed in the special maritime and territorial jurisdiction of the United States or in any territory or possession of the United States.

''(e) In a case under subsection (b), it is an affirmative defense that the defendant—

''(1) possessed less than three such images; and

''(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof—

''(A) took reasonable steps to destroy each such image; or

''(B) reported the matter to a law enforcement agency and afforded that agency access to each such image.

''§ 1466B. Obscene visual representations of pre-pubescent sexual abuse

''(a) Whoever, in a circumstance described in subsection (e), knowingly produces, distributes, receives, or possesses with intent to distribute a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that—

''(1) depicts a pre-pubescent child engaging in sexually explicit conduct, and

''(2) is obscene, or who attempts or conspires to do so, shall be subject to the penalties set forth in section 2252A(b)(1), including the penalties provided for cases involving a prior conviction.

''(b) Whoever, in a circumstance described in subsection (e), knowingly possesses a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that—

''(1) depicts a pre-pubescent child engaging in sexually explicit conduct, and

''(2) is obscene,

''or who attempts or conspires to do so, shall be subject to the penalties set forth in section 2252A(b)(2), including the penalties provided for cases involving a prior conviction.

''(c) It is not a required element of any offense under this section that the pre-pubescent child depicted actually exist.

''(d) For purposes of this section, the terms 'visual depiction' and 'pre-pubescent child' have respectively the meanings given those terms in seciton 1466A, and the term 'sexually explicit conduct' has the meaning given that term in section 2256(2)(B).

''(e) The circumstance referred to in subsection (a) and (b) is that—

''(1) any communication involved in or made in furtherance of the offense is communicated or

transported by the mail, or in interstate or foreign commerce by any means, including by computer, or any means or instrumentality of interstate or foreign commerce is otherwise used in committing or in furtherance of the commission of the offense;

''(2) any communication involved in or made in furtherance of the offense contemplates the transmission or transportation of a visual depiction by the mail, or in interstate or foreign commerce by any means, including by computer;

''(3) any person travels or is transported in interstate or foreign commerce in the course of the commission or in furtherance of the commission of the offense;

''(4) any visual depiction involved in the offense has been mailed, or has been shipped or transported in interstate or foreign commerce by any means, including by computer, or was produced using materials that have been mailed, or that have been shipped or transported in interstate or foreign commerce by any means, including by computer; or

''(5) the offense is committed in the special maritime and territorial jurisdiction of the United States or in any territory or possession of the United States.

''(f) In a case under subsection (b), it is an affirmative defense that the defendant—

''(1) possessed less than three such images; and

''(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof—

''(A) took reasonable steps to destroy each such image; or

''(B) reported the matter to a law enforcement agency and afforded that agency access to each such image.''; and

(2) in the analysis for the chapter, by inserting after the item relating to section 1466 the following:

''1466A. Obscene visual depictions of young children.

''1466B. Obscene visual representations of prepubescent sexual abuse.''.

(b)(1) Except as provided in paragraph (2), the applicable category of offense to be used in determining the sentencing range referred to in section 3553(a)(4) of title 18, United States Code, with respect to any person convicted under section 1466A or 1466B of such title, shall be the category of offenses described in section 2G2.2 of the Sentencing Guidelines.

(2) The Sentencing Commission may promulgate guidelines specifically governing offenses under section 1466A of title 18, United States Code, provided that such guidelines shall not result in sentencing ranges that are lower than those that would have applied under paragraph (1).

SEC. 6. PROHIBITION ON USE OF MATERIALS TO FACILITATE OFFENSES AGAINST MINORS.

Chapter 71 of title 18, United States Code, is amended—

(1) by inserting at the end the following:

''§ 1471. Use of obscene material or child pornography to facilitate offenses against minors

''(a) Whoever, in any circumstance described in subsection (c), knowingly—

''(1) provides or shows to a person below the age of 16 years any visual depiction that is, or is indistinguishable from, that of a pre-pubescent child engaging in sexually explicit conduct, any obscene matter, or any child pornography; or

''(2) provides or shows any obscene matter or child pornography, or any visual depiction that is, or is indistinguishable from, that of a pre-pubescent child engaging in sexually explicit conduct, or any other material assistance to any person in connection with any conduct, or any attempt, incitement, solicitation, or conspiracy to engage in any conduct, that involves a minor and that violates chapter 109A, 110, or 117, or that would violate chapter 109A if the conduct occurred in the special maritime and territorial jurisdiction of the United States,

shall be subject to the penalties set forth in section 2252A(b)(1), including the penalties provided for cases involving a prior conviction.

''(b) For purposes of this section—

''(1) the term 'child pornography' has the meaning set forth in section 2256(8);

''(2) the terms 'visual depiction', 'pre-pubescent child', and 'indistinguishable' have the meanings respectively set forth for those terms in section 1466A(c); and

''(3) the term 'sexually explicit conduct' has the meaning set forth in section 2256(2).

''(c) The circumstance referred to in subsection (a) is that—

''(1) any communication involved in or made in furtherance of the offense is communicated or transported by the mail, or in interstate or foreign commerce by any means, including by computer, or any means or instrumentality of interstate or foreign commerce is otherwise used in committing or in furtherance of the commission of the offense;

''(2) any communication involved in or made in furtherance of the offense contemplates the transmission or transportation of a visual depiction or obscene matter by the mail, or in interstate or foreign commerce by any means, including by computer;

''(3) any person travels or is transported in interstate or foreign commerce in the course of the commission or in furtherance of the commission of the offense;

''(4) any visual depiction or obscene matter involved in the offense has been mailed, or has been shipped or transported in interstate or foreign commerce by any means, including by computer, or was produced using materials that have been mailed, or that have been shipped or transported in interstate or foreign commerce by any means, including by computer; or

''(5) the offense is committed in the special maritime and territorial jurisdiction of the United States or in any territory or possession of the United States.'';

(2) in the analysis for the chapter, by inserting at the end the following:

''1471. Use of obscene material or child pornography to facilitate offenses against minors.''.

SEC. 7. EXTRATERRITORIAL PRODUCTION OF CHILD PORNOGRAPHY FOR DISTRIBUTION IN THE UNITED STATES.

Section 2251 is amended—

(1) by striking ''subsection (d)'' each place it appears in subsections (a), (b), and (c) and inserting ''subsection (e)'';

(2) by redesignating subsections (c) and (d), respectively, as subsections (d) and (e); and

(3) by inserting after subsection (b) a new subsection (c) as follows:

''(c)(1) Any person who, in a circumstance described in paragraph (2), employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct outside of the United States, its possessions and Territories, for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (e).

''(2) The circumstance referred to in paragraph (1) is that—

''(A) the person intends such visual depiction to be transported to the United States, its possessions, or territories, by any means including by computer or mail;

''(B) the person transports such visual depiction to, or otherwise makes it available within, the United States, its possessions, or territories, by any means including by computer or mail.''.

SEC. 8. STRENGTHENING ENHANCED PENALTIES FOR REPEAT OFFENDERS.

Sections 2251(e) (as redesignated by section 7(2)), 2252(b), and 2252A(b) of title 18, United States Code, are each amended by inserting ''chapter 71,'' immediately before each occurrence of ''chapter 109A,''.

SEC. 9. SERVICE PROVIDER REPORTING OF CHILD PORNOGRAPHY AND RELATED INFORMATION.

(a) Section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032) is amended—

(1) in subsection (b)(1)—

(A) by inserting ''2252B,'' after ''2252A,''; and

(B) by inserting ''or a violation of section 1466A or 1466B of that title,'' after ''of that title),'';

(2) in subsection (c), by inserting ''or pursuant to'' after ''to comply with'';

(3) by amending subsection (f)(1)(D) to read as follows:

''(D) where the report discloses a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such State law.'';

(4) by redesignating paragraph (3) of subsection (b) as paragraph (4); and

(5) by inserting after paragraph (2) of subsection (b) the following new paragraph:

''(3) In addition to forwarding such reports to those agencies designated in subsection (b)(2), the National Center for Missing and Exploited Children is authorized to forward any such report to an appropriate official of a state or subdivision of a state for the purpose of enforcing state criminal law.''.

(b) Section 2702 of title 18, United States Code is amended—

(1) in subsection (b)—

(A) in paragraph (6)—

(i) by inserting ''or'' at the end of subparagraph (A)(ii);

(ii) by striking subparagraph (B); and

(iii) by redesignating subparagraph (C) as subparagraph (B);

(B) by redesignating paragraph (6) as paragraph (7);

(C) by striking ''or'' at the end of paragraph (5); and

(D) by inserting after paragraph (5) the following new paragraph:

''(6) to the National Center for Missing and Exploited Children, in connection with a report submitted thereto under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032); or''; and

(2) in subsection (c)—

(A) by striking ''or'' at the end of paragraph (4);

(B) by redesignating paragraph (5) as paragraph (6); and

(C) by adding after paragraph (4) the following new paragraph:

''(5) to the National Center for Missing and Exploited Children, in connection with a report submitted thereto under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032); or''.

SEC. 10. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons not similarly situated or to other circumstances, shall not be affected by such invalidation.

SEC. 11. INVESTIGATIVE AUTHORITY RELATING TO CHILD PORNOGRAPHY.

Section 3486(a)(1)(C)(i) of title 18, United States Code, is amended by striking ''the name, address'' and all that follows through ''subscriber or customer'' and inserting ''the information specified in section 2703(c)(2)''.

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

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill, H.R. 4623, currently under consideration.

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

There was no objection.

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

Mr. Speaker, on April 16, 2002, the Supreme Court of the United States in the case of Ashcroft v. the Free Speech Coalition held that the current definition of child pornography as enacted by the Child Pornography Protection Act of 1996 is overbroad and, thus, unconstitutional.

In response to that decision, Ernest Allen, the president and CEO of the National Center for Missing and Exploited Children, testified that he believes that the Court's decision will result in the proliferation of child pornography in America unlike anything we have seen in more than 20 years. He concluded that, as a result of the Court's decision, thousands of children will be sexually victimized, most of whom will not report the offense.

Technology will exist, or may exist today, to create depictions of virtual children that are indistinguishable from depictions of real children. Just the mere possibility that such technology exists will make it impossible for law enforcement and prosecutors to enforce the child pornography laws in cases where computers are involved.

A vast majority of child pornography prosecutions today involve images contained on computer hard drives, computer disks or related media. A computer image seized from a child pornographer is rarely a first-generation product. These pictures are e-mailed over and over again or scanned in from photographs of real children being abused and exploited. The transmission of images over an e-mail system can alter the image and make it impossible for even an expert to know whether or not a particular image depicts a real child. If the original image has been scanned from a paper version into a digital format, accurate analysis can be even more difficult because proper forensic delineation may depend upon the quality of the image scanned and the tools used to scan it. As a result, the prosecution of child pornography cases that involve a computer in any form are threatened.

Convicted child pornographers are appealing their cases with claims that the government must prove that the child in the picture is real. This can be an insurmountable burden on the prosecution. In fact, on May 1, the committee received testimony that while there are estimates that hundreds of thousands of child pornography files are in existence and available on the Internet, law enforcement has established the identity of less than 100 children to date.

The government has an obligation to respond to the Supreme Court's decision, as it has an unquestionable compelling interest to protect children from those who would sexually exploit them. The Supreme Court recognized this compelling interest in its 1982 New York v. Ferber decision, holding that child pornography is not protected by the first amendment. The government will not be able to protect real children unless it can effectively prosecute and enforce child pornography laws. In order to do that, a statute must be adopted that narrows the definition of child pornography to withstand constitutional muster.

H.R. 4623, the Child Obscenity and Pornography Prevention Act of 2002, does that. In response to the Court's decision, this bill narrows the definition of child pornography, strengthens the existing affirmative defense, amends the obscenity laws to address virtual and real child pornography that involve visual depictions of pre-pubescent children, creates new offenses against pandering visual depictions as child pornography, and creates new offenses against providing children obscene or pornographic material.

Mr. Speaker, this is carefully crafted legislation that will help to protect our children from the worst predators in our society. I urge my colleagues to support it.

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

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

Mr. Speaker, H.R. 4623 is a hasty attempt to override the United States Supreme Court decision of just 2 months ago, Ashcroft v. Free Speech Coalition. Unfortunately, it tries to do exactly what the Supreme Court said could not be done. H.R. 4623 seeks to ban virtual child pornography. It not only defines child pornography to include virtual child pornography that is indistinguishable from real child pornography, but makes even possession of an image that is indistinguishable a crime. Child pornography may be banned and prosecuted. However, pornography that does not involve a real child is just that, pornography which, if not obscene, has been ruled by the Supreme Court to be not illegal. To constitute child pornography, a real child must be involved. The Supreme Court has ruled that computer-generated images depicting childlike characters which do not involve real children do not constitute child pornography any more than a movie with a 22-year-old actor who plays and looks like a 15-year-old engaging in sex would be illegal.

The Supreme Court has ruled that pornography, computer-generated or not, which is not produced using real children, and is not otherwise obscene, is protected under the first amendment. H.R. 4623, like the CPPA struck down in Ashcroft v. Free Speech, attempts to ban this protected material and therefore is likely to meet the same fate. The fatal flaw in the CPPA was its criminalization of speech that was neither obscene under Supreme Court guidelines nor child pornography involving the abuse of real children under New York v. Ferber.

H.R. 4623 repeats that mistake. Like the CPPA, this bill would not only criminalize speech that is not obscene but also speech that has redeeming literary, artistic, political or other social value. For example, the bill would punish therapists and academic researchers who used computer-generated images in their research and filmmakers who create explicit anti-child abuse documentaries.

The bill creates a strict liability offense. Under the bill, prohibited images may not be possessed for any reason, however legitimate. Therefore, any scholarly research that may be used to verify or refute the underlying assumptions in the bill is rendered impossible. Proponents of the bill believe the Court left open the question of whether the government can criminalize computer-generated images that are not obscene and do not involve real children. Obscene images can always be prosecuted, but the Court clearly said that the government cannot criminalize images which are not obscene unless the product involved actual children.

In striking down the bill and upholding its decision in Ferber, the Supreme Court stated: ''In contrast to the speech in Ferber, speech that itself is the record of sexual abuse, the CPPA prohibits speech that records no crime and creates no victims by its production. Virtual child pornography is not intrinsically related to the sexual abuse of children as were the materials in Ferber. Ferber, then, not only referred to the distinction between actual and virtual child pornography, it relied on it as a reason for supporting its holding. Ferber provides no support for a statute that eliminates the distinction and makes the alternative mode criminal as well.''

In interpreting the Osborne case of 1990, the Court said: ''Osborne also noted the State's interest in preventing child pornography from being used as an aid in the solicitation of minors. The Court, however, anchored its holding in the concern for the participants, those whom it called the victims of child pornography. It did not suggest that, absent this concern, other governmental interests would suffice. The case reaffirmed that where the speech is neither obscene nor the product of sexual abuse, it does not fall outside the protection of the first amendment. The distribution of descriptions or other depictions of sexual conduct, not otherwise obscene, which do not involve live performance or photographic or other visual reproduction of live performances, retains first amendment protection.''

Proponents also argue that the Court did not consider the harm to real children that will occur when, through technological advances, it may become impossible to tell whether it is real children or virtual children, thereby allowing harm to real children because the government cannot tell the difference for purposes of bringing prosecution. The Court did consider that and said: ''The government next argues that its objective of eliminating the market for pornography produced using real children necessitates a prohibition on virtual images as well. Virtual images, the government contends, are indistinguishable from real ones; they are part of the same market and are often exchanged. In this way, it is said, virtual images promote the trafficking in works produced through the exploitation of real children. The hypothesis is somewhat implausible. If virtual images were identical to illegal child pornography, the illegal images would be driven from the market by the indistinguishable substitutes. Few pornographers would risk prosecution by abusing real children if fictional, computerized images would suffice.''

Nor was the Court persuaded, Mr. Speaker, by the argument that virtual images will make it very difficult for the government to prosecute cases. As to that concern, the Court stated: ''Finally, the government says that the possibility of producing images by using computer imaging makes it very difficult for it to prosecute those who produce pornography by using real children. Experts, we are told, may have difficulty in saying whether the pictures were made by using real children or by using computer imaging. The necessary solution, the argument runs, is to prohibit both kinds of images. The argument, in essence, is that protected speech may be banned as a means to ban unprotected speech. This analysis turns the first amendment upside down. The government may not suppress lawful speech as the means to suppress unlawful speech.''

It also talked about the affirmative defense and said: ''To avoid this objection, the government would have us read the CPPA not as a measure suppressing speech but as a law shifting the burden to the accused to prove the speech is lawful. In this connection, the government relies on an affirmative defense under the statute, which allows a defendant to avoid conviction for nonpossession offenses by showing that the materials were produced using only adults and were not otherwise distributed in a manner conveying the impression that they depicted real children. The government raises serious constitutional difficulties by seeking to impose on the defendant the burden of proving his speech is not unlawful. An affirmative defense applies only after prosecution has begun, and the speaker must himself prove, on pain of a felony conviction, that his conduct falls within the affirmative defense. In cases under the CPPA, the evidentiary burden is not trivial. Where the defendant is not the producer of the work, he may have no way of establishing the identity, or even the existence, of the actors. If the evidentiary issue is a serious problem for the government, as it asserts, it will be at least as difficult for the innocent possessor.''

The Ashcroft decision in essence reiterates the principles of Ferber regarding the boundaries for fighting child pornography, like, number one, nonobscene descriptions or depictions of sexual conduct that do not involve real children are a form of speech which, even if despicable, is protected by the first amendment. The Court said that the government should focus its efforts on education and on punishment for violations of the law by those who actually harm children in the creation of child pornography rather than abridging the rights of free speech of those who would create something from their imagination.

□ 1400

Again, the Court said that the fact that the speech may be used to perpetrate a crime is insufficient reason to ban the speech. ''The government may not prohibit speech because it increases the chance an unlawful act will be committed 'at some indefinite future time.''' Further, the Government said, ''The Government may not suppress lawful speech as the means to suppress unlawful speech.''

So, therefore, Mr. Speaker, this bill just reiterates the mistakes in the original legislation. It is unlikely that the bill will ever be upheld and, therefore, ought to be defeated.

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

Mr. SENSENBRENNER. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. SMITH), the subcommittee chairman.

Mr. SMITH of Texas. Mr. Speaker, first of all, I thank the chairman of the Committee on the Judiciary for yielding me this time.

Mr. Speaker, H.R. 4623, the Child Obscenity and Pornography Prevention Act of 2002, is a bipartisan piece of legislation that was passed by the Committee on the Judiciary 22 to 3. Because I see him on the floor, I would especially like to thank the gentleman from California (Mr. SCHIFF) for his contributions to this bill as well.

Mr. Speaker, H.R. 2623 responds to the Ashcroft v. Free Speech Coalition Supreme Court decision. This decision will have a devastating effect on the prosecution of child pornographers who are so often child molesters as well.

Just this month, a doctor in San Antonio appealed his conviction for possessing child pornography. The appeal came after the Free Speech Coalition decision and challenged the conviction because the government was not required to prove that the children depicted in his pornographic images obtained on-line were real. The San Antonio Express-News reported that these appeals are occurring nationwide.

Mr. Speaker, this legislation addresses the concerns of the Supreme Court. Specifically, this bill narrows the definition of child pornography and amends the obscenity laws to address virtual and real child pornography that involves visual depictions of pre-pubescent children. It also creates new offenses against providing children obscene or pornographic material.

The Court was concerned in Free Speech Coalition that the breadth of the language would prohibit legitimate movies like ''Traffic'' or plays like ''Romeo and Juliet.'' Limiting the definition to computer images or computer-generated images will help exclude ordinary motion pictures from the coverage of ''virtual child pornography.''

Next, the bill narrows the definition by replacing the phrase ''appears to be'' with the phrase ''is indistinguishable from'' and clarifies that this definition does not apply to depictions that are drawings, cartoons, sculptures, or paintings depicting minors or adults.

At the request of the National Center for Missing and Exploited Children, this bill allows the Federally-funded Internet Crimes Against Children Task Forces to receive reports from the Cyber Tipline. These task forces are State and local police agencies that have been identified by the National Center as competent to investigate and prosecute computer-facilitated crimes against children.

Mr. Speaker, finally, in response to a new website that displays pictures of children being raped and sodomized by adults, where the pictures are clearly virtual, but obscene, this bill includes a provision that would enhance the penalties for such obscenity.

Mr. Speaker, children are the most innocent and vulnerable among us. We should do everything we possibly can to protect them, and that is why I hope my colleagues will support this piece of legislation.

Mr. SCOTT. Mr. Speaker, I yield 3 minutes to the gentleman from North Dakota (Mr. POMEROY).

Mr. POMEROY. Mr. Speaker, I thank the ranking member for yielding me this time.

These are dangerous times when it comes to child pornography. The Internet has allowed distribution in ways never imagined before, making it much more prevalent throughout our society, at the very time we have a Supreme Court ruling knocking out the prohibition on computer-generated child pornography. We need to respond, and we need to respond immediately. That is why I commend the gentleman from Texas (Mr. SMITH), the chairman of the subcommittee, and others who have worked on this legislation, including the gentleman from Florida (Mr. FOLEY) and the gentleman from Texas (Mr. LAMPSON). This has been a truly bipartisan effort to forge immediately a response that will withstand constitutional review and put back into

the code strong protections for our children against child pornography.

In the end, make no bones about it. This is about protecting our children. Meetings I have held with prosecutors, with child protection advocates, have made it very clear to me that the use of child pornography is damaging to children, sets them up as targets for ultimate exploitation, and whets the appetite of the exploiters, making them more likely to commit acts against our children.

The Attorney General and the Justice Department were very involved in assembling a panel of constitutional experts reviewing the court ruling and fashioning a legislative response that will withstand court review. This is not about some immediate, knee-jerk response to a Supreme Court ruling that causes us concern. This is a carefully calibrated effort to put back into the code constitutional standards and prohibitions now needed to be restored against virtual child pornography. There are new constitutionally compliant definitions about the virtual imagery that we are condemning, a tighter and stronger affirmative defense for those prosecuted under this, required, as my prosecutors tell me, to allow them to be able to continue to prosecute these matters.

I had a prosecutor in North Dakota tell me he took two cases right off his desk and put them right back into the file, being unable to prosecute them under the court ruling. This will put him back into business in bringing these needed actions.

It stops commercial trade in child pornography: the trading, the selling, the buying. This is not constitutionally protected free speech, and the prohibition is restored with this legislation. It clarifies the definition of obscenity by defining, whether real or virtual, explicit sex involving young children as per se obscene. Clearly, I believe we are on very strong ground that will withstand constitutional muster and make an important contribution to prosecutors trying to bring actions against this kind of material.

There is a severability clause in this legislation, thus raising the very sincere arguments that they have about whether or not this is constitutional. Clearly, the several clauses of this bill are not all constitutional. I absolutely believe they are all constitutional, but, in any event, we should pass the law, have the Justices review it, and I believe ultimately strengthen significantly the protections of our children against child pornography.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Utah (Mr. CANNON).

Mr. CANNON. Mr. Speaker, I would like to associate myself with the comments of the gentleman from Wisconsin (Mr. SENSENBRENNER) and those of the gentleman from Texas (Mr. SMITH). I believe that in light of the Supreme Court decision of Free Speech Coalition against Ashcroft, Congress must act again and immediately to give law enforcement the ability to fight the scourge of child pornography, whether real or virtual.

The Supreme Court struck down provisions of the law passed by this Congress in 1996 because some were poorly defined and too broadly targeted. We have heard some criticism today that this bill is still in conflict with the recent decision by the Supreme Court. I think that criticism is unfounded, and I want to speak for a moment about some of the specific changes we have made to focus and narrow and improve the bill.

In response to the Free Speech Coalition decision, section 3(a) of this bill narrows the definition of child pornography so that it is a computer image or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct. This provision narrows the definition in several ways. First, it limits the definition to computer images or computer-generated images; second, it limits the definition by requiring the virtual images be indistinguishable from real images; and, third, it uses the newly defined definition for ''sexually explicit conduct.''

The bill also strengthens the affirmative defense for those charged under the law to address another criticism of the Supreme Court. Finally, the bill also narrows the definition for the offense of pandering material as child pornography.

It is clear from these provisions and others in the bill that the drafting was done very carefully to address the issues raised by the Supreme Court decision and improved the law as the court suggested. I urge my colleagues to support the bill and once again make it clear that some material is so universally offensive that it does not deserve unlimited protect of the first amendment.

Mr. SCOTT. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. SCHIFF).

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

Mr. Speaker, I rise in support of the bill, and I want to commend the gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of the committee, and the gentleman from Texas (Mr. SMITH), the chairman of the subcommittee, for their work on this issue.

In the Ashcroft decision, the Supreme Court struck down the existing child pornography laws on the basis that they, in addition to prohibiting child pornography that was made by using, by molesting real children, that it also prohibited the use of adults who looked youthful looking, looked like children, and also prohibited virtual pornography, virtual child pornography produced using computers and computer graphics. But effectively, by striking down this law and by stating that only real child pornography could be prosecuted, the court struck the heart out of efforts to prosecute the real thing.

Computer technology has advanced to the point now where it is simply not possible for the government to meet a burden of demonstrating whether images were created using computer technology or the images are real. So the committee and the subcommittee worked together to try to address the concerns that the court raised and, at the same time, restore the ability of prosecutors to bring these cases against those who would victimize and molest children to produce child pornography.

In the Ashcroft decision, it recognized this dilemma, this problem, the need to go after these cases and yet the need to draft the law narrowly, and the court specifically said, we leave open, we leave open the question of whether there could be an affirmative defense; in other words, whether the burden could be shifted on this particular element to the defense to demonstrate that they only used adult actors who looked like children or they only used computer technology. That question was left open.

That is a difficult constitutional question, but if we are to restore the prosecution's ability to prosecute child pornography using real children, we must embrace this affirmative defense as the method to do so. And the law is very narrowly crafted. It prohibits the use, the sales, the pandering of child pornography that is virtually indistinguishable from real, that is generated by computers, but virtually indistinguishable from real, and then it allows the defense to affirmatively defend by saying, no, this was solely developed using computers, or, no, this was developed only by using youthful-looking adults, facts which are much more likely to be in the sole possession of the defense than in the possession of the prosecution.

So what we have is a bill that restores the prosecution's ability to bring these cases, that frames it as narrowly as possible to survive constitutional scrutiny, that indeed makes use of the vehicle the Supreme Court itself identified, that of an affirmative defense.

Will this statute survive against scrutiny by the Supreme Court? I believe it will. It will be a tough decision, but the fact of the matter is, in the absence of this legislative action, we will simply be incapable of prosecuting child pornography. I urge Members to support the bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1½ minutes to the gentleman from Alabama (Mr. BACHUS).

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

Mr. Speaker, many of us serve on the Committee on the Judiciary because we have a legal degree from a good law school, we have a great legal education, but let me tell my colleagues, a

legal education sometimes is a terrible thing to inflict on society. I think that the Supreme Court must have had too much legal education when they made the decision they made, because we know when our children go on line, when they get on their computers and they see child pornography, we know they can be exploited, we know they can be molested, and we know as parents that it does not make a bit of difference whether it is computer-generated, actual or real.

The Supreme Court said this despicable junk can go on; it is not illegal if it is computer-generated. If a prosecutor cannot play the impossible game of picking out an actual, identifiable child, then the molester goes off, he is free to molest, free to continue to abuse our children.

If there is anything as a society we ought to do, it is protect our young people. If there is anything we ought to do, it is stop playing legal games with our fine legal educations and start doing what ought to be done, and that is protecting our children from these sexual predators no matter whether they use computer-driven images or actual images. It is time to stop it. It is time to stop drawing legal distinctions.

Mr. SCOTT. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. NADLER).

□ 1415

Mr. NADLER. Mr. Speaker, this debate is an exercise in surrealism. The Supreme Court recently handed down a decision directly on point. What the sponsors of this bill are trying to do is to overturn a Supreme Court decision that they do not like by statute. We know we cannot do that. Congress cannot overturn a Supreme Court decision.

Now, it is elementary that the first amendment says that one can say, write, draw, or photograph and distribute whatever one wants. The Supreme Court has made one exception to that, or a number of exceptions. One exception is obscenity. If it is obscene, one cannot ban it.

There is another exception: where, to protect children from exploitation, we can stop the distribution of child pornography, defined as pornography that shows children. Why? To protect the children who are exploited in making it.

Now, if the material is itself obscene, we can ban it anyway; but if it is not in itself obscene, it has to be real children, because those are the people we are protecting. The Court clearly said the government cannot criminalize images which are not obscene unless the product involved actual children, because if it does not, the images do not fall outside the protection of the first amendment.

Now we are told by the gentleman from Alabama (Mr. BACHUS) and by the government that the possibility of producing images by using computer imaging, and I am quoting directly from the Supreme Court decision, ''makes it very difficult to prosecute those who produce pornography by using real children. Experts, we are told, may have difficulty in saying whether the pictures were made by using real children or by using computer imaging.

''The necessary solution, the argument runs,'' and the Court may just as well have been quoting the gentleman from Alabama, ''is to prohibit both kinds of images. In order to enable prosecution of the real thing, you should be able to prosecute the virtual images.'' The Court continues, the Supreme Court of the United States, ''The argument, in essence, is that protected speech may be banned as a means to ban unprotected speech. This analysis turns the first amendment upside down. The government may not suppress lawful speech as a means to suppress unlawful speech.''

So it is very clear. This bill is clearly unconstitutional. It is an exercise in pure politics. It is simply going to get the Supreme Court to rule again, when it has already told us on exactly the same point. The attempt by the bill to slightly narrow the definition does not matter. Either it is obscene or it is not. If it is not obscene, it is protected, unless real children were used in the production of it; and if they were not, it is still protected speech, period.

That is the Court's analysis. If we want to change that, we cannot do it by a law passed here, so we are wasting our time and misleading the public, who think that we are doing something, because we cannot overturn a Supreme Court decision, one I happen to think is correct, but that is beside the point. We cannot overturn a Supreme Court interpretation of the Constitution of the United States by a bill in Congress.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania (Mr. GEKAS).

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

Mr. Speaker, the public demands that we do something about child pornography, and the type that now has beset us across the Internet world is even worse than some of the expected child pornography that we have contemplated over the years.

What we are doing here is not trying to overturn the constitutional questions that the Supreme Court used in its rejection of the last case, but rather, to conform to the standards that the Supreme Court has set forth in its very rejection of the first statute.

So it uses words like ''indistinguishable'' and ''broad'' or ''less broad'' than the language that was contained in the first bill that was knocked down by the Supreme Court.

It comes down to this: we want to protect everyone from sex pornography of all sorts, but particularly that involving infants and youngsters. So we have to do everything we can, and the authors of this legislation did everything that they could to make it conform to constitutional standards.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Florida (Mr. FOLEY).

Mr. FOLEY. Mr. Speaker, I thank the gentleman for yielding time to me, and I thank the chairman for his hard work on this issue, as well the gentleman from Texas (Mr. SMITH).

I have heard terms described today that this has been rushed to the floor of the House. Maybe those who claim it has been rushed have not had a chance to see the virtual pornography that has been created since the Supreme Court's ruling, endangering our children, virtually created; horrible portrayals of our young and most fragile citizens on the Internet.

Today's passage of this legislation is a pedophile's worst nightmare. Congress is one step closer to helping the High Court side with children over pedophiles.

Mr. Speaker, I ask Members to make no mistake about it. We are not talking about Scooby Doo or Lilo & Stitch, American Beauty, or any of the other characterizations that have been lobbed against the passage of this legislation. The images of exploited children are indeed virtually indistinguishable from the real thing. Our legislation unshackles prosecutors so they can start protecting the children once again.

In the past, prosecution was swift and severe, for good reason, when sexual images of exploited minors were found in someone's possession. Now, after the Supreme Court ruling, unless the prosecutors can find the child in the photo, even if the photo is 10 or 20 years old, the pedophiles walk free. Prosecutors never needed to match the photos with the child, since that is nearly impossible with the laundering system that has been developed from State to State and country to country.

I urge the High Court to reconsider the consequences of its actions the next time they rule on legislation dealing with the protection of our children.

Lastly, we need to get this ban through the Senate and onto the President's desk immediately. With every passing day, another pedophile escapes prosecution because of this flawed ruling of the Supreme Court. Let us stop wasting time and start focusing on protecting our children.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1½ minutes to the gentleman from Nebraska (Mr. OSBORNE).

Mr. OSBORNE. Mr. Speaker, I thank the gentleman from Texas (Mr. SMITH) and the gentleman from Florida (Mr. FOLEY) for bringing this legislation forward.

Many times, defenders of the first amendment claim that what we hear and see has no bearing on our behavior; hence, pornography is harmless. If this is true, why is it that advertisers spend billions of dollars annually? Obviously, there is a strong connection between what we see and what we hear and what we do.

A recent study indicates that 80 percent of molesters of boys regularly use

hard-core pornography, and 90 percent of molesters of girls use hard-core pornography.

The important thing to realize here is that these people, these perpetrators, are incited by an image. It does not make any difference whether that image is real or virtual. They are incited by that image, and real children are hurt. That is the whole issue, that real children are being hurt by this practice.

Pornography is a $15 billion business or industry in our Nation. There were 1 million porn sites on the Internet. This has become a real threat to our young people, and it has become a national disgrace. The courts have consistently allowed more and more obscene material under first amendment protection.

The Supreme Court recently overturned a law similar to H.R. 4623. The courts have overturned three other laws in the past 6 years intended to control the spread of pornography. This has inflicted great damage on our young people and on our culture.

Hopefully, H.R. 4623 is written tightly enough that it will withstand a court challenge. I believe it is. The stakes are too high not to try. I urge adoption of H.R. 4623.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Tennessee (Mr. WAMP).

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

Mr. WAMP. Mr. Speaker, I thank the distinguished chairman for yielding time to me, and I appreciate his willingness to stand in the gap for something that is right, and also the authors of the bill.

Mr. Speaker, I come as a father. I have a 15-year-old son and a 13-year-old daughter. Like most teenagers in America today, they spend more time on the Internet than I would personally care for. However, that is the reality that we live in.

I think we have an obligation as legislators to try to keep up with the incredible growth of technology through the Internet and the Internet communication, because if we just buried our heads in the sand and took the position of one of the speakers a moment ago and said that the Congress cannot do anything, basically, about a Supreme Court ruling, I think that is nonsense. We have an obligation to come with new legislation so we can find the right cure that is acceptable before the Supreme Court, and that is what I think this is.

We should persevere, here. This is a world that changes day by day. We are in the Information Age, the third great wave of change in our country. In the Information Age, we are going to see more and more virtual everything, where if one has a headset on, one might not know where they are at times. As a result, we have an obligation to protect our children.

One of my greatest fears as a parent is a pedophile preying on my children. There are child lures through the Internet now that are so dangerous and so manipulative that we have to have protections for our children who are in this cyberworld and they are unprotected. That is a reality.

We have an obligation as Federal legislators to work within our constitutional law to find a remedy. That is what this bill represents. Frankly, if the Supreme Court rejects this, we need to come back with another bill and continue to persevere until we find something that is acceptable before the Court so our children are protected. This is fundamental to our job and our responsibility as Federal legislators.

I commend the authors and the committee for taking it up; and if we have to come back to the well again and again and again, we should.

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

Mr. Speaker, I just wanted to make two different points. First, the question has been raised about how difficult it is for the government to actually prosecute the cases.

The Supreme Court dealt with that when they said, in throwing out the previous language: ''The government raises serious constitutional difficulties by seeking to impose on the defendant the burden of proving that his speech is not unlawful. That affirmative defense applies only after the prosecution has begun, and the speaker must himself prove on the pain of felony conviction that his conduct falls within the affirmative defense.''

It goes on to say: ''Where the defendant is not the producer of the work, he may have no way of establishing the identity or even the existence of actors. If the evidentiary issue is a serious problem for the government, as it asserts, it will be at least as difficult for the innocent possessor.'' It dealt with the issue of prosecution and said that is not something that can be used.

Also, let me cite another part of the case. It says: ''The government says that indirect harms are sufficient because, as Ferber acknowledged, child pornography rarely can be valuable speech . . . This argument, however, suffers from two flaws. First, Ferber's judgment about child pornography was based on how it was made, not on what it communicated. The case reaffirmed that where speech is neither obscene nor the product of sexual abuse, it does not fall outside the protection of the first amendment.''

And second: ''Ferber did not hold that child pornography is by definition without value. On the contrary, the Court recognized that some works in the category might have significant value, but relied on virtual images, the very images prohibited by the CPPA, as an alternative and permissible means of expression.''

Finally, Mr. Speaker, let me just say that the word ''indistinguishable'' has been used. The only thing indistinguishable in this debate is that this bill is indistinguishable from the law the Supreme Court threw out just 2 months ago, and this bill should therefore be defeated.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, this bill is necessary for two reasons: first, the technology has gotten so good that it is very hard to determine whether the picture that is being transmitted and retransmitted on the Internet is a real child or a computer-created child. That means that if the government cannot prove that a real child was used, then the person who is the defendant will be able to walk out of the courtroom scot-free.

Secondly, as has been stated previously, every conviction of child pornographers as a result of the Ashcroft v. Free Speech Coalition decision is placed in jeopardy because at the time the prosecution took place, it was not a requirement that the government prove beyond a reasonable doubt that it was a real child that was being used for this purpose.

So the Ashcroft decision virtually guts our child pornography laws. That is why the Supreme Court has to be given an opportunity to reflect on the consequences of its decision. What this bill does is it attempts to respond to Ashcroft v. Free Speech Coalition in a way that we can have constitutional and effective anti-child pornography laws in this age of computers, the Internet, and e-mails.

Mr. Speaker, I urge every Member who is concerned about having that type of a law to vote ''aye'' on the motion to suspend the rules.

Mr. GOODLATTE. Mr. Speaker, new technologies offer a wide variety of resources for research and communication; however, we must face the reality that technology can also be used or harm. For example, computers may be used to generate pornographic depictions of children. In addition, the Internet offers predators unparalleled access to our children and can provide an avenue for abuse and exploitation. The Internet has become a attractive arena for child sex abusers, child pornographers and pedophiles because it is easy for them to share images and information about children and to make contact with children.

As advances in technology began to threaten the protection of children by interfering with the effective prosecution of the child pornography laws that cover the visual depictions of real children, Congress in 1996 attempted to address this concern with the ''Child Pornography Prevention Act.'' The 1996 language included a prohibition of any virtual depictions as well as pictures of youthful-looking adults. However, in a disturbing decision on April 16, 2002, the Supreme Court ruled in Ashcroft v. the Free Speech Coalition that this language was overbroad and unconstitutional, paving the way for child molesters to hide their abuse behind technology; for example, with altered photographs of their victims.

Computer technology exists today to disguise depictions of real children to make them unidentifiable and to make depictions of real children appear compute generated. Furthermore, future technology will have the capability to make depictions of virtual children look real and completely indistinguishable.

Congress has a compelling interest to protect children from sexual exploitation. Sexually explicit computer images that are virtually indistinguishable from images of real minors engaged in sexually explicit conduct poses a serious danger to future prosecutions involving child pornography. The April 16 Supreme Court decision gives protection to child molesters who may claim that the images they possess are not those of real children, insisting that the government prove beyond a reasonable doubt that the images are not computer-generated. To prove a child is real will require identifying the actual child. This is usually impossible since many of the victimized children are from third world countries. The impossible task of identifying the child will allow child molesters and pornographers to escape prosecution for their crimes against children.

Child pornography, virtual or otherwise, is detrimental to our nation's children. Regardless of the method of its production, child pornography is used to promote and incite deviant and dangerous behavior in our society.

I urge each of my colleagues to join me in support H.R. 4623, which will address the April 16 Supreme Court decision in Ashcroft v. the Free Speech Coalition to ensure the continued protection of children from sexual exploitation.

Mr. PAUL. Mr. Speaker, as a parent, grandparent and OB–GYN who has had the privilege of delivering over 4,000 babies, I share the revulsion of all decent people at child pornography. Those who would destroy the innocence of children by using them in sexually-explicit material deserve the harshest punishment. However, the Child Obscenity and Pornography Prevention Act (H.R. 4623) exceeds Congress' constitutional power and does nothing to protect any child from being abused and exploited by pornographers. Instead, H.R. 4623 redirects law enforcement resources to investigations and prosecutions of ''virtual'' pornography which, by definition, do not involve the abuse or exploitation of children. Therefore, H.R. 4623 may reduce law enforcement's ability to investigate and prosecute legitimate cases of child pornography.

H.R. 4623 furthers one of the most disturbing trends in modern politics, the federalization of crimes. We have been reminded by both Chief Justice William H. Rehnquist and former U.S. Attorney General Ed Meese that more federal crimes, while they make politicians feel good, are neither constitutionally sound nor prudent. Rehnquist has stated that ''The trend to federalize crimes that traditionally have been handled in state courts . . . threatens to change entirely the nature of our federal system.'' Meese stated that Congress' tendency in recent decades to make federal crimes out of offenses that have historically been state matters has dangerous implications both for the fair administration of justice and for the principle that states are something more than mere administrative districts of a nation governed mainly from Washington.

Legislation outlawing virtual pornography is, to say the least, of dubious constitutionality. The constitution grants the federal government jurisdiction over only three crimes: treason, counterfeiting, and piracy. It is hard to stretch the definition of treason, counterfeiting, or piracy to cover sending obscene or pornographic materials over the internet. Therefore, Congress should leave the issue of whether or not to regulate or outlaw virtual pornography to states and local governments.

In conclusion, Mr. Speaker, while I share my colleagues' revulsion at child pornography, I do not believe that this justifies expanding the federal police state to outlaw distribution of pornographic images not containing actual children. I am further concerned by the possibility that passage of H.R. 4623 will divert law enforcement resources away from the prosecution of actual child pornography. H.R. 4623 also represents another step toward the nationalization of all police functions, a dangerous trend that will undermine both effective law enforcement an constitutional government. It is for these reasons that I must oppose this well-intentioned but fundamentally flawed bill.

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

□ 1430

The SPEAKER pro tempore (Mr. GUTKNECHT). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 4623, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

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

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

SEX TOURISM PROHIBITION IMPROVEMENT ACT OF 2002

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4477) to amend title 18, United States Code, with respect to crimes involving the transportation of persons and sex tourism, as amended.

The Clerk read as follows:

H.R. 4477

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Sex Tourism Prohibition Improvement Act of 2002''.

SEC. 2. SECTION 2423 AMENDMENTS.

(a) IN GENERAL.—Section 2423 of title 18, United States Code, is amended by striking subsection (b) and inserting the following:

''(b) TRAVEL WITH INTENT TO ENGAGE IN ILLICIT SEXUAL CONDUCT.—A person who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, for the purpose of engaging in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 15 years, or both.

''(c) ENGAGING IN ILLICIT SEXUAL CONDUCT IN FOREIGN PLACES.—Any United States citizen or alien admitted for permanent residence who travels in foreign commerce, and engages in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 15 years, or both.

''(d) ANCILLARY OFFENSES.—Whoever arranges, induces, procures, or facilitates the travel of a person knowing that such a person is traveling in interstate commerce or foreign commerce for the purpose of engaging in illicit sexual conduct shall be fined under this title, imprisoned not more than 15 years, or both.

''(e) ATTEMPT AND CONSPIRACY.—Whoever attempts or conspires to violate subsection (a), (b), (c), or (d) shall be punishable in the same manner as a completed violation of that subsection.

''(f) DEFINITION.—As used in this section, the term 'illicit sexual conduct' means (1) a sexual act (as defined in section 2246) with a person that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States; or (2) any commercial sex act (as defined in section 1591) with a person who the individual engaging in the commercial sex act, knows or should have known has not attained the age of 18 years.''.

(b) CONFORMING AMENDMENT.—Section 2423(a) of title 18, United States Code, is amended by striking ''or attempts to do so,''.

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

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have five legislative days within which to revise and extend their remarks and include extraneous material on H.R. 4477 currently under consideration.

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

There was no objection.

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

H.R. 4477, the Sex Tourism Prohibition Improvement Act of 2002, addresses a number of problems related to persons who travel to foreign countries and engage in illicit sexual relations with minors. According to the National Center for Missing and Exploited Children, child-sex tourism contributes to the sexual exploitation of children and is increasing. There are more than 100 websites devoted to promoting teenage commercial sex in Asia alone. Because poorer countries are often under economic pressure to develop tourism, those governments often turn a blind eye towards this devastating problem. As a result, children around the world have been trapped and exploited by the sex tourism industry.

While much of the initial attention on child-sex tourism focused on Thailand and other countries of Southeast Asia, it has become disturbingly clear in recent years that there is no hemisphere, continent, or region unaffected by the child-sex trade. While it is difficult to precisely measure the exact number of children affected by sex tourism, experts agree that the number is well into the millions worldwide.

Some of the foreign countries experiencing the most significant problems with sex tourism, such as Nicaragua, Costa Rica, Thailand, and the Philippines, have requested that the United States act to deal with this growing