

omission and commission that have been discovered. But I wonder what sins may still be hidden from view since few have had the chance to read it through.

For my part, however, I believe that our work has mostly been well done and I intend to support the conference report.

Mr. NADLER. Mr. Speaker, I rise today, as a member of the Judiciary Committee, to express my support for the American Inventors Protection Act of 1999, which is included as Title IV of the Intellectual Property and Communications Omnibus Reform Act. This act is included in the Omnibus spending package, H.R. 3194, that we are considering today.

This patent reform measure includes a series of initiatives intended to protect the rights of inventors, enhance patent protections and reduce patent litigation. Perhaps most importantly, subtitle C of title IV contains the so-called "First Inventor Defense." This defense provides a first inventor (or "prior user") with a defense in patent infringement lawsuits, whenever an inventor of a business method (i.e., a practice process or system) uses the invention but does not patent it. Currently, patent law does not provide original inventors with any protections when a subsequent user, who patents the method at a later date, files a lawsuit for infringement against the real creator of the invention.

The first inventor defense will provide the financial services industry with important, needed protections in the face of the uncertainty presented by the Federal Circuit's decision in the *State Street* case. *State Street Bank and Trust Company v. Signature Financial Group, Inc.* 149 F.3d 1368 (Fed. Cir., 1998). In *State Street*, the Court did away with the so-called "business methods" exception to statutory patentable subject matter. Consequently, this decision has raised questions about what types of business methods may now be eligible for patent protection. In the financial services sector, this has prompted serious legal and practical concerns. It has created doubt regarding whether or not particular business methods used by the industry—including processes, practices, and systems—might now suddenly become subject to new claims under the patent law. In terms of every day business practice, these types of activities were considered to be protected as trade secrets and were not viewed as patentable material.

Mr. Speaker, the first inventor defense strikes a fair balance between patent law and trade secret law. Specifically, this provision creates a defense for inventors who (1) acting in good faith have reduced the subject matter to practice in the United States at least one year prior to the patent filing date ("effective filing date") of another (typically later) inventor; and (2) commercially used the subject matter in the United States before the filing date of the patent. Commercial use does not require that the particular invention be made known to the public or be used in the public marketplace—it includes wholly internal commercial uses as well.

As used in this legislation, the term "method" is intended to be construed broadly. The term "method" is defined as meaning "a method of doing or conducting business." Thus, "method" includes any internal method of doing business, a method used in the course of doing or conducting business, or a method for conducting business in the public marketplace. It includes a practice, process, activity,

or system that is used in the design, formulation, testing, or manufacture of any product or service. The defense will be applicable against method claims, as well as the claims involving machines or articles the manufacturer used to practice such methods (i.e., apparatus claims). New technologies are being developed every day, which includes technology that employs both methods of doing business and physical apparatus design to carry out a method of doing business. The first inventor defense is intended to protect both method claims and apparatus claims.

When viewed specifically from the standpoint of the financial services industry, the term "method" includes financial instruments, financial products, financial transactions, the ordering of financial information, and any system or process that transmits or transforms information with respect to investments or other types of financial transactions. In this context, it is important to point out the beneficial effects that such methods have brought to our society. These include the encouragement of home ownership, the broadened availability of capital for small businesses, and the development of a variety of pension and investment opportunities for millions of Americans.

As the joint explanatory statement of the Conference Committee on H.R. 1554 notes, the provision "focuses on methods for doing and conducting business, including methods used in connection with internal commercial operations as well as those used in connection with the sale or transfer of useful end results—whether in the form of physical products, or in the form of services, or in the form of some other useful results; for example, results produced through the manipulation of data or other inputs to produce a useful result." H. Rept. 106-464, p. 122.

The language of the provision states that the defense is not available if the person has actually abandoned commercial use of the subject matter. As used in the legislation, abandonment refers to the cessation of use with no intent to resume. Intervals of non-use between such periodic or cyclical activities such as seasonal factors or reasonable intervals between contracts, however, should not be considered to be abandonment.

As noted earlier, in the wake of *State Street*, thousands of methods and processes that have been and are used internally are now subject to the possibility of being claimed as patented inventions. Previously, the businesses that developed and used such methods and processes thought that secrecy was the only protection available. As the conference report on H.R. 1554 states: "(U)nder established law, any of these inventions which have been in commercial use—public or secret—for more than one year cannot now be the subject of a valid U.S. patent." H. Rept. 106-464, p. 122.

Mr. Speaker, patent law should encourage innovation, not create barriers to the development of innovative financial products, credit vehicles, and e-commerce generally. The patent law was never intended to prevent people from doing what they are already doing. While I am very pleased that the first inventor's defense is included in this legislation, it should be viewed as just the first step in defining the appropriate limits and boundaries of the *State Street* decision. This legal defense will provide important protections for companies against unfair and unjustified patent infringement ac-

tions. But, at the same time, I believe that it is time for Congress to take a closer look at the *State Street* decision. I hope that next year the Judiciary Committee will consider holding hearings on the *State Street* issue, so that Members can carefully evaluate its consequences.

Mr. CLAY. Mr. Speaker, I am pleased this Omnibus bill rejects the devastating cuts on seniors, children, and young adults proposed only last month by the Republican majority. The Labor/HHS portion of this bill, which adds \$7.3 billion over last year's bill, more appropriately reflects the overwhelming public support for increased investment in education and fairness in the workplace.

I am particularly pleased that the Conferees decided to continue funding the Clinton/Clay Class Size Reduction Program, which will hire 100,000 new, highly qualified teachers nationwide. I am particularly pleased that the Conferees rejected the Republican plan to divert class size funds into block grants, which could have been used for private school vouchers and purposes unrelated to class size reduction.

The Conference report provides an increase from \$1.2 billion to \$1.3 billion for class size reduction, it continues class size reduction as a separate program, and it ensures that such funds are targeted to the neediest public schools. The agreement also includes the Democratic plan to ensure that all teachers become fully certified, and it continues the program's flexibility to use funds for teacher recruitment and professional development in order to reduce class sizes.

It also provides new provisions, strongly advocated by President Clinton, that allows \$134 million in Title I funds to be used to improve low-performing schools.

The conference report also increases investment in critical education and labor initiatives above the last conference agreement. It provides \$454 million for After School Centers, an increase of \$154 million over the vetoed bill and \$254 million over 1999. It provides \$8.6 billion for Title I grants for the disadvantaged, an increase of \$144 million over the vetoed bill and \$265 million over 1999. It provides \$136 million for Historically Black Colleges and Universities, an increase of \$7.25 million over the vetoed bill and \$12.7 million over 1999. It also provides \$7.7 billion for Pell Grants to fund a maximum award of \$3,300—the same as the vetoed bill and a \$175 increase over 1999.

In the Labor area, the bill provides \$11.3 billion—\$54 million over the vetoed bill, and \$389 million over 1999.

I urge support for the bill.

Mr. PAUL. Mr. Speaker, I wish to take this opportunity to express my agreement with language contained in the report accompanying H.R. 3075, which was included in the Omnibus Appropriations bill, encouraging the Secretary of Health and Human Services to allow home health agencies to use technology to supervise their branch offices. This language also calls on the government to allow home health agencies to determine the adequate level of on-site supervision of their branch offices based on quality outcomes. I need not remind my colleagues that Congress is expecting home health agencies to operate efficiently under greatly reduced Interim Payment System (IPS) and Prospective Payment System (PPS) reimbursement. It is therefore necessary that home health agencies be allowed

the flexibility to establish and serve large service areas by utilizing cost efficient branch offices.

My district includes many rural areas which are experiencing access problems due to the Health Care Financing Administration's (HCFA's) home health branch office policies affecting time/distance limitations and on-site supervision requirements. In many cases, these requirements do not recognize technology advances. In order to ensure that senior citizens in rural areas have access to quality home care, it is vital that any regulations on home health care branch offices promulgated by the Health Care Financing Administration (HCFA) evaluate the offices by quality of outcome instead of arbitrary administration requirements and restrictions.

In conclusion, Mr. Speaker, I reiterate my support for the report language accompanying H.R. 3075 urging the use of outcome instead of arbitrary requirements and restrictions, to determine a home health care agency's ability to establish and supervise branch offices.

Mr. COSTELLO. Mr. Speaker, I rise today in opposition to H.R. 3194, the Omnibus Appropriations Bill of 1999. This bill is a travesty, a massive symbol of the failure of this Congress to accomplish its most basic goal—passage of the 13 appropriations bills by September 30, the end of the fiscal year—on time and in order. Instead, we have lumped together numerous pieces of legislation, as well as five appropriations bills, and slapped them together like a giant Thanksgiving turkey to present to the American people.

The process by which we come to this vote on this House. This bill—over a foot high, hundreds of pages thick and in its final form with only a few copies available to all 435 members—was filed at 3:00 a.m. this morning. Members of this Chamber have not had the opportunity to read or even review this legislation. No one knows what kind of special-interest boondoggles lie in the text of this bill, and no one will know for days to come.

The majority in this House even voted to suspend the rules that govern the budget process by forbidding the Congressional Budget Office to 'score' this bill, which would let members know just how much all of these provisions will cost the taxpayers. According to the last CBO estimate of this bill, the majority would pass a bill that breaks their promise to leave untouched the Social Security Trust Fund. CBO recently said this bill would use \$15 to \$17 billion of the Trust Fund—and who knows just how much this Congress will raid from the Trust Fund once this bill in its final form is enacted.

Finally, it exceeds all of the budget caps put into place in 1997 to balance the federal budget, stretching credibility and the imagination by declaring things like the Head Start program—begun in 1964—as an 'emergency,' along with the census, operations of the Pentagon and other basic functions of government. If we intend to 'bust the budget caps' and declare them obsolete now that we have a budget surplus, we should do so in an honest way and be straight with the American people.

There are some good provisions in this legislation, along with the bad provisions. It provides the President with his priorities of 100,000 new teachers and tools to create smaller teacher/student classrooms; 50,000 more police on America's streets; and a much-needed pay raise for military personnel.

However, there is no reason why this Congress could not have passed these initiatives in a deliberative manner with full debate in this House, instead of in this format. Instead, the majority has cobbled together a massive Thanksgiving turkey of a bill, to present to the American people in one whole form to avoid the scrutiny that would mean the death of some of the more controversial provisions in this legislation. These are the same leaders that told the American people that if they were in charge they would pass a budget on time, with 13 appropriations bills passed separately, without spending any of the Social Security Trust Fund. Their failure to keep their word has resulted in this bill, which I urge my colleagues to oppose.

Ms. STABENOW. Mr. Speaker, I rise today in opposition to this bill and the process that brought it to the floor. My primary concerns are that we have not received sufficient guarantees that the Social Security surplus is protected, and we have not extended the Social Security Trust Fund for even one day. Prior to consideration of this package, the Congressional Budget Office certified that Congress was on pace to spend \$17 billion from the Social Security Trust Fund in Fiscal Year 2000. Given that the offsets in this bill do not reach this level, and that this bill relies on numerous questionable budget gimmicks geared to mask the overall effect on Social Security, I cannot support it. At the same time, there are numerous examples of wasteful, unnecessary spending projects—money that would be better spent on Social Security and Medicare.

What makes the above problems all the more tragic is that there are many positive aspects to this measure. As a sponsor of the COPS 2000 legislation, which will authorize the placement of 50,000 additional police officers on our streets, I am especially pleased that a down payment on this funding is included in this bill. In addition, money to add 100,000 new teachers to our schools to reduce class size is also included, as well as an increased commitment to the Lands Legacy Initiative, which will protect our natural areas. I voted for funds to help implement the Wye River peace agreement when they were considered previously, and I would like to be able to vote for them today. This bill restores resources, at least modestly, to our hospitals, nursing homes, and home health facilities that have been negatively impacted by the Balanced Budget Act of 1997, but it does not do enough to solve the long term problems with Medicare reimbursement levels. I have been a leader of this effort, and I voted for similar provisions when they passed the House a few weeks ago. But I said at that time that more needed to be done to adequately address unfair cuts in Medicare. This budget puts pork barrel projects before funding for home health care, hospitals and nursing homes, and this is wrong.

Mr. Speaker, this Congress opened with a bipartisan commitment to preserving the integrity of the Social Security system. This budget does not live up to that commitment. Protecting and strengthening Social Security and Medicare are top priorities for the families I represent and this budget does not pass the test. I urge my colleagues to oppose this legislation.

Mr. BENTSEN. Mr. Speaker, I rise today in support of the conference report on the omnibus Fiscal Year 2000 Appropriations Bill for

the District of Columbia, the Departments of Labor, Health and Human Services, Education, Commerce, Justice, State, Interior, and Foreign Operations.

Unfortunately, Mr. Speaker, the process which brought about this omnibus bill makes a mockery of regular order in this House. Over seven weeks into the new fiscal year, and requiring an array of accounting gimmicks purporting to stay within the budget caps, my colleagues on the other side of the aisle should be ashamed of themselves for bringing such a monstrosity forward at this eleventh hour. Filing conference reports at three in the morning and then insisting that we pass legislation which no one has had the opportunity to comprehensively review serves no useful purpose other than to convey to the American people how incapable the majority is of effectively governing. Their display of ineptitude is, however, a perfect ending to a session of Congress that will long be remembered as one of missed opportunities to address the needs of Americans. Included in this graveyard of dead legislation are such important initiatives as a patients' bill of rights, prescription drugs for the elderly, and substantive reform of Medicare and Social Security.

This bill caps this Congress' departure from the 1997 Balanced Budget Act which I helped write and supported. Because of that bill and previous actions, the Nation today enjoys both a budget surplus and good economic times. Early in the year, however, the Republican Leadership determined to increase funding for defense, agriculture, education; much of it justified, but in excess of the 1997 caps. Rather than honestly explaining this to the American people, the Republican Leadership chose instead to engage in budget gimmicks and subterfuge as is evident today. Unfortunately, at this late hour, they have held hostage must-pass initiatives related to health care, general government, foreign policy and education. Because of that fact, and the fact that we continue to maintain a balanced budget and dedicate the vast majority of the projected surplus to debt reduction, I will support this conference report. Many of the items contained in the bill are too important to be allowed to lapse.

For instance, this bill includes clarifications and corrections to the Medicare changes contained in the 1997 Balanced Budget Act which exceeded spending reduction targets at the expense of our seniors and teaching hospitals. This bill provides \$12.8 billion over five years in new funding for Medicare reforms which are necessary and vital to the health of our nation's senior citizens.

Specifically, these provisions include a section based upon legislation, H.R. 1224, which I have sponsored, along with Representative CARDIN, to ensure fair and equitable Medicare funding for residents being trained to be physicians. Section 541 of Title V of this bill would, for the first time, ensure that teaching hospitals, such as those at the Texas Medical Center, will receive higher Medicare reimbursements for their physician residents. Under current law, these graduate medical education resident payments are based upon hospital-specific costs. As a result, teaching hospitals in Texas currently receive as much as six times less than those paid to hospitals in New York. This