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17 October 1988
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STAT NOTE FOR: [redacted]
C/Administrative Law Division/OGC

STAT FROM: [redacted]
Office of Congressional Affairs

SUBJECT: Post-Employment Restrictions

Attached for your information is a copy of H.R. 5043, the "Post-Employment Restriction Act of 1988." The Act recently passed the House. I had sent you an earlier version of the bill in August. A companion bill passed the Senate in April.

Attachment

STAT OCA/LEG/[redacted] 18 Oct 88

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men and staffs of the Energy and Commerce Committee and the Public Works Committee, a compromise has been fashioned which I understand meets the concerns of all interested parties.

In particular, the provision now contained in the bill allows carowners to whom a State has issued title to grant a power of attorney to the automobile dealer where title at the time of the sale is physically held by a lienholder. Limiting the use of the power of attorney to this "first sale" instance should assist auto dealers in completing the sales transaction while affording sufficient safeguards against odometer fraud. In particular, the provision prevents auto dealers from executing powers of attorney in later transfers of the vehicle and from creating long paper trails that are difficult for law enforcement officials to trace.

In our effort to balance the competing demands of auto dealers and State consumer affairs' officials, I believe it is important to reiterate Congress' desire to protect the ultimate purchaser of the used car. The policy which underlies the Federal truth-in-mileage laws is to protect the consumer from unscrupulous car salesmen who roll back odometers and fraudulently represent high-mileage autos as low-mileage ones. I hope the use of powers of attorney in auto sales does not exacerbate the problem of odometer tampering. However, if it does, I expect that my colleagues will join me in working with State officials and the National Highway Traffic Safety Administration in cracking down on such fraud, notwithstanding any perceived inconvenience for auto sales.

I would like to thank again Chairman GLENN ANDERSON and Chairman JOHN DINGELL and their staffs and commend them for their cooperation and assistance in this important issue.

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

The SPEAKER pro tempore (Mr. GRAY of Illinois). The question is on the motion offered by the gentleman from Indiana [Mr. SHARP] that the House suspend the rules and agree to the resolution, House Resoulution 583.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SHARP. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on House Resolution 583, the resolution just agreed to.

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

There was no objection.

POSTEMPLOYMENT RESTRICTIONS ACT OF 1988

Mr. FRANK. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5043) to amend section 207 of title 18, United States Code, relating to restrictions on postemployment activities, as amended.

The Clerk read as follows:

H.R. 5043

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 "Post-Employment Restrictions Act of 1988".

SEC. 2. RESTRICTIONS ON POST-EMPLOYMENT ACTIVITIES.

(a) RESTRICTIONS.—Section 207 of title 18, United States Code, is amended to read as follows:

"§ 207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches; restrictions on partners of certain current officers and employees of the executive branch

"(a) RESTRICTIONS ON ALL OFFICERS AND EMPLOYEES OF THE EXECUTIVE BRANCH AND CERTAIN OTHER AGENCIES.—

"(1) PERMANENT RESTRICTIONS.—Any person who is an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States (including the Government Printing Office and the General Accounting Office), including the President, the Vice President, and any special Government employee, and who, after his or her service or employment with the United States Government terminates, knowingly—

"(A) acts as agent or attorney for, or otherwise represents, aids, or advises any other person (except the United States) concerning any formal or informal appearance before, or

"(B) makes, with the intent to influence, any communication on behalf of any other person (except the United States) to,

any department, agency, court, or court-martial of the United States, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter—

"(i) in which such person knows that the United States is a party or has a direct and substantial interest,

"(ii) in which the person participated personally and substantially as such officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, and

"(iii) which involved a specific party or specific parties at the time of such participation,

shall be punished as provided in subsection (g).

"(2) TWO-YEAR RESTRICTIONS.—Any person subject to the restrictions contained in paragraph (1) who, within 2 years after his or her service or employment with the United States Government terminates, knowingly—

"(A) acts as agent or attorney for, or otherwise represents, any other person (except the United States) in any formal or informal appearance before, or

"(B) makes, with the intent to influence, any communication on behalf of any other person (except the United States) to,

any department, agency, court, or court-martial of the United States, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter—

"(i) in which such person knows that the United States is a party or has a direct and substantial interest,

"(ii) which such person knows was actually pending under his or her official responsibility as such officer or employee within a period of 1 year before the termination of his or her service or employment with the United States Government, and

"(iii) which involved a specific party or specific parties at the time it was so pending,

shall be punished as provided in subsection (g).

"(3) ONE-YEAR RESTRICTIONS WITH RESPECT TO TRADE NEGOTIATIONS.—Any person subject to the restrictions contained in paragraph (1) who, within 1 year after his or her service or employment with the United States Government terminates, knowingly—

"(A) acts as agent or attorney for, or otherwise represents, aids, or advises any other person (except the United States) concerning any formal or informal appearance before, or

"(B) makes, with the intent to influence, any communication on behalf of any other person (except the United States) to,

any department, agency, court, or court-martial of the United States, or any officer or employee thereof, in connection with any trade negotiation—

"(i) in which such person knows that the United States is a party or has a direct and substantial interest, and

"(ii) which such person knows was actually pending under his or her official responsibility as such officer or employee within a period of 1 year before the termination of his or her service or employment with the United States Government, or

"(II) in which such person participated personally and substantially as such officer or employee within a period of 1 year before the termination of his or her service or employment with the United States Government,

shall be punished as provided in subsection (g). For purposes of this paragraph, the term 'trade negotiation' means negotiations undertaken to enter into a trade agreement pursuant to section 1102 of the Omnibus Trade and Competitiveness Act of 1988. This paragraph applies only in a case in which neither paragraph (1) or (2) of this subsection applies.

"(b) ONE-YEAR RESTRICTIONS ON CERTAIN SENIOR EXECUTIVE BRANCH PERSONNEL.—

"(1) RESTRICTIONS.—In addition to the restrictions set forth in subsection (a), any person who is an officer or employee of the executive branch or an independent agency (including the Government Printing Office and the General Accounting Office), who is referred to in paragraph (2) (other than a special Government employee who serves less than 60 days in the 1-year period before his or her service or employment as such employee terminates), and who, within 1 year after his or her service or employment as such officer or employee terminates, knowingly—

"(A) acts as agent or attorney for, or otherwise represents, any other person (except the United States) in any formal or informal appearance before, or,

"(B) makes, with the intent to influence, any communication on behalf of any person (except the United States) to,

any department or agency in which such person served within 1 year before such person's service or employment as such officer or employee terminated, or any officer or

employee thereof, in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, which such person knows is pending before such department or agency or in which such person knows that such department or agency has a direct and substantial interest, shall be punished as provided in subsection (g).

"(2) PERSONS TO WHOM RESTRICTIONS APPLY.—(A) Paragraph (1) shall apply to a person (other than a person subject to the restrictions of subsection (c) or (d))—

"(i) employed at a rate of pay fixed according to subchapter II of chapter 53 of title 5, or a comparable or greater rate of pay under other authority, or

"(ii) employed in a position which involves significant decisionmaking or supervisory responsibility, as designated by the Director of the Office of Government Ethics, in consultation with the department or agency concerned.

Only positions which are not referred to in clause (i), and for which the basic rate of pay is equal to or greater than the basic rate of pay payable for GS-17 of the General Schedule, or positions which are established within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978, or positions held by active duty commissioned officers of the uniformed services who are serving in a grade or rank for which the pay grade (as specified in section 201 of title 37) is pay grade 0-7 or 0-8, may be designated under clause (ii).

"(B) With respect to persons in positions designated under subparagraph (A)(ii), the Director of the Office of Government Ethics may limit the restrictions of paragraph (1) to permit a former officer or employee, who served in a separate agency or bureau within a department or agency, to make appearances before or communications to persons in an unrelated agency or bureau, within the same department or agency, having separate and distinct subject matter jurisdiction, upon a determination by the Director that there exists no potential for use of undue influence or unfair advantage based on past government service. On an annual basis, the Director of the Office of Government Ethics shall review the designations made under subparagraph (A)(ii) and the determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of the Director's responsibilities under this paragraph.

"(c) RESTRICTIONS ON OTHER SENIOR EXECUTIVE BRANCH PERSONNEL.—In addition to the restrictions set forth in subsection (a), any person who—

"(1) is appointed to a position in the executive branch or an independent agency (including the Government Printing Office and the General Accounting Office) which is listed in section 5314, 5315, or 5316 of title 5, or

"(2) is appointed by the President to a position under section 105(a)(2)(B) of title 3 or by the Vice President to a position under section 106(a)(1)(B) of title 3,

and who, within 1 year after that person's service in that position terminates, knowingly—

"(A) acts as agent or attorney for, or otherwise represents, any other person (except the United States) in any formal or informal appearance before, or

"(B) makes, with the intent to influence, any communication on behalf of any other person (except the United States) to,

any department or agency in which such person served within 1 year before such person's service in such position terminated, or any officer or employee thereof, in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which such person knows that the United States is a party or has a direct and substantial interest, shall be punished as provided in subsection (g).

"(d) RESTRICTIONS ON VERY SENIOR EXECUTIVE BRANCH PERSONNEL.—(1) In addition to the restrictions set forth in subsection (a), any person who—

"(A) serves in the position of President or Vice President of the United States,

"(B) is appointed to a position in the executive branch or an independent agency (including the Government Printing Office and the General Accounting Office) which is listed in section 5312 or 5313 of title 5,

"(C) is appointed by the President to a position under section 105(a)(2)(A) of title 3 or by the Vice President to a position under section 106(a)(1)(A) of title 3, or

"(D) serves on active duty as a commissioned officer of a uniformed service in a grade or rank for which the pay grade (as specified in section 201 of title 37) is pay grade 0-9 or 0-10,

and who, within 1 year after that person's service in that position terminates, knowingly—

"(i) acts as agent or attorney for, or otherwise represents, any other person (except the United States) in any formal or informal appearance before, or

"(ii) makes, with the intent to influence, any communication on behalf of any other person (except the United States) to,

any department, agency, or person described in paragraph (2), in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which such person knows that the United States is a party or has a direct and substantial interest, shall be punished as provided in subsection (g).

"(2) The departments, agencies, and persons referred to in paragraph (1) with respect to appearances or communications by a person in a position described in subparagraph (A), (B), (C), or (D) of paragraph (1) are—

"(A) any department or agency in which such person served in such position within a period of 1 year before such person's service or employment with the United States Government terminated, and any officer or employee of such department or agency,

"(B) any other person appointed to a position in the executive branch which is listed in section 5312, 5313, 5314, 5315, or 5316 of title 5, and

"(C) in the case of a former President or Vice President, the following: any department or agency in the executive branch of the United States Government, any independent agency of the United States, and any officer or employee of any such department or agency.

"(e) RESTRICTIONS ON MEMBERS OF CONGRESS AND OFFICERS AND EMPLOYEES OF THE LEGISLATIVE BRANCH.—

"(1) MEMBERS OF CONGRESS AND ELECTED OFFICERS.—(A) Any person who is a Member of Congress or an elected officer of either House of Congress and who, within 1 year after that person leaves office, knowingly—

"(i) acts as agent or attorney for, or otherwise represents, any other person (except the United States) in any formal or informal appearance before, or

"(ii) makes, with the intent to influence, any communication on behalf of any other person (except the United States) to,

any of the persons described in subparagraph (B), in connection with any matter which such former Member of Congress or elected officer knows is pending before the Congress or any matter on which such former Member of Congress or elected officer seeks action by the Congress or by a Member of Congress in his or her official capacity, shall be punished as provided in subsection (g).

"(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former Member of Congress or elected officer, are any Member of Congress, elected officer, or employee of the House of Congress in which such former Member or officer served.

"(2) PERSONAL STAFF.—(A) Any person who is an employee of a Senator or an employee of a Member of the House of Representatives and who, within 1 year after that employment terminates, knowingly—

"(i) acts as agent or attorney for, or otherwise represents, any other person (except the United States) in any formal or informal appearance before, or

"(ii) makes, with the intent to influence, any communication on behalf of any other person (except the United States) to,

any of the persons described in subparagraph (B), in connection with any matter which such former employee knows is pending before the Congress or any matter on which such former employee seeks action by the Congress or by a Member of Congress in his or her official capacity, shall be punished as provided in subsection (g).

"(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a person who is a former employee are the following:

"(i) the Senator or Member of the House of Representatives of whom that person was an employee; and

"(ii) any employee of that Senator or Member of the House of Representatives.

"(3) COMMITTEE STAFF.—Any person who is an employee of a committee of Congress and who, within 1 year after that person's employment as such employee terminates, knowingly—

"(A) acts as agent or attorney for, or otherwise represents, any other person (except the United States) in any formal or informal appearance before, or

"(B) makes, with the intent to influence, any communication on behalf of any other person (except the United States) to,

any person who is an employee of that committee of Congress, in connection with any matter which such former employee knows is pending before the Congress or any matter on which such former employee seeks action by the Congress or by a Member of Congress in his or her official capacity, shall be punished as provided in subsection (g).

"(4) LEADERSHIP STAFF.—(A) Any person who is an employee on the leadership staff of the House of Representatives or an employee on the leadership staff of the Senate and who, within 1 year after that person's employment on such staff terminates knowingly—

"(i) acts as agent or attorney for, or otherwise represents, any other person (except

the United States) in any formal or informal appearance before, or

"(ii) makes, with the intent to influence, any communication on behalf of any other person (except the United States) to,

any of the persons described in subparagraph (B), in connection with any matter which such person knows is pending before the Congress or any matter on which such former employee seeks action by the Congress or a Member of Congress in his or her official capacity, shall be punished as provided in subsection (g).

"(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the following:

"(i) in the case of a former employee on the leadership staff of the House of Representatives, those persons are any Member of the leadership of the House of Representatives, and any employee on the leadership staff of the House of Representatives; and

"(ii) in the case of a former employee on the leadership staff of the Senate, those persons are any Member of the leadership of the Senate, and any employee on the leadership staff of the Senate.

"(5) LIMITATION ON RESTRICTIONS.—(A) The restrictions contained in paragraphs (2), (3), and (4) apply only to acts by a former employee who was paid for services rendered as such employee at a rate of pay equal to or greater than the basic rate of pay payable for GS-17 of the General Schedule under section 5332 of title 5, for a period of more than 60 days during the 1-year period before that former employee's service as such employee terminated.

"(B) The restrictions contained in paragraphs (2), (3), and (4) shall not apply to any appearance, communication, or representation by a former Member of Congress, elected officer, or employee which is made in carrying out official duties as an officer or employee of the United States Government.

"(6) DEFINITIONS.—As used in this subsection—

"(A) the term 'committee of Congress' includes standing committees, joint committees, and select committees;

"(B) a person is an employee of a House of Congress if that person is an employee of the Senate or an employee of the House of Representatives;

"(C) the term 'employee of the House of Representatives' means an employee of a Member of the House of Representatives, an employee of a committee of the House of Representatives, an employee of a joint committee of the Congress whose pay is disbursed by the Clerk of the House of Representatives, and an employee on the leadership staff of the House of Representatives;

"(D) the term 'employee of the Senate' means an employee of a Senator, an employee of a committee of the Senate, an employee of a joint committee of the Congress whose pay is disbursed by the Secretary of the Senate, and an employee on the leadership staff of the Senate;

"(E) a person is an employee of a Member of the House of Representatives if that person is an employee of a Member of the House of Representatives under the clerk hire allowance;

"(F) a person is an employee of a Senator if that person is an employee in a position in the office of a Senator;

"(G) the term 'employee on the leadership staff of the House of Representatives' means an employee of the office of a Member of the leadership of the House of Representatives described in subparagraph (K), the minority sergeant at arms, and any policy-level employee appointed under authority of the minority party leadership of the House of Representatives;

"(H) the term 'employee on the leadership staff of the Senate' means an employee of the office of a Member of the leadership of the Senate described in subparagraph (L);

"(I) the term 'Member of Congress' means a Senator or a Member of the House of Representatives;

"(J) the term 'Member of the House of Representatives' means a Representative in, or a Delegate or Resident Commissioner to, the Congress;

"(K) the term 'Member of the leadership of the House of Representatives' means the Speaker, majority leader, minority leader, majority whip, minority whip, chief majority whip, chief minority whip, Democratic Steering Committee, Democratic Caucus, Republican Conference, Republican Research Committee, and Republican Policy Committee, of the House of Representatives; and

"(L) the term 'Member of the leadership of the Senate' means the Vice President, and the President pro tempore, Deputy President pro tempore, majority leader, minority leader, majority whip, minority whip, Conference of the Majority, Conference of the Minority, chairman and secretary of the Conference of the Majority or Conference of the Minority, Majority Policy Committee, and Minority Policy Committee, of the Senate.

"(f) OFFENSES LIMITED TO ACTS FOR COMPENSATION.—(1) An act does not constitute an offense under subsection (a), (b), (c), (d), or (e) unless the act is done for compensation.

"(2) As used in this subsection, the term 'compensation' means anything of value which is provided, directly or indirectly, for services rendered, including a payment, gift, benefit, reward, favor, or gratuity.

"(g) PENALTIES.—The punishment for an offense under subsection (a), (b), (c), (d), or (e) is the following:

"(1) Any person who engages in the conduct constituting the offense shall be imprisoned for not more than 1 year or fined in the amount set forth in this title, or both.

"(2) Any person who willfully engages in the conduct constituting the offense shall be imprisoned for not more than 2 years or fined in the amount set forth in this title, or both.

"(h) GENERAL EXCEPTIONS.—

"(1) CERTAIN ELECTED OFFICIALS AND EMPLOYEES.—(A) The restrictions contained in subsection (a) shall not apply to any appearance, communication, or representation which is made in carrying out official duties as an elected official of a State or local government.

"(B) The restrictions contained in subsections (a)(2), (a)(3), (b), (c), (d), and (e) shall not apply to any appearance, communication, or representation by a former Member of Congress or officer or employee of the executive or legislative branch, which is made in carrying out official duties as—

"(i) an elected official of a State or local government, or

"(ii) an employee of (I) an agency or instrumentality of a State or local government, (II) an institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or (III) a hospital or medical research organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, if the appearance, communication, or representation is on behalf of such government, institution, hospital, or organization.

"(2) INTERNATIONAL ORGANIZATIONS.—The restrictions contained in subsections (a)(2), (a)(3), (b), (c), (d), and (e) shall not apply to the representation of, or advice or aid to, an international organization of which the United States is a member.

"(3) PUBLIC SPEECHES AND APPEARANCES.—The restrictions contained in subsections (b), (c), (d), and (e) shall not apply to the making of public speeches or public appearances.

"(i) DESIGNATIONS OF SEPARATE STATUTORY AGENCIES AND BUREAUS.—

"(1) DESIGNATIONS.—For purposes of subsections (b) and (c), and except as provided in paragraph (2), whenever the Director of the Office of Government Ethics determines that a separate statutory agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency, the Director shall by rule designate such agency or bureau as a separate department or agency.

"(2) INAPPLICABILITY OF DESIGNATIONS.—(A) A designation of an agency or bureau under paragraph (1) shall not apply with respect to—

"(i) a former head of that designated agency or bureau; and

"(ii) any former officer or employee of the department or agency within which the designated agency or bureau exists, if the official responsibilities of the officer or employee included supervision of that designated agency or bureau.

"(B) No agency or bureau within the Executive Office of the President may be designated under paragraph (1) as a separate department or agency.

"(C) Even if an agency or bureau is designated under paragraph (1), a person subject to the restrictions set forth in subsection (c) may not make any representation or other appearance prohibited by that subsection before, and may not make any communication prohibited by that subsection to, any person who is serving in a position set forth in section 5312, 5313, 5314, 5315, or 5316 of title 5, in the department or agency within which the designated agency or bureau exists.

"(j) EXCEPTION FOR SCIENTIFIC OR TECHNOLOGICAL INFORMATION.—The restrictions contained in subsections (a), (b), (c), and (d) shall not apply with respect to the making of communications by a former officer or employee solely for the purpose of furnishing scientific or technological information, if such communications are made under procedures acceptable to the department or agency concerned or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

"(k) RESTRICTIONS ON PARTNERS OF OFFICERS AND EMPLOYEES.—Any person who is a partner of an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States (including the Government Printing Office and the General Accounting Office), including the President, the Vice President, and any special Government employee, and who knowingly acts as agent or attorney for anyone other than the United States before any department, agency, court, or court-martial of the United States, or any officer or employee thereof, in connection with any judicial or other proceed-

ing, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which such person knows that—

"(1) the United States is a party or has a direct and substantial interest, and

"(2) such officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise,

shall be imprisoned for not more than 1 year or fined in the amount set forth in this title, or both.

"(l) EXCEPTION FOR TESTIMONY.—Nothing in this section shall prevent a former Member of Congress or officer or employee of the executive or legislative branch from giving testimony under oath, or from making statements required to be made under penalty of perjury.

"(m) ADMINISTRATIVE DEBARMENT.—

"(1) AUTHORITY.—If the head of a department or agency in which a former officer or employee of the executive branch or of an independent agency served finds, after notice and an opportunity for a hearing, that such former officer or employee knowingly engaged in conduct constituting an offense under subsection (a), (b), (c), or (d) of this section, such department or agency head may prohibit that person from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the intent to influence, any communication to, such department or agency on a pending matter of business for a period of not more than 5 years, or may take other appropriate disciplinary action. For purposes of this subsection, proof of conduct constituting an offense must be established by a preponderance of the evidence.

"(2) REVIEW OF DISCIPLINARY ACTION.—Any disciplinary action under paragraph (1) shall be subject to review in an appropriate United States district court.

"(3) PROCEDURES.—Departments and agencies in the executive branch and independent agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection.

"(n) CIVIL PENALTIES.—The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under subsection (a), (b), (c), (d), (e), or (j) and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than $50,000, or the amount of compensation which the person receives for the prohibited conduct, whichever amount is greater. The imposition of a civil penalty under this subsection does not preclude any other remedy which is available by law to the United States or any other person.

"(o) INJUNCTIVE RELIEF.—If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense under subsection (a), (b), (c), (d), (e), or (j), the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court shall order the trial of the action on the merits to be advanced and consolidated with the hearing on the petition. The court may issue such order if it finds that such conduct constitutes such an offense. The filing of a petition under this subsection does not preclude any other remedy which is available by law to the United States or any other person.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 11 of title 18, United States Code, is amended by amending the item relating to section 207 to read as follows:

"207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches; restrictions on partners of certain current officers and employees of the executive branch.".

SEC. 3. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsection (b), this Act and the amendments made by this Act take effect 9 months after the date of the enactment of this Act.

(b) EFFECT ON EMPLOYMENT.—(1) The amendments made by this Act apply only to persons whose service as a Member of Congress or an officer or employee to which such amendments apply terminates on or after the effective date of such amendments.

(2) With respect to service as an officer or employee which terminates before the effective date of this Act, section 207 of title 18, United States Code, as in effect at the time of the termination of such service, shall continue to apply, on and after such effective date, with respect to such service.

The SPEAKER pro tempore. Is a second demanded?

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

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

There was no objection.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. FRANK] will be recognized for 20 minutes and the gentleman from North Carolina [Mr. COBLE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. FRANK].

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

Mr. Speaker, last week the House, in a courageous fashion, adopted a resolution which dealt with the question of the rights of employees.

□ 1645

It dealt with that very small minority of situations when employees might be aggrieved because, I believe from my experience in 8 years that legitimate complaints would arise in only a small minority of cases. We are here today to deal with another situation where I believe our respect for this institution calls on us to pass a law which will probably be not needed in very many cases. But I think it is important that we show that we are fully prepared to live under the laws that we set for other people.

When Lyn Nofziger was convicted of lobbying his former colleagues he pointed out that the act he had been convicted of did not apply to Members of Congress. He was right. That, of course, is no justification for him knowingly to have violated the law. But I do believe that it is legitimate for us to pass this law which among other things, would apply to Members of Congress the restrictions on lobbying one's former colleagues for a 1-year period.

We do not come here today because any pattern of egregious abuse has been brought foward. We do not have a pattern of Members abusing it. Members ought to know, yes, there are former Members who are allowed on the floor of this House who use other facilities. In my 8 years here I have never been lobbied on the floor of the House by an ex-Member. I believe that ex-Members are quite scrupulous in observing the propriety with regard to that.

But there are ex-Members who do serve as legislative representatives, a logical way for them to be employed.

What this bill says is not that that is an inherently evil practice, but that a cooling-off period ought to exist. We are in a very collegial occupation. We work with each other, we lobby each other, we do each other favors, we try to persuade each other. The nature of the legislative process demands collegiality or it does not work. If there were 435 atavistic individuals, each deciding on his or her own to do exactly what he or she wanted, the place would simply grind to a halt. Good personal relationships among Members are an essential part of this institution.

What this bill says is not that there is any pool of corruption here, not that people here are particularly prone to abuse. Indeed, I believe after 8 years of service here that quite the contrary is true, that the average level of ethical and moral concern here is higher than it is in the society at large.

But what we are saying is this: There ought to be a cooling off period for 1 year. Why 1 year? Well, there is never any magic to 1 year as opposed to 6 months or 1½ years, but 1 year seems about right.

What we are saying is this: There ought to be a 1-year lapse between the time that we work with each other as colleagues, as co-Members and the time when one of us approaches another on behalf of a private interest. Lobbying is a very legitimate function. None of us could work well, this institution would not work well without well-informed and responsible lobbyists.

But there ought to be a cooling-off period between the time when we approach each other as full colleagues and when one approaches the other as a lobbyist. That is one of the things this bill does.

Another thing it does is to address some of the concerns that Whitney North Seymour outlined when he made his public statement after the Deaver case was concluded.

Under the law as it exists now, the office of Government Ethics can compartmentalize agencies for the purposes of this law. So that, as Michael Deaver argued, he was allowed in his judgment to lobby the Office of Man-

agement and Budget because he was a special assistant to the President.

Our version of the bill substantially restricts compartmentalization. It wipes it out with regard to the high level executives, the levels 1 and 2 of the executive compensation and severely restricts it with regard to lower levels.

There was also a provision in the bill, as it now exists, as the law now exists, which says that you cannot lobby someone only on a matter that is of significance to him. So one defense was, "Well, I lobbied the guy, but he didn't care about it so I am okay."

We have substantially responded, I believe, to what Whitney North Seymour did.

Now there are other differences between our bill and the bill which passed the Senate. The differences are primarily with regard to Members of Congress, congressional staffs, and nonpresidentially appointed civil servants.

Our bill is not as restrictive.

With regard to political people, elected Members of both Houses and top Presidential appointees, I believe we are essentially the same. I think we target a little better in some ways, but essentially we are the same. We do not act as strictly with regard to committee staff and Members' staffs and with regard to civil servants. I am pleased with our position there. One thing that I received as subcommittee chairman from the Reagan administration were a number of letters, from the Justice Department, the SEC and others, saying that the Senate restrictions with regard not to the political appointees, but to the high level civil servants would make it difficult for us to recruit people.

I am not worried about recruitment of Secretaries of State and Members of the House and the Senate. Shame on anyone who would turn down a Cabinet job or the enormous privilege of serving in this body or the Senate. And it may this week seem less of a privilege than it sometimes does. But it is still about as great a privilege as can be bestowed upon someone in a democratic society. Anyone who is deterred from accepting that honor because he or she might have diminished postemployment opportunities does not concern me. But when we are talking about the hard-working staff, the staff that sits next to me here that did such excellent work on this bill and that served all of us so well, when we are talking about GS-17's and 18's, I want to be restrictive the way we are in our bill. The 17's and 18's, they cannot switch sides, they cannot work for the Government and then go work for the opposition. But they are not subject to the kind of restrictive and I think excessive bans as they are in the Senate.

Finally, I want to pay tribute to a couple of our colleagues who sit here; the gentlewoman from Ohio [Ms. KAPTUR] and the gentleman from Michigan [Mr. WOLPE] because of their concern as representatives of American working people with people who would work for the American Government in a trade area and then quit and use the expertise acquired in that work to help people compete with Americans.

We have in fact some stronger language than the Senate does, specifically with regard to people who would work for the U.S. Trade Representative or elsewhere in trade, to prevent that kind of side-switching to the detriment of Americans.

Mr. Speaker, I hope that our bill is enacted. I am going to yield to other Members. I do at this point want to mention the excellent work done by a couple of people. The gentleman from Kansas [Mr. GLICKMAN] who preceded me as chairman, who had a very important set of hearings on this and really began grappling with this enormously difficult issue where it is possible to do great harm under the guise of reform. I think we avoid that. The gentleman from Kansas is the one who began confronting that issue.

I am enormously grateful to that very helpful legacy that he left me.

I also want to pay tribute to the chairman of the committee, the gentleman from New Jersey [Mr. RODINO]. I know this is not his favorite bill. He is a man who has served himself here for 40 years as an absolute model of integrity and I can understand his concern to make sure that no one thinks that in passing this bill we are pointing fingers at people. Because, a man who like himself has brought honor to this body for 40 years is entitled, in his last days, to emphasize that this is a place for honorable people who do honorable things.

I appreciate the guidance and concern he has been willing to show. I thought it would be especially relevant for me to pay him this tribute on what he knows is really Columbus Day, no matter what the law says. I am delighted to be able to pay that tribute to the gentleman from New Jersey today.

Finally, on the minority side, my former ranking Member who decamped for rarified precincts over at the Committee on Ways and Means, but who participated with his staff in a very helpful way in drafting the bill that I think we can be proud of, and his successor. And one other of our colleagues, let me mention the gentleman from Texas [Mr. SMITH] who cannot be with us today, because he was legitimately called away by a longstanding engagement that he made when he thought we were going to be adjourned.

He has made an enormous contribution to this bill as well.

Mr. Speaker, I hope we will pass the bill.

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

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

Mr. Speaker, as the ranking member of the Subcommittee on Administrative Law and Governmental Relations wherein this bill was initially considered in the House, I rise in support of this legislation. Postemployment restrictions on Federal Government employees, Mr. Speaker, is not a new concept to this Government. Some form of postemployment restriction has existed on our executive branch for close to a hundred years. The law under which we are currently operating—title 18, section 207 was enacted in 1978 as part of the "Ethics in Government Act." The 1978 act created ethical safeguards which covered all three branches of our Government and broadened postemployment restrictions on our executive branch personnel.

As we have observed over the last several years, Congress has enjoyed the ability to point fingers at executive branch personnel who have violated postemployment restrictions imposed upon them by us, however, we have no such laws restricting our ability to earn a living after we leave the legislative branch even if it includes lobbying Congress. Two former executive branch employees have been indicted based indirectly and directly on violations of postemployment laws. Now it is our turn to show that we don't agree with the double standard which imposes laws on others and excludes us. H.R. 5043 provides us that opportunity, Mr. Speaker, by imposing postemployment restrictions on Members of Congress and our staff here in the legislation branch and I think it is high time we did so.

I think it is important to note here, Mr. Speaker, that approximately 1 year ago, during this body's deliberations on legislation to reauthorize the independent counsel statute, an amendment was offered to include Members of Congress within the group of executive branch personnel who live under the shadow of that law. I supported that amendment to include Members of Congress, explicitly under the independent counsel statute. That amendment, however, failed directly down party lines. Ironically, although many of my colleagues chose to exclude themselves from the independent counsel provision of the Ethics in Government Act just 1 year ago, we find ourselves here today, less than 30 days away from a Presidential election, seemingly ecstatic to include ourselves in other provisions of the Ethics in Government Act. Mr. Speaker, I supported equal treatment then, and I support equal treatment today.

It is further important to note, Mr. Speaker, that several amendments were offered during the Judiciary Committee's deliberations on this bill which would have strengthened this bill, but which were defeated. I offered an amendment, Mr. Speaker, which

would preclude employees of the Federal Government who had access to classified U.S. Government information from working for any foreign government for 18 months after they leave their employ. I believe that was an important amendment, Mr. Speaker, because, in my opinion, if a conflict of interest exists within the private sector of this country for people who formerly worked for our Government, I think such a conflict certainly exists with regard to former Government employees working for a foreign government; especially if they had access to classified information. Unfortunately, that amendment was defeated along party lines, with all Republicans in support.

My Republican colleague from Pennsylvania, Mr. GEKAS, with whom I serve on the Judiciary Committee, offered an amendment to this bill during committee debate to include the judicial branch under the restrictions which we impose on the executive branch. That amendment would have done away with the double standard which exists in our ethics laws today. We sit here proudly today, claiming to rid our laws of a double standard which exists in our ethics laws because we are acting to include ourselves under the same rules which we have applied to the executive branch, however, we refuse to apply it to all three branches of our Government. Unfortunately, this double standard will continue to exist until we apply the same rules to all three branches of our Government. Mr. Speaker, that amendment was also defeated along party lines with Republicans in support. It appears to me, Mr. Speaker, that while we have the opportunity today to address a serious discrepancy that exists in our Federal ethics laws, we are willing to only solve half the problem, because it is the more politically ripe half of the problem.

Despite its shortcomings, Mr. Speaker, I support this bill today and I commend this body for moving this legislation forward. It is my hope that the next time this body addresses the issue of ethics, that it will not be during a Presidential election year, so that we will be able to address the issue from a legislative perspective, not a political one.

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

Mr. FRANK. Mr. Speaker, I yield 2 minutes to the gentleman from Kansas [Mr. GLICKMAN].

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

□ 1700

Mr. GLICKMAN. Mr. Speaker, this is an important bill. It does many significant things to improve our ethics and the appearance that we are operating within the highest standards of ethics possible.

No. 1, it applies postemployment restrictions to Members of Congress, and it prohibits us as House Members, once we leave this place, from lobbying our colleagues for 1 year, and it prohibits Senators, once they leave the Senate, from lobbying their colleagues for 1 year.

It is important to protect the integrity and appearance of integrity of the legislative process that we do this. The public perception is that the revolving door unfairly benefits high-level government employees like Members of Congress. The public perception is also that we often treat ourselves differently than the executive branch or private sector. This bill assures that we are subject to the same and similar restrictions in connection with the revolving door that high-level government employees are currently subject to.

Second of all, Mr. Speaker, in the enforcement area of our ethics law this bill does something very significant. It establishes civil penalties and injunctive relief to insure effective enforcement of the law.

The point of this is that under current law we essentially have to show a criminal violation with that standard of burden of proof, and we must basically get a conviction in order to punish people for violating ethics laws. Under this bill we have that remedy as well, but we also have civil damages and, more importantly, injunctive relief to stop offenders' actions as it is about ready to begin.

For example, in the trade area we all know that there is serious damage that can be done to this country if people go to work and relate national secrets or trade secrets to foreign governments or to foreign companies. This injunctive action will be very, very helpful in making sure that our ethics laws work, and the civil and injunctive penalties together will form a tremendous complement with our criminal penalties to make sure that these laws work very, very well.

So I think this is an important bill. It is not the be-all and end-all to ethics issues, but it is a good start.

Mr. Speaker, I would like to pay special tribute to the chairman of our full committee, the gentleman from New Jersey [Mr. RODINO], not only because his point of view in this legislation has helped to get it to the floor, but the fact that he is in my judgment one of the most distinguished Members of this body that I have ever met. I have had the opportunity to serve with him for about 7 of my 12 years since I have been in this Congress. He has had a great personal impact on me, and to this body and to this country generally. I know that he will get lots of lattitudes and all sorts of special orders on this particular legislation, one that is very important to the future integrity of the House, and the Senate, and the legislative branch and our Government as a whole. Mr. Speaker, I think that he deserves special credit.

Mr. COBLE. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from Florida [Mr. SHAW].

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

Mr. SHAW. Mr. Speaker, as the gentleman from Kansas [Mr. GLICKMAN] rightfully pointed out, we deal with perceptions. I think at all levels of politics people deal with perceptions. The perceptions out there, my colleagues, are not too bright. We are not at all times held in great esteem by the American people, and that is despite the fact that the majority of the men and women who labor in this hall are fine, outstanding people who are here for the sole purpose of trying to make a better country. But, nevertheless, there is another perception out there that is correct, and that perception is that this House of Representatives does exclude itself from many bills that it passes that affect the ethics and conduct of the executive branch, that affects the ethics and conduct of the private sector.

Mr. Speaker, this is a giant step that we are taking today. We are applying the same standard of conduct for postemployment here in the House of Representatives and in the U.S. Senate as we have substantially applied upon the executive branch. And these are a very serious, serious set of laws that we are talking about because in some instances it is going to limit what former staff members and former Members of this House can and cannot do once they leave employment here in the House of Representatives.

But in doing so, Mr. Speaker, we are substantially duplicating what we have placed upon the executive branch, which incidentally is also made up of very fine, dedicated, hard-working men and women who want nothing more than to make this a better country.

Not long ago I tried to do the same thing with special counsel, and I still believe that it is very important that this body apply the laws applying to special counsel to itself that it has applied to the executive branch.

But anyway I think that it is important to recognize today that this is a landmark day, and this is a landmark piece of legislation. I sincerely hope that the chairman and the ranking member can work their will and go through conference in order to have this bill passed into final law before this Congress comes to an end, and in doing so, as a former ranking member on the Subcommittee on Administrative Law and Governmental Relations, I would like to compliment my former chairman, the gentleman from Massachusetts, who has labored long and hard to get this bill through, and the new ranking member, the gentleman from North Carolina, for all the good work that they have done in bringing this bill along this far.

Mr. Speaker, this has not been the most popular bill to ever come to the Committee on the Judiciary, but it is one of the best, and I would say that this is a red-letter day for the Congress and the Committee on the Judiciary.

Mr. Speaker, as the former ranking member of the Subcommittee on Administrative Law and Governmental Relations, I had the opportunity it participate in the hearings on and subcommittee consideration of H.R. 5043. Based on my observations of the testimony and amendments which were favorably considered at subcommittee on this bill, I rise in support of H.R. 5043.

As has been stated here today, postemployment restrictions on our executive branch have existed for many years. However, no such restrictions have existed on members of this branch regarding the same postemployment conflicts of interest. This body's partisan attacks on the Reagan administration over the last several years regarding ethical and alleged ethical violations by members of the executive branch have highlighted the double standard to which we hold ourselves and members of our executive branch. I don't think the discrepancy which exists between our postemployment laws with regard to executive and legislative branch coverage is fair. I do not think it is right, and I think it is appropriate that we cure that double standard by passing H.R. 5043 here today.

While there have been arguments made that no evidence exists of abuse by former Members of Congress or former congressional staff regarding postemployment activities, it is the perception here that I think we must address. If there is a perception in the public eye that our Government, and especially this body, is not covering itself with laws prohibiting unethical behavior, then I think we do a great disservice to the public by avoiding the issue. By considering H.R. 5043 here today, we are seizing an opportunity to cure that perception or mispreception, as the case may be, and show the American public that we will pass laws to prohibit such activities.

You may recall, Mr. Speaker, that during this body's deliberations last year on legislation to reauthorize the independent counsel law, I offered an amendment to specifically cover members of this body as well as members of the executive branch under that law. The same double standard applied there as it does here, and I've heard all the specious agruments about why that is a different issue. I don't agree. There exist ethical canons and rules covering lawyers and judges and conflicts of interest similar to what this legislation addresses. But we choose here today to explicity include under a criminal statute Members of Congress. We should have done the same under the independent counsel law and for the same reasons.

Despite our shortsightedness in the past, I see much support here today in the shadow of a Presidential election to include Members of Congress under additional provisions of the Ethics in Government Act. I supported doing so last year and I support doing so again here today. I urge my colleagues to support H.R. 5043; it is much-needed legislation.

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

Mr. FRANK. Mr. Speaker, let me again thank the gentleman from Florida [Mr. SHAW] for his cooperation.

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

Mr. Speaker, we use the word a lot, but the gentleman from New Jersey [Mr. RODINO] is the enormously distinguished chairman of the full committee who is drawing to a close one of the most impressive congressional careers, I believe, in our country's history.

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

Mr. RODINO. Mr. Speaker, I want to thank the gentleman from Massachusetts [Mr. FRANK], the chairman of the subcommittee. I must commend him for being sensitive to the concerns that have been expressed by many of us who did not want to overreach.

However, Mr. Speaker, I must say that the measure has been dealt with, as I described, sensitively and with concern for the possibility that we might overreach.

H.R. 5043, the Post-Employment Restrictions Act of 1988 strengthens and clarifies the current criminal conflict of interest statutes that apply to the post-employment activities of executive branch personnel; and establishes new criminal conflict of interest prohibitions to apply to the post-employment activities of legislative branch personnel.

H.R. 5043 addresses loopholes in current law. First, this legislation prevents the compartmentalization of the Executive Office of the President. Under current law, the EOP has been subdivided by the Director of the Office of Government Ethics into nine compartments. It is generally agreed that this authority to compartmentalize the EOP is unnecessary and allows the current statute to be avoided by White House personnel. In addition, H.R. 5043 makes it clear that trade negotiations are covered by post-employment restrictions. There is some question whether, under current law, this area is covered.

When the Ethics in Government Act was enacted in 1978, it included post-employment restrictions. I supported those restrictions, as I have always supported ethics laws which address demonstrated problems and which are designed to promote and protect the integrity of the Government decision-making process.

There is no doubt of the necessity for strong ethics laws. At the same time, the balance which has been struck in the current statute preserves the ability of the Federal Government to attract and retain employees of the highest caliber to carry out the diverse, far ranging, and essential functions of the Government. Thus, the current statute balances several considerations: the danger of possible influence peddling by former Federal employees; the right of former Federal employees to earn a living after leaving Government service; and the ability of the Government to attract qualified individuals to Government service.

While is is critical that actual loopholes in the current law be addressed as is done by H.R. 5043, it is equally important that we not move in the direction of overly severe postemployment restrictions which will hurt the ability of the entire Government to recruit new employees and to retain its current ones. When Congress passed the Ethics in Government Act in 1978, there was a massive exodus of career and political executive branch employees. This occurred because the law, or originally enacted—and we were very enthusiastic about the law at the time—would have prevented many individuals from earning a living after leaving Government service. As a result, it was necessary to amend the law less than 1 year after its original enactment—in fact, before it even became effective—in order to remove those punitive and overbroad restrictions. It was imperative to the governmental process that we not lose some valuable employees and the institutional and substantive knowledge they possessed.

It is generally agreed that the so-called revolving door between private life and Government service is a distinctly American institution that is one of the real strengths of our Government. By attracting top people from the private sector to serve the Nation, even for limited periods of time, we infuse new blood and new ideas into the bureaucracy. Therefore, even the career civil service is not made up exclusively of permanent office holders. Moreover, as testimony during our committee hearings pointed out, "the importance of recruiting talented leaders—from the private sector—for government service has increased as both the functions of government and the technological complexity of governmental decisions have increased." Thus, our system of Government is strengthened by making it more vital and by trying it more closely to the people it serves.

I am concerned about the new provisions relating to postemployment restrictions on the legislative branch for several reasons. First, there is no documentation of any abuse. Not a single instance of specific evidence of abuse is described in the extensive hearings in either the House or Senate.

Second, the legislative responsibilities require Members of Congress to be informed about legislative proposals and about currents of opinion concerning that legislation. Our rights as Members to inform ourselves, even through unsolicited information, are protected by the speech of debate clause of the Constitution. By applying postemployment restrictions to the legislative branch, we potentially deprive ourselves of valuable sources of

information simply because the communicator is a former legislative branch officer or employee. And those who seek "redress of grievance" also have rights restricted by these bans—the right to select the person they want to present their grievance and to represent them.

Finally, the legislative branch differs in operation from the executive branch. Almost every legislative function is performed on the public record. There are exceptions, but most decisions by Congress are made in public—committee hearings and markups, as well as floor debate and votes. On the other hand, because of its very nature, executive branch decisionmaking is often cloaked in secrecy, and it is, therefore, difficult to hold people individually accountable for their actions. Also unlike the executive branch, the legislative branch makes collective decisions, not individual ones.

Several questions are raised concerning coverage of former Members of Congress by postemployment restrictions. How does contact by former Members of Congress differ from contacts by campaign contributors, political parties, business corporations, public interest groups, and even close friends of current officials? Does a former elected official of one political party really have the potential to unduly influence a current elected official of another political party?

In addition, Members of Congress are already subject to a more stringent accountability. We must be reelected and therefore, must answer to our constituencies at each election—for those of us in the House, this accountability comes every 2 years. If our constituents think we have been, or are subject to being, unduly or improperly influenced, they can refuse to reelect us.

I think the real problem of ethics concerning the Congress is not a postemployment revolving door, but the problem of honoraria and campaign contributions given to current Members of Congress. Being lobbied by a former Member of Congress is less an appearance of a conflict problem than being lobbied by one who contributes to a Member's political campaign or who have paid him an honorarium. This is where there is a genuine danger of undue influence.

The proposed prohibitions on the legislative branch raise questions about the first amendment rights both of former Members and employees of the legislative branch. The proposal to cover elected Members of Congress also treats the legislative branch more harshly than the executive branch. The legislative branch is covered by a no contact ban, while the executive branch coverage has a nexus test for most of the officers and employees subject to restrictions.

Executive branch employees are covered by civil service job protections, such as tenure and due process rights to prevent arbitrary dismissal. Although the House recently adopted the fair labor resolution, legislative branch employee protections are not as potent as executive branch employee protections. For example, even with passage of the fair labor resolution, a legislative branch employee who is fired has no recourse for reinstatement. Executive branch employees have individual authority to award contracts, approve regulations, and take other binding actions that may mean millions of dollars to a private interest. Legislative branch personnel must act through the institution and publicly. Executive branch personnel often make decisions behind closed doors. Any legislative branch decision that affects those outside of Congress must be acted on publicly and by the Members, not by staff.

The difficulty of enacting strong and fair restrictions on postemployment activity should not be underestimated. It is important not to go too far and create new criminal laws that are so onerous as to unfairly punish many valuable public servants. H.R. 5043 has been finely tuned to address only those issues where a problem has been demonstrated or a real potential for a problem exists.

Mr. COBLE. Mr. Speaker, I yield 3 minutes to the distinguished gentlewoman from Ohio [Ms. KAPTUR].

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

Ms. KAPTUR. Mr. Speaker, I thank the gentleman from North Carolina [Mr. COBLE] for his kindness.

Mr. Speaker, I rise in strong support of H.R. 5043, the Postemployment Restrictions Act of 1988.

It is time, high time, to stop former public officials from taking advantage of their privileged insider knowledge gained at taxpayer expense. Integrity in public service should never be called into question.

Mr. Speaker, my interest in this legislation stems from its provision to ban former executive branch officials from representing, aiding, or advising a party about a trade negotiation which was under the employee's responsibility while working for the Government. Since 1985 the gentleman from Michigan [Mr. WOLPE] and I have pushed this legislation to prohibit former top U.S. Government officals from representing a foreign interest on a matter before the U.S. Government for a cooling-off period after our officials leave government service.

The need for this particular bill became apparent to me in 1984 when a businessman from my district expressed his complete loss of trust in our Federal Government and our public officials. After giving a senior level Commerce Department official confidential information about his business during a trade mission to Japan, he was dismayed to learn during a subsequent visit to Washington that this same individual has left Government service to lobby on behalf of his Japanese competitors.

Mr. Speaker, America can do better than that.

What I did not know when we first introduced this bill was that history was but the tip of the iceberg where so many of our citizens unfortunately put their own pocketbook interests ahead of the interests of this Republic. People like Robert Watkins, who, while he was involved in trade negotiations on behalf of the United States, was soliciting postemployment opportunities with the Japanese Government in their auto firms, or Wally Lenahan who divulged the United States trade position on textiles at the Geneva meeting, or Eric Garfinkle, who, while in the employment of the United States, when he was negotiating on machine tools, before the agreement was even signed, went to work on behalf of Japanese machine tool interests.

□ 1715

I think that what makes it so attractive for these people to do this is that they are paid five times more on average than their salaries with the U.S. Government.

Although I do not believe this legislation goes far enough to stop the mass exodus that occurs yearly from the U.S. Trade Representative's office and the Department of Commerce and other Government agencies where we lose people where they go to work in lobbying activities on the other side, I believe the bill goes a long way and it a positive step to restoring integrity to the institutions we rely on to protect America's economic interest in the global marketplace.

Mr. Speaker, I want to end by thanking the gentleman from Massachusetts [Mr. FRANK] for his legislative skill in working with all the various interests on this bill and for his diligence and sensitivity to all the Members.

Also I want to congratulate the gentleman from New Jersey [Mr. RODINO], the chairman of the committee, for his always being Mr. Integrity and whenever it was a question of protecting America's interests, that has been the hallmark of his career.

Mr. FRANK. Mr. Speaker, the gentlewoman was on a roll and we did not want to interrupt her.

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

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

Mr. FLORIO. Mr. Speaker, I rise in support of H.R. 5043, a bill to strengthen the restrictions on postemployment lobbying by public officials.

In the past year, the public has grown increasingly alarmed at the abuses of former high-level officials like Michael Deaver and Lyn Nofziger who have used their connections to influence the Government and at the same time enrich themselves with large lobbying fees.

The convictions of these two men show that Congress and the courts refuse to tolerate such unethical behavior. But for too long now we in Congress have lived by a double standard, exempting ourselves from measures prohibiting the same type of behavior which we condemn in others. The time has come for that double standard to end, and H.R. 5043 would do just that. It would impose, for the first time, restrictions on lobbying by former Members of Congress and their top staff.

Some Members of this body have pointed out that there are few, if any, actual examples of unethical behavior involving former Members of Congress lobbying on Capitol Hill. But there is no denying that the present system with its absolute lack of restrictions offers the potential for abuse. We must not wait for such abuse to occur. As elected representatives, we need to set the highest standards of excellence in Government. Those whom we serve deserve to know that we will never betray their trust for our own personal profit.

H.R. 5043 is a carefully crafted, thoughtful approach to ensuring that the opportunity for abuse no longer exists. It provides for a 1-year cooling off period during which Congressmen and Senators would be prohibited from lobbying in the Chamber in which they had served, and legislative staff making over $72,500 would be prohibited from lobbying the Congressman or Senator for whom they had worked.

H.R. 5043 takes a positive first step toward creating higher ethical standards throughout the Federal Government. I feel, that even stronger measures can and should be taken. All former Members of Congress, for example, should be restricted for 1 year from lobbying anywhere within the legislative branch. In addition, tougher penalties should be imposed upon those who do violate the public's trust.

Despite potential improvements that could be made, I am proud to be a cosponsor of H.R. 5043, and I hope that my colleagues will join me in supporting this measure.

Mr. FRANK. Mr. Speaker, I yield 3 minutes to the gentleman from Michigan [Mr. WOLPE].

Mr. WOLPE. Mr. Speaker, I rise in strong support of H.R. 5043, the Post Employment Restriction Act of 1988. And I want to begin my remarks by paying special tribute to Mr. FRANK for his creative and sensitive leadership in bringing this bill to the floor this year, and to Mr. GLICKMAN, for all of his work on this issue in the last session of Congress.

I recognize that there are many in this House that would have preferred to see this legislation buried for the indefinite future—feeling that the inclusion of Members of Congress within its coverage represents a solution in search of a problem. Yet I submit that the failure to include Members of Congress would only deepen public cynicism about the self-serving nature of our national institutions.

The fact of the matter is we do have a problem. Watergate, ABSCAM, Irangate, Deavergate, and Pentagon contractor scandals have all taken their toll in an erosion of public trust and confidence in our political institution. A recent public opinion survey revealed that no more than 40 percent of the American public thought of their Government as honest. And poll after poll attests to the sense of a large number of Americans that average citizens count for very little nowadays and that public policy is controlled by an array of powerful, well-financed special interests.

There is enormous danger here. A democracy cannot long function if its citizens do not trust the integrity of their political institutions and leaders, or find them to be unresponsive to the popular will. And, indeed, the past couple of decades have witnessed a sharp falling away from political participation. People, feeling increasingly powerless, have in effect become powerless.

The erosion of public confidence in our national institutions will not be reversed overnight. It will take time to restore trust, and it will take a very different kind of example than that which has been set by the Michael Deavers and Rita Lavelles and Ed Meeses of this administration.

But the legislation before us, the Postemployment Restrictions Act of 1988, takes an important step by addressing one of the most egregious and frequent violations of the public trust: High-level public officials using the insider information and special access they have acquired through their public service for their private gain. Time and time again, we have seen key officials leave their Government posts to take enormously lucrative positions with the very interests that fell within their regulatory, administrative, or legislative responsibilities. And in the process, not only have they compromised the trust that had been placed in them, but they have also compromised the agencies or institutions within which they had operated. The revolving door has been endemic, and it is time the revolving door be slammed shut. And that is the purpose of the bill before us.

I want to draw particular attention to the bill's fair trade negotiations section. This section incorporates the thrust of legislation Congresswoman MARCY KAPTUR and I introduced 3 years ago. Our Foreign Agents Compulsory Ethics in Trade ACT-IT—was a response to a series of journalistic exposes and the work of economist Pat Choate. These writings documented a number of high-ranking American officials, particularly in the Office of the U.S. Trade Representative, leaving their Government employment and turning up, virtually the next day, in the employment of foreign governments or foreign companies. Indeed, it seems as if the Federal Government has become, for some, little more than a finishing school for the highly paid lobbyists of foreign interests.

This is wrong. Dead wrong. American taxpayers have a right to expect that those who are negotiating on America's behalf are doing so with American interests foremost, and are not being diverted or tempted by the prospect of lucrative post-Government employment with the foreign interest that sits on the opposite side of the bargaining table.

The legislation before us would prohibit American trade officials from representing, aiding or advising any person other than the United States in a trade negotiation for a period of 1 year following their departure from the American Government. Frankly, I wish the prohibition could be substantially longer. Our original face-it bill called for a 10-year ban. And a more recent version proposed a 4-year prohibition. Our feeling has been that more time is needed for the advantages—of insider knowledge and special access—which a former Government official brings to his or her foreign clients, to dissipate. But even a 1-year ban on such post-Government employment will help insulate Government agencies and personnel from the kinds of improper influences and temptations that may well compromise the integrity of Federal agencies. This legislation takes a small step, but it is an important one. I hope it will receive the overwhelming bipartisan support of this body.

Mr. COBLE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from California [Mr. EDWARDS].

Mr. EDWARDS of California. Mr. Speaker, I rise in opposition to this bill. Others before me have said that this bill is a legislative solution in search of a problem. I agree. Even the distinguished chairman of the Administrative Law Subcommittee and floor manager of this bill has conceded that there is no evidence of abuse in the legislative branch. Congress may have its share of ethics related problems—certainly the papers have been full of stories in recent weeks and months that, if true, might give voters pause about the scruples of their elected representatives. But none of these stories, or the incidents they describe, are in any way affected by this bill.

On the contrary, this bill focuses only on the postemployment activities of former executive and legislative branch officials and employees. Lately there have been a couple of highly publicized incidents of postemployment abuses by two former members of the Reagan administration. Those two individuals were indicted and convicted, if not for ethics violations, for crimes arising directly out of ethical abuses.

I suspect that much of the impetus for this bill stems from those two cases. But I suggest that those cases prove that the current laws work, not that we need more of them.

Some have argued that those two cases revealed loopholes in the law that need to be closed; others have said that, as a matter of parity or fairness, Congress ought to be covered as well as the executive branch. Neither of those arguments requires us to turn

a blind eye to the Constitution or to act in haste. We have only to look at what has been happening in both Houses of Congress in recent days to know that haste, particularly in an election year, frequently spells disaster—or at the very least, disregard for the Constitution.

We may needs a new ethics bill; I don't know. Nothing I've heard so far has convinced me that the current law needs changing. But if there is going to be a bill, and I suspect there is, then why not have one that addresses the serious constitutional concerns that surround any effort to restrict first amendment activity.

Let's be clear about that: lobbying Congress and the executive branch is activity protected by the first amendment. Getting paid for it doesn't make it any less protected.

The Supreme Court has laid down a strict two part test against which to measure Government efforts to regulate first amendment activity: first, the regulation must serve a compelling State interest and second, it must be narrowly drawn to serve that purpose and no more.

The bill's sponsors admit there is no evidence of a compelling need and, as the bill has moved forward, it has been broadened not narrowed. The bill flunks the test. I urge a "no" vote.

Mr. COBLE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Iowa [Mr. NAGLE].

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

Mr. NAGLE. It is ironic, Mr. Speaker, to be here today and to think back to the early 1970's and the mid-1970's when we raced to watch a TV that was installed in our office to watch the proceedings of the Watergate hearings and to realize that in the last week of the tenure of the chairman of the Judiciary Committee, the gentleman from New Jersey [Mr. RODINO], that I have the opportunity to speak on our bill that has been produced by his committee. It is an honor to do so, an honor particularly in light of his record.

Mr. Speaker, I come at this I think perhaps from a different perception than others. New to the body, I must confess that I have been impressed by it. I have been impressed by the integrity of the Members. I have been impressed by the effort to gather factual information that goes into our process. I have been impressed by the diversity of our membership and I have been impressed by the fact that the institution, despite all its flaws that it produces, does seem to work well.

I have been distressed, distressed by the seeming willingness of Members to attack the institution for their own political gain or to somehow appear superior to the rest of us.

The ethics bill that we debate today as it pertains to Members really has on it two fronts. One is to remove any possible perception that somehow the information Congress received is biased, whether we acted in a special or unevenhanded manner, to preserve our integrity by preserving the public's perception of the integrity of the institution.

The second goes to the very process of gathering the information itself, to see that the information Congress does consider is considered on the basis of the merits of the idea that is presented to us and not on the basis of who presents it, not on the basis of what form it comes in to us.

I think the bill is necessary and profitable from a perception standpoint and from the standpoint of insuring that the integrity of the institution is maintained. I support it. I support it strongly, and I think it is a positive step and I think it is a salute to the chairman of our Judiciary Committee that we undertake this legislation in his last week.

Mr. SMITH of Texas. Mr. Speaker, the 1978 Ethics in Government Act's "revolving door" restrictions apply only to former officials and employees of the executive branch. The Post-Employment Restrictions Act of 1988 extends this act's restrictions to the Congress despite flaws. For this reason it deserves support.

Better we seize the opportunity and pass this bill than to allow Congress to continue to exempt former Members and their staff from the Ethics Act. Corrections must be left to further legislative action and judicial review.

My concerns about the bill are twofold: First, that certain provisions of the bill may unconstitutionally interfere with the ability of elected officials to receive information; and second, that the inclusion of compensation as a requirement for an act to be illegal is a serious loophole that will substantially weaken the law.

Still, this bill provides an extraordinary legislative opportunity to adopt a policy that makes the revolving door laws applicable to the Congress.

I wish to thank the chairman of the House Administrative Law Subcommittee, Mr. FRANK, for his commitment and leadership in guiding this bill through the House.

I also wish to thank the subcommittee's ranking minority member, Mr. COBLE, for his support during consideration of this bill.

Mrs. SCHROEDER. Mr. Speaker, the Reagan-Bush administration has a remarkable record of providing job opportunities—but mostly by hiring sleazy characters to Government jobs. Over 250 administration appointees have been charged with criminal wrongdoing, abuse of power, and offensive behavior. These individuals came to Washington on the pledge of good government and instead, as former Republican Congressman Caldwell Butler said "put all four feet and a snout in the trough."

H.R. 5043 bars officials from jumping to lucrative positions by cashing in on their Government relationships—the Deaver-Nofziger syndrome. Immediately upon leaving his White House job, Michael Deaver formed a lobbying business and sold his contacts with high level administration officials to foreign nations and corporate giants with huge stakes in Federal spending. Lyn Nofziger, also a former White House aide and longtime adviser to President Reagan, lobbied administration officials on behalf of his clients. Mr. Nofziger even suggested that President Reagan could help persuade the Army to give the Wedtech Corp. a military contract.

By limiting high officials from trading on their Government service, legislation will discourage the even more brazen group of administration rogues who start capitalizing on their Government positions while still on the public payroll.

Consider the following cases:

Hal Albert, while head of the Defense Audio Visual Agency in the Department of Defense, supervised contract negotiations with Dynalectron in May 1984, and in July joined the company to become manager of the $23 million contract with the Pentagon.

Arthur P. Brill, Jr., while Director of Public Affairs for the President's Commission on Organized Crime, allegedly used official stationary and mailed at Government expense an announcement to hundreds on his media list that he was starting his own "media crisis management" business.

Guy W. Fiske, while Deputy Secretary of the Department of Commerce, allegedly negotiated the sale of the weather satellites to Comsat at the same time he was negotiating a high level job for himself with the same company.

Michael Frost, while an official of the Office of Personnel Management, took Government paid trips to California during which he arranged to be appointed to a position by Governor Deukmajian.

Mary Ann Gilleece, while Deputy Under Secretary of the Department of Defense and the Pentagon's top procurement regulator, solicited business from defense contractors for a firm she intended to establish after leaving the Government.

James E. Jenkins, while Deputy Counselor to the President, allegedly was instrumental in the Wedtech Corp.'s successful bid on a military contract and later became the contractor's chief Washington representative.

Norman B. Ture, while Under Secretary for Tax and Economic Affairs at the Department of Treasury, urged the Department to purchase an economic model from an accounting firm that was in the process of buying the rights to the model from him.

H.R. 5043 will send a loud signal to prospective appointees that Government service is a rewarding pursuit in itself but not a ticket to later gold.

Mr. FRENZEL. Mr. Speaker, it is always tough to vote against a so-called reform bill. Many Members and constituents equate criticism of the Congress with goodliness. I know, because I have, early and often, taken that position myself. It is normally a valid position.

But, messing around with constitutional issues is a risky adventure. We need to be sure there is a real need and a responsible reaction to the need. Unless it has been pretty clearly demonstrated that the system is broken, repairs are best not under taken.

As has been noted here, there is no clear evidence of abuse. The rationale here is that two ex-administration members broke the law, and the legislative is the same as the executive. Neither is a good excuse for this bill.

In the first place, the law-breakers were already caught. In their case, the existing law was adequate. In the second place, the legis-

lative branch is quite different from the executive branch.

Any reform law that grandfathers not only past members and employees, but also grandfathers an exclusion for those now contemplating retirement, must be immediately suspect. If we need to worry about last year's retirees, and this year's, perhaps we ought to worry about next year's too. If we don't have to worry, we don't need the bill.

I have not seen wrong-doing as the main issue here. We have had ethics and conflict of interest laws on our books for over 100 years. I will conceed that improvement is always possible. I am concerned that the revolving door laws which already apply to the executive branch have slowed the movement of able people into Government. Those who made the sacrifice to get into Government, ought to be able to return to their previous vocations. America doesn't have so many able, experienced people trying to do the public's business that it can afford to discourage very many of them.

The legislative branch is another problem. I am not contemplating retirement. I don't plan to lobby when I do. Even so, when a person subjects himself or herself to biannual ratification, there ought not be a restriction on that individual's right to work or speak when voluntarily or involuntarily retired.

We have lots of ex-colleagues lobbying us. Some are said to be good; some are said to be less so. I have yet to see action on their part that would be improved by this legislation, or, conversely, I have seen no good that would have come from preventing them from doing whatever they are doing. Nor does the committee's record give any evidence of wrong-doing that would have been prevented by this bill.

A last point may be a familiar one. Again we have been subjected to a limited debate, no amendment process which is contrary to democratic procedures, and surely is a source of sloppy lawmaking. To handle a bill with controversial constitutional questions is to invite trouble. A good rule for me is that when in doubt, vote against bills on the Suspension Calendar.

Very few people will dare vote against the bill. It's pretty hard to explain why a Member voted against reform. I will cast my "no" vote with reluctance, and with regret. But until the managers can show a need, and a good result, it is not possible for me to vote "yes."

Mr. FORD of Michigan. Mr. Speaker, I rise in opposition to H.R. 5043 as brought before the House today. While I have no problem with the intent of the bill; namely, prohibiting Members of Congress and senior Government executives in both the legislative and executive branches from banking on "revolving door" arrangements, I must oppose the bill because I find its limitations to be unreasonable in certain circumstances.

I agree that Members of Congress and senior executives should not be able to spend a few years in the Government's employ only to turn around, go to the private sector, and cash in on connections made and information gained through their Federal employment.

However, for those who have chosen to make a career of public service or whose service is terminated by circumstances beyond their control, the provisions of the bill are unduly onerous.

In all honesty, I do not see how we can ask our professional staff to spend years developing their expertise for the low salaries that we are able to pay them and then tell them that they cannot go into private practice as professionals if they plan to deal with the Government.

Clearly, from my experience of almost 24 years in Congress, this bill attempts to solve a problem that doesn't exist.

Had this bill been considered under normal procedures, I was prepared to offer an amendment which would have exempted from provisions of the bill Members of Congress and congressional employees who retire from their positions on an immediate annuity. I see no reason why a retiree, someone who has completed a career with the Federal Government, shall be foreclosed from making use of experience garnered over many years.

The amendment would have exempted from the bill's restrictions Members of Congress who lose their bids for reelection or whose congressional seats are lost through redistricting. I think it unfair to restrict the employment of these people whose employment is terminated through what can best be termed "involuntary separation."

While I laud the intent of the sponsors of the legislation and commend the subcommittee chairman, Mr. FRANK, for his expedience in bringing this important matter before the House, I am discouraged by the process under which this legislation is being considered and must oppose its passage.

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

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

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts [Mr. FRANK] that the House suspend the rules and pass the bill, H.R. 5043, as amended.

The question was taken.

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

The yeas and nays were ordered.

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

GENERAL LEAVE

Mr. FRANK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5043, the bill just considered.

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

There was no objection.

BERNE CONVENTION IMPLEMENTATION ACT OF 1988

Mr. KASTENMEIER. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 4262) to amend title 17, United States Code, to implement the Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris on July 24, 1971, and for other purposes.

The Clerk read as follows:

Senate amendment: Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE AND REFERENCES TO TITLE 17, UNITED STATES CODE.

(a) SHORT TITLE.—This Act may be cited as the "Berne Convention Implementation Act of 1988".

(b) REFERENCES TO TITLE 17, UNITED STATES CODE.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to or a repeal of a section or other provision, the reference shall be considered to be made to a section or other provision of title 17, United States Code.

SEC. 2. DECLARATIONS.

The Congress makes the following declarations:

(1) The Convention for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, on September 9, 1886, and all acts, protocols, and revisions thereto (hereafter in this Act referred to as the "Berne Convention") are not self-executing under the Constitution and laws of the United States.

(2) The obligations of the United States under the Berne Convention may be performed only pursuant to appropriate domestic law.

(3) The amendments made by this Act, together with the law as it exists on the date of the enactment of this Act, satisfy the obligations of the United States in adhering to the Berne Convention and no further rights or interests shall be recognized or created for that purpose.

SEC. 3. CONSTRUCTION OF THE BERNE CONVENTION.

(a) RELATIONSHIP WITH DOMESTIC LAW.—The provisions of the Berne Convention—

(1) shall be given effect under title 17, as amended by this Act, and any other relevant provision of Federal or State law, including the common law; and

(2) shall not be enforceable in any action brought pursuant to the provisions of the Berne Convention itself.

(b) CERTAIN RIGHTS NOT AFFECTED.—The provisions of the Berne Convention, the adherence of the United States thereto, and satisfaction of United States obligations thereunder, do not expand or reduce any right of an author of a work, whether claimed under Federal, State, or the common law—

(1) to claim authorship of the work; or

(2) to object to any distortion, mutilation, or other modification of, or other derogatory action in relation to, the work, that would prejudice the author's honor or reputation.

SEC. 4. SUBJECT MATTER AND SCOPE OF COPYRIGHTS.

(a) SUBJECT AND SCOPE.—Chapter 1 is amended—

(1) in section 101—

(A) in the definition of "Pictorial, graphic, and sculptural works" by striking out in the first sentence "technical drawings, diagrams, and models" and inserting in lieu thereof "diagrams, models, and technical drawings, including architectural plans";

(B) by inserting after the definition of "Audiovisual works", the following:

"The 'Berne Convention' is the Convention for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, on September 9, 1886, and all acts, protocols, and revisions thereto.

"A work is a 'Berne Convention work' if—

"(1) in the case of an unpublished work, one or more of the authors is a national of a nation adhering to the Berne Convention, or in the case of a published work, one or more