

HON. RON PAUL OF TEXAS BEFORE THE US HOUSE OF REPRESENTATIVES April 14, 2005

Repeal Sarbanes-Oxley! Mr. Speaker, I rise to introduce the Due Process and Economic Competitiveness Restoration Act, which repeals Section 404 of the Sarbanes-Oxley Act. Sarbanes-Oxley was rushed into law in the hysterical atmosphere surrounding the Enron and WorldCom bankruptcies, by a Congress more concerned with doing something than doing the right thing. Today, American businesses, workers, and investors are suffering because Congress was so eager to appear “tough on corporate crime.” Sarbanes-Oxley imposes costly new regulations on the financial services industry. These regulations are damaging American capital markets by providing an incentive for small US firms and foreign firms to deregister from US stock exchanges. According to a study by the prestigious Wharton Business School, the number of American companies deregistering from public stock exchanges nearly tripled during the year after Sarbanes-Oxley became law, while the New York Stock Exchange had only 10 new foreign listings in all of 2004.

The reluctance of small businesses and foreign firms to register on American stock exchanges is easily understood when one considers the costs Sarbanes-Oxley imposes on businesses. According to a survey by Kron/Ferry International, Sarbanes-Oxley cost Fortune 500 companies an average of \$5.1 million in compliance expenses in 2004, while a study by the law firm of Foley and Lardner found the Act increased costs associated with being a publicly held company by 130 percent.

Many of the major problems stem from section 404 of Sarbanes-Oxley, which requires Chief Executive Officers to certify the accuracy of financial statements. It also requires that outside auditors “attest to” the soundness of the internal controls used in preparing the statements-- an obvious sop to auditors and accounting firms. The Public Company Accounting Oversight Board defines internal controls as “controls over all significant accounts and disclosures in the financial statements.” According to John Berlau, a Warren Brookes Fellow at the Competitive Enterprise Institute, the definition of internal controls is so broad that a CEO possibly could be found liable for not using the latest version of Windows! Financial analysts have identified Section 404 as the major reason why American corporations are hoarding cash instead of investing it in new ventures.

Journalist Robert Novak, in his column of April 7, said that, “[f]or more than a year, CEOs and CFOs have been telling me that 404 is a costly nightmare” and “ask nearly any business

executive to name the biggest menace facing corporate America, and the answer is apt to be number 404...a dagger aimed at the heart of the economy.”

Compounding the damage done to the economy is the harm Sarbanes-Oxley does to constitutional liberties and due process. CEOs and CFOs can be held criminally liable, and subjected to 25 years in prison, for inadvertent errors. Laws criminalizing honest mistakes done with no intent to defraud are more typical of police states than free societies. I hope those who consider themselves civil libertarians will recognize the danger of imprisoning citizens for inadvertent mistakes, put aside any prejudice against private businesses, and join my efforts to repeal Section 404. The US Constitution does not give the federal government authority to regulate the accounting standards of private corporations. These questions should be resolved by private contracts between a company and its shareholders, and by state and local regulations. Let me remind my colleagues who are skeptical of the ability of markets and local law enforcement to protect against fraud: the market passed judgment on Enron, in the form of declining stock prices, before Congress even held the first hearing on the matter. My colleagues also should keep in mind that certain state attorneys general have been very aggressive in prosecuting financial crimes

Section 404 of the Sarbanes-Oxley Act has raised the costs of doing business, thus causing foreign companies to withdraw from American markets and retarding economic growth. By criminalizing inadvertent mistakes and exceeding congressional authority, Section 404 also undermines the rule of law and individual liberty. I therefore urge my colleagues to cosponsor the Due Process and Economic Competitiveness Restoration Act.