

THE DIRECTOR OF CENTRAL INTELLIGENCE

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Office of Legislative Counsel

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5 OCT 1978

Mr. Larry A. Hammond
Deputy Assistant Attorney General
Office of Legal Counsel
Department of Justice
Washington, D.C. 20530

DOJ

Dear Larry:

The House passed H.R. 12171, the "Federal Accounting and Auditing Act of 1978" (the so-called "Brooks bill") on Tuesday, 3 October, under suspension of the rules. The bill as passed included the amendment proposed by the Permanent Select Committee on Intelligence (HPSCI).

During his remarks on the floor, Representative Brooks submitted for the Record a letter from HPSCI Chairman Boland, dated 3 October 1978, providing the views of the Committee on H.R. 12171 and the amendment thereto. The following two points in Chairman Boland's letter are particularly relevant:

1. Although the specified categories of financial transactions are, or may be, exempted from Comptroller General review, they are "not exempt... from any review." Chairman Boland goes on to note that, under the amendment, such transactions are "reviewable" by the two oversight committees, and that Representative Burlison's subcommittee "will conduct" an appropriate review.

2. Chairman Boland states that this amendment "fully satisfies the security concerns of the... Intelligence Community."

As we have discussed previously, the extent of the authority of the committees of Congress, particularly the oversight committees, to review sensitive intelligence financial transactions is a live issue. As you know, our concern all along with H.R. 12171 has been that it should

not alter the status quo as regards unvouchered funds expenditures and authorities. To the extent that the final sentence of the "Boland amendment" may be construed to alter that status quo with respect to review by the oversight committees, then we do not endorse that sentence; in that case, the amendment--in the words of Chairman Boland's letter-- does not fully "satisf[y] the security concerns of the ..intelligence community." This is a matter we will want to explore further.

Of course, nothing in Chairman Boland's letter goes to the other, primarily constitutional, problems the Department of Justice raised with H.R. 12171. This is understandable, since the appropriate focus of HPSCI's jurisdiction runs to intelligence "security concerns" rather than general, constitutional issues. Still, these remain very real concerns.

I have been informed by Mr. Vic Reinemer, on the Senate Governmental Affairs Committee, that they hope to take action on the bill next week. He said further that he had been in touch with the intelligence committee and was under the impression that the Boland amendment took care of all of our "intelligence concerns" with the bill. I told him this was essentially true although we were somewhat uncomfortable with the provisions therein relating to review by the intelligence committees; I also stated that it was our understanding the Department of Justice had other serious concerns with the bill.

I think we should get together on this as soon as possible. Please give us a call.

Sincerely,

[Redacted Signature]

Assistant Legislative Counsel

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Why do we have such a wide disparity in the estimate of the cost of this legislation between the USDA figures and the CEO figures? One is talking in terms of nearly \$3 million, the other is talking about \$300,000 or \$400,000 over the same period. It seems to me that if we are going to pass a bill to create another task force to do another study, we ought to know what it is going to cost.

Mr. GRASSLEY. Mr. Speaker, if the gentleman will allow me to answer the question, that was before the bill was amended; and now, with the amendment, it will be in the lower figure.

Mr. BAUMAN. It will be the lower figure?

Mr. GRASSLEY. Mr. Speaker, I will ask the gentleman from Indiana: Am I right on that?

Mr. FITZHIAN. Mr. Speaker, if the gentleman will yield, I want to assure my friend, the gentleman from Maryland (Mr. BAUMAN), that the original USDA estimate was made at the time when they interpreted the original language of the bill to require hearings and studies into every single possible obstruction to the movement of agricultural goods. Two changes in the bill have ensued: One, which my friend, the gentleman from Iowa, alludes to, was an amendment to title VI; and the other was stressing that it was to study and to review only those that would bring serious impact to agriculture. Therefore, the lower figure is the correct figure.

Mr. BAUMAN. Mr. Speaker, I thank the gentleman for his explanation, and if the gentleman will yield further, I have another question, and it pertains to the duplication that this task force may cause. I clearly remember, after the passage of the Northeast Emergency Railway legislation in 1973, that those of us who represent rural areas spent hundreds of manhours at hearings and meetings, and so on, which included agricultural commodities shipment studies under that act. The whole Northeast quadrant of the United States, from Chicago to Maine to the South, was studied in great depth, because the USRA had to determine which rails would be taken out of the eventual ConRail system and which were to be included.

I hope we are not going to replot all of that very expensive study by the Federal Government once again as a part of this task force study, and it raises the question as to whether this is necessary.

Mr. GRASSLEY. Mr. Speaker, I would expect that the task force would not break new ground again. Part of the job ought to be to first review what studies have already been made and build on those, as opposed to starting out fresh, anew. Perhaps the committee report should have made that point clear. Since it did not, let me assure you where this Member stands. I feel it should not repeat any earlier studies. We have not been quite that direct in our telling the Commission what they should do, but that would be my intent.

Mr. Speaker, I would ask the gentleman from Indiana (Mr. FITZHIAN) if he would like to speak to that point.

Mr. FITZHIAN. If the gentleman will yield, there is no intention. I can assure my friend, the gentleman from Maryland (Mr. BAUMAN), to start over and restudy rail abandonment and all of those problems. It is primarily looking at those real impediments to the agricultural sector and the movement of goods there.

Mr. Speaker, I would like to read a letter, dated August 31, 1978, that I received from the acting chairman of the Interstate Commerce Commission:

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., August 31, 1978.
Hon. FLOYD FITZHIAN,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN FITZHIAN: Thank you for your letter of July 10, 1978, requesting the views of the Interstate Commerce Commission on H.R. 12917. This bill would require the Secretary of Agriculture to conduct a study of rail lines in the United States and make recommendations for a railroad transportation system adequate to meet the needs of the United States' agricultural industry.

As you know, this legislation is identical to S. 1835 which was passed with minor modifications by the Senate on June 8, 1978. Prior to its passage, the Commission testified in favor of S. 1835 before two separate Senate Subcommittees.

The Commission continues to support this legislation because it establishes a mechanism for identifying the rail service needs of the agricultural industry. This information could be quite beneficial in aiding the Commission in its attempts to solve grain car shortage problems.

Last year, the Department of Defense provided us with this sort of information, by identifying the major main line corridors which are essential to the national defense and the lines that provide direct access to military installations. This information has been valuable to the Commission in considering national defense needs in our decisions. A similar identification of the agricultural industry's needs could aid the Commission in its deliberations and could assist the Department of Transportation in meeting its planning responsibilities. This would ultimately benefit the farmer, the processor, and the consumer, as well as the rail industry.

Accordingly, the Commission supports the speedy enactment of H.R. 12917. If I can be of any further assistance to you on this matter, please contact me.

Very truly yours,

(Mrs.) BETTY JO CHRISTIAN,
Acting Chairman.

I think that carries the thrust of where we are going with this study.

Mr. GRASSLEY. I would just add at this point, for the sake of the concern of the gentleman from Maryland, that legislative history now supports what was originally intended by the authors and supporters of this legislation.

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

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

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

Mr. GRASSLEY. 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 Indiana (Mr. FITZHIAN) that the House suspend the rules and pass the bill H.R. 12917, as amended.

The question was taken.

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

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 3, rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. FITZHIAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill, H.R. 12917.

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

There was no objection.

FEDERAL ACCOUNTING AND AUDITING ACT OF 1978

Mr. BROOKS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 12171) to strengthen the right of access of the Comptroller General to public and certain private records, to allow for limited auditing of unvouchered expenditures, and for other purposes, as amended.

The Clerk read as follows:

H.R. 12171

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Accounting and Auditing Act of 1978".

UNVOUCHERED EXPENDITURES

SEC. 2. Section 117 of the Accounting and Auditing Act of 1950 is amended by adding at the end thereof the following new subsection:

"(e) (1) Notwithstanding any provision of law heretofore enacted permitting an expenditure to be accounted for solely on the approval, authorization, or certificate of the President of the United States or an official of a department or establishment, the Comptroller General shall be furnished such information as he may request and shall have access to such books, documents, papers, records, and other information relating to such expenditure as may be necessary to enable him to determine whether the expenditure was, in fact, actually made and whether such expenditure was authorized by law. The provisions of this paragraph shall not be superseded except by a provision of law enacted after the date of enactment of this paragraph and specifically repealing or modifying the provisions of this paragraph.

"(2) With respect to any expenditure accounted for solely, on the approval, authorization, or certificate of the President of the United States or an official of a department or establishment and notwithstanding any previously enacted provision of law, no officer or employee of the General Accounting Office may release the findings of its audit of such expenditure or disclose any books, documents, papers, records, or other information concerning such expenditure to anyone not an officer or employee of the General Accounting Office, except to the duly established committees of the Congress having legislative or oversight responsibilities, under the rules of the House of Representatives or of the Senate, over the subject matter of the expenditure.

"(3) (A) Nothing in this subsection shall be construed as affecting the authority contained in subsection 8(h) of the Central Intelligence Agency Act of 1949, as amended.

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(B) The President may exempt from the provisions of paragraph (1) of this subsection financial transactions which relate to sensitive foreign intelligence or foreign counterintelligence activities; such an exemption may be given for a class or category of financial transactions. Financial transactions taken pursuant to subsection 8(b) of the Central Intelligence Agency Act of 1949, as amended, and financial transactions exempted from the provisions of paragraph (1) shall be reviewable by the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

ENFORCEMENT OF ACCESS TO RECORDS

Sec. 3. Section 313 of the Budget and Accounting Act, 1921, is amended by designating the existing paragraph as subsection (a), by deleting the last sentence thereof and by adding at the end the following new subsections:

(b) If any information, books, documents, papers, or records requested under subsection (a) or any other provision of law or agreement granting the Comptroller General a right of access from any department or establishment have not been made available to the General Accounting Office within a period of twenty calendar days after the request has been delivered to the office of the head of the department or establishment involved, the Comptroller General, through any attorney designated by him, is authorized to bring an action in the United States District Court of the District of Columbia against the head of the department or establishment concerned to compel the furnishing of such material. The Attorney General is authorized to represent the defendant official in such actions.

(c) (1) To assist in carrying out his functions, the Comptroller General may sign and issue subpoenas requiring the production of contractor and subcontractor records pertaining to negotiated contracts and records of other non-Federal persons or organizations to which he has a right of access by any law or agreement. Service of a subpoena issued under this subsection may be made by mailing a copy thereof by certified or registered mail, return receipt requested, addressed to such contractor, subcontractor, other non-Federal person, or organization at his or its residence or principal place of business.

(2) In case of failure to obey a subpoena issued under paragraph (1), the Comptroller General, through any attorney designated by him, may invoke the aid of any district court of the United States in requiring the production of the records involved. Any district court of the United States within whose jurisdiction the contractor, subcontractor, or other non-Federal person or organization is found or resides or in which the contractor, subcontractor, or other non-Federal person or organization transacts business, may, in case of refusal to obey a subpoena issued under this section, issue an order requiring compliance therewith; and any failure to obey such order of the court shall be treated by the court as a contempt thereof.

APPOINTMENT OF THE COMPTROLLER GENERAL AND DEPUTY COMPTROLLER GENERAL

Sec. 4. (a) Section 302 of the Budget and Accounting Act, 1921, is amended to read as follows:

(b) (1) There shall be in the General Accounting Office a Comptroller General of the United States who shall, from a list of persons submitted by the Commission described in subsection (b), be appointed by the President by and with the advice and consent of the Senate.

(2) The Deputy Comptroller General shall perform such duties as may be assigned to him by the Comptroller General. During the absence or incapacity of the Comptroller General, or during a vacancy in that office,

the Deputy Comptroller General shall act as Comptroller General.

(b) Whenever, after the date of enactment of this subsection, a vacancy occurs in the Office of Comptroller General, there is established a commission to recommend individuals to the President for appointment to the Office of Comptroller General and whenever, after such date, a vacancy occurs in the Office of Deputy Comptroller General, there is established a commission to recommend individuals to the President for appointment to the Office of Deputy Comptroller General. Such commission shall in either case consist of—

(1) the Speaker of the House of Representatives,

(2) the President pro tempore of the Senate,

(3) the majority and minority leaders of the House of Representatives and the Senate,

(4) the Chairman and ranking minority member of the Committee on Government Operations of the House of Representatives and of the Committee on Governmental Affairs of the Senate, and

(5) in the case of a vacancy in the office of Deputy Comptroller General, the Comptroller General of the United States. Such Commission shall, after consultation with the President, submit to the President for consideration the names of not less than three persons for the office of Comptroller General: Provided, That the President, within his discretion, may request that additional names be submitted.

(b) The first paragraph of section 303 of such Act (31 U.S.C. 43) is amended by striking out the first sentence and inserting in lieu thereof the following: "Except as otherwise provided in this section, the Comptroller General shall hold office for fifteen years and the Deputy Comptroller General shall hold office from the date of his appointment until the date on which an individual is appointed to fill a vacancy in the Office of Comptroller General. The Deputy Comptroller General may continue to serve until his successor is appointed."

(c) The amendments made by this section shall not apply to persons occupying the positions of Comptroller General and Deputy Comptroller General on the date of enactment of this Act, but shall apply with respect to any vacancy in such positions occurring on or after such date, and shall apply to any person appointed to fill such a vacancy.

The SPEAKER pro tempore. Is a second demanded?

Mr. HORTON. 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 Texas (Mr. Brooks) will be recognized for 20 minutes, and the gentleman from New York (Mr. Horton) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas (Mr. Brooks).

Mr. BROOKS asked and was given permission to revise and extend his remarks and to include extraneous matter.

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

Mr. Speaker, H.R. 12171 is designed to strengthen Congress oversight capabilities. It does this by enhancing the authority of the General Accounting Office to obtain information required in its oversight investigations. The bill also increases the role of Congress in selecting future Comptrollers General.

H.R. 12171 authorizes the Comptroller

General to audit "unvouchered" expenditures which today are accounted for solely on the approval or certificate of the President or other executive branch officials. The purpose of the audits are to determine whether expenditures are made for the purposes authorized by law. Disclosure of such information will only be to congressional committees having appropriate legislative and oversight responsibilities.

At present, excluding funds expended by the CIA, over \$23 million is spent annually through "unvouchered" expenditures by the White House, Treasury Department, National Science Foundation, HUD, and many other agencies. While necessary confidentiality must be preserved, where essential, neither Congress nor the public is being properly informed as to how this money is being expended.

In spite of the safeguards preserving confidentiality which are contained in this provision, the chairman of the permanent Select Committee on Intelligence has expressed concern over the possibility that sensitive intelligence information may be improperly disclosed. In consequence, an amendment has been included in this bill, which is acceptable to the chairman of the Intelligence Committee, which will exempt the CIA from the terms of this bill as well as sensitive foreign intelligence or foreign counterintelligence activities, if the President so determines.

Mr. Speaker, I submit for the Record at this time a letter from the gentleman from Massachusetts (Mr. BOLAND), chairman of the Permanent Select Committee on Intelligence:

PERMANENT SELECT COMMITTEE ON INTELLIGENCE
Washington, D.C., October 3, 1978.
Hon. JACK BROOKS,
Chairman, Committee on Government Operations, Washington, D.C.

DEAR JACK: As you know, when H.R. 12171 was ordered reported from the Committee on Government Operations, I requested sequential referral on behalf of the Permanent Select Committee on Intelligence. I did so because of the serious concern with which the Committee viewed opening up to the General Accounting Office—with all its thousands of employees—various unvouchered accounts of the intelligence agencies. These accounts include expenditures which relate to the most sensitive and highly guarded activities of our Government—some of them known to but a few. Yet H.R. 12171 made no provision for the security of these vouchers nor did it limit the personnel who might have access to them.

At your request and in order not to prevent the consideration of H.R. 12171 in this Congress, I withdrew my request for sequential referral with the understanding that you would move to suspend the rules and pass H.R. 12171 with an amendment drafted by the Permanent Select Committee on Intelligence.

The language of that amendment provides that the President may exempt from review by the GAO those financial transactions which relate to sensitive foreign intelligence or foreign counterintelligence activities, but it does not exempt these transactions from any review. Rather, the amendment further provides that such transactions are reviewable by the House and Senate Intelligence Committees.

I believe I can say with assurance that the Subcommittee on Program and Budget Authorization, chaired so ably by the gen-

tieman from Missouri, Bill Burlington, will conduct what review of these transactions is appropriate in a thorough and responsible fashion. Thus, there will be review, but it will occur under such procedures and protections as will ensure the essential secrecy of the many important activities in question.

Thus, I can say that H.R. 12171, as amended by the amendment you will offer, fully satisfies the security concerns of the Permanent Select Committee on Intelligence and of the intelligence community as to expenditures which go to the heart of our most sensitive intelligence efforts.

With every good wish, I am

Sincerely yours,

EDWARD P. BOLAND,

Chairman.

Mr. Speaker, the second provision of this bill strengthens the power of the GAO to enforce its statutory and other rights of access to Federal agency and Federal contractor records. While the law clearly gives the GAO the right to obtain all necessary records required to determine if moneys are being effectively expended, some agencies and contractors in the past have refused or resisted supplying such data. This bill authorizes the Comptroller General to seek the authority of Federal courts to compel production of records by Federal agencies, and also authorizes him to subpoena appropriate records of Federal contractors, and recipients of Federal financing assistance.

Finally, the bill establishes a commission composed of the congressional leadership and the chairman and ranking minority members of the House Government Operations and Senate Governmental Affairs Committees. This commission will submit not less than three potential nominees for Comptroller General to the President, from which he may appoint one for submission to the Senate for confirmation. The President may reject such list of names and request others.

The Comptroller General is an officer of the Congress, yet, he is presently nominated and appointed by the President. Congress should have a greater input into the appointment of future Comptrollers General—thus the basis for this provision.

As originally reported, H.R. 12171 altered the present arrangement for nominating and appointing the Deputy Comptroller General, which is presently the same as for the Comptroller General. The bill gave the Comptroller General the right to appoint his deputy. However, certain members of the other body objected to losing their confirmation authority.

In order that this important piece of legislation can be signed into law this Congress, an amendment is included in the bill before us to require the appointment of future Deputy Comptrollers General in essentially the same manner as the Comptroller General, which includes confirmation by the Senate.

In summary, Mr. Speaker, this bill will greatly increase the ability of Congress to carry out its oversight responsibilities by substantially improving the effectiveness of the General Accounting Office. I urge the House membership to support this bill by voting for suspension of the rules.

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

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

Mr. Speaker, H.R. 12171 is a reasonable bill which would provide the General Accounting Office with the authority it needs to audit certain unvouched expenditures and with the increased strength it must have to enforce its statutory right of access to records of Federal departments and of non-Federal organizations such as contractors who receive Federal assistance. I should point out that the President may exempt the Central Intelligence Agency's financial transactions which relate to sensitive foreign intelligence or foreign counter-intelligence activities.

Those features of the bill are acceptable in my view, but the provision I most like in the bill is the one that establishes a formal mechanism for consultation between the President and congressional officials in the appointment of future comptrollers general. This is a very important step forward and I support it without reservation.

Mr. Speaker, I believe H.R. 12171 is an excellent bill and I urge my colleagues to support it.

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

Mr. BROOKS, Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. Brooks) that the House suspend the rules and pass the bill H.R. 12171, as amended.

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

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BROOKS, Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill H.R. 12171, just passed.

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

There was no objection.

MERCHANT MARINE ACT AMENDMENTS FOR GREAT LAKES VESSELS

Mr. MURPHY of New York. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 11658) to amend title XI of the Merchant Marine Act, 1936, to permit the guarantee of obligations for financing Great Lakes vessels in an amount not exceeding 87½ per centum of the actual or depreciated actual cost of each vessel, as amended.

H.R. 11658.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 509 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1159), is amended by striking the words "fourteen knots" in the

fourth sentence, and inserting in lieu thereof the words "ten knots".

The SPEAKER pro tempore. Is a second demanded?

Mr. McCLOSKEY, 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 New York (Mr. MURPHY) will be recognized for 20 minutes, and the gentleman from California (Mr. McCLOSKEY) will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York (Mr. MURPHY).

(Mr. MURPHY of New York asked and was given permission to revise and extend his remarks.)

Mr. MURPHY of New York. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 11658, a bill that would correct a longstanding inequity that has adversely affected our Great Lakes fleet.

Pursuant to title XI of the Merchant Marine Act, 1936, as amended, the Maritime Administration of the Department of Commerce is authorized to guarantee commercial loans and mortgages to finance the cost of construction or reconstruction of U.S.-flag vessels. Under the title XI guarantee program, the vessel owner is required to make a downpayment of 25 or 12½ percent, and the Government guarantees private financing for the balance.

One of the general conditions for a 12½-percent downpayment is that the vessel must meet the size and speed requirements set forth in section 509 of the act.

Public Law 76-116, approved June 6, 1939, enacted the 14-knot requirement currently set forth in section 509. The purpose of this requirement in 1939 was to generally preclude barges, fishing boats, and other small craft from the benefits provided by section 509.

It was not until the Merchant Marine Act of 1970, that the Great Lakes received long overdue recognition as the fourth seacoast of the United States. That act also amended the title XI guarantee program downpayment requirement from 25 to 12½ percent for vessels meeting the requirements of section 509; including 14 knots. Through an oversight, at that time no thought was given to the characteristics of vessels operating on the Great Lakes.

It is clear that the most economical speed for a 1,000-foot bulk carrier in typical Great Lakes service is 12.8 knots. This vessel, moving at its most economical speed can transport 1 long ton of cargo 607 miles for every gallon of fuel burned. At 14 knots, however, it can transport the same ton only 503 miles. Requiring this higher speed can only lead to higher transportation costs that must eventually reflect in higher prices for the American consumer.

Because the distinctive characteristics of vessel operations on the Great Lakes dictate an optimum speed of less than 14 knots, these vessels have been inadvertently precluded from the more fav-