

1 MORNINGSIDE PARTNERS, LLC

2 HJU174000

3 MARKUP OF: H.R. 5503, THE "SECURING

4 PROTECTIONS FOR THE INJURED FROM LIMITATIONS

5 ON LIABILITY ACT";

6 TO CONSIDER A MOTION TO AUTHORIZE ISSUANCE OF

7 SUBPOENAS TO BP AMERICA FOR DOCUMENTS

8 REGARDING ITS CLAIMS PROCESS RELATING TO THE

9 GULF OIL SPILL;

10 H.R. 5566, THE "PROHIBITING

11 INTERSTATE COMMERCE IN CRUSH VIDEOS ACT OF 2010"; AND

12 H.RES. 1455, DIRECTING THE ATTORNEY

13 GENERAL TO TRANSMIT TO THE HOUSE OF

14 REPRESENTATIVES COPIES OF CERTAIN

15 COMMUNICATIONS RELATING TO CERTAIN

16 RECOMMENDATIONS REGARDING ADMINISTRATION

17 APPOINTMENTS

18 Wednesday, June 23, 2010

19 House of Representatives,

20 Committee on the Judiciary,

21 Washington, D.C.

22 The committee met, pursuant to call, at 10:18 a.m., in Room
23 2141, Rayburn House Office Building, Hon. John Conyers
24 [chairman of the committee] presiding.

25 Present: Representatives Conyers, Berman, Boucher,
26 Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Cohen,
27 Johnson, Pierluisi, Quigley, Chu, Deutch, Baldwin, Gonzalez,
28 Weiner, Schiff, Sanchez, Maffei, Polis, Smith, Sensenbrenner,
29 Coble, Gallegly, Goodlatte, Lungren, Issa, Forbes, King,
30 Franks, Gohmert, Jordan, Poe, Chaffetz, Rooney, and Harper.

31 Staff present: Perry Apelbaum, Staff Director/Chief
32 Counsel; Ted Kalo, General Counsel/Deputy Staff Director;
33 George Slover, Legislative Counsel/Parliamentarian; Sean
34 McLaughlin, Minority Chief of Staff/General Counsel; Karas
35 Pattison, Minority Professional Staff Member; and Anita L.
36 Johnson, Clerk.

37 Chairman Conyers. [Presiding.] Good morning. The
38 committee will come to order. Welcome everyone. The clerk
39 will call the roll to see if we have a quorum.

40 The Clerk. Mr. Conyers?

41 Chairman Conyers. Present.

42 The Clerk. Mr. Berman?

43 [No response.]

44 Mr. Boucher?

45 [No response.]

46 Mr. Nadler?

47 [No response.]

48 Mr. Scott?

49 [No response.]

50 Mr. Watt?

51 [No response.]

52 Ms. Lofgren?

53 [No response.]

54 Ms. Jackson Lee?

55 [No response.]

56 Ms. Waters?

57 [No response.]

58 Mr. Delahunt?

59 [No response.]

60 Mr. Cohen?

61 [No response.]

62 Mr. Johnson?
63 [No response.]
64 Mr. Pierluisi?
65 [No response.]
66 Mr. Quigley:
67 Mr. Quigley. Present.
68 The Clerk. Ms. Chu?
69 Ms. Chu. Here.
70 The Clerk. Mr. Deutch?
71 [No response.]
72 Mr. Gutierrez?
73 [No response.]
74 Ms. Baldwin?
75 [No response.]
76 Mr. Gonzalez?
77 [No response.]
78 Mr. Weiner?
79 [No response.]
80 Mr. Schiff?
81 [No response.]
82 Ms. Sanchez?
83 Present.
84 The Clerk. Mr. Maffei?
85 [No response.]
86 Mr. Polis?

87 [No response.]
88 Mr. Smith?
89 Mr. Smith. Present.
90 The Clerk. Mr. Sensenbrenner?
91 Mr. Sensenbrenner. Here.
92 The Clerk. Mr. Coble?
93 Mr. Gallegly?
94 [No response.]
95 Mr. Goodlatte?
96 [No response.]
97 Mr. Lungren?
98 [No response.]
99 Mr. Issa?
100 [No response.]
101 Mr. Forbes?
102 [No response.]
103 Mr. King?
104 [No response.]
105 Mr. Franks?
106 Mr. Franks. Here.
107 The Clerk. Mr. Gohmert?
108 Mr. Jordan?
109 [No response.]
110 Mr. Poe?
111 [No response.]

112 Mr. Chaffetz?

113 Mr. Chaffetz. Present.

114 The Clerk. Mr. Chaffetz present.

115 Mr. Rooney?

116 Mr. Rooney. Present.

117 The Clerk. Mr. Rooney present.

118 Mr. Harper?

119 [No response.]

120 Mr. Smith?

121 Mr. Smith?

122 Mr. Smith. Present.

123 The Clerk. Mr. Smith present.

124 Mr. Nadler?

125 Mr. Nadler. Present.

126 The Clerk. Mr. Nadler present.

127 Mr. Maffei?

128 Mr. Maffei. Aye. Here.

129 The Clerk. Mr. Maffei here.

130 Ms. Baldwin?

131 Ms. Baldwin. Here.

132 The Clerk. Mr. Chairman, 15 members responded to the
133 quorum call.

134 Chairman Conyers. So we have a working quorum, and
135 pursuant to notice I call up H.R. 5503 and ask the clerk to
136 report the bill.

137 The Clerk. "H.R. 5503, a bill to revise laws regarding
138 liability in certain civil actions arising from maritime
139 incidents and for other purposes."

140 [The bill follows:]

141 ***** INSERT *****

142 Chairman Conyers. Without objection, the bill is
143 considered as read and open for amendment at any point.
144 Members of the committee we are here today to deal with the
145 April 20th explosion on the Deepwater Horizon oil drilling
146 platform that resulted in the death of 11 men and injury to
147 more than 17 others in addition to leading to the most
148 massive environmental disaster in the history of the nation.

149 There was poisoning widespread swaths of the Gulf of
150 Mexico killing wildlife, ruining wetlands, wreaking economic
151 havoc in the Gulf of Mexico. The disaster not only
152 highlighted gaps in our ability to engage and regulate
153 deepwater drilling, but also major legal loopholes in the
154 applicable statutes.

155 And so we focus today on those legal liability issues
156 within the committee's jurisdiction. We have found that the
157 current state of the law regarding these liability issues is
158 outdated, is unfair and operates against our nation's
159 interest.

160 The three key laws in effect all date from the mid-
161 1800s, the Death on the High Seas Act, the Jones Act and the
162 Limitation on Liability Act. So the bill before us responds
163 to these unfair laws and offers justice to current and future
164 victims of oil and shipping accidents.

165 It amends the Death on the High Seas Act and Jones Act
166 to permit non-pecuniary damages. It repeals the Limitation

167 on Liability Act. It makes a very narrow change to the Class
168 Action Fairness Act to allow attorneys general to bring
169 remedial actions in their own state courts.

170 It limits the ability of parties responsible for oil and
171 similar spills to prevent their employees from speaking to
172 the media. It prevents parties responsible for oil spills
173 from using bankruptcy courts as a subterfuge to leave victims
174 without adequate legal recourse.

175 And it provides that these changes will apply to pending
176 and future cases, consistent with previous liability law
177 changes enacted by Congress.

178 I now would like to recognize my friend, Lamar Smith,
179 the ranking member for his opening comments.

180 Mr. Smith. Thank you, Mr. Chairman. Mr. Chairman,
181 although I believe this legislation is well-intended, I have
182 concerns about H.R. 5503 in its current form. It is
183 important that BP and other responsible parties pay all costs
184 associated with the oil spill and that they be held fully
185 accountable.

186 However, H.R. 5503 is overly broad and will have
187 unintended consequences that reach well beyond the Gulf Coast
188 disaster. It is incredible that the sweeping changes this
189 bill makes are being proposed without the benefit of even one
190 legislative hearing on any of the bill's provisions.

191 For example, H.R. 5503 makes several changes to

192 longstanding U.S. maritime liability laws. These changes
193 virtually rewrite U.S. maritime liability law, and in some
194 instances make it out of step with the laws of nearly every
195 other maritime nation.

196 The most problematic change is the repeal of the
197 Shipowner's Limitation of Liability Act. Maritime accidents
198 usually involve numerous parties with competing claims, loss
199 of life or personal injury in multiple jurisdictions in which
200 claims may be filed.

201 The Limitation of Liability Act addresses these problems
202 by allowing for consolidation of all claims arising out of a
203 maritime accident in one federal forum. It also creates a
204 fund to pay personal injury and death claims over and above
205 the act's general liability limit.

206 Despite the act's importance, Section Four of this bill
207 repeals the act without adopting any replacement legislation
208 to fill the void. Repeal of the act introduces uncertainty,
209 and in many cases may result in inadequate compensation to
210 personal injury and wrongful death claimants.

211 Repeal of the act also eliminates from U.S. law the
212 globally recognized principle that vessel owner liability
213 should be limited. This principle is so widely accepted that
214 it has been adopted in an international convention that 52 of
215 some of the world's largest maritime nations have signed.

216 Other sections of this law are also questionable.

217 Section Three allows for recovery of non-economic damages and
218 wrongful death actions under the Jones Act. While this may
219 seem like a fair result, it actually creates inequities
220 because the Jones Act is an analog to land-based Worker's
221 Compensation statutes, which do not apply at sea.

222 Worker's Compensation generally does not allow for the
223 recovery of non-economic damages. Without having held a
224 legislative hearing to understand the full impact of this
225 change on injured workers, employers, shippers and consumers,
226 we should not rush this provision through today.

227 These extensive changes to U.S. maritime liability law,
228 which apply well beyond oil spills, threaten to increase
229 dramatically the cost of shipping goods, an increase that
230 will be borne by all American consumers.

231 Additionally, the legislation unnecessarily amends the
232 Class Action Fairness Act. The effect of this will be to
233 open up the possibility of enterprising trial lawyers gaming
234 the system and circumventing federal law to keep class
235 actions out of federal court.

236 Finally, by giving Oil Pollution Act claimants veto
237 power over bankruptcy asset sales of companies with OPA
238 liability, Section Seven of the bill effectively gives these
239 claimants control of the bankruptcy process.

240 However, giving OPA claimants this veto power seriously
241 curtails the rights of other bankruptcy claimants, including

242 the secured creditors, pension funds, other tort victims and
243 state and local governments.

244 Because this bill applies retroactively, there is no
245 reason to push this bill through committee today without
246 having conducted a single legislative hearing on its sweeping
247 changes. A hearing would have addressed the questionable
248 parts of the legislation.

249 As we amend the law to ensure that BP is held
250 accountable, we should avoid harming the national interests
251 at the same time.

252 Thank you, Mr. Chairman, and I yield back.

253 Chairman Conyers. Does any member of the committee have
254 a brief opening comment that they would like us to know
255 about?

256 Mr. Smith. Let us go quick.

257 Ms. Jackson Lee. Mr. Chairman?

258 Chairman Conyers. Ms. Sheila Jackson Lee?

259 Ms. Jackson Lee. Mr. Chairman, I want to thank you for
260 your leadership on this very crucial and important issue that
261 is a quick response to the horrific tragedy of 11 lives lost
262 in the Gulf on the Deepwater Horizon.

263 And the families that we both had an opportunity to
264 visit with and talk with on the enormous impact that some of
265 the laws that you are presently correcting are having on
266 their ability to in essence not recover their lost ones, but

267 to be able to provide for their remaining family members.

268 I have been to the Gulf twice and expect to go back. I
269 live in the Gulf region and know that the pain is very, very
270 difficult. The fear of bankruptcy of BP, the fear of the
271 claim system not working, all of these issues are discussed
272 in the underlying bill.

273 I am delighted that some of the aspects of our concerns
274 have been addressed in the manager's amendment, and I look
275 forward to addressing concerns that impact our area that may
276 be unique.

277 The cruise industry, the issues concerning small
278 independent energy companies, all of that has to be of
279 concern as we look at this particular incident so that it
280 does not happen again, and we create a legal framework to
281 address the questions that have been raised by the tragedy of
282 BP.

283 In final, in our meeting yesterday with the U.S. Coast
284 Guard, they indicated that they are able to capture about
285 23,000 barrels a day, but as has been reported, it may be
286 upwards of 100,000 barrels a day. This is going to be—that
287 is spilling off into the Gulf.

288 This is going to be a long haul. And I believe the
289 balance of working together with our respective committees,
290 working with the Judiciary Committee, understanding the
291 economic needs of the Gulf, understanding the loss of these

292 very dear souls and the difficulty of their families will be
293 the best route for all of us to move forward to address this
294 in the right kind of legislative manner.

295 I thank you, Mr. Chairman and I thank you for the
296 discussion we will have on some of the amendments or thoughts
297 that I have going forward. I yield back.

298 Mr. Smith. Mr. Poe would like to speak. Mr. Poe of
299 Texas?

300 Chairman Conyers. Judge Poe of Texas.

301 Mr. Poe. Thank you, Mr. Chairman. H.R. 5503 has been
302 rushed through the committee process following the explosion
303 of the Deepwater Horizon. Since this horrible accident, the
304 committee has held one general oversight hearing on liability
305 related to the Gulf oil spill, and most of these issues
306 included in H.R. 5503 were not even discussed.

307 The unintended consequences of this legislation could be
308 widespread. Among other things, H.R. 5503 repeals limitation
309 on Liability Act, which is the fundamental change and a
310 fundamental change in U.S. maritime law. This change would
311 end the longstanding practice in the U.S. that all maritime
312 claims be determined in one federal forum.

313 It also ends the limitation on U.S. vessels owners'
314 liability, a limitation, which in its place is virtually done
315 in every other country in their maritime industry. The loss
316 of this limitation will handicap U.S. mariners. H.R. 5503

317 would cause insurance rates to spin out of control damaging
318 American maritime industry, putting thousands of jobs in
319 jeopardy.

320 In other words, the insurance rates will be so high
321 these companies cannot afford insurance. They won't have
322 insurance, and they will be out of business. That is the
323 consequence and maybe unintended consequence of this
324 legislation.

325 Just as the offshore drilling moratorium was hastily
326 enacted by the administration, a ruling by a federal judge
327 declared that to be illegal yesterday, this bill is being
328 rushed through the committee process.

329 The committee needs to act prudently, and analyze
330 important issues and not rush a bill to the floor, which
331 could have widespread unintended consequences and make
332 another disaster in the Gulf of Mexico. I yield back.

333 Chairman Conyers. Mike Quigley, Illinois?

334 Mr. Quigley. Thank you, Mr. Chairman. The opposition
335 to this bill, and I am assuming the rest of the bills that
336 are up today, assumes that the Deepwater Horizon was an
337 isolated incident that could never happen again.

338 Anyone who imagines that all the rigs that are out there
339 are safe and that this could never happen again, aren't
340 dealing with reality and that spills have taken place before
341 in Alaska and other places.

342 They take place on virtually a daily basis. And that
343 the serious problem with this legislation is the fact that,
344 unfortunately, it is reactive and that it should have taken
345 place some time ago to address these possibilities.

346 We were living on borrowed time before. To imagine that
347 something like this won't happen again is fanciful. And I
348 welcome what we do here today, and hope that we can remedy
349 the problems in the future.

350 Chairman Conyers. The chair notes that Mrs. Courtney
351 Kemp, wife of Roy Wyatt Kemp, is in the committee room
352 sitting in the front row. Mrs. Shelley Anderson, wife of
353 Jason Anderson is here with us today, as is attorney Keith
354 Jones, the father of Gordon Jones. We welcome all of you
355 back to the committee hearing.

356 And the chair recognizes Mel Watt of North Carolina.

357 Mr. Watt. Mr. Chairman, I have an amendment at the
358 desk.

359 Chairman Conyers. Well, wait a minute. You are in it—I
360 thought you wanted to get your 2 cents worth in before we
361 started.

362 Mr. Watt. I just want to get started.

363 [Laughter.]

364 Chairman Conyers. Well, there maybe someone else with 2
365 cents and that—but seeing—well, wait a minute. There is one.

366 Mr. Maffei?

367 Mr. Maffei. Yes, Mr. Chairman, thank you. I have 2
368 cents and just 2 cents. But I do support this bill. I am
369 concerned about some unintended consequences, but that is why
370 we are here. That is why we have an amendment process and if
371 an amendment needs to be offered.

372 But it does seem to me there is some intended
373 consequences of this legislation and that is to make sure
374 that the costs of offshore drilling actually reflect the
375 costs and risks of offshore drilling. And I think that is an
376 extraordinarily important thing.

377 And of course, the urgency of this is not something that
378 we decided. It is something that happened because of this
379 emergency in the Gulf. And so I would actually ask unanimous
380 consent that I become a co-sponsor of a H.R. 5503.

381 Chairman Conyers. Without objection.

382 Mr. Maffei. Thank you, Mr. Chairman.

383 Chairman Conyers. The chair has a manager's amendment
384 at the desk that I would like to report before we recognize
385 Mel Watt for his amendment. The clerk will report.

386 The Clerk. "Amendment to H.R. 5503 offered by Mr.
387 Conyers of Michigan and Ms. Jackson Lee of Texas. Page Two,
388 line eight insert and after the semicolon. Page Two, strike
389 lines nine through 11. Page Two, line 12 strike D and insert
390 C. Beginning on Page Two, strike line"-

391 [The amendment by Chairman Conyers and Ms. Jackson Lee

392 follows:]

393 ***** COMMITTEE INSERT *****

394 Chairman Conyers. I ask unanimous consent the amendment
395 be considered as read, and let me explain this as an
396 uncomplicated amendment here. First the amendment clarifies
397 that the personal representative of the state can file an
398 action under the Death on the High Seas Act.

399 And the Death on the High Seas Act is also amended so
400 that state law will provide which members of the family of
401 the deceased may bring a case to recover compensation for the
402 loss of their loved one.

403 Secondly, the amendment removes an exception in the
404 Jones Act for oil companies, which has restricted the ability
405 of foreign workers and their families to recover for injury
406 or death in the United States' courts.

407 That provision currently hurts Americans working in the
408 oil and gas industry since it provides an incentive for oil
409 companies to hire foreign workers to limit their legal
410 liability.

411 Thirdly, the amendment makes a conforming change so that
412 the definition of a mass action will be amended along with
413 the definition of a class action so that cases brought on
414 behalf of a state can remain in state courts, which have
415 sometimes more expertise with state law.

416 And finally the amendment makes a number of
417 clarifications to the bankruptcy changes in the bill to
418 better ensure that those responsible for oil spills can't use

419 the bankruptcy code to avoid their responsibility to the
420 victims of the spill.

421 And with that explanation I turn to Lamar Smith.

422 Mr. Smith. Thank you, Mr. Chairman. This manager's
423 amendment makes largely technical corrections to the
424 underlying bill. Unfortunately in doing so, it avoids the
425 opportunity to refocus this bill directly on oil spill
426 liability in general and on the liability of those
427 responsible for the Gulf Coast oil spill in particular.

428 Additionally, in several places the manager's amendment
429 makes this bill's consequences for others, who not only have
430 nothing to do with this oil spill, but are not even involved
431 in the oil industry, more severe.

432 As I mentioned earlier, I believe the intent of this
433 bill is good. It is important that all those responsible for
434 the Gulf oil spill and any future oil spills are held fully
435 accountable. But the underlying bill and the manager's
436 amendment go well beyond this intent.

437 This committee should focus on considering legislation
438 that is needed to ensure that BP and future oil spillers are
439 held responsible for their negligence rather than on
440 legislation that negatively affects the entire U.S. maritime
441 industry and other uninvolved third parties.

442 Regrettably, the manager's amendment makes things worse
443 and actually makes the unintended consequences of the bill

444 more regrettable. So Mr. Chairman, I have to oppose the
445 manager's amendment and yield back.

446 Chairman Conyers. All in favor of the manager's
447 amendment, signify by saying "aye."

448 [A chorus of ayes.]

449 Chairman Conyers. Aye.

450 All opposed, signify by saying "no."

451 [A chorus of noes.]

452 Chairman Conyers. The ayes have it, and the manager's
453 amendment is agreed to.

454 And we now turn to Mel Watt.

455 We turn to Mr. Smith.

456 Mr. Smith. Mr. Chairman, I have an amendment at the
457 desk.

458 Chairman Conyers. You have an amendment yet?

459 Mr. Smith. Yes, I said I had an amendment at the desk.

460 Chairman Conyers. Oh, the clerk will report the
461 amendment.

462 The Clerk. "Amendment to H.R. 5503 offered by Mr.
463 Smith. Add at the end the following: Section —.

464 Limitation on application of act to claims arising out of oil
465 spills. This act and the amendments made by this act shall
466 not apply to any claim other than a claim arising out an oil
467 spill."

468 [The amendment by Mr. Smith follows:]

469 ***** INSERT *****

470 Chairman Conyers. Mr. Smith?

471 Mr. Smith. Mr. Chairman, this amendment is very simple,
472 straightforward and easy to support. It is of great
473 importance if the true intent of this bill is to hold those
474 responsible for the Gulf oil spill and future oil spills
475 fully accountable.

476 The amendment adds to the end of the bill a very short
477 section that simply states, "This act and the amendments made
478 by this act shall not apply to any claim other than a claim
479 arising out of an oil spill."

480 If the bill is intended to address the Gulf oil spill
481 then the committee should accept this amendment to make its
482 purpose clear. If, on the other hand, this bill is intended
483 to make major changes in U.S. maritime and class action law
484 apart from this oil spill, there is no reason to rush this
485 bill through committee today without holding even one
486 legislative hearing on the bill's provisions.

487 All of us want to hold BP fully accountable for all the
488 damage it has done in the Gulf and surrounding coastal areas.
489 Neither BP nor any company that in the future creates an oil
490 pollution disaster should be let off the hook.

491 This amendment ensures that BP and those responsible for
492 future oil spills are held fully accountable, while at the
493 same time restricting the unintended consequences of this
494 spill. I hope we will adopt this amendment, Mr. Chairman,

495 and I will yield back. Does that sound reasonable?

496 Chairman Conyers. It sounds reasonable, yes, but there
497 is a problem here, Brother Smith, and here is what it is.

498 What this amendment does is narrow the bill to only cases of
499 oil spills, and I think that is the wrong approach.

500 We are taking a wider view in our major bill. And our
501 examination into the Gulf oil spill disaster has exposed
502 deficiencies in maritime liability law and that is what we
503 are trying to correct here today.

504 This isn't just about BP's oil spill. That is just the
505 tip of the iceberg. We don't know how many more are waiting
506 to happen, but there is a problem with the law, as I have
507 indicated in my opening statement. It is important that we
508 realize this. We have got three laws here that are so out of
509 date, well, they are ancient.

510 What we want to do here today—and you can hold as many
511 hearings as you want to get to the bottom of this—but we want
512 to permit non-pecuniary damages on the High Seas Act and the
513 Jones Act that are not allowed now. I don't know how many
514 discussions and witnesses we want to bring forward on that.

515 We want to repeal the Limitation on Liability Act. That
516 goes beyond the spill. We want to make a change in the Class
517 Action Fairness Act to allow attorney generals in the states
518 to bring their own remedial actions in state courts.

519 So it is not just a matter of looking with a very narrow

520 blinder on what happened here on April the 20th. It goes
521 beyond that and that is why, notwithstanding the good
522 intentions of this amendment it is way too small for the
523 scope of the problem before me and I am unable to support you
524 in this request.

525 All in favor of the Smith amendment, indicate by saying
526 "aye."

527 [A chorus of ayes.]

528 Chairman Conyers. All opposed to the Smith amendment,
529 indicate by saying "no."

530 [A chorus of noes.]

531 Mr. Smith. Could we get a recorded vote, Mr. Chairman?

532 Chairman Conyers. A recorded vote is requested. The
533 clerk will call the roll.

534 The Clerk. Mr. Conyers?

535 Chairman Conyers. No.

536 The Clerk. Mr. Conyers votes no.

537 The Clerk. Mr. Berman?

538 [No response.]

539 Mr. Boucher?

540 [No response.]

541 Mr. Nadler?

542 [No response.]

543 Mr. Scott?

544 Mr. Scott. No.

545 The Clerk. Mr. Scott votes no.
546 Mr. Watt?
547 Mr. Watt. No.
548 The Clerk. Mr. Watt votes no.
549 Ms. Lofgren?
550 Ms. Lofgren. No.
551 The Clerk. Ms. Lofgren votes no.
552 Ms. Jackson Lee?
553 Ms. Jackson Lee. No.
554 The Clerk. Ms. Jackson Lee votes no.
555 Ms. Waters?
556 [No response.]
557 Mr. Delahunt?
558 [No response.]
559 Mr. Cohen?
560 Mr. Cohen. No.
561 The Clerk. Mr. Cohen votes no.
562 Mr. Johnson?
563 Mr. Johnson. No.
564 The Clerk. Mr. Johnson votes no.
565 Mr. Pierluisi?
566 Mr. Pierluisi. No.
567 The Clerk. Mr. Pierluisi votes no.
568 Mr. Quigley?
569 Mr. Quigley. No.

570 The Clerk. Mr. Quigley votes no.
571 Ms. Chu?
572 Ms. Chu. No.
573 The Clerk. Ms. Chu votes no.
574 Mr. Deutch?
575 Mr. Deutch. No.
576 The Clerk. Mr. Deutch votes no.
577 Mr. Gutierrez?
578 [No response.]
579 Ms. Baldwin?
580 Ms. Baldwin. no.
581 The Clerk. Ms. Baldwin votes no.
582 Mr. Gonzalez?
583 Mr. Gonzalez. No.
584 The Clerk. Mr. Gonzalez votes no.
585 Mr. Weiner?
586 [No response.]
587 Mr. Schiff?
588 Mr. Schiff. No.
589 The Clerk. Mr. Schiff votes no.
590 Ms. Sanchez?
591 Ms. Sanchez. No.
592 The Clerk. Ms. Sanchez votes no.
593 Mr. Maffei?
594 Mr. Maffei. No.

595 The Clerk. Mr. Maffei votes no.
596 Mr. Polis?
597 [No response.]
598 The Clerk. Mr. Smith?
599 Mr. Smith. Aye.
600 The Clerk. Mr. Smith votes aye.
601 Mr. Goodlatte?
602 Mr. Goodlatte. Aye.
603 The Clerk. Mr. Goodlatte votes aye.
604 Mr. Sensenbrenner?
605 Mr. Sensenbrenner. Aye.
606 The Clerk. Mr. Sensenbrenner votes aye.
607 Mr. Coble?
608 Mr. Coble. Aye.
609 The Clerk. Mr. Coble votes aye.
610 Mr. Gallegly?
611 Mr. Gallegly. Aye.
612 The Clerk. Mr. Gallegly votes aye.
613 Mr. Lungren?
614 [No response.]
615 Mr. Issa?
616 [No response.]
617 Mr. Forbes?
618 Mr. Forbes. Aye.
619 The Clerk. Mr. Forbes votes aye.

620 Mr. King?

621 Mr. King. Aye.

622 The Clerk. Mr. King votes aye.

623 Mr. Franks?

624 Mr. Franks. Aye.

625 The Clerk. Mr. Franks votes aye.

626 Mr. Gohmert?

627 [No response.]

628 Mr. Jordan?

629 Mr. Jordan. Yes.

630 The Clerk. Mr. Jordan votes yes.

631 Mr. Poe?

632 Mr. Poe. Aye.

633 The Clerk. Mr. Poe votes aye.

634 Mr. Chaffetz?

635 Mr. Chaffetz. Aye.

636 The Clerk. Mr. Chaffetz votes aye.

637 Mr. Rooney?

638 Mr. Rooney. Yes.

639 The Clerk. Mr. Rooney votes yes.

640 Mr. Harper?

641 Mr. Harper. Aye.

642 Mr. Harper votes aye.

643 Chairman Conyers. Mr. Weiner?

644 The Clerk. Mr. Weiner is not recorded.

645 Mr. Weiner. I pass.

646 The Clerk. Mr. Weiner passes.

647 Chairman Conyers. Mr. Nadler?

648 Mr. Nadler. No.

649 The Clerk. Mr. Nadler votes no.

650 Chairman Conyers. Chairman Berman?

651 Mr. Berman. No.

652 The Clerk. Mr. Berman votes no.

653 Chairman Conyers. Mr. Weiner?

654 Mr. Weiner. No.

655 The Clerk. Mr. Weiner votes no.

656 Chairman Conyers. The clerk—

657 Mr. Issa. Mr. Chairman?

658 Chairman Conyers. Oh, Darrell Issa?

659 The Clerk. Mr. Issa is not recorded.

660 Mr. Issa. I vote yes.

661 The Clerk. Mr. Issa votes yes.

662 Chairman Conyers. The clerk will report.

663 The Clerk. Mr. Chairman, 14 members voted aye and 19

664 members voted nay.

665 Chairman Conyers. Amendment unsuccessful.

666 The chair recognizes the gentleman from North Carolina,

667 Mel Watt.

668 Mr. Watt. Mr. Chairman I have an amendment at the desk.

669 Chairman Conyers. The clerk will report the amendment.

670 The Clerk. "Amendment to H.R. 5503 offered by Mr. Watt
671 of North Carolina, page"-

672 [The amendment by Mr. Watt follows:]

673 ***** INSERT *****

674 Mr. Watt. I ask unanimous consent the amendment be
675 considered as read.

676 Chairman Conyers. The gentleman is recognized.

677 Mr. Watt. Thank you, Mr. Chairman. Mr. Chairman, I
678 can't imagine that there is anybody in this audience, in the
679 United States, possibly in the world, who doesn't feel
680 absolute disdain for the situation that we are in at this
681 moment with the oil spill and probably have personalized that
682 to be absolute disdain for BP because they are the
683 intermediary that is responsible for the oil spill.

684 And while I have some reluctance to offer this amendment
685 because some people may say that it represents an attempt to
686 protect BP or show some respect for BP, I want to emphasize
687 that that is not the case. What I am showing respect for is,
688 I believe, the rule of law and the sanctity of contracts that
689 exist.

690 So the effect of the amendment would be to strike the
691 retroactive application of this law to pending cases and to
692 make it apply only prospectively.

693 I support, and the reason I voted against Mr. Smith's
694 amendment, I support all of the positive aspects of the bill.
695 As we go forward, we need to restructure this whole thing,
696 and put a whole new set of rules around it.

697 But I think we in the Judiciary Committee in particular
698 must not lose sight of our constitutional and rule of law

699 considerations and I think that making this law have
700 retroactive application, would violate both of those
701 principles.

702 There is no need for me to elaborate on that statement
703 any further. I think it is a simple amendment and members of
704 the committee, obviously, will go wherever they feel like
705 they have to go on the amendment.

706 But I don't think we in the Judiciary Committee should
707 be making laws that have retroactive effect or abrogate
708 existing contracts, and that is the position I have taken in
709 a number of different cases.

710 And despite my disdain for where we are and for BP, I
711 think there are some considerations that are more important
712 in the bigger picture. And one of those is the
713 constitutionality and one of those is the rule of law. I
714 yield back, Mr. Chairman.

715 Chairman Conyers. Well, this is an interesting
716 situation. We have been voting retroactive law since before
717 you came to Congress, Brother Watt, and we aren't going to
718 stop now because of some interpretation you brought forward,
719 since you voted for retroactivity yourself.

720 And I hope you ask me what cases so I can call Lamar.
721 Who else seeks recognition?

722 Mr. Watt. If the gentleman is yielding to me—

723 Chairman Conyers. Sure I will yield.

724 Mr. Watt. I will ask that question. I think you were
725 going to answer it anyway.

726 Chairman Conyers. No, I wasn't going to answer it.

727 Mr. Watt. Okay. Well you can. I will ask the
728 question. That will give you the entre to answer it.

729 Chairman Conyers. Yes, what about the 9/11 Bill?

730 Mr. Watt. The 9/11 Bill set up a new fund that was
731 going forward.

732 Chairman Conyers. It wasn't retroactive?

733 Mr. Watt. It had no retroactive applications.

734 Chairman Conyers. Okay, what about Lilly Ledbetter?

735 Mr. Watt. It had no retroactive application to Ms.
736 Ledbetter.

737 Chairman Conyers. That was not retroactive? What about
738 the 9/11-

739 Mr. Watt. Did she go back and win her lawsuit?

740 Chairman Conyers. It applied to other pending cases.
741 Anybody?

742 Okay, Lamar Smith.

743 Mr. Smith. Thank you, Mr. Chairman. Mr. Chairman, I am
744 actually going to be easier on Mr. Watt because I do
745 appreciate his wanting to respect the sanctity of contracts,
746 as he put it, and the rule of law.

747 But I would point out to the gentleman from North
748 Carolina that if he is worried about a new set of rules, as I

749 think he has a right to be, he ought to be concerned about
750 the underlying bill because of the new set of rules that
751 provides for the maritime industry, which is perhaps far
752 greater. So that is another reason to take a look at the
753 underlying bill.

754 The effect of this amendment, Mr. Chairman, as I
755 understand it, is to prevent current BP claims from being
756 covered under this bill. And so I have more concern about
757 those claims being able to be addressed than I do about the
758 retroactivity, so I will oppose this amendment.

759 Chairman Conyers. Mr. Chairman of the Constitution
760 Committee, Jerry Nadler.

761 Mr. Nadler. Thank you, Mr. Chairman. I oppose the
762 amendment. First of all, I think we ought to clarify it. We
763 are not talking about retroactive legislation here. We are
764 talking about legislation for pending cases.

765 Now, Lilly Ledbetter was not retroactive, but it did
766 affect pending cases. Lilly Ledbetter herself, her case was
767 over by the time we passed the bill, so it didn't affect her.
768 But it affected all pending cases on the date the bill was
769 passed.

770 We often apply laws to pending litigations, the Lilly
771 Ledbetter Fair Pay Act, Protection of Lawful Commerce in Arms
772 Act. The Superfund Laws of 1980 on cleaning up hazardous
773 waste applied to pending cases and was specifically found

774 constitutional by the Supreme Court in the case of Eastern
775 Enterprises v. Apfel in 1998.

776 There are a number of other Supreme Court cases that I
777 can cite, but I won't bother. This is certainly not nearly
778 unprecedented. We often apply laws to pending cases.

779 Second of all, I don't see any issue of abrogation of
780 contract here. We are not abrogating a contract. We are
781 changing a law. There was no contract that said their
782 liability was limited.

783 First of all, under the Constitution, the federal
784 government, unlike the states, can abrogate contracts. The
785 states cannot. The federal government can, but we are not
786 even talking about that here. We are talking about changing
787 the law.

788 Now, if they relied on the law we are changing it—we do
789 that often enough. I think in terms of the equities to the
790 American taxpayer and to all the people in the Gulf, we ought
791 to make this affect all pending cases. And I therefore see
792 no constitutional or equitable problem with it, and I
793 therefore urge defeat of the amendment.

794 Chairman Conyers. Steve King?

795 Mr. King. Thank you, Mr. Chairman. I rise in defense
796 of the gentleman from North Carolina whom I think is very
797 deserving of it. I just thumbed through this Constitution
798 Article 1 Section 9, and it says no bill of attainder or ex

799 post facto law shall be passed.

800 I think when I read this language here of Mr. Watt's
801 amendment, it says exactly that to me, that this will not be
802 an ex post facto law. That it doesn't apply to cases pending
803 or after such date of the enactment this piece of
804 legislation.

805 Mr. Nadler. Would the—

806 Mr. King. I think that that would be a normal
807 clarification that is implicit in what we do. But in this
808 case we are explicitly addressing a subject matter that would
809 turn it into an ex post facto law should we not have Mr.
810 Watt's amendment. And I just want to make that point into
811 the record and yield back at this time.

812 Mr. Nadler. Would the gentleman yield? Would the
813 gentleman yield?

814 Chairman Conyers. He yielded back.

815 Mike Quigley, Illinois?

816 Mr. Quigley. I think the argument for this amendment
817 understands what attainder-like punishments we are talking
818 about in the Constitution. This bill does not impose
819 attainder-like criminal punishments on BP.

820 And the case law, as Mr. Nadler started to point out, is
821 pretty clear that you can have retroactive laws but they must
822 have a rational legislative purpose. I can't imagine that
823 someone wouldn't understand that the largest oil disaster in

824 American history would not qualify. In fact, this is second
825 or third now in the history of this world in environmental
826 disaster.

827 So to assume that it doesn't qualify negates the reality
828 of how traumatic a disaster this is, and that it obviously
829 has a rational legislative purpose. So obviously, to discuss
830 the Superfund Laws, the standard was established in Pension
831 Benefit v. R.A. Gray. It just simply says that the
832 retroactive laws must have a rational legislative purpose.

833 So I think those who support this don't understand what
834 the Constitution was talking about in those concerns and that
835 the Supreme Court has ruled several times and there is a
836 standard in here, that this is not unconstitutional.

837 Chairman Conyers. Dan Lungren, California?

838 Mr. Lungren. Thank you very much, Mr. Chairman. I have
839 a couple questions on this for the chairman or whoever can
840 answer it, and that is if this is not limited just to this
841 incident, as I understand it, this would affect all pending
842 cases that exist for Death on the High Seas Act or Jones Act
843 in any incident.

844 Is that true, I mean, for all such incidents that occur
845 or have occurred for which there is a pending action, Mr.
846 Chairman?

847 Chairman Conyers. Yes, I think it is.

848 Mr. Lungren. Do we know how many actions there are out

849 there?

850 Chairman Conyers. Nobody knows.

851 Mr. Lungren. Can someone tell me has this been the
852 state of the law since both of these statues were passed?
853 That is not allowing for this kind of recovery, non-economic
854 damages.

855 Chairman Conyers. Yes. That is why we—bringing the
856 bill for.

857 Mr. Lungren. No, I understand it, Mr. Chairman. What I
858 want to know is—these are laws that have been on the books
859 since the 1920s as I understand it. I appreciate, certainly
860 appreciate, the tragedy that we are talking about.

861 But we are talking about a change in law that deals with
862 all actions under both of these acts as I understand it. And
863 I was just wondering if we have any evidence or any hearings
864 about the impact of the laws as they have occurred in the
865 past?

866 That is as accidents have occurred in the past. I mean,
867 does anybody have any information before this committee on
868 that?

869 Chairman Conyers. Well, we have enough information
870 about the results of the law to know that it is unfair, and
871 we want to change it.

872 Voice. You know 11 people were killed.

873 Chairman Conyers. Eleven people were—

874 Mr. Lungren. No, I understand that, Mr. Chairman, and I
875 appreciate it very—

876 Chairman Conyers. Well—

877 Mr. Lungren. —very much. I do—

878 Chairman Conyers. —let me ask you about—let me just try
879 to explain it in terms of the airline circumstances. We
880 changed the law with reference to airline injuries and
881 applied it to pending cases. And you were, I think, with us
882 on that.

883 Mr. Lungren. Are these strict liability laws that we
884 are dealing with?

885 Chairman Conyers. I don't remember.

886 Mr. Lungren. Are these strict liability statutes that
887 we are dealing with, underlying law?

888 Chairman Conyers. No. They are negligence-based, not
889 strict liability.

890 Mr. Lungren. Thank you, Mr. Chairman, I appreciate us
891 bringing this bill to the committee. The only concern I
892 would raise is normally we have an opportunity to have
893 hearings to understand the impact.

894 If this were just limited to the instant that we are
895 referring to, or like incidents, then I can understand the
896 suggestion that we don't need any hearings on it. We don't
897 need to review how this law has impacted the maritime trade,
898 et cetera, and then it would be easy for me to make a

899 decision.

900 Unfortunately, we have no record whatsoever in terms of
901 the impact of this change on the statutes that existed since
902 the 1920s. And I think that puts us in a difficult
903 situation, those of us who would like to do the right thing,
904 in this particular circumstance, but also would like to know
905 the underlying implications then significant change in the
906 overall law as we have here.

907 So I thank the chairman.

908 Mr. Issa. Would the gentleman yield?

909 Mr. Lungren. Well, I will—happy to yield to the
910 gentleman.

911 Mr. Issa. And I am not going to claim my own time. I
912 appreciate your yielding a little time. I, too, share this
913 question of when is it that the majority decided that no
914 crisis should be allowed to go to waste?

915 When is it we decided that we would pass legislation
916 without study and deliberate activity, particularly one that
917 has no sunset and has been on the books since before any of
918 us in this room were born? Why in the world are we doing
919 this today, except to take opportunistic advantage of 11
920 people dying in the Gulf?

921 Mr. Lungren. Well, I—

922 Mr. Issa. Take opportunistic crisis advantage and I
923 share with the gentleman that this is inappropriate.

924 Mr. Lungren. If I could take back my time, what I am
925 saying is I am sorry we aren't crafting legislation to deal
926 with the specific circumstance we have here. I think
927 everybody in America is aware of what happened. Everybody in
928 America would respond in a particular way.

929 However, because of the failure of some of the
930 amendments, we have a situation in which this is not just
931 limited to this situation. This applies to all such
932 incidents on the high seas dealing with general maritime
933 commerce, and frankly, I would hope that we would have a
934 better basis for making such decisions than that.

935 And I appreciate the expedition with which we are
936 dealing with the specifics of the tragedy that took place in
937 the Gulf. But I would just say, once again, it usually is
938 good for us to have at least some record and some evidence
939 and some opportunity to question how the law has worked than
940 just bringing the bill up like this.

941 And I appreciate it, Mr. Chairman, and I would yield
942 back the balance.

943 Chairman Conyers. Well, could I merely pacify my
944 friends here? On May 2th, we had a full committee hearing on
945 every single issue on every one of the three bills that we
946 seek to amend here today. And both of you, I remember
947 distinctly, were here for that hearing. And I am getting the
948 transcript for you right now.

949 And this isn't coming out of the sky somewhere. It was
950 that hearing that led us to make these corrections that are
951 before you now.

952 So I know we have very busy schedules and you can't
953 remember everything that happens at every hearing, but we
954 have gone into this. This did not come out of the sky or out
955 of thin air.

956 And I will have the hearings for your scrutiny coming
957 up.

958 Mr. Berman?

959 Mr. Berman. Thank you, Mr. Chairman. I appreciate the
960 gentleman's amendment. I do think it is important to spend
961 at least a little time contemplating whether in the desire to
962 address a crisis, are we doing things which are not
963 consistent with traditional notions of rule of law?

964 But I do think in this situation where we are dealing
965 with civil law, it is pretty well established that the
966 Congress, particularly if it manifests the intent to do so,
967 can change the liability aspects and the procedural aspects
968 for dealing with incidents which have already occurred, and
969 apply it retroactively.

970 I was very involved in the major amendments in 1986 to
971 the False Claims Act and in amendments to those amendments
972 since that time, and we always manifested the intention that
973 the changes made in that language in it would apply to

974 fraudulent acts previously committed.

975 We raised liability provisions. We changed procedural
976 rules. We made a number of changes in the False Claims Act
977 with the intent that it apply retroactively to not just
978 simply the cases pending, but to incidents that occurred
979 prior to the effective date of the law.

980 And in the context of the contract sanctity argument, I
981 am not exactly sure what the gentleman is referring to but we
982 do not interpret the constitutional provisions regarding
983 contracts as contract sanctity.

984 We pass a minimum wage law and a overtime pay law and
985 the public policy behind that law trumps an employer's
986 contract with his worker every day.

987 We do this in a number of situations where we determine
988 as a matter of public policy based on the constitutional
989 basis, under the Commerce Clause and other provisions for
990 enacting legislation that we are going to trump contracts
991 that are now in effect.

992 So I don't view the contractual provisions in the
993 Constitution as creating a contract sanctity. And I don't
994 think the courts have recognized that for 50 years—70 years,
995 actually.

996 Mr. Issa. Would the gentleman yield for a question?

997 Mr. Berman. Sure.

998 Mr. Issa. Have we ever retroactively increased minimum

999 wage?

1000 Mr. Berman. We have increased the minimum wage and made
1001 it apply and trump contracts that required an employer to pay
1002 less than that wage. There is no question about it. We—

1003 Mr. Issa. But not for work already done or contracts—

1004 Mr. Berman. We have—

1005 Mr. Issa. —already delivered?

1006 Mr. Berman. But for contracts already made. And this
1007 isn't retroactive—

1008 Mr. Issa. But not delivered.

1009 Mr. Berman. Well, my comments on the minimum wage law
1010 dealt with the issue of contract sanctity. As you probably
1011 know from your own business experience, sometimes those
1012 contracts aren't so sanctified.

1013 Chairman Conyers. Arizona, Mr. Franks?

1014 Mr. Franks. Thank you, Mr. Chairman. Mr. Chairman, I
1015 guess there is a little confusion here from my perspective.
1016 May I ask if Mr. Watt would yield for a question?

1017 Mr. Watt. It is your time.

1018 Mr. Franks. Yes. Mr. Watt, I, you know, when I find
1019 myself seemingly to agree with you, I don't know whether to
1020 declare I want to buy the whole committee dinner or try to
1021 understand this a little bit better.

1022 If I understand your amendment, it says it shall apply
1023 to cases pending on or after such a date. The pending part—

1024 Mr. Watt. I am striking that language.

1025 Mr. Franks. Yes, but the pending part—

1026 Mr. Watt. Shall not apply.

1027 Mr. Franks. —concerns me, because if we took out the
1028 word pending, it occurs to me that we could be taking out a
1029 date and that this could apply completely retroactively. Is
1030 that potentially possible?

1031 Mr. Watt. I don't believe so, because I don't think a—

1032 Mr. Franks. You don't think it would be interpreted
1033 that way?

1034 Mr. Watt. I don't think a fair interpretation. That
1035 might be why the gentleman is having trouble being in the
1036 same position that I am.

1037 Mr. Franks. I think maybe you think—

1038 Mr. Watt. I look at these things from a fairness
1039 perspective.

1040 Mr. Franks. Perhaps you thought I was agreeing with
1041 you, but I was just confused.

1042 [Laughter.]

1043 Well—

1044 Mr. Watt. Mr. King has been in that position a couple
1045 of times the last couple of weeks, too, so he is feeling
1046 equally—

1047 Mr. Franks. Well, I guess my last thought then is are
1048 you trying to make this forward legislation or when—by

1049 leaving—using the word pending would that encompass cases
1050 that are already pending and exacerbate the concerns on the
1051 part of some of us related to retroactive legislation?

1052 Mr. Watt. If the gentleman would yield, that is not my
1053 intent. My intent is to have this apply fully going forward,
1054 the new law apply fully going forward. I support the
1055 purposes of the bill. I just don't think it is fair to apply
1056 it retroactively. And I said that in my opening statement.

1057 Mr. Franks. Yes, you did.

1058 Mr. Watt. Yes.

1059 Mr. Franks. Thank you, Mr. Chairman.

1060 Chairman Conyers. Subcommittee Chair Bobby Scott,
1061 Virginia.

1062 Mr. Scott. Yes. Thank you, Mr. Chairman. Mr.
1063 Chairman, first of all, I don't think the retroactive
1064 application is needed for BP. They are looking at criminal
1065 violations. They have strict liability, civil penalties per
1066 barrel that appear to be running up into the billions.

1067 They have already put \$20 billion on the table and there
1068 is every indication that there is going to be more where that
1069 came from, so the victims should be fully compensated without
1070 the retroactivity.

1071 Unfortunately, we have done this retroactivity before,
1072 as it has been pointed out. They have done liability cases
1073 the NAACP filed against the NRA were dismissed because of

1074 intervening congressional action.

1075 An unpopular ruling in the Oklahoma bombing case was
1076 overruled by congressional action. Terri Schiavo was
1077 pending, and we intervened in that case and there is several
1078 liability cases have been pointed out that we changed the law
1079 with cases that were pending in court.

1080 The idea that a dispute should be tried, essentially,
1081 not in a court of law based on the law that applies to
1082 everybody, that is fairly applied by an independent judge and
1083 jury but rather in the political branch of government where
1084 popularity, not justice is the key, and political
1085 contributions and elections can affect the outcome of a case.

1086 Justice in a lawsuit ought to be the same for popular
1087 and unpopular litigants, encouraging what is, essentially, a
1088 trial on the merits in the political branch violates this
1089 principle.

1090 And so I would hope that we would not encourage people
1091 to bring their cases to this branch of government to win on
1092 popularity, but to try their cases in the court of law where
1093 they are stuck with the same law, independent judge and jury
1094 like everybody else. So I would support the amendment.

1095 Chairman Conyers. Maxine Waters?

1096 Ms. Waters. Thank you very much. Mr. Chairman and
1097 members, I was on the floor prepared to take up a bill on
1098 flood insurance up and when I heard about this amendment, I

1099 rushed down because I thought someone had made a mistake.

1100 When they told me it was my friend, Mel Watt, who was
1101 putting forth a strict interpretation of the Constitution
1102 relative to retroactivity, I knew they had made a mistake.

1103 So I came to make sure that I understood what was
1104 happening here, and I do believe that having listened to Mr.
1105 Watt somewhat since I came in, and having read the amendment
1106 and been thinking about the way he handles the law, I
1107 understand why he did it.

1108 I don't agree with it, but I certainly have respect and
1109 appreciation for the fact that he believes that the
1110 Constitution disfavors retroactivity. And so my staff got
1111 together for me a bit of background information. I asked
1112 them to get whatever was available from the Congressional
1113 Research Service, and this is what I think basically caps it.

1114 They, in speaking about retroactivity, they say, "The
1115 Constitution disfavors retroactivity as individuals should
1116 have an opportunity to know what the law is and to conform
1117 their conduct accordingly. Settled expectations should not
1118 lightly be disrupted."

1119 "A legislator's responsiveness to political pressures
1120 the Supreme Court has said poses the risk that it may be
1121 tempted to use retroactive legislation as a means of
1122 retribution against unpopular groups or individuals."

1123 And I am sure that my friend, attorney Mel Watt, takes

1124 this very seriously. Nonetheless it goes on to say,
1125 "Constitutional restraints on retroactivity are of limited
1126 scope and within reasonable bounds. The retroactive
1127 application of statutes can be an acceptable or unavoidable
1128 means of achieving a legitimate public purpose."

1129 As the court has said, "Retroactivity provisions often
1130 serve entirely benign and legitimate purposes whether to
1131 respond to emergencies, to correct mistakes, to prevent
1132 circumvention or a new statute in the interval and
1133 immediately preceding its passage or simply to give
1134 comprehensive effect to a new law Congress considers
1135 salutary."

1136 Accordingly, several Supreme Court decisions in the past
1137 half century that address retroactive federal statutes have
1138 found them constitutionally inoffensive, so there is no
1139 question that the constitutional argument just does not hold
1140 water here.

1141 I think it has been articulated very well by Mr. Berman
1142 and perhaps some others. And in the case of this spill, this
1143 historical spill, in the case of everything that we have
1144 learned about this spill and the fact that a claims process
1145 was setup very early.

1146 And in that claims process BP said it made a mistake,
1147 and they tried to get people to waive their rights in order
1148 to receive a claim.

1149 In light of the fact that the destruction is so
1150 extensive on and on and on, I think that we certainly should
1151 move very aggressively to support this bill and to recognize
1152 that we are not-

1153 Chairman Conyers. No, we got to go.

1154 Ms. Waters. -in violation of the Constitution in any
1155 shape, form or fashion. But the Supreme Court established
1156 this standard in 1984 in Pension Benefits v. R.A. Gray. I
1157 will yield back the balance of my time.

1158 Ms. Jackson Lee. Mr. Chairman?

1159 Chairman Conyers. I appreciate that all of my senior
1160 members on the committee would like to weigh in on this. The
1161 chair is going to ask you to put your comments into the
1162 record, and I am going to call for a vote on the amendment.
1163 We are now going to vote on the Watt amendment. All in favor
1164 of the Watt amendment, indicate by saying "aye"

1165 [A chorus of ayes.]

1166 Chairman Conyers. All those opposed, say "no."

1167 [A chorus of noes.]

1168 Chairman Conyers. The Watt amendment is unsuccessful.

1169 Mr. Goodlatte?

1170 Mr. Goodlatte. Mr. Chairman, I have an amendment at the
1171 desk marked Goodlatte amendment number one.

1172 Chairman Conyers. The clerk will report the amendment.

1173 The Clerk. "Goodlatte amendment number one to H.R.

1174 5503, strike Section 5."

1175 [The amendment by Mr. Goodlatte follows:]

1176 ***** INSERT *****

1177 Chairman Conyers. The gentleman is recognized in
1178 support of his amendment.

1179 Mr. Goodlatte. Well, thank you, Mr. Chairman. Mr.
1180 Chairman, as you are aware, several years ago work that
1181 Congressman Rick Boucher and I introduced, the Class Action
1182 Fairness Act, was passed through the Congress with
1183 overwhelming bipartisan support, passed through the Senate,
1184 signed into law by the president.

1185 And the provision in H.R. 5503 dealing with class action
1186 lawsuits on Page Four, Section 5 is a very significant
1187 loophole that does not just affect maritime incidents, by the
1188 way, but would alter the law with regard to all class action
1189 lawsuits, and I believe that that section is unnecessary.

1190 The supporters of this provision say it is necessary to
1191 allow states affected by the oil spill in the Gulf to seek
1192 effective legal remedies in their own courts.

1193 But the Class Action Fairness Act provision is totally
1194 unnecessary because state attorneys general can bring suits
1195 as *parens patriae* on behalf of their citizens without
1196 implicating Class Action Fairness Act jurisdiction.

1197 Thus, the only real effect of the legislation would be
1198 to create a loophole that would keep legitimate class actions
1199 out of our federal courts. Here is why Congress should
1200 reject this attempt to amend CAFA by deleting the CAFA
1201 provision from H.R. 5503.

1202 First, some lawsuits brought by state attorneys general
1203 are *parens patriae* cases. That means suits in which the
1204 state attorney general seeks to enforce state laws by suing
1205 in its sovereign capacity on behalf of the state citizens and
1206 often to seek monetary recoveries from them.

1207 These suits are typically brought under state consumer
1208 protection statutes. Such suits can only be brought by
1209 attorneys general, fall outside of the scope of CAFA because
1210 they are not class actions.

1211 And we worked very diligently and very carefully, Mr.
1212 Boucher and I and a number of others on this committee, to
1213 make it very clear that those suits were not covered by CAFA,
1214 and therefore attorneys general could bring those suits.

1215 CAFA expressly applies to class actions which are
1216 defined as "any civil action filed in a district court of the
1217 United States under Rule 23 of the Federal Rules of Civil
1218 Procedure, or any civil action that is removed to a district
1219 court of the United States that was originally filed under a
1220 state statute or rule of judicial procedure authorizing an
1221 action to be brought by one or more representatives as a
1222 class action."

1223 Unlike class actions, *parens patriae* cases do not
1224 involve any certification process and are not filed by
1225 representative class members. Some have claimed that the
1226 amendment is necessary because the U.S. Court of Appeals for

1227 the Fifth Circuit expanded CAFA jurisdiction to include
1228 parens patriae lawsuits in, *In Re Katrina Canal Litigation*
1229 Breaches.

1230 But that case does not support the proposition that all
1231 suits initiated by attorneys general may be removed to
1232 federal court under CAFA. Rather, the court found that the
1233 lawsuit in that case was effectively a class action and not
1234 an authentic parens patriae suit because the state joined
1235 individual plaintiffs in the action.

1236 As a result, the state was not the only real party in
1237 interest, which meant that the suit was not an authentic
1238 parens patriae action, in which the state was suing in its
1239 sovereign capacity.

1240 As other courts have found in refusing to follow the
1241 Katrina ruling, suits brought by state attorneys general are
1242 not subject to federal jurisdiction under CAFA when the state
1243 is suing in its capacity as a sovereign. And there are a
1244 number of cases in which that ruling has been made.

1245 Secondly, the CAFA provision of the Spill Act threatens
1246 to negate one of the core purposes of the Class Action
1247 Fairness Act by creating a loophole that would encourage
1248 enterprising attorneys to avoid federal jurisdiction by
1249 finding attorneys general to join their class action
1250 lawsuits.

1251 Rather than promote justice, such a result would promote

1252 questionable collaborations between private attorneys and
1253 public officials in which the attorneys seek the A.G.'s
1254 signature simply in order to avoid federal jurisdiction and
1255 the A.G.s join essentially private lawsuits for political
1256 reasons. Meanwhile, it would do nothing to help the
1257 individuals and businesses affected by the Gulf spill.

1258 For all these reasons, the CAFA provision in the Spill
1259 Act should be deleted from the bill and I would urge my
1260 colleagues to support this amendment and preserve the very
1261 carefully balanced legislation that was approved by the
1262 Congress and signed into law and has worked very effectively.

1263 It does not meet the needs of the Gulf state attorneys
1264 general. Their ability to take action under *parens patriae*
1265 lawsuits is preserved and protected in current law.

1266 Ms. Jackson Lee. Mr. Chairman?

1267 Chairman Conyers. Who seeks? Sheila Jackson Lee?

1268 Ms. Jackson Lee. I disagree with my friend, colleague,
1269 from Virginia based on the hearing that many seem to want to
1270 forget. One representative of the state attorney generals
1271 throughout the Gulf who will be filing their lawsuits made it
1272 very clear that the present structure of the class action law
1273 does not protect and provide the opportunity for lawsuits to
1274 be carried forward for the citizens of that state.

1275 I think this amendment takes away the clarification that
1276 is in this present legislation. If we recall, BP has

1277 consistently said that they will pay every legitimate claim.
1278 That raises a question as to their determination of
1279 legitimacy.

1280 But I can assure them that there will be claims that
1281 will be unending, families who may have initial claims that
1282 will generate into secondary claims because of the enormity
1283 of this action, injured workers, states who are now facing
1284 enormous environmental concerns, the economy that may be
1285 unending.

1286 And so states may have a combination of matters that
1287 impact the citizens of that state, and the way the present
1288 class act legislation is drafted, it does not give them the
1289 latitude to litigate as they would need to in behalf of the
1290 citizens collectively.

1291 So I would argue that striking this takes away the
1292 clarity that is necessary for incidences like this. And I
1293 would hope we don't see another horrific incident like this,
1294 but certainly now we have precedent that it can and will
1295 occur.

1296 If that is the case, I want to make sure that states
1297 have the right to be able to represent citizens who are not
1298 represented by individual counsel because the injury is
1299 collective. The economy is a collective impact. The idea of
1300 the environmental impact is a collective impact.

1301 And so I think it is crucial that these states have an

1302 unimpeded pathway into the courthouse to be able to recover
1303 the enormity of the damages that are impacting them and will
1304 impact them, I believe, for decades to come.

1305 With that, I just offer my opposition to the amendment
1306 and ask for a vote no. I yield back.

1307 Chairman Conyers. Ranking member Lamar Smith.

1308 Mr. Smith. Thank you, Mr. Chairman. Mr. Chairman, I
1309 support Mr. Goodlatte's amendment, which would remove the
1310 Class Action Fairness Act's provisions from the underlying
1311 bill. The proposed changes to the Class Action Fairness Act
1312 in H.R. 5503 are unnecessary and run counter to the very
1313 purpose of the act.

1314 The act was meant to ensure that class actions brought
1315 by plaintiffs of one state against the dependents of another
1316 state are decided in a neutral fair forum, the federal
1317 courts. History shows that the alternative, permitting such
1318 actions in local courts, often leads to unjust results.

1319 The Class Action Fairness Act provisions in this bill
1320 apply well beyond oil spills. Striking them from this bill
1321 will not affect the ability of those harmed by the Gulf oil
1322 spill to recover fully for the damages they have suffered.

1323 So I support the amendment and, Mr. Chairman, I will
1324 yield the balance of my time to the maker of this amendment,
1325 Mr. Goodlatte.

1326 Mr. Goodlatte. I thank the gentleman for yielding. And

1327 I would like to say in response to the gentleman from Texas
1328 that the attorney general for Mississippi who raised this
1329 issue, cited the very same case that I addressed, the Katrina
1330 Canal Litigation Breaches.

1331 And as I pointed out, that was a hybrid case in which
1332 the attorney general of Louisiana had chosen to join a
1333 private plaintiff's lawsuit. It did not deprive the ability
1334 of the lawsuit to move forward.

1335 It simply said, as the Class Action Fairness Act
1336 requires, that it could be, on the motion of any of the
1337 parties, removed into United States District Court in
1338 Louisiana, which in fact is what took place in that case.

1339 But the fact of the matter is that the provision in H.R.
1340 5503 would have the effect of removing this from all class
1341 action lawsuits for all time and not require the distinction
1342 between a *parens patriae* case brought by a state attorney
1343 general on behalf of the citizens of the state, which the
1344 Class Action Fairness Act does not apply to in any way, shape
1345 or form.

1346 Nor would it in any way prohibit a state contained class
1347 action lawsuit from being brought in Mississippi or Louisiana
1348 or any state that only involved plaintiffs within that state.
1349 That also is not covered by the Class Action Fairness Act.

1350 It is only when you have a class action lawsuit that
1351 expands beyond the borders of a state, and that class action

1352 then can be removed to federal district court if it meets
1353 certain other criteria.

1354 This amendment is totally unnecessary to the purposes
1355 sought to be able to preserve the right of state attorneys
1356 general and the private citizens to bring, in the case of
1357 attorneys general parens patriae cases, in the case of
1358 private plaintiffs, class action lawsuits in the state courts
1359 in those states.

1360 In the instance where an attorney general chooses to
1361 combine with a group of private plaintiffs, there is nothing
1362 that the Class Action Fairness Act does to prohibit that
1363 lawsuit. It simply says that if it also meets other
1364 criteria, then any of the parties to the class action can
1365 move to take that case to federal court.

1366 This is a good example of why we should not alter major
1367 legislation that has been signed into law and has been
1368 operating successfully by slipping in a provision into
1369 something that is otherwise totally unrelated to it. And
1370 this provision in this bill should be taken out.

1371 Chairman Conyers. Thank you very much. Before I
1372 recognize my friend, Ms. Waters, I would like to put in the
1373 record a letter that came to us Friday to myself and to Lamar
1374 Smith as ranking member. And it is a letter from the
1375 Attorney General of Mississippi Jim Hood, who testified on
1376 May 27th.

1377 [The information follows:]

1378 ***** INSERT *****

1379 Chairman Conyers. And he says, "Dear Chairman Conyers
1380 and Ranking Member Smith. Please accept this letter as my
1381 expressed support for H.R. 5503. I especially support
1382 Sections Four and Five of H.R. 5503, the repeal of the
1383 Limitation on Liability Act and the amendment to the Class
1384 Action Fairness Act."

1385 So I can understand, Mr. Goodlatte that may not have
1386 gotten this letter but you did.

1387 Mr. Goodlatte. Would the chairman—

1388 Chairman Conyers. Yes, just a minute I want to tell you
1389 what it said. You must hear this before I yield. He goes on
1390 to say that "British Petroleum and Transocean revealed their
1391 legal strategy of attempting to remove all claims including
1392 the state and federal government claims to federal district
1393 court in Houston, Texas.

1394 States deserve to have their claims litigated in their
1395 courts. Federal law should respect the separate sovereign
1396 authority of the states."

1397 And that is why I am putting the letter in to oppose
1398 this amendment, Mr. Goodlatte, for the simple reason that
1399 this is the strategy of keeping litigation going for ever and
1400 most states can't afford the expense.

1401 So that is why, unfortunately, I can't support your
1402 amendment at this time and—

1403 Mr. Goodlatte. Mr. Chairman—

1404 Chairman Conyers. -I will yield to you.

1405 Mr. Goodlatte. I thank you for yielding, Mr. Chairman.

1406 I would make the point again that if the attorney general of
1407 Mississippi or Louisiana or any other Gulf state brings a
1408 *parens patriae* case, a case on behalf of all of their
1409 citizens in the state courts of the state in which they serve
1410 as attorney general including, Mr. Hood in Mississippi, the
1411 Class Action Fairness Act will in no way allow the removal of
1412 that case to a federal district court in Houston Texas or
1413 anywhere else because those actions are not covered by the
1414 Class Action Fairness Act.

1415 And if a class action is brought on behalf of the
1416 citizens of Mississippi or Louisiana by citizens of that
1417 state and not other states as well then again it cannot be
1418 removed to the federal district courts.

1419 Now, once a combined class action is brought involving
1420 multiple states that is the purpose that we have federal
1421 district courts for is to consider disputes involving parties
1422 in different states and plaintiffs in different states and
1423 under those circumstances a case could be removed.

1424 But it could not be removed to the location of BP's
1425 choice. It would be removed to the federal district court
1426 that the laws provide for. And it will most likely not be
1427 Houston, Texas.

1428 So I again I would reiterate that the multitude of-

1429 Chairman Conyers. Okay—

1430 Mr. Goodlatte. —different types of lawsuits brought
1431 here will not be covered by the Class Action Fairness Act, so
1432 we shouldn't make a change to the Class Action Fairness Act
1433 that is going to affect all class actions in all states that
1434 are—

1435 Chairman Conyers. Okay.

1436 Mr. Goodlatte. —brought and not just—

1437 Chairman Conyers. Do you know this is my time that you
1438 are using?

1439 Mr. Goodlatte. I will yield back.

1440 [Laughter.]

1441 Chairman Conyers. I am stunned because those who
1442 support states rights should rally behind the proposal that
1443 states should be able to bring their own claims in their own
1444 courts.

1445 And I have just read you an excerpt, and again, I should
1446 make you a copy of this letter because it is in the record
1447 now, in which they revealed what their strategy is. They
1448 testified that they go from Mississippi to Houston and you
1449 are saying that it is okay. They can't afford it.

1450 And no, I am not yielding any more time to you. But the
1451 whole idea is that if we were to adopt the Goodlatte
1452 amendment we would be sanctioning BP and Transocean's
1453 strategy to exhaust the resources of states' attorney

1454 generals to bring the claim.

1455 And that is why, Lamar, he wrote me and you the letter
1456 thanking us for Section Five and now we are up here
1457 discussing seriously removing that section. I appealed to a
1458 rally for all my states' rights colleagues to join me in
1459 defeating this amendment.

1460 Mr. Coble. Mr. Chairman?

1461 Chairman Conyers. Mr. Coble—

1462 Mr. Coble. Mr. Chairman?

1463 Chairman Conyers. —you are a states' rights man, you
1464 are recognized.

1465 Mr. Coble. Well thank you—

1466 [Laughter.]

1467 Thank you, Mr. Chairman. I wanted to yield to the
1468 gentleman from Virginia, Mr. Goodlatte.

1469 Mr. Goodlatte. I thank the gentlemen for yielding, and
1470 Mr. Chairman I will say again that while I very much
1471 appreciate that the attorney general of Mississippi has
1472 written a letter to you and Mr. Smith, that facts are facts.
1473 And the fact is that what he claims in his letter is simply
1474 not the case.

1475 And the other fact is is that this bill, this provision
1476 goes way beyond anything that is related to claims in the
1477 Gulf and will apply to all time to all class actions brought
1478 under the circumstances provided in that section.

1479 If it makes the chairman feel any better my next
1480 amendment is one that limits this to cases, to maritime cases
1481 in the Gulf related to oil spills. So we certainly do not
1482 want to afford BP any advantage and I think I have made it
1483 very plain that the Class Action Fairness Act does not afford
1484 BP any advantage whatsoever.

1485 And I would urge my colleagues to protect what was
1486 passed into law, legislation introduced by myself and Mr.
1487 Boucher and supported by many, many Democrats on this
1488 committee and in the Congress as a whole and many Republicans
1489 as well.

1490 This was very bipartisan legislation. It was worked out
1491 in the House and the Senate. It had a very substantial
1492 majority in the Senate, as well, and this is a very
1493 substantial change that goes way beyond helping the
1494 plaintiffs in the Gulf.

1495 Mr. Coble. Mr. Chairman, I would reclaim and yield
1496 back.

1497 Chairman Conyers. The gentlelady from California,
1498 Maxine Waters?

1499 Ms. Waters. Thank you very much, Mr. Chairman. I would
1500 like to first compliment you on this legislation and
1501 particularly on Section 5. I remember the debate on the
1502 Class Action Fairness Act, and I remember that some of us
1503 were concerned about precisely what the attorney general, Jim

1504 Hood, identifies in this letter.

1505 In the letter he says "CAFA has been abused by corporate
1506 wrongdoers to improperly delay and remove cases filed by
1507 state attorneys general in violation of the 11th Amendment to
1508 United States Constitution, which provides that actions
1509 against the state should be decided at state courts." These
1510 violations of states' rights cannot stand.

1511 I remember that we had this great debate just around the
1512 possible abuse of the legislation that finally got passed.
1513 Having said that, you pointed out what we learned right here
1514 in this committee when we had the hearing where we had the
1515 representatives from BP and others, when they identified that
1516 they had moved to Houston to file in the Houston courts
1517 which, I think, is very instructive.

1518 Having said that, Mr. Chairman, I think that not only
1519 should the colleagues, your colleagues on this committee,
1520 join with you and those that have stood up for our states'
1521 rights, but I am going to join with Haley Barbour right now,
1522 the governor of Mississippi.

1523 Everybody thinks that we are philosophically,
1524 diametrically opposed to each other on everything, but today
1525 I want the record to reflect that I support Governor Haley
1526 Barbour. And I am so surprised that we would have members on
1527 the opposite side of the aisle who are states' rights
1528 opponents and who support the governor who would take this

1529 step.

1530 After all, even if you are right, wouldn't it be better
1531 to err on the side of the victims of this historic oil spill?
1532 Wouldn't it be better to make sure that the states' attorney
1533 generals have the opportunity to represent the people that
1534 have been harmed in their state in the way that this oil
1535 spill has done?

1536 So I am opposed to this amendment, and I thank you, Mr.
1537 Chairman, for making sure that Section 5 is a part of this
1538 bill. And I yield back the balance of my time.

1539 [Laughter.]

1540 Chairman Conyers. Anybody else before—

1541 Mr. Lungren. Mr. Chairman?

1542 Chairman Conyers. Dan Lungren?

1543 Mr. Lungren. Thank you very much Mr. Chairman. Mr.
1544 Chairman I would like to ask my friend from Virginia, as I
1545 understand when you had the Class Action Fairness Act passed
1546 you got a super majority in the Senate and a super majority
1547 in the House floor—

1548 Mr. Goodlatte. We did indeed.

1549 Mr. Lungren. —on a bipartisan basis?

1550 Mr. Goodlatte. We did indeed. And this section of that
1551 act was discussed and debated and amendments were offered as
1552 it moved through the process and we achieved what I think is
1553 a very fair balance here with this legislation.

1554 But I would say to the gentlewoman from California that
1555 I very much respect her concern for plaintiffs. That is what
1556 the Class Action Fairness Act is designed to do. It was in
1557 response to abuses in which class actions were brought where
1558 plaintiffs got—I saw one just the other day—a \$3 payment and
1559 the attorneys got a \$1.3 million in attorney's fees.

1560 So we want to make absolutely sure that when actions are
1561 brought they are brought in a fair manner. If a state
1562 attorney general chooses to bring an action on behalf of the
1563 citizens of that state, the Class Action Fairness Act doesn't
1564 even apply at all, so we shouldn't be looking at this.

1565 Mr. Lungren. Yes, but—

1566 Mr. Goodlatte. If a private group of plaintiffs bring
1567 an action and they bring it within the citizens of that state
1568 they can't remove that case to federal court as well. But it
1569 is only when you have multiple plaintiffs in multiple states
1570 and multiple defendants that the Class Action Fairness Act
1571 applies.

1572 And that is why we have federal courts to begin with, to
1573 resolve disputes amongst parties from different states. The
1574 particular suit that the attorney general of Mississippi is
1575 complaining about deals with a suit that wasn't brought by
1576 the attorney general. It was brought by private plaintiffs,
1577 and the attorney general chose to join in the suit. So it is
1578 not a pure *parens patriae* law suit.

1579 And that is the only instance in which a state attorney
1580 general has chosen to join has been allowed be moved to
1581 federal court. And properly so because it was a private
1582 class action law suit that fits within the parameters of the
1583 law.

1584 If the attorney general of Mississippi brings a suit on
1585 his own he can keep it in the state courts of Mississippi.
1586 This provision in this bill is totally unnecessary for this
1587 bill, and it is totally detrimental to the legislation that
1588 was passed and signed into law with very, very strong-

1589 Mr. Lungren. If I can-

1590 Mr. Goodlatte. -bipartisan support, although albeit
1591 without the support of the gentlewoman from California.

1592 Mr. Lungren. If I can reclaim my time. Is there
1593 anything that stops an attorney general from any of the
1594 states from bringing a parens patriae action?

1595 Mr. Goodlatte. Nothing--none whatsoever.

1596 Mr. Lungren. And as I recall, before you had the Class
1597 Action Fairness Act passed, we did have instances of where
1598 people would get less than a dollar as being a member of the
1599 class action.

1600 But the attorney's fees would be significant and part of
1601 the effort, as I recall, in the Class Action Fairness Act was
1602 to try and balance the various interests involved such that
1603 individuals who would be members of the class would get a

1604 beneficial portion of any return.

1605 And also, did it not require certain types of notices
1606 and so forth so that there would be greater transparency?

1607 Mr. Goodlatte. If the gentleman would yield. The
1608 gentleman is absolutely correct. The abuse that we had were
1609 the so-called coupon settlements, where the settlement would
1610 be negotiated between the plaintiff's attorneys, which would
1611 be awarded millions of dollars in attorney's fees, the
1612 defendants attorneys, which wanted to get out of the lawsuit.

1613 When the plaintiffs got coupons often to buy more of the
1614 product that their attorneys were alleging were defective in
1615 the first place. There were major abuses here, and we were
1616 careful to make sure that state attorneys general could bring
1617 their own lawsuits in their own states and not be affected by
1618 that law. And as I—

1619 Mr. Johnson. Would the gentleman yield?

1620 Mr. Goodlatte. I would be happy to yield.

1621 Mr. Lungren. Well, well, wait one second, it is my
1622 time.

1623 Mr. Goodlatte. I would be happy to answer a question—

1624 Mr. Lungren. Well, well—

1625 Mr. Goodlatte. —if the gentleman from California
1626 yields.

1627 Mr. Lungren. I mean, I appreciate the opinion of the
1628 gentleman from Mississippi, the attorney general, but as I

1629 recall, during the service when I was attorney general, we
1630 had the largest class action lawsuit with the largest
1631 settlement in the history of the world against the tobacco
1632 companies.

1633 I did not find that the attorney generals were somehow
1634 forced to the sidelines, either at that time or subsequent to
1635 the law that you suggest—well, that you helped pass, and I am
1636 at somewhat of a loss to understand the complaint here and—

1637 Mr. Johnson. Well, would the gentleman yield?

1638 Mr. Goodlatte. —the requirement for us in this bill to
1639 overturn a piece of legislation that was passed
1640 overwhelmingly by the House and the Senate on a bipartisan—

1641 Mr. Johnson. Would the gentleman yield? Would the
1642 gentleman yield?

1643 Mr. Lungren. I would be happy to yield.

1644 Mr. Goodlatte. I am—

1645 Mr. Lungren. I don't know I keep—I hear a couple—

1646 Mr. Johnson. Would the gentleman yield? I think I was
1647 first.

1648 Mr. Lungren. Oh. I am sorry, Mr. Johnson was first.

1649 Mr. Johnson. Thank you for yielding to me. I would ask
1650 whether or not the Class Action so-called Fairness Act made a
1651 distinction between what is a mass action and what is a class
1652 action?

1653 Mr. Lungren. I would be happy to yield to the gentleman

1654 from Virginia. He wants to know whether there is a
1655 distinction between a class action and a mass action under
1656 the terms of the bill that you had referred to.

1657 Mr. Goodlatte. Yes. There was a distinction drawn
1658 between the two.

1659 Mr. Johnson. What is that distinction?

1660 Mr. Watt. I will be happy to yield to the gentleman
1661 from Virginia to be able to respond to the gentleman from
1662 Georgia on my time.

1663 Mr. Goodlatte. That is in the Senate compromise bill
1664 that was finally agreed to by the House and passed into law.
1665 I can't give you the details right here.

1666 Mr. Johnson. Could the gentleman yield to me for a
1667 second? Is it not the intent of the manager's amendment to
1668 clarify the difference between a mass action and a class
1669 action?

1670 Mr. Goodlatte. No. This is an attempt to clarify—

1671 Mr. Lungren. This is known as a pregnant pause. I will
1672 have to yield to the gentleman from Michigan, I think, on
1673 that question.

1674 Mr. Johnson. I would yield to the gentleman from
1675 Michigan on that, well, if I have time to yield.

1676 Chairman Conyers. Let me put it like this. On July
1677 2008, the Fifth Circuit Court in the case of Louisiana v.
1678 Allstate found in their decision that the attorney general

1679 actions for a state are subject to the Class Action Fairness
1680 Act and can have their cases removed to federal court.

1681 That is why Section 5 is in the bill, and taking it out
1682 would make this the law of the land, which it currently is.
1683 That is what we are trying to change.

1684 Mr. Lungren. If I might reclaim my time, I think I have
1685 the time in this roundabout here. I believe that may be true
1686 except if it is a *parens patriae* case. That is where the
1687 attorney general is acting.

1688 The attorney general is acting on behalf of all of the
1689 people of the state he represents and does not have other
1690 individual claimants involved nor has joined together with
1691 other attorney generals in their lawsuits.

1692 Mr. Goodlatte. Would the gentleman yield?

1693 Chairman Conyers. This just in. This was a *parens*
1694 *patriae* case.

1695 Mr. Goodlatte. Would the gentleman yield?

1696 Mr. Johnson. Would the gentleman yield?

1697 Mr. Lungren. If I have time, this is great. I have
1698 never had so much time. I will be happy to yield.

1699 Mr. Goodlatte. I thank the gentleman for yielding. I
1700 think it is very clear from that decision that that was not a
1701 *parens patriae* case. It was a private class action lawsuit,
1702 which the state attorney general of Louisiana joined as a
1703 party.

1704 And so a parens patriae case is a case brought by the
1705 sovereign on behalf of the citizens of the state, not a suit
1706 brought by private plaintiffs that the state attorney general
1707 chooses to join. That is a huge difference.

1708 That is not recognized in your deletion of these
1709 provisions in the Class Action Fairness Act that you placed
1710 in Section 5 of your bill.

1711 And that is why that section should be removed from the
1712 bill, because it doesn't address the very case that you are
1713 talking about there. And it is totally unnecessary, but has
1714 far-reaching implications well beyond oil spills in the Gulf.

1715 Mr. Lungren. If I have any time left Mr.—

1716 Mr. Watt. Can I just claim my own time, Mr. Chairman?

1717 Mr. Lungren. Oh, okay. I will yield back the balance
1718 of my time, just—

1719 Chairman Conyers. Well, I will recognize Mr. Watt—

1720 Mr. Watt. —just long enough to say that I think the
1721 gentleman is way overstating the impact of this because at
1722 worst, this would be a redundancy if what the gentleman is
1723 saying. You are making it this sound like you are repealing
1724 the whole class action statute, and that is not the case.

1725 Mr. Goodlatte. Would the gentleman yield?

1726 Mr. Watt. Let me make one other point to make it
1727 absolutely clear that there were a number of us who would
1728 like to go much, much further than this language. Because we

1729 would like to do away with the whole thing, because we didn't
1730 vote for it in the first place, but that is a subject of
1731 another day.

1732 But I think you are making much, much more of this
1733 language in this bill than the language actually says. At
1734 worst, it is a redundancy if your position is correct. And I
1735 will yield to the gentleman if he wants me to yield to him,
1736 but I—that is all I have to say. I will yield back.

1737 Mr. Goodlatte. I appreciate the gentleman yielding.
1738 The concern here is that plaintiff's attorneys will bring a
1739 private class action lawsuit, and then in order to avoid the
1740 purposes of the Class Action Fairness Act they will get the
1741 state attorney general to join with them and then once that
1742 occurs—

1743 Mr. Watt. Well, reclaiming my time. The gentleman
1744 obviously is not reading the language, because it says "an
1745 action brought by a state or subdivision of a state" in both
1746 of the sections.

1747 I, you know, and now you are talking about something
1748 that is completely different. You are just making up
1749 something. You are obviously not reading the language of the
1750 bill. It does not go as far as you say. I would like for it
1751 to go as far as you say, but—

1752 Mr. Goodlatte. If the gentleman would yield further.
1753 If the intention is, as the chairman describes, to overturn

1754 the decision in this canal case in Louisiana, that is exactly
1755 the circumstance I just described.

1756 Mr. Watt. Well, you can't look at the intention. You
1757 have got to look at the language, you know, the language of
1758 the bill says what it says. So I don't know what his
1759 intention is. I am just looking at the language of the bill.

1760 Mr. Goodlatte. Well, I would ask the chairman—

1761 Mr. Watt. I yield back.

1762 Mr. Goodlatte. —what his intention is.

1763 Chairman Conyers. Ladies and gentlemen, before we
1764 repair for the three votes on the House, I will call
1765 attention to the fact, and introduce into the record the
1766 Louisiana v. Allstate case, and read you this one sentence.

1767 "Louisiana asserts that this action is not a class
1768 action, but rather a *parens patriae* action, which the
1769 Louisiana attorney general is statutorily and
1770 constitutionally authorized to bring. And in that case, it
1771 was held by the Fifth Circuit that the attorney general's
1772 actions are subject to the Class Action Fairness Act and can
1773 have their cases removed to the federal court," which is
1774 precisely what Section 5 is trying to prohibit.

1775 We are now prepared to vote on the Goodlatte amendment.
1776 All in favor, indicate by saying "aye."

1777 [A chorus of ayes.]

1778 Chairman Conyers. All opposed, indicate by saying "no."

1779 [A chorus of noes.]

1780 Mr. Goodlatte. Mr. Chairman, I would ask for a recorded
1781 vote.

1782 Chairman Conyers. A recorded vote is requested. The
1783 clerk will call the roll.

1784 The Clerk. Mr. Conyers.

1785 Chairman Conyers. No.

1786 The Clerk. Mr. Conyers votes no.

1787 Mr. Berman?

1788 [No response.]

1789 Mr. Boucher?

1790 [No response.]

1791 Mr. Nadler?

1792 Mr. Nadler. No.

1793 The Clerk. Mr. Nadler votes no.

1794 Mr. Scott?

1795 Mr. Scott. No.

1796 The Clerk. Mr. Scott votes no.

1797 Mr. Watt?

1798 Mr. Watt. No.

1799 The Clerk. Mr. Watt votes no.

1800 Ms. Lofgren?

1801 Ms. Lofgren. No.

1802 The Clerk. Ms. Lofgren votes no.

1803 Ms. Jackson Lee?

1804 Ms. Jackson Lee. No.

1805 The Clerk. Ms. Jackson Lee votes no.

1806 Ms. Waters?

1807 [No response.]

1808 Mr. Delahunt?

1809 [No response.]

1810 Mr. Cohen?

1811 [No response.]

1812 Mr. Johnson?

1813 Mr. Johnson. No.

1814 The Clerk. Mr. Johnson votes no.

1815 Mr. Pierluisi?

1816 Mr. Pierluisi. No.

1817 The Clerk. Mr. Pierluisi votes no.

1818 Mr. Quigley?

1819 [No response.]

1820 Ms. Chu?

1821 [No response.]

1822 Mr. Deutch?

1823 Mr. Deutch. No.

1824 The Clerk. Mr. Deutch votes no.

1825 Mr. Gutierrez?

1826 [No response.]

1827 Ms. Baldwin?

1828 Ms. Baldwin. No.

1829 The Clerk. Ms. Baldwin votes no.
1830 Mr. Gonzalez?
1831 [No response.]
1832 Mr. Weiner?
1833 [No response.]
1834 Mr. Schiff?
1835 Mr. Schiff. No.
1836 The Clerk. Mr. Schiff votes no.
1837 Ms. Sanchez?
1838 [No response.]
1839 Mr. Maffei?
1840 Mr. Maffei. No.
1841 The Clerk. Mr. Maffei votes no.
1842 Mr. Polis?
1843 [No response.]
1844 Mr. Smith?
1845 Mr. Smith. Aye.
1846 The Clerk. Mr. Smith votes aye.
1847 Mr. Goodlatte:
1848 Mr. Goodlatte. Aye.
1849 The Clerk. Mr. Goodlatte votes aye.
1850 Mr. Sensenbrenner?
1851 [No response.]
1852 Mr. Coble?
1853 [No response.]

1854 Mr. Gallegly?
1855 Mr. Gallegly. Aye.
1856 The Clerk. Mr. Gallegly votes aye.
1857 Mr. Lungren?
1858 Mr. Lungren. Aye.
1859 The Clerk. Mr. Lungren votes aye.
1860 Mr. Issa?
1861 [No response.]
1862 Mr. Forbes?
1863 Mr. Forbes. Aye.
1864 The Clerk. Mr. Forbes votes aye.
1865 Mr. King?
1866 Mr. King. Aye.
1867 The Clerk. Mr. King votes aye.
1868 Mr. Franks?
1869 [No response.]
1870 Mr. Gohmert?
1871 [No response.]
1872 Mr. Jordan?
1873 Mr. Jordan. Yes.
1874 The Clerk. Mr. Jordan votes yes,
1875 Mr. Poe?
1876 Mr. Poe. Aye,
1877 The Clerk. Mr. Poe votes aye,
1878 Mr. Chaffetz?

1879 Mr. Chaffetz. Aye.

1880 The Clerk. Mr. Chaffetz votes aye.

1881 Mr. Rooney?

1882 Mr. Rooney. Aye.

1883 The Clerk. Mr. Rooney votes aye.

1884 Mr. Harper?

1885 Mr. Harper. Aye.

1886 The Clerk. Mr. Harper votes aye.

1887 Ms. Waters?

1888 Ms. Waters. No.

1889 The Clerk. Ms. Waters votes no.

1890 Mr. Cohen?

1891 Mr. Cohen. No.

1892 The Clerk. Mr. Cohen votes no.

1893 Chairman Conyers. The clerk will report.

1894 The Clerk. Mr. Chairman, 11 members voted aye, 14
1895 members voted nay.

1896 Chairman Conyers. The amendment is unsuccessful. The
1897 committee can re-record a vote after it has been called.

1898 Mr. Watt. -have left. They would offset each other
1899 anyway.

1900 Chairman Conyers. Yes. We can ask unanimous consent
1901 that Mr. Weiner and Mr. Jordan and Ms. Chu be recorded.
1902 Okay. Well somebody go first.

1903 Voice. How did the chairman vote?

1904 Chairman Conyers. I voted in the negative.

1905 The Clerk. Mr. Weiner voted no.

1906 Ms. Chu?

1907 Ms. Chu. No.

1908 The Clerk. Ms. Chu votes no.

1909 Mr. Jordan is already recorded as voting aye.

1910 Voice. Well somebody else who came in-

1911 Voice. Mr. Gallegly came in.

1912 Voice. -Mr. Gallegly came in, and I believe Mr. Franks.

1913 Chairman Conyers. Mr. Franks?

1914 The Clerk. Mr. Franks is not recorded.

1915 Mr. Franks. I vote aye.

1916 The Clerk. Mr. Franks votes aye.

1917 Chairman Conyers. The clerk will report.

1918 The Clerk. Mr. Chairman, 12 members voted aye, 16

1919 members voted nay.

1920 Chairman Conyers. The amendment is not successful. We

1921 will stand in recess until the three votes are dispensed

1922 with, and then we will resume again. Thank you for your

1923 attention.

1924 [Recess.]

1925 Chairman Conyers. Committee will come to order. The

1926 clerk will call the role for a quorum.

1927 The Clerk. Mr. Conyers.

1928 Chairman Conyers. Present.

1929 The Clerk. Mr. Berman?
1930 Mr. Boucher?
1931 Mr. Nadler?
1932 Mr. Scott?
1933 Mr. Watt?
1934 Ms. Lofgren?
1935 Ms. Jackson Lee?
1936 Ms. Waters?
1937 Mr. Delahunt?
1938 Mr. Cohen?
1939 Mr. Johnson?
1940 Mr. Pierluisi?
1941 Mr. Quigley?
1942 Ms. Chu?
1943 Mr. Deutch?
1944 Mr. Gutierrez?
1945 Ms. Baldwin?
1946 [No response.]
1947 Mr. Gonzalez?
1948 [No response.]
1949 Mr. Weiner?
1950 [No response.]
1951 Mr. Schiff?
1952 [No response.]
1953 Ms. Sanchez?

1954 [No response.]
1955 Mr. Maffei?
1956 [No response.]
1957 Mr. Polis?
1958 [No response.]
1959 Mr. Smith?
1960 [No response.]
1961 Mr. Goodlatte?
1962 [No response.]
1963 Mr. Sensenbrenner?
1964 [No response.]
1965 Mr. Coble?
1966 [No response.]
1967 Mr. Gallegly?
1968 [No response.]
1969 Mr. Lungren?
1970 [No response.]
1971 Mr. Issa?
1972 [No response.]
1973 Mr. Forbes?
1974 [No response.]
1975 Mr. King?
1976 [No response.]
1977 Mr. Franks?
1978 [No response.]

1979 Mr. Gohmert?
1980 [No response.]
1981 Mr. Jordan?
1982 [No response.]
1983 Mr. Poe?
1984 [No response.]
1985 Mr. Chaffetz?
1986 [No response.]
1987 Mr. Rooney?
1988 [No response.]
1989 Mr. Harper?
1990 [No response.]
1991 Ms. Baldwin?
1992 [No response.]
1993 Mr. Quigley?
1994 [No response.]
1995 Mr. Scott?
1996 [No response.]
1997 Mr. Deutch?
1998 [No response.]
1999 Mr. Nadler?
2000 Mr. Nadler. Present.
2001 Chairman Conyers. The clerk will report.
2002 The Clerk. Mr. Chairman, 14 members responded to the
2003 quorum call.

2004 Chairman Conyers. A working quorum being established.

2005 Ms. Jackson Lee. Mr. Chairman?

2006 Chairman Conyers. The chair recognizes the gentlelady

2007 from Texas, Sheila Jackson Lee.

2008 Ms. Jackson Lee. Mr. Chairman, thank you so very much.

2009 I would like to call up amendment 814 and 812 en bloc Jackson

2010 Lee.

2011 Chairman Conyers. The clerk will report the amendments.

2012 The Clerk. "Amendment to H.R. 5503 offered by Ms.

2013 Jackson Lee of Texas. Add at the end the following, Section

2014 Nine, Multi-party Litigation."

2015 [The amendment by Ms. Jackson Lee follows:]

2016 ***** COMMITTEE INSERT *****

2017 Ms. Jackson Lee. I ask unanimous consent that the
2018 amendment be considered as read.

2019 Chairman Conyers. The gentlelady is recognized in
2020 support of her amendments.

2021 Ms. Jackson Lee. I thank the chairman very much. First
2022 of all, again, I would like to express my appreciation to
2023 Chairman Conyers, who about 10 days ago met with me, a number
2024 of victims and heard their plea and their story.

2025 During our break, I had the privilege, and I call it
2026 privilege, to meet a number of other family members who have
2027 lost loved ones. And again, I say to them, my deepest
2028 sympathy, but most of all I apologize to you. I have no
2029 conflictedness in apologizing to the offender.

2030 In listening to what has occurred over the past couple
2031 of weeks, what struck me again and again was an interview by
2032 a survivor that was reported over the last 24 hours. And
2033 that survivor said that he indicated to the supervisors that
2034 the BOP was leaking and that that leak was not being repaired
2035 days out.

2036 And he said over and over again, clearly there was no
2037 response until the tragedy of April 20th. This legislation
2038 is right because it deals with retroactivity. But I would
2039 like to talk very briefly about making sure every aspect of
2040 the concerns of the people of the Gulf are considered.

2041 I have an amendment on multi-party litigation that

2042 amends the Jones Act that, I think, further clarifies the
2043 ability of the states to move themselves out of multi-party
2044 jurisdiction to be able to defend their cases on behalf of
2045 citizens of individual states because the multi-party
2046 litigation causes them to pile up in one court.

2047 And I would like to clarify or make sure that the
2048 victims and the citizens of the individual harmed states can
2049 move as quickly through the courts as possible, and my
2050 amendment would provide for that.

2051 My other amendment deals with a question of an industry
2052 that is being impacted. And that is the tourist cruise
2053 industry that in fact protects and recognizes their
2054 responsibility to the traveling public and as well to their
2055 employees.

2056 But in this legislation there is the possibility of
2057 confusing provisions given to oil workers to our cruise
2058 workers as well. This has nothing to do with criminal
2059 activities. It has nothing to do with a potential impact on
2060 passengers where, in fact, those passengers would be harmed.
2061 This directly relates to employees.

2062 And my legislation would say that if the foreign
2063 employees or amendment has the appropriate remedy in their
2064 foreign country, meaning that they were not barred from the
2065 courts, then that would be the particular remedy that they
2066 would secure and would not need to secure any other remedy.

2067 Mr. Chairman, I know that you understand the importance
2068 of legislation that should be balanced. And therefore, I
2069 believe that we would have the opportunity to sit down and
2070 discuss these particular amendments and effectively make sure
2071 that they amend this legislation appropriately.

2072 Let me just add one other point. I have amendment 819
2073 that I have not yet submitted, but I believe this is
2074 important. BP has made the point that they will pay every
2075 legitimate claim. I, obviously, am concerned about that.

2076 Because having visited with shrimpers and others and
2077 small energy companies, small energy companies, I am
2078 concerned that the negative impact of what has occurred with
2079 BP labels and taints the entire industry, the same industry
2080 that victims have said they want to see continue safely in
2081 order to be able to continue not having the economic impact.

2082 So I will also be introducing and working with this
2083 committee and others on tiering the liability issues under
2084 LOL and under the Oil Pollution Act so that small, very small
2085 mom-and-pop energy companies and for those of you that are
2086 not from the Gulf, those kind of companies do exist.

2087 Mom-and-pop energy companies who comply with all of the
2088 safety rules are not negatively impacted by this legislation.
2089 With that in mind, let me indicate to my colleagues I look
2090 forward to working with the chairman and this committee.

2091 I supported the manager's amendment and go on record for

2092 supporting it. And go on record as have the amendment
2093 represent the support of Congressman Conyers and
2094 Congresswoman Sheila Jackson Lee.

2095 But I do believe that there are ways that we can speed
2096 through the litigation of these particular plaintiffs and as
2097 well make the states stronger and provide support for our
2098 cruise industry that has provided such a base of the economy
2099 in the Gulf region.

2100 Mr. Chairman I am going to ask now unanimous consent,
2101 thanking you for the courtesies and looking forward, if I
2102 could, to working with you and let me just yield for a
2103 moment, Mr. Chairman. I would appreciate if we could work
2104 together on some of the points that I have just made.

2105 Chairman Conyers. The gentlelady would yield, I am—

2106 Ms. Jackson Lee. I am happy to yield Mr. Chairman.

2107 Chairman Conyers. —delighted to inquire further into
2108 the two bills and the underlying issues that are involved.

2109 Ms. Jackson Lee. I thank the chairman very much. This
2110 is a good first step and I thank you for your work and
2111 enjoyed working with you on the manager's amendment and with
2112 that I would ask unanimous consent to withdraw my amendments
2113 looking forward to working with you on this issue. I ask
2114 unanimous consent to withdraw the amendment.

2115 Chairman Conyers. Without objection.

2116 Mr. Goodlatte. Mr. Chairman?

2117 Chairman Conyers. Mr—

2118 Mr. Goodlatte. Mr. Chairman?

2119 Chairman Conyers. Oh, Dan Lungren?

2120 Mr. Goodlatte. No, it is Bob Goodlatte.

2121 Chairman Conyers. Bob Goodlatte?

2122 Mr. Goodlatte. Mr. Chairman, I have an amendment at the
2123 desk, Goodlatte amendment number two.

2124 Chairman Conyers. I would like to have the clerk report
2125 the amendment.

2126 The Clerk. "Goodlatte amendment number two to H.R.

2127 5503. On page 4, line 9, after 'citizens' add 'in a class

2128 action rising out of an oil spill.' On page 4, line 13,

2129 after 'citizens' add, 'in a class action arising out of an

2130 oil spill.'"

2131 [The amendment by Mr. Goodlatte follows:]

2132 ***** INSERT *****

2133 Chairman Conyers. The gentleman is recognized in
2134 support of his amendment.

2135 Mr. Goodlatte. Thank you, Mr. Chairman. Mr. Chairman
2136 in recognition of the outcome of the last amendment, which
2137 was along a party line vote I have a solution that addresses
2138 your concern and could bring us all together.

2139 And that would be to simply make it clear that the
2140 provisions of H.R. 5503 that alter the Class Action Fairness
2141 Act only apply with respect to actions arising out of an oil
2142 spill. The proponents of H.R. 5503 claim that the underlying
2143 provisions necessary to allow lawsuits to move forward to
2144 address the disaster in the Gulf.

2145 This amendment incorporates that and would allow
2146 lawsuits seeking redress of oil spills to move forward
2147 despite the Class Action Fairness Act rules while preserving
2148 those rules for all other cases.

2149 This is a narrowly tailored amendment that protects the
2150 current Class Action Fairness Act while addressing the
2151 specific issue at hand, Gulf disasters caused by oil spills.

2152 And Mr. Chairman, I would urge you to accept this
2153 amendment or something like it, simply because I think
2154 broadening out the debate and making changes that affect many
2155 other class action lawsuits around the country is going to
2156 bring in parties to attempt to challenge what we are trying
2157 to accomplish here with regard to the ability of those in the

2158 Gulf who are aggrieved to be able to bring actions as they
2159 see fit.

2160 So I would urge my colleagues to support this amendment.

2161 Chairman Conyers. Well, this is one amendment that I
2162 must say that we did not anticipate. I have got to be sure
2163 that I would live more happily ever after with this amendment
2164 than had you not—than if you had succeeded on your first try.

2165 Could I inquire about the line of cases that I have
2166 quoted that—in which the courts have said *parens patriae* and
2167 class actions all get interpreted the same way and that they
2168 are accepted—that removals from state jurisdictions to
2169 federal are perfectly permissible.

2170 Mr. Goodlatte. Well, if the chairman would yield, under
2171 the two decisions that you cited, each one is unique in the
2172 sense that in the first one, involving the canal, that was a
2173 case in which the attorney general joined a private lawsuit.

2174 It was not the attorney general bringing a separate
2175 lawsuit on his own that would enable the matter to be kept in
2176 state court because of the nature of that lawsuit involved
2177 plaintiffs and defendants from more jurisdictions that under
2178 federal law, for the purpose that our federal courts and
2179 diversity jurisdiction exists, could be removed to a federal
2180 court.

2181 With regard to the other case, that is a situation in
2182 which the attorney general brought an action on behalf of a

2183 very narrow and limited class of people, not in the sense of
2184 an ordinary parens patriae case brought on behalf of the
2185 citizens of a state.

2186 And again, the court adopted a narrow interpretation of
2187 the law that indicated that that did not fit the definition
2188 of a traditional parens patriae case and allowed it to be
2189 removed to federal court.

2190 Again, once the court makes that decision that does not
2191 automatically remove a case to federal court. It simply then
2192 says that the other criteria for removing a case to federal
2193 court must be examined. And the court did that and found
2194 that it met those criteria.

2195 Ms. Jackson Lee. Mr. Chairman?

2196 Chairman Conyers. Who seeks recognition? Yes? I yield
2197 to gentlelady from Texas.

2198 Ms. Jackson Lee. I think the arguments that we made on
2199 the underlying amendment of Mr. Goodlatte are appropriate for
2200 opposition to this amendment. But frankly, the bill that you
2201 had put forward and the committee is now reviewing is not an
2202 isolated legislative initiative on an oil spill.

2203 It frankly is, I believe, correcting the failures of the
2204 class action as it relates to catastrophic events such as
2205 what has just occurred. And I would argue that if we put in
2206 the language of oil spills, there may be another catastrophic
2207 event that requires states to want the same kind of relief.

2208 If that is the case, we then now have sent forward a
2209 bill that only refers to oil spills. And I would be
2210 concerned about that. I think we are sound on the way the
2211 class action has been amended, both in the manager's
2212 amendment, which talks about mass action, and it helps to
2213 expedite in these instances.

2214 And so I would oppose the gentleman's amendment because
2215 it is narrow and limiting, and it does not go to the intent
2216 of this legislation, I hope, which is to broadly correct what
2217 might be a failure as it relates to class action. And I hope
2218 as I discuss with you further multi-district litigation.

2219 I yield back. I oppose the amendment.

2220 Mr. Goodlatte. Mr. Chairman? If you might yield just
2221 briefly again, I have one other point that may be of interest
2222 to you.

2223 Chairman Conyers. All right.

2224 Mr. Goodlatte. In the Class Action Fairness Act, there
2225 is already discretion for the court. It provides in Section
2226 3, "A district court may, in the interest of justice in
2227 looking at the totality of the circumstances, decline to
2228 exercise jurisdiction whether the claims asserted will be
2229 governed by laws of the state in which the action was
2230 originally filed or by the laws of other states."

2231 So it seems to me that that coupled with this amendment
2232 that I am offering here would address your concerns.

2233 Chairman Conyers. Well, Bob, here is the problem.

2234 These carve-outs could leave me with sleepless nights for the
2235 following reasons.

2236 What if it was another natural disaster, but it was not,
2237 in fact, an oil spill? And the same of those that want to
2238 carve out an exception for cruise ships. You know, we are
2239 now moving into the carve-out phase and oil spills are not
2240 the only environmental disaster that can create problems.

2241 So I don't know why—just because the event of April 20th
2242 was an oil spill, why do we just cover that alone? What
2243 about if it is something—another environmental problem?

2244 Mr. Goodlatte. Mr. Chairman, the fact of the matter is
2245 all this legislation is taking place because of the emergency
2246 circumstances that have been brought to your attention. If
2247 there needs to be broader changes to the Class Action
2248 Fairness Act, then let us have a hearing on the Class Action
2249 Fairness Act.

2250 But to make a change that is more broadly applied in its
2251 scope than what we know about is, quite frankly, to not give
2252 a fair hearing to existing law that many people think has
2253 worked very well.

2254 Obviously, a couple of people on your side have spoken
2255 today in saying that they don't like aspects of it. Let us
2256 have a hearing on it.

2257 But let us not change it in this expedited process that

2258 we are undertaking for enduring effects that we don't know
2259 what the unintended consequences are at this point.

2260 Let us just apply it to the matter that is facing us
2261 right in front of us, the oil spill that we are concerned—we
2262 need to make sure people can bring appropriate actions.

2263 Chairman Conyers. Well, let us agree that our staffs
2264 should work on this and that we may be heading toward a
2265 particular hearing under the Class Action Fairness Act. But
2266 I approached this on a wider scope. And I think you do it,
2267 and most of our committee does, too.

2268 This isn't just about oil spills. We have got some
2269 environmental problems that may come up in other contexts.
2270 So while our staff is studying this, let us move this
2271 legislation through without this carve-out. I think we would
2272 be better. I am still open for discussion.

2273 Mr. Goodlatte. Mr. Chairman, if you are suggesting that
2274 you and your staff would be willing to work with Congressman
2275 Boucher and I on the language that is in this bill with
2276 regard to the Class Action Fairness Act and try to arrive at
2277 something that would be more agreeable, we would certainly be
2278 willing to do that with you and withdraw this amendment.

2279 Chairman Conyers. Thank you. And I commit to that
2280 agreement.

2281 Mr. Goodlatte. Well, thank you, Mr. Chairman. We will
2282 do that.

2283 Chairman Conyers. Without objection, the amendment is
2284 withdrawn. And we turn now to the former Attorney General of
2285 California Dan Lungren.

2286 Mr. Lungren. Thank you very much, Mr. Chairman. I have
2287 an amendment at the desk.

2288 Chairman Conyers. The clerk will report it.

2289 The Clerk. "Amendment to H.R. 5503 offered by Mr.
2290 Daniel E. Lungren of California. Add at the end the
2291 following section-waiver of restriction on operation"-

2292 Mr. Lungren. Mr. Chairman?

2293 The Clerk. -"of foreign"-

2294 [The amendment by Mr. Lungren follows:]

2295 ***** INSERT *****

2296 Mr. Lungren. I ask unanimous consent the amendment be
2297 considered as read.

2298 Chairman Conyers. Without objection, the gentleman is
2299 recognized and—

2300 Mr. Lungren. Mr. Chairman, the Deepwater Horizon
2301 catastrophe is obviously tragic in terms of the loss of human
2302 life, but also we have the concern about the untold damage to
2303 the environment of the Gulf region.

2304 The circumstances are obvious to anybody who watches on
2305 television, sees the damage done. And it appears to me that
2306 virtually everyone agrees that we have got to do everything
2307 we can to facilitate the cleanup operations in the states
2308 affected.

2309 For this reason, I am offering an amendment to the
2310 Merchant Marine Act of 1920 otherwise known as the Jones Act
2311 stating that the sections should be suspended—

2312 Ms. Baldwin. Mr. Chairman, I reserve a point of order?

2313 Chairman Conyers. Who reserves the point of order?

2314 Gentlelady from Wisconsin's point of order is reserved.

2315 Mr. Lungren. Mr. Chairman, right now under the Jones
2316 Act, foreign flagships are unable to participate in emergency
2317 oil spill cleanup operations if, in fact, the foreign flag
2318 vessels travel between two U.S. ports. And of course that is
2319 what they would have to do if they were actually to assist in
2320 the emergency oil spill cleanup.

2321 As someone who grew up in and around major U.S. ports in
2322 Long Beach and Los Angeles, I have a great respect and
2323 admiration for those who work on U.S. flag vessels and
2324 understand the important national interest in ensuring the
2325 strength of our American fleet.

2326 However, it seems strange that during a national crisis,
2327 where an oil spill has taken place that somehow we would
2328 refuse the offer of assistance by foreign countries because
2329 their vessels are, in fact, a foreign flag.

2330 And there is every bit of evidence that in this
2331 particular case that has caused a delay in the response.
2332 That is that there is a limited capacity of vessels that we
2333 have, skimmers and others, to respond to a disaster such as
2334 this.

2335 Other countries, particularly Holland, or the
2336 Netherlands, have expertise in this area, have capacity that
2337 was not utilized and because of the impact of the Jones Act
2338 were not allowed to participate in this recovery.

2339 If an adequate number of vessels documented under the
2340 laws of the U.S. cannot be found, and if the foreign country
2341 has accorded similar privileges to the U.S. vessels under
2342 similar circumstances, we should, I hope, on a temporary
2343 basis draw upon the assistance of U.S. flag vessels for help.

2344 The environmental areas damaged really don't
2345 discriminate against whether or not it is a foreign-flagged

2346 skiff that is attempting to try and protect it or a U.S.
2347 flagged vessel that is doing that. So I would hope that we
2348 would respond to this tragic circumstance by recognizing one
2349 of the shortcomings of the Jones Act.

2350 We need to do everything we can to have all of the
2351 equipment that is available worldwide because this is not
2352 only global economy, but this is a global enterprise. These
2353 rigs find themselves—if they are not offshore the United
2354 States, they will be transferred to other places, Australia,
2355 off the coast of Brazil, Africa, et cetera.

2356 All of the equipment that is necessary to protect
2357 against the impact of some of these disasters is not
2358 available here in the United States. So I would hope this is
2359 not a radical notion. My amendment incorporates the language
2360 of an existing federal statutory authority under 46 USC,
2361 Section 55 113.

2362 In the bill before us today, we are making changes in
2363 the Jones Act, with all due respect, Mr. Chairman, without a
2364 lot of hearings. But we are doing it in reaction to the
2365 emergency exigent circumstances. I would hope that we would
2366 do that here as well.

2367 We should make it crystal clear that our effort to
2368 expand the parameters of the Jones Act include first and
2369 foremost an unequivocal commitment to do everything within
2370 our power to ensure that all the tools available worldwide

2371 can be used to protect the United States. And so, Mr.
2372 Chairman, that is why I offer this amendment. I hope it is
2373 not controversial.

2374 And because the bill before us deals with securing the
2375 protections of the injured from limitations on liability act,
2376 there is a limitation right now for protecting the injured,
2377 critical habitat in our coast.

2378 And that is a law that prohibits those who have
2379 requested permission to assist us, a law that prohibits them—
2380 or prohibits us from accepting that help.

2381 So, Mr. Chairman, I offer this in a spirit of
2382 bipartisanship and with the hope that we could get support on
2383 this. And with that, I yield back the balance of my time.

2384 Chairman Conyers. Does the gentlelady from Wisconsin
2385 insist upon her reservation?

2386 Ms. Baldwin. Yes. I would like to press the point of
2387 order that the amendment before us is not germane to the
2388 underlying bill. The underlying bill relates to civil
2389 actions for tort liability and this relates to rules relating
2390 to flagging and manning ships.

2391 While there was reference to the Jones Act, that this
2392 is—the Jones Act is a sweeping piece of legislation. Our
2393 underlying bill only addresses a small part of the Jones Act,
2394 and so I don't think that is adequate leverage to make this
2395 amendment germane.

2396 Chairman Conyers. Dan Lungren, do you have a response
2397 to this point of order?

2398 Mr. Lungren. Mr. Chairman, the title of this bill is
2399 "Securing Protections for the Injured from Limitations on
2400 Liability Act." I seek to secure protections for the injured
2401 infrastructure, which both affects the environment and the
2402 American citizens on or around the coast affected by this
2403 tragedy.

2404 There are limitations on those who can assist based on
2405 whether or not their flag is foreign or domestic. And it
2406 seems to me that is a limitation on our ability to protect.

2407 And I understand that this bill is precisely on point
2408 here, but under the emergency circumstances, I would hope
2409 that no one would offer a point of order, if in fact, what we
2410 are trying to do is to respond immediately to an emergency
2411 and to do something to help the people in Louisiana.

2412 If you have seen the governor of Louisiana, if you have
2413 seen the other people down there desperately asking for
2414 assistance, and one of the responses of the federal
2415 government is you can't have all of the assistance that is
2416 there, because we have limitations under the Jones Act, it
2417 seemed to me to be a very natural and reasonable thing for us
2418 to try and do it here without hearings.

2419 But I understand that sometimes the process is
2420 appropriate and Mr. Chairman, before yielding back my time, I

2421 would just say to you, Mr. Chairman, I would very carefully
2422 listen to what you had to say about carve-outs and your
2423 objections to them.

2424 And so I hope you will support me on the floor tomorrow
2425 when we deal with the DISCLOSE Act and the large carve-outs
2426 dealing with auctioning off parts of the First Amendment
2427 tomorrow.

2428 Mr. Smith. Would the gentleman yield?

2429 Mr. Lungren. I would be happy to yield on my response
2430 on the objection by way of point of order.

2431 Mr. Smith. I thank you, gentlemen, for yielding. Mr.
2432 Chairman, I just want to say, I hope the point of order is
2433 not insistent upon either. The gentleman from California
2434 just said this is an emergency type of situation.

2435 I also want to point out that 5 years ago, in the
2436 aftermath of hurricane Katrina, President Bush waived the
2437 Jones Act, easing the way for foreign vessels to move into
2438 U.S. waters. However, unlike President Bush, President Obama
2439 so far has declined to suspend the act even temporarily.
2440 Thus, foreign countries are being turned away when making
2441 legitimate offers of help.

2442 As oil washes up on our shores, there is little reason
2443 not to temporarily waive the act and take advantage of offers
2444 of assistance from our foreign allies. So I support the
2445 amendment and hope the majority will not insist upon their

2446 point of order. Now I will yield back.

2447 Chairman Conyers. Well, members, this objection is a
2448 question of germaneness and so that goes to the scope of the
2449 bill before us. And that scope is federal law regarding
2450 civil actions related to tort liability. The amendment deals
2451 with rules for flagging and manning ships in the United
2452 States coast-wide trade.

2453 Now, the amendment deals with a different subject matter
2454 and a different purpose. And what it would do in our view is
2455 that it would broaden the bill beyond its current scope so
2456 that it would be referred to another committee, namely, the
2457 Transportation Committee.

2458 And so perusing Rule 16, Clause Seven, the chair rules
2459 the amendment to be not germane to the bill. And so I will
2460 not be able to entertain the amendment any further.

2461 Gentlemen, from Florida, Mr. Deutch?

2462 Mr. Deutch. Mr. Chairman, I have an amendment at the
2463 desk.

2464 Chairman Conyers. The clerk will report it.

2465 The Clerk. "Amendment to H.R. 5503 offered by Mr.
2466 Deutch of Florida. Page 4, line 17 strike, Subsection (b)
2467 and"—

2468 [The amendment by Mr. Deutch follows:]

2469 ***** INSERT *****

2470 Mr. Deutch. Mr. Chairman, I ask unanimous consent the
2471 amendment be considered as read.

2472 Chairman Conyers. Without objection, the gentleman is
2473 recognized in support of his amendment.

2474 Mr. Deutch. Thank you, Mr. Chairman. To the amendment
2475 addressed as Section 6 (b) of the underlying bill. The
2476 section of the bill provides an exception to Section 6, which
2477 makes certain secrecy agreements regarding the discharge of
2478 contaminants into U.S. waters unenforceable under the
2479 exception of director for secrecy agreement that is contained
2480 in a court order is enforceable.

2481 And the exception also permits the issuing of secrecy
2482 agreements by a government agency that has the authority to
2483 enforce the agreement in court. This amendment would make
2484 two important changes to the exception.

2485 First, the amendment would require that a court granting
2486 the enforcement of a secrecy agreement that is needed for the
2487 public health and safety, must state factual findings and
2488 conclusions of law relating to the enforcement of the
2489 agreement on the record.

2490 And second, the amendment would require that in the
2491 event a government agency is enforcing their secrecy
2492 agreement in a court, that the agency demonstrate by clear
2493 and convincing evidence that the agreement is needed to
2494 protect the public health or safety.

2495 It is crucial to emphasize that the underlying bill is
2496 only addressing secrecy agreements that restrict the
2497 dissemination of information regarding the cause of a
2498 discharge into the water of a contaminant, the nature and
2499 extent of the discharge, the damage caused or threatened by
2500 the discharge or information regarding remediation.

2501 This amendment would encourage a court that orders a
2502 secrecy agreement restricting public access to this
2503 information to be well-informed, possibly through a hearing,
2504 witness testimony or submission of other evidence before
2505 taking steps to restrict public access to information on
2506 contaminants that have been discharged into U.S. waters.

2507 It also places a reasonable burden on a government
2508 agency that seeks to keep information secret on the discharge
2509 of contaminants into our waters. If the government agency
2510 wants to keep information that affects the public health or
2511 safety secret and out of public dissemination, they should
2512 have to satisfy that burden of proof.

2513 Indeed, our laws should reaffirm that it is of the
2514 utmost importance that the public have access to information
2515 that impacts their health and safety. Secrecy agreements on
2516 information that impact the public health or safety are in
2517 opposition to our nation's tradition of having courts that
2518 are open to the public.

2519 And a government that is open to the people keeping

2520 information secret from the public, especially if the
2521 information relates to public health or safety, should only
2522 be a last resort. And this amendment will ensure that that
2523 is the case. I yield back.

2524 Chairman Conyers. I thank the gentleman from Florida.
2525 I have gone over his amendment, and we find that it is very
2526 well crafted. And on our side we are prepared to accept it.

2527 And I would yield to Lamar Smith.

2528 Mr. Smith. Thank you, Mr. Chairman. Mr. Chairman, I
2529 don't know if this amendment is necessary or not, but I think
2530 it is a good one. To quote from the amendment, "the court
2531 shall state the court's factual findings and conclusions of
2532 law relating to that enforcement on the record."

2533 Like I say, I am not sure it is necessary, but I think
2534 in the interest of transparency in the judicial process, it
2535 is a good effort to make sure that that transparency occurs.
2536 And so I encourage my colleagues to support the amendment as
2537 well.

2538 Chairman Conyers. I thank the gentleman from Texas.

2539 The question is on the Deutch amendment. Would all in
2540 favor say "aye?"

2541 [A chorus of ayes.]

2542 Chairman Conyers. All opposed? The ayes have it, and
2543 the amendment is carried. A reporting quorum being present,
2544 the question is on reporting the bill as amended favorably to

2545 the House. All in favor, say "aye." Aye.

2546 This is reporting H.R. 5503. Reporting quorum being
2547 present, the question is on reporting the bill as amended
2548 favorably to the House. Those in favor say "aye."

2549 [A chorus of ayes.]

2550 Chairman Conyers. Those opposed, say "no."

2551 [A chorus of noes.]

2552 Chairman Conyers. The ayes seem to have it.

2553 Ms. Lofgren. Mr. Chairman, I would request a recorded
2554 vote.

2555 Chairman Conyers. Recorded vote is sought by the
2556 gentlelady from California, Zoe Lofgren. The clerk will
2557 recall the roll.

2558 The Clerk. Mr. Conyers?

2559 Chairman Conyers. Aye.

2560 The Clerk. Mr. Conyers votes aye.

2561 Mr. Berman?

2562 [No response.]

2563 Mr. Boucher?

2564 [No response.]

2565 Mr. Nadler?

2566 [No response.]

2567 Mr. Scott?

2568 Mr. Scott. Aye.

2569 The Clerk. Mr. Scott votes aye.

2570 Mr. Watt?

2571 [No response.]

2572 The Clerk. Ms. Lofgren?

2573 Ms. Lofgren. Aye.

2574 The Clerk. Ms. Lofgren votes aye.

2575 Ms. Jackson Lee?

2576 [No response.]

2577 Ms. Waters?

2578 [No response.]

2579 Mr. Delahunt?

2580 [No response.]

2581 Mr. Cohen?

2582 [No response.]

2583 Mr. Johnson?

2584 Mr. Johnson. Aye.

2585 The Clerk. Mr. Johnson votes aye.

2586 Mr. Pierluisi?

2587 Mr. Pierluisi. Aye.

2588 The Clerk. Mr. Pierluisi votes aye.

2589 MR. Quigley?

2590 Mr. Quigley. Aye.

2591 The Clerk. Mr. Quigley votes aye.

2592 Ms. Chu?

2593 Ms. Chu. Aye.

2594 The Clerk. Ms. Chu votes aye.

2595 Mr. Deutch?

2596 Mr. Deutch. Aye.

2597 The Clerk. Mr. Deutch votes aye.

2598 Mr. Gutierrez?

2599 [No response.]

2600 Ms. Baldwin?

2601 Ms. Baldwin. Aye.

2602 The Clerk. Ms. Baldwin votes aye.

2603 Mr. Gonzalez?

2604 [No response.]

2605 Mr. Weiner?

2606 [No response.]

2607 Mr. Schiff?

2608 Mr. Schiff. Aye.

2609 The Clerk. Mr. Schiff votes aye.

2610 Ms. Sanchez?

2611 Ms. Sanchez. Aye.

2612 The Clerk. Ms. Sanchez votes aye.

2613 Mr. Maffei?

2614 Mr. Maffei. Aye.

2615 The Clerk. Mr. Maffei votes aye.

2616 Mr. Polis?

2617 Mr. Polis. Aye.

2618 The Clerk. Mr. Polis votes aye.

2619 Mr. Smith?

2620 Mr. Smith. No.

2621 The Clerk. Mr. Smith votes no.

2622 Mr. Goodlatte?

2623 Mr. Goodlatte. No.

2624 The Clerk. Mr. Goodlatte votes no.

2625 Mr. Sensenbrenner?

2626 [No response.]

2627 Mr. Coble?

2628 Mr. Coble. No.

2629 The Clerk. Mr. Coble votes no.

2630 Mr. Gallegly?

2631 Mr. Gallegly. No.

2632 The Clerk. Mr. Gallegly votes no.

2633 Mr. Lungren?

2634 [No response.]

2635 Mr. Issa?

2636 [No response.]

2637 Mr. Forbes?

2638 [No response.]

2639 Mr. King?

2640 [No response.]

2641 Mr. Franks?

2642 [No response.]

2643 Mr. Gohmert?

2644 [No response.]

2645 Mr. Jordan?
2646 [No response.]
2647 Mr. Poe?
2648 Mr. Poe. No.
2649 The Clerk. Mr. Poe votes no.
2650 Mr. Chaffetz?
2651 Mr. Chaffetz. No.
2652 The Clerk. Mr. Chaffetz votes no.
2653 Mr. Rooney?
2654 Mr. Rooney. Aye.
2655 The Clerk. Mr. Rooney votes aye.
2656 Mr. Harper?
2657 [No response.]
2658 Mr. Franks?
2659 Mr. Franks. No.
2660 The Clerk. Mr. Franks votes no.
2661 Chairman Conyers. Mr. Boucher?
2662 Mr. Boucher. I vote aye.
2663 The Clerk. Mr. Boucher votes aye.
2664 Mr. Lungren?
2665 Mr. Lungren. Aye.
2666 The Clerk. Mr. Lungren votes aye.
2667 Mr. Gohmert?
2668 Mr. Gohmert. No.
2669 The Clerk. Mr. Gohmert votes no.

2670 Chairman Conyers. Mr. Forbes?
2671 Mr. Forbes. No.
2672 The Clerk. Mr. Forbes votes no.
2673 Mr. King. Mr. King?
2674 Chairman Conyers. Steve King?
2675 Mr. King. No.
2676 The Clerk. Mr. King votes no.
2677 Chairman Conyers. Mr. Jordan?
2678 The Clerk. Mr. Jordan?
2679 Mr. Jordan. No.
2680 The Clerk. Mr. Jordan votes no.
2681 Chairman Conyers. The clerk will report.
2682 The Clerk. Mr. Chairman, 16 members voted aye, 11
2683 members voted no.
2684 Chairman Conyers. And the bill is agreed to. And
2685 without objection, the bill will be reported as a single
2686 amendment in the nature of a substitute, incorporating
2687 amendments adopted, staff authorized to make technical and
2688 conforming changes. Members will have 2 days for additional
2689 views.
2690 Pursuant to notice, we now consider a motion to
2691 authorize the issuance of subpoenas to British Petroleum
2692 America for documents regarding its claims process relating
2693 to the Gulf oil spill.
2694 My colleagues, I am moving to authorize the issuance of

2695 subpoenas to BP to assure that the committee has the
2696 opportunity to obtain on a timely basis the information we
2697 need to understand the operation of the claims process.

2698 [The motion follows:]

2699 ***** INSERT *****

2700 Chairman Conyers. Now, since our hearings on May 27, we
2701 have repeatedly sought to obtain information which would make
2702 the claims process more transparent, and we have been
2703 unsuccessful. And so when British Petroleum solemnly comes
2704 before this and other committees in the House to pledge to
2705 pay every legitimate claim without regard to any limitation,
2706 it begs the question of not only what claims are being paid
2707 and when, but what claims are not being paid?

2708 And so in a non-combative spirit as possible, it seems
2709 to me it is in BP's interest to be able to establish these
2710 facts rather than simply release claims paid information as
2711 they are doing currently.

2712 Only yesterday we were engaged in discussions with them
2713 regarding obtaining the information, and we are not getting
2714 anywhere. It is my understanding that they are telling us
2715 that they do not track the information and that in any event
2716 it is up to Administrator Ken Feinberg.

2717 And so I hope that what we do here today will put them
2718 on notice that we are taking this process quite seriously.
2719 There is a way that we can go about this, and we are hoping
2720 that we don't have to use the subpoena.

2721 But the chair is asking for the support so that if it
2722 comes to that, if it is necessary. And I will do this in
2723 consultation with the distinguished gentleman from Texas that
2724 we do it.

2725 And I urge support for the measure and recognize Lamar
2726 Smith.

2727 Mr. Smith. Thank you, Mr. Chairman. I support the
2728 motion to authorize the issuance of subpoenas to BP for
2729 documents regarding its claims process.

2730 BP is responsible for the Gulf oil spill and should pay
2731 all legitimate claims. And while BP has given assurances
2732 that they will do so, it is important that Congress is able
2733 to exercise oversight over the claims process.

2734 I don't believe that any of the documents sought in this
2735 subpoena relate to confidential information from either BP or
2736 individual claimants. So Mr. Chairman, I support the motion
2737 and yield back the balance of my time.

2738 Chairman Conyers. The vote is on the measure before us.
2739 We will take a vote. All in favor, say "aye."

2740 [A chorus of ayes.]

2741 Chairman Conyers. All opposed, say no. The ayes have
2742 it and the motion is agreed to. I will invite—

2743 Mr. Smith. Crush video next.

2744 Chairman Conyers. What?

2745 Mr. Smith. The next one is crush video.

2746 Chairman Conyers. Yes, I would invite Bobby Scott to
2747 take the chair at this point for the crush video proposal
2748 that is before us. And I also wanted to acknowledge the
2749 presence of the former Lieutenant Governor of Texas Ben

2750 Barnes has been present with us, and we recognize him at this
2751 point.

2752 Mr. Scott. [Presiding.] Pursuant to notice I call up
2753 the bill H.R. 5566, the Prevention of Interstate Commerce in
2754 Animal Crush Videos Act of 2010 for purposes of markup. The
2755 clerk will report the bill.

2756 The Clerk. "H.R. 5566, a bill to amend Title 18, United
2757 States Code, to prohibit interstate commerce in animal crush
2758 videos, and for other purposes."

2759 [The bill follows:]

2760 ***** INSERT *****

2761 Mr. Scott. Without objection, the bill is considered as
2762 read and is open for amendment at any point. I recognize
2763 myself for 5 minutes for the purpose of an opening statement.
2764 First, I would like to discuss the background of the
2765 legislation.

2766 In the late 1990s, Congress was made aware of a growing
2767 market for videotapes and still photographs depicting
2768 typically small animals being slowly crushed to death. These
2769 depictions are commonly referred to as "crush videos."

2770 Much of the materials feature women inflicting torture
2771 with their bare feet or while wearing high heels. Depictions
2772 often appeal to people with a very specific sexual fetish.
2773 Even in states where harming animals in such a way itself
2774 violated state laws prohibiting cruelty to animal,
2775 prosecutors had difficulty obtaining convictions.

2776 For example, the faces of the individuals inflicting the
2777 torture often were not shown on the videos and the locations,
2778 times and dates of the acts could not be ascertained from the
2779 depictions themselves.

2780 Defendants were, therefore, often able to successfully
2781 assert as a defense that the state could not prove its
2782 jurisdiction over the place where the act occurred or that
2783 the actions took place within the statute of limitations.

2784 So because it was hard to find the perpetrators of the
2785 underlying acts of cruelty to animals and it was so difficult

2786 to obtain convictions, Congress adopted and the president
2787 signed into law a new law prohibiting the creation, sale and
2788 possession of the depictions of such acts.

2789 New law was codified as Section 48 of Title XVIII U.S.
2790 Code. The motivation for passing the law was to address the
2791 sale of crush videos, but the statute also applied to more
2792 mainstream material, such as videos depicting hunting and
2793 fishing and other activity protected by the First Amendment.

2794 In April, the Supreme Court invalidated the statute in
2795 the case U.S. v. Stevens. The Court also held that the law
2796 was overbroad and violated the Constitution's First
2797 Amendment, but did not rule out the possibility of Congress
2798 adopting a bill that would hold up under scrutiny.

2799 Subcommittee on Crime held a hearing about the decision
2800 in May and heard from witnesses who stated that a narrower
2801 legislative approach would likely be constitutional and
2802 survive court challenges. The bill before us is much
2803 narrower than the original law.

2804 Most important difference is the bill would only
2805 prohibit the sale of crush videos that are obscene. This
2806 would address the key flaw in the original statute because
2807 obscenity is outside of the protection of the First Amendment
2808 whereas some of the activity covered by the present law was
2809 in fact protected by the First Amendment, as the court found.

2810 The types of conduct and the depiction that are covered

2811 by this bill are narrower than the original law and clearly
2812 not protected by the First Amendment. Furthermore, there is
2813 no confusion as to whether hunting or fishing videos are
2814 prohibited under this bill. They are clearly not covered.

2815 I commend my colleague from California, Representative
2816 Gallegly and my colleague from Michigan, Representative
2817 Peters, who worked together to produce this bipartisan bill.
2818 I yield back the balance of my time and recognize for 5
2819 minutes the gentleman from Texas, Mr. Smith.

2820 Mr. Smith. Thank you, Mr. Chairman. First of all, Mr.
2821 Chairman, I want to thank Mr. Gallegly for introducing this
2822 legislation. An earlier bill on the same subject I believe
2823 attracted over 300 co-sponsors, which may well be a record
2824 for this Congress.

2825 H.R. 5566, the Prevention of Interstate Commerce in
2826 Animal Crush Videos Act, responds to the Supreme Court's
2827 recent decision in U.S. v. Stevens, which invalidated the
2828 federal animal cruelty statute codified in 18 USC 48.

2829 Originally enacted in 1999 with broad bipartisan
2830 support, this statute attempted to address depictions of
2831 animal cruelty, including so-called animal crush videos. The
2832 law was successful in virtually eliminating the market for
2833 these disturbing videos which depict small animals being
2834 slowly crushed to death by women using their bare feet or
2835 while wearing high heels.

2836 All 50 states and the District of Columbia have laws
2837 banning acts of animal cruelty such as those portrayed in
2838 these videos. However, animal crush videos often do not
2839 reveal the identity of those involved, making it difficult
2840 for states to prosecute the perpetrators for the underlying
2841 animal cruelty.

2842 Federal legislation is necessary to address the
2843 interstate sale and distribution of these videos, which is
2844 often beyond the reach of many state laws. Federal penalties
2845 will serve as an additional deterrent to those who engage in
2846 this cruel behavior. In Stevens though, the Supreme Court
2847 held that the animal cruelty statute was over broad under the
2848 First Amendment.

2849 H.R. 5566 proposes a very narrow statute aimed
2850 specifically at criminalizing animal crush videos. The
2851 primary sponsor of this legislation, Mr. Gallegly, has gone
2852 to great lengths to fully and effectively respond to the
2853 Court's analysis. The bill limits this new criminal offense
2854 to obscene material.

2855 The Supreme Court has recognized Congress' authority to
2856 regulate obscene material as a category of protected speech
2857 under the First Amendment. I thank the chairman, Mr.
2858 Conyers, for his attention to this issue and for bringing
2859 this legislation before the committee today.

2860 H.R. 5566 is a thoughtful, deliberate response to the

2861 Stevens decision that proposes a criminal penalty that will
2862 withstand constitutional scrutiny.

2863 Mr. Chairman, I will yield back.

2864 Mr. Scott. Thank you and, without objection, other
2865 members' opening statements will be included in the record
2866 other than Mr. Gallegly, who is the chief sponsor of the
2867 bill.

2868 The gentleman from California is recognized.

2869 Mr. Gallegly. Thank you very much, Mr. Chairman. I
2870 want to thank you and the ranking member for working me to
2871 draft this bill to put a stop to crush videos. By now I
2872 think most of us, if not all of us are familiar with these
2873 disgusting videos, as Lamar and others have said, features
2874 small and defenseless animals secured to the floor and being
2875 slowly tortured to death, often by women wearing spiked heels
2876 and other attire.

2877 We are also in near universal agreement that these
2878 videos must be stopped as we were when my bill first was
2879 passed in the House in 1999 by a bipartisan vote of 372 to 42
2880 and by unanimous consent in the Senate, and subsequently
2881 signed into law by then President Clinton.

2882 This is not just an animal cruelty bill, Mr. Chairman.
2883 It is a law enforcement bill. I first became aware of this
2884 issue when the district attorney of Ventura County,
2885 California came to me and brought it to my attention in early

2886 1999.

2887 He explained that although crush videos were illegal
2888 under the state laws, the crime was difficult to prosecute
2889 because video producers moved their goods through interstate
2890 commerce to avoid prosecution.

2891 The FBI, the U.S. Department of Education and the U.S.
2892 Department of Justice consider animal cruelty to be one of
2893 the early warning signs of future violence by youths, the
2894 Boston Strangler, the Unabomber, Jeffrey Dahmer, Ted Bundy,
2895 all tortured animals before they began to murder people.

2896 As you know, Mr. Chairman, as you mentioned, the Supreme
2897 Court ruled in April that the 1999 law was too broad. In
2898 response to their ruling, I have introduced along with my
2899 friend from Michigan, Mr. Peters, the Prevention of
2900 Interstate Commerce to Animal Crush Videos Act of 1910.

2901 Based on the testimony of constitutional experts at the
2902 May 26th Crime Subcommittee hearing, I worked with the
2903 members of both sides of the aisle to craft legislation that
2904 is narrowly focused to prohibit crush videos rather than the
2905 broader depiction of animal cruelty.

2906 Mr. Chairman, immediately after the 1999 bill became
2907 law, the crush video industry disappeared. It has reemerged
2908 in light of the Court's ruling. Quick passage of this bill
2909 will once again stop these revolting videos that depict the
2910 torture and killing of defenseless animals.

2911 I want to thank you, Mr. Chairman. I thank the ranking
2912 member, both of you for your comments in this markup. And I
2913 would strongly urge the committee to move quickly to support
2914 and vote for H.R. 5566, and I yield back.

2915 Mr. Scott. Thank you. We will ask other members to put
2916 their opening statements in the record, without objection, so
2917 ordered.

2918 Are there any amendments? There being no amendments,
2919 the reporting quorum, I believe, is present.

2920 The question is on the favorably reporting the bill to
2921 the House. Those in favor will say "aye."

2922 [A chorus of ayes.]

2923 Mr. Scott. All opposed, say "no." The ayes have it but
2924 there may be a question about a quorum, so I am going to call
2925 for a recorded vote. The clerk will call the roll.

2926 The Clerk. Mr. Berman?

2927 [No response.]

2928 Mr. Boucher?

2929 [No response.]

2930 Mr. Nadler?

2931 [No response.]

2932 Mr. Scott?

2933 Mr. Scott. Aye.

2934 The Clerk. Mr. Scott votes aye.

2935 Mr. Watt?

2936 [No response.]

2937 Ms. Lofgren?

2938 [No response.]

2939 Ms. Jackson Lee?

2940 [No response.]

2941 Ms. Waters?

2942 [No response.]

2943 Mr. Delahunt?

2944 [No response.]

2945 Mr. Cohen?

2946 Mr. Cohen. Aye.

2947 The Clerk. Mr. Cohen votes aye.

2948 Mr. Johnson?

2949 Mr. Johnson. Aye.

2950 The Clerk. Mr. Johnson votes aye.

2951 Mr. Pierluisi?

2952 Mr. Pierluisi. Aye.

2953 The Clerk. Mr. Pierluisi votes aye.

2954 Mr. Quigley?

2955 [No response.]

2956 Ms. Chu?

2957 [No response.]

2958 Mr. Deutch?

2959 Mr. Deutch. Aye.

2960 The Clerk. Mr. Deutch votes aye.

2961 Mr. Gutierrez?
2962 [No response.]
2963 Ms. Baldwin?
2964 Ms. Baldwin. Aye.
2965 The Clerk. Ms. Baldwin votes aye.
2966 Mr. Gonzalez?
2967 [No response.]
2968 Mr. Weiner?
2969 [No response.]
2970 Mr. Schiff?
2971 Mr. Schiff. Aye.
2972 The Clerk. Mr. Schiff votes aye.
2973 Ms. Sanchez?
2974 Ms. Sanchez. Aye.
2975 The Clerk. Ms. Sanchez votes aye.
2976 Mr. Maffei?
2977 [No response.]
2978 Mr. Polis?
2979 Mr. Polis. Aye.
2980 The Clerk. Mr. Polis votes aye.
2981 Mr. Smith?
2982 Mr. Smith. Aye.
2983 The Clerk. Mr. Smith votes aye.
2984 Mr. Goodlatte?
2985 Mr. Goodlatte. Aye.

2986 The Clerk. Mr. Goodlatte votes aye.
2987 Mr. Sensenbrenner?
2988 [No response.]
2989 Mr. Coble?
2990 Mr. Coble. Mr. Coble votes aye.
2991 Mr. Gallegly?
2992 Mr. Gallegly. Aye.
2993 The Clerk. Mr. Gallegly votes aye.
2994 Mr. Lungren?
2995 Mr. Issa?
2996 Mr. Lungren. Aye.
2997 The Clerk. Mr. Lungren votes aye.
2998 Mr. Issa?
2999 [No response.]
3000 Mr. Forbes?
3001 [No response.]
3002 Mr. King?
3003 [No response.]
3004 Mr. Franks?
3005 [No response.]
3006 Mr. Gohmert?
3007 [No response.]
3008 Mr. Jordan?
3009 [No response.]
3010 Mr. Poe?

3011 [No response.]
3012 Mr. Chaffetz?
3013 [No response.]
3014 Mr. Rooney?
3015 [No response.]
3016 Mr. Harper?
3017 Mr. Harper. Aye.
3018 The Clerk. Mr. Harper vote aye.
3019 Mr. King?
3020 Mr. King. Aye.
3021 The Clerk. Mr. King votes aye.
3022 Ms. Lofgren?
3023 Ms. Lofgren. Aye.
3024 The Clerk. Ms. Lofgren votes aye.
3025 Ms. Chu?
3026 Ms. Chu. Aye.
3027 The Clerk. Ms. Chu votes aye.
3028 Mr. Rooney?
3029 Mr. Rooney. Aye.
3030 The Clerk. Mr. Rooney votes aye.
3031 Mr. Conyers?
3032 Chairman Conyers. Aye.
3033 The Clerk. Mr. Conyers votes aye.
3034 Mr. Boucher?
3035 Mr. Scott. He votes aye.

3036 The Clerk. Mr. Boucher votes aye.
3037 Mr. Forbes?
3038 Mr. Forbes. Aye.
3039 The Clerk. Mr. Forbes votes aye.
3040 Mr. Jordan?
3041 Mr. Jordan. Yes.
3042 The Clerk. Mr. Jordan votes yes.
3043 Is that everybody?
3044 Mr. Scott. Do any other members wanted to vote? The
3045 clerk will report.
3046 The Clerk. Mr. Chairman, 23 members voted aye.
3047 Mr. Scott. Thank you. The bill is reported, without
3048 objection. The staff is authorized to make technical and
3049 conforming changes and members will have 2 days to submit
3050 additional views.
3051 Pursuant to notice I call up House Resolution 1455
3052 directing the attorney general to submit to the House of
3053 Representatives copies of certain communications related to
3054 certain recommendations regarding administration appointments
3055 and move that it be reported adversely to the House.
3056 [The resolution follows:]
3057 ***** INSERT *****

3058 Mr. Scott. Without objection, the resolution is
3059 considered as read and open for amendment in any point. And
3060 on behalf of the chairman, I will make the opening statement.

3061 This resolution was introduced by our ranking member,
3062 the gentleman from Texas, Mr. Smith, and referred to our
3063 committee. Although we have significant legislative business
3064 before us, under House rules we are required to report this
3065 resolution within 14 days of its introduction or a privileged
3066 motion to discharge the committee could be filed on the House
3067 floor.

3068 So we must put aside important legislative matters
3069 before us and address this resolution. And for three reasons
3070 I recommend that we report it adversely.

3071 First, although there is no credible evidence that the
3072 Department of Justice had any involvement in or knowledge of
3073 any alleged offers to Representative Sestak or Mr. Romanoff,
3074 the department has already responded to multiple inquiries
3075 from Republican members on this issue and letters of May
3076 21st, June 1th4 and June 15th.

3077 Attorney General Holder has responded to questions on
3078 this subject before this committee on May 13th. The
3079 department has made it clear that any allegation of criminal
3080 conduct by public officials will be reviewed carefully by
3081 career prosecutors and law enforcement agent who will take
3082 any appropriate action.

3083 In addition the White House counsel released a memo on
3084 May 28th describing what happened concerning Representative
3085 Sestak and a White House e-mail to Mr. Romanoff has also been
3086 publicly released.

3087 Second, high ranking Bush administration lawyers and
3088 others on both sides of the aisle agreed that there is
3089 nothing illegal about offering a potential candidate for
3090 office an administration appointed political position even if
3091 partially motivated to avoid a divisive primary.

3092 For example, Steven Bradbury, former Bush assistant
3093 attorney general in charge of the Office of Legal Counsel
3094 acknowledged that there would be no criminal prosecution
3095 based on the conduct at issue here.

3096 Former Bush White House ethics advisor, Richard Painter
3097 said on May 28th that in light of the information released by
3098 the White House, it is even more apparent that this is a non-
3099 issue, no scandal, time to move on.

3100 Former DOJ Public Integrity Prosecutor Peter Zeidenberg,
3101 who once pursued charges against a top Hillary Clinton
3102 fundraiser commented that you would be laughed out of the
3103 courtroom for trying to prosecute the alleged conduct
3104 concerning Representative Sestak. Third, particularly in
3105 light of all of this, there is no proper basis for the
3106 resolution's specific document request.

3107 There has been no indication that there was any guidance

3108 or recommendation from the department to the White House in
3109 this matter as in the first request.

3110 And if there is any new opened investigation or review
3111 by DOJ or the FBI as to the alleged improper conduct, the FBI
3112 has explained that it would contradict a longstanding policy
3113 and jeopardize an investigation to either confirm or deny its
3114 existence.

3115 Providing all documents related to such inquiries
3116 demanded in the second request would be even worse. The
3117 department has also explained the long history of career
3118 officials handling such matters professionally and
3119 independently without need for special counsel.

3120 Former Bush Attorney General Michael Mukasey, who did
3121 appoint a special prosecutor in the U.S. attorney matter, has
3122 agreed that there is no basis for one here.

3123 Indeed the Department of Justice Inspector General found
3124 the U.S. attorney matter involved improper conduct concerning
3125 and by Department of Justice an improper political pressure
3126 on federal prosecutors.

3127 At its core, that investigation was about ensuring the
3128 proper functioning of the criminal justice system, none of
3129 which is involved here. For those reasons, I recommend that
3130 we report the resolution adversely to the House and return as
3131 expeditiously as we can to other important business before
3132 the committee.

3133 I now recognize the ranking member of the committee, the
3134 gentleman from Texas, Mr. Smith.

3135 Mr. Smith. Thank you, Mr. Chairman. Today's resolution
3136 will help the president further his goal of increasing
3137 government's transparency and accountability.

3138 When President Obama was elected, he made grand promises
3139 of change in Washington. He claimed he would impose strong
3140 ethic standards on White House staff and promised to run the
3141 most open and transparent administration in American history.

3142 Unfortunately, the Obama administration has broken both
3143 of these promises. Rather than openness and transparency,
3144 the administration has engaged in regrettable back room
3145 political deals.

3146 It has been 4 months since Congressman Joe Sestak
3147 disclosed that the Obama Administration discussed with him a
3148 federal appointment in exchange for his dropping out of the
3149 Democratic primary for Senate in Pennsylvania.

3150 And it has been several weeks since Colorado House
3151 Speaker Andrew Romanoff disclosed he received a similar
3152 offer. It appears that administration officials may have
3153 engaged in an unethical and possibly illegal practice of
3154 manipulating Senate Democratic primary elections by offering
3155 candidate jobs in this administration.

3156 In the White House counsel's report released earlier
3157 this month, the administration admitted to making the offer

3158 to Sestak in an attempt to prevent a divisive primary that
3159 might have ended with a lost Democratic seat in the Congress.

3160 The president's political affiliation as a Democrat does
3161 not give administration officials carte blanche to do
3162 whatever they want simply because it benefits the Democratic
3163 Party.

3164 The most basic rule of American government is that no
3165 one, not even the administration, is above the law. Free,
3166 fair and democratic elections are the cornerstone of our
3167 political system.

3168 Federal law protects fair elections by prohibiting
3169 government officials from using their positions of power to
3170 unduly influence election outcomes. It is a crime to offer
3171 someone a federal appointment as a reward for withdrawing
3172 from a primary election race.

3173 The attorney general has a responsibility to ensure that
3174 all political officials, including administration officials,
3175 follow this law. The American people are not buying the
3176 administration's defense of everyone does it or that is just
3177 how Washington works.

3178 Regardless of anyone else's behavior, President Obama
3179 made changing Washington the cornerstone of his campaign.
3180 Nobody asked him to promise open and transparent government,
3181 but when he did, Americans took his promises seriously.

3182 The resolution of inquiry we consider today directs

3183 Attorney General Holder to do what President Obama has failed
3184 to do for 4 months, transmit to Congress, documents relating
3185 to the White House's potential illegal and unethical offers
3186 to Congressman Sestak and Speaker Romanoff.

3187 I am disappointed that this resolution of inquiry is
3188 even necessary, but the administration has ignored all
3189 efforts to conduct meaningful oversight.

3190 On June 8th, Mr. Sensenbrenner and I sent Attorney
3191 General Holder a letter asking for the documents we are now
3192 seeking by this resolution. And on Monday, oversight and
3193 reform government ranking member Darrell Issa and I sent a
3194 letter to the White House highlighting a curious pattern of
3195 federal earmarks directed to congressional districts around
3196 the same time the representative decided not to run in the
3197 statewide Democratic Senate primary.

3198 If the administration has nothing to hide, why not
3199 provide Congress with the requested documents and restore
3200 integrity to our election process? It is time for the White
3201 House to make good on its promise of transparency and come
3202 clean about what other elections administration officials may
3203 have sought to influence.

3204 Mr. Chairman, I encourage my colleagues to support this
3205 inquiry and before I yield back I would like unanimous
3206 consent to put into the record the opening statement of our
3207 colleague, Jim Sensenbrenner.

3208 Mr. Scott. Without objection, so ordered.

3209 [The statement of Mr. Sensenbrenner follows:]

3210 ***** INSERT *****

3211 Mr. Scott. And without objection, other member's
3212 statements will be included in the record. Are there any
3213 amendments? There are no amendments. The question before us
3214 is the motion that the resolution be referred to the House
3215 adversely.

3216 Mr. Goodlatte. Mr. Chairman.

3217 Mr. Scott. The gentleman from Virginia.

3218 Mr. Goodlatte. Mr. Chairman I move to strike the last
3219 word.

3220 Mr. Scott. The gentleman is recognized for 5 minutes.

3221 Mr. Goodlatte. Thank you, Mr. Chairman. Mr. Chairman,
3222 I am pleased to support this resolution of inquiry. Since
3223 the news of the Sestak and Romanoff scandals broke earlier
3224 this year, liberal commentators and media outlets have raised
3225 the arguments that these sorts of offers happen all the time.
3226 And that this is just "business as usual."

3227 What they failed to admit is that business as usual is
3228 entirely incompatible with the change that this
3229 administration promised to bring to American politics.
3230 "Change we can believe in" is a slogan that Americans became
3231 familiar with 2008 and 2009 as this administration ran for
3232 office and began governing.

3233 Americans probably thought it referred to a promise to
3234 bring a new political culture to Washington. Obviously they
3235 were mistaken.

3236 The reality is that this is not business as usual.
3237 Administrations in the past have relied on the wisdom of
3238 American people to elect their leaders not on powerful
3239 political interference in state primary races.

3240 But this administration is different. It passed a
3241 health care bill that reorganized one-sixth of the American
3242 economy and bailed out rich Wall Street banks. It should be
3243 no surprise, therefore, that the administration had to resort
3244 to highly unusual tactics to scratch the backs of those who
3245 scratched theirs.

3246 Supporters of the administration's actions with respect
3247 to the Sestak and Romanoff scandals must now make a choice.
3248 Do they continue to subscribe to the tired notion that this
3249 administration has brought change to Washington? Or would
3250 they like to now admit that the administration is yet another
3251 reiteration of "business as usual" in Washington, D.C.?

3252 Mr. Chairman, the types of actions that are alleged
3253 regarding White House employees with regard to Democratic
3254 Senate primaries around the country is not business as usual.
3255 This committee should not acknowledge that it is business as
3256 usual and should go ahead and support this resolution of
3257 inquiry.

3258 The resolution of inquiry will deliver transparency
3259 about the Sestak and Romanoff scandals. This transparency is
3260 long overdue. I support the resolution and ask why anyone

3261 would not support providing for that kind of transparency
3262 when it comes to very serious allegations about wrongdoing in
3263 the White House? I yield back.

3264 Mr. Scott. I think the gentleman's time has expired.

3265 Are there other amendments?

3266 Mr. Gallegly. Mr. Chairman?

3267 Mr. Scott. The gentleman from California is recognized.

3268 Mr. Gallegly. I move to strike the last word.

3269 Mr. Scott. The gentleman is recognized.

3270 Mr. Gallegly. Mr. Chairman on May 28th, committee

3271 Republicans sent a letter requesting the FBI investigate the

3272 allegations regarding White House officials offering Rep. Joe

3273 Sestak a job.

3274 On June 8th, Ranking Member Smith and Sensenbrenner sent

3275 a letter to the Department of Justice requesting specific

3276 information to ensure Congress and the American public

3277 understand the DOJ's involvement in the Sestak and Romanoff

3278 matters.

3279 The responses from both the FBI and the DOJ, which did

3280 not address any of the serious issues raised in the letters,

3281 was disappointing at the very least. Although we can

3282 disagree about policy we should all be able to agree that the

3283 Congress has not only the role but a responsibility to

3284 oversee the FBI and DOJ.

3285 I would ask my colleagues to support this resolution to

3286 preserve congressional oversight of the administration.

3287 Thank you, Mr. Chairman. I yield back.

3288 Mr. Scott. Are there other amendments?

3289 Mr. King. Mr. Speaker?

3290 Mr. Scott. The gentleman from Iowa, do you have an
3291 amendment?

3292 Mr. King. I move to strike the last word.

3293 Mr. Scott. The gentleman is recognized for 5 minutes.

3294 Mr. King. Thank you, Mr. Chairman. Mr. Chairman I
3295 support the pending resolution of inquiry which is directed
3296 at the most politicized Department of Justice in recent
3297 history.

3298 The Department of Justice and this administration have a
3299 history of operating on a partisan basis, which is why it is
3300 essential that this committee conduct meaningful, thorough
3301 and effective oversight of the Department of Justice to
3302 prevent its just becoming a political arm of the Obama
3303 administration.

3304 This resolution of inquiry attempts to break the culture
3305 of secrecy at DOJ that we have become all too familiar with
3306 under the Obama administration. We have the Attorney General
3307 Holder criticizing Arizona's immigration law before he has
3308 even read the law. And we heard that before us in this very
3309 room, Mr. Chairman.

3310 And we have also the Civil Rights Division saying that

3311 the people of Kinston, North Carolina can't have nonpartisan
3312 elections on one of the clearest examples of this Department
3313 of Justice's politicization it involves a mishandling of the
3314 New Black Panther case.

3315 In May of 2009, the Department of Justice made a sudden
3316 and still unexplained decision to abandon the case against
3317 the new Black Panther party that was the most open and shut
3318 case of voter intimidation in the history of America. It was
3319 on videotape. That is more open and shut than something that
3320 happen back post-Civil War.

3321 This case arose out of videos that show two members of
3322 the New Black Panther party with billy clubs smacking them in
3323 their hands clearly intimidating voters entering and exiting
3324 the polling location in Philadelphia on Election Day and
3325 calling people crackers.

3326 None of the three original defendants in the case even
3327 bothered to show up to court. Thus, the court directed
3328 Department of Justice to file the necessary paperwork to
3329 proceed with a default judgment, which very likely would have
3330 resulted in an important victory for the Department of
3331 Justice's efforts to prevent voter intimidation.

3332 Rather than moving forward with the default judgment,
3333 the Department of Justice reversed course and inexplicably
3334 dropped its case against all but one of the defendants.

3335 And as for the remaining defendant, we know that the

3336 Department of Justice did not seek or obtain the maximum
3337 penalty associated with voter intimidation despite the
3338 testimony under oath by Assistant Attorney General Thomas
3339 Perez before the Subcommittee on the Constitution.

3340 He stated that the maximum was sought and obtained but
3341 the facts in the case demonstrate that only a narrow
3342 injunction was obtained against the defendant.

3343 After 6 months of trying to get answers from the
3344 Department of Justice about this case, Mr. Wolf, ranking
3345 member of the Department of Justice's Appropriations
3346 Subcommittee, introduced a resolution of inquiry that was
3347 referred to this committee.

3348 Republicans voted in favor of that resolution but we
3349 were outvoted, and the truth about the New Black Panther
3350 party case to this day remains an administration secret. I
3351 fear that the resolution we are considering today will meet
3352 the same fate as the New Black Panther Party resolution, the
3353 one I just mentioned.

3354 Americans will be left in the dark yet again, and the
3355 administration and the Department of Justice will get away
3356 with another tag team effort to advance a highly political
3357 agenda. I strongly encourage my colleagues to vote yes on
3358 this resolution of inquiry and break the cycle of secret
3359 political decisions at the Department of Justice.

3360 The American people deserve the truth about the Sestak

3361 scandal, and they deserve to know how the Department of
3362 Justice may have advised the administration in dealing with
3363 the consequences.

3364 And Mr. Chairman, in the Kinston, North Carolina case
3365 for example, the people of Kinston, North Carolina voted by
3366 63.8 to 36.2 that they wanted nonpartisan elections. The
3367 Department of Justice made a political decision, some would
3368 say a race-based decision, and I would agree with that.

3369 The same person that cancelled the New Black Panthers
3370 investigation also is the one that cancelled the will of the
3371 people in Kinston, North Carolina and that is Loretta King.

3372 She said, and this is Kinston, North Carolina, "Removing
3373 the partisan queue in municipal elections will eliminate the
3374 single factor that allows black candidates to be elected to
3375 office. Voters base their choice more on race than political
3376 affiliation."

3377 I mean this is an appalling decision of the part of
3378 Justice, the Department of Justice, not to mention that there
3379 is not one nickel or 1 man-hour invested in the investigation
3380 of the criminal enterprise known as ACORN. And yet we have
3381 the Department of Justice investigating Arizona, not having
3382 read the bill.

3383 Yes, we need approval on this resolution that has been
3384 offered by Mr. Smith. I support it. I ask unanimous consent
3385 to introduce into the record the letter from the Department

3386 of Justice that addresses the Kinston, North Carolina case,
3387 and I would ask unanimous consent.

3388 Mr. Scott. Is there objection? No objections, so
3389 ordered.

3390 [The information follows:]

3391 ***** INSERT *****

3392 Mr. King. And then Mr. Chairman I appreciate your
3393 indulgence, and I would yield back the balance of my time.

3394 Mr. Scott. Gentleman's time has expired. Are there
3395 other amendments?

3396 Mr. Franks. Mr. Chairman?

3397 Mr. Scott. The gentleman from Arizona.

3398 Mr. Franks. Move to strike the last word.

3399 Mr. Scott. The gentleman from Arizona is recognized for
3400 5 minutes.

3401 Mr. Franks. Well, thank you, Mr. Chairman. Mr.
3402 Chairman, I support the resolution of inquiry that we are
3403 considering today because it is an important effort to
3404 conduct meaningful oversight of the Department of Justice.

3405 And one of our primary roles as members of this
3406 committee is to ensure that the DOJ properly discharges its
3407 duties as the nation's law enforcement agency and that it not
3408 engage in political affairs at the direction of this
3409 administration.

3410 This committee has considered numerous resolutions of
3411 inquiry, this Congress, seeking documents from the DOJ.
3412 Unfortunately, those resolutions have repeatedly been
3413 reported unfavorably out of this committee.

3414 For example, Mr. Chairman, you will recall that the
3415 committee Republicans introduced a resolution of inquiry in
3416 November of last year trying to understand why this

3417 administration still has not developed a coherent policy for
3418 detaining, trying and transferring terrorists at Guantanamo
3419 Bay.

3420 It is utterly irresponsible for the Justice Department
3421 to continue to cobble together an ad hoc approach to the
3422 nation's war on terrorism. That resolution was also voted
3423 down by this committee.

3424 As a result this committee is left without credible
3425 evidence the DOJ has an effective anti-terrorism policy. And
3426 when the Obama administration's policy for dealing with
3427 terrorists is simply "trust us," Americans cannot help but
3428 feel less safe.

3429 Similarly, our resolution of inquiry to obtain documents
3430 from the DOJ regarding its policy for providing Miranda
3431 warnings to our enemies captured on the battlefield was also
3432 reported unfavorably.

3433 And still months after DOJ under the Obama
3434 administration announced that it would reconsider where to
3435 hold the trial of 9/11 mastermind Khalid Sheikh Mohammed,
3436 still DOJ has left Americans in the dark about where this
3437 trial will finally be held. In fact, Mr. Chairman, the
3438 attorney general has even refused to rule out New York City.

3439 When might we expect this political hot button issue to
3440 be finally made public? Political reports and advocates on
3441 both sides of the issue expect that the administration will

3442 hold off revealing its true intentions until after the
3443 November election.

3444 Even Senator Durbin has conceded the expediency of
3445 delay, "We have to resolve that Guantanamo issue at another
3446 time." Asked that if he meant a non-election year, Durbin
3447 replied, "Well perhaps it will be easier. That's a pretty
3448 cynical view and very accurate."

3449 Mr. Chairman, if the administration is taking the same
3450 view then the administration is lack of transparency is
3451 nothing less than playing politics with national security.

3452 We can all agree that the administration's first job is
3453 to protect the United State from threats rather than
3454 shielding itself from accountability of the voters.

3455 Ironically, as you can see on the monitors, had to wait
3456 for a moment to make sure you could see on the monitors, the
3457 home page of the DOJ Web site proudly displays an initiative
3458 called "Open Government at the Department of Justice."

3459 And when you click on that banner, Mr. Chairman, you
3460 will learn that this initiative was undertaken pursuant to
3461 President Obama's memorandum on transparency and open
3462 government.

3463 But the facts show that the DOJ under this
3464 administration is anything but transparent and I strongly
3465 encourage my colleagues to vote yes on this resolution of
3466 inquiry and break the cycle of secret political decisions at

3467 the Department of Justice.

3468 The American people deserve the truth about the Sestak
3469 scandal. And they deserve to know whether the DOJ, this
3470 agency responsible for enforcing the laws of this nation and
3471 for investigating these kinds of things played a role in
3472 covering up the Sestak scandal.

3473 And with that Mr. Chairman, I would yield back the
3474 balance of my time.

3475 Mr. Scott. All right. The gentleman's time has
3476 expired. Are there other amendments?

3477 Mr. Rooney. Mr. Chairman?

3478 Mr. Scott. The gentleman from Florida for which purpose
3479 to you seek recognition?

3480 Mr. Rooney. Remove to strike the last word.

3481 Mr. Scott. The gentleman is recognized for 5 minutes.

3482 Mr. Rooney. Mr. Chairman, during the 2008 presidential
3483 election campaign, President Obama made transparency and open
3484 government priorities for his administration.

3485 In fact, the day after his inauguration he issued a
3486 memorandum directing the heads of government agencies to make
3487 government more transparent and user friendly.

3488 It is strange, therefore, that the American people had
3489 to learn of the secret offers to Congressman Joe Sestak and
3490 Colorado House Speaker Andrew Romanoff from them and not from
3491 this most transparent administration.

3492 And here we are 4 months after Congressman Sestak
3493 disclosed the offer to the public, considering this
3494 resolution of inquiry. This resolution is necessary only
3495 because the administration has failed to live up to its
3496 promise of open government for 4 months.

3497 If this administration were serious about transparency,
3498 it would have already produced the documents to Congress
3499 relating to discussions of quid pro quo offers to Congressman
3500 Joe Sestak and Colorado House Speaker Andrew Romanoff.
3501 Instead, Congress is left having to ask for information from
3502 the Department of Justice.

3503 Let me further explain what transparency means to this
3504 administration. On May 28th, the administration issued a
3505 short two-page memorandum after months of political pressure
3506 to provide details about the Sestak issue.

3507 Congressional leaders and the media asked for more
3508 details but they were not provided. Because the memo raised
3509 more questions than it answered, on June 4th the ranking
3510 member asked that the full Judiciary Committee hold a hearing
3511 to investigate these deals. That request was declined.

3512 Then on June 8th, the ranking member, Mr. Sensenbrenner,
3513 sent Attorney General Holder a letter informally asking for
3514 the documents we are now seeking by this resolution. Once
3515 again, the administration blocked Congress' oversight
3516 function and the constitutional system of checks and

3517 balances.

3518 Finally, last Sunday, the administration announced on a
3519 Sunday morning political television show that it would
3520 disclose no additional information on this matter. As a last
3521 resort, the American people have turned to this committee to
3522 give life to the transparency that this administration
3523 promised us. Therefore, I support this resolution.

3524 And I yield back the balance of my time.

3525 Mr. Scott. The gentleman's time has expired. Are there
3526 other amendments for which purpose—gentleman from California?

3527 Mr. Issa. Mr. Chairman, I move to strike the last word.

3528 Mr. Scott. The gentleman is recognized for 5 minutes.

3529 Mr. Issa. I join with the ranking member in believing
3530 that time has come to get answers from the administration on
3531 a number of troubling matters. Congressman Sestak has done
3532 nothing but tell us something that should never have
3533 happened, happened.

3534 The administration, after 10 weeks of intense scrutiny
3535 and requests by the press, issued a page and a quarter
3536 statement that simply said there is nothing illegal or
3537 unethical. Mr. Chairman, the American people know that this
3538 business as usual, which is the defense, is unethical and
3539 wrong.

3540 Whether it is illegal or not is up to a legitimate
3541 inquiry into the facts, but the facts are not forthcoming.

3542 Not in the case of Sestak, not in the case of Romanoff, not
3543 in the case of many other troubling events that we continue
3544 seeing going on in this administration's use of federal
3545 funds, potentially to clear fields, to save tens of millions
3546 of dollars of political money.

3547 Mr. Chairman, since the days of Andrew Jackson, Congress
3548 has passed one after another, strong laws to prevent simply
3549 campaigning based on payoffs if you are elected. We have,
3550 additionally, under the Hatch Act, prohibited or put up the
3551 wall, if you will, of separation between government officials
3552 who are, in fact, political appointees and politics.

3553 The last administration was researched extensively for
3554 something as simple as firing their own appointees in order
3555 to replace them with other appointees. The chairman himself
3556 was very active in asking about the U.S. attorney firings and
3557 whether or not that was politically motivated when, of
3558 course, no laws were broken.

3559 It is completely within the administration's right to
3560 hire and replace people that they appoint. And certainly
3561 today, this committee has a right to say, why is Rahm Emanuel
3562 still there when he used a--yes, exactly--when he deceived and
3563 disguised his actions by using former President Clinton to
3564 offer something in order to clear the field?

3565 Clearly showing that whatever he was offering and why he
3566 was offering it was something he did not want to have

3567 publicly disclosed. Congressman Sestak publicly disclosed
3568 it, or the administration would still be denying any and all
3569 wrongdoing. In the case of Colorado State Senator Romanoff,
3570 very clearly, if not for the e-mails we would still have
3571 complete denial.

3572 So Mr. Chairman, the time has come, so many months have
3573 passed since the first announcement in February, so many
3574 questions have been asked and none answered, not even by that
3575 one and a half page "we did nothing wrong" or others saying
3576 it is business as usual. You didn't expect us to change
3577 everything.

3578 Mr. Chairman, I would ask that you favorably move this
3579 resolution and yield back the balance of my time.

3580 Mr. Scott. The gentleman's time has expired. Are there
3581 other amendments?

3582 Mr. Harper. Mr. Chairman, I move to strike the last
3583 word.

3584 Mr. Scott. The gentleman is recognized for 5 minutes.

3585 Mr. Harper. Thank you, Mr. Chairman. Mr. Chairman, it
3586 doesn't take a lawyer or a judge to recognize that the
3587 administration's discussions about job offers with
3588 Representative Sestak and Andrew Romanoff in an attempt to
3589 influence Senate Democratic primaries go against the spirit
3590 of federal laws designed to prohibit political officials from
3591 wrongfully influencing the election process.

3592 The Hatch Act prohibits federal employees from engaging
3593 in certain political activity. The Hatch Act was enacted to
3594 ensure that individuals entrusted with discharging a federal
3595 duty on behalf of the executive branch maintain a bright line
3596 separation between their jobs and political activities.

3597 Similarly, several provisions in Title 18, the Federal
3598 Criminal Code, clearly prohibit offering, giving and taking
3599 anything of value in exchange for any political activity. In
3600 fact, it is some of these very same statutes that are
3601 currently at issue in the trial of President Obama's home
3602 state's former governor, Ron Blagojevich.

3603 Mr. Chairman, I do not know whether administration
3604 officials violated any federal law when they offered jobs to
3605 Congressman Sestak and Speaker Romanoff, but it is obvious
3606 that in doing so the administration may have engaged in the
3607 type of behavior these statutes were designed to prohibit.

3608 I suspect the administration knows this. After all,
3609 what was the need for President Clinton to deliver the
3610 message to Congressman Sestak? Was it to ensure the
3611 administration would avoid any potential liability under the
3612 Hatch Act or Title 18?

3613 Ultimately, we all work for the American people. The
3614 salaries of federal employees, including those who work for
3615 the Obama administration, are paid by American taxpayers. We
3616 must remember that federal employees are paid to provide

3617 necessary government services to the American people who pay
3618 their salaries.

3619 Taxpayer dollars should never be used by politicians to
3620 further entrench their own partisan political interests.
3621 This resolution of inquiry will, hopefully, yield documents
3622 that reveal the truth about whether the administration
3623 violated federal law.

3624 That is why I strongly support this resolution of
3625 inquiry. Mr. Chairman, I yield back the balance of my time.

3626 Mr. Scott. The gentleman's time has expired. Are there
3627 other amendments?

3628 The gentleman from Texas, Mr. Gohmert, recognized for 5
3629 minutes for the purpose of striking the last word?

3630 Mr. Gohmert. All right, thank you for the purposes of
3631 striking the last word. I do think that this resolution is
3632 important. We have seen from this Justice Department over
3633 the last year and a half, the way they handled the Black
3634 Panther voter situation.

3635 Where you clearly—according to an African American
3636 gentleman that was one of the original fighters for the civil
3637 rights movement in the 1960s—give an affidavit, obviously
3638 under oath, saying it was the worst case of voter
3639 intimidation he had ever seen, more so than the 1960s.

3640 And then, even though all the career people said they
3641 wanted to go forward, it was a locked down case, this Justice

3642 Department runs in and drops everything but one of the
3643 defendants. They were on video. They had testimony, and
3644 they dropped it.

3645 So clearly, this was more about partisan politics than
3646 it was about doing justice. We know that--this weekend I saw
3647 a newspaper article that said that the five people involved
3648 in the 9/11 plotting beginning with Khalid Sheikh Mohammed
3649 had decided to plead guilty.

3650 They were going to waive all of their pleading rights.
3651 They were going to give up all future motions. They were
3652 just going to come in, waive everything, plead guilty.

3653 Unfortunately, that article was dated December 9th,
3654 2008, and a month later this so-called Department of Justice
3655 runs in and said, "We are not going to let them plead guilty.
3656 We are going to move them to New York and make a circus out
3657 of this thing."

3658 That wasn't about justice. Justice was about to be done
3659 for the over 3,000 victims of 9/11. And so now, the report
3660 this weekend is the decision may be put off until after the
3661 November elections. Gee, could that be about politics? It
3662 ought to be about justice.

3663 And then we find out that something we have been trying
3664 to get to the bottom of for quite some time--these offshore
3665 leases that were executed in 1998, 1999 under the Clinton
3666 administration in which the price adjustment language we were

3667 told in natural resources was actually pulled out
3668 intentionally.

3669 The guy that prepares them said, "Hey, you are leaving
3670 out this language." He said, "Leave it out and leave out the
3671 addenda." That cost the federal treasury hundreds of
3672 millions, and now I am told it is cost us billions of dollars
3673 that went to companies like British Petroleum.

3674 And one of the people we were told that was not
3675 interviewed was a person named Sylvia Baca, because, you
3676 know, she left the government and was no longer in the
3677 government service so the I.G. didn't investigate or question
3678 her.

3679 And now guess what? She is back working for the
3680 Interior Department and works for the mining management,
3681 Minerals Management Service, and nobody has—I found out last
3682 week—has bothered to investigate that.

3683 It has cost us billions of dollars, and they
3684 intentionally pull this language out and now back working for
3685 the government and we are not doing anything on investigating
3686 that? And then we have got the Sestak situation.

3687 Never mind that he went to the Naval Academy and that
3688 there is an honor code there that he is supposed to—not just
3689 at the Academy but always—state the full truth.

3690 Never mind that it is a violation of that honor code not
3691 to tell the full truth. But we have got a Justice Department

3692 that could investigate. Just give us the facts, tell us what
3693 happened so we can put this behind us because there is so
3694 much else at stake here.

3695 But if there is a crime being committed we need to know
3696 what it is. And I would just simply submit that this really
3697 isn't justice. The victims of 9/11 have not gotten justice.
3698 Maybe we should change the name from Department of Justice to
3699 Department of Partisan Politics Polluting the Process. I
3700 yield back.

3701 Ms. Jackson Lee. Mr. Chairman? Mr. Chairman?

3702 Mr. Scott. Are there other members—the gentlelady from
3703 Texas?

3704 Ms. Jackson Lee. I would move to strike the last word.

3705 Mr. Scott. The gentlelady is recognized to strike the
3706 last word for 5 minutes.

3707 Ms. Jackson Lee. Mr. Chairman, I recognize that we are
3708 on a particular resolution, and I just hope that my good
3709 friend from Texas has gotten everything that has ever
3710 bothered him off of his chest, because that is what his
3711 previous statement evidenced. If we begin to talk about
3712 politicizing the DOJ, there are many examples of that in the
3713 previous administration.

3714 But what I would like to say is that on the issue at
3715 hand, particularly dealing with Admiral Sestak, former
3716 Congressman Sestak, if they will look at the materials

3717 submitted to this committee and various letters that have
3718 been written, particularly by their own colleague, the
3719 ranking member on the Government Reform Committee, these have
3720 been asked and answered.

3721 And all of this today is, again, a gripe session. The
3722 Department of Justice is not politicized. The attorney
3723 general is not politicized. I have not seen him go in the
3724 dark of night and try to secure a signature of a sick and
3725 disabled person, nor has his staff sought to secure his
3726 signature on documents that would violate the Constitution
3727 while he was disabled.

3728 So we can begin to talk about what is politicized or
3729 not, but to the motion at hand I would say to my colleagues
3730 that all that you have asked has already been given. This is
3731 not a motion that is to clarify. I believe it is simply to
3732 allow a song and verse gripe session.

3733 For that reason I think that we should oppose this
3734 amendment and begin to move forward on legislation that will
3735 improve the conditions of Americans. Yield—

3736 Mr. Gohmert. Would the gentlelady yield? Would the
3737 gentlelady yield?

3738 Ms. Jackson Lee. I will yield to the gentleman.

3739 Mr. Gohmert. I don't know if this will surprise you or
3740 not, but I completely agree with you how entirely
3741 inappropriate that was to go into ICU and try to get a

3742 signature. I agree. Any kind of politics is completely
3743 inappropriate. I agree with the gentlelady on that.

3744 Ms. Jackson Lee. Thank you. Reclaiming my time, and I
3745 thank the gentleman for his courtesies and honesty on some of
3746 my comments that I would ask that we could work together and
3747 secure any material that we would need from the Department of
3748 Justice without this form of a resolution.

3749 I would yield back and ask my colleagues to oppose this
3750 resolution. Thank you.

3751 Mr. Coble. Mr. Chairman.

3752 Mr. Scott. Does the gentlelady yield back?

3753 Ms. Jackson Lee. Yielding back, thank you.

3754 Mr. Scott. The gentlelady's time has expired. Are
3755 there other amendments?

3756 Mr. Coble. Mr. Chairman?

3757 Mr. Scott. The gentleman seeks to strike the last word?

3758 Mr. Coble. Move to strike the last word, Mr. Chairman.

3759 Mr. Scott. Recognized for 5 minutes.

3760 Mr. Coble. I thank the chairman. Mr. Chairman,
3761 immediately after Congressman Sestak disclosed that on
3762 February 18th the administration had approached him with a
3763 job offer to clear the presidential Democratic Senate primary
3764 for Senator Arlen Specter, Americans began demanding more
3765 information.

3766 They demanded it in February, March, April and May and

3767 as well as the present month of June.

3768 Mr. Chairman and colleagues, Capitol Hill has observed
3769 much wrongdoing on the part of Democratic administrations and
3770 Republican administrations, errors in judgment, even a
3771 commission of crime from time to time.

3772 And in those cases it seems to me that if the alleged
3773 wrongdoers had simply come forward and said, "Fellow
3774 Americans, we blew it. I committed a crime or I made an
3775 error in judgment, forgive me. I will try to do better."

3776 Americans, Mr. Chairman, generally are tolerant.
3777 Americans generally are a forgiving people, and I think this
3778 issue, this matter at hand now needs for that sort of
3779 transparent foreclosure to come forward.

3780 Almost 4 months after Congressman Sestak's announcement
3781 when the administration can no longer sweep its questionable
3782 conduct under the rug, it released a one-page memorandum on
3783 the subject. Unfortunately, that memo raised more questions
3784 than answered.

3785 For example, the White House memo acknowledges that the
3786 Obama administration used former President Bill Clinton to
3787 discuss possible federal appointments with Congressman
3788 Sestak. The \$64,000 question, Mr. Chairman and colleagues,
3789 is why? Why couldn't the chief of staff or even President
3790 Obama make this offer directly?

3791 Additionally, the White House memo confirmed that

3792 Congressman Sestak declined an offer to serve as an executive
3793 branch adviser while remaining a congressman. On May 28th,
3794 Mr. Sestak said he believed he was being offered a position
3795 on the President's Intelligence Advisory Board.

3796 There is only one small problem with the White House
3797 story. According to the White House's own Web site, federal
3798 employees, not unlike Representative Sestak, are ineligible
3799 to serve on the President's Intelligence Advisory Board.
3800 Simply stated, the administration version of the events is
3801 implausible.

3802 Finally, the White House memo states that efforts and I
3803 repeat efforts, in the plural, were made to determine whether
3804 Congressman Sestak was interested in a quid pro quo. Yet the
3805 memo describes only one conversation that Sestak had with the
3806 former President Clinton.

3807 What were the other efforts? Did any of these efforts
3808 violate federal criminal law or applicable ethical standards?
3809 President Obama promised the American people the most
3810 transparent administration in history, yet this
3811 administration's disclosure on the Sestak possible scandal is
3812 woefully inadequate.

3813 While circling the wagons may be good legal advice, it
3814 is oftentimes not good political advice. The public
3815 rightfully holds its elected officials to a higher standard.
3816 To ignore this or somehow to argue that questions about this

3817 matter are without merit is an affront to the awesome
3818 responsibility that we as elected officials hold in public
3819 office.

3820 The administration needs to come clean on this matter,
3821 clear the air. If laws were in fact violated those matters
3822 could be addressed. But the bigger issue here is whether the
3823 administration is willing to hold itself to a higher
3824 standard?

3825 Ignoring this matter, this possible scandal, will only
3826 fan the fires. I encourage my colleagues to vote for the
3827 resolution and I thank the chairman for having called this
3828 markup. And I yield back, but first, Mr. Chairman, I would
3829 like to gain the unanimous consent to have Congressman
3830 Chaffetz's statement made a part of the record. And with
3831 that I yield back.

3832 Mr. Scott. Is there any objection? No objection, so
3833 ordered. A reporting quorum being present, without
3834 objection, the question is called. Without—the question is
3835 on reporting the resolution adversely to the House.

3836 Those in favor of reporting adversely, say "aye."

3837 [A chorus of ayes.]

3838 Mr. Scott. Those opposed, say "no."

3839 [A chorus of noes.]

3840 Mr. Scott. The ayes have it and the resolution is
3841 ordered reported adversely.

3842 Ms. Jackson Lee. Mr. Chairman?

3843 Mr. Scott. The gentlelady from Texas?

3844 Ms. Jackson Lee. Mr. Chairman, I wanted—

3845 Mr. Scott. Just a minute. Members will have 5 days to
3846 submit views.

3847 The gentlelady from Texas?

3848 Ms. Jackson Lee. Mr. Chairman, I wanted to report for
3849 the record that I was unavoidably detained in a meeting
3850 discussing the jobs bill that has been stalled in the Senate
3851 that has been passed by the House.

3852 For that reason, I missed the final vote on H.R. 5503
3853 Securing Protections for the Injured from Limitations on
3854 Liability Act. If I had been present, I would have voted
3855 aye. I would like that to be placed appropriately in the
3856 record.

3857 Mr. Smith. Mr. Chairman, may I ask unanimous consent to
3858 speak out of order?

3859 Ms. Jackson Lee. I am in the middle of—

3860 Mr. Smith. Apparently—

3861 Mr. Scott. Excuse me, I am sorry.

3862 Mr. Smith. I thought you had finished. I am sorry.

3863 Ms. Jackson Lee. No, no, and I asked unanimous consent
3864 for it to be placed appropriately in the record.

3865 Mr. Scott. Without objection.

3866 Ms. Jackson Lee. All right, excuse me, and the motion

3867 to authorize issuance of the subpoenas to BP America for
3868 documents regarding its claims process relating to the Gulf
3869 oil spill, if I had been present, I would have voted aye. I
3870 ask unanimous consent for it to be placed in the record.

3871 Mr. Scott. Without objection.

3872 Ms. Jackson Lee. And the H.R. 5566 Prohibiting
3873 Interstate Commerce in Crushed Video Act of 2010, if I had
3874 been present I would have voted aye. I ask that be placed in
3875 the record. I ask unanimous consent.

3876 Mr. Scott. Without objection. And I would notify some
3877 of the members not to leave now if possible.

3878 Ms. Jackson Lee. And I thank the chair because of my
3879 unavoidable detainment. Thank you. I yield back.

3880 Mr. Smith. Mr. Chairman, I would say it is my fault but
3881 I don't believe the chairman heard me ask for a recorded
3882 vote, and I regret that I didn't make that clearer but I do
3883 hope we will have a recorded vote.

3884 Mr. Scott. We have members who have left. I don't know
3885 if we can get them back. If they will hold the vote open—

3886 Mr. Smith. Okay, we can hold the vote open. We can
3887 hold the vote open at this time.

3888 Mr. Scott. Without objection, the clerk will re-call
3889 the roll on the Resolution 1455, motion to report adversely.

3890 The Clerk. Mr. Conyers?

3891 [No response.]

3892 Mr. Berman?
3893 [No response.]
3894 Mr. Boucher?
3895 [No response.]
3896 Mr. Nadler?
3897 [No response.]
3898 Mr. Scott?
3899 Mr. Scott. Aye.
3900 The Clerk. Mr. Scott votes aye.
3901 Mr. Watt?
3902 [No response.]
3903 Ms. Lofgren?
3904 Ms. Lofgren. Aye.
3905 The Clerk. Ms. Lofgren votes aye.
3906 Ms. Jackson Lee?
3907 Ms. Jackson Lee. Aye.
3908 The Clerk. Ms. Jackson Lee votes aye.
3909 Ms. Waters?
3910 [No response.]
3911 Mr. Delahunt?
3912 [No response.]
3913 Mr. Cohen?
3914 Mr. Cohen. Aye.
3915 The Clerk. Mr. Cohen votes aye.
3916 Mr. Johnson?

3917 Mr. Johnson. Aye.

3918 The Clerk. Mr. Johnson votes aye.

3919 Mr. Pierluisi?

3920 Mr. Pierluisi. Aye.

3921 The Clerk. Mr. Pierluisi votes aye.

3922 Mr. Quigley?

3923 Mr. Quigley. Aye.

3924 The Clerk. Mr. Quigley votes aye.

3925 Ms. Chu?

3926 Ms. Chu. Aye.

3927 The Clerk. Ms. Chu votes aye.

3928 Mr. Deutch?

3929 [No response.]

3930 Mr. Gutierrez?

3931 [No response.]

3932 Ms. Baldwin?

3933 Ms. Baldwin. Aye.

3934 The Clerk. Ms. Baldwin votes aye.

3935 Mr. Gonzalez?

3936 Mr. Gonzalez. Aye.

3937 The Clerk. Mr. Gonzalez votes aye.

3938 Mr. Weiner?

3939 [No response.]

3940 Mr. Schiff?

3941 Mr. Schiff. Aye.

3942 The Clerk. Mr. Schiff votes aye.
3943 Ms. Sanchez?
3944 Ms. Sanchez. Aye.
3945 The Clerk. Ms. Sanchez votes aye.
3946 Mr. Maffei?
3947 [No response.]
3948 Mr. Polis?
3949 [No response.]
3950 Mr. Smith?
3951 Mr. Smith. No.
3952 The Clerk. Mr. Smith votes no.
3953 Mr. Goodlatte?
3954 Mr. Goodlatte. No.
3955 The Clerk. Mr. Goodlatte votes no.
3956 Mr. Sensenbrenner?
3957 [No response.]
3958 Mr. Coble?
3959 Mr. Coble. No.
3960 The Clerk. Mr. Coble votes no.
3961 Mr. Gallegly?
3962 Mr. Gallegly. No.
3963 The Clerk. Mr. Gallegly votes no.
3964 Mr. Lungren?
3965 [No response.]
3966 Mr. Issa?

3967 Mr. Issa. No.

3968 The Clerk. Mr. Issa votes no.

3969 Mr. Forbes?

3970 [No response.]

3971 Mr. King?

3972 Mr. King. No.

3973 The Clerk. Mr. King votes no.

3974 Mr. Franks?

3975 Mr. Franks. No.

3976 The Clerk. Mr. Franks votes no.

3977 Mr. Gohmert?

3978 [No response.]

3979 Mr. Jordan?

3980 Mr. Jordan. No.

3981 The Clerk. Mr. Jordan votes no.

3982 Mr. Poe?

3983 [No response.]

3984 Mr. Chaffetz?

3985 [No response.]

3986 Mr. Rooney?

3987 Mr. Rooney. No.

3988 The Clerk. Mr. Rooney votes no.

3989 Mr. Harper?

3990 Mr. Harper. No.

3991 The Clerk. Mr. Harper votes no.

3992 Mr. Deutch?

3993 Mr. Deutch. Aye.

3994 The Clerk. Mr. Deutch votes aye.

3995 Mr. Gohmert?

3996 Mr. Gohmert. No.

3997 The Clerk. Mr. Gohmert votes no.

3998 Mr. Conyers?

3999 Chairman Conyers. Aye.

4000 The Clerk. Mr. Conyers votes aye.

4001 Mr. Forbes?

4002 Mr. Forbes. No.

4003 The Clerk. Mr. Forbes votes no.

4004 Mr. Berman?

4005 Mr. Berman. Aye.

4006 The Clerk. Mr. Berman votes aye.

4007 Mr. Scott. Are there members who want to have their

4008 votes recorded? If not, the clerk will report.

4009 The Clerk. Mr. Chairman, 15 members voted aye, 12

4010 members voted nay.

4011 Chairman Conyers. Fifteen voted aye, 12 voted nay. The

4012 ayes have it and the resolution is ordered reported

4013 adversely. Members will have 2 days to submit additional

4014 views. Is there further business to come before the

4015 committee? Apparently not, so the committee will stand

4016 adjourned.

4017 [Whereupon, at 2:37 p.m., the committee was adjourned.]