

ROLL CALL NO. ~~H.R. 5~~ (3)

DATE 2/9/11

COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
112TH CONGRESS

Failed 10-15

Subject: H.R. 5 Amendment #3 - Mr. Nadler

Present		Ayes	Nays	Present
.....	MR. SMITH, <i>Chairman</i> .....		X	
.....	MR. SENSENBRENNER.....			
.....	MR. COBLE.....			
.....	MR. GALLEGLY.....		X	
.....	MR. GOODLATTE.....		X	
.....	MR. LUNGREN.....		X	
.....	MR. CHABOT.....			
.....	MR. ISSA.....		X	
.....	MR. PENCE.....			
.....	MR. FORBES.....		X	
.....	MR. KING.....		X	
.....	MR. FRANKS.....		X	
.....	MR. GOHMERT.....			
.....	MR. JORDAN.....		X	
.....	MR. POE.....		X	
.....	MR. CHAFFETZ.....			
.....	MR. REED.....		X	
.....	MR. GRIFFIN.....			
.....	MR. MARINO.....		X	
.....	MR. GOWDY.....		X	
.....	MR. ROSS.....		X	
.....	MS. ADAMS.....		X	
.....	MR. QUAYLE.....		15	
.....	MR. CONYERS.....	X		
.....	MR. BERMAN.....	X		
.....	MR. NADLER.....	X		
.....	MR. SCOTT.....	X		
.....	MR. WATT.....			
.....	MS. LOFGREN.....			
.....	MS. JACKSON LEE.....			
.....	MS. WATERS.....	X		
.....	MR. COHEN.....	X		
.....	MR. JOHNSON.....	X		
.....	MR. PIERLUISI.....			
.....	MR. QUIGLEY.....	X		
.....	MS. CHU.....	X		
.....	MR. DEUTCH.....	X		
.....	MS. SÁNCHEZ.....			
.....	MS. WASSERMAN SCHULTZ.....			
.....	TOTAL.....	10	15	

#3

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**AMENDMENT TO H.R. 5**  
**OFFERED BY MR. NADLER OF NEW YORK**

Page 15, after line 18, insert the following and re-designate the succeeding sections accordingly:

1 **SEC. 9. RESTRICTIONS ON PROTECTIVE ORDERS AND SEAL-**  
2 **ING OF CASES AND SETTLEMENTS.**

3 (a)(1) In any health care lawsuit in which the plead-  
4 ings state facts that are relevant to the protection of pub-  
5 lic health or safety, a court shall not enter, by stipulation  
6 or otherwise, an order otherwise authorized restricting the  
7 disclosure of information obtained through discovery, an  
8 order otherwise authorized approving a settlement agree-  
9 ment that would restrict the disclosure of such informa-  
10 tion, or an order otherwise authorized restricting access  
11 to court records unless in connection with such order the  
12 court has first made independent findings of fact that—

13 (A) such order would not restrict the disclosure  
14 of information which is relevant to the protection of  
15 public health or safety; or

16 (B)(i) the public interest in the disclosure of  
17 past, present, or potential public health or safety  
18 hazards is outweighed by a specific and substantial

1 interest in maintaining the confidentiality of the in-  
2 formation or records in question; and

3 (ii) the requested order is no broader than nec-  
4 essary to protect the confidentiality interest as-  
5 serted.

6 (2) No order entered as a result of the operation of  
7 paragraph (1), other than an order approving a settlement  
8 agreement, may continue in effect after the entry of final  
9 judgment, unless at the time of, or after, such entry the  
10 court makes a separate finding of fact that the require-  
11 ments of paragraph (1) continue to be met.

12 (b) In any health care lawsuit in which the pleadings  
13 state facts that are relevant to the protection of public  
14 health or safety, a court shall not enforce any provision  
15 of an agreement between or among parties, or enforce an  
16 order entered as a result of the operation of subsection  
17 (a)(1), to the extent that such provision or such order pro-  
18 hibits or otherwise restricts a party from disclosing any  
19 information relevant to such health care lawsuit to any  
20 Federal or State agency with authority to enforce laws  
21 regulating an activity relating to such information.

22 (c)(1) Subject to paragraph (2), a court shall not en-  
23 force any provision of a settlement agreement in any  
24 health care lawsuit in which the pleadings state facts that  
25 are relevant to the protection of public health or safety,

1 between or among parties that prohibits one or more par-  
2 ties from—

3 (A) disclosing the fact that such settlement was  
4 reached or the terms of such settlement (excluding  
5 any money paid) that involve matters relevant to the  
6 protection of public health or safety; or

7 (B) discussing matters relevant to the protec-  
8 tion of public health or safety involved in such  
9 health care lawsuit.

10 (2) Paragraph (1) applies unless the court has made  
11 independent findings of fact that—

12 (A) the public interest in the disclosure of past,  
13 present, or potential public health or safety hazards  
14 is outweighed by a specific and substantial interest  
15 in maintaining the confidentiality of the information  
16 in question; and

17 (B) the requested order is no broader than nec-  
18 essary to protect the confidentiality interest as-  
19 serted.

20 (d) Notwithstanding subsections (a)(1)(B)(i) and  
21 (c)(2)(A), when weighing the interest in maintaining con-  
22 fidentiality under this section, there shall be a rebuttable  
23 presumption that the interest in protecting personally  
24 identifiable information of an individual outweighs the  
25 public interest in disclosure.

1 (e) Nothing in this section shall be construed to per-  
2 mit, require, or authorize the disclosure of classified infor-  
3 mation (as defined under section 1 of the Classified Infor-  
4 mation Procedures Act (18 U.S.C. App.)).

