

RPTS JOHNSONDCMN BURRELL

MARKUP OF COMMITTEE PRINT OF  
MATERIAL TO BE TRANSMITTED TO  
THE COMMITTEE ON THE BUDGET  
PURSUANT TO SECTION 201 OF  
H.CON.RES. 112

Wednesday, April 18, 2012  
House of Representatives,  
Committee on the Judiciary,  
Washington, D.C.

The committee met, pursuant to call, at 2:13 p.m., in Room 2141, Rayburn House Office Building, Hon. Lamar Smith [chairman of the committee] presiding.

Present: Representatives Smith, Coble, Gallegly, Goodlatte, Chabot, Issa, Pence, Forbes, King, Franks, Gohmert, Jordan, Poe, Chaffetz, Griffin, Gowdy, Ross, Adams, Quayle, Amodei, Conyers, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Lofgren, Johnson,

Pierluisi, Chu, Deutch, Sanchez, Polis.

Staff Present: Richard Hertling, Staff Director and Chief Counsel; Travis Norton, Parliamentarian; Zach Somers, Counsel; Sarah Kish, Clerk; Perry Apelbaum, Minority Staff Director; and Aaron Hiller, Counsel.

Chairman Smith. The Judiciary Committee will come to order. Without objection, the chair is authorized to declare a recess of the committee at any time. The clerk will call the roll to establish the presence of a quorum.

The Clerk. Mr. Smith?

Chairman Smith. Present.

The Clerk. Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

[No response.]

The Clerk. Mr. Goodlatte?

[No response.]

The Clerk. Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

[No response.]

The Clerk. Mr. Issa?

[No response.]

The Clerk. Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

[No response.]

The Clerk. Mr. King?

[No response.]

The Clerk. Mr. Franks?

[No response.]

The Clerk. Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

[No response.]

The Clerk. Mr. Poe?

Mr. Poe. Present.

The Clerk. Mr. Chaffetz?

[No response.]

The Clerk. Mr. Griffin?

[No response.]

The Clerk. Mr. Marino?

[No response.]

The Clerk. Mr. Gowdy?

[No response.]

The Clerk. Mr. Ross?

[No response.]

The Clerk. Mrs. Adams?

Mrs. Adams. Present.

The Clerk. Mr. Quayle?

[No response.]

The Clerk. Mr. Amodei?

[No response.]

The Clerk. Mr. Conyers?

[No response.]

The Clerk. Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

[No response.]

The Clerk. Mr. Scott?

Mr. Scott. Present.

The Clerk. Mr. Watt?

Mr. Watt. Present.

The Clerk. Ms. Lofgren?

[No response.]

The Clerk. Ms. Jackson Lee?

[No response.]

The Clerk. Ms. Waters?

[No response.]

The Clerk. Mr. Cohen?

[No response.]

The Clerk. Mr. Johnson?

Mr. Johnson. Present.

The Clerk. Mr. Pierluisi?

[No response.]

The Clerk. Mr. Quigley?

[No response.]

The Clerk. Ms. Chu?

Ms. Chu. Present.

The Clerk. Mr. Deutch?

[No response.]

The Clerk. Ms. Sanchez?

[No response.]

The Clerk. Mr. Polis?

[No response.]

Chairman Smith. The gentleman from California?

Mr. Gallegly. Present.

Chairman Smith. The gentleman from Ohio, Mr. Jordan?

Mr. Jordan. Here.

Chairman Smith. The gentleman from North Carolina?

Mr. Coble. Present.

Chairman Smith. The gentlewoman from California, Ms. Sanchez?

Ms. Sanchez. I am present, Mr. Chairman.

Chairman Smith. Okay. The gentleman from South Carolina,  
Mr. Gowdy?

Mr. Gowdy. Present, Mr. Chairman.

Chairman Smith. The gentleman from Arizona, Mr. Franks?

Mr. Franks. Here.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 13 members responded present.

Chairman Smith. A working quorum is present. I was going to resume consideration of Mr. Scott's amendment. Since he is not here, we will go -- he is here. Pursuant to notice, I now call up Judiciary

Committee print 112-6, the proposed reconciliation submission to the Budget Committee for purposes of markup. So we will resume consideration of Mr. Scott's amendment. And we have had 45 minutes debate, as I recall, on this amendment. And if we are ready, I would like to proceed to a vote.

Any other members who wish to be recognized? The gentleman from Virginia, Mr. Scott, even though he has already been recognized once on this amendment.

Mr. Scott. I ask unanimous consent that I be given about 30 seconds. Just to remind people that this is the reinstatement of joint and several liability that the gentleman from California, Mr. Lungren, said was a good bill, and he would be supporting.

Chairman Smith. Thank you, Mr. Scott, for that reminder. The vote is on the Scott amendment. All in favor say aye. Opposed, no. The clerk will call the roll.

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Mr. Goodlatte?

[No response.]

The Clerk. Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

[No response.]

The Clerk. Mr. Issa?

[No response.]

The Clerk. Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

[No response.]

The Clerk. Mr. King?

[No response.]

The Clerk. Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan votes no.

Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

[No response.]

The Clerk. Mr. Griffin?

[No response.]

The Clerk. Mr. Marino?

[No response.]

The Clerk. Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy votes no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross votes no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams votes no.

Mr. Quayle?

[No response.]

The Clerk. Mr. Amodei?

[No response.]

The Clerk. Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers votes aye.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

[No response.]

The Clerk. Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye.

Ms. Lofgren?

[No response.]

The Clerk. Ms. Jackson Lee?

[No response.]

The Clerk. Ms. Waters?

[No response.]

The Clerk. Mr. Cohen?

[No response.]

The Clerk. Mr. Johnson?

[No response.]

The Clerk. Mr. Pierluisi?

[No response.]

The Clerk. Mr. Quigley?

[No response.]

The Clerk. Ms. Chu?

Ms. Chu. Aye.

The Clerk. Ms. Chu votes aye.

Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch votes aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez votes aye.

Mr. Polis?

[No response.]

Chairman Smith. The gentleman from North Carolina?

Mr. Coble. No.

The Clerk. Mr. Coble votes no.

Chairman Smith. The gentleman from Iowa?

Mr. King. No.

The Clerk. Mr. King votes no.

Chairman Smith. The gentleman from California, Mr. Issa?

Mr. Issa. No.

The Clerk. Mr. Issa votes no.

Chairman Smith. Has the gentleman from Georgia voted?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Chairman Smith. The gentleman from Virginia, Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 7 members voted aye, 11 members voted  
nay.

Chairman Smith. The majority having voted against the

amendment, the amendment is not agreed to.

Are there other amendments? If we go down the list of amendments I have in front of me, Mr. Johnson, if you have an amendment, we will consider that. The gentleman from Georgia has an amendment at the desk. And the clerk will report the amendment. Mr. Johnson, you have two amendments now. Do you want to consider them together?

Mr. Johnson. No, separately.

Chairman Smith. Okay. The clerk will report.

The Clerk. Amendment to Judiciary Committee Print 112-6 offered by Mr. Johnson of Georgia. Page 20, insert after line 12 the following: (3) Notwithstanding paragraph (1) or (2), this act shall not preempt any applicable State constitutional provision.

[The amendment of Mr. Johnson follows:]

\*\*\*\*\* INSERT 1-1 \*\*\*\*\*

Chairman Smith. The gentleman from Georgia is recognized to explain his amendment.

Mr. Johnson. Thank you, Mr. Chairman. The amendment I am offering would honor the 10th Amendment and protect States' rights by prohibiting the implementation of the HEALTH Act's provisions in States where the State Constitution explicitly prohibits provisions contained within the bill.

The Seventh Amendment guarantees a right to a jury trial, and this bill infringes upon that right. And also some State supreme courts have found that limits on awards for pain and suffering by a jury violates the Constitution of those particular courts. And so this amendment goes towards those States that allow for there to be -- this allows for States with constitutional differences with H.R. 5 to be exempted from the operations of H.R. 5.

I would tender to you the fact that this bill is a Federal tort reform bill. It contradicts the arguments that have been raised by opponents of the Affordable Care Act, also known as ObamaCare. Many opponents of ObamaCare have said that it goes too far, and it is not a part of the duties and responsibilities of Congress. Some of them even say that insurance and health care are not issues that affect commerce. And certainly that argument is not consistent with the argument that is being raised with H.R. 5, which admits that insurance affects interstate commerce, and so therefore the Congress has the authority to govern in this area. That is a distinction that does not make much sense to me.

Mr. Conyers. Would the gentleman yield, please?

Mr. Johnson. Yes, I will.

Mr. Conyers. Thank you very much, Congressman. The 10th Amendment, to paraphrase, says that the powers not delegated to the United States are reserved to the people. Is that still the crux of the argument in your important amendment?

Mr. Johnson. Yes, it is the foundation of it as a matter of fact. And you hit me right when I was getting ready to get to it. I will tell you that many Republicans support the argument that this bill is a bill that is affecting interstate commerce, but they oppose it. Now, some, like Ken Cuccinelli, the Virginia Attorney General, say that Washington -- he is true to his colors. I am going to read what he says about Senate Bill 197, which is a companion legislation to H.R. 5. He says it takes an approach that Washington knows best, while trampling States' authority and the 10th Amendment. The legislation is breathtakingly broad in its assumptions about Federal power, particularly the same power to regulate commerce that lies at the heart of all lawsuits, including Virginia's, against the individual mandate of the 2010 Federal health care law. I have little doubt that the Senators who brought us S. 197, also here known as H.R. 5, I have little doubt that the proponents oppose the use of the Commerce Clause to compel individuals to buy health insurance, yet they have no qualms about dictating to State court judges how they are to conduct trials in State lawsuits.

How does this sort of constitutional disconnect happen? And if

S. 197, a medical malpractice bill, if it were ever signed into law by a Republican or a Democratic President, they would file suit against it just as fast as I filed suit when Federal health care bill was signed into law in March of 2010.

Chairman Smith. The gentleman's time has expired.

Mr. Johnson. With that, I will yield back the balance of my time. It is inconsistent, and it is an intrusion on States' rights. And I would ask for my colleagues, especially those on the other side who oppose ObamaCare, to vote consistent with that view and vote in favor of this amendment.

Chairman Smith. Thank you, Mr. Johnson. The gentleman from Arizona, Mr. Franks, is recognized.

Mr. Franks. Mr. Chairman, I would oppose this amendment, and urge my colleagues to do the same. Adopting this amendment would result in a rather hopeless patchwork of rules, and would gut the health care cost savings of this bill entirely. In fact, it would essentially gut the bill. The Health Care Act appropriately addresses a national problem because doctors are moving from State to State based on which States have enacted reasonable legal reforms. Doctors should be able to practice anywhere there are patients, not just where certain States have enacted reasonable legal reforms that allow them to practice, Mr. Chairman.

And I am going to stop right there.

Mr. Johnson. Would the gentleman yield?

Mr. Franks. I will yield, yes, sir.

Mr. Johnson. Thank you, sir. I would ask the gentleman does the gentleman agree that health care and insurance are issues that affect interstate commerce, and thus are properly within the jurisdiction of Congress to legislate upon?

Mr. Franks. I would say that in this case that we are talking about here that medical liability issues do affect interstate commerce. And I believe that the commerce committee in the Constitution, even when it was enacted, there was a battle over balance. You know, we knew that there had to be some ability to dictate to the States so that we were able to have interstate commerce that worked for everyone's concern. We also wanted to do everything we could to preserve the States' power in other areas.

The difference between this and the Health Care Act is the Health Care Act actually requires someone to buy a certain product. Now, if that can be justified under the Commerce Clause, then I simply, Mr. Johnson, don't know what couldn't be justified. I guess that is my point. It is sort of a measurement.

With that, I yield back.

Mr. Johnson. Well, sir, before you yield back, if I could ask you another question.

Chairman Smith. The gentleman has already yielded back. Are there other members who wish to be heard on this amendment?

The gentleman from Virginia, Mr. Scott.

Mr. Scott. I move to strike the last word.

Chairman Smith. The gentleman is recognized for 5 minutes.

Mr. Scott. Yield to the gentleman from Georgia.

Mr. Johnson. Thank you. If I could address my friend from Arizona once again, you really did not answer my question, though I appreciated your answer. But I want to kind of get a little bit more direction. What you are saying is that the difference between preventing people from engaging in tort litigation in the medical arena and the Congress regulating insurance and health care through what you all call ObamaCare is the fact that the individual mandate requires of people some action, whereas this H.R. 5 does not have a requirement of action in it?

Mr. Franks. Mr. Johnson, I would suggest to you that that is one of the main distinctions between the two efforts. On the one hand, in this bill we are trying to address laws that essentially prevent doctors from coming to certain States and practicing their trade and practicing commerce because they cannot survive under these liability abuses that certain States allow. That is on the one hand. On the other hand, forcing someone to buy something is entirely different than preventing them from not being able to practice commerce. And I think that is the main distinction.

Mr. Johnson. Reclaiming my time, was Congress authorized to compel people to make deposits into the Social Security Fund out of their paychecks?

Mr. Franks. Actually, that is what Congress did, yes.

Mr. Johnson. And you contend that that was unconstitutional, or is that constitutional?

Mr. Franks. That would fall, of course, under the taxing authority of the Congress. And you know, that is one of the things of course the administration when they were trying to defend ObamaCare earlier, they said it was not a tax. Well, now of course when they knew that they had no ground whatsoever to stand on the commerce clause based on mandating someone to buy something, all of a sudden now it is a tax because the taxing authority under the Constitution is quite clear.

Mr. Johnson. Reclaiming my time, and I would ask you what is your explanation for the U.S. Supreme Court during arguments on this case taking the stand that it doesn't matter whether or not it is a tax or a penalty, we are ready to rule on it? Can we agree that it has gotten down to the U.S. Supreme Court playing politics with this issue?

Mr. Franks. Well, unfortunately, I think that you do have a point in that the Supreme Court and the courts in general, Mr. Johnson, have been politicized to a tragic degree in the day in which we live. And I think it probably is one of the greatest threats to the Republic that we face as a people. If we are not able to count on the courts to examine legislation based on the original intent of the Constitution and based on obvious contradiction thereto, then ultimately we have vitiated the entire rule of law. And so your point is a good one.

Mr. Johnson. Well, before I yield back, I will respond and say that I agree with much of what you said, though I believe that the Constitution is a living document.

Mr. Franks. Then we live in a dead Republic, sir.

Mr. Johnson. If I may continue, I believe it is a living document that has to be construed in accordance with the times, taking into consideration what the forefathers may have intended for this particular issue that the Court is addressing. But I will say that it is despicable when a court says that it is not a court that engages in judicial activism and sticks with the strict construction of the Constitution and then turns around and plays politics. That is what we have today.

And with that, I will yield back.

Chairman Smith. Does the gentleman from Virginia yield back? Are there any other members who wish to be heard on this amendment?

The question is on the Johnson amendment, first amendment. All in favor say aye. Opposed, no. In the opinion of the chair, the noes have it and the amendment is not agreed to.

Mr. Johnson. I ask for a recorded vote.

Chairman Smith. A recorded vote has been requested. The clerk will call the roll.

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

[No response.]

The Clerk. Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte no.

Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

Mr. Chabot. No.

The Clerk. Mr. Chabot no.

Mr. Issa?

[No response.]

The Clerk. Mr. Pence?

Mr. Pence. No.

The Clerk. Mr. Pence votes no.

Mr. Forbes?

[No response.]

The Clerk. Mr. King?

Mr. King. No.

The Clerk. Mr. King votes no.

Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan votes no.

Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz votes no.

Mr. Griffin?

[No response.]

The Clerk. Mr. Marino?

[No response.]

The Clerk. Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy votes no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross votes no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams votes no.

Mr. Quayle?

[No response.]

The Clerk. Mr. Amodei?

[No response.]

The Clerk. Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers votes aye.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

[No response.]

The Clerk. Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye.

Ms. Jackson Lee?

[No response.]

The Clerk. Ms. Waters?

Ms. Waters. Aye.

The Clerk. Ms. Waters votes aye.

Mr. Cohen?

[No response.]

The Clerk. Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi votes aye.

Mr. Quigley?

[No response.]

The Clerk. Ms. Chu?

Ms. Chu. Aye.

The Clerk. Ms. Chu votes aye.

Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch votes aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez votes aye.

Mr. Polis?

[No response.]

Chairman Smith. The gentleman from Virginia, Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Chairman Smith. The gentleman from California, Mr. Issa?

Mr. Issa. No.

The Clerk. Mr. Issa votes no.

Chairman Smith. The gentleman from North Carolina, Mr. Coble?

Mr. Coble. No.

The Clerk. Mr. Coble votes no.

Chairman Smith. The gentleman from California, Mr. Gallegly?  
Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 10 members voted aye, 15 members voted nay.

Chairman Smith. The majority having voted against the amendment, the amendment is not agreed to. Are there other amendments?

Mr. Conyers. Mr. Chairman.

Chairman Smith. The gentleman from Michigan, Mr. Conyers.

Mr. Conyers. Thank you. I would just like to acknowledge the presence of Attorney Reginald Turner in our hearing. You recognized him from his previous visits here. He is the past President of the State Bar of Michigan and the past President of the National Bar Association.

Chairman Smith. Mr. Turner, we welcome you. Thank you for being present.

Mr. Turner. Thank you, Mr. Chairman.

Chairman Smith. Thank you, Mr. Conyers. Are there other amendments? The gentlewoman from California.

Ms. Waters. Thank you very much, Mr. Chairman. I have an amendment at the desk. I have three amendments. I would like to start with amendment number 148.

Chairman Smith. Okay. The clerk will report.

The Clerk. Amendment to Judiciary Committee Print 112-6 offered

by Ms. Waters of California. Page 14, line 14, strike "or which" and insert "which". Page 14, line 15, strike "antitrust" and insert "antitrust; or which involves the application of a preexisting condition exclusion (as such term is defined in section 2704 (b)(1)(A) (42 U.S.C. 300gg-3(b)(1)(A)))".

[The amendment of Ms. Waters follows:]

\*\*\*\*\* INSERT 1-2 \*\*\*\*\*

Chairman Smith. The gentlewoman from California is recognized.

Mr. Franks. Mr. Chairman, I would reserve a point of order.

Chairman Smith. For what purpose does the gentleman seek to be recognized? The gentleman from Arizona reserves a point of order. Does the gentlewoman from California want to explain her amendment?

Ms. Waters. Thank you, Mr. Chairman. My amendment would eliminate any cap on damages when insurance companies deny coverage for persons with preexisting conditions. Health insurance companies have a long history of denying coverage to people with preexisting conditions. Too many people with serious medical conditions like diabetes, heart disease, cancer, and HIV/AIDS have been unable to receive the health care they need because insurance companies refuse to cover them. Tragically, some of these preexisting conditions can be fatal for patients who are denied access to health care.

The Affordable Care Act prohibits exclusions based on preexisting conditions. After the bill was signed into law, 2 years ago last month, insurance companies were required to immediately cease denials of coverage to children with preexisting conditions. These protections will be extended to Americans of all ages beginning in 2014.

H.R. 5 is so sweeping that it would apply to claims brought by individuals who have been denied coverage for a preexisting condition. This bill could provide a perverse incentive for penny pinching insurance companies to deny coverage to persons with preexisting conditions, in direct violation of the law. H.R. 5 would allow an insurance company to decide that it would be cheaper to risk paying

a \$250,000 claim, or nothing at all, than to continue to pay for expensive medical care for chronically ill patients for an indefinite period of time. H.R. 5 would deter insurance companies from doing the right thing.

My amendment would eliminate any cap on damages for claims involving denials of coverage for preexisting conditions. This amendment is critical to ensure that H.R. 5 is not used by insurance companies to evade the law and refuse to provide coverage to people with preexisting conditions.

A study by the Department of Health and Human Services found that as many as 129 million Americans under the age of 65 have preexisting conditions that would put them at risk of insurance coverage denials. Insurance companies should not be able to save money by denying medically necessary care to millions of people in violation of a Federal law, knowing that their damages may be eliminated or at least severely limited.

The prohibition of exclusions based upon preexisting conditions is one of the most important achievements of the Affordable Care Act. All Americans should have access to quality, affordable health care regardless of preexisting condition. We cannot allow this essential patient protection to be undermined by an artificial cap on damages. I urge my colleagues to support this amendment.

Chairman Smith. Thank you, Ms. Waters. Does the gentleman from Arizona insist upon his point of order?

Mr. Franks. No, Mr. Chairman, I would withdraw the point of

order.

Chairman Smith. Does the gentleman want to oppose the amendment?

Mr. Franks. Mr. Chairman, I do want to oppose the amendment.

Chairman Smith. The gentleman is recognized.

Mr. Franks. Mr. Chairman, I agree that this amendment is clearly an effort to entrench ObamaCare and make it harder to repeal by referencing it in other laws. And if one opposes ObamaCare, then they should oppose this amendment. But even if one should support ObamaCare, Mr. Chairman, there are risks to cross-referencing that law in this bill. For instance, if you go to Westlaw right now and attempt to look up the definition cross-referenced in this amendment, you will see a red flag, indicating that that provision was held unconstitutional as nonseverable by the most recent Federal court to consider it. So the definition referenced in this bill is of dubious constitutionality. And like the rest of ObamaCare, this definition is quite likely to be either repealed or invalidated by the Supreme Court within a matter of months or years. And I think we should avoid inserting such an uncertain term into the definitions of section H.R. 5. And by doing so, we can make the definitions of this bill as subject to doubt and uncertainty as the provisions of ObamaCare itself. And I would urge my colleagues to vote down the amendment.

Chairman Smith. Thank you, Mr. Franks. The question is on the Waters amendment. All in favor say aye. Aye. Opposed, no. In the opinion of the chair, the noes have it, and the amendment is not agreed to.

Ms. Waters. I request a recorded vote.

Chairman Smith. Recorded vote has been requested. The clerk will call the roll.

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte no.

Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

[No response.]

The Clerk. Mr. Issa?

Mr. Issa. No.

The Clerk. Mr. Issa votes no.

Mr. Pence?

Mr. Pence. No.

The Clerk. Mr. Pence votes no.

Mr. Forbes?

[No response.]

The Clerk. Mr. King?

Mr. King. No.

The Clerk. Mr. King votes no.

Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan votes no.

Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz votes no.

Mr. Griffin?

[No response.]

The Clerk. Mr. Marino?

[No response.]

The Clerk. Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy votes no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross votes no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams votes no.

Mr. Quayle?

[No response.]

The Clerk. Mr. Amodei?

Mr. Amodei. No.

The Clerk. Mr. Amodei votes no.

Mr. Conyers?

[No response.]

The Clerk. Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye.

Ms. Jackson Lee?

[No response.]

The Clerk. Ms. Waters?

Ms. Waters. Aye.

The Clerk. Ms. Waters votes aye.

Mr. Cohen?

[No response.]

The Clerk. Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi votes aye.

Mr. Quigley?

[No response.]

The Clerk. Ms. Chu?

[No response.]

The Clerk. Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch votes aye.

Ms. Sanchez?

[No response.]

The Clerk. Mr. Polis?

[No response.]

Chairman Smith. The gentleman from Virginia, Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Chairman Smith. The gentleman from North Carolina, Mr. Coble?

Mr. Coble. No.

The Clerk. Mr. Coble votes no.

Chairman Smith. The gentlewoman from California, Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez votes aye.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 9 members voted aye, 15 members voted nay.

Chairman Smith. The majority having voted against the amendment, the amendment is not agreed to. Are there other amendments?

The gentlewoman from California, Ms. Waters.

Ms. Waters. I have an amendment at the desk numbered 147.

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to Judiciary Committee Print 112-6 offered by Ms. Waters of California. Page 14, beginning on line 14, strike the "or which is grounded in antitrust" and insert "which is grounded in antitrust; or which is grounded in a rescission of a group health plan or health insurance coverage."

[The amendment of Ms. Waters follows:]

\*\*\*\*\* INSERT 1-3 \*\*\*\*\*

Chairman Smith. The gentlewoman from California is recognized to explain her amendment.

Ms. Waters. Thank you, Mr. Chairman. This amendment would eliminate any cap on damages when insurance companies rescind coverage for current policyholders. Many Americans have paid health insurance premiums for years, just to have their insurance companies rescind their policy when they get sick.

On June 16, 2009, the House Energy and Commerce Subcommittee on Oversight and Investigations held a hearing entitled Terminations of Individual Health Policies By Insurance Companies. The committee discovered that Wellpoint, the Nation's largest health insurance company, rewarded employees for canceling coverage of sick patients. Employees earned high points on performance reviews for retroactively canceling policies. At that same hearing, Peggy Raddatz testified about her brother Otto Raddatz, who died of lymphoma after his insurance company canceled his coverage. Otto's insurer based the decision on Otto's failure to disclose an aneurysm and gallstones on his application, conditions that Otto's doctors had never told him about.

The Affordable Health Care Act prevents insurance companies from rescinding health policies for plan years or renewals beginning on or after September 23 of 2010. For these plans, rescission is no longer permitted except in cases of fraud or intentional misrepresentation of the material fact as provided by the terms of the plan.

H.R. 5 is so broad that it would apply to claims brought by individuals who have had their health insurance policies rescinded.

This bill could provide a perverse incentive for insurance companies to rescind policies in direct violation of the law. H.R. 5 would allow an insurance company to calculate that it would be cheaper to risk paying a \$250,000 claim, or nothing at all, than to continue to cover a current policyholder after the policyholder is diagnosed with an expensive medical condition.

Once again, H.R. 5 would deter insurance companies from doing the right thing. My amendment would eliminate any cap on damages for claims involving health plan rescissions. This amendment is necessary to make certain that H.R. 5 does not allow insurance companies to evade the law and deny people the medical care they need when they need it most. Rescinding people's health insurance after they are diagnosed with an expensive health condition like diabetes, cancer, or HIV/AIDS is one of the most disgusting and downright cruel practices of the health insurance industry. We cannot allow insurance companies to return to this unfair and now illegal practice.

I urge my colleagues to support this amendment.

Chairman Smith. Thank you, Ms. Waters. The gentleman from Arizona, Mr. Franks.

Mr. Franks. Thank you, Mr. Chairman. Sir, I would oppose this amendment. Health insurers are an integral part of the health system, and should be covered by this HEALTH Act. Some would argue that health insurers should be subject to liability for conduct based on tort theories when such conduct relates to patients' quality of care, diagnosis, or treatment. Some State laws provide for such liability.

For example, Texas imposes State tort liability on an insurer for, quote, "health care treatment decisions," unquote, affecting quality of care. New Jersey has a similar law. The court rulings on the Texas law provide for a split in jurisdiction. Some health insurers can be sued in State court for malpractice-type conduct affecting quality of care, while administrative matters under an ERISA plan correctly belong in the Federal courts.

This bill is, Mr. Chairman, and should remain silent on that issue. If certain organizations are going to be increasingly subject to State liability under tort and similar theories of malpractice, then it is only fair that such organizations be extended the same defenses and litigation limitations as are available to providers and other defendants that are contained in the HEALTH act. But this bill leaves it up to existing law as to whether that is the case.

Consequently, I hope my colleagues will oppose the amendment.

Chairman Smith. Thank you, Mr. Franks. The question is on the amendment. All in favor say aye. Opposed, no. In the opinion of the chair, the noes have it, the amendment is not agreed to. Does the gentlewoman have another amendment?

Ms. Waters. Yes, I do. I would like a recorded vote on that amendment.

Chairman Smith. The clerk will call the roll.

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

Mr. Coble. No.

The Clerk. Mr. Coble votes no.

Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte no.

Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

Mr. Chabot. No.

The Clerk. Mr. Chabot votes no.

Mr. Issa?

[No response.]

The Clerk. Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

[No response.]

The Clerk. Mr. King?

Mr. King. No.

The Clerk. Mr. King votes no.

Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan votes no.

Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

[No response.]

The Clerk. Mr. Griffin?

[No response.]

The Clerk. Mr. Marino?

[No response.]

The Clerk. Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy votes no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross votes no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams votes no.

Mr. Quayle?

[No response.]

The Clerk. Mr. Amodei?

Mr. Amodei. No.

The Clerk. Mr. Amodei votes no.

Mr. Conyers?

[No response.]

The Clerk. Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye.

Ms. Jackson Lee?

[No response.]

The Clerk. Ms. Waters?

Ms. Waters. Aye.

The Clerk. Ms. Waters votes aye.

Mr. Cohen?

[No response.]

The Clerk. Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi votes aye.

Mr. Quigley?

[No response.]

The Clerk. Ms. Chu?

[No response.]

The Clerk. Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch votes aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez votes aye.

Mr. Polis?

[No response.]

Chairman Smith. The gentleman from Utah?

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz votes no.

Chairman Smith. The gentleman from Indiana?

Mr. Pence. No.

The Clerk. Mr. Pence votes no.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 9 members voted aye, 14 members --

Mr. Nadler. Mr. Chairman? Mr. Chairman?

Chairman Smith. If everyone will suspend, I am going to check with the Parliamentarian to see if we can still allow members to record their votes. I am told that when I say the words, "The clerk will report," that cuts off the vote. However, as long as the vote doesn't go the wrong way, we will make exceptions. I am informed by the Parliamentarian when I say, "The clerk will report," that is where the voting stops, otherwise it might go on indefinitely. But for right now, for these purposes we will suspend the announcement of the vote and allow members to record their votes. And the gentlewoman from California, Ms. Chu?

Ms. Chu. How am I recorded?

The Clerk. Not recorded, ma'am.

Ms. Chu. I vote aye.

The Clerk. Ms. Chu votes aye.

Chairman Smith. Are there any other members who wish -- the gentleman from Virginia, Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Chairman Smith. Okay. The clerk will report again.

The Clerk. Mr. Chairman, 10 members voted aye, 15 members voted

may.

Chairman Smith. The majority having voting against the amendment, the amendment is not agreed to. Are other amendments?

The gentlewoman from California, Ms. Waters.

Ms. Waters. Thank you very much. I have amendment 150 at the desk.

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to Judiciary Committee Print 112-6 offered by Ms. Waters of California. Page two, line 20, insert after "to the same injury," the following: "This subsection shall not apply in the case of any health care lawsuit brought for catastrophic injury, vegetative state, or death."

[The amendment of Ms. Waters follows:]

\*\*\*\*\* INSERT 1-4 \*\*\*\*\*

Chairman Smith. The gentlewoman is recognized to explain her amendment.

Ms. Waters. Mr. Chairman, as I did in committee and on House floor, I remain opposed to H.R. 5, an unconstitutional big government bill that violates the 10th Amendment and States' rights. My amendment would ensure that H.R. 5 does not apply in the case of any health care lawsuit brought for a catastrophic injury, vegetative state, or death. The Federal Government should not substitute its judgment for State legislatures that have not imposed strict caps on noneconomic damages.

At the very start of the 112th Congress, my colleagues on the opposite side of the aisle declared that all business conducted in the House would be consistent with the Constitution. Yet, if you read the constitutional authority statement attached to H.R. 5, the Republican sponsors seem to believe the commerce clause magically creates a path for Congress to mandate nationwide caps on punitive damages in all medical malpractice lawsuits. The Republicans are telling all Americans no matter how severe the injury or egregious the mistake by the doctor, hospital, or drug manufacturer, that their lawsuits are going to be capped at \$250,000.

And with all due respect to the gentleman from Georgia, Representative Gingrey, who introduced H.R. 5, even his own State Supreme Court has found caps on punitive damages to be unconstitutional. In 2010, the Georgia Supreme Court unanimously struck down limits on jury awards in medical malpractice cases. The Georgia court determined that a \$350,000 cap on noneconomic damages

violates the right to a jury trial as guaranteed under the Georgia Constitution.

Section 110(a) of H.R. 5 would impose an even lower cap on damages in Georgia, effectively overturning the court's decision by an act of Congress. This action reads, and I quote, "The provisions governing health care lawsuits set forth in this act preempt, subject to subsections B and C, State law to the extent that State law prevent the application of any provisions of law established by or under this act."

In addition to Georgia, other States like Arizona, Pennsylvania, Wyoming, and Kentucky, whose State Constitutions specifically prohibit damage limitations, will have their Constitutions overruled by Congress. For Members who have for years now questioned the constitutionality of the Affordable Care Act, H.R. 5 is much worse, going far beyond anything passed by the Democratic majority. If you don't believe me, just listen to Tea Party Nation founder Judson Phillips. In slamming H.R. 5, he wrote, "Whether you think tort reform is a good idea or not, it is an issue that belongs to the States, not to the Federal Government. Tort law has always been governed by the States."

That was a statement by Judson Phillips, the founder of Tea Party Nation. Even some of my Republican colleagues on the Judiciary Committee have expressed concerns on this committee. Congressman Ted Poe said, and I quote, "I believe that each individual State should allow the people of that State to decide, not the Federal Government.

If the people of a particular State don't want liability caps, that is their prerogative under the 10th Amendment."

Then let's listen to what Congressman Louie Gohmert said, and I quote, "The right of the States for self-determination is enshrined in the 10th Amendment. I am reticent to support Congress imposing its will on States by dictating new State laws in their own State courts."

I urge my colleagues to support my amendment and ensure that victims of egregious medical malpractice are not barred from full recovery of their lawsuits in noneconomic damages. States should continue to have their constitutional authority to establish caps on noneconomic damages. It is not the place of Congress to dictate to the States what caps, if any, should be imposed.

I thank you, and I yield back the balance of my time. I ask for a recorded vote.

Mr. Gallegly. [Presiding.] The gentleman from Arizona, Mr. Franks, is recognized.

Mr. Franks. Thank you, Mr. Chairman. Mr. Chairman, this amendment by exempting cases of, quote, "catastrophic injury" from the bill would essentially gut it, and to really no reasonable end. What this bill does is to provide for the same reasonable limits on all health care lawsuits that Governor Jerry Brown signed into law in California over 30 years ago. Those reasonable tort reforms were good policy and applied to all lawsuits. The nature of the injury isn't the issue. And the reforms in this case should be applied equally to all cases. And it is important to note that the Health Care Act does not limit

in any way an award of economic damages from anyone responsible for harm.

Mr. Chairman, with that I would yield back and urge --

Ms. Waters. Would the gentleman yield? Will the gentleman yield?

Mr. Gallegly. He yielded back his time. Is someone else seeking time? Mr. Nadler?

Mr. Nadler. Mr. Chairman, I must commend the gentlelady on her amendment. It is a very good amendment. And I yield to her at this time.

Ms. Waters. Thank you very much. Mr. Chairman and members, I wanted the gentleman to yield because he referenced California. Yes, while some States have attempted to enact liability reforms, they have not resulted in lower premiums. H.R. 5 is modeled after California's Medical Injury Compensation Reform Act. This law limited noneconomic damages to \$250,000, and yet malpractice premiums in California increased by 450 percent during the first 13 years following the law's passage. It is only after years of litigation, along with passage of Proposition 103 in 1988, that we began to see a decrease in insurance rates. Proposition 103 placed a prohibition on unfair insurance practices, subjecting the insurance industry to State anti-trust laws. However, even with Proposition 103 today, California's health insurers continued to raise premiums.

Mr. Nadler. Yield back to me?

Ms. Waters. I yield back to the gentleman from New York.

Mr. Nadler. Thank you. I would also point out that the gentleman from Arizona mentioned that California passed this \$250,000 limit back in 1976 I think he said. And that was fair, he said. Well, if it was fair in 1976, it is certainly not fair now. Two hundred fifty thousand dollars in 1976 dollars today is worth \$38,000. So if it was fair at \$250,000 in 1976, it is not fair at \$38,000 today. And this bill does not have, as I will address in a subsequent amendment, an inflation provision. So if you are saying \$250,000 in 1976, \$250,000 in 2012, \$250,000 in 2030, what you are saying is eventually noneconomic damages, pain and suffering, et cetera, should get no compensation because you keep devaluing that amount every year.

I would also point out, as the gentlelady from California did, the experience in California, rates increased constantly after these so-called reforms were enacted until the 1988 passage of insurance reforms, which did bring about subsequent reductions or lack of increase in insurance. But the first 13 years shows how totally irrelevant and ineffectual these kinds of medical malpractice award limitations were in reducing medical malpractice premiums.

Ms. Waters. Would the gentleman yield back?

Mr. Nadler. I yield to the gentlelady.

Ms. Waters. Thank you very much. H.R. 5 applies damage caps on all health care lawsuits, including cases against drug companies, nursing homes, insurance companies, and HMOs. MICRA, that is the California law, only applies to malpractice cases against a doctor or a hospital.

Mr. Nadler. Thank you. And that gets back to my next amendment, which we will discuss at that time.

Mr. Franks. Mr. Chairman, I move to strike the last word.

Mr. Nadler. I yield back.

Mr. Gallegly. The gentleman has already used his 5 minutes. Is there anyone else on our side that would like to be heard?

Mr. King. Mr. Chairman? I move to strike the last word.

Mr. Gallegly. The gentleman is yielded 5 minutes.

Mr. King. Thank you, Mr. Chairman. As I look to the language here that is offered by Ms. Waters, it exempts catastrophic injury, vegetative state, or death. I don't know what would be left after you took those components out of this. Of course, that is what it is designed do is gut the bill. And we have watched as our costs in health care have gone up, the defensive medicine that is practiced. I know I have an orthopedic surgeon who tells me that 95 percent of the MRIs that he orders he already knows the results to, but he has to do so because of the rampant abuse of lawsuits.

And so I would like to then yield to my friend from Arizona the balance of my time.

Mr. Franks. I thank the gentleman. I am going to be very brief, Mr. Chairman. Just to the point that Mr. Nadler made relating to the inflation index, I think that is a worthy item of discussion. I would stipulate that there is an issue there that maybe should be debated. But to the issue relating to California's premium costs continuing to escalate, that is true. But the rest of the States that did not have

these reforms escalated at 300 percent greater rate. And it is also important to keep in mind that the bill that was passed in California really didn't take place until it was upheld by the State Supreme Court of California. And if one looks at the chronology there, it is very clear that the California law did deescalate the rate of increase of premiums profoundly in comparison to the rest of the States.

With that, I yield back the to the gentleman.

Mr. Gallegly. Anyone else seeking recognition? The gentlelady from California.

Ms. Sanchez. I move to strike the last word.

Mr. Gallegly. The gentlelady is yielded 5 minutes.

Ms. Sanchez. Thank you, Mr. Chairman. It is interesting that we get non-Californians who are somehow experts in our laws in California. I have lived with these laws my whole life. And I want to point out several very important distinctions between H.R. 5 and the MICRA law that was passed in California. MICRA was a law that was passed in California in 1975. And there are some very clear differences between the two. As Ms. Waters mentioned, H.R. 5 applies damage caps in all health care lawsuits, including cases against drug companies, nursing homes, and insurance companies and HMOs.

MICRA, the California law, only applied to malpractice cases against a doctor or a hospital. Punitive damages, which are reserved for only the most egregious medical malpractice, those kinds of punitive damages are meant to deter the dangerous conduct that people are engaging in, and to deter them from continuing to do that in the

future. But MICRA didn't cap punitive damages. They are still available. But H.R. 5, in stark contrast, gets rid of punitive damages. H.R. 5 gives a total immunity from punitive damages to drug and device manufacturers if their products have been approved by the FDA or are generally recognized as safe and effective. MICRA didn't have that kind of sweeping immunity for the drug industry.

H.R. 5 caps noneconomic damages at \$250,000 in the aggregate, no matter how many parties have been damaged by medical malpractice, even when an injury results in the loss of a marital relationship. California law recognizes a separate claim for loss of consortium so that a spouse can bring a claim if their loved one is injured or dies. And MICRA doesn't limit those kinds of claims. H.R. 5 does.

H.R. 5 is a very radical piece of legislation. And I keep hearing that somehow it is modeled after California's law, and that it has resulted in this magical reduction in medical malpractice premiums. But the fact of the matter is medical premiums in California, malpractice premiums in California didn't go down after MICRA was passed, didn't go down after MICRA was implemented. They only went down after Prop 103 in California was passed. And that proposition limited what insurance companies could charge for medical malpractice premiums. So it wasn't MICRA that created these magical savings for doctors, it was insurance reform. There are unprecedented legal protections for an insurance industry in H.R. 5, but there is no guarantee that any future savings that these insurance companies have will be passed on to doctors in the form of lower premiums or their

patients in terms of the costs of health care.

So I think it is very important that if people are going to try to make the analogy that this is somehow in any way, shape, or form comparable to what has happened in California, they at least be educated on the facts of what has happened in California because H.R. 5 is vastly different, it is far more radical, it has all these sweeping immunities. And we are talking about \$250,000 caps, which again Mr. Nadler correctly points out were implemented in the 1970s and have not kept pace with inflation or the cost of living.

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[3:10 p.m.]

Ms. Sanchez. So to somehow say that you have been grievously injured or in some cases people have died because of medical malpractice and that because we want to save money we are only going to allow people to claim up to \$250,000 is really an insult to those people who have been injured or who have been killed.

So this is just a bad bill all the way around. I urge my colleagues to support Ms. Waters' amendment and to vote against final passage.

Ms. Waters. Will the gentlelady yield?

Ms. Sanchez. I will yield to my colleague from California.

Ms. Waters. Thank you very much.

I just wish clarification. When Mr. Steve King took the microphone, he basically talked about the savings and that this bill would only -- that my amendment would only basically eliminate the intent of H.R. 5 altogether. I want to make sure that I understand that my amendment that I am putting before you would ensure that H.R. 5 does not apply in the case of any health care lawsuit brought by catastrophic injury, vegetative state, or death. Are you saying that \$250,000 cap is acceptable for catastrophic injury, vegetative state, or death?

Ms. Sanchez. I would yield my side to the other side if they

choose to answer Ms. Waters' questions.

Chairman Smith. [Presiding.] The gentlewoman's time has expired.

Mr. Johnson. I move to strike the last word.

Chairman Smith. The gentleman from Georgia is recognized for 5 minutes.

Mr. Johnson. Thank you.

I agree totally with the Congresswoman from California, and I would yield to her gladly.

Ms. Waters. Thank you very much.

I would like to -- and I have addressed my question to Mr. King. Of course, he has the option, as a member of this committee, to answer or not answer. But I was a little bit startled, and I don't know if I misunderstood him or he understands that I am trying with this amendment to ensure that H.R. 5 does not apply in the case of any health care lawsuit brought by catastrophic injury, including vegetative state or death. Is that what you are saying, Mr. King?

Mr. King. If the gentlelady would yield.

Ms. Waters. I would yield to the gentleman.

Mr. King. I would state that very large awards to victims of medical malpractice are still permitted under California's legal reforms. Those reforms cap noneconomic damages, as you said, at \$250,000, which do not cap quantifiable economic damages. So the model in California's legal reform would work out this way, that there is cases that show reasonable legal reform, such as those in the Health

Act, which still allow for very large multi-million dollar awards to deserving victims.

We have debated this in this committee some years past. I am aware that we have been engaged in this debate, and prior to the speakership of Ms. Pelosi, and it has been very clear to me for a long time that the noneconomic damages were separate from the economic damages.

Ms. Waters. Reclaiming my time, the gentleman answered my question by referring to California. H.R. 5 would preempt all States. This is a Federal law. And what I am trying to prevent is that H.R. 5 would not apply in the case of any health care lawsuit brought for a catastrophic injury, including vegetative state or death.

Mr. King. If the gentlelady would yield.

Ms. Waters. I would yield.

Mr. King. Under H.R. 5, if the State set a different value for noneconomic damages, the State value would prevail over H.R. 5.

Ms. Waters. Reclaiming my time --

Ms. Sanchez. Will the gentlelady yield?

Ms. Waters. I yield to the gentlelady from California.

Ms. Sanchez. I would just like to raise one point on that particular issue. If you have a child who is not a wage earner but is the victim of medical malpractice that leaves them in a vegetative state, what they can claim are health care costs, but the maximum noneconomic damages that they can claim is \$250,000. They can't even claim economic damages because they are not even in the workforce. So

I can't think of a grosser example of unfairness and of essentially blaming the victim when it really is the person who committed the medical malpractice that should be paying those noneconomic damages.

That also applies, coincidentally, not just to children but to elderly people who are outside of the workforce who are not wage earners. And it is an inherent sense of unfairness because they are not in the workforce, therefore, they can't claim economic damages.

Mr. King. Will the gentlelady yield?

Ms. Sanchez. I yield back to my colleague from California.

Mr. King. Will the gentlelady from California yield?

Ms. Waters. Yes, I yield to the gentleman.

Mr. King. I thank the gentlelady from California, the ladies from California.

I have a list in front of me of noneconomic damages that have been awarded. As I look down through this list, California damages, it starts at \$5.5 million and on up to \$96.4 million. I think there are plenty of examples --

Mr. Johnson. Reclaiming my time, isn't it wrong to treat people with high incomes, in other words, economic losses, differently than those who don't have economic losses? Isn't that unfair?

I will yield to my colleague from Iowa.

Mr. King. If the gentleman will yield.

Mr. Johnson. Yes.

Mr. King. I would just say damage is damage, loss is loss, regardless of your income level.

Mr. Johnson. Why should we cap noneconomic losses with no cap for economic losses and treat everyone the same?

Mr. King. We cap because we want to constrain the runaway lawsuits.

Now, if you would like to go a little further with this, I would think that there might be some people on this side of the aisle that would entertain such a Johnson amendment.

I yield back.

Mr. Johnson. Well, I will tell you, I don't think anything coming from this side of the aisle will garner any support from your side because of the partisanship.

Chairman Smith. The gentleman's time has expired.

Mr. Johnson. But I do appreciate your responses.

Chairman Smith. The question is on the Waters amendment. All in favor, say aye; opposed, no.

In the opinion of the chair, the noes have it.

Ms. Waters. Roll call.

Chairman Smith. The clerk will call the roll.

The Clerk. Mr. Smith.

Chairman Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner.

[No response.]

The Clerk. Mr. Coble.

[No response.]

The Clerk. Mr. Gallegly.

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Mr. Goodlatte.

[No response.]

The Clerk. Mr. Lungren.

[No response.]

The Clerk. Mr. Chabot.

Mr. Chabot. No.

The Clerk. Mr. Chabot votes no.

Mr. Issa.

Mr. Issa. No.

The Clerk. Mr. Issa votes no.

Mr. Pence.

[No response.]

The Clerk. Mr. Forbes.

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Mr. King.

Mr. King. No.

The Clerk. Mr. King votes no.

Mr. Franks.

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Mr. Gohmert.

Mr. Gohmert. No.

The Clerk. Mr. Gohmert votes no.

Mr. Jordan.

[No response.]

The Clerk. Mr. Poe.

[No response.]

The Clerk. Mr. Chaffetz.

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz votes no.

Mr. Griffin.

Mr. Griffin. No.

The Clerk. Mr. Griffin votes no.

Mr. Marino.

[No response.]

The Clerk. Mr. Gowdy.

[No response.]

The Clerk. Mr. Ross.

Mr. Ross. No.

The Clerk. Mr. Ross votes no.

Mrs. Adams.

Mrs. Adams. No.

The Clerk. Mrs. Adams votes no.

Mr. Quayle.

[No response.]

The Clerk. Mr. Amodei.

Mr. Amodei. No.

The Clerk. Mr. Amodei votes no.

Mr. Conyers.

Mr. Conyers. Aye.

The Clerk. Mr. Conyers votes aye.

Mr. Berman.

[No response.]

The Clerk. Mr. Nadler.

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye.

Mr. Scott.

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt.

[No response.]

The Clerk. Ms. Lofgren.

Ms. Lofgren. Aye.

The Clerk. Mrs. Lofgren votes aye.

Ms. Jackson Lee.

[No response.]

The Clerk. Ms. Waters.

Ms. Waters. Aye.

The Clerk. Ms. Waters votes aye.

Mr. Cohen.

[No response.]

The Clerk. Mr. Johnson.

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Mr. Pierluisi.

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi votes aye.

Mr. Quigley.

[No response.]

The Clerk. Ms. Chu.

Ms. Chu. Aye.

The Clerk. Ms. Chu votes aye.

Mr. Deutch.

Mr. Deutch. Aye.

The Clerk. Mr. Deutch votes aye.

Ms. Sanchez.

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez votes aye.

Mr. Polis.

Chairman Smith. The gentleman from Virginia, Mr. Goodlatte.

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Chairman Smith. The gentleman from North Carolina, Mr. Coble.

Mr. Coble. No.

The Clerk. Mr. Coble votes no.

Chairman Smith. The gentlewoman from Texas, Ms. Jackson Lee.

Ms. Jackson Lee. Votes aye.

The Clerk. Ms. Jackson Lee votes aye.

Chairman Smith. The Clerk will report.

The Clerk. Mr. Chairman, 11 members voted aye, 15 members voted nay.

Chairman Smith. The majority having voted against the amendment, the amendment is not agreed to.

Are there other amendments?

The gentleman from New York has an amendment.

Mr. Nadler. I have a number of amendments.

Chairman Smith. Yes, he is correct. The gentleman from New York is recognized for the purpose of offering an amendment.

Mr. Nadler. Thank you, Mr. Chairman.

I have an amendment at the desk, Nadler No. 1, Leg Counsel No. 126.

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to Judiciary Committee print 112-6 offered by Mr. Nadler of New York.

Page 6, line 24, strike "products sold or".

Page 7, strike line 18 --

Chairman Smith. Without objection, the amendment will be considered as read.

[The amendment of Mr. Nadler follows:]

\*\*\*\*\* INSERT 2-1 \*\*\*\*\*

Chairman Smith. The gentleman is recognized to explain his amendment.

Mr. Nadler. Thank you, Mr. Chairman.

My amendment would limit the reach of the bill to health care professionals. It would allow victims to continue to hold insurance corporations and other big business health care companies responsible for causing the medical injuries.

One second -- can we suspend this amendment and go to Nadler No. 2 for the moment?

Chairman Smith. If the gentleman will ask unanimous consent to withdraw this amendment, we will move to the next amendment.

Mr. Nadler. Nadler No. 2, Leg Counsel No. 127.

Chairman Smith. Without objection, Nadler No. 1 amendment is withdrawn and the clerk will report Nadler No. 2.

The Clerk. Amendment to Judiciary Committee print 112-6 offered by Mr. Nadler of New York.

Page 2, line 17, and page 3 --

Chairman Smith. Without objection, the amendment is considered as read.

[The amendment of Mr. Nadler follows:]

\*\*\*\*\* INSERT 2-2 \*\*\*\*\*

Chairman Smith. The gentleman is recognized to explain his amendment.

Mr. Nadler. Thank you.

Mr. Chairman, this is the first of two amendments dealing with the inflation issue that we discussed a few moments ago that Mr. Franks said he had some sympathy with. This amendment would take what I consider an awful bill and make it slightly less awful by adjusting the cap for inflation.

As I said, I am against capping damages in any amount. I believe our legal system is well equipped to evaluate lawsuits and using the rules of evidence and juries to determine which suits are meritorious and which are not and, when meritorious, to set award amounts reflective of the facts of a given case.

Capping damages will not reduce the cost of malpractice insurance, will not make patients safer, will not make sure that those who are harmed by their doctors are provided for, will not drive bad doctors out of practice. Capping damages helps one group of people. It gives a free ride to rogue doctors who seriously harm their patients.

Despite my disagreement with capping damages, the amendment that I am offering will, at a bare minimum, make the cap less draconian. The \$250,000 cap for noneconomic damages comes from a law adopted in 1975 that has been referenced earlier today, the MICRA law. In today's dollars, accounting for inflation, that \$250,000 in 1975 is now worth only about \$62,000. Taking this in reverse, \$250,000 in 1975, if adjusted to reflect inflation, would be almost \$2 million today.

This amendment would set the cap for noneconomic damages at \$1,977,500, the same amount \$250,000 would be in 2009 dollars. If your model is MICRA and \$250,000 was appropriate for 1975, then the figure in this amendment, \$1,977,500, is the appropriate cap for today.

When MICRA was enacted, the salary of a Member of Congress was \$42,500 a year. I don't think anyone on this dais wants to go back to 1975 salaries. With inflation, that amount just isn't what it used to be.

By the same token, we shouldn't punish people with a damages cap that is based on the 40-year-old number. To enact a cap in 2012 of \$250,000 because that was the figure used in 1975 simply ignores the existence of inflation.

My amendment also would adjust the new \$1,977,000 figure annually for inflation going forward. If we don't adjust this amount, whatever cap on damages there may be, that number goes down in real terms over real -- over time due to inflation. Eventually, it will reach zero.

How can it be fair or make any logical sense to say that today your maximum damages award is \$250,000 for noneconomic damages if your are injured in any kind of medical mishap, but if the same injury occurs 5, 10, or 15 years later, you deserve less, perhaps much less? Again, adjusting for inflation simply maintains the value of the cap in real-dollar terms.

In arguing against this amendment in our previous markup on H.R. 5, the gentleman from Arizona, Mr. Franks, made two points.

First, he said that my amendment would diminish the purpose for

the bill. To the contrary, by adjusting the figure from 1975 for inflation until now, my amendment actually best effectuates MICRA and brings it up to date.

Second, he said other States with caps such as California and Texas don't index their damage caps for inflation. I cannot speak for the choices of California and Texas, but their failure to index damage awards doesn't alter basic economic reality.

Again, what this amendment does is amend the amount \$250,000, which is based on the MICRA California amount in 1975, to the same amount in today's dollars -- actually, in 2009 dollars; we haven't updated it since I drafted it -- of \$1,977,500 and provides for inflation adjustments in the future according to the CPI.

I encourage my colleagues to support this amendment, and I yield back the balance of my time.

Chairman Smith. Thank you, Mr. Nadler.

The gentleman from Arizona, Mr. Franks, is recognized.

Mr. Franks. Thank you, Mr. Chairman.

Mr. Chairman, just for the record, I want to suggest that I don't think my earlier comments should have been interpreted as having sympathy towards Mr. Nadler's amendment, to use his word. I was merely pointing out that indeed if something is not indexed that there is a lessening of value over time because of inflation.

But, nevertheless, for that reason, actually, and to some degree, this amendment should be opposed because it indeed weakens the cap on economic damages. Caps on noneconomic damages are essential to the

success of the Health Act reforms. Indeed, the savings of \$54 billion over 10 years that the CBO concluded would be significantly diminished if the cap were raised over time. The key to the success of long-term reforms in California is its cap on noneconomic damages at \$250,000 which, of course, was not indexed to inflation.

The recent reforms in Texas do not index the caps to inflation. The California cap, Mr. Chairman, has withstood the test of time and remains an effective check on medical professional liability rates precisely because it was not indexed to inflation back in 1975, and what may have been described by some as an arbitrary figure in 1975 really has become a keystone of the only proven long-term legislative solution to the current crisis in access to medical care.

Indexing that figure to inflation would throw a wrench into the long-term medical professional liability premium reducing machine that is California's MICRA reforms. So if you want to gut the health care cost savings in this bill, Mr. Chairman, then, of course, you should vote for the amendment. But if you have ever supported health care lawsuit tort reforms on the grounds that CBO has scored it as a cost saver, then I think it is important to oppose this amendment,

Finally, Mr. Chairman, it is important to remind the members of the committee that if the States set a different number than this \$250,000, then the State number prevails.

And just to correct a previous issue, Mr. Chairman, the suggestion was made that children don't get major economic compensation for tragedies that occur here. In December of 2002, a 5-year-old boy with

cerebral palsy and quadriplegia was awarded \$84 million in economic damages. A 3-year-old girl with cerebral palsy was awarded \$59 million in economic damages. It is disingenuous to try to suggest that the \$250,000 cap in noneconomic damages has anything really to do with the actual damages that someone incurs in certain tragedies.

It is important that if we are going to discover some sort of Consumer Price Index that measures pain and suffering, then we can have this other debate. Until then, I hope --

Mr. Nadler. Will the gentleman yield for a question?

Mr. Franks. Yes, I will yield.

Mr. Nadler. Mr. Franks, you said a moment ago, correctly, that under this bill if a State sets a different economic amount, let's say \$600,000, that prevails, correct?

Mr. Franks. That is correct.

Mr. Nadler. Okay. My question is, if a State were to set an amount \$300,000 with an adjustment for inflation going forward, would that prevail?

Mr. Franks. I actually think it would, Mr. Nadler.

Mr. Nadler. Thank you.

Chairman Smith. The gentleman yields back his time. Thank you, Mr. Franks.

The question is on the Nadler amendment. All in favor, say aye; opposed, no.

In the opinion of the chair, the clerk needs to call the roll.

The Clerk. Mr. Smith.

Chairman Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner.

[No response.]

The Clerk. Mr. Coble.

Chairman Smith. The clerk will suspend.

I have been told by the mover of the amendment that he did not intend to call for a roll call vote. So, in that case, the noes have it.

Oh, someone else would have. All right, the clerk will resume calling the roll.

The Clerk. Mr. Coble.

[No response.]

The Clerk. Mr. Gallegly.

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Mr. Goodlatte.

[No response.]

The Clerk. Mr. Lungren.

[No response.]

The Clerk. Mr. Chabot.

Mr. Chabot. No.

The Clerk. Mr. Chabot votes no.

Mr. Issa.

[No response.]

The Clerk. Mr. Pence.

[No response.]

The Clerk. Mr. Forbes.

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Mr. King.

[No response.]

The Clerk. Mr. Franks.

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Mr. Gohmert.

[No response.]

The Clerk. Mr. Jordan.

[No response.]

The Clerk. Mr. Poe.

Mr. Poe. No.

The Clerk. Mr. Poe votes no.

Mr. Chaffetz.

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz votes no.

Mr. Griffin.

[No response.]

The Clerk. Mr. Marino.

[No response.]

The Clerk. Mr. Gowdy.

[No response.]

The Clerk. Mr. Ross.

Mr. Ross. No.

The Clerk. Mr. Ross votes no.

Mrs. Adams.

Mrs. Adams. No.

The Clerk. Mrs. Adams votes no.

Mr. Quayle.

Mr. Quayle. No.

The Clerk. Mr. Quayle votes no.

Mr. Amodei.

Mr. Amodei. No.

The Clerk. Mr. Amodei votes no.

Mr. Conyers.

Mr. Conyers. Aye.

The Clerk. Mr. Conyers votes aye.

Mr. Berman.

[No response.]

The Clerk. Mr. Nadler.

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye.

Mr. Scott.

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt.

[No response.]

The Clerk. Ms. Lofgren.

[No response.]

The Clerk. Ms. Jackson Lee.

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee votes aye.

Ms. Waters.

Ms. Waters. Aye.

The Clerk. Ms. Waters votes aye.

Mr. Cohen.

[No response.]

The Clerk. Mr. Johnson.

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Mr. Pierluisi.

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi votes aye.

Mr. Quigley.

[No response.]

The Clerk. Ms. Chu.

Ms. Chu. Aye.

The Clerk. Ms. Chu votes aye.

Mr. Deutch.

Mr. Deutch. Aye.

The Clerk. Mr. Deutch votes aye.

Ms. Sanchez.

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez votes aye.

Mr. Polis.

[No response.]

Chairman Smith. The gentleman from North Carolina, Mr. Coble.

Mr. Coble. No.

The Clerk. Mr. Coble votes no.

Chairman Smith. The gentleman from Virginia, Mr. Goodlatte.

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Chairman Smith. The gentleman from Iowa, Mr. King.

Mr. King. No.

The Clerk. Mr. King votes no.

Chairman Smith. The gentleman from Texas, Mr. Gohmert.

Mr. Gohmert. No.

The Clerk. Mr. Gohmert votes no.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 10 members voted aye, 15 members voted nay.

Chairman Smith. The majority having voted against the amendment, the amendment is not agreed to.

The gentleman from New York is recognized.

Mr. Nadler. I have an amendment at the desk, Nadler Amendment No. 4.

Chairman Smith. The Clerk will report the amendment.

The Clerk. Amendment to Judiciary Committee Print 112-6 offered by Mr. Nadler of New York.

Page 2, line 17, and page 3, lines 2 and 8, strike "\$250,000" in each place it appears and insert the following: "\$250,000 (adjusted annually according to the adjustments in the consumer price index --

Chairman Smith. Without objection, the amendment will be considered as read.

[The amendment of Mr. Nadler follows:]

\*\*\*\*\* INSERT 2-3 \*\*\*\*\*

Chairman Smith. The gentleman is recognized to explain his amendment.

Mr. Nadler. Thank you, Mr. Chairman.

This amendment is similar to the previous amendment, which is why I wasn't going to call a roll call on the previous amendment, but it goes the other way. This amendment says, okay, if \$250,000 is an appropriate amount now, let's keep it that way and adjust it for inflation going forward. Because, otherwise, eventually the \$250,000 limit will be a limit for all practical purposes of zero. Because at an inflation rate -- this year, it is \$250,000; next year, it is the equivalent of 240; the year after, 230 -- 220, 210, et cetera.

Now, if we are saying here -- I don't think we are saying -- I don't think Mr. Franks is saying that people are not entitled to damages other than medical costs and lost wages; that if people are made paraplegics by somebody's negligence, et cetera, they shouldn't be compensated for that. And this is simply saying if 250 is an appropriate figure for now, it should be an appropriate figure for later, adjusted for inflation, so that inflation doesn't reduce this figure annually eventually for all practical purposes to zero.

Now, I heard that the gentleman from Arizona said a moment ago that the cost savings that CBO predicts from the bill are premised on \$250,000 and are premised on it not being adjusted for inflation. That may be. And it may be that if this amendment were adopted that there would be less cost savings in the bill. But at least the bill would be a little more fair.

How can you say to people who are injured in terrible ways \$250,000 is fitting now but eventually it is only \$30,000 and eventually \$10,000 and eventually nothing? And if that is the cost of saving money for the -- saving money by essentially stealing it -- or let me withdraw that -- by essentially taking that money from injured people and saying you can't get any recompense at all for your loss of consortium, for your loss of a limb, for your loss of the ability to walk, for the loss of your ability to hear or to speak or to see or whatever, it is not worth anything, because \$250,000 eventually will become worth virtually nothing, that simply is wrong.

And if in order to say the \$250,000, which I think is the wrong figure, much too low a figure and I don't think there ought to be any figure, but if that figure is fair now, let's at least maintain that.

It seems to me the supporters of the bill will say that \$250,000 is a reasonable figure. They must say it is a reasonable figure or they couldn't support the bill. It should stay a reasonable figure, and that is what this amendment does.

Because not to pass this amendment says that eventually we are going to say to people who are terribly injured through the negligence of someone else, you can't recover anything other than lost wages and medical expenses. You can't recover anything for your real injury. And that is simply unfair.

And, yes, maybe the bill will save less money by doing that. I am not so sure of that. But even if it does, then those figures ought to be adjusted. Because saving money for the government at the expense

of victims of negligence in this way is simply wrong.

And the vote on this amendment is a value judgment. If you vote for this amendment, you are saying that people who are harmed by the negligence of others should get at least a certain compensation for that harm other than lost wages and medical costs. If you vote against it, you are saying that ultimately that it is more important to save money for the government than for people to recover anything for lost limbs, lost consortium, loss of the ability to see or to walk or whatever, and that is a heck of a comment I hope that Congress wouldn't make.

I yield back and urge the adoption of the amendment.

Chairman Smith. Thank you, Mr. Nadler.

The gentleman from Arizona, Mr. Franks.

Mr. Franks. Well, thank you, Mr. Chairman.

To suggest that the Congress in this case would be making the statement that the loss of a limb or eyes or things like that, somehow that the victims shouldn't receive compensation is just patently not true. We have made this example time and time again here that the difference between noneconomic damages and economic damages that can be quantified -- and certainly the loss of a limb, there are all kinds of valid formulas to quantify that loss, and it should be compensated, and there is nothing in this bill that does otherwise.

Also, just to correct any misunderstanding, the gentleman asked me a moment ago whether or not if the State indexed for inflation a \$250,000 cap, would it prevail. I simply said yes as a matter of fact.

That doesn't suggest that I think they should or that we should change anything here. I just said yes as a matter of fact, which is still true.

But requiring that the cap on noneconomic damages get higher every year would indeed reduce the cost savings of the bill. And, Mr. Chairman, the noneconomic damage amounts that we are talking about here is really the engine that catalyzes these abusive lawsuits. That is really the cause many times. Because a lot of those, the lawyers that capitalize on this are looking to that source of money as their compensation and that which gets rewarded gets done. This is why the noneconomic damages are the target here that we are trying to deal with, because we are trying to reduce abusive lawsuits that cost people who didn't do anything wrong money for something that they didn't do.

CBO's score of the savings of taxpayer dollars under this bill would be indeed reduced if the amendment passes, because CBO scored the bill based on a 10-year analysis.

Second, if a particular State, again, wants to raise any of the damages in this bill to another specific number, a noneconomic damage, they remain free to do so.

I hope we will defeat the amendment.

Chairman Smith. Thank you, Mr. Franks.

The gentleman from Virginia, Mr. Scott.

Mr. Scott. I move to strike the last word.

Chairman Smith. The gentleman is recognized for 5 minutes.

Mr. Scott. I yield to the gentleman from New York.

Mr. Nadler. I thank the gentleman.

I would just point out, without getting into the whole question of abusive lawsuits and to what extent they occur and what this bill does, the fact is if \$250,000 today will prevent the abusive lawsuits, if \$250,000 today is a fair ceiling for recompense for noneconomic damages, then it ought to remain so tomorrow and the year after and the year after in real terms.

It is very nice to say that you can have different formulas for figuring out what a loss of a limb is worth, et cetera. But that is still a noneconomic damage, and it is not provided for in the bill. The bill provides -- I mean, economic damages are simply lost earnings and medical costs. Anything other than that fits under the noneconomic damages cap, whether it is loss of a limb or inability to walk or to see or to hear or whatever. That is all defined as noneconomic damages. The only thing not defined as noneconomic damages are lost earnings and medical costs.

So if everything else is defined as noneconomic damages and you put a limit of \$250,000 on it, which I think is very unfair and too small, but be that as it may, at least you ought to keep that limit real. Because, otherwise, what you are saying -- and I understand that Mr. Franks doesn't agree -- but what you are saying is quite accurate, is that that there is a ceiling of \$250,000 now and \$230,000 in current dollars next year and eventually almost zero. And you are saying that loss of a limb, loss of the ability to walk or to see, that the compensation you should get is limited by a ceiling that can

progressively go down eventually to practically zero, and that is simply wrong.

We ought to change that even if it means the bill will save less money. Because people who become paraplegics or lose the use of their limbs or whatever through someone else's negligence should not be uncompensated. And I don't think that abusive lawsuits are caused by under \$250,000.

I yield back.

Mr. Franks. Would the gentleman yield?

Mr. Scott. I yield.

Mr. Franks. Just briefly, Mr. Chairman.

The 5-year-old boy with cerebral palsy and quadriplegia that I just mentioned was awarded \$84 million in economic damages, and we shouldn't miss that. If there was a cap there of noneconomic damages of \$250,000, if it had gone to zero the next year, it wouldn't have affected that child very much.

The reality is these economic damages go primarily to the victim of the tragedy. The noneconomic damages is where the main source of the payoff for these attorneys that try to exploit these things go. And when you talk about not addressing the question of lawsuit abuses, that is the whole question we are trying to address here.

With that, I yield back. Thank you for yielding.

Mr. Scott. Reclaiming my time, I would point out that the entire judgment is subject generally to attorneys' fees, and when you limit -- if you do anything, if you limit the damages for noneconomic

damages, in effect the legal fees will eat into the noneconomic damages.

I yield to the gentleman from New York.

Mr. Nadler. First of all, I point out that I don't know that case. But most cases -- almost all cases where you see incredible figures like \$84 million are reduced by trial and appellate courts to much more reasonable figures later.

But second of all, as the gentleman from Virginia points out, the lawyers' fees come out of that. It will come out of \$84 million and \$250,000, and the lawsuit abuse is not going to come because of \$250,000. And most people who are awarded simply their medical costs, whatever they may be, which go to the doctors and hospitals, and the lost earnings, without noneconomic damages they are not compensated for real injury, loss of ability to walk or whatever, and ought to be compensated. And \$250,000 is little enough, but at least that ceiling ought to be maintained at \$250,000.

In this society, we index almost everything to inflation these days, and not to index this is saying that we place very little if any value on damages to a person other than lost wages, and eventually they are compensated at zero, and that is simply wrong.

Mr. Scott. I yield back.

Chairman Smith. The gentleman yields back his time.

The question is on the Nadler amendment. All in favor, say aye; opposed, no.

In the opinion of the chair, the noes have it.

Mr. Nadler. I ask for a vote.

Chairman Smith. The gentleman requests a roll call vote. The clerk will call the roll.

The Clerk. Mr. Smith.

Chairman Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner.

[No response.]

The Clerk. Mr. Coble.

[No response.]

The Clerk. Mr. Gallegly.

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Mr. Goodlatte.

[No response.]

The Clerk. Mr. Lungren.

[No response.]

The Clerk. Mr. Chabot.

Mr. Chabot. No.

The Clerk. Mr. Chabot votes no.

Mr. Issa.

[No response.]

The Clerk. Mr. Pence.

[No response.]

The Clerk. Mr. Forbes.

Mr. Forbes. [Presiding.] No.  
The Clerk. Mr. Forbes votes no.  
Mr. King.  
[No response.]  
The Clerk. Mr. Franks.  
Mr. Franks. No.  
The Clerk. Mr. Franks votes no.  
Mr. Gohmert.  
[No response.]  
The Clerk. Mr. Jordan.  
[No response.]  
The Clerk. Mr. Poe.  
Mr. Poe. No.  
The Clerk. Mr. Poe votes no.  
Mr. Chaffetz.  
[No response.]  
The Clerk. Mr. Griffin.  
[No response.]  
The Clerk. Mr. Marino.  
[No response.]  
The Clerk. Mr. Gowdy.  
[No response.]  
The Clerk. Mr. Ross.  
Mr. Ross. No.  
The Clerk. Mr. Ross votes no.

Mrs. Adams.

Mrs. Adams. No.

The Clerk. Mrs. Adams votes no.

Mr. Quayle.

[No response.]

The Clerk. Mr. Amodei.

Mr. Amodei. No.

The Clerk. Mr. Amodei votes no.

Mr. Conyers.

[No response.]

The Clerk. Mr. Berman.

Mr. Berman. Yes.

The Clerk. Mr. Berman votes yes.

Mr. Nadler.

Mr. Nadler. Yes.

The Clerk. Mr. Nadler votes yes.

Mr. Scott.

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt.

[No response.]

The Clerk. Ms. Lofgren.

[No response.]

The Clerk. Ms. Jackson Lee.

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee votes aye.

Ms. Waters.

[No response.]

The Clerk. Mr. Cohen.

[No response.]

The Clerk. Mr. Johnson.

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Mr. Pierluisi.

[No response.]

The Clerk. Mr. Quigley.

[No response.]

The Clerk. Ms. Chu.

Ms. Chu. Aye.

The Clerk. Ms. Chu votes aye.

Mr. Deutch.

Mr. Deutch. Aye.

The Clerk. Mr. Deutch votes aye.

Ms. Sanchez.

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez votes aye.

The Clerk. Mr. Polis.

[No response.]

Mr. Forbes. Mr. Quayle.

Mr. Quayle. No.

The Clerk. Mr. Quayle votes no.

Mr. Forbes. The gentleman from North Carolina.

Mr. Coble. No.

The Clerk. Mr. Coble votes no.

Mr. Forbes. The gentleman from Puerto Rico.

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi votes aye.

Mr. Forbes. The gentleman from Virginia.

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Mr. Forbes. The gentleman from Texas.

Mr. Gohmert. No.

The Clerk. Mr. Gohmert votes no.

Mr. Forbes. The gentleman from Iowa.

Mr. King. No.

The Clerk. Mr. King votes no.

Mr. Forbes. The clerk will report.

The Clerk. Mr. Chairman, nine members voted aye, 14 members voted nay.

Mr. Forbes. The majority having voted against it, the amendment is not agreed to.

Are there any other amendments?

The gentleman from New York.

Mr. Nadler. I return to Nadler Amendment 1, Leg Counsel No. 126.

Mr. Forbes. The Clerk will report.

The Clerk. Amendment to Judiciary Print 112-6 offered by Mr. Nadler of New York.

Page 6, line 24, strike "products sold or."

Page 7, strike line 18 --

Mr. Nadler. Mr. Chairman, I ask unanimous consent that the reading of the amendment be dispensed with.

Mr. Forbes. Without objection.

Mr. Nadler. Mr. Chairman, this amendment would limit the reach of the bill to health care professionals. It would allow victims to continue to hold insurance corporations and other big business health care companies responsible for causing the medical injuries.

I am strongly opposed to the underlying bill as it literally would take money out of the hands of victims and give that money to big health care companies.

Contrary to its title --

Mr. Forbes. Would the gentleman suspend?

Have we passed out the amendment yet to everyone?

Go ahead. Sorry to interrupt.

Mr. Nadler. Thank you.

Contrary to its title, doing so would not promote access to better health care nor make health care more affordable.

I urge my colleagues to keep one important fact in mind as we debate this bill again today. It would apply only to people who have meritorious claims. You don't have to limit recoveries or attorneys' fees to people without meritorious claims. They lose their case. So

whatever you are doing here will be done to those who have been injured, whose injury has been inflicted by someone else's wrongdoing, and who need and should be entitled to compensation.

The argument behind this bill, which is not a new one, is that if we have allow players in the health care industry to escape the consequences of the harm they inflict, then somehow we will all be better off. That is not true, it has never been true, and despite the extravagant claims of the proponents of this bill and the industries lobbying for it, that will not be true if this multi-billion dollar gift to bad actors in the health care industry were to become law.

Just how pricey a gift to industry are we talking about? As we can see from the budget reconciliation instructions under which we are operating, the CBO says that amount is \$45.5 billion over the next decade. Anyone who believes that this savings will be passed along directly to consumers, health care providers, and victims of medical malpractice is living in a dream world.

This gets to one of the many misleading aspects. During the many, many years I have been here for debates on issues related to medical malpractice, the usual examples I hear about the allegedly negative impact of high damage awards are on individual doctors. For example, I have heard that resulting higher malpractice insurance rates cause the loss of income or even the ability to practice in a certain profession.

I don't agree that there is this disconnection between damage awards and malpractice insurance rates, but even if one believes that

there is such a connection, this bill would go well beyond medical issues per se and beyond helping individual doctors. This bill would shield anyone involved in health care, including big PhRMA, the manufacturers of defective medical devices. Even big insurance companies like HMOs that routinely refuse to pay for necessary health care services, they would be shielded from liability. The bill would severely limit the normal incentive in our civil justice system for those big companies to behave, and that incentive is paying damages.

Maybe other people are willing to risk their health and the health of their constituents on the good graces of the health care industry. I am not. I oppose the whole notion of the bill, caps on damage awards in particular, but at the very least the bill should be limited to its stated intent. And by limiting the bill, we can limit the collateral damage it would cause.

This amendment would limit the bill to what I thought was supposed to be its focus and purpose. It would change the bill to shield only individual health care service providers, doctors and other licensed health care professionals. It would exclude large corporations such as insurance companies, medical device manufacturers, health maintenance organizations, and pharmaceutical giants to the liability gift it otherwise would provide. It is one thing to want to limit the liability of people who practice medicine. It is quite another to shield huge corporations, including foreign corporations.

I know that one of the arguments has been that doctors practice preventive medicine, that this increases the cost of medical care

because they are worried about getting sued, that medical insurance rates for doctors are so high that it inhibits practice. Well, even if all that is true, with this amendment, if this bill would cure that, this bill would still cure it, because it would limit the noneconomic damages against doctors and health care professionals and therefore would limit their malpractice rates if you think there is a connection. But it would not shield large corporations.

I know many of my Republican colleagues believe that we should treat corporations as real human beings, but limiting their liability in the same way you would the neighborhood pediatrician is a bit much.

I urge all members to support this amendment which would limit the noneconomic damages cap to lawsuits against doctors and other health care professionals but would not shield the large corporations that make defective health care equipment and so forth.

I yield back the balance of my time.

Mr. Forbes. The gentleman from Arizona is recognized for 5 minutes.

Mr. Franks. Thank you, Mr. Chairman.

Mr. Chairman, I have to oppose the amendment once again. This amendment would strike from the bill all references to health care goods or products when so much of the rise in health care costs which are driven by abusive lawsuits relate to the increase in prices of health care goods.

Abusive lawsuits, Mr. Chairman, involving the products a doctor uses also contribute to the steep rise of health care costs, and this

amendment would strike all references to medical goods and products from the bill, which would not only contribute to the rise in the health care costs but would reduce the amount of savings in this bill very dramatically.

Mr. Chairman, I am going to stop there and yield back.

Mr. Forbes. The question is on the amendment. Those in favor, say aye; those opposed, no.

In the opinion of the chair, noes have it and the amendment is not agreed to.

Mr. Nadler. Roll call.

Mr. Forbes. The clerk will call the roll.

The Clerk. Mr. Smith.

[No response.]

The Clerk. Mr. Sensenbrenner.

[No response.]

The Clerk. Mr. Coble.

[No response.]

The Clerk. Mr. Gallegly.

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Mr. Goodlatte.

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Mr. Lungren.

[No response.]

The Clerk. Mr. Chabot.

Mr. Chabot. No.

The Clerk. Mr. Chabot votes no.

Mr. Issa.

[No response.]

The Clerk. Mr. Pence.

[No response.]

The Clerk. Mr. Forbes.

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Mr. King.

Mr. King. No.

The Clerk. Mr. King votes no.

Mr. Franks.

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Mr. Gohmert.

[No response.]

The Clerk. Mr. Jordan.

[No response.]

The Clerk. Mr. Poe.

Mr. Poe. No.

The Clerk. Mr. Poe votes no.

Mr. Chaffetz.

[No response.]

The Clerk. Mr. Griffin.

[No response.]

The Clerk. Mr. Marino.

[No response.]

The Clerk. Mr. Gowdy.

[No response.]

The Clerk. Mr. Ross.

Mr. Ross. No.

The Clerk. Mr. Ross votes no.

Ms. Adams.

[No response.]

The Clerk. Mr. Quayle.

Mr. Quayle. No.

The Clerk. Mr. Quayle votes no.

Mr. Amodei.

[No response.]

The Clerk. Mr. Conyers.

[No response.]

The Clerk. Mr. Berman.

[No response.]

The Clerk. Mr. Nadler.

Mr. Nadler. Yes.

The Clerk. Mr. Nadler votes yes.

Mr. Scott.

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt.

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye.

Ms. Lofgren.

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye.

Ms. Jackson Lee.

[No response.]

The Clerk. Ms. Waters.

[No response.]

The Clerk. Mr. Cohen.

[No response.]

The Clerk. Mr. Johnson.

Mr. Johnson. Yes.

The Clerk. Mr. Johnson votes yes.

Mr. Pierluisi.

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi votes aye.

Mr. Quigley.

[No response.]

The Clerk. Ms. Chu.

Ms. Chu. Aye.

The Clerk. Ms. Chu votes aye.

Mr. Deutch.

Mr. Deutch. Aye.

The Clerk. Mr. Deutch votes aye.

Ms. Sanchez.

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez votes aye.

Mr. Polis.

[No response.]

Chairman Smith. [Presiding.] I vote no.

The Clerk. Mr. Smith votes no.

Chairman Smith. The gentlewoman from Florida.

Mrs. Adams. No.

The Clerk. Mrs. Adams votes no.

Chairman Smith. The gentleman from North Carolina.

Mr. Coble. No.

The Clerk. Mr. Coble votes no.

Chairman Smith. The gentleman from Texas.

Mr. Gohmert. No.

The Clerk. Mr. Gohmert votes no.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, nine members voted aye, 13 members voted nay.

Chairman Smith. The majority having voted against the amendment, the amendment is not agreed to.

At this point, we have about half a dozen amendments left. So what we will do is stand in recess until after this series of votes

is over, and we will resume our markup at about 4:45 or 5 o'clock. We look forward to seeing all members at that point.

[Recess.]

RPTS BLAZEJEWSKI

DCMN BURRELL

[5:19 p.m.]

Chairman Smith. The Judiciary Committee will reconvene and come to order, and the gentleman from New York is recognized for the purpose of offering an amendment.

Mr. Nadler. Thank you. Mr. Chairman, I have an amendment at the desk, Nadler 3, number 128.

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to Judiciary Committee Print 112-6, offered by Mr. Nadler of New York. Page 11, after line 21 insert the following and redesignate the succeeding sections accordingly.

[The amendment of Mr. Nadler follows:]

\*\*\*\*\* INSERT 3-1 \*\*\*\*\*

Chairman Smith. Without objection, the amendment will be considered as read, and the gentleman is recognized to explain his amendment.

Mr. Nadler. Mr. Chairman, this amendment is a narrower version of a bill that I have introduced, H.R. 592, the Sunshine in Litigation Act. It is the same as an amendment I offered when we considered H.R. 5 last year. The amendment is designed to protect the public's ability to gain access to critical health and safety information uncovered during health care litigation.

Current law and practice allow defendants to use protective orders, settlements and other legal mechanisms to seal information uncovered as part of litigation. Unfortunately, the public interest in knowing about health and safety hazards is not sufficiently considered in deciding whether or not such information should be kept secret. As a result of hiding this information, lives are often put at risk.

Today we are talking specifically about medical malpractice lawsuits, cases involving injury or death allegedly caused by a health care provider or other health care related entity. Such cases could include potential wrongdoing by doctors, nurses, hospitals, medical device manufacturers, insurance companies, and so on. Allowing any of these types of entities to hide information revealed in litigation about negligence is simply unconscionable. Sealing information prevents people from making educated decisions about all aspects of health care. Patients or potential patients should be able to know

about a doctor who has been sued hundreds of times for negligence or about a drug that its manufacturer knows is harmful. Bringing sunshine to such court proceedings would allow patients to make educated decisions about their health care.

Allowing defendants to shield their actions also prevents public scrutiny. Law enforcement and other government regulators cannot take appropriate enforcement actions if they are not even aware of problems to begin with. If we make such information available, those we count on to protect us can concentrate their limited resources on protecting the public from those who are truly dangerous. This would be an important step in reducing incidence of medical malpractice.

Let me give just one example. Drug maker Eli Lilly settled Federal and State claims in 2005 that its drug Zyprexa caused dangerous side effects. Parts of the \$700 million settlement were the requirements that all discovery documents be returned to Eli Lilly and that parties not talk about the case publicly. The broader public did not learn of Zyprexa's dangerous side effects until 2007 after documents were leaked to the New York Times. Eli Lilly later settled an additional 18,000 claims for \$500 million.

What is being lost in such cases is the public interest in critical and informative materials. My amendment solves this problem by prohibiting court orders which restrict access to information unless the court makes a finding, one, that such orders would not hide information relevant to the protection of public health or safety or, two, both that the order is sufficiently narrow and the public interest

is outweighed by the confidentiality interest at stake.

The amendment also bars agreements between parties or orders which prevent sharing information with Federal or State agencies and bars making unenforceable provisions of settlement agreements between parties which block access to information unless, again, there is a finding that such orders would not hide information relevant to the protection of public health or safety, or both, that the order is sufficiently narrow and that the public interest is outweighed by the confidentiality interest at stake.

A number of consumer groups, including Consumers Union and Consumer Federation of America, have endorsed this concept in support of H.R. 592, the broader Sunshine in Litigation Act. My amendment would ensure that the public interest is properly taken into account when a court is weighing whether or not to make secret information that was revealed in health care litigation. It would allow a judge to seal records when the privacy at issue outweighs public health and safety considerations. This balanced approach would protect patients and all health care consumers, making sure they have access to critical health and safety information while still keeping records private when necessary. In other words, this would allow the judge before sealing information to say does this -- is making this information public vital to protecting the public health and safety? And, if so, we will still seal it if the privacy interests, if there is a real privacy interest on somebody's part outweighs the public interest in safety. Without this, people's lives can be endangered by unsafe medical products,

unsafe medical devices, drugs, et cetera, continuing to be used because the records of how unsafe they are were simply sealed by the court.

So I urge my colleagues to support this amendment, and I yield back.

Chairman Smith. Thank you, Mr. Nadler. The gentleman from Arizona, Mr. Franks.

Mr. Franks. Mr. Chairman, I would oppose this amendment and encourage my colleagues to do the same. This amendment is similar to the Sunshine in Litigation Act, which is opposed both by the Judicial Conference of the United States and the American Bar Association. Both that act and this amendment would severely limit a judge's discretion to grant a protective order.

Mr. Chairman, protective orders serve so very many important purposes in our civil justice system. Among other things, of course, they protect trade secrets and other intellectual property, and they address confidentiality and privacy concerns of both plaintiffs and defendants, and this would essentially make it almost impossible for a judge to limit access to sometimes information that should be kept confidential for very good reason, and I would urge my colleagues to oppose the amendment, and I yield back.

Chairman Smith. Thank you, Mr. Franks. All in favor of the amendment say aye. Opposed nay.

In the opinion of the chair the noes have it.

Mr. Nadler. Yeah, roll call vote.

Chairman Smith. The gentleman requests a roll call, and the

clerk will call the roll.

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

[No response.]

The Clerk. Mr. Goodlatte?

[No response.]

The Clerk. Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

Mr. Chabot. No.

The Clerk. Mr. Chabot votes no.

Mr. Issa?

[No response.]

The Clerk. Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

[No response.]

The Clerk. Mr. King?

[No response.]

The Clerk. Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

[No response.]

The Clerk. Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

[No response.]

The Clerk. Mr. Griffin?

[No response.]

The Clerk. Mr. Marino?

[No response.]

The Clerk. Mr. Gowdy?

[No response.]

The Clerk. Mr. Ross?

[No response.]

The Clerk. Ms. Adams?

Mrs. Adams. No.

The Clerk. Ms. Adams votes no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle votes no.

Mr. Amodei?

Mr. Amodei. No.

The Clerk. Mr. Amodei votes no.

Mr. Conyers?

[No response.]

The Clerk. Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt?

[No response.]

The Clerk. Ms. Lofgren?

[No response.]

The Clerk. Ms. Jackson Lee?

[No response.]

The Clerk. Ms. Waters?

[No response.]

The Clerk. Mr. Cohen?

[No response.]

The Clerk. Mr. Johnson?

[No response.]

The Clerk. Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi votes aye.

Mr. Quigley?

[No response.]

The Clerk. Ms. Chu?

[No response.]

The Clerk. Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch votes aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez votes aye.

Mr. Polis?

Mr. Polis. Aye.

The Clerk. Mr. Polis votes aye.

Chairman Smith. The gentleman from North Carolina?

Mr. Coble. No.

The Clerk. Mr. Coble votes no.

Chairman Smith. The gentleman from Arkansas?

Mr. Griffin. No.

The Clerk. Mr. Griffin votes no.

Chairman Smith. The gentleman from Virginia?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Chairman Smith. The gentleman from --

Ms. Jackson Lee. How am I recorded?

Chairman Smith. The gentlewoman from Texas?

Ms. Jackson Lee. How am I recorded?

The Clerk. Not recorded, ma'am.

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee votes aye.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 7 members voted aye, 9 members voted nay.

Chairman Smith. A majority having voted against the amendment, the amendment is not agreed to. Are there other amendments?

Ms. Jackson Lee. Mr. Chairman, I have an amendment at the desk. It is amendment 369 or amendment number 1, 2, 3, 4, 5, 6 on the roster.

Chairman Smith. Does the clerk understand the amendment? The clerk will report the amendment. Let me ask the gentlewoman from Texas, she has three amendments that I am aware of. Does she intend to offer all three? Would she consider offering all three together?

Ms. Jackson Lee. I intend to offer all three separately.

Chairman Smith. Okay. The clerk will report the amendment.

The Clerk. Amendment to Judiciary Print 112-6 offered by Ms. Jackson Lee of Texas. Page 11, insert after line 21 the following.

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

Chairman Smith. Without objection, the gentlewoman is

recognized to explain her amendment.

[The amendment of Ms. Jackson Lee follows:]

\*\*\*\*\* INSERT 3-2 \*\*\*\*\*

Ms. Jackson Lee. I thank the gentleman and the chairman for his courtesies. Just for a moment, colleagues, I just, as I lead into my discussion, my amendment involves irreversible injury. Many of us know that the American Bar Association is here with us today, and a group that I met with had to do with access to justice. Although this is not directly the issue that we are discussing today, I would like my colleagues to consider the mark of the Senate bill of \$402 million versus the House bill of \$328 million. I just hope that the Judiciary Committee can be leaders on the value of access to justice.

As I begin to -- as we listen to this debate on medical malpractice, I am beginning to be reminded of the challenges of having the right to have access to justice. I remember doing this bill, and frankly we are not doing this medical malpractice legislation for policy purposes. As I understand it, we are now dealing with it for the Republican budget, and so we in the Judiciary Committee are now using so-called depriving individuals of their legal rights by this implementation of this legislation.

My amendment seeks to restore the rights of those who are denied their rights. This is not to undermine the medical profession; this is an attempt to right what has been wrong. This bill is intended to change what some of my colleagues believe to be a broken medical malpractice system.

First, I would like to introduce an amendment which carves out an exemption for health care lawsuits for serious and irreversible injury, again restoring the right, not using this as a budget fix.

My amendment will exempt victims of malpractice that resulted in irreversible injury, including loss of limbs, loss of reproductive ability, from \$250,000 cap that H.R. 5 imposes on noneconomic damages. My amendment, a noneconomic cap for victims of irreversible or life-altering injury is patently unfair, as they will never fully recover from the injury. H.R. 5 caps noneconomic damages at \$250,000 for all cases, no matter how severe the injury or how egregious a mistake by the doctor, hospital or drug manufacturer. Caps on noneconomic damages disproportionately affect victims of serious injury resulting from medical malpractice. Other than reimbursement for out-of-pocket medical costs, the only form of compensation may be noneconomic damages. For patients not in the workforce, noneconomic damages are the only available form of compensation.

This is not a reckless, random, catch-all amendment. This is to address the question of those kinds of cases that are so severe that the person never recovers. As demonstrated recently in Texas, victims of serious medical malpractice cannot be fairly compensated with a \$250,000 noneconomic cap. Connie Spears was incorrectly discharged from the emergency room.

By the time she returned via ambulance to a different hospital in 3 days later she had a tissue death in her legs and kidney failure. Doctors had to amputate both legs, which could have easily been avoided had she been diagnosed correctly at the first emergency room.

Under this particular cap, \$250,000, and I know that we have used Texas and we have used California on a number of examples, but that

doesn't mean that it is right. Patients can suffer a life-altering injury without it being irreversible. For example, Heather, a college student, was misdiagnosed as having either polycystic ovarian syndrome or insulin resistance and treated with medication and recommended dietary restrictions. When her condition failed to improve, she sought out a second opinion and was correctly diagnosed. She is now undergoing a stage 4 chemotherapy regime. Heather lost her hair and spends every day exhausted and nauseated, Heather is unable to work full time, socialize with friends for a wrong diagnosis.

The amendment ensures that victims who are severely harmed by medical malpractice are justly compensated; not overly compensated, justly compensated.

While the system may need some tweaks to help controlling ballooning medical malpractice, it is shameful that we would use this process to fit the scheme of the Ryan budget, the Republican budget. What more? Are we going to steal food out of the mouths of babies just to comply with the Ryan budget? This bill is so broadly drafted that it would also limit remedies against the for-profit nursing home, insurance, and pharmaceutical industries, and so I ask my colleagues to ensure that this amendment can be protected -- not protected, but add the protection to those who need.

Further, it severely restricts contingency fees, discouraging the representation that is so needed. If we are cutting access to justice, obviously cases that are not necessarily taken under those cases, medical malpractice, but I can assure you, we are leaving people

empty handed, empty hearted, and without the right kind of access. We know there are errors, we know there are great and wonderful doctors. We are only suggesting that we find a way to provide the coverage for all of these individuals.

The angle or the analysis that I hope that we will pay attention to is irreversible injury, how can we avoid providing comfort and support for irreversible injuries? I ask my colleagues to support this amendment.

Chairman Smith. Thank you, Ms. Jackson Lee. The gentleman from Arizona, Mr. Franks.

Mr. Franks. Mr. Chairman, irreversible injury and life-altering injury, these are not defined terms in Ms. Jackson Lee's amendment, and these could range all the way from catastrophic injury to a scar on your finger that wouldn't go away. This is really a dangerous road to go down. I think it would gut the bill and really to no reasonable end.

This bill tries to provide the same reasonable limits on all health care lawsuits that we have already discussed was signed into law by Governor Brown in California 30 years ago, and they have been good policy, they have applied to all lawsuits, and the nature of the injury really isn't the issue here. These reforms should be fairly applied and equal to all cases, and I would hope my colleagues would oppose the amendment.

Chairman Smith. Thank you, Mr. Franks. Are there other members who wish to be heard?

If not, the question is on the amendment. All in favor say aye.  
Aye. Opposed no. No.

In the opinion of the chair the noes have it, and the amendment is not agreed to.

Ms. Jackson Lee. I have my second amendment that I would like to call up. I think it has been distributed; is that correct?

Chairman Smith. The clerk will --

Ms. Jackson Lee. Well --

Chairman Smith. The clerk will report the amendment.

Ms. Jackson Lee. Thank you, Mr. Chairman. I apologize. 367.  
Thank you.

The Clerk. Amendment to Judiciary Committee print 112-6 offered by Ms. Jackson Lee of Texas, page 11 insert after line 21 the following and redesignate provisions accordingly. Section 7, exemption from limitations on damages for actions by minors. Section 3(b), section 3(d), and section 5(b)(2) shall not apply to a health care lawsuit by a minor as determined under applicable State law.

[The amendment of Ms. Jackson Lee follows:]

\*\*\*\*\* INSERT 3-3 \*\*\*\*\*

Chairman Smith. The gentlewoman is recognized to explain her amendment.

Ms. Jackson Lee. I thank you very much, Mr. Chairman. The simple premise of this amendment is to ensure that minors who have these kinds of injuries would not see a lifetime of poverty, limit their access to justice. The amendment would exempt children from the \$250,000 cap on noneconomic damages and the cap on punitive damages, allowing children to be reimbursed for the full cost of their care.

Let me just say in the last amendment, which Mr. Franks wanted to suggest that it was not defined, my statement made it very clear, the irreversible injury clearly suggests those that could not be remedied by cosmetic surgery, and a scar on one's finger could. But if we are attempting to stop the wheels of justice, with due respect to my good friend and colleague, we will use any excuse that we can possibly use.

The importance of this amendment is to address questions of a child being injured, and one of the questions in all of the States' noneconomic damages that has been raised over and over again that many who believe you should not limit access to justice have tried to correct is the fact that children have nominal economic value, their punitive damages would be severely limited under H.R. 5, the HEALTH Act.

Punitive damages, while rarely awarded and rightly so, should be left to the judge and jury and are reserved for the most egregious wrongdoers. Unfortunately, egregious case of malpractice or abuse often involve children. By limiting punitive damages, H.R. 5 limits

the deterrent effect of punitive damages to punish those who injure or, God forbid, a child loses their life. No one should be allowed to get any compensation for a frivolous lawsuit, but caps on noneconomic and punitive damages apply to all cases, no matter how severe the injury or how egregious the mistake by the doctor, hospital or drug manufacturer. In fact, it is only in the most egregious cases of medical negligence in which a jury decides to award more than \$250,000 on punitive damages and restrictive caps on damages. Caps on damages unnecessarily shift costs from the responsible party to the taxpayer-funded programs. If an injured child cannot hold a negligent doctor or hospital accountable, that child's parents will rely on programs such as Social Security disability, Medicaid to pay for that egregious injury.

Take a youngster by the name of Porter James Schorr, right out of Texas, in December 2005, 6-year-old Porter accompanied his parents to see the cardiologist who had been monitoring Porter's stenotic narrowed aorta valve, the doctor ran tests, informed Porter's parents that Porter needed a catheter procedure called a valvotomy. The doctor told them that it was a routine procedure, and the cardiologist who was to perform the procedure had done hundreds and never had any major complications. The Schorrs postponed the procedure until after the holidays and Porter's 7th birthday. On February 16th the Schorrs took Porter to the hospital for the procedure. The cardiologist performing the procedure went over the risks with Porter's parents and then wheeled Porter out of the room and into surgery. The catheter lab did not have

a cardiovascular surgeon on standby in case Porter went into cardiac arrest, and during the procedure Porter's heart stopped, and as there was no cardiovascular surgeon on standby, nurses began to do the best they could. The manual chest compressions caused blood clots to form, which moved into Porter's brain, causing six strokes. After 8 days on life support, combined with multiple surgeries, failed organs and the multiple strokes, the Schorrs removed Porter from life support. This provides this hospital with unprecedented legal protection and cuts off Porter's family from financial redress. These are the kinds of tragedies that this particular office -- excuse me, this particular legislation would ensue.

Let me just say, Mr. Chairman, that we are doing serious business in this particular committee room, and I would appreciate the appropriate decorum necessary by staff and others who find anything that we say here, and I had to say this in an earlier hearing, humorous. I would hope that they would think of the serious issues that we are discussing, but I would ask my colleagues to support this amendment because it is an attempt to provide access to justice.

I thank you and I yield back. I ask to support the Jackson Lee amendment dealing with the impact on minors of H.R. 5 and the limitation on their damages.

Chairman Smith. Okay. Thank you, Ms. Jackson Lee. The gentleman from Arizona, Mr. Franks.

Mr. Franks. Mr. Chairman, I have no doubt that this amendment is well intentioned. However, it is important to remember that

children benefit from health care tort reform as well, and they shouldn't be excluded from it. The policy behind a cap on inherently unquantifiable, noneconomic damages benefits patients of all ages. Such caps increase access to health care equally for children as well as for adults of all ages, and this amendment should be opposed if we want our children to have access to medical care when they need it, Mr. Chairman, and I hope my colleagues will do just that.

Chairman Smith. Thank you, Mr. Franks.

All those in favor of the amendment say aye. Aye.

Opposed say nay. No.

In the opinion of the chair the noes have it, the amendment is not agreed to. Does the gentlewoman --

Ms. Jackson Lee. Roll call, please, Mr. Chairman.

Chairman Smith. Roll call vote has been requested. The clerk will call the roll.

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Mr. Goodlatte?

[No response.]

The Clerk. Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

[No response.]

The Clerk. Mr. Issa?

[No response.]

The Clerk. Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Mr. King?

Mr. King. No.

The Clerk. Mr. King votes no.

Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan votes no.

Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe votes no.

Mr. Chaffetz?

[No response.]

The Clerk. Mr. Griffin?

[No response.]

The Clerk. Mr. Marino?

[No response.]

The Clerk. Mr. Gowdy?

[No response.]

The Clerk. Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross votes no.

Ms. Adams?

Mrs. Adams. No.

The Clerk. Ms. Adams votes no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle votes no.

Mr. Amodei?

Mr. Amodei. No.

The Clerk. Mr. Amodei votes no.

Mr. Conyers?

[No response.]

The Clerk. Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt?

[No response.]

The Clerk. Ms. Lofgren?

[No response.]

The Clerk. Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee votes aye.

Ms. Waters?

[No response.]

The Clerk. Mr. Cohen?

[No response.]

The Clerk. Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi votes aye.

Mr. Quigley?

[No response.]

The Clerk. Ms. Chu?

Ms. Chu. Aye.

The Clerk. Ms. Chu votes aye.

Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr Deutch votes aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez votes aye.

Mr. Polis?

Mr. Polis. Aye.

The Clerk. Mr. Polis votes aye.

Chairman Smith. The gentleman from Virginia, Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Chairman Smith. The gentleman from Ohio. No? Have you, Mr. Jordan, voted? Oh, sorry. The gentleman from Arkansas?

Mr. Griffin. No.

The Clerk. Mr. Griffin votes no.

Chairman Smith. The gentleman from Texas.

Mr. Gohmert. No.

The Clerk. Mr. Gohmert votes no.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 9 members voted aye, 14 members voted

nay.

Chairman Smith. Okay, a majority having voted against the amendment, the amendment is not agreed to. Are there any other --

Ms. Jackson Lee. Mr. Chairman, I have a final amendment, and the amendment number is 368 on the roster.

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to Judiciary Committee Print 112-6, offered by Ms. Jackson Lee of Texas, page 1, beginning on line 19, strike within 3 years through a longer period. On page 2, line 4, and insert the following, not later than the date that is 3 years after the latest of the date of the alleged --

[The amendment of Ms. Jackson Lee follows:]

\*\*\*\*\* INSERT 3-4 \*\*\*\*\*

Chairman Smith. Without objection, the amendment will be considered as read, and the gentlewoman is recognized to explain her amendment.

Ms. Jackson Lee. I thank the gentleman very much, and I thank the committee for its courtesies.

The bottom line of this amendment is to change the time frame related to the manifestation or discovery of an injury related to a minor, again to protect our children who are innocent and cannot speak for themselves and obviously at the time of the injury are not an age of majority. This amendment would extend the time for filing a claim, also referred as a statute of limitations for children who are a victim of an assault. It may be by a physician in this instance. The amendment would preserve the rights of injured children until they reach an age of majority and are old enough to decide whether to bring a cause of action.

This bill, H.R. 5, again, simply to comply with the Ryan Republican budget, we are now using medical mal allegedly as a budget cutter, but it requires children who are victims of malpractice to bring a cause of action between the age of 8 or within 3 years of the alleged manifestation of the injury. This statute of limitations is far too restrictive. What about the tragedy of the 6-year-old? What opportunity does he have? It is also nonsensical. What 8-year-old is capable of understanding their legal right? This statute of limitations, which is much more restrictive than a majority of State laws, would cut off meritorious claims involving diseases or long

incubation periods; for example, a child who was infected with HIV from tainted blood transfusion may not show symptoms of HIV or AIDS for many years. The HEALTH Act would unfairly deny these victims their day in court.

The king of all tragedies dealing with children besides the Penn State case, which is now pending, is recently seen in Delaware. Such restrictive statutes of limitation simply are there to protect allegedly those who would violate children. Dr. Earl Bradley, a Delaware pediatrician, abused and raped over a hundred of his child patients, some as young as 3 months old. As these children grew into adults, many tried to bring suits against Dr. Bradley, but due to Delaware's restrictive statute of limitations, which is similar to the HEALTH Act, these causes of action were thrown out of court. Last year Delaware had to revise its laws to allow these suits against Dr. Bradley to go forward.

Congress should not make the same mistake that Delaware did by restricting the legal rights of children. This is too restrictive a statute of limitations, and it is one that we should recognize poses a problem. The rights of patients and children who are suffering due to preventable medical errors or actions of a medical provider really have to be addressed in a statute of limitations. The best way to cut down on malpractice lawsuits is improve patient safety and care and as well to ensure in the training of our physicians, in the vetting of our physicians or medical providers or nurses or others that we, in fact, provide the right kind of personnel.

The Institute of Medicine found that 98,000 people die every year because of preventable medical errors. We need to reduce preventable errors, and that should reduce lawsuits, but as well we should not limit a statute of limitations that keeps a child from seeking remedy in a medically involved situation.

I would ask my colleagues to support this. Again, it is tragic if we would cut down the medical malpractice, the opportunity to correct medical malpractice by those minor youngsters who, in fact, cannot speak for themselves. I ask my colleagues to support this amendment.

With that, Mr. Chairman, I yield back.

Chairman Smith. Thank you, Ms. Jackson Lee. The gentleman from Arizona, Mr. Franks.

Mr. Franks. Well, Mr. Chairman, I am going to just stick to the issue here. As I stated regarding the previous amendment, this amendment should be opposed if we want our children to have access to medical care when they need it because, indeed, children do benefit from health care tort reform, and they shouldn't be excluded from it in the way that this amendment would do. This amendment would allow OB/GYNs to be sued for actions taken during the delivery of a baby up to the time that baby is an adult, and that defies the policy behind all statutes of limitations, which essentially the purpose is to provide closure and allow cases to be brought early enough that crucial evidence is not lost due to the passage of time, and I will stop there, Mr. Chairman.

Ms. Jackson Lee. Will the gentleman yield?

Mr. Franks. Yes, I will yield.

Ms. Jackson Lee. I thank you for your courtesy. Just I think there is one sentence I just wanted to refer to. I think you are saying that this benefits children because this is a budget saver, and so you would save money, and you would give an opportunity for insurance rates to be down, but I would just make the argument that we are not here dealing with the budget. I don't know if they would be able to have more coverage, but what I would say is that you are denying a minor who has been injured, you are limiting them only to 8 years or 3 years beyond, and that really violates the fact they are not an adult at that time, and it would be very difficult for you to limit their right to action, and reasonably speaking, the cause of action, if it is a legitimate cause of action, should not be denied by a statute of limitation when it happened when the child, when an individual was a minor.

I yield back to the gentleman.

Mr. Franks. Well, I would just say to the lady, Mr. Chairman, that as one who has essentially dedicated my public life and adult life to protecting children, born and unborn, those that don't have a voice, I don't think it is in the best interest of children to sue OB/GYNs out of existence. When we devastate the doctors and the medical personnel that take care of our children and make it impossible to practice their trade, we do children no real favors.

And again, Mr. Chairman, I will stop there.

Chairman Smith. Okay. Thank you, Mr. Franks. The

question -- the gentleman from Nevada, Mr. Amodei.

Mr. Amodei. Thank you, Mr. Chairman. I move to strike the last word.

Chairman Smith. The gentleman is recognized for 5 minutes.

Mr. Amodei. Thank you, Mr. Chairman, and I appreciate the discussion so far on all of this today, but I also wanted to provide another perspective in that there have been some indications today about why you would vote for this in the context of a budget sense, and I understand the context which it comes before, but I come from a State which did medical malpractice reform as a result of an initiative petition, a vote of the people, and when it was done it had nothing to do with the budget in the State of Nevada. It had to do with access to health care and the cost of that access and what that cost as a result of insurance premiums and availability.

Now, one size does not fit all, and the small State that I am from is not necessarily directly attainable, applicable to the examples that are given in larger urban areas, and I respect that, but I will say that to the extent that there are indications that have been a vote against some of these amendments or for some of them or whatever is strictly in a budget sense, I just want to put on the record that my perspective comes from a State that has done it by initiative petition, it was not in the context of any budget context. It has worked there, in the experience what we did in that State, and that my votes for or against these amendments today will have as much to do with access in the experience that I bring from my district, if not more so for that

than anything else, and I yield back.

Thank you, Mr. Chairman.

Chairman Smith. Thank you, Mr. Amodei.

Mr. Scott. Mr. Chairman?

Chairman Smith. The gentleman from Virginia, Mr. Scott.

Mr. Scott. Move to strike the last word.

Chairman Smith. The gentleman is recognized for 5 minutes.

Mr. Scott. Yield to the gentlelady from Texas.

Ms. Jackson Lee. I thank the gentleman from Virginia, and I wanted to just appreciate my good friends from Nevada and certainly Mr. Franks' long history. We can both say from our own perspective we have coddled children and tried to respect the rights of children in the work that each of us have done or many of them have done around this panel. The last thing I want to do is put any profession dealing with medicine and the oath that they take to care and nurture those who are in need out of business. OB/GYN friends, pediatricians, dentists, internists, cardiologists, neurologists, and the whole litany of those who are so vital. But the specifics of this amendment says that not later than the date that is 3 years after the latest of the date of the alleged manifestation of the injury, the date that the injury was discovered or the date by which a minor reaches the age of majority, three distinct, precise descriptions, 3 years after the latest date of the alleged manifestation, somebody with HIV/AIDS, some other ailment, the date that the injury was discovered, that is not ad infinitum or the date of minor reaches maturity, 18, 21, whatever

is in the particular State that we are speaking of. That is not asking too much, and that is not a heavy weight on medical mal in terms of cost. What it does speak to is a balanced way to ensure that a child that is injured over the series of the amendments that I have had, has irreversible injury, has an injury that is not discovered, is suffering like Porter is suffering or is abused by someone who has raped during the course of medical care a 3-month-old. All it is saying is to allow an opportunity within reason for that individual to petition the halls of justice, the legal system, and I beg of my colleagues to recognize that the Ryan budget should not be superior in the room that is supposed to be the holder of the Constitution, the laws of this land, and should be promoting access to justice, not diminishing access to justice.

So I would ask my colleagues to support this amendment in the name of our mutual concern of children and their needs. I yield back to the gentleman.

Mr. Scott. Yield back.

Chairman Smith. The gentleman yields back his time. The vote is on the Jackson Lee amendment. All in favor say aye. Aye. Opposed nay.

Ms. Jackson Lee. Chairman, I would like a roll call vote.

Chairman Smith. Roll call vote has been requested. The clerk will call the roll.

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

[No response.]

The Clerk. Mr. Issa?

[No response.]

The Clerk. Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Mr. King?

[No response.]

The Clerk. Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan votes no.

Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe votes no.

Mr. Chaffetz?

[No response.]

The Clerk. Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin votes no.

Mr. Marino?

[No response.]

The Clerk. Mr. Gowdy?

[No response.]

The Clerk. Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross votes no.

Ms. Adams?

Mrs. Adams. No.

The Clerk. Ms. Adams votes no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle votes no.

Mr. Amodei?

Mr. Amodei. No.

The Clerk. Mr. Amodei votes no.

Mr. Conyers?

[No response.]

The Clerk. Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt?

[No response.]

The Clerk. Ms. Lofgren?

[No response.]

The Clerk. Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee votes aye.

Ms. Waters?

[No response.]

The Clerk. Mr. Cohen?

[No response.]

The Clerk. Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi votes aye.

Mr. Quigley?

[No response.]

The Clerk. Ms. Chu?

Ms. Chu. Aye.

The Clerk. Ms. Chu votes aye.

Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch votes aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez votes aye.

Mr. Polis?

Mr. Polis. Aye.

The Clerk. Mr. Polis votes aye.

Mr. Gallegly. [Presiding.] Are there any members in the chambers that have not cast their vote? The clerk will report.

The Clerk. Mr. Chairman, 9 members voted aye, 12 members voted nay.

Mr. Gallegly. The amendment fails, and there is no further request for amendments.

Mr. Johnson. Yes, there is. I have an amendment at the desk.

Mr. Gallegly. I am sorry, but at this point the committee is going to be recessed subject to the call of the chair.

Mr. Johnson. Are we going to reconvene?

Mr. Gallegly. What is that? Why don't you take off for, in case we call it back to order in 20 minutes or 4 hours or whatever, just sit around. The committee is recessed subject to the call of the chair.

We are done. I assume we are finished for the night.

The committee is recessed for the rest of the evening.

[Whereupon, at 6:00 p.m., the committee was adjourned.]