

RPTS DOTZLERDCMN BURRELL

CONTINUED MARKUP OF H.R. 5,  
THE "HELP EFFICIENT, ACCESSIBLE,  
LOW-COST, TIMELY HEALTHCARE  
(HEALTH) ACT OF 2011"

Wednesday, February 16, 2011

House of Representatives,  
Committee on the Judiciary,  
Washington, D.C.

The committee met, pursuant to call, at 3:00 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, Reed, Griffin, Marino, Gowdy, Ross, Adams, Quayle, Conyers, Berman, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Cohen, Johnson, Pierluisi, Quigley, Chu, Deutch, Sanchez, and Wasserman

Schultz.

Staff Present: Sean McLaughlin, Chief of Staff; Allison Halatei, Deputy Chief of Staff/Parliamentarian; Sarah Kish, Clerk; Perry Apelbaum, Minority Staff Director.

Chairman Smith. The clerk will call the roll to determine if a quorum is present.

The Clerk. Mr. Smith?

Chairman Smith. Present.

The Clerk. Mr. Smith, present.

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?

[No response.]

The Clerk. Mr. Chaffetz?

[No response.]

The Clerk. Mr. Reed?

[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. Here.

The Clerk. Mr. Ross, here.

Mrs. Adams?

Mrs. Adams. Here.

The Clerk. Mrs. Adams, here.

Mr. Quayle?

[No response.]

The Clerk. Mr. Conyers?

Mr. Conyers. Present.

The Clerk. Mr. Conyers, present.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Here.

The Clerk. Mr. Nadler, here.

Mr. Scott?

Mr. Scott. Here.

The Clerk. Mr. Scott, here.

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?

Mr. Johnson. Present.

The Clerk. Mr. Johnson, present.

Mr. Pierluisi?

[No response.]

The Clerk. Mr. Quigley?

Mr. Quigley. Here.

The Clerk. Mr. Quigley, here.

Ms. Chu?

[No response.]

The Clerk. Mr. Deutch?

Mr. Deutch. Here.

The Clerk. Mr. Deutch, here.

Ms. Sanchez?

[No response.]

The Clerk. Ms. Wasserman Schultz?

Ms. Wasserman Schultz. Present.

The Clerk. Ms. Wasserman Schultz, present.

Mr. Gallegly. How was I recorded?

The Clerk. Not recorded, sir.

Mr. Gallegly. Present.

Chairman Smith. The gentleman from Ohio.

Mr. Chabot. Here.

Chairman Smith. The gentleman from Arizona.

Mr. Quayle. Here.

Chairman Smith. The gentleman from California.

Mr. Issa. Here. At least this gentleman from California.

The Clerk. Mr. Franks.

Mr. Franks. Here.

The Clerk. Mr. Griffin.

Mr. Griffin. Present.

The Clerk. Mr. Jordan.

Mr. Jordan. Here.

The Clerk. Mr. Gowdy.

Mr. Gowdy. Present.

Chairman Smith. Are there any other members who wish to record their presence?

If not, the clerk will report.

The Clerk. Mr. Chairman, 18 members have responded present.

Chairman Smith. A working quorum is present. Pursuant to notice, proceedings will now resume on H.R. 5. The clerk will report the title of the bill.

The Clerk. H.R. 5, a bill to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system.

[The information follows:]

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

Chairman Smith. We will pick up on amendments where we left off last week. We are working our way down the rostrum of amendments. The next amendment up is going to be offered, I believe, by the gentlewoman from Florida, Ms. Wasserman Schultz.

Ms. Wasserman Schultz. Mr. Chairman, I have an amendment at the desk.

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to H.R. 5 offered by Ms. Wasserman Schultz and Mr. Johnson of Georgia. Page 5 --

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

[The information follows:]

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

Ms. Wasserman Schultz. Thank you, Mr. Chairman. Our amendment is a simple one. It simply states that children shall be exempt from the cap on noneconomic damages in the bill. And the basis of the amendment is just common sense. Children don't work. Like women and the elderly who tend to be in lower wage jobs, children are even more disproportionately impacted by these noneconomic damage caps because they don't work at all.

The children who are injured in malpractice cases, their entire award can be based on noneconomic damages. Now, I would like to share with you the story of Michael Turello from Chester, Connecticut. Michael and his twin brother Matthew were born prematurely in the 34th week of pregnancy. Both Michael and Matthew tested healthy at birth, but were not yet developed enough to leave the hospital's neonatal unit.

Several days after his birth, twin Michael developed breathing problems and his bilirubin levels began to rise. Bilirubin levels are routinely monitored. There are routine standards of care for treatment for elevated levels, and this hospital had its own written policy. Yet Michael's levels went untreated. He was not treated with light therapy or with a blood transfusion. As a result, he developed kernicterus, a devastating illness that resulted in cerebral palsy.

Kernicterus is a disease that has been completely eradicated with standard treatment practices. It should never occur in a hospitalized patient. As a result of this incident, Michael is now wheelchair bound and in a chronically weakened state, incapable of intelligible speech. He will never even be able to feed himself.

Meanwhile, his twin Matthew, the second born and the smaller twin, is perfectly healthy and a stark contrast to Michael.

Now, as the mother of twins myself, and as the mother of a daughter who had an elevated bilirubin level at birth, I have to tell you that this is a story that breaks my heart. Twins do everything together. They grow up together. They develop together. They share an incredibly special bond. It is part of the magic of being a twin.

But while Matthew will grow up and go to school and play sports and have a full life, his twin Michael will be home bound to a wheelchair unable to speak or feed himself. This will be gut wrenching to both of them and incredibly difficult on their parents.

Now, this legislation before us tells Michael that his whole life is worth \$250,000. He was barely born at the time of the incident, let alone working. He will have no lost wages. This is a simple case of negligence. There was no allegation of intentional wrongdoing where he could recover punitive damages.

Who are we to tell Michael that his suffering is worth no more than \$250,000? There are just some things you don't get a receipt for. And Michael is just one case out of many.

I will tell you what will happen. If we pass H.R. 5, it will just shift those costs to taxpayer-funded programs. If an injured child cannot hold a negligent doctor or hospital accountable, that child's mom or dad will rely on programs like SSI and Medicaid to pay for their care and support.

I wonder how many of our friends on the other side of the aisle

think that powerful interests like insurance companies and hospitals should be let off the financial hook for their egregious errors so that taxpayers foot the bill.

My friends in the Tea Party I think probably don't share the view that that is a good idea. Medicaid is taxpayer funded. Why should the taxpayer pay for these errors? That is exactly what happens in these cases if this bill goes forward. They shouldn't. That is why I am offering this amendment. I want to make sure that when a child is harmed egregiously by medical negligence, just like Michael Turello, that he is not bound by some arbitrary lifetime cap of \$250,000.

Remember, these children don't have lost wages. There are no receipts that they can produce. It is a morally right thing to do, and it is fiscally responsible. Restricting the rights of children will not reduce the number of frivolous lawsuits; it merely limits the rights of children who are suffering due to preventable medical errors or like Michael.

The best way to cut down on malpractice lawsuits is to improve patient safety and care, not arbitrarily limit the rights of those who have been injured, particularly children who have been injured.

Thank you.

Chairman Smith. Thank you, Ms. Wasserman Schultz.

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

Mr. Franks. Thank you, Mr. Chairman.

Mr. Chairman, I am the first to recognize the well-meaning intent of the gentlelady's amendment. I happen to have two twins myself. She

is right, they do play with each other and it is the most amazing miracle you will ever see. As it happens, I used to be the director of the children's department in Arizona.

But, you know, sometimes these amendments can have the exact opposite effect. My concern is that this amendment is just such an amendment and it should be opposed if we want our children to be able to access the medical care when they really need it. Children benefit, in my judgment, from health care tort reform as well as adults and shouldn't be excluded from it.

The amendment should be opposed because the policy behind a cap on inherently unqualifiable, 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. In fact, it is the OB/GYNs, those who bring children into the world, and providers of emergency medicine, who are among those who suffer most without reasonable caps on nonquantifiable, noneconomic damages because the mere threat of potential limitless liability sends their medical profession insurance rates skyrocketing and consequently drives them out of business.

Also, Mr. Chairman, children more than so than adults tend to get themselves injured more, and certainly they have a very pressing need for specialists in this response and emergency medicine and other specialties. Without a reasonable cap on noneconomic damages, there may be no one there to provide that emergency medicine, and I think that that could have the effect of causing children to suffer.

Ms. Wasserman Schultz. Would the gentleman yield?

Mr. Franks. Certainly.

Ms. Wasserman Schultz. Wouldn't you agree if we go forward with the limits in this bill, what is going to happen when it comes to the cases of children that are victims of negligence, that we are just going to shift the cost of their care to programs like Social Security disability and Medicaid and we are all going to pay significantly more. If you simply allow there to be no cap on noneconomic damages because we are talking about children who don't earn a salary and won't benefit from what Mr. Smith says is being able to provide their care in the bill for economic damages, then we are all are paying for it. I mean, we are putting a price on the life of children.

Mr. Franks. Reclaiming my time.

Ms. Wasserman Schultz. Thank you.

Mr. Franks. I think the part that the gentlelady overlooks is that for economic damages there are no limits here. We are talking about the damages that are noneconomic, nonquantifiable.

Ms. Wasserman Schultz. Would the gentleman yield for a question?

Mr. Franks. Yes.

Ms. Wasserman Schultz. Wouldn't you acknowledge that you don't have economic damages when it comes to children? Children don't earn a salary. Michael, the little boy I used as an example, was injured when he was just born. What economic damages are there?

Mr. Franks. Reclaiming my time, Mr. Chairman, the reality is that the economic damages accrue to the parents, and the parents certainly have the right to sue on behalf of economic damages in a

limitless capability. Whatever the actual damages there are, they will have the ability to sue for those damages to take care of the child in the future.

So it is a tragedy, and I wish there were a way to see all of the things that go wrong in a medical situation ameliorated, but I don't think that the gentlelady's amendment has an ultimately positive effect and I would oppose it.

I yield back.

Chairman Smith. Are there any members who wish to be heard?

Mr. Deutch.

Mr. Deutch. Thank you, Mr. Chairman.

Mr. Chairman, for clarification, if Mr. Franks or someone could address the issue of the economic damages and the claim that a parent might be able to make on their behalf.

Chairman Smith. If the gentleman would yield, I will address it briefly by saying that it is my understanding that the lawyer for that child would be able to make a successful claim for lost wages during the lifetime of that child. So that could amount to millions of dollars. That would be economic damages.

Thank you for yielding.

Mr. Deutch. I yield back the balance of my time.

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

Mr. Scott. Mr. Chairman, I would like to pose a follow-up question to that.

For children, what basis would there be to calculate future

earnings? Some States, since there is no basis on which to calculate deny recovery for future wages when there is no employment.

Chairman Smith. It is my understanding this has successfully been done in court any number of times where the argument is made that that child will grow, will become a of working age and earn an average of a certain salary. I will be able to find the cases for you, but there have been multi-million dollar settlements in that regard.

Ms. Wasserman Schultz. Would the gentleman yield?

Mr. Scott. I yield to the gentlelady from Florida.

Ms. Wasserman Schultz. Thank you. I wanted to ask the chairman a question. Mr. Chairman, can you name a single case in which a child has been awarded economic damages?

Chairman Smith. If the gentlelady will yield, I just mentioned to Mr. Scott that I will be happy to come up with those cases for you. I just don't have them in front of me right now. I believe they are out of California.

Ms. Wasserman Schultz. How were they able to quantify?

Chairman Smith. I will have to look at how the arguments went in court and what the attorneys said, but I will be happy to provide those.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Ms. Wasserman Schultz. I yield back.

Mr. Scott. Mr. Chairman, it is not surprising you can get a multi-million dollar verdict, but not when there are caps on noneconomic damages. That is the problem.

Chairman Smith. If the gentleman will yield, these are considered economic damages.

Mr. Scott. Is it the legislative intent of this legislation to allow economic damages based on future lost wages of children on which there is no basis on which to make such a calculation? Is it the legislative intent to approve those because some States, I think you would have a lot of trouble proving economic damages for children on a totally speculative basis.

And if it is the legislative intent that projected, speculative, future wages would count as economic damages and that would not be adversely affected by this cap, we should make sure that that is in the legislation. I am inquiring, is that the legislative intent of the legislation?

Chairman Smith. If the gentleman will yield, I am simply saying there have been successful cases made on that basis and we will be happy to provide those to you.

Mr. Scott. And if there is a senior citizen who is retired and is not expected to have future earnings, they would be limited to the cap, is that correct?

Chairman Smith. That would be up to the attorney to argue their earnings were not limited. It would depend on the individual case.

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

Mr. Nadler. Thank you. I submit that the legal situation is that some States will permit a calculation of the future potential earnings of a child, and they generally come in fairly low because you don't assume that that child is going to be an entrepreneur or whatever. They come in with an average. And some States will not. Some States have limitations on their tort laws on noneconomic recovery and some do not.

What this discussion leads me to conclude, at least, is that if it is the intent that the situation outlined by the gentlelady from Florida should not result by our action in a total loss of any ability to be recompensed for the damages there, then we ought to make very clear in this legislation that although we are at the least, although we are superseding State noneconomic damage limitations, that does not include any recovery for future lost wages, even if not easily quantifiable because some courts will read that obviously since it is not quantifiable, we must mean to do that. And if we are preempting State law here. We should make it clear that we are not preempting State law at least with respect to recovery of future earnings estimates.

Mr. Conyers. Mr. Scott, would you yield?

Mr. Scott. I yield.

Mr. Conyers. Thank you.

I think Ms. Wasserman Schultz has raised an important way that we could create an exemption, but there are State laws that vary all

over the place. So what I would ask Chairman Smith to do is could we withdraw this amendment, if the gentlelady was agreeable, to do the proper research that would be required here and maybe we could shed a little bit more light accurately on this situation.

Ms. Wasserman Schultz. Mr. Chairman?

Chairman Smith. The gentlelady from Florida.

Ms. Wasserman Schultz. Rather than withdraw the amendment, if we could perhaps put the amendment aside until you can give us the information you are claiming.

Chairman Smith. I doubt that we will be able to do that in the next hour or two. And I am not sure we are going to be marking up this bill beyond today.

So if the gentlewoman wants to withdraw her amendment, she is welcome to. If not, we can proceed to debate and vote.

Ms. Wasserman Schultz. I do not wish to withdraw my amendment. I would like to proceed with debate.

Chairman Smith. Other members who wish to be heard?

The gentleman from Virginia, Mr. Forbes.

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

I apologize at the outset because I was just listening to the debate about some of the awards in some of the cases, and as we all know, California is probably some of the States that we can best mirror some of these under, but for some of the economic damages we were talking about, we have one of them for \$84 million. It was a 5-year-old boy with cerebral palsy and a quadriplegic because of delayed treatment

of jaundice after birth. That is a fairly sizable award to have been given.

Another one, in October 2002, was \$59,317,500. That was a 3-year-old girl with cerebral palsy as a result of a birth injury.

Another one, a 10-year-old boy, Mr. Chairman, this was in December of 1999, San Francisco county, \$50,239,557, a 10-year-old boy with brain damage because of undiagnosed infection at birth.

In July, 1999, Los Angeles County, a newborn girl with cerebral palsy because of birth injuries, \$30.8 million.

In April, 1999, \$6,885,000, a premature newborn girl with permanent blindness because of delay in treatment.

In January 1999, \$21,789,549, Los Angeles County, newborn girl, cerebral palsy.

I could go on, Mr. Chairman. I will just do one more, Mr. Chairman, or maybe two more.

October, 1997, a \$25 million award in San Diego County, a boy with severe brain damage because too much anesthesia was administered during a procedure.

And in January 1995, a jury award for \$49 million to a minor child in California.

Mr. Johnson. Would the gentleman yield?

Mr. Forbes. Yes.

Mr. Johnson. Yes, question. Those were jury verdicts, were they not?

Mr. Forbes. They were. And as I understand, they were not

significantly reduced by the judges. But certainly I will try to get that information and give it to you, because I am going by what I have here, and as I mentioned, I was just listening to the debate and hadn't pulled all of the cases. But I will get them.

Mr. Johnson. Well, if California imposes a \$250,000 cap on noneconomic damage --

Mr. Forbes. I am sorry, Mr. Johnson, they are the final awards after any reduction. So the figures I gave, they are the final awards.

Mr. Johnson. They were not for noneconomic loss?

Mr. Forbes. That is correct.

Mr. Johnson. Those were for economic losses?

Mr. Forbes. Correct. But all of those were carried in the same central language that we have with a \$250,000 cap.

Mr. Johnson. I think we would have to know what the station in life of the victims of the malpractice were.

Mr. Forbes. I will be happy to give you that. One of them was 5 years old. One was 3 years old. One was 10 years old. One of them was a newborn girl. One was a premature newborn girl. Another a minor boy, and another one a minor child. So all of them across the spectrum. You pick which one you want, and I think it fell within that category.

Mr. Johnson. It sounds like perhaps California tort law is not as draconian as some would make it out to be.

Mr. Forbes. Mr. Chairman, I yield back the balance of my time.

Chairman Smith. Thank you, Mr. Forbes.

The gentleman from North Carolina, Mr. Watt.

Mr. Watt. Thank you, Mr. Chairman.

Mr. Chairman, I am having a little trouble with this argument because it seems to me that we want to preempt State law, and yet then on the other hand you want to go right around and use State law, which varies greatly from State to State, about how you calculate economic versus noneconomic losses to justify this. I don't think that you can have this both ways without a Federal standard definition of what you mean by noneconomic losses. I mean, all of those cases I am troubled by because you are talking about somebody who is disabled for the entire rest of their life, and they got an economic award for the nursing care, the medical care that is anticipated in the future, dah, dah-da, dah-da. I am offended you would think that somebody who was that injured would only be eligible for \$250,000 noneconomic loss if somebody really, really was negligent in the administration of the medical care, which by definition they were. Otherwise you wouldn't have a verdict of any kind. There wouldn't be a basis for a recovery in any amount.

So I am offended on two counts here. Number one, that you would limit somebody with that kind of severe impact on their lives, their entire life shot, to \$250,000 in noneconomic losses. I am offended by that. I don't think that is what we ought to do.

But I am also offended by the notion that you keep telling us that in every State, if we pass this bill, you would be able to calculate damages on the economic loss side in the same way that they calculate damages on the economic loss side in California. I know that is not the case in North Carolina. I mean, we have a whole different standard

about how we calculate economic losses in North Carolina. So that \$17 million economic loss verdict in California might be entirely different under North Carolina law, and without a standard that defines what that means in our Federal statute here, then you are left to State law once again to determine what the economic loss or noneconomic loss is.

Now, I think this reinforces my notion that all of this in the past has been done by State law. You can't move from State law partially. I mean, you either have to go all of the way to Federal law and say that we are going to define what the standards are for calculating economic losses and noneconomic losses, or you have to leave it to the States. You can't have it both ways. You can't have a foot in both sides. The framers of the Constitution didn't give you that option, right?

If you think this should be done at the Federal level, then you have to do it at the Federal level and you have got to answer these questions about how you calculate the damages at the Federal level and not say okay, in North Carolina, they do it a different way than they do it in California. And, therefore, folks in North Carolina are going to get hurt more than under Federal law, which should be a Federal standard if you are going to do it, which I don't think you should. But that is where we have gotten to.

Anyway, I just think we are asking for trouble here, Mr. Chairman, unless you are going to define these terms in the Federal statute.

Chairman Smith. Thank you. The gentleman from California, Mr. Gallegly, is recognized.

Mr. Gallegly. Mr. Chairman, I yield to the gentleman from Virginia.

Mr. Forbes. Mr. Chairman, it seems to me as I just read the statute, and maybe the gentleman from North Carolina can tell me differently, that we do define those terms. It clearly says what economic damages are. It says the term "economic damages" means objectively verifiable monetary losses incurred as a result of provision of, use of or payment for or failure to provide use or pay for health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or --

Ms. Wasserman Schultz. Would the gentleman yield for a question?

Mr. Nadler. Where are you reading from?

Mr. Forbes. I am reading from paragraph 6, page 18.

Mr. Watt. Would the gentleman from California yield?

Mr. Forbes. If I can just finish.

Mr. Chairman, I think what we are saying is we have a well-defined term for economic damages here. The question that had been posited earlier, as I understood it, was are there any cases that you can show. Obviously we have to show cases of similar types of statutes where those awards were given which were fairly astronomical awards.

The other thing we have to be constantly looking at here is when we are talking about who can be potential victims, we leave off a whole group of individuals who don't have access to OB/GYN doctors because their malpractice premiums are so high we don't get the doctors there

to service them in the first place. That is a huge group of people.

Second, we really don't have any evidence that a single doctor changes his practice based on having a higher malpractice premium.

Ms. Wasserman Schultz. Would the gentleman yield for a question, so I may ask the gentleman from Virginia a question?

Mr. Gallegly. I yield to the gentlelady from California for the purpose of asking the gentleman from Virginia a question, and I would yield to him to respond.

Ms. Wasserman Schultz. Thank you, Mr. Gallegly.

The cases you cited earlier, do you know if any of those children died?

Mr. Forbes. I do not believe that they died because I think the cases continued on, and they would have had to have been living.

One of the problems we have in getting all of the information you ask for, as you know, many of these cases have confidentiality agreements and it is very difficult to get the details.

Ms. Wasserman Schultz. If they did die, is it your position under this legislation that the only thing that the family would be entitled to is \$250,000?

Mr. Forbes. I have to defer back to the chairman on that.

Ms. Wasserman Schultz. Which essentially means that you are placing the value of a child's life at \$250,000?

Mr. Forbes. There is no question that the awards that I gave you were for children that lived.

Mr. Gallegly. I yield to the gentleman from North Carolina.

Mr. Watt. Thank you.

Let me tell you what my problem is. You are basically undercutting the argument that this is savings. The folks in North Carolina have a system. It sounds to me like what California is doing and what you are doing is a heck of a lot more liberal. It is going to drive more people out of the business, which as you said was -- you know, in North Carolina, maybe I should just shut up and let you all do this at the Federal level because you are now defining these losses in a way that is substantially different than North Carolina defines it now, and you are saying that you are saving money or saving doctors from liability.

You are increasing the liability of doctors in North Carolina under that definition, if that is what you are going to apply to everybody nationwide. You know, you can't do this. You know, you can't have your cake and eat it, too, guys.

Mr. Forbes. If the gentleman wants to do as he said and stop arguing and let the bill pass, I am happy to do that.

On the other hand, I think that this bill will have the effect of helping in the malpractice premiums and will help continue to provide the doctors that we need to have, and I think it moves us in the right direction.

I yield back.

Mr. Gallegly. Mr. Chairman, I yield back the balance of my time.

Chairman Smith. We will vote on this amendment, and then Ms. Wasserman Schultz has another amendment.

Mr. Johnson. Mr. Chairman, before we vote.

Chairman Smith. The gentleman from Georgia, Mr. Johnson.

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

Mr. Chairman, this is an amendment that protects one of the most vulnerable populations of our society, our children. As written, H.R. 5 caps noneconomic damages for all cases, including intentional torts and sexual assault against children at \$250,000. It also limits punitive damages to \$250,000, or two times the amount of economic damages awarded.

Why would we want to restrict the protections and legal rights of our children? How would we justify this to little baby Taylor McCormick of Massachusetts. At 13 months, she was taken to the emergency room. Doctors refused to operate on the 13-month-old that evening because the operating room was too busy. Doctors failed to put Taylor into the intensive care unit or properly monitor her. Her brain swelled from fluid buildup, and she died.

Now, under Georgia law, she would be entitled or her parents would be able to collect for the time that she had pain and suffering up until her death. This legislation would limit that to \$250,000 even though it was probably an excruciating death for Taylor.

But then also the full value of the life for the wrongful death of Taylor would be a damage that could be compensated for in Georgia, but this legislation would cap the noneconomic losses at \$250,000.

How would we justify this to little Harry Donnelly of New York. He went to the hospital to have minor surgery for an ear infection.

The anesthesiologist did not notice that his breathing tube was dislodged, and the young man died.

We need to protect our children. There is no sound justification for limiting the rights of children like Taylor and like Harry.

Thank you, Mr. Chairman. I yield back the balance of my time.

Chairman Smith. Thank you, Mr. Johnson.

The question is on the amendment.

Chairman Smith. Those in favor say aye. Those opposed, no. In the opinion of the chair, the noes have it. The amendment is not agreed to.

Ms. Wasserman Schultz. Mr. Chairman, I would ask for a roll call vote on the amendment.

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

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith, no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

Mr. Coble. No.

The Clerk. Mr. Coble, no.

Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly, 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, no.

Mr. King?

[No response.]

The Clerk. Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks, no.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan, no.

Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe, no.

Mr. Chaffetz?

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz, no.

Mr. Reed?

Mr. Reed. No.

The Clerk. Mr. Reed, no.

Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, no.

Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino, no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy, no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross, no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams, no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle, no.

Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers, aye.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler, aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott, aye.

Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt, aye.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren, aye.

Ms. Jackson Lee?

[No response.]

The Clerk. Ms. Waters?

Ms. Waters. Aye.

The Clerk. Ms. Waters, aye.

Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen, aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson, aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi, aye.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley, aye.

Ms. Chu?

[No response.]

The Clerk. Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch, aye.

Ms. Sanchez?

[No response.]

The Clerk. Ms. Wasserman Schultz?

Ms. Wasserman Schultz. Aye.

The Clerk. Ms. Wasserman Schultz, aye.

Chairman Smith. Mr. Issa?

Mr. Issa. No.

Chairman Smith. Mr. Issa votes no.

The Clerk. Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye.

Mr. Gohmert?

Mr. Gohmert. No.

The Clerk. Mr. Gohmert votes no.

Chairman Smith. The clerk will report.

If the clerk will suspend, the gentlewoman from Texas, Ms. Jackson-Lee, votes?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee votes aye.

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

Ms. Sanchez. Yes.

The Clerk. Ms. Sanchez votes aye.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 14 members voted aye and 18 members voted nay.

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

The gentlewoman from Florida is recognized for her other amendment. The clerk will report the amendment.

The Clerk. Amendment to H.R. 5 offered by Ms. Wasserman Schultz and Mr. Johnson of Georgia.

Page 5, beginning on line 8, strike --

[The information follows:]

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

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

Ms. Wasserman Schultz. Thank you, Mr. Chairman.

This amendment simply extends the statute of limitations for children so that we preserve the rights of injured children until they reach an age of majority and are old enough to decide whether or not they want to file a lawsuit.

The basis of the amendment is just common sense. H.R. 5 requires child victims to have sued by the age of 8 or within 3 years of the manifestation of the injury. But what 8-year-old child understands his or her legal rights? And what about diseases that have long incubation periods? For example, what happens if due to a negligent blood transfusion at age 3, a 13-year-old child develops HIV or AIDS? Does the medical negligence that caused them the injury not matter because too many years went by before they got sick?

What I am concerned about is that the HEALTH Act will deny these victims their day in court. And I am also concerned that such an unduly restrictive statute of limitations could protect pedophiles. Mr. Chairman, I share your priority of doing everything we can to hold pedophiles accountable to every letter of the law, whether that is a criminal case or a civil case.

But Delaware has already gone down this road and the result was not pretty. Did you know, Mr. Chairman and my colleagues, that in Lewes, Delaware, a beautiful iconic little city along the Delaware

shore, that a pediatrician, a Dr. Earl Bradley, sexually assaulted 103 children over the course of his long medical career. One little girl was only 3 months old.

Law enforcement had filed a 481-count indictment against this trusted pediatrician after discovering videotapes in his residence that showed him raping or sexually abusing over 100 children between 1998 and 2010. Many of these children appeared to lose consciousness during the sexual assaults that he recorded on video.

Now, Mr. Chairman, I have two daughters and this case sends a chill down my spine. One Delaware mother who had sent both of her daughters to Dr. Bradley said it best. She said our worst fears have been realized. He is pure evil. No one with a conscience could do this, and she is right.

Now, why do I bring this up? I bring up what happened in Delaware because many of these victims had their cases thrown out of court because up until that point Delaware had a restrictive statute of limitations similar to the statute of limitations proposed in the HEALTH Act. Their cases had been thrown out because too much time had elapsed between the offense and the lawsuit even though many of the victims were unconscious when this happened.

Mr. Chairman, I don't want to see us go down that road. The State of Delaware had to go back and fix their law so that civil actions based on sexual abuse of a patient by a health care provider may be filed at any time after the commission of the abuse.

Now, let's be clear. This bill, H.R. 5, will preempt that

carefully crafted Delaware law that gives these child victims of sexual assault access to justice. So it will just wipe out that Delaware law and leave those children twisting in the wind again.

Restricting the rights of children will not reduce the number of frivolous lawsuits. It merely limits the rights of children who are suffering due to preventable medical errors or intentional assaults like the 10-year-old who developed HIV or the 103 little girls in Delaware who may not even have been aware that they were being assaulted by their trusted pediatrician.

Let's not go down the road that Delaware did only to realize that we have a moral obligation to turn back. The best way to cut down on malpractice lawsuits is to improve patient safety and care, not arbitrarily limit the rights of those who have been injured, particularly children who have been grievously injured.

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

Chairman Smith. Thank you, Ms. Wasserman Schultz.

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

Mr. Franks. Thank you, Mr. Chairman.

Mr. Chairman, first, I would like to remind everyone for the third or fourth time here that this bill does not limit any prosecution for any criminal act. If someone is raped or assaulted, there is nothing that this bill does to limit that issue.

Ms. Wasserman Schultz. Will the gentleman yield?

Mr. Franks. I will when I finish here.

Ms. Wasserman Schultz. Sure, thank you.

Mr. Franks. I was trying to avoid this, Mr. Chairman, but I am always kind of amazed here because I know that the people who are offering these amendments genuinely want to protect children. I know that. I believe that. But it is always amazing to me that when we talk about protecting the rights of children or not limiting the rights of children or protecting the helpless, that we always leave out the unborn. We always leave them out. It just sort of vitiates the whole discussion. I don't know what to do with that, so I will probably just move on, Mr. Chairman.

But the National Commission on Fiscal Responsibility and Reform was created by President Obama and it specifically recommended to Congress to have a reasonable statute of limitations that this amendment would strike.

Statutes of limitations define the time period following an injury in which a suit must be brought in order to protect defendants from the prejudice of stale claims by requiring trials while the best evidence is still available, while at the same time encouraging patients to have themselves checked for injuries, or their parents, that may have resulted from negligent medical care sooner rather than later. Now the best way to do that to allow every patient his or her day in court while preventing prejudice to health care providers is to codify a reasonable statute of limitations, which the HEALTH Act tries to do.

Mr. Chairman, the HEALTH Act provides a medical malpractice lawsuit must be filed no later than 3 years after the manifestation

of an injury or within 1 year after the claimant discovers or reasonably should have discovered the injury, whichever occurs first.

Further, the statute of limitations is extended upon proof of fraud, intentional concealment, or the presence of a foreign object in the body that has no therapeutic effect.

The HEALTH Act also makes an exception for minors under the age of 6, extending the time within which the lawsuit must be filed to the longer of 3 years from the manifestation. That is the manifestation of the injury or the date on which the minors reach the age of 18.

The manifestation I think in the age case, Mr. Chairman, there would have to be some manifestation or symptom. The provisions are based on California's micro law.

The HEALTH Act's statute of limitations are designed to protect, for example, OB/GYNs who are particularly hard hit by high medical malpractice insurance rates because they have to worry about being sued a decade or more after they delivered a baby.

Mr. Chairman, I am going to go ahead and yield to the gentlelady from Florida, Ms. Wasserman Schultz, at this point.

Ms. Wasserman Schultz. Thank you, Mr. Franks. Part of the statute you cite where you say you are making sure that criminal liability can still be pursued is not relevant in the Delaware case because it still preempts civil cases from being pursued, and those are the kinds of lawsuits that are filed in Delaware. In fact the statute says, the proposed statute says, such term does not include a claim or action which is based on criminal liability. And this is

not criminal liability we are talking about. The Delaware cases are civil.

I yield back.

Mr. Johnson. Would the gentleman yield?

Mr. Franks. Mr. Chairman, I will yield.

Mr. Johnson. Thank you, Mr. Franks, and I do know of your sincere concern and regard for the lives of the unborn, and I would not question it whatsoever. But I do find it ironic that you would have such callous and cold disregard for the value of the life of an infant injured due to the negligence of a health care provider, so callous that you would value the life of such a child at \$250,000, an arbitrary cap. I find that quite ironic.

Mr. Franks. Mr. Chairman, if I could reclaim my time, "ironic" would be the wrong word. "Erroneous" would be a better word.

The reality is that those of us who care about life certainly put the highest price and consider it a priceless commodity. We consider it the most priceless thing on the planet. We also believe that this legislation does what it can to try to create a system that reaches more and helps more innocent life than the way it is now.

But I would just suggest if the gentleman is inclined to work with me on some legislation that will protect both the unborn and the born from criminal or violent acts, then I think we could get together on this.

With that, I yield back the balance of my time.

Chairman Smith. Thank you, Mr. Franks.

Does any other member wish to be recognized? If not, the question is on the amendment. Those in favor say aye. Opposed say no. In the opinion of the chair, the noes have it, and the amendment is not agreed to.

Ms. Wasserman Schultz. Mr. Chairman, I ask for a recorded vote.

Chairman Smith. The gentlewoman asks for a recorded vote. The clerk will call the roll.

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith, no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

Mr. Coble. No.

The Clerk. Mr. Coble, no.

Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly, no.

Mr. Goodlatte?

[No response.]

The Clerk. 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.

[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, no.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan, no.

Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe, no.

Mr. Chaffetz?

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz, no.

Mr. Reed?

Mr. Reed. No.

The Clerk. Mr. Reed, no.

Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, no.

Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino, no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy, no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross, no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams, no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle, no.

Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers, aye.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler, aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott, aye.

Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt, aye.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren, aye.

Ms. Jackson Lee?

[No response.]

The Clerk. Ms. Waters?

Ms. Waters. Aye.

The Clerk. Ms. Waters, aye.

Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen, aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson, aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi, aye.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley, aye.

Ms. Chu?

[No response.]

The Clerk. Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch, aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez, aye.

Ms. Wasserman Schultz.

Ms. Wasserman Schultz. Aye.

The Clerk. Ms. Wasserman Schultz, aye.

Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes, no.

Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte, no.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson-Lee, aye.

Chairman Smith. Does any other member wish to be recorded? If not, the clerk will report.

Mr. Gohmert. Mr. Chairman?

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

Mr. Gohmert. No.

The Clerk. Mr. Gohmert, no.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 14 members voted aye and 18 members voted nay.

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

Mr. Nadler. Mr. Chairman?

Chairman Smith. For what purpose does the gentleman of New York wish to be recognized?

Mr. Nadler. Mr. Chairman, there is an amendment that I offered last week that I would like to bring up at some point. When is the appropriate time?

Chairman Smith. That is correct, and we will get to it momentarily, but I would like to stay in order if I could. That is, if the gentleman from Tennessee, Mr. Cohen, is prepared to offer an amendment we will go to his amendment, and then I would like to take up the Scott amendments and then go to your amendment.

Mr. Nadler. Thank you.

RPTS BINGHAM

DCMN ROSEN

[4:00 p.m.]

Chairman Smith. Gentleman from Tennessee, does the gentleman wish to be recognized to offer an amendment?

Mr. Cohen. Yes, sir thank you. I do have an amendment. I appreciate it Mr. Chairman. The amendment I have would exempt from the caps on noneconomic --

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to H.R. 5 offered by Mr. Cohen.

Page 15, insert after line 18 the following and redesignate succeeding sections accordingly.

[The information follows:]

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

Chairman Smith. Without objection the amendment will be considered as read. The gentleman from Tennessee, Mr. Cohen, is recognized to explain his amendment.

Mr. Cohen. Thank you, sir. The amendment would exempt from the caps on noneconomic and punitive damages any malpractice cases brought because of a wrong site or a wrong patient surgery, you picked the wrong organ, the wrong limb or the wrong person, and instances where a foreign object is left in a patient during surgery. Let's think about it. You go in, you have got a problem with your right leg, they do something to your left leg. You have a problem with your right kidney, they take out your left kidney. You go in and you got a problem with your tonsils and they take out somebody else's tonsils, pretty major mistakes.

You don't have to be a doctor to know that these cases constitute clear malpractice, serious, serious errors, blunders. These are never cases, they should never happen. It is not an issue about gray areas. It is black and white. And the consequences for patients that suffer at the hands of these horrible mistakes are devastating.

A few examples, May 2002, Linda MacDougal, State of Wisconsin, is diagnosed with an aggressive form of cancer. Doctors recommended radical treatment, including the removal of both breasts. But days after the surgery a doctor revealed that McDougal's test results had been switched with another woman's. McDougal never had cancer. But she suffered unnecessary surgery when her biopsy slide was confused with another patient's.

Additionally, the other patient, who was suffering from an

aggressive form of cancer, had not been identified, needed to be and needed to be treated quickly and wasn't. It is not an isolated incident. Rhode Island State regulators took the unusual step of requiring video cameras in all operating rooms at Rhode Island Hospital after a spate of errors. Among the errors they detected once they had them in there was a case where a child went for eye surgery and the surgeons confusing the child with another one took the tonsils out. Another child had a cleft palate surgery on the wrong side of the mouth.

Another patient went in for neurosurgery, and doctors drilled holes on the wrong side of the head. These were all on tape in Rhode Island.

According to the Joint Commission Center For Transforming Health Care, which accredits hospitals, as many as 40 cases of wrong site or wrong patient surgery are reported every week -- 40 cases every week. That is over 2,000 a year.

In addition, the Journal of American Medicine reports that there are 1,500 incidents of surgical tools left in patients every year. For example, this handy little device, which is called the Glassman Viscera Retainer, better known in medical parlance as "the Fish." It is used by surgeons to reduce the risk of nicks and punctures when closing up a body. It is a especially well-designed because there is a ring here and it is on the outside of the body and it is meant to be left outside during surgery so that the doctor will remember to remove it. Pretty simple.

Well, not so simple when Leonard Belushi of New Jersey was having

surgery. His surgeons did not follow the protocol. They left the Fish inside him after surgery. He needed additional surgery and intense psychotherapy as a result of this mistake, having a fish left in him. Think about what you would feel like if somebody left a fish in you.

Mr. Chairman, the point of this amendment is not to attack doctors. The fact is, my father was a physician, and I was proud of his profession. My uncle was a physician. I have got a cousin who is a physician. I have had a lot of physician friends and still have them. And I have high regard for the practice of medicine.

But there is a small percentage of doctors who commit the lion's share of malpractice. And this amendment is necessary to ensure that patients who suffer the most extreme forms of malpractice are not limited in the recovery by these artificially low caps contained in these bills.

However, how can you tell Linda McDougal, Leonard Belushi, or the thousands of other victims of this obvious extreme malpractice that their pain and suffering is not going to be worth any more than \$250,000, regardless if their age is 21 or if their age is 83, regardless if they are an athlete who needs their limb, or if they are an office worker who may like their limb but doesn't need it to earn their profession. They are the same, \$250,000.

How much of a deterrent will it be to doctors if they know the most they could be forced to pay for punitive damages for such extreme malpractice is \$250,000?

And everybody knows that punitive damages are a deterrent.

Attorneys who practice plaintiff's law and bring actions where there are punitive damage awards are private attorneys generals. And because of the threat of punitive damages and the courts award punitive damages to punish, they act in a capacity, a quasi government capacity, because it is for the public good to see that negligent, extremely negligent conduct is not allowed or doesn't occur in the future because people will fear for it.

The Pinto case, the late Jim Neal, a great lawyer, got a lot of punitive damages in that Ford Pinto case. It saved a lot of people's lives and the punitive damages was to deter Ford or any other manufacturer from creating defective cars that caused people to lose their lives and nobody on this panel I think or very few people indeed and I seriously doubt the chairman with his great legal background and his legal acumen would believe that the punitive damages in such a case or other cases like that aren't good for the society in deterring outrageous conduct that cause people to lose their lives.

But we are not suggesting that punitive damages should be eliminated in all cases, only medical malpractice. But what could be more serious than a medical malpractice case where you have the wrong limb removed or the wrong organ removed or you have a fish left in your body? These are the most egregious types torts and take these in particular and limit punitive damages and limit the potentiality of that being a deterrent to extremely negligent conduct that causes the loss of life or extreme injury is wrong.

Wrong site, wrong patient surgery and cases of foreign objects

left in patients cause real pain and suffering. To limit patients' recovery in this way is unfair to the victims and would do nothing to ensure that these horrible tragedies do not occur in the future.

I would urge the adoption of the amendment.

And as a personal reflection, which is not particularly germane to this amendment, I will mention, as we have this hearing, one of my very, very, very dearest friends took me outside of a restaurant recently in tears to tell me that his wife had brain cancer, that they had been to two doctors and both had said it was nothing. And the third doctor told him it was brain cancer, and the surgery is going to be this week. To think that there is a cap of \$250,000 and both doctors missed it is shocking.

Thank you, Mr. Chairman.

Chairman Smith. Thank you, Mr. Cohen.

The gentleman from Arizona, Mr. Franks.

Mr. Franks. Thank you, Mr. Chairman.

Mr. Chairman, I would respectfully oppose this amendment for a number of reasons.

First of all, the amendment goes to some very particular issues that I am not sure can be said to actually damage, they may be more obvious in the mistakes that are made but I am not sure that they can argued to be more damaging to the patient than maybe a lesser mistake that causes a greater tragedy.

The reality is that the limits that are talked about are often not the lion's share of awards that are given. I will just give a couple

of examples.

The following are some recent very large award victims to victims of medical malpractice under California's legal reforms which cap noneconomic damages to 250,000 much like the present bill, but which do not cap quantifiable economic damages.

The Health Act is modeled on California's legal reform and these cases show that reasonable legal reform such as those in the Health Act still allow for very large, multi million dollar awards to deserving victims, August 10 in Contra Costa County, California, \$5.5 million; February 2010 16.5 million; February --

Mr. Johnson. Will the gentleman yield?

Mr. Franks. I will when I am finished.

February 2010, 12 million; November 2009, 5 million; October 2009, 5.75 million; September 2009, 7.3 million; January 2009, 16 million; July 2007, Los Angeles County 96 million, unless that is a typo, that is a pretty good big award.

Mr. Chairman, one of the things, I think, we overlook here, I couldn't help but to just on a personal note here that Mr. Cohen had mentioned about a cleft being operated on the wrong side. It fascinates me, and I was born with cleft and I don't doubt the gentleman at all, but it is hard for me to understand how a doctor can sew up the wrong side of a cleft when there is usually only one side to sew up. But it is an issue.

But let me just say to you that one of the things that occurs to me, I had the privilege of being operated on 11 times before I was

9 years old, mostly because of that issue. And it doesn't escape me that if there hasn't been qualified, good doctors available to do that, I might not be speaking to you in such erudite, clear tones today. And it is important to keep in mind the big picture here. And that is, that the best way to have the best health care for people, the best surgeries, the most innovative procedures, is to have many doctors that are highly educated, highly committed, competing with each other for the patient's attention. And I think that we overlook that sometimes we when we take out, or ameliorate the reward mechanism of some doctors -- and most of them are there because they care about humanity -- we can actually reduce the effectiveness of doctors and actually reduce the availability of doctors.

In fact, in one study, Mr. Chairman, the best evidence about medical injuries comes from two large studies of hospital records which concluded that under 1 percent of hospital charts showed negligent medical injury. Nevertheless -- and part of it is because the unlimited lawsuits make it where sometimes doctors don't want to be open about what is happening. The litigations in the reforms in the Health Act will reduce the incidents of medical malpractice because the threat of potentially infinite liability in an unregulated tort system prevents doctors from discussing medical errors and looking for ways to improve the delivery of health care. The Health Act would largely dispel that fear and allow doctors to freely suggest improvements in medical care.

The Medical Journal, Annals of Medicine, will detail reports of

medical errors, as it has been reported, creating, "creating a series of articles on medical mistakes was the idea of Dr. Robert Wachter, associate chairman of the Department of Medicine at the University of California at San Francisco. The series was inspired in part of by a 1999 report by the Institute of Medicine which found that mistakes in hospitals kill 44,000 to 98,000 patients a year.

In an editorial about the new series, Dr. Wachter and his colleagues wrote that the medical profession, for reasons that include liability issues, was not harnessing the full power of errors to teach and thereby reduce errors."

Now, I know that it is a complicated subject, Mr. Chairman, but the bottom line is that we are trying to allow doctors to be able to learn from their mistakes and teach their subordinates and teach doctors coming into the profession the best procedures possible. And if they are so terrified of everything that they do, not only will they disappear from the profession, but they won't be honest or sometimes can't even afford to be honest about what actually happens.

So with that, Mr. Chairman, unless somebody wants me to yield, I will yield back.

Mr. Johnson. Yes I do, I would. Can I ask you whether or not those are verdict reports or whether or not those are appellate court decisions on those jury verdicts that you are referring to?

Mr. Franks. Mr. Johnson, I think these are final awards, but I would be willing to stand corrected if the staff has some other information.

Mr. Johnson. I suspect that they are not final awards after an appellate court has rendered a decision, and many decisions rendered by the appellate courts are on the issue of whether or not the damages that have been awarded are, in fact, justified under the law.

So I have severe concerns, serious concerns about the cases that you all are citing.

Chairman Smith. The gentleman's time has expired. Does any other member wish to be heard on this amendment?

The gentleman from Tennessee has already spoken on this amendment once. The gentleman from North Carolina is recognized.

Mr. Watt. I yield to the gentleman from Tennessee.

Mr. Cohen. I would just like to ask my former ranking member at a time far, far away in a place not too far away, Mr. Franks, a question. Would you be in favor of abolishing, or excuse me, limiting punitive damages to a standard amount in all tort cases of any sort?

Mr. Franks. You know, I guess it is hard for me to take in the expanse of all the possibilities, I think that under this, without speaking any States' rights issues or anything like that, that under this protocol that if the pain and suffering aspect of it, the punitive aspect of it, were limited to a specific amount, I think that if the other elements of this legislation were left in place, that we would probably have a system that would be more responsive and more capable of creating less errors and giving better care than is the case now.

So I would think that in theory, it is probably not a bad idea.

Chairman Smith. Does the gentleman from North Carolina yield

back his time?

Mr. Watt. If these two gentlemen are finished having their dialogue, I will yield back, I will yield back to Mr. Cohen.

Mr. Cohen. I yield back to the gentleman from the State that was originally Tennessee and gave us birth from the chairman whose State we saved and gave birth to.

Mr. Watt. In that case, I will yield back.

Chairman Smith. Thank you, Mr. Watt. The question is on the amendment.

All those in favor, signify by saying aye.

Aye.

Opposed, no.

No.

In the opinion of the chair, the noes have it and the amendment is not agreed to. We will now go to --

Mr. Cohen. Mr. Chairman.

Chairman Smith. The gentleman from Tennessee.

Mr. Cohen. Aye, nays roll call.

Chairman Smith. The clerk will call the roll.

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith, no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

Mr. Coble. No.

The Clerk. Mr. Coble, no.

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?

Mr. Issa. No.

The Clerk. Mr. Issa, no.

Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes, no.

Mr. King?

[No response.]

The Clerk. Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks, no.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan, no.

Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz, no.

Mr. Reed?

Mr. Reed. No.

The Clerk. Mr. Reed, no.

Mr. Griffin?

[No response.]

The Clerk. Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino, no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy, no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross, no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams, no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle, no.

Mr. Conyers?

[No response.]

The Clerk. Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler, aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott, aye.

Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt, aye.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren, aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee, aye.

Ms. Waters?

Ms. Waters. Aye.

The Clerk. Ms. Waters, aye.

Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen, aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson, aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi, aye.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley, aye.

Ms. Chu?

[No response.]

The Clerk. Mr. Deutch.

Mr. Deutch. Aye.

The Clerk. Mr. Deutch, aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez, aye.

Ms. Wasserman Schultz?

Ms. Wasserman Schultz. Aye.

The Clerk. Ms. Wasserman Schultz, aye.

Chairman Smith. Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers, aye.

Chairman Smith. Ms. Waters?

Ms. Waters. Aye.

The Clerk. Ms. Waters, aye.

Chairman Smith. Mr. Gohmert?

Mr. Gohmert. No.

The Clerk. Mr. Gohmert, no.

Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe, no.

Chairman Smith. Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, no.

Chairman Smith. Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly, no.

Chairman Smith. Are there any other members who wish to record their vote? If not, the clerk will report.

The Clerk. Mr. Chairman, 14 members responded Aye. 19 members responded nay.

Chairman Smith. The majority voted against the amendment. The amendment is not agreed to. And the gentleman from Virginia, Mr. Scott, is recognized to offer an amendment.

And if I may suggest, Mr. Scott, would you start off with amendment Number 14?

The Clerk. Amendment to H.R. 5 offered by Mr. --

Chairman Smith. The clerk will suspend. Is that all right with the gentleman from Virginia if we start off with amendment 14?

Mr. Scott. Yes.

Chairman Smith. The clerk will report.

The Clerk. Amendment to H.R. 5 offered by Mr. Scott of Virginia.

[The information follows:]

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

Chairman Smith. Without objection, the amendment will be considered as read. The gentleman from Virginia will be recognized to explain amendment Number 14.

Mr. Scott. Thank you. Mr. Chairman, I would like to begin with an observation that one legislative strategy that is frequently used is to cite a problem, then offer legislation without any meaningful explanation of how the legislation actually solves the problem, but the passage of the bill is often achieved because people believe that the problem needs to be solved, even when the legislation fails to solve the problem, the goal of passage is achieved.

As I see it, the three problems have been articulated. You have got defensive medicine, high malpractice premiums and frivolous lawsuits. The provisions in this bill will not eliminate lawsuits so there is no expectation that defensive medicine will be affected. On premiums, the States with the provisions of this bill, there is no pattern of the effect on premiums has been found; and on frivolous lawsuits, the Institute of Medicine has suggested that 100,000 deaths are caused each year due to medical errors, and only 5,000 medical malpractice wrongful death lawsuits. So even if the bill is passed, the problem will not be solved.

In that light, Mr. Chairman, we consider the collateral source rule. This amendment would strike the provision affecting the collateral source rule and ensure that the rule will remain law where it presently exists. The collateral source rule prevents a wrongdoer from reducing the amount of damages they must pay to a victim by the

amount the victim receives --

Chairman Smith. Would the gentleman from Virginia yield?

Mr. Scott. I will yield.

Chairman Smith. I would like to recommend that the committee accept this amendment. At its best, it improves the bill, at its worst it does no harm, so if the gentleman will yield back his time, we will ask for a vote on the amendment.

And let me say also, this is an advantage of our being able to see the amendments ahead of time, we can evaluate them and perhaps find some amendments that are acceptable to both sides. Will the gentleman yield back his time?

Mr. Scott. I yield back.

Chairman Smith. All those in favor, signify by saying aye.

Aye.

Opposed, no.

No.

The amendment is agreed to and Mr. Scott is recognized for the purpose of offering another amendment.

Mr. Scott. Thank you, Mr. Chairman. I think we are on a roll and just --

Chairman Smith. Well, I wouldn't go that far.

Mr. Scott. Mr. Chairman, this amendment would restore --

Chairman Smith. The clerk will report the amendment. This is amendment Number 13.

The Clerk. Amendment to H.R. 5 offered by Mr. Scott of Virginia.

Page 6, beginning --

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

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mr. Scott. Mr. Chairman, this amendment would restore joint and several liability in States where it still exists, and thereby ensure that injured patient are fully compensated for their injuries. Joint and several liability is a common-law principle that enables an injured patient to seek compensation from any or all parties responsible for the patient's injuries.

Joint liability forces all of multiple defendants, such as a negligent surgical team or negligent hospital to be jointly responsible for the total damages, and if they want, they can apportion fault among themselves, but the process does not burden the injured patient with the requirement of assigning proportional fault. This Health Act creates a bizarre and impossible standard for a patient by eliminating joint and several liability.

It requires the patient demonstrate each person's proportional responsibility. This is often impossible for the plaintiff because frequently, all the plaintiff knows is he woke up as a victim of malpractice. Why should he be required to find out what each and everybody did, especially when everybody is denying liability?

This is an unfair burden on the patient as well as unnecessary. Health care providers already can and do agree in advance on how to apportion responsibility in cases of malpractice, they provide insurance, they pay premiums, and they even set fees accordingly based on that allocation.

If there is a clear case of malpractice, one insurance company will pay, and if necessary, insurance companies can argue between

themselves as to who will pay what.

But this bill essentially requires separate lawsuits against each defendant, each requiring a finding for each defendant of a duty of care, a breach of that duty, a proximate cause, a finding of damages and then a determination of what part of damages are attributable to which malpractice. Each case requires an expert witness, depositions, and the full expense of complicated litigation. Another provision in the bill, the one limiting attorneys fees seeks to maximize percentage of recovery which the plaintiff actually receives. But here, the cost of the additional expert witnesses and the depositions come right out of the plaintiff's pocket, not reimbursed by any of the defendants.

Further, this provision makes settlement virtually impossible. If two defendants seem equally culpable, you can't risk settlement for one for half of the anticipated damages, because the other might be ultimately found to be only 25 percent responsible. There is no excuse for creating this kind of quagmire on someone, especially an injured patient. There is also no excuse for what I assume is an unanticipated and unintended consequence, and that is, many professionals who are rarely sued, like nurses, will be sued. If a nurse hands a surgeon the wrong instrument and the patient's injury results, the nurse must be sued for her portion or his or her portion of the damages.

We will therefore see premiums for nurses and other people that are rarely sued skyrocket. And furthermore, because more defendants will be on the hook in each case with additional defendant costs, others will see their premiums increase.

What is most disturbing about this bill is it eliminates joint and several liability for all damages, including economic damages. By doing this, H.R. 5 is more extreme than most State's laws, economic loss compensates injured patients for their out-of-pocket expenses, such as hospitals, doctor bills and lost wages, and even though the proponents of H.R. 4, not even California eliminates joint and several liability for economic damages.

And this provision in the underlying bill will not reduce the total amount the plaintiff is entitled to. It just increases expenses and imposes procedural barriers making it more difficult to achieve the recovery for which the plaintiff is entitled. So it will do nothing to reduce defensive medicine. It increases expenses for defendants so it may actually increase malpractice premiums, and does nothing to target frivolous lawsuits.

Now, it may cause so much confusion that all lawsuits are reduced, but it does nothing to target those which are frivolous.

Now Mr. Chairman over centuries, each State has balanced judicial procedures between plaintiffs and defendants. Some provide longer, some shorter statutes of limitation. Some have large, some small, some no caps on damages. Some deny recoveries in cases of contributory negligence, others allow recovery based on comparative negligence. Most have joint and several liability, a few do not. But the interests of the plaintiffs and the defendants have been balanced over the years in each State. We should not override centuries of State level balancing of these interests by preempting some parts of tort law with

this Federal bill.

Now, Mr. Chairman, I would hope that we would not abolish joint and several liability, and I would hope, therefore, that we would adopt this amendment. I yield back.

Chairman Smith. Thank you Mr. Scott.

The gentleman from Arizona, Mr. Franks.

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

Mr. Chairman, this is a fundamentally unjust amendment in my judgment because if there is anything that a lot of us would hold to be true is that people should not be responsible for something that they did not do. Otherwise, those seeking for even just recovery of damages could just pick somebody in the phonebook to sue, and it is just fundamentally unfair.

The amendment that Mr. Scott offers should be opposed because it would eliminate the Health Care Act or the Health Act's fair share rule that provides a defendant should pay only for the damages they cause. The alternative is unfair because it puts full responsibility on those who may have only marginally been at fault, or perhaps not at fault to any degree hardly at all. Respect for the law is fostered when it is fair and just punishments are proportional to the wrongs committed. And as Thomas Jefferson noted, he said if punishment were only proportional to the injury, men would feel it their inclination as well as their duty to see that the laws were observed.

Mr. Chairman joint and several liability, although it is motivated, I suppose, by a desire to ensure that plaintiffs are made

whole, leads to a search by plaintiffs' attorneys for deep pockets and to a proliferation of lawsuits against those who are minimally liable or not liable at all.

The Health Act, by providing for a share fair rule apportions damages in proportion to a defendant's degree of fault prevents unjust situations in which hospitals can be forced to pay for all damages resulting from an injury, even when the hospital is minimally at fault.

Let me just give an example. Say a drug dealer staggers into an emergency room with a gunshot wound after a deal dealing drugs goes bad. The surgeon works on him, does the best he possibly can, but it is not perfect, and the drug dealer sues him. The jury finds the drug dealer 99 percent responsible for his own injuries. But it also finds the hospital 1 percent responsible because the physician was fatigued after working too long. But today, the hospital can be made to pay 100 percent of the damages because the drug dealer is without means.

Now, Mr. Chairman, that is unfair. And even Senator Lieberman put it this way: He said "The joint and several liability rule now has grown to a point where what it really means is that somebody who is not liable, or liable very little, if they happen to have deep pockets, they can be held fully liable." That is the wrong message to send. If you hurt somebody, you should have to pay. If you do not, you should not have to pay.

Mr. Chairman, ultimately, the second thing that this amendment does beyond being an unjust amendment is that it keeps the focus on just the lawsuit rather than correcting the problem. If those who had

hardly any liability or hardly any fault are the ones that pay, then those who are at fault don't pay ultimately, and then the real fault is not addressed clearly.

So with that, I would yield back and hope that the amendment would be opposed.

Chairman Smith. Thank you, Mr. Franks. Does anyone else wish to be recognized? The gentleman from Illinois, Mr. Quigley.

Mr. Quigley. Thank you, Mr. Chairman.

And briefly, I salute the gentleman from Arizona being able to capture the drug dealer in this example to make it the most egregious thing possible, but might I suggest that in the near future, we try to incorporate an illegal immigrant seeking an abortion at Gitmo. Then we can capture all of the evil things in the world and make those arguments better.

I get the idea that what we are treating to do here is something that is fundamentally fair. And I went to law school at night which means 4 years, and the irony is, my constitutional law professor, after 2 years, put the chalk down and said, in the end, that is what this is all about. Don't take yourself too seriously after just law school. Whatever you do in your career, think about what is sound and fair to everyone. So I think it is just a question of which side you are looking at. But I do appreciate the reference to the drug dealer. I would yield.

Mr. Franks. Mr. Chairman, would the gentleman yield?

Mr. Quigley. I will in order, it is just that the gentleman

behind me asked first.

Mr. Watt. I appreciate the gentleman yielding. Actually, this is an interesting discussion we are having here because under North Carolina law, now, since we have -- it is a contributory negligence State, under your drug dealer situation, the doctor would have no liability. So I am encouraged that you now have postured a scenario that gives the doctor some comparative liability in that situation. Because in North Carolina, we have no recovery there.

The problem I have here is, this bill in some respects, actually, I keep telling you all that, liberalizes North Carolina law. I don't know what standard of care you are going to use. There is no national standard. The standard of care in tort cases has always been a local standard of care. I have no idea what the standard is going to be in this case. But you are wiping out some really bad -- we have been working to get rid of contributory negligence in North Carolina forever.

Mr. Quigley. Recapturing my time, Mr. Chairman, because time will be up soon, and I appreciate the gentleman's comments. I just want the gentleman from Arizona know that I do believe we are all speaking the same thing, it is a definition of fairness, and I meant this in a kidding way, but I do respect that you believe what you are talking about in a most sincere way.

And Mr. Chairman, I would yield to the gentleman from Arizona.

Mr. Franks. Mr. Chairman, he was so nice to me, I am not going to yield back.

Mr. Quigley. If I could then recapture my time, I would just then yield to Ms. Lofgren.

Ms. Lofgren. Just a brief comment, and I thank the gentleman for yielding.

I think Mr. Watt's comment is really very pertinent, because it shows why this entire exercise is wrong, that we could have a hearing this morning where the majority argued that we have no right as a Federal Government to intrude into State law, and then in the afternoon, mark up a bill that wipes out State law, is just stunning. And I would hope that we would just reject this. I have never felt that tort law should be federalized in this way. And I had expected that the new majority would feel the same way. And I thank the gentleman for yielding and yield back to Mr. Quigley.

Mr. Quigley. Mr. Chairman, if I still have time I will yield to Mr. Scott.

Mr. Scott. Thank you. The part I expected the gentleman from Arizona to mention that the drug dealer was going to be arguing for lost drug profits as part of his lost wages. He left that out. But he also left out that Virginia, like North Carolina, has contributory negligence, not 99 percent at fault, but if the drug dealer was 1 percent at fault or any percent at fault, he would lose all recovery under the contributory negligence in Virginia.

But one thing, another thing that is left out was the effect on others, not just the physicians. What is going to happen to nurses and their malpractice premiums? Nurses probably pay a negligible

amount of malpractice premiums. Now they will have to be sued on every case, because they will have some portion of liability, and nothing has been said about what is going to happen to their malpractice premiums if you eliminate joint and several liability where the case traditionally would just go against the physician, and you get all your recovery there, the insurance companies want contribution, they can get it. What is going to happen to all the others that pay negligible amounts of malpractice premiums now?

The Chairman. Would the gentleman yield?

Mr. Quigley. My time is up.

Chairman Smith. The gentleman's time has expired. The gentleman, without objection, is granted an additional minute.

Mr. Quigley. I would then yield.

Mr. Forbes. I would ask my friend from Virginia on contributory negligence if that is not an affirmative defense?

Mr. Watt. Not in North Carolina.

Mr. Scott. You have to make your allegation that the other side --

Mr. Forbes. Because this bill doesn't affect affirmative defenses, I think they can still be brought. The other thing --

Mr. Scott. You can bring a losing case that is true.

Mr. Forbes. And the other thing is if the gentleman has ever defended any of those cases, which I have from a number of hospitals, the reason the nurses are brought in, the reason the emergency room physicians are brought in is because you have joint and several

liability and they shotgun that approach and they bring everybody in, in hoping they are going to get that award with the deep pocket that they can pay. So I think it has the opposite of effect of what the gentleman is saying.

Mr. Scott. Would the gentleman yield?

Mr. Forbes. Sure.

Mr. Scott. Without joint and several liability you are obligated to bring everybody in because if someone is not at the table as you have 10 or 15 or 20 percent liability, unless they are at the table being sued and unless you have established the duty of care, a breach of duty of care, expert witnesses, depositions against each and every one, you may leave 10 or 20 up to 40 percent on the table.

Mr. Forbes. I absolutely disagree with the gentleman. And again, if you have tried any of those cases, one of the things you would know is the reason you have to bring them in is because if you don't bring them in with joint and several liability and you find out that they have any of that negligence, your case could be thrown out and you could lose.

So all I am saying to the gentleman is over and again, what you are going to find under the current law is that they are going to bring everybody in under the shotgun approach. I think this does just the opposite.

Mr. Scott. Will the gentleman yield?

Chairman Smith. The gentleman's time has expired.

The question is on the amendment.

All those in favor, signify by saying aye.

Aye.

Opposed, no.

No.

In the opinion of the Chair the "noes" have it, and the amendment is not agreed to. We will now go to Mr. Quigley. The gentleman from Virginia has asked for a recorded vote and the clerk will call the roll.

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith, no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly, no.

Mr. Goodlatte?

[No response.]

The Clerk. Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

Mr. Chabot. No.

The Clerk. Mr. Chabot, no.

Mr. Issa?

Mr. Issa. No.

The Clerk. Mr. Issa, no.

Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes, no.

Mr. King?

[No response.]

The Clerk. Mr. Franks?

[No response.]

The Clerk. Mr. Gohmert?

Mr. Gohmert. No.

The Clerk. Mr. Gohmert, no.

Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan, no.

Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe, no.

Mr. Chaffetz?

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz, no.

Mr. Reed?

Mr. Reed. No.

The Clerk. Mr. Reed, no.

Mr. Griffin?

[No response.]

The Clerk. Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino, no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy, no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross, no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams, no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle, no.

Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers, aye.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler, aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott, aye.

Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt, aye.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren, aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee, aye.

Ms. Waters?

Ms. Waters. Aye.

The Clerk. Ms. Waters, aye.

Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen, aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson, aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi, aye.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley, aye.

Ms. Chu?

Ms. Chu. Aye.

The Clerk. Ms. Chu, aye.

Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch, aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez, aye.

Ms. Wasserman Schultz?

[No response.]

Chairman Smith. Mr. Goodlatte?

Mr. Conyers. No.

The Clerk. Mr. Goodlatte, no.

Chairman Smith. Mr. Coble?

Mr. Coble. No.

The Clerk. Mr. Coble, no.

Chairman Smith. Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, no.

Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe, no.

Chairman Smith. Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, no.

Chairman Smith. Do any other members wish to record their votes?

If not the clerk --

Mr. Franks. Mr. Chairman, I vote no.

The Clerk. Mr. Franks votes no.

Chairman Smith. Mr. King?

Mr. King. No.

The Clerk. Mr. King votes no.

Chairman Smith. Clerk will report.

The Clerk. Mr. Chairman, 14 members responded Aye, 20 members responded nay.

Chairman Smith. Majority of them voted against the amendment. The amendment is not agreed to. And the gentleman from Illinois, Mr. Quigley, I believe, has an amendment and if so, he is recognized.

Mr. Quigley. Thank you, Mr. Chairman. If I might ask from a procedural point of view, I would respectfully ask unanimous consent to add Ms. Jackson Lee as a cosponsor to this amendment.

Chairman Smith. Without objection and the clerk will report the amendment.

[The information follows:]

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

The Clerk. Amendment to H.R. 45 offered by Mr. Quigley and Ms. Jackson Lee.

Page 11, beginning on line 18, strike subsection C.

Chairman Smith. The gentleman from Illinois is recognized to explain the amendment.

Mr. Quigley. Thank you, Mr. Chairman.

Mr. Chairman, the amendment before the committee would strike subsection C of section 7 which provides that no punitive damages shall be awarded for products that comply with FDA standards.

This amendment is necessary because as written, the bill completely immunizes manufacturers of drugs and devices that are approved by the FDA from punitive damages.

More egregiously, the bill also extends immunity to the manufacturers of drugs and devices that are not FDA approved yet are "generally recognized as safe and effective." This is largely a vague, nonscientific standard.

Moreover, although Federal regulators approved the design of product before it enters the manufacturing process, they do not approve the manufacturing of each batch of the product. The manufacturer of a defective product is nevertheless exempt from punitive damages under the bill.

Government safety standards establish an essential but minimal level of protection for the public. Unfortunately FDA approval of a drug does not mean that the drug is failsafe. There are countless illustrations of this fact including Reglan, a diabetes drug that gave

long-term use patients neurological disorders, and high absorbancy tampons linked to toxic shock syndrome, just to name two.

Punitive damages are rarely awarded and are reserved for the worst of the worst cases. But the availability of punitive damage is essential to incentivize to manufacturers to take product safety seriously. As written, there can be no doubt that H.R. 5 provides a significance benefit to the pharmaceutical industry to the detriments of consumers.

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

Chairman Smith. Thank you, Mr. Quigley.

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

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

Mr. Chairman, this amendment should also be opposed because, first of all, litigation is threatening the viability of the lifesaving drug industry, and this amendment would weaken the provisions in the bill providing for a safe harbor from punitive damages and I emphasize punitive damages for FDA approved products and repealing this entire provision, including subsection 2, would leave physicians potentially liable for damages in cases where they properly prescribed a medically necessary drug or device in compliance with all applicable laws and regulations. And it is inherently unjust to allow lawsuits against a physician for complying with all the relevant requirements of the law.

Now it is important to understand, Mr. Chairman, the provision that we have in the Health Act here is self-evidently fair. If someone

claims that their injury was caused by a particular ingredients in a drug when the FDA has specifically approved that ingredients as safe, how could a drug manufacturer possibly be found guilty of a malicious conduct, when all they did was to sell a product approved as safe by the gigantic and comprehensive apparatus of the FDA?

In other words, Mr. Chairman, if someone goes to the trouble to try to comply with all the complicated mechanisms of the FDA, it is obvious that there is no malicious deliberate attempt there to defraud anyone or to hurt anyone, and therefore, the punitive damages in that case are waived under the bill. And I just think it is inherently fair and I would hope that people would oppose the amendment.

Chairman Smith. Thank you, Mr. Franks. The gentlewoman from Texas, Ms. Jackson Lee is recognized.

Ms. Jackson Lee. First of all, I want to congratulate my good friend from Illinois. I am delighted to be able to join him on this amendment. And I believe that both of us, and I might speak for him, are interested in the pharmaceuticals doing the excellent work that they have been known to do and certainly knowing the needs of Americans with cutting-edge research and science, we want to see this work protected. We want to see pharmaceuticals advancing. In fact, as a member of the intellectual property committee, it is an issue of great concern.

But I think my good friend, Mr. Franks, missed the interpretation of this amendment.

What we are suggesting that the FDA cannot bar distributing

defective products or negligently manufacturing after you have received the FDA approval. This amendment would hold all manufacturers accountable for negligently manufacturing, this is after the fact, they have an FDA approval, but unfortunately without oversight, something happens in the processing or distributing a defective product regardless if the product has been approved by the FDA.

As the cases above illustrate, without the threat of full liability, especially liability for punitive damages, there are no financial disincentives.

The case is not that punitive damages are a given, but that they are not exempt from punitive damages. Everyone knows who has tried a case, sometimes you win punitive damages sometimes you don't. It is based upon the factual case.

We want to simply say that you should not prohibit this provision. For example, as my good friend and colleague indicated, a number of drugs have been found to be harmful. Vioxx, for example, withdrawn from the market because it caused cardiovascular problems; Avandia for diabetes heavily restricted because it is linked to heart problems; Lipitor recalled twice in 2010 because of mold problems linked to gastrointestinal problems. I don't think the FDA would approve something with mold on it. Fen Phen, recalled because it caused cardiovascular problems.

So we are just simply saying, give us the opportunity to have that presented to the court and let the judge or the jury make the decision

whether or not punitive damages would be, if you will, eligible based upon the facts.

For example, just last Christmas pharmaceutical maker, GlaxoSmithKline, agreed to resolve a lawsuit over charges that the company knowingly manufactured and sold contaminated drugs including the heavily prescribed antidepressant Paxil. GSK was reportedly informed by their employees of the sub standard condition at one of the manufacturing plants, including bacteria-laden water used to produce the drug tablets, problems with sterility, manufacturing problems that allegedly resulted in drugs getting mixed up with other drugs and drugs of varying strengths showing up in mislabeled bottles.

Mr. Chairman, what is happening is that the defendant in this instance will go in and say, this was approved by the FDA. I have done everything right.

But here is the evidence. The evidence says that employees indicated a substandard conditions, contaminated water, problems with sterility. I would offer to say that this is not the interpretation of that my good friend Mr. Franks gave it. It is simply giving the opportunity to have punitive damages be considered during these egregious set of circumstances. There are a number of other cases, a tainted batch of Heparin that was sold. And I would argue, Mr. Chairman, that this is a viable amendment and would ask my colleagues to support it.

I yield back.

Chairman Smith. Thank you, Ms. Jackson Lee. Are there any

other members who wish to be heard? If not the question is on the amendment.

All those in favor, signify by saying aye.

Aye.

Opposed, no.

No.

Mr. Quigley. Mr. Chairman, I ask for a record vote.

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

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith, no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

Mr. Coble. No.

The Clerk. Mr. Coble, no.

Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly, 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, no.

Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes, no.

Mr. King?

[No response.]

The Clerk. Mr. Franks?

[No response.]

The Clerk. Mr. Gohmert?

Mr. Gohmert. No.

The Clerk. Mr. Gohmert, no.

Mr. Jordan?

[No response.]

The Clerk. Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe, no.

Mr. Chaffetz?

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz, no.

Mr. Reed?

Mr. Reed. No.

The Clerk. Mr. Reed, no.

Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, no.

Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino, no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy, no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross, no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams, no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle, no.

Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers, aye.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler, aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott, aye.

Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt, aye.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren, aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee, aye.

Ms. Waters?

Ms. Waters. Aye.

The Clerk. Ms. Waters, aye.

Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen, aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson, aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi, aye.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley, aye.

Ms. Chu?

Ms. Chu. Aye.

The Clerk. Ms. Chu, aye.

Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch, aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez, aye.

Ms. Wasserman Schultz?

[No response.]

Chairman Smith. Mr. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Mr. Lofgren, aye.

Chairman Smith. Mr. King?

Mr. King. No.

The Clerk. Mr. King, no.

Chairman Smith. Mr. Chabot?

Mr. Chabot. No.

The Clerk. Mr. Chabot, no.

Mr. Berman?

Mr. Berman. Aye.

The Clerk. Mr. Berman, aye.

Chairman Smith. Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks, no.

Chairman Smith. Ms. Wasserman Schultz, emerging from the Republican side of the committee room.

Ms. Wasserman Schultz. Aye.

Chairman Smith. Are there any other members who wish to record their vote? If not, the clerk will report.

The Clerk. Mr. Chairman, 16 members voted aye, 20 members voted no.

Chairman Smith. The majority having voted against the amendment the amendment is not agreed to. We will now go to the next amendment.

Mr. Johnson, the gentleman from Georgia, has two amendments. Do you wish to offer one or both?

Mr. Johnson. Mr. Chairman, I actually have three. The one that I withdrew last week I would like to rehabilitate, resuscitate and move forward with it.

Chairman Smith. Is that amendment Number 16?

Mr. Johnson. That was amendment Number 16.

Chairman Smith. The clerk will report.

Mr. Johnson, the amendment is not at the desk yet. Can we take

up 17 or 18 we will come back to 16.

Mr. Johnson. Okay Number 17 is at the desk.

Chairman Smith. The clerk will report the amendment.

The Clerk. Number 17?

Chairman Smith. 17.

[The information follows:]

\*\*\*\*\* INSERT 2-4 \*\*\*\*\*

The Clerk. Amendment to H.R. 5 offered by Mr. Johnson of Georgia, page 25 insert after line 7 the following. Notwithstanding Paragraph (1) or (2), this Act shall not preempt any applicable State constitutional provision.

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

Mr. Johnson. Thank you, Mr. Chairman. And before I neglect to do so, I would like to enter into the record a February 16th letter from the National Conference of State Legislatures, which states its opposition to the underlying legislation, H.R. 5.

Chairman Smith. Without objection.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mr. Johnson. And 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.

For example, the State constitutions of Arizona, Kentucky, Pennsylvania, and Wyoming prohibit a cap on damage awards. Under H.R. 5, their State constitutions, which specifically prohibit H.R. 5, will have their constitutions overrun by Congress. If you are a champion for States' rights, you cannot, in good conscience, vote this bill out of committee favorably in its current form.

H.R. 5 is a direct attack on States' rights. Proponents of H.R. 5 claim that this bill contains language that preserves State law. This claim is false and a close reading of section 11 and its State flexibility provisions reveals that it does virtually nothing to mitigate serious federalism concerns.

Section 11 specifically preempts State law that is more protective of patients. This means that under H.R. 5, States that provide a greater period of time for filing claims, who do not restrict damage caps for nursing homes, pharmaceutical and insurance bad faith cases will have their law preempted. While section 11 allows some State damage caps to stand, it forces States that do not have caps to accept Federal caps, and also may force States with a general cap to accept a more specific cap.

For example, this means a State like Texas, which does not

currently cap damages in cases involving the drug or device industry, would be forced to cap damages in pharmaceutical cases.

Thus, this section 11 State flexibility provision really does not provide much flexibility at all.

H.R. 5 would even overrule amendments to State constitutions. The National Conference of State Legislatures, reacting to H.R. 5 in an earlier session of Congress, argued that the bill would nullify the work of their State legislatures, dismantle State judicial authority and preempt all existing State laws governing medical malpractice lawsuits.

The new House majority has campaigned on the promise of limited government, but one of their top priorities is to pass a bill that would supersede the State constitution of several States.

For the past 2 years, Republicans have argued that health care policy is better left to the States and any government intrusion is a massive overreach. However, this is totally inconsistent with what H.R. 5 is trying to do in federalizing the tort process.

To stay true to the 10th Amendment, I would hope that my colleagues on the other side of the aisle would support this amendment.

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

Chairman Smith. I thank the gentleman.

I recognize myself in opposition on the amendment but at the same time, I want to reassure the gentleman from Georgia and the gentleman from North Carolina, and particularly two gentlemen from Texas on my side that we are actively working on an amendment for the House floor

that would empower States to have control over what aspect of this law would apply to the States or whether the law would apply to those States at all. And this is something that we brought up last week but I just want to ensure the gentleman that the discussions are ongoing and I believe will be successful.

Mr. Johnson. Well, I thank you, Mr. Chairman.

Chairman Smith. Are there any other members who wish to be heard on this amendment? Does the gentleman still -- if not, the vote is on the amendment.

All those in favor, signify by saying aye.

Aye.

Opposed, no.

No.

In the opinion of the Chair the noes have it and amendment is not --

Mr. Johnson. Mr. Chairman, I ask for a recorded vote.

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

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith, no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly, 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, no.

Mr. Issa?

Mr. Issa. No.

The Clerk. Mr. Issa, no.

Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes, no.

Mr. King?

[No response.]

The Clerk. Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks, no.

The Clerk. Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

[No response.]

The Clerk. Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz, no.

Mr. Reed?

Mr. Reed. No.

The Clerk. Mr. Reed, no.

Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, no.

Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino, no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy, no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross, no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams, no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle, no.

Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers, aye.

Mr. Berman?

Mr. Berman. Aye.

The Clerk. Mr. Berman, aye.

Mr. Nadler?

[No response.]

The Clerk. Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott, aye.

Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt, aye.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren, aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee, aye.

Ms. Waters?

Ms. Waters. Aye.

The Clerk. Ms. Waters, aye.

Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen, aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson, aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi, aye.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley, aye.

Ms. Chu?

Ms. Chu. Aye.

The Clerk. Ms. Chu, aye.

Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch, aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez, aye.

Ms. Wasserman Schultz?

Ms. Wasserman Schultz. Aye.

The Clerk. Ms. Wasserman Schultz, aye.

Chairman Smith. Mr. King.

Mr. King. No.

Chairman Smith. Mr. King, no.

Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler, aye.

Chairman Smith. Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan, no.

Chairman Smith. Are there other members who wish to be recorded who have not been recorded? If not, the clerk will report.

The Clerk. Mr. Chairman, 16 members voted aye, 18 members voted no.

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

Does the gentleman from Georgia have another amendment?

RPTS DOTZLER

DCMN BURRELL

[5:00 p.m.]

Mr. Johnson. Mr. Chairman, I have another amendment. Can we go to amendment 16?

Chairman Smith. The clerk will report.

The Clerk. Amendment to H.R. 5 offered by Mr. Johnson. Page 18, lines 23 and 24, strike state --

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

[The information follows:]

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

Chairman Smith. The gentleman from Georgia is recognized.

Mr. Johnson. Thank you, Mr. Chairman.

Mr. Chairman, this amendment would limit the application of the bill to cases brought in Federal court.

Mr. Chairman, I offered this amendment at the markup last week. There was some disagreement amongst Judiciary Republicans as to whether there were any federalism concerns about H.R. 5. This amendment is an important amendment that respects States' rights.

The 10th Amendment to the Constitution, which was recently read on the floor of the House, provides that powers not provided to the Federal Government nor prohibited to the States are reserved to the States or to the people. Traditionally, tort law, including medical malpractice, has been left to the States. H.R. 5 would overturn this system while at the same time we seek to overturn Congress' ability to legislate in the area of health care itself.

For these reasons, I am offering this amendment and seeking a recorded vote.

I thank the chairman, and I yield back the balance of my time.

Chairman Smith. Thank you, Mr. Johnson.

I recognize myself in opposition.

I oppose it for the same reasons as I opposed the last amendment. We are working on an amendment that I believe will empower States and increase States' rights. And because of that amendment being in process, I oppose this amendment at this point.

Does any other member wish to be recognized?

I recognize the gentleman from North Carolina, Mr. Watt.

Mr. Watt. I will just incorporate my statements from the last debate also, as you did. But I did want to take the opportunity, I heard while I was out of the room that you made a comment that you were working on an amendment. Is that amendment going to be considered in the committee?

Chairman Smith. If the gentleman would yield, that is the amendment I expect and have been told will be made in order on the House floor.

Mr. Watt. I thought that is what we existed for as the Judiciary Committee, to consider these delicate issues.

Chairman Smith. The gentleman is correct on that. The amendment is a work in process, and it has not yet been processed.

Mr. Watt. It just seems to me that if it is going to be used as a basis for defeating this amendment, and I might like your amendment more than I like Mr. Johnson's amendment for all I know, but it seems to me that the appropriate place to have that discussion is in the House Judiciary Committee, not in the House in general where we have not had a chance to evaluate it. It may come up at the last minute. It may be in a manager's amendment. I just think we are not doing service to the prerogatives of our committee by doing that.

I don't want to prolong the debate. Mr. Conyers is trying to get me to yield. I yield to him.

Mr. Conyers. Mr. Watt, could we ask the chairman for a copy of the document that he is floating?

Mr. Watt. That is kind of where I am trying to get to, but he said it is a work in progress and it hasn't progressed very much. It is in his head, not on a piece of paper, and he won't give me his head.

So you know, I am kind of at a disadvantage here. I would like to do what my constituents sent me here to serve on the Judiciary Committee to do, and I try to be diligent in doing that. But you know, I think it is this committee's responsibility to consider amendments and legislation under the jurisdiction of the Judiciary Committee, and the effect of what the chairman is saying is we are not going to be able to fulfill our judiciary responsibility.

I yield to the gentleman.

Mr. Conyers. Could the chairman agree to take the Johnson amendment until we get to the floor and see what happens then?

Mr. Watt. I think that would be a great idea. I thought Mr. Johnson's last amendment was a good one, and I thought Mr. Franks surely would agree to it since it is his State's Constitution that has a constitutional provision and he is a big States' rights guy. I know he is on my side on all of these States' rights issues. So I was expecting him to be jumping up and down to accept the last amendment and this amendment. And if it needs further refinement or revision between now and the floor, then you know I am happy to continue to look at that. We never give up on a piece of legislation or the prospect that it might be made perfect.

But I think the place to consider an amendment is right here, and Mr. Johnson has listed his amendments. He has followed all of the

protocols of the committee, and the chairman set the protocols, and it seems to me he is about to break it.

So, you know, I have said what I have to say. There is no need for me to belabor the point.

Mr. Chairman, are you going to give us a copy of the amendment before it gets to the floor? When are we going to get this amendment?

Chairman Smith. If the gentleman would yield, the amendment would be available when it is written, but it is not yet written. And there are many, many times when we go to the floor with amendments that we are working on.

Mr. Watt. The chairman will recall, I was pretty adamant about that on our side when we were in the majority, too. I would like to see the amendment.

Chairman Smith. If the gentleman will yield, I am reminded that because of the new House rules, that amendment would be available 3 days before we go to the House floor. So there will be plenty of time to consider it.

Mr. Watt. That gives me a lot more comfort.

Chairman Smith. It also gives you a lot more time than you had last year.

Mr. Watt. But since the majority told me that we were going to be out by 3 o'clock tomorrow, and then we got an e-mail saying we might not be out by 3 o'clock tomorrow, we might be here on Friday, I am beginning to lose faith in some of the commitments that have been made. They told me that we were going to have all these open rules, and now

we are finding that open rules sometimes conflict with the time situation.

Mr. Gallegly. Would the gentleman yield?

Mr. Watt. I am happy to yield to the gentleman.

Would the gentleman from North Carolina keep the faith?

Mr. Watt. Keep the faith?

Mr. Gallegly. Keep the faith.

Chairman Smith. Would the gentleman from North Carolina yield to the gentleman from Iowa?

Mr. Watt. I yield to the gentleman. We are here to debate.

Chairman Smith. Without objection, the gentleman from North Carolina is yielded an additional minute.

Mr. Watt. I yield to the gentleman from Iowa.

Mr. King. I thank the gentleman from North Carolina for yielding.

I just reflect that there are a lot of folks watching this that don't remember our debate from last week. This came up as a States' rights issue, and the part that troubled some of the members that are not sitting here right now is what happens with the State Constitutions that might be, let me say, set aside by this statute that is before us.

Mr. Watt. Mr. Johnson's last amendment.

I yield back to the gentleman.

Mr. King. And as a proposal, a thought that crosses my mind would be if those general assemblies might decide to opt out, that would be

a deference to the States' rights argument and it is a suggestion that I would pose for consideration while we move towards a floor debate.

I yield back to the gentleman from North Carolina.

Mr. Watt. It would be great to have that discussion in this committee. My Federal Constitution never really talked about the States having to opt out or in to something. If it was reserved to the States, the States had the prerogative to act on it or not act on it. They didn't have to cow-tow to the Federal Government as to whether they opted in or opted out.

Now, you know, if that would make the gentleman feel better about his States' rights credentials, or whatever you call them, then that might be satisfactory. But this is the place to have that kind of discussion.

Chairman Smith. The time of the gentleman has expired.

Mr. Watt. I appreciate the gentleman.

Chairman Smith. The question is on the amendment. Those in favor say aye. Those opposed say no. In the opinion of the chair, the noes have it.

Mr. Johnson. Mr. Chairman, recorded vote.

Chairman Smith. The clerk will call the roll.

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith, no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly, 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, no.

Mr. Issa?

[No response.]

The Clerk. Mr. Pence?

Mr. Pence. No.

The Clerk. Mr. Pence, no.

Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes, no.

Mr. King?

Mr. King. No.

The Clerk. Mr. King, no.

Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks, no.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan, no.

Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz, no.

Mr. Reed?

Mr. Reed. No.

The Clerk. Mr. Reed, no.

Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, no.

Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino, no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy, no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross, no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams, no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle, no.

Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers, aye.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler, aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott, aye.

Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt, aye.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren, aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee, aye.

Ms. Waters?

Ms. Waters. Aye.

The Clerk. Ms. Waters, aye.

Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen, aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson, aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi, aye.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley, aye.

Ms. Chu?

Ms. Chu. Aye.

The Clerk. Ms. Chu, aye.

Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch, aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez, no.

Ms. Wasserman Schultz?

Ms. Wasserman Schultz. Aye.

The Clerk. Ms. Wasserman Schultz, aye.

Mr. Berman?

Mr. Berman. Aye.

The Clerk. Mr. Berman, aye.

Mr. Issa?

Mr. Issa. No.

The Clerk. Mr. Issa, no.

Chairman Smith. Mr. Coble?

Mr. Coble. No.

The Clerk. Mr. Coble, no.

Chairman Smith. Are there any other members who wish to record their votes?

If not, the clerk will report.

The Clerk. Mr. Chairman, 16 members voted aye and 19 Members voted nay.

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

Are there other amendments?

Mr. Johnson. I have one more at the desk, Mr. Chairman.

Chairman Smith. Mr. Johnson is recognized for purposes of offering an amendment.

The clerk will report the amendment. I believe this is amendment No. 18.

The Clerk. Amendment to H.R. 5 offered by Mr. Johnson.  
Beginning on page --

[The information follows:]

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

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

The gentleman from Georgia is recognized.

Mr. Johnson. Thank you, Mr. Chairman.

H.R. 5 is a broad bill that applies to medical malpractice pharmaceutical products, nursing homes, and health insurance claims. This amendment would limit the scope of the bill to licensed physicians and health care professionals for medical malpractice cases so that the limitations on punitive damages and caps would not apply in suits against HMOs or manufacturers of defective products.

This amendment would ensure that this bill implements its stated intent of medical malpractice reform and would remove blanket protections from the insurance industry who may not always act in the best interest of the patient.

As drafted, this bill protects insurance companies instead of patients. The HEALTH Act is drafted so broadly that bad faith denials of health insurance claims by insurance companies would be protected from liability.

This amendment will improve the bill by ensuring that patients and not insurance companies are the number one priority.

Thank you, Mr. Chairman.

I yield back the balance of my time.

Chairman Smith. Thank you, Mr. Johnson.

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

Mr. Franks. Thank you, Mr. Chairman.

It is important to remember when we talk about reducing health care costs, increasing access to health care and treatment and about reining in the out of control costs of health care litigation, we are talking about the health care system as a whole.

This is a comprehensive reform bill and it is aimed at reforming the entire medical liability system. But this amendment, Mr. Chairman, would limit the bill's application to health care providers only. That is any person or entity licensed or registered or certified to provide health care services. And if we so limit the bill's application, we will fail to address some of the major drivers of increased health care costs as a whole.

The bill is not about protecting "health care providers" versus others in the health care system, it is about reducing costs and increasing access to medical treatments. Out of control medical liability affects the entire system; and, thus, it is the entire system that needs reforming.

I would hope that we oppose this amendment.

Chairman Smith. Thank you, Mr. Franks.

Does any other member wish to be recognized?

If not, the question is on the amendment. Those in favor say aye. Those opposed, no. The noes have it. 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, no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly, 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, no.

Mr. Issa?

Mr. Issa. No.

The Clerk. Mr. Issa, no.

Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes, no.

Mr. King?

[No response.]

The Clerk. Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks, no.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan, no.

Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

[No response.]

The Clerk. Mr. Reed?

Mr. Reed. No.

The Clerk. Mr. Reed, no.

Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, no.

Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino, no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy, no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross, no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams, no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle, no.

Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers, aye.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

[No response.]

The Clerk. Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott, aye.

Mr. Watt?

[No response.]

The Clerk. Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren, aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee, aye.

Ms. Waters?

Ms. Waters. Aye.

The Clerk. Ms. Waters, aye.

Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen, aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson, aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi, aye.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley, aye.

Ms. Chu?

Ms. Chu. Aye.

The Clerk. Ms. Chu, aye.

Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch, aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez, aye.

Ms. Wasserman Schultz?

Ms. Wasserman Schultz. Aye.

The Clerk. Ms. Wasserman Schultz, aye.

Chairman Smith. Mr. Coble?

Mr. Coble. No.

The Clerk. Mr. Coble votes no.

Chairman Smith. Mr. Pence?

Mr. Pence. No.

The Clerk. Mr. Pence votes no.

Chairman Smith. Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe votes no.

Chairman Smith. Mr. King?

Mr. King. No.

The Clerk. Mr. King votes no.

Chairman Smith. Mr. Berman?

Mr. Berman. Aye.

The Clerk. Mr. Berman votes aye.

Chairman Smith. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye.

Chairman Smith. Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye.

Chairman Smith. Are there any other Members who wish to be recorded? If not, the clerk will report.

The Clerk. Mr. Chairman, 16 members voted aye and 19 members voted nay.

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

Does the gentleman from Florida, Mr. Deutch, have an amendment?

Mr. Deutch. I do, Mr. Chairman.

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to H.R. 5 offered by Mr. Deutch. Page 18, line 25, strike "against" and insert "against or by."

[The information follows:]

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

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

Mr. Deutch. Thank you, Mr. Chairman.

H.R. 5 is not, as has been suggested repeatedly this afternoon, a comprehensive bill. It is a one-sided bill, and my amendment is extremely straightforward. It simply says that what is good for the goose is good for the gander.

If we are going to place limits on claims made by patients, then insurance companies and manufacturers and others in the industry should be expected to abide by those same limits as well.

My amendment to H.R. 5 would apply the bill to all claims by providers, insurance companies, and manufacturers in the same way that it applies them to patients. H.R. 5 as it is written applies to all health care lawsuits. However, the definition of health care lawsuits is limited to cases against a health care provider, a health care organization, or the manufacturer, distributor, supplier, marketer or promoter or seller of a medical product regardless of the theory of liability on which the claim is based.

Now, I think that this bill needs to be seen for what it is. It is not about cost savings for the health care system. It is not about helping doctors and it is not about helping patients. Capping damages and closing the doors of justice will not do anything to improve health care in this country. We have seen in State after State that has tried different variations on medical liability reform that cost savings, if any, stop at the insurance companies.

But if proponents of this bill really think that cost savings will occur, and if the goal of the bill really is to save money and save the health care system from a scourge of lawsuits, then it only makes sense to get the most out of these savings and apply the limitations fairly across the board. The only reasonable approach is to also apply these same reforms on cases brought by the same group of people and organizations. These are the actual cases that are growing each year. While medical malpractice cases brought by patients are shrinking in number, business versus business litigation is on the rise. Tort filings declined by 25 percent between 1999 and 2008. On the other hand, contract disputes in courts rose by 63 percent over the same period. Corporations argue that access to the courthouse should be restricted. Yet businesses suing other businesses account for the vast majority of all verdict dollars. In fact, across the top 100 verdicts in the United States, business versus business cases account for more than two-thirds of all of the verdict dollars.

Individuals do not have the resources that these companies have. So why should patients' rights be restricted when the cases that are actually clogging the courts are brought by businesses? Shouldn't there be at least parity between claims brought by patients and claims initiated by insurance companies, health care companies and manufacturers. There is no reason to hold up this distinction, and I hope that the committee will accept this amendment to fairly apply these limitations.

I yield back the balance of my time.

Chairman Smith. Thank you, Mr. Deutch.

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

Mr. Franks. Thank you, Mr. Chairman.

Mr. Chairman, the types of suits initiated by the named entities in the gentleman's amendment differ dramatically from medical liability lawsuits, and thus placing the same requirements on them is certainly not beneficial. For instance, few such suits would involve contingency fees or pain and suffering, et cetera. The underlying bill applies equally to all in similar situations. That is if a health care practitioner sued another practitioner for malpractice, the provisions of H.R. 5 would apply. There is no rational reason to apply, for example, those provisions to a contract dispute between a doctor and his or her insurer.

Mr. Chairman, this amendment either does nothing or if it does anything, it creates special rules that only apply against doctors, dentists and nurses who happen to find themselves as plaintiffs in a lawsuit.

The bill limits noneconomic and punitive damages in health care suits, and in most cases the amendment would be nonsensical. I am not aware of any case where a hospital or an insurance company or a drug manufacturer filed a lawsuit seeking pain and suffering or mental anguish damages in health care.

Mr. Deutch. Would the gentleman yield for a question?

Mr. Franks. Yes, Mr. Chairman, I yield.

Mr. Deutch. I wonder whether the gentleman is aware of any cases

brought in business to business cases that return verdicts with enormous noneconomic damage awards?

Mr. Franks. Mr. Chairman, certainly I am, but they are not health care related. Say you operated on my corporate entity here and you did something. It doesn't apply because this is in general noneconomic and punitive damages for health care lawsuits. This is what the bill deals with, is health care lawsuits, which are sought by natural people, not corporate entities. Because the bill's limits already apply to any person, the amendment wouldn't change the rules for a doctor or nurse who was injured by malpractice.

Mr. Deutch. If the gentleman would yield, the reason that the bill applies to health care lawsuits filed by individuals is because the bill is drafted to apply to health care lawsuits introduced by individuals.

Mr. Franks. Reclaiming my time, precisely, Mr. Deutch. That is the point. The bill is drafted to deal with health care lawsuits. And if the gentleman wants to deal with other lawsuits, I would suggest that another bill is a more appropriate vehicle.

I yield back the balance of my time.

Chairman Smith. The gentlewoman from Florida, Ms. Wasserman Schultz, is recognized.

Ms. Wasserman Schultz. I move to strike the last word, and I yield to the gentleman from Florida, Mr. Deutch.

Mr. Deutch. I appreciate that.

The suggestion was made that this amendment is nonsensical. I

would respectfully suggest that if the purpose of this litigation is meant to save money in the system, if the purpose of this legislation is also meant to bring down costs, which is something that we have heard about time and time again, then changing the definition of a health care lawsuit is hardly nonsensical.

Broadening the definition of health care lawsuits to actually reflect where the largest percentage of costs in the health care system reside is the absolute essential approach in order to bring down these costs. That is the purpose of this amendment. It is hardly nonsensical. It is entirely consistent with what the bill's sponsors have proposed, and that is the reason this amendment has been offered.

I yield back to the gentlelady from Florida.

Ms. Wasserman Schultz. Mr. Chairman, I yield back the balance of my time.

Chairman Smith. Does any other member wish to be recognized?

If not, the question is on the amendment. Those in favor say aye. Those opposed say no. In the opinion of the chair, the noes have it.

Mr. Deutch. I ask for a recorded vote.

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

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith, no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly, no.

Mr. Goodlatte?

[No response.]

The Clerk. Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

Mr. Chabot. No.

The Clerk. Mr. Chabot, no.

Mr. Issa?

Mr. Issa. No.

The Clerk. Mr. Issa, no.

Mr. Pence?

Mr. Pence. No.

The Clerk. Mr. Pence, no.

Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes, no.

Mr. King?

Mr. King. No.

The Clerk. Mr. King, no.

Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks, no.

Mr. Gohmert?

Mr. Gohmert. No.

The Clerk. Mr. Gohmert, no.

Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan, no.

Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe, no.

Mr. Chaffetz?

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz, no.

Mr. Reed?

[No response.]

The Clerk. Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, no.

Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino, no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy, no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross, no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams, no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle, no.

Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers, aye.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler, aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott, aye.

Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt, aye.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren, aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee, aye.

Ms. Waters?

Ms. Waters. Aye.

The Clerk. Ms. Waters, aye.

Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen, aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson, aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi, aye.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley, aye.

Ms. Chu?

Ms. Chu. Aye.

The Clerk. Ms. Chu, aye.

Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch, aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez, aye.

Ms. Wasserman Schultz?

Ms. Wasserman Schultz. Aye.

The Clerk. Ms. Wasserman Schultz, aye.

Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Mr. Coble?

Mr. Coble. No.

The Clerk. Mr. Coble votes no.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 15 members voted aye; 20 Members voted nay.

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

I have a question for the gentlelady from California, Ms. waters. How many amendments do you expect to offer?

Ms. Waters. Two.

Chairman Smith. The gentlewoman is recognized for the purpose of offering her first amendment.

Ms. Waters. Thank you very much. I have an amendment at the desk, Mr. Chairman.

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to H.R. 5 offered by Ms. Waters. Page 19 --

[The information follows:]

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

Ms. Waters. I ask unanimous consent to dispense with the reading.

Chairman Smith. Without objection. The gentlelady is recognized to explain her amendment.

Ms. Waters. Thank you. 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. To 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, 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 would 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 on 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 denial 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.

This amendment is particularly important in light of a recent study by the Department of Health and Human Services which 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 on 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 conditions. 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.

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

Mr. Franks. Thank you, Mr. Chairman.

This amendment seems an effort to entrench ObamaCare and to make it harder to repeal by referencing it in other laws. I would suggest that if one opposes ObamaCare, they should oppose this amendment.

And if they don't oppose ObamaCare, if they support it, there are still 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 indication that the provision was held unconstitutional as not severable by the most recent Federal court to consider it.

So, Mr. Chairman, the definition referenced in this bill is certainly of doubtful constitutionality, and like the rest of ObamaCare, this definition is very likely in my judgment to either be repealed or --

Ms. Jackson Lee. Would the gentleman yield?

Mr. Franks. I will when I finish.

-- either repealed or invalidated by the Supreme Court within a matter of months or years. We should avoid inserting such an uncertain term in the definitions sections of H.R. 5. By so doing, I think we could make the definitions of this bill subject to doubt and uncertainty, as the provisions of ObamaCare itself.

And with that, Mr. Chairman, I would yield to the gentlelady.

Ms. Jackson Lee. Would the gentleman yield?

Mr. Franks. Yes.

Ms. Jackson Lee. I thank the gentleman. We are all good friends and colleagues here, and I know the gentleman wants to be accurate in his comments.

Does he have a bill number for ObamaCare or is he speaking about the Affordable Care Act? Is that what he is referring to? Because I don't remember debating a bill by that name on the floor of the House and I am not sure. In the legislative process in speaking about legislative language and bill language, we should be careful in citing the actual name of the bill and not a political acronym that is incorrect and almost insulting.

This bill was passed by a number of Members on the floor of the House, and it was supported by quite a few. As I understand it, we voted on the Affordable Care Act. So I would just inquire to the gentleman as to what bill number was the ObamaCare? And if not, is he speaking about the Affordable Care Act?

I would like the record to reflect I believe he is speaking about the Affordable Care Act.

Mr. Franks. I would answer the gentlelady's question by suggesting that your point is well taken, but I would also suggest that naming the bill that we passed the Affordable Care Act was as equally a euphemism.

Ms. Wasserman Schultz. Would the gentleman yield for a moment?

Ms. Jackson Lee. I thank the gentleman.

Ms. Wasserman Schultz. Would the gentleman yield?

Mr. Franks. Certainly.

Ms. Wasserman Schultz. Thank you. In the spirit of civility, it would be most appreciated if the gentleman would refrain from using a disrespectful term as it applies to the name of the health care reform law that was passed last year. It is not called ObamaCare. It is called the Affordable Care Act, and I think many of us would appreciate it if you would in the future refer to it by its accurate title.

I thank you.

Mr. Franks. I thank the gentlelady.

Chairman Smith. Are there any other members who wish to be heard on the amendment?

If not, the question is on the amendment. Those in favor say aye. Those opposed say no. In the opinion of the chair the noes have it. The amendment is not agreed to.

Ms. Waters. Roll call.

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

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith, no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

Mr. Coble. No.

The Clerk. Mr. Coble, no.

Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly, 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, no.

Mr. Issa?

Mr. Issa. No.

The Clerk. Mr. Issa, no.

Mr. Pence?

Mr. Pence. No.

The Clerk. Mr. Pence, no.

Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes, no.

Mr. King?

Mr. King. No.

The Clerk. Mr. King, no.

Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks, no.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan, no.

Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe, no.

Mr. Chaffetz?

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz, no.

Mr. Reed?

[No response.]

The Clerk. Mr. Griffin?

[No response.]

The Clerk. Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino, no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy, no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross, no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams, no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle, no.

Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers, aye.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler, aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott, aye.

Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt, aye.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren, aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee, aye.

Ms. Waters?

Ms. Waters. Aye.

The Clerk. Ms. Waters, aye.

Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen, aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson, aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi, aye.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley, aye.

Ms. Chu?

[No response.]

The Clerk. Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch, aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez, aye.

Ms. Wasserman Schultz?

Ms. Wasserman Schultz. Aye.

The Clerk. Ms. Wasserman Schultz, aye.

Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin votes no.

Chairman Smith. Does any other member wish to be recognized?

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, 14 members voted aye and 20 members voted nay.

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

The gentlelady from California is recognized for the purpose of offering her second amendment.

Ms. Waters. Thank you, Mr. Chairman, I have an amendment at the desk.

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to H.R. 5 offered by Ms. Waters of California. After section 9 --

[The information follows:]

\*\*\*\*\* INSERT 3-5 \*\*\*\*\*

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

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

Ms. Waters. Thank you, Mr. Chairman.

I want to thank Congressman Mike Quigley for joining me in this effort to eliminate the antitrust exemption that has allowed medical malpractice insurers to escape legal accountability.

I also want to thank my colleagues, Mr. Conyers, Mr. Johnson, and Judy Chu for their earlier amendment to completely repair the McCarran-Ferguson Act.

I have supported previous efforts to the insurance industry's broad antitrust exemption, and look forward to working with them in our future efforts to ensure that insurance companies are held accountable for any anticompetitive and predatory conduct.

The Waters-Quigley amendment to H.R. 5 would repair certain provisions in the McCarran-Ferguson Act which currently exempt medical malpractice insurers from Federal antitrust laws. The amendment will subject medical malpractice insurers to the same good competition laws that apply to virtually every other company doing business in the United States.

The McCarran-Ferguson Act has been interpreted so broadly that it has been very difficult for plaintiffs and doctors to overcome the general immunity courts have determined the exemption affords insurers. In a 2009 hearing before the Senate Judiciary Committee,

Assistant Attorney General Christine Barney from the Department of Justice's Antitrust Division noted: "Under the McCarran-Ferguson Act, the presence of even minimal State regulation, even on an issue unrelated to the antitrust suit, is generally sufficient to preserve the immunity."

Indeed, the case law can be read as suggesting that act precludes Federal antitrust action whenever there is a State regulatory scheme regardless of how perfunctory or ineffective it may be.

It is fair to say that the McCarran-Ferguson Act antitrust exemption is very expansive with regard to anything that can be said to fall within the business of insurance, including premium pricing and market allocations. As a result, the most egregiously anticompetitive claims such as naked agreements, fixing price, or reducing coverage are virtually always found immune.

Today, the application of the antitrust laws to potentially pro-competitive collective activity has advanced and become more sophisticated since the McCarran-Ferguson Act was enacted 64 years ago. Assistant A.G. Barney further explains that, and I quote: "Some forms of joint activity that might have been prohibited under earlier, more restrictive doctrine are now clearly permissible or at the very least analyzed under a rule of reason that takes appropriate account of the circumstances and efficient operation of a particular history."

The Antitrust Modernization Commission, the AMC, has also reviewed whether the McCarran-Ferguson Act is necessary to allow insurers to collect, aggregate, and review data losses so they can

better set their rates to cover their likely costs. The AMC concluded that the exemption is not, saying that insurance companies would bear no greater risk than companies in other industries engaged in data sharing and other collaborative undertakings.

In particular, the AMC said: "Like all potentially beneficial competitor collaboration, generally such data sharing would be assessed by antitrust enforcers and the courts under a rule of reasoned analysis, would fully consider the potential pro-competitive effects of such conduct and condemn it only if, on balance, it was anticompetitive.

Significantly, the AMC added that "to the extent that insurance companies engaged in anticompetitive collusion, then they appropriately should be subject to antitrust liability."

I believe the majority has shown some concern with insurance companies' antitrust exemptions, as H.R. 5 includes a provision clarifying that the bill does not apply in these types of cases. On page 19, beginning at line 7 where the bill defines health care lawsuit, it reads that such terms do not include a claim or action which is based on criminal liability, which seeks civil fines or penalties paid to Federal, State or local government or which is grounded in antitrust.

However, since the McCarran-Ferguson Act would still constitute good law, doctors and competitors would continue to face procedural barriers in efforts to sue medical malpractice insurers for anticompetitive conduct. H.R. 5 affirms that these defenses would otherwise still be available to malpractice insurers.

On page 23, line 24, the bill reads: Except as otherwise provided in this section, nothing in this act shall be deemed to effect any defense available to a defendant in a health care lawsuit or action under any other provision of Federal law.

On page 25, line 3, the bill reads: This act shall not preempt or supersede any State or Federal law that imposes greater procedural or substantive protections for health care providers and health care organizations from liability, loss, or damages than those provided by this act, or create a cause of action.

H.R. 5 cements protections for medical malpractice insurers while it strips victims and patients of their constitutional right to have injuries determine recovery and damages for certain losses.

Mr. Chairman, any measure to lower health care costs must also include insurance reform. We need to hold medical malpractice insurers accountable for their anticompetitive practices that have contributed to skyrocketing health care costs. It is unconscionable for this committee to pass legislation severely limiting patients' rights while medical malpractice insurers continue to benefit from the McCarran-Ferguson Act.

I urge my colleagues to support the Waters-Quigley amendment.  
Chairman Smith. Thank you, Ms. Waters.

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

Mr. Franks. Thank you, Mr. Chairman.

Mr. Chairman, I think we should oppose this amendment because it actually undermines the longstanding policy of State regulation of

insurance. It will spur litigation and legal uncertainties, and it will do nothing to reduce and could even increase medical liability insurance costs.

Under our current system, Mr. Chairman, State regulation of health insurance, State regulators have authority to prevent rates that are excessive, inadequate, or unfairly discriminatory.

Under McCarran-Ferguson, anticompetitive conduct by insurers is prohibited by each State's regulations and each State's antitrust laws. The President of the National Association of Insurance Commissioners stated in a February 7, 2003 letter to Senator Judd Gregg the following: "States have strong laws that prohibit price fixing and anticompetitive practices by insurers."

Mr. Chairman, CBO concluded that this bill would have little effect because the State laws already bar the activities that would be prohibited under Federal law if this bill was enacted.

By letting Department of Justice and FTC second guess State insurance regulator's competition policies, this amendment would disrupt subtle law in nearly every State in the Union. It will lead to unnecessary and costly litigation by overlapping State and Federal rules.

CBO found that the new litigation caused by repealing McCarran could actually drive up costs.

Mr. Chairman, it is simply not the case that medical liability insurers are gouging doctors by raising rates to anticompetitive levels. Indeed, many doctors get their liability insurance through

nonprofit physician-owned mutual insurers. There is no reason in the world that a mutual insurance company would gouge doctors in violation of antitrust law since the doctors own the company and the company is nonprofit. But repealing McCarran-Ferguson could make it harder for these mutual insurers and other small insurers to operate and compete with large, for-profit insurers.

The exemption allows small insurers to aggregate data for underwriting purposes so that they can compete effectively against larger companies. This amendment would gut that protection and make it impossible for small, physician-owned and nonprofit insurers to compete.

So for many reasons, Mr. Chairman, the CBO found that McCarran-Ferguson repeal would do little, if anything, to lower and might even raise insurance costs.

As the President of NAIC concluded in his letter to Senator Gregg: "The preliminary evidence points to rising costs and defense costs associated with litigation as the principal drivers of the medical malpractice prices."

Mr. Chairman, this bill would do nothing to drive down those costs and could make insurance even more costly for doctors, and therefore should be opposed.

Chairman Smith. Thank you, Mr. Franks.

The distinguished ranking member, the gentleman from Michigan, Mr. Conyers, is recognized.

Mr. Conyers. Thank you. I rise simply to congratulate Maxine

Waters, who has always supported us repealing entirely the McCarran-Ferguson Act. But now she has created an amendment that merely repeals certain provisions of the McCarran-Ferguson Act which exempt medical malpractice insurers from Federal antitrust laws.

I think that is a good thing. There is no justification to exempt the medical malpractice insurance industries from the antitrust laws and Federal Government oversight. So this amendment will subject medical malpractice insurers to the same fair competition laws that apply to most other companies doing business in this country.

Our competition laws are powerful tools to ensure that consumer welfare is the benchmark for fair and accountable industry practices.

Consumers benefit through lower prices, more choices, and better services. In addition, insurance companies like these would have to compete with each other which they don't in most places have to do now.

So I urge that we at least repeal McCarran-Ferguson as it applies to malpractice insurers.

I thank the members of the committee for considering a vote on this important amendment.

Thank you, Mr. Chairman.

Chairman Smith. Thank you, Mr. Conyers.

The gentleman from North Carolina, Mr. Watt, is recognized.

Mr. Watt. Thank you, Mr. Chairman.

I just wanted to see if I could get Mr. Franks to read the first paragraph of his statement again. I thought I heard him say that his rationale for opposing this amendment is that it disrupts all State

law, and I thought that is what he was trying to do by offering the bill. Maybe I misheard him. Could I ask the gentleman to read the first paragraph of his statement again?

He is not listening to me.

Mr. Franks. Yes, sir, I am listening. I want to make sure that I get the right paragraph. I am trying to find the one that you like so well here.

Mr. Watt. I thought it was the first one.

Mr. Franks. All right, I will read the first one.

"Mr. Chairman, this amendment should be rejected."

Mr. Watt. Go ahead.

Mr. Franks. "Amending the McCarran-Ferguson Act cannot be the solution. Under the act, medical malpractice rates are regulated by the States. State regulators are required by law to turn down rates that are excessive, inadequate or unfairly discriminatory. Insurance companies are also prohibited by law from attempting to recoup prior losses through future insurance rates. Even under McCarran-Ferguson, insurers are only provided protection from Federal antitrust laws for activities considered to be the business of insurance. To the extent that the business of insurance is regulated by the States, and to the extent that acts or agreements don't constitute boycott, intimidation or coercion, repealing McCarran would not change in any way the underlying and escalating costs of medical malpractice claims that premiums must cover."

I don't think that is the paragraph that you wanted.

Mr. Watt. Go to the next paragraph. I just want to hear this.

Mr. Franks. I know this is important.

Mr. Watt. I want to make sure that I heard you right. Give me that one about we are going to disrupt State law. That is the one that I want to hear. You can't find it?

Mr. Franks. Mr. Chairman, I am wondering if the gentleman would like for me to hand him my entire statement.

Chairman Smith. That is what I was thinking as well, Mr. Franks.

Mr. Watt. I thought I was hearing things.

Mr. Franks. I think the gentleman's hearing is good. I just don't think --

Mr. Watt. You can't find it. But you know what I am talking about, don't you?

Mr. Franks. I do. Honesty compels me to tell that the gentleman is correct; I did read something like that.

Mr. Scott. Would the gentleman yield?

Mr. Watt. I yield.

Mr. Scott. I would also ask the gentleman to respond because the defense against, the argument against this amendment is that it disrupts State law. Could the gentleman tell us what the purpose of the underlying bill is? Is that not designed to disrupt State tort law?

Mr. Franks. Mr. Chairman, the bill is designed brilliantly to cooperate with the States in trying to encourage better practices in medicine and to try to make it more available for all.

Mr. Scott. A follow-up question, Mr. Chairman. You mentioned defense costs. We defeated an amendment that I offered that would have reinstated joint and several liability which would allow a plaintiff to recover all of the damages from one of many negligent defendants.

Since we did not adopt the amendment, isn't it true that defense costs will be going up if this bill is adopted?

Mr. Franks. Mr. Chairman, I truly believe that the overall costs of medical care will be demonstrably diminished if this bill is adopted. That is my sincere opinion.

Mr. Watt. Reclaiming my time, I want to tell the gentleman, I don't think that is going to happen in North Carolina. I mean, as much as I am a States' rights advocate, you are substantially liberalizing North Carolina law in this bill, I think, and I thought our State legislators had done a reasonable job of balancing the tort law in North Carolina.

And actually, I believe they are better equipped to do that for the State of North Carolina than the gentleman from Arizona is, or anybody else is for the State of North Carolina.

And because I have never seen a medical procedure take place in interstate commerce, most of them take place in operating rooms and doctor's offices inside a particular State. I don't understand the rationale for what you all are doing.

But I have made that argument and now you have agreed with me in part of your statement. So I appreciate it. I just wanted to make sure that I was hearing correctly.

I yield back the balance of my time.

RPTS BINGHAM

DCMN BURRELL

[6:00 p.m.]

Chairman Smith. The gentleman's time has expired. The question is on the amendment. All those in favor, signify by saying aye. Opposed, no.

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

Ms. Waters. Roll call, please.

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

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith, no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

Mr. Coble. No.

The Clerk. Mr. Coble, no.

Mr. Gallegly.

Mr. Gallegly. No.

The Clerk. Mr. Gallegly, no.

Mr. Goodlatte?

[No response.]

The Clerk. Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

Mr. Chabot. No.

The Clerk. Mr. Chabot, no.

Mr. Issa?

[No response.]

The Clerk. Mr. Pence?

[No response.]

The Clerk. Mr. Forbes.

Mr. Forbes. No.

The Clerk. Mr. Forbes, no.

Mr. King?

[No response.]

The Clerk. Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks, no.

Mr. Gohmert?

Mr. Gohmert. No.

The Clerk. Mr. Gohmert, no.

Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan, no.

Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe, no.

Mr. Chaffetz?

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz, no.

Mr. Reed?

[No response.]

The Clerk. Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, no.

Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino, no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy, no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross, no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams, no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle, no.

Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers, aye.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler, aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott, aye.

Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt, aye.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren, aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee, aye.

Ms. Waters.

Ms. Waters. Aye.

The Clerk. Ms. Waters, aye.

Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen, aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson, aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi, aye.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley, aye.

Ms. Chu?

[No response.]

The Clerk. Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch, aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez, aye.

Ms. Wasserman Schultz.

Ms. Wasserman Schultz. Aye.

The Clerk. Ms. Wasserman Schultz, aye.

Chairman Smith. Mr. Pence.

Mr. Pence. No.

The Clerk. Mr. Pence votes no.

Chairman Smith. Mr. Goodlatte.

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Chairman Smith. Mr. Issa?

Mr. Issa. No.

The Clerk. Mr. Issa votes no.

Chairman Smith. Any other members who wish to have their vote recorded? If not, the clerk will report.

The Clerk. Mr. Chairman, 14 members voted aye, 19 members voted nay.

Chairman Smith. The majority has voted against the amendment and it is not agreed to.

Let me say to all members who are here, first of all, we have had excellent attendance here today which I think is outstanding on both sides, which I think helps the debate and makes a better discussion of the issues.

We only have a few amendments left. I am hoping that we will get through them before a vote is called. If we do not, I regret to say we are going to need to come back after the last vote to finish up tonight.

We will now go to the gentlewoman from Texas, Ms. Jackson Lee, for the purpose of offering an amendment if she desires to offer that amendment.

She is not here.

Ms. Jackson Lee. I am here. I have an amendment at the desk.

Chairman Smith. The clerk will report the amendment.

Ms. Jackson Lee. Twenty-six.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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

Chairman Smith. Gentleman from Arizona reserves a point of order, and the gentlewoman who is offering the amendment is recognized in support of her amendment.

Ms. Jackson Lee. Thank you very much, Mr. Chairman, and I appreciate the gentleman's reserving the point of order and I vigorously disagree with the gentleman.

I think I want to make it clear to my colleagues the language specifically deals with requiring liability insurers, let me just, requiring liability insurers who increase liability insurance premiums on health care providers during a year in which health care lawsuits declined in number filed or the amount of damages awarded in such lawsuits to file a report with the Attorney General that describe the reason for their increase.

We have heard over and over again that tort reform and in particular medical malpractice reform, which many of us would like to look at in a bipartisan manner, would in actuality bring down the premiums on our good friends, physicians. Even when I talk to physicians in the State of Texas, which has operated under a medical malpractice reform for a number of years, they cannot document how their premiums have gone down.

The underlying premise of this bill is that this will alter, if you will, the practice or the quality of practice for our physicians, good physicians. And I agree. And all this suggests that if you have a health care insurance company that covers health care for providers

and they increase it after the passage of this bill, they should provide a basis or a reason for doing so.

This amendment truly promotes the stated purpose of H.R. 5 by focusing on health care and the insurance industry that the health care liability system existed throughout the United States that affect interstate commerce by contributing to the high cost of health care and premiums for health care liability insurance purchased by health care providers.

I firmly believe that the vast majority of doctors and other health care providers around the country exercise great care and compassion and provide valuable services. When laws like these are passed, they should be the beneficiary. Insurance premiums should not go up. But if they do there is no reason to deny the reporting factor that this simply requires.

This legislation is tied to the Attorney General under interstate commerce, but it is also applied under the jurisdiction of this particular legislation, and I would ask my colleagues to support this amendment.

Chairman Smith. Thank you, Ms. Jackson Lee.

Does the gentleman from Arizona reserve his point of order? Does the gentleman from Arizona insist on his point of order?

Mr. Franks. Mr. Chairman, I would respectfully insist on my point of order. We have consulted with the House Parliamentarian and we have been informed that this amendment is not within this committee's jurisdiction and is therefore not germane to the HEALTH Act.

Chairman Smith. Thank you, Mr. Franks. Does the gentlewoman from Texas wish to speak on the point of order?

Ms. Jackson Lee. I certainly do. And as I indicated, this is a reporting feature that is tied to this legislation that offers to modify the tort scheme, if you will, for providers and others who are under insurance.

We are modifying the law dealing with the requirements or the legal scheme for filing these cases, medical malpractice cases. This is simply a ministerial amendment that just asks for those insurers of health care providers to report on the basis of their health care insurance increases. And I think it is ministerial, and it is not outside the realm of this legislation.

Chairman Smith. Thank you, Ms. Jackson Lee. The chair is prepared to rule on the point of order. In the opinion of the chair, the amendment is not germane.

Are there any other amendments? I am aware that the gentleman from New York has an amendment, and the clerk will report the amendment.

The Clerk. Amendment to H.R. 5 offered by Mr. Nadler, page 6, lines 1, 11 and 17 insert after \$250,000 --

[The information follows:]

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

Mr. Nadler. Mr. Chairman, I move to waive the reading.

Chairman Smith. Without objection, the amendment is considered as read. The gentleman from New York, Mr. Nadler, is recognized in support of his amendment.

Mr. Nadler. Thank you, Mr. Chairman.

I offered this amendment last week, and I was gratified that it seemed to have some support on the Republican side of the aisle, too. I am offering it again because I withdrew it then rather than ask for a vote because we thought it might be worked out.

I do not agree, as most people here know, with the idea that the Federal Government should preempt State law and impose a cap on the amount to be awarded for noneconomic damages. I don't agree with that. But obviously, probably the majority of the committee is going to vote for that in the amount of \$250,000.

My point is that if you believe that there ought to be a cap that supersedes State law and that the amount of that cap ought to be \$250,000, okay, but the \$250,000 cap if it makes sense should remain. If you don't put an inflation adjustment into that next year it will be 240,000, the year after that 230,000, and 200, eventually deflates to zero. For example, the \$250,000 cap that California voted in 1975 was never changed. It is still \$250,000. But in 1975 dollars, it is somewhere in the vicinity of \$1 million to \$1.5 million.

Now I am not suggesting that we ought to make this cap \$1 million or \$1.5 million. That was a different amendment. But I am suggesting that if \$250,000 is the right amount, it should stay that amount. If

we think, if the Republicans think, if whoever is voting for this bill thinks that it makes sense and it is just and fair to preempt State law and to tell people who have a noneconomic damage, a person who is going to be in pain for the rest of his life or whatever, that we are going to limit that damage to \$250,000 as a matter of policy, then okay, limit it to 250,000 but that amount should stay the same.

And any time we put an amount in the law, if we don't put an inflation adjustment, this amendment says that wherever it says \$250,000 we shall add the words adjusted annually according to the adjustment in the Consumer Price Index to the nearest \$1,000. If we don't put that in, then this \$250,000 will, over time, deflate, eventually to \$1.50. And if \$250,000 is fair now, then that is what will be a year from now and 10 years from now and 15 and 20 years from now.

So it seems to me that anyone who thinks that we ought to vote for this \$250,000 cap now ought to vote for this amendment to keep it at \$250,000 in real money as inflation proceeds.

So I urge the 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 again, Mr. Chairman.

Mr. Chairman, I oppose this amendment because it weakens the cap on noneconomic damages. Indeed the savings of \$54 billion over 10 years that CBO concluded would significantly be diminished if the cap were raised over time.

Mr. Chairman, the key to the success of the legal reforms in California is its cap on noneconomic damages at \$250,000, which is not indexed to inflation. The recent reforms in Texas also do not index the caps to inflation. And the California cap has stood 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. What may have been described by some as an arbitrary figure in 1975 has become the keystone of the only proven long-term legislative solution to the current crisis to access to medical care.

And Mr. Chairman, there was a study in 2010 showing that doubling California's cap on noneconomic damage would cost that State between 1.3 and \$2.4 billion in employee and retired benefits over a 10-year period.

If one extrapolates from that number, it becomes clear that adopting such an amendment would similarly raise the cap in Federal legislation, it would cost the Federal taxpayers somewhere in the neighborhood of \$14 billion or more. And I think, Mr. Chairman, I am not sure where the Consumer Price Index measures pain and suffering, but I think that is what the effort would be here.

So I would oppose the amendment.

Chairman Smith. Thank you, Mr. Franks.

Are there other members who wish to be recognized? The gentleman from Virginia, Mr. Scott.

Mr. Scott. Strike the last word.

Chairman Smith. The gentleman is recognized 5 minutes.

Mr. Scott. I would agree with the gentleman that failing to adopt this amendment would erode the cap. That is the purpose of the amendment, to keep the cap at a reasonable limit. If you adopt 250 as reasonable, failure to adopt this would mean that that amount would erode over time and just get much less reasonable.

And I yield to the gentleman from New York.

Mr. Nadler. I thank the gentleman for yielding.

You know the argument that the gentleman from Arizona makes essentially is saying that we can't measure pain and suffering exactly, and therefore we should say that no one can receive for pain and suffering more than a constantly declining amount, eventually zero. Whatever pain and suffering is worth, it is not worth less 10 years from now than it is today. If someone loses an arm, if someone is put into a wheelchair, the amount of the damage that that person suffers is not less if that happens 10 years from now than if it happens today.

And what you are really saying if you are saying we should put an amount, a cap whether it is 250 or 200 or 400, it doesn't matter what the amount is, if you don't put on an inflation adjustment, what you are really saying is there is no value at all. No one, eventually no one should be able to recover anything for someone's negligence and pain and suffering. The only thing you should ever be able to recover is actual lost wages and medical costs. Nothing else should be recoverable because that is what a cap will do eventually. Nothing. Zero. That is what a cap will do eventually if there is not an inflation adjustment.

And I would point out that we vote every year and I suspect that everybody on the other side of the aisle votes for the same thing, every year we vote on a bill or amendment, depending on what form it takes, to adjust the numbers in the physicians' payments that Medicare will do so that we don't get a reduction every year because of inflation. We have seen that we don't want to reduce doctors' payments just by not acting. We understand the effect of inflation if you are dealing with a constant number.

The same thing is true here. And anyone who votes against this amendment is saying in effect that the recovery for all pain, all suffering, should eventually be zero. I don't think we want to say that.

Chairman Smith. The gentleman's time is expired. The question is on the amendment.

All those in favor, signify by saying aye. Opposed, no.

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

Mr. Nadler. Mr. Chairman, I ask for a roll call vote.

Chairman Smith. The clerk will call the roll.

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith, no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

Mr. Coble. No.

The Clerk. Mr. Coble, no.

Mr. Gallegly.

[No response.]

The Clerk. 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, no.

Mr. Pence?

Mr. Pence. No.

The Clerk. Mr. Pence, no.

Mr. Forbes?

[No response.]

The Clerk. Mr. King?

Mr. King. No.

The Clerk. Mr. King, no.

Mr. Franks.

Mr. Franks. No.

The Clerk. Mr. Franks, no.

Mr. Gohmert?

Mr. Gohmert. No.

The Clerk. Mr. Gohmert, no.

Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan, no.

Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

[No response.]

The Clerk. Mr. Reed?

[No response.]

The Clerk. Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, no.

Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino, no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy, no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross, no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams, no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle, no.

Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers, aye.

Mr. Berman?

Mr. Berman. Aye.

The Clerk. Mr. Berman, aye.

Mr. Nadler.

Mr. Nadler. Aye.

The Clerk. Mr. Nadler, aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott, aye.

Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt, aye.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren, aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee, aye.

Ms. Waters.

Ms. Waters. Aye.

The Clerk. Ms. Waters, aye.

Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen, aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson, aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi, aye.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley, aye.

Ms. Chu?

[No response.]

The Clerk. Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch, aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez, aye.

Ms. Wasserman Schultz.

Ms. Wasserman Schultz. Aye.

The Clerk. Ms. Wasserman Schultz, aye.

Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Mr. Chabot?

Mr. Chabot. No.

The Clerk. Mr. Chabot votes no.

Chairman Smith. Any other members who wish to record their vote?

If not, the clerk will report.

The Clerk. Mr. Chairman 15 members voted aye, 18 members voted nay.

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

It is my understanding that we have three amendments left. The first amendment we will take up is the amendment offered by the gentleman from Florida, Mr. Deutch.

Mr. Deutch. Thank you, Mr. Chairman.

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to H.R. 5 offered by Mr. Deutch of Florida.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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

The gentleman is recognized in support of his amendment.

Mr. Deutch. Thank you, Mr. Chairman. This amendment follows up on an amendment offered last week by Ranking Member Conyers on intentional torts. Mr. Conyers raised concerns that the bill as written would unintentionally protect doctors who molest their patients from being sued.

There were concerns that the original amendment was overly broad. And while I agree with Mr. Conyers the amendment would have been an improvement on the language in the bill, I hope that all members can support my amendment which simply lists the egregious intentional torts to exclude them from coverage in the bill. There is no reason to protect assault, battery, rape, conversion, false imprisonment, intentional infliction of emotional distress, flawed misrepresentation, malicious prosecution, abuse of process, invasion of privacy, slander, libel or defamation in this bill.

Victims of intentional torts cannot avail themselves of the criminal liability exemption currently in H.R. 5 unless a criminal defendant is convicted or pleads guilty.

The right of a victim to bring a civil claim for intentional conduct should not hinge on law enforcement's pursuit of criminal charges. This has nothing to do with the stated intent of the bill, and my amendment would ensure that rights of the victims of these kinds of intentional acts are not unintentionally limited.

Mr. Conyers. Mr. Deutch, would you yield long enough for me to compliment you on narrowing --

Mr. Deutch. I will gladly yield for that purpose.

Mr. Conyers. That is just what I did. Thank you.

Chairman Smith. Thank you, Mr. Deutch.

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

Mr. Franks. Mr. Chairman, this amendment should also be opposed because first of all it is redundant. The bill already only applies to health care, quote, goods and services or goods or services, quote, that relate to the diagnosis, prevention or treatment of any human disease or impairment, close quote.

None of the items that this amendment lists are a health care good or service and have nothing to do with the diagnosis, prevention or treatment of any human disease or impairment.

Mr. Chairman, quite simply, this is a medical liability bill. Its definitions are perfectly clear that it applies only to medical liability. And this amendment, it is really kind of a transparent effort to change the subject by talking about a bunch of horrifying things that have actually nothing to do with medical liability.

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

Mr. Franks. I will when I am finished, sir.

This amendment is not just a distraction but it is potentially a dangerous one, Mr. Chairman, that could undermine and confuse the definitions that are already in the bill. A court could possibly infer that if Congress found it necessary to include this list that there

must be other things that are not on this list that somehow count as medical liability. And perhaps arson isn't on the list. What if somebody burns down a health clinic? This amendment would make it a lot more ambiguous as to whether the arsonist gets protection under the bill.

And Mr. Chairman, I think at best the amendment is unnecessary and at worst it is harmful and should be opposed in either case.

Chairman Smith. Thank you, Mr. Franks.

Mr. Franks. I would yield to the gentleman.

Mr. Deutch. Thank you. I would remind the members that there seemed to be some general understanding last week in our discussion that intentional torts will have a very narrow definition. There was a definition on the Black's Law Dictionary definition of intentional torts and in fact I believe that the chairman took out a Black's Law Dictionary and read to us.

This amendment was introducing at the urging, frankly, of the chairman, in order to clarify what intentional torts we are specifically speaking of. The discussion last week focused on a carve-out in this bill for criminal acts. And there was extensive discussion about the fact that someone cannot bring a claim unless there is a criminal act which would protect abusers, would protect a whole host of activities that we want to give individuals the opportunity to seek redress for.

The purpose of this amendment is to list them. These are the intentional torts of which we spoke last week. This is consistent with

the discussion we had. I would urge members to support it. I am confused why this is suddenly, why there is suddenly such great opposition to excluding these intentional torts which were never meant to be included in the bill and are consistent entirely with the criminal carve-out that already exists.

Mr. Franks. Mr. Chairman, I just would reclaim my time.

No changes to this amendment can make it more relevant to the bill. I mean the bottom line is that throughout the hearing, the markup here, we have heard assault, battery, rape, other sexual assault or false imprisonment, all kinds of weird things brought in that the bill does not affect and these are criminal activities. And Mr. Chairman, I just think that the amendment is one we have gone over before in different applications and I hope that --

Mr. Deutch. Would the gentleman yield back for a specific question?

Mr. Franks. I am going to yield back to the chairman at this point.

Chairman Smith. Thank you, Mr. Franks. The question is on the amendment.

Ms. Sanchez. Mr. Chairman.

Chairman Smith. The gentlewoman from California, Ms. Sanchez, is recognized.

Ms. Sanchez. Mr. Chairman, move to strike the last word.

Chairman Smith. The gentlewoman is recognized for 5 minutes.

Ms. Sanchez. And I would yield my time to the gentleman from

Florida, Mr. Deutch.

Mr. Deutch. I thank the gentlelady. I would ask if there is someone who would choose to answer the question whether my understanding of this legislation is correct because as I read this legislation, an intentional tort; that is, the molestation or the rape by a physician of a patient, would be subject to a -- that is not -- under which there is not a criminal charge filed but would nevertheless constitute intentional tort, would be subject to a \$250,000 cap on noneconomic damages. And if that is the intention I just think it would be helpful for the MEMBERS of this committee to understand that that is the intention of the legislation.

Chairman Smith. Does anybody want to respond?

Mr. Deutch. And seeing my question fall upon deaf ears, I will yield back, Mr. Chairman.

Chairman Smith. If no other member wishes to be recognized, the question is on the amendment.

All those in favor, signify by saying aye. Opposed, no.

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

Mr. Deutch. Ask for a roll call.

Chairman Smith. And the clerk will call the roll.

The Clerk. Mr. Smith.

Chairman Smith. No.

The Clerk. Mr. Smith, no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly.

Mr. Gallegly. No.

The Clerk. Mr. Gallegly, 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, no.

Mr. Issa?

Mr. Issa. No.

The Clerk. Mr. Issa, no.

Mr. Pence?

Mr. Pence. No.

The Clerk. Mr. Pence, no.

Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes, no.

Mr. King?

Mr. King. No.

The Clerk. Mr. King, no.

Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks, no.

Mr. Gohmert?

Mr. Gohmert. No.

The Clerk. Mr. Gohmert, no.

Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan, no.

Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe, no.

Mr. Chaffetz?

[No response.]

The Clerk. Mr. Reed?

[No response.]

The Clerk. Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, no.

Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino, no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy, no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross, no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams, no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle, no.

Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers, aye.

Mr. Berman?

Mr. Berman. Aye.

The Clerk. Mr. Berman, aye.

Mr. Nadler.

[No response.]

The Clerk. Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott, aye.

Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt, aye.

Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren, aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee, aye.

Ms. Waters.

Ms. Waters. Aye.

The Clerk. Ms. Waters, aye.

Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen, aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson, aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi, aye.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley, aye.

Ms. Chu?

[No response.]

The Clerk. Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch, aye.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez, aye.

Ms. Wasserman Schultz.

Ms. Wasserman Schultz. Aye.

The Clerk. Ms. Wasserman Schultz, aye.

Chairman Smith. Mr. Coble?

Mr. Coble. No.

The Clerk. Mr. Coble votes no.

Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes Aye.

Chairman Smith. Any other members who wish to be recorded? If not, the clerk will report.

The Clerk. Mr. Chairman, 15 members voted aye, 19 members voted nay.

Chairman Smith. The majority voted against the amendment. The amendment is not agreed to. And we will now go to an amendment offered by the gentlewoman from Texas, Ms. Jackson Lee.

Ms. Jackson Lee. Thank you, Mr. Chairman. I have an amendment at the desk.

Chairman Smith. The clerk will report the amendment.

The Clerk. The amendment to H.R. 5 offered by Ms. Jackson Lee.

[The information follows:]

\*\*\*\*\* INSERT 4-2 \*\*\*\*\*

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

Ms. Jackson Lee. Thank you very much, Mr. Chairman.

I would just read to my colleagues as it comes out.

This is a simple premise to really conceptualize what I hope that all of us as Democrats and Republicans are doing today. It is the sense of Congress that this act adheres to the Fifth Amendment rights of due process under the Constitution.

Really, originally, my language suggested that under this legislation that physicians and patients would be treated with the sense of fairness, but I believe in the context of this committee, this addresses all the debate that we have had over the course of a couple of days, whether it has to do with the defective products, whether it has to do with applicability of punitive damages, it really speaks to our commitment to ensuring that the ultimate effect of this bill is that it treats those who are subject to the bill with due process privileges.

It restates the obvious, but it is important to do so. Because when I started with an amendment that I offered early on, I mentioned one of the patients that I was referring to, a lady by the name of Ms. Speiers who was rendered unconscious, was treated as a different hospital and determined that her artery was severely clotted and had caused tissue death in her legs. She ultimately had to have both of her legs amputated in order to save her life. She deserves due process and respect.

Jennifer McCready, a single mother who fell and severely injured her ankle and sought treatment at an emergency room. Despite the severity of the break, the bone in her ankle was never set, a common practice done to prevent excess swelling, and she was not seen by an orthopedic surgeon. She was sent home and told to wait until the swelling went down. However, the swelling did not go down and surgery that should have only taken 1 hour took 4. Because of the swelling the surgeon had to slice her Achilles tendon and wounds that refused to heal required grafts. To date she has endured five surgeries.

There are many cases like this. And what we are suggesting is that even though this may be considered a reform and an improvement of the tort laws that deal with medical malpractice, let us ensure that this bill does entitle all to a sense of fairness and simple due process that comes under the Constitution.

I would ask my colleagues to support this sense of Congress.

Chairman Smith. Thank you, Ms. Jackson Lee.

The gentleman from Arizona, once again, is recognized.

Mr. Franks. Thank you, Mr. Chairman.

Mr. Chairman, this amendment really does nothing but restate the obvious, that the bill should be applied in a way that is consistent with the Constitution, particularly the Fifth Amendment, that no person should be deprived of life, liberty, or property without due process of law. I am not sure that anyone is deprived of life, liberty, or property in this effort. But we just have to remember that every bill we pass in Congress should be consistent with the Constitution in the

first place. And I know that the supporters of the Affordable Care Act may forget that from time to time, but this is a baseline requirement of everything that we do. And we shouldn't be in the business of restating the obvious in every bill that we consider.

Mr. Chairman, with all due respect and some humor, if we did, if we restated the Constitution and its application in every markup that we did, we would be here until Barack Obama became a Republican. And by the rationale of this amendment, we might as well restate the entire Constitution in this and every bill, and that would be absurd.

The bill does not raise any problems under the Fifth Amendment. And if members believe that somehow H.R. 5 violates the Fifth Amendment, then certainly they should oppose the bill. But restating the obvious I don't think accomplishes anything. So with all due respect --

Ms. Jackson Lee. Will the gentleman yield?

Mr. Franks. With all due respect, I oppose the amendment and I will yield.

Ms. Jackson Lee. The gentleman has spoken, if you will, to the reason why out of a conciliatory collegial response and respect, that the amendment can be accepted. Frankly, it was your majority that has asked us to make sure to attest to that all subjected legislation does comply with the Constitution. So there is not a redundancy. There is a point to say that we want to ensure that those affected by this legislation know that they have rights under the Fifth Amendment. It is to say that all of us, no matter how many amendments were accepted or rejected, have the same intent for this legislation.

So I would ask my friend to accept not what is so much the obvious but what has been asked us by your own leadership, and to explain to me what offense it would take to allow this amendment to be admitted.

I ask my colleagues to support this amendment. I yield back.

Mr. Franks. Well, Mr. Chairman, I would just suggest that the majority's requirement that each bill cite its constitutional authority or where we have the authority as Congress to pass a certain bill is in this one as well, and we have cited that.

And I have to oppose the amendment based on the things that I have already said very respectfully.

Chairman Smith. Thank you, Mr. Franks. The question is on the amendment.

All those in favor, signify by saying aye. Opposed, no.

The noes have it.

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

Chairman Smith. And the clerk will call the roll.

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith, no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

Mr. Coble. No.

The Clerk. Mr. Coble, no.

Mr. Gallegly.

Mr. Gallegly. No.

The Clerk. Mr. Gallegly, no.

Mr. Goodlatte?

[No response.]

The Clerk. Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

Mr. Chabot. No.

The Clerk. Mr. Chabot, no.

Mr. Issa?

Mr. Issa. No.

The Clerk. Mr. Issa, no.

Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes, no.

Mr. King?

Mr. King. No.

The Clerk. Mr. King, no.

Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks, no.

Mr. Gohmert?

Mr. Gohmert. No.

The Clerk. Mr. Gohmert, no.

Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan, no.

Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe, no.

Mr. Chaffetz?

[No response.]

The Clerk. Mr. Reed?

[No response.]

The Clerk. Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin, no.

Mr. Marino?

Mr. Marino. No.

The Clerk. Mr. Marino, no.

Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy, no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross, no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams, no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle, no.

Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers, aye.

Mr. Berman?

Mr. Berman. Aye.

The Clerk. Mr. Berman, aye.

Mr. Nadler?

[No response.]

The Clerk. Mr. Scott?

[No response.]

The Clerk. Mr. Watt?

[No response.]

The Clerk. Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren, aye.

Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee, aye.

Ms. Waters?

Ms. Waters. Aye.

The Clerk. Ms. Waters, aye.

Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen, aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson, aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi, aye.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley, aye.

Ms. Chu?

[No response.]

The Clerk. Mr. Deutch?

Mr. Deutch. Aye.

The Clerk. Mr. Deutch, aye.

Ms. Sanchez?

[No response.]

The Clerk. Ms. Wasserman Schultz?

Ms. Wasserman Schultz. Aye.

The Clerk. Ms. Wasserman Schultz, aye.

Chairman Smith. Mr. Goodlatte?

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Chairman Smith. Mr. Pence?

Mr. Pence. No.

The Clerk. Mr. Pence votes no.

Chairman Smith. Any other members who wish to record their votes.

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 13 members voted aye, 19 voted nay.

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

Let me say to the members we have had a couple of more late blooming amendments, and I hope we can get through them quickly because I know they are being offered in good faith.

And the first person to be recognized for his amendment is the gentleman from Illinois, Mr. Quigley.

Mr. Quigley. Thank you very much, Mr. Chairman.

I have an amendment at the desk.

Chairman Smith. And the clerk will report the amendment.

The Clerk. Amendment to H.R. 5 offered by Mr. Quigley of Illinois, page 6, line 4, insert after "to the same injury," the following: "This subsection shall not apply in the case of a health care lawsuit" --

[The information follows:]

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

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

Mr. Quigley. Thank you again, Mr. Chairman.

Mr. Chairman, this amendment would exempt claims arising from care at VA hospitals from some restrictions imposed by H.R. 5, specifically the liability caps imposed in subsection (B) of section 4. While our veterans deserve the best hospital care, several VA hospitals have been under scrutiny for failure to properly sterilize equipment, leaving veterans exposed to HIV, hepatitis C, and other blood borne illnesses. This amendment would ensure that civil justice provides just compensation to veterans.

This month at least 35 patients had operations canceled after officials at John Cochran VA Medical Center in St. Louis found that surgical equipment had not been cleaned. While the elective surgeries were postponed, another nine patients had to be transferred to other hospitals in the area for the more urgent surgeries, which were paid for by the VA.

More alarming still, last year the same hospital came under scrutiny for problems without sterilization of instruments in the dental clinic. The hospital notified nearly 2,000 patients that they may have been exposed to blood borne illnesses over a 13-month period when dental instruments were not pre-washed with cleanser before undergoing with heat sterilization.

The so-called State flexibility language in H.R. 5 could further hurt veterans by forcing States to exempt permanent injury or loss from

damage limitations to not only damages for irreversible life threatening injury to \$250,000. It would be better to simply protect veterans by exempting them from these ill-advised caps.

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

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

Mr. Franks. Mr. Chairman, the actual effect of this amendment would be to drive doctors and nurses away from working at VA hospitals in the first place and to make drugs and health care services more expensive for VA hospitals. I think the amendment must be opposed if we want our veterans to have access to the same quality of affordable health care as the rest of us.

Now, Mr. Chairman, veterans benefit from health care tort reform as well, and they should not be excluded from it. This amendment must be opposed because the policy behind the cap on inherently unquantifiable noneconomic damages benefits all patients. The need to hold down costs by enacting reasonable medical care liability reform is particularly pressing for publicly funded hospitals that serve a public interest like caring for our veterans.

Cruz Reynoso, the Democratic Vice Chairman of the U.S. Commission on Civil Rights and former Justice of the California Supreme Court, perhaps said it best when he said quote, publicly funded medical centers were very supportive of the continued protection of California's medical liability law because if their own insurance rates would go up, they would be less able to serve the poor. He goes on to say, I

personally favored having as much access to the courts as possible, but at the same time you have to be careful that it doesn't do so in a way that is destructive; for example, in the medical field, destructive of the ability of society to respond to the medical needs of the people.

Mr. Chairman, to borrow Mr. Reynoso's words, this amendment would be, quote, destructive of the ability of society to respond to the medical needs of our veterans.

We should not single out veterans by denying them the benefits of this bill, and we should not knee-cap the VA system by forcing it to play by a different, more costly set of rules than other hospitals. And I oppose the amendment.

Chairman Smith. Thank you, Mr. Franks.

Are there any other members who wish to be recognized? The gentleman from South Carolina, Mr. Gowdy, is recognized.

Mr. Gowdy. Thank you, Mr. Chairman. Could I ask the gentleman from Illinois whether or not his amendment and the cases that would be referenced or litigated therein would already be covered by the Federal Tort Claims Act?

Mr. Quigley. Mr. Chairman, I defer the question to Mr. Nadler or Mr. Berman if they can be repeated.

Mr. Gowdy. Whether or not the category of cases cited by the gentleman from Illinois in his amendment would already be covered by the Federal Tort Claims Act given the fact that a VA hospital is being sued.

Mr. Quigley. My understanding, Mr. Chairman, is they would be currently, but this act would put them out of that protection. That is my understanding.

Chairman Smith. Okay. The gentleman from South Carolina yields back his time. The question is on the amendment.

All those in favor, signify by saying aye. Opposed, no.

In the opinion of the chair, the noes have it. The amendment is not agreed to. I appreciate the gentleman from Illinois not requesting a recorded vote. Let me thank all the members for their participation.

I don't think there is any way for us to finish the three more amendments that remain, the amendments to be offered by Ms. Waters, Mr. Scott, and Mr. Nadler and have those begun. Votes have begun, so we will ask the members to please return after the last vote, and we will try to get through these last three amendments, and then we will be finished, and I really appreciate that effort that everybody will make, and we will stand in recess until after the last vote.

Ms. Waters. Mr. Chairman, I will withdraw my amendment if the others will withdraw their two amendments so we don't have to come back.

Chairman Smith. Goodness gracious. The gentlewoman is recognized. Let me tell you.

Let's see if we can do that. I appreciate the gentlewoman willing to withdraw her amendment. Are Mr. Scott and Mr. Nadler willing to withdraw their amendments?

Mr. Scott. Mr. Chairman, mine will take about 1 minute.

Chairman Smith. We accepted one of your amendments already

today, Mr. Scott.

Mr. Scott. You will probably accept this one, too.

Chairman Smith. Well, Mr. Nadler, are you willing to withdraw your amendment?

Mr. Nadler. No, I think it is one that you might be willing to accept also after a minute or so.

Chairman Smith. We agree to reopen. We will continue our recess despite the best efforts by the gentlewoman from California and we will return after the last vote.

We will return after the last vote.

Mr. Nadler. I will withdraw it.

Chairman Smith. Members, please stay in the room.

Mr. Scott. Mr. Chairman, can I just offer my amendment and get a reaction?

Chairman Smith. The gentleman is recognized for purposes of offering his amendment. The clerk will report Mr. Scott's amendment.

The Clerk. Amendment to H.R. 5 offered by Mr. Scott of Virginia.

Page 18, line 7. Strike the term --

[The information follows:]

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

Chairman Smith. The amendment will be considered as read. Without objection, the gentleman from Virginia is recognized.

Mr. Scott. Mr. Chairman, this just places the bill, the legislative intent that you articulated earlier today, just to ensure that a child's future earnings or economic losses are not limited by the \$250,000 cap.

I yield back.

Chairman Smith. The gentleman has yielded back. I still oppose the amendment, having not had a chance to look at it, as much I would like to.

Mr. Nadler. Mr. Chairman -- I am sorry, finish.

Chairman Smith. The question is on the amendment.

All those in favor, signify by saying aye. Opposed, no.

The noes have it. The amendment is not agreed to.

A reporting quorum being present, the gentleman from New York, Mr. Nadler, is recognized.

Mr. Nadler. I have an amendment at the desk which will be very fast.

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to H.R. 5 offered by Mr. Nadler --

[The information follows:]

\*\*\*\*\* INSERT 4-5 \*\*\*\*\*

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

Mr. Nadler. The amendment simply says on page 18, line 8, strike the words "objectively verifiable." It is very simple. The bill says on page 5 that in any health care lawsuit nothing in this act shall limit a claimant's recovery of the full amount of the available economic damages. Economic damages are defined on page 18 as various different damages that are objectively verifiable monetary losses. Now if you have a child, the monetary loss may not be objectively verifiable. The law of the State will say whether they are verifiable or not. This is designed to say let the State law prevail and let the intent that I believe you have that we should not limit economic damages prevail.

Chairman Smith. Thank you, Mr. Nadler. I still have to oppose the amendment. We can continue to discuss it though. The question is on the amendment.

All those in favor, signify by saying aye. Opposed, no.

The noes have it, and the amendment is not agreed to.

A reporting quorum being present, the question is on reporting the bill, as amended, favorably to the House.

All those in favor, signify by saying aye. Opposed, no.

The ayes have it. And the bill, as amended, is ordered reported favorably.

Without objection, the bill will be reported as a single amendment in the nature of a substitute incorporating amendments adopted, and staff is authorized to make technical and conforming changes. Members

will have 2 days to submit their views. A recorded vote has been requested. The clerk will call the roll.

The Clerk. Mr. Smith?

Chairman Smith. Aye.

The Clerk. Mr. Smith, aye.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

Mr. Coble. Aye.

The Clerk. Mr. Coble, aye.

Mr. Gallegly?

Mr. Gallegly. Aye.

The Clerk. Mr. Gallegly, aye.

Mr. Goodlatte?

Mr. Goodlatte. Aye.

The Clerk. Mr. Goodlatte, aye.

Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

Mr. Chabot. Aye.

The Clerk. Mr. Chabot, aye.

Mr. Issa?

Mr. Issa. Aye.

The Clerk. Mr. Issa, aye.

Mr. Pence?

Mr. Pence. Aye.

The Clerk. Mr. Pence, aye.

Mr. Forbes?

Mr. Forbes. Aye.

The Clerk. Mr. Forbes, aye.

Mr. King?

Mr. King. Aye.

The Clerk. Mr. King, aye.

Mr. Franks?

Mr. Franks. Aye.

The Clerk. Mr. Franks, aye.

Mr. Gohmert?

Mr. Gohmert. Aye.

The Clerk. Mr. Gohmert, aye.

Mr. Jordan?

Mr. Jordan. Aye.

The Clerk. Mr. Jordan, aye.

Mr. Poe?

Mr. Poe. Aye.

The Clerk. Mr. Poe, aye.

Mr. Chaffetz?

[No response.]

The Clerk. Mr. Reed?

[No response.]

The Clerk. Mr. Griffin?

[No response.]

The Clerk. Mr. Marino?

Mr. Marino. Aye.

The Clerk. Mr. Marino, aye.

Mr. Gowdy?

Mr. Gowdy. Aye.

The Clerk. Mr. Gowdy, aye.

Mr. Ross?

Mr. Ross. Aye.

The Clerk. Mr. Ross, aye.

Mrs. Adams?

Mrs. Adams. Aye.

The Clerk. Mrs. Adams, aye.

Mr. Quayle?

Mr. Quayle. Aye.

The Clerk. Mr. Quayle, aye.

Mr. Conyers?

Mr. Conyers. No.

The Clerk. Mr. Conyers, no.

Mr. Berman?

Mr. Berman. No.

The Clerk. Mr. Berman, no.

Mr. Nadler?

Mr. Nadler. No.

The Clerk. Mr. Nadler, no.

Mr. Scott?

Mr. Scott. No.

The Clerk. Mr. Scott, no.

Mr. Watt?

Mr. Watt. No.

The Clerk. Mr. Watt, no.

Ms. Lofgren?

Ms. Lofgren. No.

The Clerk. Ms. Lofgren, no.

Ms. Jackson Lee?

Ms. Jackson Lee. No.

The Clerk. Ms. Jackson Lee, no.

Ms. Waters?

Ms. Waters. No.

The Clerk. Ms. Waters, no.

Mr. Cohen?

Mr. Cohen. No.

The Clerk. Mr. Cohen, no.

Mr. Johnson?

Mr. Johnson. No.

The Clerk. Mr. Johnson, no.

Mr. Pierluisi?

Mr. Pierluisi. No.

The Clerk. Mr. Pierluisi, no.

Mr. Quigley?

Mr. Quigley. No.

The Clerk. Mr. Quigley, no.

Ms. Chu?

[No response.]

The Clerk. Mr. Deutch?

Mr. Deutch. No.

The Clerk. Mr. Deutch, no.

Ms. Sanchez?

Ms. Sanchez. No.

The Clerk. Ms. Sanchez, no.

Ms. Wasserman Schultz.

Ms. Wasserman Schultz. No.

The Clerk. Ms. Wasserman Schultz, no.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 18 members voted aye, 15 members voted nay.

Chairman Smith. A majority having agreed to the bill, the bill is agreed to, and without objection, the bill will be reported as a single amendment in the nature of a substitute incorporating amendments adopted, and the staff is authorized to make technical and conforming changes. Members will have 2 days to submit their views. There being no further business before the committee, we stand adjourned. I thank everybody again.

[The statement of Mr. Marino follows:]

\*\*\*\*\* INSERT 4-6 \*\*\*\*\*

[Whereupon, at 6:40 p.m., the committee was adjourned.]