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MARKUP OF:

H.R. 367, THE "REGULATIONS FROM THE EXECUTIVE IN NEED OF SCRUTINY (REINS)ACT OF 2013";

AND H.R. 982, THE "FURTHERING ASBESTOS CLAIM TRANSPARENCY ACT (FACT) OF 2013"

Wednesday, March 20, 2013

House of Representatives,

Subcommittee on Regulatory Reform,

Commercial and Antitrust Law,

Committee on the Judiciary,

Washington, D.C.

The subcommittee met, pursuant to call, at 10:00 a.m., in Room 2141, Rayburn House Office Building, Hon. Spencer Bachus [chairman of the subcommittee] presiding.

Present: Representatives Bachus, Farenthold, Marino, Holding, Collins, Rothfus, Cohen, Johnson, DelBene, Garcia, and Jeffries.

Staff Present: Shelley Husband, Staff Director; Branden Ritchie, Deputy Staff Director and Chief Counsel; Allison Halataei, Parliamentarian; Kelsey Deterding, Clerk; Daniel Flores, Counsel; John Hilton, Counsel; Perry Apelbaum, Minority Staff Director; Danielle Brown, Minority Parliamentarian; and James Park, Counsel.

Mr. Bachus. The Subcommittee on Regulatory Reform, Commercial and Administrative Law will come to order. A working quorum is present. Pursuant to notice, I now call up H.R. 367 for purposes of markup. The clerk will report the bill.

Ms. Deterding. H.R. 367 to amend Chapter 8 --

[The bill follows:]

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

Mr. Bachus. Without objection, the bill is considered as read, and open for amendment at any point. And I will begin by recognizing myself and the ranking member for an opening statement.

Today the subcommittee will mark up H.R. 367, the Regulations from the Executive in Need of Scrutiny Act of 2013, commonly known as the REINS Act. Let me thank Represent Todd Young of Indiana for introducing this legislation, and let me say, I am pleased to be an original cosponsor.

Regulations help to implement policies Congress has established by statute. When issued, they should be reasonable, set clear rules of the road for businesses, and provide benefits to the public that are greater than the cost. Today's regulatory system fails that test. The cost it imposes and the uncertainty it creates are choking America's economy and preventing recovery of American jobs, growth, and global competitiveness.

Excessive regulation especially harms small businesses that generate most of the new jobs in our economy, or at least they did generate most of the jobs in our economy until this last recession. And numerous studies have shown that jobs in our small businesses are not being created at the same pace. The Small Business Administration, has confirmed that small businesses pay a disproportionate share of the Federal regulatory burden. Indeed, the cost of regulatory compliance has been translated to about \$11,000 per worker.

Imagine how much better off we would be if they could put that \$11,000 back in their businesses to grow and hire workers.

Federal Reserve Chairman Ben Bernanke himself expressed concern about the impact and cost of regulations on small businesses during his Humphrey-Hawkins testimony last month. Chairman Bernanke said, and I am quoting now, "We all agree that the burden of regulation falls particularly heavily on small community banks which don't have the resources to manage those regulations very effectively," unquote.

The same thing can be said about credit unions, and the fact their regulator has expressed an almost identical concern.

The REINS Act helps to relieve the burden on small businesses and everyday Americans by requiring that Congress, not the Washington bureaucracy, decide what major regulatory burden should be imposed on the American public. It makes sure that the American people have a say in approving the most costly decisions that affect their lives and livelihood. This reform could not be timelier. American workers and businesses are facing a historic regulatory tsunami. Unless Congress intervenes and passes the REINS Act and other important regulatory reforms, the increasing tide of major Federal regulation will continue to destroy jobs, harm communities, and weaken opportunities and the ability of American workers to find jobs and to provide for their families.

Our forefathers designated our Federal system of governance to include an important system of checks and balances. The REINS Act is commonsense legislation that does just that. I invite all my colleagues to work together during our markup to help ensure it becomes law during this Congress, and restore the sense of balance established

by our forefathers and the Constitution.

At this time, I recognize the gentleman from Memphis, Tennessee for his opening statement.

[The statement of Mr. Bachus follows:]

***** COMMITTEE INSERT *****

Mr. Cohen. Thank you, Mr. Chairman. And this hearing, this markup troubles me. It troubles me for two reasons. I have a concern about the process, and I have a regard, positive and affectionate, for the chairman. And the chairman is responsible for the process. But he is a really good guy, and somebody I like, and I know he is not always approval of this process. But in this process we are here to mark up the REINS Act, and Mr. Johnson and myself have both submitted questions to be answered by the witnesses and we haven't even had time for them to answer the questions, and they haven't been answered, and to have a markup before the period for questions to be answered has ended is really a terrible process, I have to think.

We have got to get a grip on this, and while this bill has been around, and I have said since Groundhog Day, some of the members or most of the members are new, and they weren't here with us when Bill Murray was with us last, and we had this same bill come before us, this REINS Act. So I am concerned about the process, even though I totally and completely respect the chairman.

The bill is, as I said before, I think totally unnecessary, and impractical. It is a difference in maybe philosophies, and the chairman said, and I am sure he feels that -- no question he feels it, that he thinks it is a common-sense approach. I think it is illogical, and gets us into the weeds where Congress was never supposed to go.

This would say that all regulations have to be approved by both the House and the Senate and signed by the President before they go into law. Well, the odds of doing that are, of any bill, let alone

a regulation, is very slim. And there is a process set up in here that takes over the scheduling of procedures in the House.

Right now Speaker Boehner can schedule bills when he sees fit, when he has the votes, when he thinks we have the time, et cetera, et cetera. But this would come and be a law that would put its act over the Speaker and take his power away and say that joint resolutions have to be approved within 70 legislative days before they could take effect, and if they are not approved, then they don't take effect. And in the House, committees of jurisdiction only have 15 legislative days to consider a resolution, and if you don't do it within 15 days, gone. It goes to the full committee, and to the floor, and the committee has no further opportunity to look at this.

And then when it gets there, the House has to consider on a second or fourth Thursday of every month, assuming the House is even in session on a Thursday. I don't know what happens in August when we are not here. We are not here for Passover and Easter. I guess we just kind of pass over the opportunity to approve regulations. And that would raise four major questions that I would ask, but I am not the youngest person on this panel, so I won't do that. Major bills have to be -- are considered those of over \$100 million, and there are 50 or 100 a year. And we are not going to have the opportunity to look at 50 or 100 bills within 14 days of submission of the committee, or to have Tuesday and Thursdays -- the second and fourth Thursday. It is not Tuesdays, just Thursdays -- to act on these.

It is just, for a law to take over the Speaker's power of

scheduling makes no sense, not that we don't have plenty of time on Thursdays to do things. Normally we are getting to the airport as soon as we can. But it just makes no sense to me, and it is just a way to obfuscate government.

I thought about, you know, a previous statement I made about each day we get up, and brush my teeth and shower, and get in the car, and come up here, and I feel good, because I know everything has kind of been looked at and safe because of the regulations. And I really thought about that today when I got in the elevator. And I said, and then I thought wow, you know, I am on the 13th floor. This is a big machine. We have confidence that this has been inspected and that the regulations work, and that this isn't going to just fall to the ground and I am going to die. And the elevator worked because we had regulations and they inspect it, and it works. And regulations are good.

And regulations aren't the, you know, evil that some people make them out to be. But this legislation is a Rube Goldberg kind of deal that would take away power from the Speaker to schedule bills, and end up obfuscating the opportunity for experts to deal with regulations and give lobbyists much more power to come in a committee and kill something, and never have it go into effect.

So for those who fly airplanes, go in elevators, eat food, and live, we need regulations and I would humbly, and honorably request that we not pass such a bill, which we didn't schedule it, but nevertheless, Mr. Bachus is a great guy, and so those are my concerns.

[The statement of Mr. Cohen follows:]

***** COMMITTEE INSERT *****

Mr. Bachus. Thank you. You are on the 13th floor?

Mr. Cohen. Yes, I am.

Mr. Bachus. Okay. We don't have 13 floors in Alabama. All right.

Are there any amendments? Hearing no amendments, a reporting quorum being present, the question is on reporting the bill -- for what purposes does the gentleman --

Mr. Cohen. I don't think there is a quorum. I would have to ask if, really --

Mr. Bachus. I think four makes a quorum. Okay, we don't have another -- okay, we do not have a quorum to report the bill. We had a quorum to start the proceedings, but -- well, here we go. Now, a reporting quorum being present. I appreciate that. You are absolutely right, it wasn't present, but it is now.

A reporting the quorum being present, the question is on reporting the bill favorably to the full House. Mr. Collins, did you want to be recognized before?

Mr. Collins. Yes, I move to strike the last word.

Mr. Bachus. The gentleman is recognized.

Mr. Collins. Thank you, Mr. Chairman. In this debate over how to bring transparency to the regulatory process, we tend to lose sight of the common ground we share. This may come as a surprise to my friends on the other side of the aisle, but I value the role of responsible regulations. Many regulations have been designed to protect personal safety and ensure our children grow up in a nation where they can breathe

clean air, eat safe, healthy food and drink clean water.

I believe, as I think some of my colleagues on the other side of the aisle do as well, the goal of any regulation should be to achieve a benefit that would not be possible if the regulation wasn't in place. But the regulation should be designed in such a fashion that its achieved benefit far outweighs the cost. This is where the breakdown occurs. It seems that our regulatory system today has lost sight of this goal and America's economy is paying the price.

The Federal Government too often designs regulations that are unnecessary, and achieve little or no benefit at a very high cost. This problem did not begin with this current administration, nor will it cease to exist on January 20, 2017. I respect the concerns of my Democratic colleagues but I fail to see how congressional oversight is appropriate in every other aspect of policy except the area of regulatory arena, especially as it relates to the rules that have over \$100 million in economic impact.

Even if my friends are correct and the implementation of a major rule is delayed, does that really create the parade of horrors they describe? When grappling with a rule that could affect so many of our constituents and local economies I believe that requiring additional congressional oversight and deliberation is sound, responsible policy. This is particularly true given our current environment where many of the major rules issued by the Department of Health and Human Services and Department of Agriculture were issued without public comment.

I don't believe that the REINS Act is a magical fix that will

single-handedly stem the tide of red tape or over regulation that our businesses and industry are facing, but I do think it is a reasonable and rational approach to require Congress to take a second look before slapping our districts with new regulations bearing a hefty price tag.

Mr. Chairman, I yield back.

[The statement of Mr. Collins follows:]

***** COMMITTEE INSERT *****

Mr. Bachus. Thank you.

Mr. Cohen. I would like to request to enter Mr. Conyers' statement.

Mr. Bachus. Without objection, Mr. Conyers' statement will be included in the record.

[The statement of Mr. Conyers follows:]

***** COMMITTEE INSERT *****

Mr. Cohen. Thank you, sir.

Mr. Bachus. Okay. As I said, a reporting quorum is present.

The question is on reporting the bill favorably to the full committee.

Those in favor say aye.

Those opposed nay.

Okay. It appears the ayes have it.

Mr. Cohen. Roll call, please.

Mr. Bachus. A roll call has been -- a recorded vote has been requested. The clerk will call the roll.

Ms. Deterding. Mr. Bachus?

Mr. Bachus. Aye.

Ms. Deterding. Mr. Bachus votes aye.

Mr. Farenthold?

Mr. Farenthold. Aye.

Ms. Deterding. Mr. Farenthold votes aye.

Mr. Issa?

[No response.]

Ms. Deterding. Mr. Marino?

Mr. Marino. Aye.

Ms. Deterding. Mr. Marino votes aye.

Mr. Holding?

Mr. Holding. Aye.

Ms. Deterding. Mr. Holding votes aye.

Mr. Collins?

Mr. Collins. Aye.

Ms. Deterding. Mr. Collins votes aye.

Mr. Rothfus?

Mr. Rothfus. Aye.

Ms. Deterding. Mr. Rothfus votes aye.

Mr. Cohen?

Mr. Cohen. No.

Ms. Deterding. Mr. Cohen votes no.

Mr. Johnson?

[No response.]

Ms. Deterding. Ms. DelBene?

Ms. DelBene. No.

Ms. Deterding. Ms. DelBene votes no.

Mr. Garcia?

[No response.]

Ms. Deterding. Mr. Jeffries?

Mr. Jeffries. No.

Ms. Deterding. Mr. Jeffries votes no.

Mr. Bachus. The ayes have it, and the bill is ordered reported favorably to the full committee.

Let me point out, Mr. Cohen, the Rules Committee has a referral on this bill, so that could be a possibility in getting the bill delayed until such time as you get answers from the witnesses. And I will also ask the witnesses to, in a prompt manner, to answer your questions. So I will work with you on that part of the process and we will do that.

And I know we are going into a recess, but that shouldn't delay

the witnesses from responding to you.

Mr. Cohen. Thank you. Thank you, sir. That is why I said all of those nice things about you, because they are true.

Mr. Bachus. Will the clerk report the vote?

Ms. Deterding. Mr. Chairman, 6 members voted aye; 3 members voted nay.

Mr. Bachus. All right, thank you. With that, we have previously ordered the bill reported favorably to the full committee.

Now, pursuant to notice, I now call up H.R. 982 for purposes of markup. The clerk will report the bill.

Ms. Deterding. H.R. 982 to amend Title 11 of the --

[The bill follows:]

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

Mr. Bachus. Without objection, the bill is considered as read and open for amendment at any point. Before I do that, though, this is the Asbestos Claim Transparency Act, or the FACT Act. I received a letter yesterday, in fact, Chairman Goodlatte, Mr. Conyers, myself, and Mr. Cohen received a letter from three of the victims.

These were the ladies that were here for the last hearing. And they point out -- I would like to offer this letter for the record -- they point out that they didn't have the opportunity to testify. First thing I would say about that is that we have had three hearings, essentially, on this bill last year and this year, and there was an opportunity to call them. And actually, who was called as opposed to them, and I think that was a decision by my colleagues in the minority that a representative of the trial lawyers, or a representative -- testified as a representative of the victims. But having said that, I started the last hearing with a statement that we are here for the victims. We are here to do what is right for the victims. They may, some of them may disagree. All of them may disagree with that, but the point that their testimony was not taken I think is a valid one. And I am going to hold the hearing -- what I am going to do is open the record for the purposes of taking their testimony. And I would like Mr. Cohen's cooperation in doing that.

So we will arrange for one or more of them to be present, hopefully the week we come back, and we will open the record. We will allow the members to participate, and we will take their testimony.

Mr. Cohen. And then the vote will be after that?

Mr. Bachus. Well, I want to go ahead and vote now, but before -- it will then go to the full committee, but they just said they wanted the right to testify.

Now, I have read, they all submitted testimony. I have read their -- I have read their submitted testimony. And let me say this: I think this, we debated this, I think, at length, and Mr. Farenthold, and Mr. Matheson, you know, this is a bipartisan legislation, but I think this is in the best interest of the victims, because it helps prevent the fund from being depleted. Now, we have past victims. We have future victims. Obviously, for future victims, you know, preserving the fund, making sure we have transparency, I think is good. We debated that.

But I am just simply saying that they said they would like their testimony to be a part of the record before the full committee. I want to make that concession to them. I understand what you are saying, but I am, you know, we have already scheduled this, and this was something we got late last night, apparently. It came in last night.

Mr. Marino.

Mr. Marino. Give me 30 seconds. I want to make it perfectly clear. First of all, I agree with you that these people wanted to testify. They have the right and we should hear their information. But I also want to make it clear that in lieu of these people testifying, the Democrats called the attorney to represent these people. It wasn't the Republicans that said you cannot testify. Each side determines what witnesses they are going to call about what issue.

So with that, I yield back.

Mr. Bachus. Yeah, and -- Mr. Cohen.

Mr. Cohen. Thank you, Mr. Chairman. You know, with all due respect, and due regard, this is ridiculous. There are four witnesses. Three are called by the majority, one by the minority. We get one, you get three. We called somebody to represent the victims. If we had two, we would have had a victim. Three victims who were here have written and said, we live with the pain caused by this each and every day. It is immeasurable. It is unthinkable Congress would add to our misfortune. The idea of having a hearing after we have had a markup in this subcommittee, makes a mock-up of the hearing, makes a mock-up of the misfortune and makes the citizens look like, you know, they can speak, but nobody is going to listen.

Now, I am not laboring under any thought that any of the testimony is going to affect the outcome of the vote. But nevertheless, the vote shouldn't take place until there is that possibility that lightning strikes and somebody listens and does change their position. And I would just simply ask, and the idea of due process, notice and a hearing, the 5 days for questions hasn't even expired since the last hearing. You have 5 legislative days to submit questions. We haven't gotten to there until the end of the day.

This markup is premature, and it flies in the face of due process, and of us representing any citizens, let alone the victims. And so I would ask the chairman out of a sense of fairness, or the appearance of fairness, to put this markup off until after the hearing.

Mr. Bachus. Let me, if the gentleman will suspend, let me ask the staff some procedural questions.

All right, let me put in the record that I want to give the victims the right to have their testimony recorded, and I want to offer them 30 days to do that. And further -- well, I am going to offer them 30 days. I tell you 21 days. We will split the difference, 21 days. And I will take their testimony, and I will notify you, Mr. Cohen, and I will further ask the full committee chairman not to bring this up for markup or a vote until they have had that opportunity.

Now, let me say, if I said so, we have had three hearings. Instead of calling a victim, the decision was made by the minority. You were not chairman, but in all cases, to call the same trial lawyer representative as opposed to the victim, and attorneys often speak for victims very articulately, and I think he did represent their views at least for those three folks. But I am simply saying, I am going to make that offer to you.

Mr. Jeffries. Mr. Chairman, if you would yield I move to strike the last word.

Mr. Bachus. Yes.

Mr. Jeffries. I think you have mentioned that there have been three hearings in the proceedings in Congress, I gather. There are several new members of this committee who haven't had the opportunity to fully examine the record that may have been before other members of the committee, who carry over from the 112th Congress. Now, I assume, as you indicated, and I take you at your word, that the purpose

of moving this legislation for those who support it is on behalf of the victims, not on behalf of the asbestos industrial complex. So if it is on behalf of the victims, then I would think that we should hear from the victims, live before us, with an opportunity to question them before moving forward as it relates to any vote. I mean, this essentially will be the equivalent of a trial before a jury that some witnesses who weren't able to participate --

Mr. Bachus. All right, let me, your point is well taken and I am going to take this on myself. And I may not please, I am sure I won't please everybody. But I am going to give 30 days for the witnesses to come in here for them to give their testimony, for members to ask them questions, and at that time we will take a vote.

We will take their hearing, and we will probably do that in one of the other rooms, but any of you all will be invited. We won't do it while the full committee is meeting, and we will take their testimony. And they will be available for questions. And I am going to delay a vote, and I have been asked not to, but I am going to do that. All right?

Mr. Jeffries. Thank you, Mr. Chairman.

Mr. Cohen. Thank you, Mr. Chairman. I appreciate that, and I think it is definitely the right thing to do, and it is bipartisanship.

Mr. Marino. Mr. Chairman, if I may for a moment. I think it is the right decision. I think we should be hearing from these individuals, although again, I want to point out that none of my colleagues on the other side, as far as I know, requested from you or

the chair of the full committee, for these people to testify. And all it pretty much takes is a request. And I am sure, I am sure if you were requested by someone on the other side to have an individual testify, that would have been granted.

And I yield back.

Mr. Bachus. So, we are in agreement. We are going to give them 30 days to be here, these three ladies have requested. One, or all three, or two. We are going to take their testimony. We are going to give members the opportunity to question them. And we are going to postpone a vote for 30 days.

Having said that, this hearing -- I am not going to have the vote today. I am just not going to do it. With that, this hearing is recessed. We will recess subject to call of the chair.

Mr. Cohen. Thank you, sir.

[Whereupon, at 10:30 a.m., the subcommittee was adjourned.]