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4 MARKUP OF H.R. 758, THE LAWSUIT ABUSE REDUCTION ACT (LARA) OF  
5 2015;

6 H.R. 526, THE FURTHERING ASBESTOS CLAIM TRANSPARENCY (FACT)  
7 ACT OF 2015; AND

8 H. CON. RES. 13, EXPRESSING THE SENSE OF CONGRESS THAT THE  
9 RADICAL ISLAMIC MOVEMENT IN AFGHANISTAN KNOWN AS THE TALIBAN  
10 SHOULD BE RECOGNIZED OFFICIALLY AS A FOREIGN TERRORIST  
11 ORGANIZATION BY THE UNITED STATES GOVERNMENT.

12 Thursday, May 14, 2015

13 House of Representatives

14 Committee on the Judiciary

15 Washington, D.C.

16 The committee met, pursuant to call, at 10:22 a.m., in  
17 Room 2141, Rayburn Office Building, Hon. Bob Goodlatte

18 [chairman of the committee] presiding.

19 Present: Representatives Goodlatte, Sensenbrenner,  
20 Smith, Chabot, Issa, Forbes, King, Franks, Gohmert, Jordan,  
21 Poe, Marino, Gowdy, Labrador, Farenthold, Collins, DeSantis,  
22 Walters, Buck, Ratcliffe, Trott, Bishop, Conyers, Nadler,  
23 Lofgren, Jackson Lee, Cohen, Johnson, Pierluisi, Chu, Deutch,  
24 DelBene, Jeffries, Cicilline, and Peters.

25 Staff present: Shelley Husband, Majority Staff  
26 Director; Branden Ritchie, Deputy Majority Staff Director and  
27 Chief Counsel; Allison Halataei, Majority Parliamentarian and  
28 General Counsel; Paul Taylor, Chief Counsel, Subcommittee on  
29 the Constitution and Civil Justice; Anthony Grossi, Chief  
30 Counsel, Subcommittee on Regulatory Reform, Commercial and  
31 Antitrust Law; George Fishman, Chief Counsel, Subcommittee on  
32 Immigration and Border Security; Kelsey Williams, Majority  
33 Clerk; Perry Apelbaum, Minority Staff Director; Danielle  
34 Brown, Minority Parliamentarian; James Park, Minority  
35 Counsel; Susen Jensen, Minority Counsel; Tom Jawetz, Minority  
36 Counsel; and Maggie Lopatin, Minority Clerk.

37

38 Chairman Goodlatte. Good morning. The Judiciary  
39 Committee will come to order, and without objection the chair  
40 is authorized to declare a recess of the committee at any  
41 time.

42 We will now resume consideration of H.R. 758, the  
43 Lawsuit Abuse Reduction Act, introduced by the gentleman from  
44 Texas, Mr. Smith. When we left on April 15, the Conyers  
45 amendment was pending. Does anyone seek recognition on the  
46 Conyers amendment?

47 For what purpose does the gentlewoman from California  
48 seek recognition?

49 Ms. Lofgren. Strike the last word.

50 Chairman Goodlatte. The gentlewoman is recognized for 5  
51 minutes.

52 Ms. Lofgren. Mr. Chairman, I would like to yield to Mr.  
53 Conyers to refresh our memory on where we are.

54 Mr. Conyers. Thank you very much for yielding. And I  
55 will attempt to summarize, Ms. Lofgren, the amendment that  
56 was pending when we last were considering the bill and my  
57 amendment. My amendment exempts this bill from civil rights  
58 and the constitutional law cases.

59 And there is a reason. We have an experience that civil

60 rights and constitutional cases raises frequently unique  
61 arguments for extensions or modifications of existing law,  
62 and as a result, during the Civil Rights Movement many civil  
63 rights plaintiffs were susceptible to Rule 11 motions under  
64 the 1983 version of the rule. And so, what my amendment does  
65 is merely restore the 1983 version of the rule, and we think  
66 that it will lessen the experience with that rule, which  
67 disproportionately impacted on civil rights cases.

68 I do not know if the author of the bill knew this or  
69 intended this, but I bring it to my friend from Texas'  
70 attention so that he may even support this amendment. For  
71 example, a 1991 Federal Judicial Center study found that the  
72 incidence of Rule 11 motions was higher in civil rights cases  
73 than in other types of cases. And another study showed that  
74 while civil rights comprised 11 percent of the Federal cases  
75 filed, more than 22 percent of the cases were ones in which  
76 sanctions had been imposed. They were civil rights cases.

77 In other words, this measure that we are considering,  
78 unless we return to the 1983 version, we are making it more  
79 difficult for civil rights cases, which are admittedly less  
80 frequent than they were in an earlier period, but it is still  
81 very important that they not be hindered by this measure.

82 And that is the import of my amendment.

83 The inclusion of this language is an acknowledgment of  
84 the disproportionate impact that the 1983 rule had on civil  
85 rights cases, and we should applaud its intent.  
86 Nevertheless, I fear this rule of construction by itself will  
87 not prevent defendants from using Rule 11, as amended by H.R.  
88 758, with mandatory sanctions and lack of a safe harbor, as a  
89 weapon to dissuade civil rights plaintiffs from pursuing  
90 their claims. And my amendment makes merely an explicit  
91 exception for civil rights and constitutional issues and  
92 actions.

93 As a result, litigants will be clearly aware of its  
94 existence and will not be able to force opposing priorities  
95 into satellite litigation when the case is brought under a  
96 civil rights law. My amendment is necessary to avoid even  
97 the possibility of a chilling effect that the amendments made  
98 by the bill to Rule 11 could have on those advocating civil  
99 rights and constitutional protections.

100 And so, I urge my colleagues to give this small  
101 exception that I am carving out the consideration that I feel  
102 is necessary based on our previous experience. And I thank  
103 the chairman, and I hope to have support for this.

104       Ms. Lofgren. Thank you, Mr. Conyers. And I yield back,  
105 Mr. Chairman.

106       Mr. Smith. [presiding] Okay. Thank you, Mr. Conyers.  
107 And the gentleman from Colorado, Mr. Buck, is recognized.

108       Mr. Buck. Thank you, Mr. Chairman, and I yield to the  
109 chair to respond to the ranking member's statement.

110       Mr. Smith. I appreciate that very much. First of all,  
111 let me thank the chairman of the committee, Mr. Goodlatte,  
112 for bringing this bill up and actually for returning to it  
113 today. It is an important piece of legislation. I do want  
114 to do my best to continue Mr. Conyers' refresher comments,  
115 and reassure him at the same time that if you look at page 2  
116 of the bill, the actual language under the heading "Rule of  
117 Construction" reads, "Nothing in this act or an amendment  
118 made by this act shall be construed to bar or impede the  
119 assertion or development of new claims, defenses, or  
120 remedies, under Federal, State, or local laws, including  
121 civil rights law or under the Constitution of the United  
122 States." So I think we have gone out of our way here to  
123 assure individuals that we will not allow that to occur.

124       The amendment that Mr. Conyers has offered goes beyond  
125 that and would make it impossible to prevent frivolous claims

126 to be filed under civil rights laws. And I simply have to  
127 resist that large of a loophole. I am trying to reduce  
128 frivolous lawsuits, not create a loophole where those types  
129 of lawsuits could be filed. So I do have to oppose the  
130 gentleman's amendment.

131 Mr. Conyers. Would the chairman yield?

132 Mr. Smith. And I will be happy to yield to the  
133 gentleman from Michigan.

134 Mr. Conyers. Thank you. We have sort of a rebuttal to  
135 that because if it were as easily resolved as you say because  
136 you mentioned it. I just wanted to add our research shows  
137 that the rule of construction does nothing to prevent a civil  
138 rights plaintiff from being forced into satellite litigation.  
139 It says merely that 758 could not be construed to bar or  
140 impede a civil right or constitutional claim. And by  
141 contrast, my amendment simply exempts civil rights and  
142 constitutional claims from the effect of the amendment to  
143 Rule 11 that 758 would make.

144 This way civil rights plaintiffs can avoid or at least  
145 significantly reduce the risk of being dragged into Rule 11  
146 satellite proceedings, the very risk that would have had a  
147 chilling effect on civil rights claims under the 1983 rule.

148 And so, I want to thank the chairman for his noble attempt,  
149 and I hope that he will see that I intend to pursue this  
150 because I think your helpfulness does not go quite far  
151 enough. And I thank the chairman.

152 Mr. Smith. Yes, thank you, Mr. Conyers. I will reclaim  
153 my time, and I certainly appreciate the gentleman's good  
154 motive. But, again, the underlying point of this legislation  
155 is to prevent frivolous lawsuits from being filed whether it  
156 is satellite litigation or not satellite litigation. The  
157 whole point is to try to reduce the number of frivolous  
158 lawsuits. And I might say I also try to reduce the number of  
159 frivolous lawsuits whether it is civil rights lawsuits or any  
160 other kind of lawsuit, and I am just not willing to carve out  
161 an exception to that.

162 Are there other members who wish to be heard on the  
163 Conyers amendment? The gentleman from Georgia is recognized  
164 for 5 minutes.

165 Mr. Johnson. Thank you, Mr. Chairman. I have a simple  
166 question, and it is not a rhetorical question, and perhaps it  
167 has just been answered. But the question is, what is the  
168 problem that this legislation seeks to address? And as I  
169 understand it, it purports to address the issue of so-called



170 frivolous lawsuits, and so the aim is to reduce frivolous  
171 lawsuits. That is the purpose of this legislation.

172 But, you know, the real question is why do we need this  
173 bill in order to reduce frivolous litigation?

174 Mr. Smith. If the gentleman will yield, I will be happy  
175 to try to respond.

176 Mr. Johnson. Yes.

177 Mr. Smith. Okay. First of all, I do believe it  
178 requires us to acknowledge that there is frivolous  
179 legislation. If the gentleman does not believe there is any  
180 frivolous legislation, I can understand his opposition to the  
181 bill. But point in fact, as I mentioned last month in my  
182 opening statement, there is a real problem. A lot of  
183 innocent individuals see their livelihoods ruined, oftentimes  
184 to the point of being bankrupted. Their innocent and good  
185 reputations have been besmirched by frivolous lawsuits that  
186 have no basis whatsoever. And oftentimes these frivolous  
187 lawsuits actually rise to the point of being legalized  
188 extortion.

189 And so, I do think frivolous lawsuits, like 90 percent  
190 of the American people, are a plague upon our society, and  
191 this legislation, by having the judge impose sanctions in the

192 case of a finding of frivolous lawsuits, will act as a  
193 deterrent to those types of lawsuits. And that is the reason  
194 for the underlying bill. And I thank the gentleman for  
195 yielding.

196 Mr. Johnson. Well, I thank the gentleman for explaining  
197 the need for this legislation. But the fact is that the  
198 judges who make up the Judicial Conference, which represents  
199 all of the Federal judiciary, and which has a rulemaking  
200 committee, has a Conference Committee on Rules, is in strong  
201 opposition to this legislation, the same legislation that was  
202 in effect back in 1983, and which was rescinded, I believe,  
203 in 1994 because it was too costly. It actually exponentially  
204 increased the volume and cost of civil litigation in Federal  
205 courts, and it had a chilling impact on civil rights cases.

206 And then most foundationally, it undermined the Judicial  
207 Conference's deliberative process in terms of being able to  
208 set its own procedural rules in accordance with legislation  
209 that was passed in this body back in the 30s. And so, with  
210 it being opposed by the very judges who are charged with the  
211 responsibility of managing the flow of litigation through the  
212 court system, which should be a judicial prerogative and not  
213 a legislative prerogative.

214           It just seems that my friends from the Bar who practice  
215 law and former judges, people who have been involved in the  
216 court system, would have an appreciation for the views of our  
217 Judicial Conference, which is strongly in opposition to this  
218 bill. And with that, I will yield back.

219           Mr. Smith. Would the gentleman yield just one more  
220 time?

221           Mr. Johnson. I would.

222           Mr. Smith. Very briefly, as I think the gentleman  
223 knows, the Judicial Conference opposes anything that they do  
224 not originate themselves. But when they went out for a poll  
225 and polled judges who had served both during the stronger and  
226 weaker versions of Rule 11, a majority of those judges  
227 actually supported the stronger version of Rule 11, which  
228 this bill takes us back to.

229           But I appreciate the gentleman for yielding, and the  
230 gentleman from Rhode Island seeks --

231           Mr. Johnson. Well, thank you. Reclaiming the remaining  
232 time that I have.

233           Mr. Smith. Yes.

234           Mr. Johnson. I would just emphasize the fact that the  
235 will of the judiciary is stated by the Judicial Conference

236 and its rulemaking committee should speak for the whole. So  
237 anonymous polls, secret conversations, and the like should  
238 not be dispositive on this issue. With that, I yield back.

239 Mr. Smith. Thank you, Mr. Johnson. The gentleman from  
240 Rhode Island is recognized.

241 Mr. Cicilline. Thank you, Mr. Chairman. I would like  
242 to speak in support of the amendment and thank Mr. Conyers  
243 for offering it. While I have grave concerns about the  
244 underlying statute, Mr. Conyers' amendment at least attempts  
245 to mitigate the damage of this new provision by ensuring that  
246 in the area of civil rights and constitutional law that we  
247 carve out a special protection. And that makes sense  
248 because, of course, very often in this area litigants are  
249 using novel legal theories. It is an evolving body of law,  
250 and there are very often plaintiffs who have limited  
251 resources to make these constitutional claims, but in cases  
252 that vindicate some of our most sacred constitutional  
253 protections.

254 For example, *Brown v. Board of Education* was a landmark  
255 decision, of course, of the United States Supreme Court that  
256 declared laws establishing separate public schools for black  
257 and white students as unconstitutional. This obviously paved

258 the way for integration and for the Civil Rights Movement in  
259 this country. *Griswold v. Connecticut* was a landmark case in  
260 which the Supreme Court ruled that the Constitution protected  
261 a right to privacy, and 7 to 2 the Supreme Court invalidated  
262 a prohibition on the use of contraceptives because it  
263 violated a fundamental right to marital privacy. These were  
264 groundbreaking decisions.

265 *Massachusetts v. The Environmental Protection Agency.*

266 In this case, 12 States and several cities of the United  
267 States brought suit against the United States EPA to force  
268 the Agency to regulate carbon dioxide and other greenhouse  
269 gases as pollutants. And the Court rejected the EPA's  
270 argument that the Clean Air Act was not meant to refer to  
271 carbon emissions in the section giving the EPA authority to  
272 regulate air pollution agents.

273 *New York Times v. the United States.* This case  
274 considered whether the *New York Times* and the *Washington Post*  
275 could publish the then classified "Pentagon Papers" without  
276 the risk of government censure. The question before the  
277 Court was whether the constitutional freedom of the press  
278 guaranteed by the 1st Amendment was subordinate to a claimed  
279 need of the executive branch of government to maintain this

280 sea of information. And the Supreme Court ultimately ruled  
281 that the 1st Amendment protected the right of the *New York*  
282 *Times* to print these materials.

283 Those are just some examples of important constitutional  
284 freedoms and constitutional rights that have been vindicated  
285 in litigation and which at least Mr. Conyers' amendment would  
286 attempt to protect from what I think would be very onerous  
287 provisions of a new Rule 11. So I compliment the ranking  
288 member for this excellent amendment.

289 Mr. Conyers. Would the gentleman yield?

290 Mr. Cicilline. And I would be delighted to yield the  
291 balance of my time to Mr. Conyers.

292 Mr. Conyers. Mr. Cicilline, I want to commend you  
293 because I may have made the misinterpretation that all I  
294 wanted to do was protect the civil rights and constitutional  
295 litigation. But we are going back to research the judicial  
296 opinions about this measure, which were not as favorable as  
297 has been reported. And I thank you very much, because I did  
298 not really spend much time talking about, as you did, that  
299 this is not a good bill even with this minor correction that  
300 I was trying to achieve in my amendment. And I thank the  
301 gentleman.

302       Mr. Smith. Would the gentleman from Michigan yield to  
303 me just briefly?

304       Mr. Conyers. It is not my time.

305       Mr. Smith. He actually yielded the balance of his time.

306       Mr. Conyers. Okay. All right. I yield.

307       Mr. Smith. Well, let me reassure both gentlemen in that  
308 case that there is nothing in this bill that would have  
309 prevented any of those lawsuits from being filed. We do not  
310 change the definition of what "frivolous" is. That standard  
311 remains and always has been there.

312       So once again, all those examples of those legitimate  
313 lawsuits, none of those would have been prevented by this  
314 bill.

315       Mr. Cicilline. Mr. Chairman, if you will yield back for  
316 a moment. But the point is when these cases involve novel  
317 legal theories, legal theories being advanced for the first  
318 time, the danger is that this new rule will chill the  
319 willingness of parties and litigants to bring those claims.

320       So in the end you may have seen that in these cases, but  
321 we do not know what cases would not have been brought or  
322 whether these would, in fact, have been brought if the  
323 plaintiffs and their counsel were fearful that mandatory

324 sanctions would, in fact, be imposed.

325 Mr. Smith. Once again, the definition of "frivolous"  
326 has no legal basis in fact. No judge would have found in any  
327 of these cases that that would have been the situation, but  
328 maybe that is just a legitimate opinion. And I appreciate  
329 what the gentleman has said. Does the gentleman from  
330 Michigan yield back the balance of his time?

331 Mr. Conyers. No. As a matter of fact, my researchers  
332 have just come up with something that will perhaps move you  
333 to reconsider your own opinion.

334 Mr. Smith. The gentlewoman from Texas seeks to be  
335 recognized, and perhaps she can yield you time if you yield  
336 back your time.

337 Mr. Conyers. I will. I will.

338 Mr. Smith. The gentleman's time has expired.

339 Mr. Conyers. Yes.

340 Mr. Smith. I thank the gentlewoman from Texas for  
341 pointing that out, and does she seek to be recognized?

342 Ms. Jackson Lee. [Off audio.]

343 Mr. Conyers. Thank you, Ms. Jackson Lee. I have and  
344 would offer to put into the record a letter from the  
345 Committee on Rules of Practice and Procedure of the Judicial



346 Conference of the United States, Jeffrey Sutton, chair,  
347 Rebecca Womeldorf, secretary.

348       Here is the matter that I would like the committee and  
349 the chairman in particular to consider. On the first page it  
350 says, "We share the desire of the sponsors of 758 to improve  
351 the civil justice system in our Federal courts, including the  
352 desire to reduce frivolous filings. But legislation that  
353 would restore the 1983 version of Rule 11 would create a cure  
354 worse than the problem it is meant to solve. Such  
355 legislation contravenes the longstanding Judicial Policy  
356 Conference opposing direct amendment of Federal rules by  
357 legislation other than through the deliberative process  
358 Congress established in the Rules Enabling Act."

359       And so, what I am trying to impress upon the members  
360 that will be voting on this measure is that the Judicial  
361 Conference and the Committee on Rules of Practice and  
362 Procedure are not supportive of the bill that my friend from  
363 Texas is promoting. And so, I think that even with the  
364 exception that I was seeking in my amendment, I still would  
365 have to agree with Mr. Cicilline that this is not a good  
366 bill, and I think that that is the import of a letter dated  
367 April 13th, 2015 by Jeffrey Sutton of the Committee on Rules

368 of Practice and Procedure. And I ask unanimous consent that  
369 it be included in the record.

370 Mr. Smith. Without objection, so ordered. The letter  
371 will be made a part of the record.

372 [The information follows:]

373

374 Mr. Conyers. And I thank the gentleman.

375 Mr. Smith. Thank you, Mr. Conyers. And the gentlewoman  
376 from Texas reclaims her time.

377 Mr. Conyers. I thank the gentlewoman, too, from Texas.

378 Ms. Jackson Lee. Let me very briefly in the time  
379 remaining indicate that I rise to support the Conyers  
380 amendment. And I make a point to my dear friend from Texas  
381 that this tracks some of the tort reform that has occurred in  
382 Texas. And I can assure my colleagues that it has had an  
383 enormous chilling effect on vibrant and important litigation,  
384 particularly representing poor constituents where their  
385 issues have been worthy, and the turnaround or the flip side  
386 or the upside down of the litigation system has chilled their  
387 constitutional rights.

388 This provision, this legislation, LARA, to me is like  
389 going back to the horse and wagon days in litigation because  
390 in actuality civil rights and constitutional issues are  
391 particularly sensitive. They are sensitive to the plaintiff.  
392 It is difficult to find lawyers. The cases are meritorious.  
393 And I bring to the committee's attention particularly the  
394 death penalty cases where pro bono lawyers have taken these  
395 cases, and in Texas, in particular, they have been

396 victorious.

397 But in this instance, going back to the horse and wagon,  
398 there would be a mandatory provision of attorney's fees and  
399 costs to be paid to the prevailing party. And sometimes you  
400 do not win this case. And then to add insult to injury, if  
401 you will, the Rule 11 sanction for purposes of compensation  
402 rather than deterrence goes beyond the 1983 rule, and the  
403 American Bar Association, Judicial Conference of the United  
404 States, the policymaking body of the Federal judiciary, and  
405 Public Citizen oppose this, as does a coalition of groups,  
406 including the Alliance for Justice, Consumer Federation of  
407 America, Consumers Union, Earth Justice.

408 But rather than allowing this poor defendant, poor  
409 plaintiff, if you will, to make amends by having 21 days to  
410 withdraw the offending submission, I mean, that makes sense,  
411 does it not? It make sense to say I have made a mistake, I  
412 want to withdraw it, and unfortunately this new bill does not  
413 allow even for me to say I am sorry, I want to take it out.  
414 And, therefore, you slap me down even more by charging me  
415 with money, and I am saying I am sorry, and I want to take it  
416 out, but my case deserves to be heard. And I may not be the  
417 richest plaintiff in the world, and I may have a pro bono

418 lawyer.

419       And I would just ask my colleagues to look at this in a  
420 bipartisan perspective, that everyone deserves their day in  
421 court, and some people come on their own representing  
422 themselves. The Federal courts are sensitive to plaintiffs  
423 who come in pro se. And I would make the argument that this  
424 amendment needs to be supported, which eliminates, if you  
425 will, or deals with constitutional and civil rights cases,  
426 many of whom impact people of all ranges of all backgrounds.  
427 And I would make the case that this amendment is a justified  
428 amendment.

429       And even so as I conclude, let me say why do we have a  
430 bill that does not allow me to say I am sorry in 21 days, and  
431 allow me to take out the offending language, and so I can  
432 proceed with my case and not slap me down with attorney's  
433 fees and sanctions, and destroy my opportunity even to be  
434 heard. I do not have any money in the first place. I am  
435 trying to press my point in the court of justice, which you  
436 tell me as a citizen of the United States I have the right to  
437 do.

438       I would ask my colleagues to support the Conyers  
439 amendment, and I yield back.

440 Chairman Goodlatte. [presiding] The question occurs on  
441 the amendment offered by the gentleman from Michigan.

442 All those in favor, respond by saying aye.

443 Those opposed, no.

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

445 Mr. Conyers. A record vote is requested.

446 Chairman Goodlatte. A record vote is requested, and the  
447 clerk will call the roll.

448 Ms. Williams. Mr. Goodlatte?

449 Chairman Goodlatte. No.

450 Ms. Williams. Mr. Goodlatte votes no.

451 Mr. Sensenbrenner?

452 [No response.]

453 Ms. Williams. Mr. Smith?

454 Mr. Smith. No.

455 Ms. Williams. Mr. Smith votes no.

456 Mr. Chabot?

457 Mr. Chabot. No.

458 Ms. Williams. Mr. Chabot votes no.

459 Mr. Issa?

460 [No response.]

461 Ms. Williams. Mr. Forbes?

462 Mr. Forbes. No.  
463 Ms. Williams. Mr. Forbes votes no.  
464 Mr. King?  
465 [No response.]  
466 Mr. Williams. Mr. Franks?  
467 Mr. Franks. No.  
468 Ms. Williams. Mr. Franks votes no.  
469 Mr. Gohmert?  
470 [No response.]  
471 Ms. Williams. Mr. Jordan?  
472 Mr. Jordan. No.  
473 Ms. Williams. Mr. Jordan votes no.  
474 Mr. Poe?  
475 Mr. Poe. No.  
476 Ms. Williams. Mr. Poe votes no.  
477 Mr. Chaffetz?  
478 [No response.]  
479 Ms. Williams. Mr. Marino?  
480 Mr. Marino. No.  
481 Ms. Williams. Mr. Marino votes no.  
482 Mr. Gowdy?  
483 Mr. Gowdy. No.

484 Ms. Williams. Mr. Gowdy votes no.  
485 Mr. Labrador?  
486 [No response.]  
487 Ms. Williams. Mr. Farenthold?  
488 Mr. Farenthold. No.  
489 Ms. Williams. Mr. Farenthold votes no.  
490 Mr. Collins?  
491 Mr. Collins. No.  
492 Ms. Williams. Mr. Collins votes no.  
493 Mr. DeSantis?  
494 [No response.]  
495 Ms. Williams. Ms. Walters?  
496 Ms. Walters. No.  
497 Ms. Williams. Ms. Walters votes no.  
498 Mr. Buck?  
499 Mr. Buck. No.  
500 Ms. Williams. Mr. Buck votes no.  
501 Mr. Ratcliffe?  
502 Mr. Ratcliffe. No.  
503 Ms. Williams. Mr. Ratcliffe votes no.  
504 Mr. Trott?  
505 Mr. Trott. No.



506 Ms. Williams. Mr. Trott votes no.  
507 Mr. Bishop?  
508 Mr. Bishop. No.  
509 Ms. Williams. Mr. Bishop votes no.  
510 Mr. Conyers?  
511 Mr. Conyers. Aye.  
512 Ms. Williams. Mr. Conyers votes aye.  
513 Mr. Nadler?  
514 [No response.]  
515 Ms. Williams. Ms. Lofgren?  
516 Ms. Lofgren. Aye.  
517 Ms. Williams. Ms. Lofgren votes aye.  
518 Ms. Jackson Lee?  
519 Ms. Jackson Lee. Aye.  
520 Ms. Williams. Ms. Jackson Lee votes aye.  
521 Mr. Cohen?  
522 Mr. Cohen. Aye.  
523 Ms. Williams. Mr. Cohen votes aye.  
524 Mr. Johnson?  
525 Mr. Johnson. Aye.  
526 Ms. Williams. Mr. Johnson votes aye.  
527 Mr. Pierluisi?

528 Mr. Pierluisi. Aye.

529 Ms. Williams. Mr. Pierluisi votes aye.

530 Ms. Chu?

531 Ms. Chu. Aye.

532 Ms. Williams. Ms. Chu votes aye.

533 Mr. Deutch?

534 [No response.]

535 Ms. Williams. Mr. Gutierrez?

536 [No response.]

537 Ms. Williams. Ms. Bass?

538 [No response.]

539 Ms. Williams. Mr. Richmond?

540 [No response.]

541 Ms. Williams. Ms. DelBene?

542 Ms. DelBene. Aye.

543 Ms. Williams. Ms. DelBene votes aye.

544 Mr. Jeffries?

545 [No response.]

546 Ms. Williams. Mr. Cicilline?

547 Mr. Cicilline. Aye.

548 Ms. Williams. Mr. Cicilline votes aye.

549 Mr. Peters?

550 Mr. Peters. Aye.

551 Ms. Williams. Mr. Peters votes aye.

552 Chairman Goodlatte. The gentleman from California?

553 Mr. Issa. No.

554 Ms. Williams. Mr. Issa votes no.

555 Chairman Goodlatte. The gentleman from Texas?

556 Mr. Gohmert. No.

557 Ms. Williams. Mr. Gohmert votes no.

558 Chairman Goodlatte. Has every member voted who wishes

559 to vote?

560 [No response.]

561 Chairman Goodlatte. The clerk will report.

562 Ms. Williams. Mr. Chairman, 10 members voted aye, 18

563 members voted no.

564 Chairman Goodlatte. And the amendment is not agreed to.

565 Ms. Jackson Lee. Mr. Chairman?

566 Chairman Goodlatte. For what purpose does the

567 gentlewoman from Texas seek recognition?

568 Ms. Jackson Lee. I have an amendment at the desk.

569 Chairman Goodlatte. The clerk will report the

570 amendment.

571 Ms. Williams. Amendment to H.R. 758, offered by Ms.

572 Jackson Lee, page 2, line --

573 Chairman Goodlatte. Without objection, the amendment

574 will be considered as read.

575 [The amendment of Ms. Jackson Lee follows:]

576

577 Chairman Goodlatte. And the gentlewoman is recognized  
578 for 5 minutes on her amendment.

579 Ms. Jackson Lee. Thank you very much, Mr. Chairman. I  
580 guess I am going to continue with the analogy of taking us  
581 back to the pioneering days of the horse and wagon litigation  
582 because, again, I think this legislation, albeit with good  
583 intentions, clearly diminishes and chills individuals who are  
584 standing before the court with all good intentions. Of  
585 course, this particular legislation suggests that all of us  
586 who come before the court with striking and provocative cases  
587 have dastardly intentions that are intending to obstruct or  
588 to make a mockery of the judicial system, and that is not the  
589 case.

590 Individuals come because they feel compelled, and so my  
591 amendment is to give the courts the opportunity to deal with  
592 this in a reasonable manner. My amendment will restore the  
593 sanctions currently available under Rule 11, which provide  
594 the correct balance in punishing unwarranted conduct without  
595 encouraging unnecessary litigation. The amendment would  
596 restore the balance found in the current version of Rule 11,  
597 which gives the court discretion to determine the appropriate  
598 sanction. That version was adopted by the courts after a 10-

599 year failed experiment of the mandatory sanction rule.

600 We speak eloquently in this committee about the  
601 discretion of courts. Many of us believe that one of the  
602 failures of the mandatory minimums is not giving judges the  
603 discretion as it relates to conditions of that case in that  
604 particular timeframe. And so, we now, as I indicated with  
605 Mr. Conyers' amendment. Mr. Conyers' amendment was to  
606 recognize that constitutional and civil rights cases are very  
607 sensitive, and very meaningful, and very heartfelt by the  
608 litigants, the plaintiffs in particular.

609 In my case, I am suggesting the court look on the  
610 plaintiff and, if you will, pierce his or her heart and know  
611 that there was no malice intended, and be able to address  
612 that with a balanced response to sanctions. One of the key  
613 changes in the 1993 was to replace the mandate that sanctions  
614 must be imposed if a violation of the rule is found with a  
615 grant of discretion to Federal judges to decide when to  
616 impose sanctions, to what extent.

617 By eliminating the mandatory fee shifting provision, the  
618 1993 rule discouraged satellite litigation and encouraged  
619 parties to move forward with the merits of the case. Under  
620 the prior Rule 11 that was in effect for a 10-year period

621 until the courts repealed it, mandatory fee shifting was used  
622 to discourage plaintiffs from bringing meritorious claims  
623 using novel legal theories in civil rights and employment  
624 cases.

625       The beauty of the law is to be creative on behalf of  
626 your plaintiff, your litigant, to find justice. Is that not  
627 what we are here for, to find justice? Is it justice to  
628 knock down a poor plaintiff by an onerous one-shoe-fits-all  
629 imposing of sanctions? Mine just asks for discretion and  
630 reasonableness to be able to address those constituents or  
631 those litigants -- forgive me.

632       The legislation before us, H.R. 758, would reinstate the  
633 mandatory fee shifting rule, and thus would also reinstate  
634 the chilling effect on plaintiffs' claims, especially since  
635 an individual plaintiff taking on corporate interests cannot  
636 afford the risk of being saddled with a corporation's fees  
637 and costs. This amendment would preserve the current version  
638 of the rule and restore the current balance between punishing  
639 unwarranted conduct and deterring unnecessary litigation.

640       This occurs across the board. This occurs in massive  
641 cases like asbestos litigation, or the litigation that we had  
642 in years past, thalidomide, that dealt with a certain

643 prescription that women were taking back in the 1950s, or  
644 some of these massive cases dealing with injury. None of us  
645 would hold to the fact that individual plaintiffs would come  
646 before us in a frivolous way. But if such was determined,  
647 would it not be responsible to allow the judge again to  
648 pierce the heart of those plaintiffs and say, you know what?  
649 I am not going to hit with them with the massive sanction,  
650 but I am going to use a reasonable man standard, a reasonable  
651 women standard, and allow these individuals to have their  
652 cases brought before.

653 A leading study on this issue showed that although civil  
654 rights cases made up 11.4 percent of Federal cases filed,  
655 22.7 percent of the cases in which sanctions had been imposed  
656 were civil rights cases. Those are personal cases to people  
657 of all backgrounds, of all religions, of all racial  
658 backgrounds. People bring civil rights cases. And my  
659 question would be, why do we not allow the courts to be used  
660 for people who feel that they have been aggrieved, and they  
661 go in and say, you know what? I have found not total  
662 justice, but they at least recognize in not penalizing me  
663 that I had a meritorious reason to come to the court.

664 I ask my colleagues that this will not disrupt the bill.



665 It will only give reasonable discretion to the court. Do we  
666 not trust the judges that we have confirmed here in the  
667 United States Congress? We have vetted them. The Senate has  
668 vetted them. The Presidents, Republican and Democrat, have  
669 appointed them. Do we not see that they have the kind of  
670 discretion that can make the right decision?

671 I ask my colleagues to support the Jackson Lee  
672 amendment. With that, I yield back.

673 Chairman Goodlatte. For what purpose does the gentleman  
674 from Texas seek recognition?

675 Mr. Smith. Mr. Chairman, I rise in opposition to the  
676 amendment.

677 Chairman Goodlatte. The gentleman is recognized for 5  
678 minutes.

679 Mr. Smith. Thank you, Mr. Chairman. Mr. Chairman, I  
680 oppose this amendment which would strike the provision for  
681 mandatory penalties for filers of frivolous lawsuits and,  
682 thus, defeat the purpose of the bill. Today there is not  
683 guarantee that a victim of a frivolous lawsuit will be  
684 compensated even if a court finds the case to be frivolous.  
685 This legislation guarantees that victims of frivolous  
686 lawsuits the ability to receive compensation from those who

687 abuse the legal system. So I urge my colleagues to oppose  
688 this amendment.

689 Also, Mr. Chairman, I would like to ask unanimous  
690 consent to put into the record a letter that I just received  
691 from the National Federation of Independent Business  
692 endorsing the legislation.

693 Chairman Goodlatte. Without objection, it will be made  
694 a part of the record.

695 [The information follows:]

696

697 Chairman Goodlatte. For what purpose does the gentleman  
698 from Tennessee seek recognition?

699 Mr. Cohen. Thank you, Mr. Chairman, to strike the last  
700 word.

701 Chairman Goodlatte. The gentleman is recognized for 5  
702 minutes.

703 Mr. Cohen. And I would like to yield to the lady from  
704 Texas.

705 Ms. Jackson Lee. Very kind, sir. Let me just say that  
706 I think the gentleman from Texas has misinterpreted my  
707 amendment. My amendment just gives the court, the very judge  
708 that we have put through a confirmation process, that we have  
709 indicated that that judge is worthy of being confirmed and to  
710 serve the American people. And I am only suggesting that we  
711 allow that judge to evenly in the playing field address the  
712 question of whether or not the sanctions against a litigant,  
713 who in his or her mind has come honestly before the court, to  
714 just slap them down in order to punish them in contrast to an  
715 individual who may have been the defendant.

716 And this is affirmed by the American Bar Association in  
717 expressing opposition to H.R. 758, and I have not viewed them  
718 as a radical organization. And they, in essence, oppose the

719 bill because it would circumvent the procedures Congress  
720 itself has established for amending rules of civil procedure.

721 Second, there is no demonstrated evidence that the  
722 existing Rule 11 is inadequate and needs to be amended. And  
723 third, by ignoring the lessons learned from 10 years of  
724 experience under the 1983 mandatory version of Rule 11,  
725 Congress ensures or incurs a substantial risk that the  
726 proposed changes would impede the administration of justice  
727 by encouraging additional litigation.

728 And I know there are lawyers and non-lawyers on this  
729 panel. You cannot tell me that you have not been in court  
730 with all good intentions with a worthy litigant, and you have  
731 benefitted from the previous structure of Rule 11. Now, you  
732 are going to be slapped down, but it is not you the lawyer  
733 before the Bar, before the court. It is this litigant that  
734 has taken all measures to be right, but has felt harmed.

735 I am not suggesting that no action be taken. I am  
736 suggesting that the discretion of the court to be reasonable.  
737 Why would we block that? Reasonableness is a good standard.  
738 We in law school have always learned of the reasonable man or  
739 women standard. How in the world are we going to reject it  
740 now in the debate of this particular bill, the reasonable

741 judge standard, which is a judge that has been approved or  
742 given the authority by the U.S. Congress and the President of  
743 the United States to get a lifetime appointment as a federal  
744 jurist? I am baffled by that.

745 We all agree or disagree with judges. We agree or  
746 disagree with the appeals court. We agree or disagree with  
747 the Supreme Court. But they have been confirmed by the  
748 American people through the process of confirmation. The  
749 ABA, the American Bar Association, which is comprised of  
750 plaintiffs' and defendants' lawyers are saying this is a  
751 wrong-headed way to go.

752 And you know what? The only sentence I can say I am  
753 just shocked and baffled. I do not even know why we are  
754 here. I am just amazed. I guess I just cannot contain. I  
755 am just amazed that we are on this legislation in 2015. I  
756 just do not understand it. We are back pulling horses and  
757 wagons and denying people into the courthouse.

758 So let me just say with all due respect, in a bipartisan  
759 manner I am just asking if we can provide the opportunity for  
760 the court to make a reasonable decision about these  
761 sanctions. With that, I want to thank the gentleman from  
762 Tennessee for his kindness, and hopefully he has a word.

763 Mr. Cohen. Mr. Chair, how much time do I have left?

764 Chairman Goodlatte. The gentleman has 1 minute left.

765 Mr. Cohen. Only 1 minute? It seems like I just  
766 started.

767 [Laughter.]

768 Mr. Cohen. I want to thank the lady for her advocacy,  
769 and I support her cause. And I appreciate the chair yielding  
770 us the time, and I yield back the remainder thereof.

771 Chairman Goodlatte. For what purpose does the gentleman  
772 from Michigan seek recognition?

773 Mr. Conyers. Mr. Chairman, I want to support the  
774 Jackson Lee amendment.

775 Chairman Goodlatte. The gentleman is recognized for 5  
776 minutes.

777 Mr. Conyers. Thank you very much. This has been quite  
778 an unusual discussion. First, we decide that constitutional  
779 and civil rights cases should not be clearly excluded from  
780 the provisions of this measure, and now we are determining  
781 that we will take away discretion from judges under Rule 11,  
782 and eliminate their discretion. And it is a bit unusual for  
783 the Committee on Judiciary that has the jurisdiction over the  
784 court on many of these Federal matters, for us to be debating

785 whether or not the provision mandating compensatory monetary  
786 awards should be modified to be made discretionary. That is  
787 all I see the Jackson Lee as doing.

788 And so, I support the amendment because it would restore  
789 the necessary discretion for judges when imposing a monetary  
790 sanction. Now, who other than some members of the committee  
791 would want to take away that discretion and make it  
792 mandatory? Judges currently have this discretion under Rule  
793 11, but this bill, H.R. 758, would eliminate that discretion.

794 And so, we know from previous experience that mandatory  
795 sanctions leads to an exponential increase in the volume of  
796 litigation as well as the cost of litigation. Mandatory  
797 sanctions, together with the lack of a safe harbor, are what  
798 gave strong incentives to parties to fight Rule 11 motions.  
799 And so, this measure, the more we examine it, the more things  
800 I find are disturbing about it.

801 And so, I urge the members of the committee before they  
802 cast a vote on this amendment to consider that we of all  
803 people in the House of Representatives should be supportive  
804 of giving judges discretion rather than making their conduct  
805 mandatory in this particular instance. I thank --

806 Ms. Jackson Lee. Would the gentleman --

807           Mr. Conyers. I would yield to the gentlelady from  
808 Texas.

809           Ms. Jackson Lee. Your comments are eloquent, Mr.  
810 Ranking Member, and I just want to take this moment to submit  
811 into the record, I do not know if I did, the letter from the  
812 American Bar Association confirming your comments dated March  
813 23rd, 2015, opposing H.R. 758. And it is from, as I said,  
814 the American Bar Association, which has as its, if you will,  
815 defining definition "defending liberty, pursuing justice."

816           I ask unanimous consent, Mr. Chairman, to put this  
817 letter in the record. Mr. Chairman?

818           Chairman Goodlatte. Without objection, it will be made  
819 a part of the record.

820           [The information follows:]

821



822           Ms. Jackson Lee. Thank you, Mr. Conyers. I will yield  
823 back. Thank you so very much.

824           Mr. Conyers. And I thank you, and I will yield back as  
825 well.

826           Chairman Goodlatte. The question occurs on the  
827 amendment offered by the gentlewoman from Texas.

828           All those in favor, respond by saying aye.

829           Those opposed, no.

830           Ms. Jackson Lee. Recorded vote.

831           Chairman Goodlatte. Before the ruling, a recorded vote  
832 is requested, and the clerk will call the roll.

833           Ms. Williams. Mr. Goodlatte?

834           Chairman Goodlatte. No.

835           Ms. Williams. Mr. Goodlatte votes no.

836           Mr. Sensenbrenner?

837           Mr. Sensenbrenner. No.

838           Ms. Williams. Mr. Sensenbrenner votes no.

839           Mr. Smith?

840           Mr. Smith. No.

841           Ms. Williams. Mr. Smith votes no.

842           Mr. Chabot?

843           Mr. Chabot. No.

844 Ms. Williams. Mr. Chabot votes no.  
845 Mr. Issa?  
846 Mr. Issa. Nay.  
847 Ms. Williams. Mr. Issa votes nay.  
848 Mr. Forbes?  
849 [No response.]  
850 Ms. Williams. Mr. King?  
851 [No response.]  
852 Mr. Williams. Mr. Franks?  
853 Mr. Franks. No.  
854 Ms. Williams. Mr. Franks votes no.  
855 Mr. Gohmert?  
856 [No response.]  
857 Ms. Williams. Mr. Jordan?  
858 Mr. Jordan. No.  
859 Ms. Williams. Mr. Jordan votes no.  
860 Mr. Poe?  
861 Mr. Poe. Aye.  
862 Ms. Williams. Mr. Poe votes aye.  
863 Mr. Chaffetz?  
864 [No response.]  
865 Ms. Williams. Mr. Marino?

866 Mr. Marino. No.

867 Ms. Williams. Mr. Marino votes no.

868 Mr. Gowdy?

869 Mr. Gowdy. No.

870 Ms. Williams. Mr. Gowdy votes no.

871 Mr. Labrador?

872 [No response.]

873 Ms. Williams. Mr. Farenthold?

874 Mr. Farenthold. No.

875 Ms. Williams. Mr. Farenthold votes no.

876 Mr. Collins?

877 Mr. Collins. No.

878 Ms. Williams. Mr. Collins votes no.

879 Mr. DeSantis?

880 [No response.]

881 Ms. Williams. Ms. Walters?

882 [No response.]

883 Ms. Williams. Mr. Buck?

884 Mr. Buck. No.

885 Ms. Williams. Mr. Buck votes no.

886 Mr. Ratcliffe?

887 Mr. Ratcliffe. No.

888 Ms. Williams. Mr. Ratcliffe votes no.  
889 Mr. Trott?  
890 Mr. Trott. No.  
891 Ms. Williams. Mr. Trott votes no.  
892 Mr. Bishop?  
893 Mr. Bishop. No.  
894 Ms. Williams. Mr. Bishop votes no.  
895 Mr. Conyers?  
896 Mr. Conyers. Aye.  
897 Ms. Williams. Mr. Conyers votes aye.  
898 Mr. Nadler?  
899 Mr. Nadler. Aye.  
900 Ms. Williams. Mr. Nadler votes aye.  
901 Ms. Lofgren?  
902 Ms. Lofgren. Aye.  
903 Ms. Williams. Ms. Lofgren votes aye.  
904 Ms. Jackson Lee?  
905 Ms. Jackson Lee. Aye.  
906 Ms. Williams. Ms. Jackson Lee votes aye.  
907 Mr. Cohen?  
908 Mr. Cohen. Aye.  
909 Ms. Williams. Mr. Cohen votes aye.

910 Mr. Johnson?

911 Mr. Johnson. Aye.

912 Ms. Williams. Mr. Johnson votes aye.

913 Mr. Pierluisi?

914 Mr. Pierluisi. Aye.

915 Ms. Williams. Mr. Pierluisi votes aye.

916 Ms. Chu?

917 Ms. Chu. Aye.

918 Ms. Williams. Ms. Chu votes aye.

919 Mr. Deutch?

920 Mr. Deutch. Aye.

921 Ms. Williams. Mr. Deutch votes aye.

922 Mr. Gutierrez?

923 [No response.]

924 Ms. Williams. Ms. Bass?

925 [No response.]

926 Ms. Williams. Mr. Richmond?

927 [No response.]

928 Ms. Williams. Ms. DelBene?

929 Ms. DelBene. Aye.

930 Ms. Williams. Ms. DelBene votes aye.

931 Mr. Jeffries?

932 [No response.]

933 Ms. Williams. Mr. Cicilline?

934 Mr. Cicilline. Aye.

935 Ms. Williams. Mr. Cicilline votes aye.

936 Mr. Peters?

937 Mr. Peters. Aye.

938 Ms. Williams. Mr. Peters votes aye.

939 Chairman Goodlatte. The gentleman from Virginia?

940 Mr. Forbes. No.

941 Ms. Williams. Mr. Forbes votes no.

942 Chairman Goodlatte. The gentlewoman from California?

943 Ms. Walters. No.

944 Ms. Williams. Ms. Walters votes no.

945 Chairman Goodlatte. Has every member voted who wishes

946 to vote?

947 [No response.]

948 Chairman Goodlatte. The clerk will report. Oh, the

949 gentleman from New York.

950 Mr. Jeffries. Aye.

951 Ms. Williams. Mr. Jeffries votes aye.

952 Chairman Goodlatte. The clerk will report. Has the

953 gentleman from Texas voted?

954 Mr. Gohmert. How am I recorded?

955 Ms. Williams. Not recorded.

956 Mr. Gohmert. No.

957 Ms. Williams. Mr. Gohmert votes no.

958 Chairman Goodlatte. Now the clerk will report.

959 Ms. Williams. Mr. Chairman, 14 members votes aye, 18  
960 members voted no.

961 Chairman Goodlatte. And the amendment is not agreed to.  
962 For what purpose does the gentleman from Tennessee seek  
963 recognition?

964 Mr. Cohen. I have an amendment at the desk.

965 Chairman Goodlatte. The clerk will report the  
966 amendment.

967 Ms. Williams. Amendment to H.R. 758, offered by Mr.  
968 Cohen --

969 Mr. Cohen. It does not need to be read.

970 Chairman Goodlatte. Without objection, the amendment  
971 will not be read --

972 [The amendment of Mr. Cohen follows:]

973

974 Chairman Goodlatte. And the gentleman is recognized for  
975 5 minutes on his amendment.

976 Mr. Cohen. Thank you, sir. This amendment delays the  
977 effective date until the Administrative Office of the U.S.  
978 Courts has the chance to assess the potential effects of the  
979 bill on Federal court resources, including both financial and  
980 non-financial resources and litigation costs for private  
981 litigants to the extent the office has such data. This  
982 should be right down everybody's alley: saving money and  
983 letting the Administrative Office of the Courts tell us if  
984 this is going to cost us money or not.

985 The amendment requires a similar assessment to be made  
986 by the Department of Justice of the potential effects of  
987 litigation costs for the government. I know this committee  
988 has been concerned about the cost of regulations, and  
989 oftentimes we like to get the cost of regulations before we  
990 approve them. So we should get the cost of these actions as  
991 well, I would think. So this is in keeping with the  
992 committee's work, and it has rubbed off on me, and that is  
993 why I introduced this amendment so that we could get the cost  
994 before we went on and did this and maybe found out this was  
995 going to hurt on the deficit and cost our children and



996 grandchildren and have to pay for this.

997       Both the Administrative Office and the Department of  
998 Justice would be required to submit reports to the House and  
999 Senate Judiciary Committees outlining their assessments.  
1000 This is just an amendment in the basic spirit of the  
1001 committee, bipartisan, about the cost benefit analysis to  
1002 justify this bill just like we do for regulations.

1003       This principle would apply here with respect to this  
1004 impact that Rule 11 would have on the resources of the  
1005 courts, Department of Justice, and private litigants,  
1006 including civil rights plaintiffs and whistleblowers. I  
1007 understand the Congressional Budget Office found no impact on  
1008 the Federal budget when assessing this legislation last  
1009 Congress. The CBO, however, appeared to reach that  
1010 conclusion after determining that because only private  
1011 litigants would pay sanctions, so there would be no impact on  
1012 the Federal budget.

1013       It seems there was no assessment of the bill's potential  
1014 effect on the judiciary's or the Justice Department's  
1015 financial resources where it is engaged in civil litigation  
1016 and may be subject to Rule 11 as amended by this bill. There  
1017 was no assessment of the potential effect on non-financial

1018 resources, such as the diversion, judges' or attorneys' time  
1019 away from other critical matters as a result of increased  
1020 Rule 11 satellite litigation. We know from experience with  
1021 the '83 version of Rule 11 that the volume of satellite  
1022 litigation increased exponentially during the 10 years that  
1023 the '83 version was in effect.

1024 Civil procedure experts agree that the reason for that  
1025 sharp increase was the mandatory sanctions regimen of the '83  
1026 rule and its lack of a safe harbor provision, two provisions  
1027 that H.R. 758 restores. This increase in litigation also led  
1028 to increases in costs for litigants and strained judicial  
1029 resources. As with any good cost benefit analysis, it is  
1030 fair to ask what the cost will be for the courts, for the  
1031 Department of Justice, and for private litigants, and whether  
1032 those costs outweigh what I believe are the non-existent  
1033 benefits of H.R. 758 before this legislation takes effect.  
1034 But we should see whether the costs outweigh the benefits.

1035 This amendment does nothing to stop the bill. It merely  
1036 asks for an assessment of the potential impact of the bill on  
1037 various entities, including the potential for increased  
1038 burdens on taxpayers. So this is kind of a compromise in the  
1039 spirit of the tradition of the Judiciary Committee's concern

1040 about costs and cost benefit analysis that offer this as kind  
1041 of a get together spirit of Glassboro amendment.

1042 And with that, I would ask for everybody's support, and  
1043 Kumbaya. I yield back the balance of my time.

1044 Chairman Goodlatte. You may get the Kumbaya.

1045 [Laughter.]

1046 Chairman Goodlatte. But not the rest of it.

1047 For what purpose does the gentleman from Texas seek  
1048 recognition?

1049 Mr. Smith. Mr. Chairman, I oppose the amendment.

1050 Chairman Goodlatte. The gentleman is recognized for 5  
1051 minutes.

1052 Mr. Smith. Thank you, Mr. Chairman. I certainly  
1053 appreciate the gentleman from Tennessee's great attitude, but  
1054 I still have to oppose the amendment. The amendment would  
1055 allow the Administrative Office of the Courts and the  
1056 Attorney General, either of them, in fact, to veto the  
1057 Lawsuit Abuse Reduction Act. For too long, bad actors have  
1058 used our civil justice system to prey on innocent parties.  
1059 Defendants, plaintiffs, small businesses, and all victims of  
1060 abusive litigation simply deserve better.

1061 The underlying bill ensures that if a party is injured

1062 by a frivolous claim, they are guaranteed compensation. And  
1063 I might take a moment to respond to a couple of other  
1064 comments that have been made about the judge's discretion.  
1065 The judge has complete discretion to determine whether or not  
1066 a lawsuit is frivolous or not. We do not tamper with that  
1067 discretion whatsoever.

1068 But this amendment frustrates the goal by delaying Rule  
1069 11 reforms until after the Administrative Office of the  
1070 Courts and the Attorney General assess the bill and report to  
1071 Congress. Under this amendment, there is no guarantee that  
1072 such assessment and report will ever occur because there is  
1073 no deadline. Therefore, the status quo may continue, which  
1074 harms victims of lawsuit abuse and rewards unscrupulous  
1075 lawyers.

1076 And let me say this is basically letting the AG, for  
1077 example, determine completely him or herself whether to kill  
1078 this bill or to allow it go forward. And I am just not  
1079 comfortable putting that amount of power in the hands of the  
1080 Attorney General. So I urge my colleagues to oppose this  
1081 amendment and yield back.

1082 Chairman Goodlatte. Would the gentleman yield?

1083 Mr. Smith. I yield to the gentleman.

1084 Chairman Goodlatte. I thank the gentleman for yielding.  
1085 It occurs to me that it is basically like giving the Attorney  
1086 General a pocket veto.  
1087 Mr. Smith. I could not agree with the chairman more.  
1088 Thank you.  
1089 Chairman Goodlatte. The question occurs --  
1090 Mr. Conyers. Mr. Chairman?  
1091 Chairman Goodlatte. For what purpose does the gentleman  
1092 from Michigan seek recognition?  
1093 Mr. Conyers. Strike the last word.  
1094 Chairman Goodlatte. The gentleman is recognized for 5  
1095 minutes.  
1096 Mr. Conyers. May I ask the author of this amendment if  
1097 he was disturbed by some of the draconian results that would  
1098 occur if his amendment were to succeed that I thought I was  
1099 hearing when opposition to your amendment was articulated?  
1100 Mr. Cohen. Well, am I recognized?  
1101 Mr. Conyers. Yes, I yield.  
1102 Mr. Cohen. I do not believe any of that would occur,  
1103 and I think this would simply give us the judgment of an  
1104 objective analysis of what the costs will be because there  
1105 are going to be great costs to the system if judges have to

1106 spend more time on satellite litigation, the judges as well  
1107 as the private litigants. And, you know, we are concerned in  
1108 this committee very much about cost benefit analysis, and  
1109 there is no place that should be more important for this  
1110 committee than the judiciary.

1111 So, no, I think this would be very beneficial, and no  
1112 veto. There is certainly no pocket veto. That is not the  
1113 case, whoever would have it.

1114 Mr. Conyers. Well, I thank the gentleman because this  
1115 is the first time I have heard a discussion in which some of  
1116 the members did not want to find out how much the costs of a  
1117 measure that they were taking under consideration would be.  
1118 And it strikes me that it certainly does not give the  
1119 Department of Justice or anybody else any advantages in  
1120 knowing what the costs are going to be. And it certainly  
1121 does not kill bills.

1122 It seems to me we should have an accurate assessment of  
1123 the risk given that that taxpayers are involved. And to the  
1124 extent that the courts keep track of the costs of this for  
1125 private parties and the government, we should have some  
1126 estimation of what the costs would be. So I cannot see why  
1127 this provision that the Cohen amendment would bring to this,

1128 it would not change my opinion about my overall position on  
1129 the bill, but it would make it more attractive to maybe  
1130 somebody who would say, yes, let us find out how much this  
1131 would cost, unless this is something we want to keep secret  
1132 here and not allow that to happen as we are moving swiftly  
1133 through H.R. 758.

1134 And I yield to the gentleman.

1135 Mr. Cohen. Thank you. I was just trying to offer this  
1136 to show that the majority's work in this Congress has rubbed  
1137 off on me. And I understand a lot more about cost benefit  
1138 analysis than I ever did before. And I just thought that  
1139 this would help improve their bill, and I wanted to lend that  
1140 opportunity to them to have even a better bill that not only  
1141 expedited what their theory in the civil justice system, but  
1142 also to cost benefit analysis to a new and important place.

1143 Mr. Conyers. Well, I just hope that all of this that is  
1144 rubbing off on you will not lead you to support the bill  
1145 itself. We keep improving it against the wishes of the  
1146 proponents of the bill. This an incredible public  
1147 conversation we are having in this committee.

1148 Mr. Cohen. Well, I do think we should try to reach  
1149 across the aisle and do public service, and try to find

1150 places where we come together. And I just thought this was  
1151 it in kind of the spirit of Beatles, "Come Together."

1152 Mr. Conyers. I thank the gentleman, and I yield back  
1153 the balance of my time.

1154 Chairman Goodlatte. Before we sing "Kumbaya," the chair  
1155 will ask for a vote on the amendment.

1156 Mr. Cohen. The chair went to Abbey Road. "Come  
1157 Together" was on that album, I think. I saw you cross the  
1158 street.

1159 Chairman Goodlatte. The question occurs on the  
1160 amendment offered by the gentleman from Tennessee.

1161 All those in favor, respond by saying aye.

1162 Those opposed, no.

1163 In the opinion of the chair, the noes have it, and the  
1164 amendment is not agreed to.

1165 Mr. Conyers. Do you want a record vote?

1166 Mr. Cohen. I am not ask for a roll call because not  
1167 only did I learn from them about cost benefit, but I remember  
1168 my math.

1169 [Laughter.]

1170 Chairman Goodlatte. For what purpose does the gentleman  
1171 from Georgia seek recognition?



1172 Mr. Johnson. I have an amendment at the desk.

1173 Chairman Goodlatte. The clerk will report the  
1174 amendment.

1175 Ms. Williams. Amendment to H.R. 758, offered by --

1176 Mr. Johnson. And I would ask that it would be read as  
1177 considered.

1178 Chairman Goodlatte. The amendment will be considered as  
1179 read without objection.

1180 [The amendment of Mr. Johnson follows:]

1181

1182 Chairman Goodlatte. And the gentleman is recognized for  
1183 5 minutes on his amendment.

1184 Mr. Johnson. Thank you, Mr. Chairman. My amendment  
1185 would delay the enactment of the LARA Act until the Federal  
1186 Judicial Conference has an opportunity to review Rule 11  
1187 through the Rules Enabling Act process to determine whether  
1188 or not Rule 11 needs to be changed.

1189 Congress has a long history of trusting the Federal  
1190 judiciary to make its own procedural rules. In 1934,  
1191 Congress passed the Rules Enabling Act, which authorizes the  
1192 Federal judiciary to determine its own rules of practice,  
1193 procedure, and evidence. And it does so through a body known  
1194 as the Judicial Conference of the United States. It is a  
1195 body that is composed of Federal judges, practicing lawyers,  
1196 law professors, State chief justice, and representatives of  
1197 the Department of Justice, and these are the people who are  
1198 on the ground working as attorneys and judges day in and day  
1199 out.

1200 The Judicial Conference is broken down into committees,  
1201 advisory committees. It has an advisory committee on  
1202 appellate rules, one on bankruptcy rules, one on civil rules,  
1203 one on criminal rules, one on evidence rules. And through

1204 those committees, the Judicial Conference takes action that  
1205 is in the best interest of the judiciary as a whole.

1206 The LARA Act departs from the well-established practice  
1207 of allowing the Judicial Conference to determine how the  
1208 legal profession should be governed. This is a practice that  
1209 Congress itself authorized very wisely, and it not necessary  
1210 to change the process now. Never once has the U.S. Supreme  
1211 Court found that the Federal judiciary overstepped its  
1212 rulemaking authority.

1213 Rather than empowering the Federal judiciary to make its  
1214 own procedural rules, this bill attempts to amend the Federal  
1215 Rules of Civil Procedure directly over the objections made by  
1216 the intensely deliberative Judicial Conference. This will  
1217 undermine the development of sound rules and practices. In  
1218 fact, I have a letter right here from the Judicial Conference  
1219 dated April 13th, 2015 that expresses their views about the  
1220 LARA Act, and goes into the history of why the current rules  
1221 exist.

1222 And I would like to submit this letter for the record  
1223 without objection.

1224 Chairman Goodlatte. Without objection, it will be made  
1225 a part of the record.

1226 [The information follows:]

1227

1228           Mr. Johnson. To take a little bit from this letter and  
1229 read it into the record, I will start with this paragraph,  
1230 which begins as follows: "A decade of experience with the  
1231 1983 mandatory sanctions provision demonstrated that it  
1232 failed to provide meaningful relief from the litigation  
1233 behavior it was meant to address, and instead generated  
1234 wasteful satellite litigation that had little to do with the  
1235 merits of the cases. The 1983 version of Rule 11 required  
1236 sanctions for every violation of the rule," which is what  
1237 this legislation would do, "required sanctions for every  
1238 violation of the rule, and quickly became a tool of abuse.

1239           Aggressive filings of Rule 11 sanctions motions required  
1240 expenditure of tremendous resources on Rule 11 battles having  
1241 nothing to do with the merits of the case, and everything to  
1242 do with strategic gamesmanship. Many Rule 11 motions in turn  
1243 triggered counter motions seeking Rule 11 sanctions as a  
1244 penalty for filing the original Rule 11 motion."

1245           And so, it goes on and on and on, and it is wasteful  
1246 litigation. It leads to results that are not what could be  
1247 considered justice, which is what the judiciary is all about  
1248 or should be all about. And so, many of my colleagues on  
1249 this committee are former attorneys and judges, and I hope

1250 that we can cross party lines to rally behind the Judicial  
1251 Conference. We know what it is like to practice law and the  
1252 importance of being able to self-govern based on our day-to-  
1253 day real world experience.

1254 And with that, I will again urge that we allow for this  
1255 consideration by the Judicial Conference of this particular  
1256 piece of legislation, and I will yield back.

1257 Mr. Issa. Mr. Chairman?

1258 Chairman Goodlatte. For what purpose does the gentleman  
1259 from California seek recognition?

1260 Mr. Issa. Mr. Chairman, I ask to respond in the  
1261 negative to his amendment.

1262 Chairman Goodlatte. The gentleman is recognized for 5  
1263 minutes.

1264 Mr. Issa. Mr. Chairman, it is a pleasure not to be a  
1265 judge or an attorney at this time, but, in fact, numerous  
1266 times a victim of frivolous claims and outrageous conduct by  
1267 attorneys, in which we knew that even if we proved it, we had  
1268 little chance of receiving compensation. I have on occasion  
1269 seen Rule 11 sanctions granted. Unfortunately, it is often  
1270 at best a repayment of the amount it took to file. Anyone  
1271 who practices law who sought these knows they are doing it

1272 out of principle and not out any pragmatic, they are going to  
1273 get their money back.

1274 The fact is that Rule 11 sanctions are seldom granted  
1275 because the "may" clause allows a discretion that seems to  
1276 always favor the outrageous conduct of an attorney on behalf  
1277 of his client. Witnessing it absolutely firsthand over the  
1278 years, I will tell you that this is sorely needed. We need  
1279 to have a "shall" because the judge has already determined  
1280 the conduct is inappropriate. And now the question is, if  
1281 you have done the crime so to speak, why are you not paying  
1282 the fine?

1283 So any delay in changing the standard to one in which if  
1284 you have done wrong you should be held accountable, and  
1285 causing attorneys to act the way they should and mostly do is  
1286 long overdue. So I trust that as a novice to all the  
1287 technicality of why a lawyer would not want to be held  
1288 accountable for their wrong behavior, I will tell you the  
1289 clients want to see this change. And I urge --

1290 Mr. Johnson. Would the gentleman yield?

1291 Mr. Issa. Of course I would yield.

1292 Mr. Johnson. Well, thank you, sir, for yielding. You  
1293 know, to get involved in the nuts and bolts of judicial

1294 procedure by non-lawyers who may have some personal  
1295 experience with the judicial process, but lack the intimate  
1296 knowledge of how the system works --

1297 Mr. Issa. Reclaiming my time, I will tell you that the  
1298 intimate knowledge I have is to be a victim of wrongful  
1299 conduct on behalf of attorneys.

1300 Mr. Johnson. And if the gentleman would yield --

1301 Mr. Issa. I will further yield in just a moment. I  
1302 believe that the best reason for someone to speak up and say  
1303 we need to leave this movement is for just that reason.  
1304 There is no reason for the discretion that you may do  
1305 something if you see outrageous behavior. If officers of the  
1306 court act beyond what it is reasonable and it is determined,  
1307 then the judge shall have an appropriate reaction.

1308 They still get to decide how much it is. We are not  
1309 saying they shall fully compensate. They have a lot of  
1310 discretion. But the discretion to do nothing when they have  
1311 seen wrongful conduct, I am the victim. When the lawyers are  
1312 going back and forth, the clients on both sides are the  
1313 victims. And so, this holding attorneys accountable for good  
1314 conduct is, in fact, long overdue. And if the judges will  
1315 not move, you know, Rule 11 is not new. I have been here 14



1316 years, and I lived under it before I came here. It really is  
1317 an opportunity to do what should have been done, and to wait  
1318 for a conference on something that they have not done in so  
1319 long is inappropriate.

1320 So I was pleased to see this reform, and I would yield  
1321 again to the gentleman.

1322 Mr. Johnson. Well, thank you, sir. Back in 1983, Rule  
1323 11 was changed so as to provide automatic sanctions upon  
1324 filing or upon winning a Rule 11 motion, no safe harbor. And  
1325 the judiciary proceeded with that in place between 1983 and  
1326 1993 when the rule was rescinded for the reasons that I  
1327 stated in the letter and the portion of the letter that I  
1328 read.

1329 And I think for us to go back now to the '83-'93 period  
1330 and impose that same scenario on our judiciary at this time  
1331 is something that should be considered by the judiciary at  
1332 this time.

1333 Mr. Issa. Reclaiming my time. I appreciate the  
1334 gentleman's final statements. The fact is that officers of  
1335 the court need to be held to a high standard, and just as we  
1336 have mandatory minimums for certain behavior and we have  
1337 damages that are statutory in many cases, this is an example

1338 where officers of the court, if they live up to the proper  
1339 letter and spirit of their obligation, they will not see  
1340 these sanctions. And if they do not, I believe it is long  
1341 overdue to reinstate it. And I thank the chairman for his  
1342 effort to make this happen, and, again, I oppose the  
1343 amendment.

1344 Chairman Goodlatte. For what purpose does the gentleman  
1345 from Michigan seek recognition?

1346 Mr. Conyers. I rise in support of the amendment.

1347 Chairman Goodlatte. The gentleman is recognized for 5  
1348 minutes.

1349 Mr. Conyers. Thank you, Mr. Chairman. This is a most  
1350 unusual hearing because never in my experience, and  
1351 especially during the legislative hearing on 758, there has  
1352 been no witness that could name an instance when the Congress  
1353 has directly amended a civil procedure rule. And it is not  
1354 clear to me if we all understand that what we are doing here  
1355 is that we are not only not seeking the Judicial Conference's  
1356 advice on the bill itself. We are moving forward on this  
1357 bill over the objections of the Judicial Conference without  
1358 even any consultation whatsoever.

1359 It is very unusual, and I think that at the very least

1360 we should give the courts a chance to review Rule 11 before  
1361 it makes such drastic changes to the rule, which makes it  
1362 even more unpalatable from my point of view.

1363 And I urge support of the Johnson amendment, which  
1364 merely wants to give the court a chance to review and approve  
1365 the amendments to Rule 11. And so, I urge support of the  
1366 Johnson amendment, and I yield back the balance of my time.

1367 Chairman Goodlatte. The question occurs on the  
1368 amendment offered by the gentleman from Georgia.

1369 All those in favor, respond by saying aye.

1370 Those opposed, no.

1371 In the opinion of the chair, the noes have it, and the  
1372 amendment is not agreed.

1373 Mr. Conyers. We seek a record vote, Mr. Chairman.

1374 Chairman Goodlatte. A recorded vote is requested, and  
1375 the clerk will call the roll.

1376 Ms. Williams. Mr. Goodlatte?

1377 Chairman Goodlatte. No.

1378 Ms. Williams. Mr. Goodlatte votes no.

1379 Mr. Sensenbrenner?

1380 Mr. Sensenbrenner. No.

1381 Ms. Williams. Mr. Sensenbrenner votes no.

1382 Mr. Smith?

1383 Mr. Smith. No.

1384 Ms. Williams. Mr. Smith votes no.

1385 Mr. Chabot?

1386 Mr. Chabot. No.

1387 Ms. Williams. Mr. Chabot votes no.

1388 Mr. Issa?

1389 Mr. Issa. No.

1390 Ms. Williams. Mr. Issa votes no.

1391 Mr. Forbes?

1392 [No response.]

1393 Ms. Williams. Mr. King?

1394 [No response.]

1395 Mr. Williams. Mr. Franks?

1396 Mr. Franks. No.

1397 Ms. Williams. Mr. Franks votes no.

1398 Mr. Gohmert?

1399 Mr. Gohmert. No.

1400 Ms. Williams. Mr. Gohmert votes no.

1401 Mr. Jordan?

1402 Mr. Jordan. No.

1403 Ms. Williams. Mr. Jordan votes no.

1404 Mr. Poe?

1405 [No response.]

1406 Ms. Williams. Mr. Chaffetz?

1407 [No response.]

1408 Ms. Williams. Mr. Marino?

1409 Mr. Marino. No.

1410 Ms. Williams. Mr. Marino votes no.

1411 Mr. Gowdy?

1412 Mr. Gowdy. No.

1413 Ms. Williams. Mr. Gowdy votes no.

1414 Mr. Labrador?

1415 [No response.]

1416 Ms. Williams. Mr. Farenthold?

1417 Mr. Farenthold. No.

1418 Ms. Williams. Mr. Farenthold votes no.

1419 Mr. Collins?

1420 Mr. Collins. No.

1421 Ms. Williams. Mr. Collins votes no.

1422 Mr. DeSantis?

1423 [No response.]

1424 Ms. Williams. Ms. Walters?

1425 Ms. Walters. No.

1426 Ms. Williams. Ms. Walters votes no.  
1427 Mr. Buck?  
1428 Mr. Buck. No.  
1429 Ms. Williams. Mr. Buck votes no.  
1430 Mr. Ratcliffe?  
1431 Mr. Ratcliffe. No.  
1432 Ms. Williams. Mr. Ratcliffe votes no.  
1433 Mr. Trott?  
1434 Mr. Trott. No.  
1435 Ms. Williams. Mr. Trott votes no.  
1436 Mr. Bishop?  
1437 Mr. Bishop. No.  
1438 Ms. Williams. Mr. Bishop votes no.  
1439 Mr. Conyers?  
1440 Mr. Conyers. Aye.  
1441 Ms. Williams. Mr. Conyers votes aye.  
1442 Mr. Nadler?  
1443 Mr. Nadler. Aye.  
1444 Ms. Williams. Mr. Nadler votes aye.  
1445 Ms. Lofgren?  
1446 Ms. Lofgren. Aye.  
1447 Ms. Williams. Ms. Lofgren votes aye.

1448 Ms. Jackson Lee?  
1449 [No response.]  
1450 Ms. Williams. Mr. Cohen?  
1451 Mr. Cohen. Aye.  
1452 Ms. Williams. Mr. Cohen votes aye.  
1453 Mr. Johnson?  
1454 Mr. Johnson. Aye.  
1455 Ms. Williams. Mr. Johnson votes aye.  
1456 Mr. Pierluisi?  
1457 Mr. Pierluisi. Aye.  
1458 Ms. Williams. Mr. Pierluisi votes aye.  
1459 Ms. Chu?  
1460 Ms. Chu. Aye.  
1461 Ms. Williams. Ms. Chu votes aye.  
1462 Mr. Deutch?  
1463 Mr. Deutch. Aye.  
1464 Ms. Williams. Mr. Deutch votes aye.  
1465 Mr. Gutierrez?  
1466 [No response.]  
1467 Ms. Williams. Ms. Bass?  
1468 [No response.]  
1469 Ms. Williams. Mr. Richmond?

1470 [No response.]

1471 Ms. Williams. Ms. DelBene?

1472 Ms. DelBene. Aye.

1473 Ms. Williams. Ms. DelBene votes aye.

1474 Mr. Jeffries?

1475 [No response.]

1476 Ms. Williams. Mr. Cicilline?

1477 Mr. Cicilline. Aye.

1478 Ms. Williams. Mr. Cicilline votes aye.

1479 Mr. Peters?

1480 Mr. Peters. Aye.

1481 Ms. Williams. Mr. Peters votes aye.

1482 Chairman Goodlatte. The gentleman from New York?

1483 Mr. Jeffries. Aye.

1484 Ms. Williams. Mr. Jeffries votes aye.

1485 Chairman Goodlatte. The gentleman from Virginia?

1486 Mr. Forbes. No.

1487 Ms. Williams. Mr. Forbes votes no.

1488 Chairman Goodlatte. Has every member voted who wishes

1489 to vote?

1490 [No response.]

1491 Chairman Goodlatte. The clerk will report.



1492           Ms. Williams. Mr. Chairman, 12 members voted aye, 18  
1493 members voted no.

1494           Chairman Goodlatte. And the amendment is not agreed to.

1495           For what purpose does the gentleman from Rhode Island  
1496 seek recognition?

1497           Mr. Cicilline. Thank you, Mr. Chairman. I have an  
1498 amendment at the desk.

1499           Chairman Goodlatte. The clerk will report the  
1500 amendment.

1501           Ms. Williams. Amendment to H.R. 758, offered by Mr.  
1502 Cicilline, page 2, strike like --

1503           Chairman Goodlatte. Without objection, the amendment  
1504 will be considered as read.

1505           [The amendment of Mr. Cicilline follows:]

1506

1507 Chairman Goodlatte. And the gentleman is recognized for  
1508 5 minutes on his amendment.

1509 Mr. Cicilline. Thank you, Mr. Chairman. Mr. Chairman,  
1510 this amendment would restore the current safe harbor  
1511 provision under the Federal Rules of Civil Procedure Number  
1512 11. As the committee knows, the safe harbor provision allows  
1513 an attorney a period of 21 days to withdraw an objectionable  
1514 pleading, and Rule 11, of course, applies to all kinds of  
1515 pleadings, motions, and pre-trial documents. Many violations  
1516 of Rule 11 are technical and not deliberate, and this  
1517 amendment would simply restore the safe harbor provision.

1518 For the 10 years that mandatory sanctions were in  
1519 effect, litigation surrounding Rule 11 significantly  
1520 increased. In fact, the safe harbor amendment would curtail  
1521 this satellite litigation that so many colleagues have spoken  
1522 about this morning by providing a party an opportunity to  
1523 correct a small defect to a pleading or other paper.  
1524 According to Professor Lonnie Hoffman, who testified at the  
1525 March 11th, 2011 hearing on this very same bill, and I quote,  
1526 "A further key reform in 1993 was the addition of what is  
1527 known as the safe harbor provision, which protects against  
1528 the imposition of sanctions if the filing alleged to be

1529 sanctionable is withdrawn in a timely manner. The addition  
1530 of the safe harbor has been credited with successfully  
1531 reducing the incidence of abusive rule of evidence sanctions  
1532 practice, a salutary result felt especially by those  
1533 claimants who were impacted most severely by the 1983 rule."

1534       Without the safe harbor provision, Rule 11 discouraged  
1535 the withdrawal of sanctionable filings because as the  
1536 Advisory Committee puts it, "Parties were sometimes reluctant  
1537 to abandon a questionable contention lest that be viewed as  
1538 evidence of a violation of Rule 11." So after the safe  
1539 harbor rule was included, this was no longer a problem.

1540       And, in fact, even if such a problem exists, history  
1541 tells us that what is proposed in this as a remedy will prove  
1542 not only ineffective, but will actually make the problem  
1543 worse. In fact, the last time that such a proposal was  
1544 enacted in 1983, it spawned unnecessary and abusive  
1545 litigation. During the decade that mandatory Rule 11  
1546 sanctions were in effect, nearly 7,000 motions were  
1547 generated, much of it stemming from purely tactical motives.

1548       Prior to that, during the 45 years when the existing  
1549 rule was in effect, Federal courts ruled on only 19 Rule 11  
1550 motions for sanctions, and found a violation of Rule 11 only

1551 11 times. And, in fact, in 1989, a study found that roughly  
1552 one-third of all Federal civil lawsuits at the time involved  
1553 Rule 11 litigation. Roughly a quarter of all the cases on  
1554 the Federal docket were burdened by rule 11 actions that did  
1555 not result in sanctions.

1556 As the Judicial Conference noted in 2004, the mandatory  
1557 application of Rule 11 created, and I quote, "a significant  
1558 incentive to file unmeritorious Rule 11 motions by providing  
1559 a possibility of monetary penalty, engendered potential  
1560 conflicts of interest between clients and lawyers, who  
1561 advised withdrawal of particular claims despite the client's  
1562 preference, and provided little incentive to abandon or  
1563 withdraw a pleading or claim that lacked merit after  
1564 determining that it no longer was supportable in law or  
1565 fact."

1566 In an effort to address frivolous litigation, the 1983  
1567 amendment actually spurred a new form of abusive tactics. It  
1568 is for this reason, among others, that the rule was re-  
1569 amended and to make sanctions discretionary, and to create a  
1570 safe harbor provision. This safe harbor provision required  
1571 parties seeking Rule 11 sanctions to give the adverse party  
1572 notice and the opportunity to withdraw without penalty. My

1573 amendment would simply restore the safe harbor provision. It  
1574 would allow courts to focus more on the merits of cases, and  
1575 preventing much of the pure gamesmanship that accompanied the  
1576 previous version of Rule 11.

1577 I urge my colleagues to support this amendment and yield  
1578 back the remainder of my time.

1579 Chairman Goodlatte. The chair thanks the gentleman.  
1580 For what purpose does the gentleman from Texas seek  
1581 recognition?

1582 Mr. Smith. Mr. Chairman, I oppose the amendment.

1583 Chairman Goodlatte. The gentleman is recognized for 5  
1584 minutes.

1585 Mr. Smith. Thank you, Mr. Chairman. First of all, I  
1586 would like to thank the gentleman from California, Mr. Issa,  
1587 for his comments on the previous amendment. There is no  
1588 substitute for firsthand experience with frivolous lawsuits,  
1589 though. Frankly, I regret he had to go through that  
1590 experience, but I thought what he said was very, very  
1591 persuasive.

1592 Mr. Chairman, I oppose the amendment at hand, which  
1593 strikes a section of the bill and allows lawyers who file  
1594 frivolous claims to escape any sanction. It is essential

1595 that LARA reverse the 1993 amendments to Rule 11. The  
1596 current rule allows those who file frivolous lawsuits to  
1597 avoid sanctions by withdrawing claims within 21 days after a  
1598 motion for sanctions has been filed. This loophole, which  
1599 LARA closes, gives unscrupulous lawyers an unlimited number  
1600 of free passes to file frivolous pleadings with impunity.

1601 Justice Scalia correctly predicted that such amendments  
1602 would, in fact, encourage frivolous lawsuits. Opposing the  
1603 1993 amendments in which the 21-day rule was reinstated,  
1604 Justice Scalia wrote, "In my view, those who file frivolous  
1605 suits and pleadings should have no safe harbor. The rule  
1606 should be solicitous of the abused and not of the abuser.  
1607 Under the revised rule, parties will be able to file  
1608 thoughtless, reckless, and harassing pleading, secure in the  
1609 knowledge that they have nothing to lose. If objection is  
1610 raised, they can retreat without penalty."

1611 LARA would get rid of the free pass lawyers now have to  
1612 file frivolous lawsuits under today's Rule 11. This  
1613 amendment would eliminate that essential provision, so I urge  
1614 my colleagues to oppose this amendment. Yield back.

1615 Chairman Goodlatte. The question occurs on the  
1616 amendment offered by the gentleman from Rhode Island.

1617 All those in favor, respond by saying aye.  
1618 Those opposed, no.  
1619 In the opinion of the chair, the noes have it.  
1620 Mr. Cicilline. Ask for a recorded vote, Mr. Chairman.  
1621 Chairman Goodlatte. A recorded vote is requested, and  
1622 the clerk will call the roll.  
1623 Ms. Williams. Mr. Goodlatte?  
1624 Chairman Goodlatte. No.  
1625 Ms. Williams. Mr. Goodlatte votes no.  
1626 Mr. Sensenbrenner?  
1627 Mr. Sensenbrenner. No.  
1628 Ms. Williams. Mr. Sensenbrenner votes no.  
1629 Mr. Smith?  
1630 Mr. Smith. No.  
1631 Ms. Williams. Mr. Smith votes no.  
1632 Mr. Chabot?  
1633 Mr. Chabot. No.  
1634 Ms. Williams. Mr. Chabot votes no.  
1635 Mr. Issa?  
1636 Mr. Issa. No.  
1637 Ms. Williams. Mr. Issa votes no.  
1638 Mr. Forbes?

1639 [No response.]  
1640 Ms. Williams. Mr. King?  
1641 [No response.]  
1642 Mr. Williams. Mr. Franks?  
1643 [No response.]  
1644 Ms. Williams. Mr. Gohmert?  
1645 [No response.]  
1646 Ms. Williams. Mr. Jordan?  
1647 Mr. Jordan. No.  
1648 Ms. Williams. Mr. Jordan votes no.  
1649 Mr. Poe?  
1650 Mr. Poe. No.  
1651 Ms. Williams. Mr. Poe votes no.  
1652 Mr. Chaffetz?  
1653 [No response.]  
1654 Ms. Williams. Mr. Marino?  
1655 Mr. Marino. No.  
1656 Ms. Williams. Mr. Marino votes no.  
1657 Mr. Gowdy?  
1658 Mr. Gowdy. No.  
1659 Ms. Williams. Mr. Gowdy votes no.  
1660 Mr. Labrador?



1661 Mr. Labrador. No.

1662 Ms. Williams. Mr. Labrador votes no.

1663 Mr. Farenthold?

1664 Mr. Farenthold. No.

1665 Ms. Williams. Mr. Farenthold votes no.

1666 Mr. Collins?

1667 Mr. Collins. No.

1668 Ms. Williams. Mr. Collins votes no.

1669 Mr. DeSantis?

1670 [No response.]

1671 Ms. Williams. Ms. Walters?

1672 Ms. Walters. No.

1673 Ms. Williams. Ms. Walters votes no.

1674 Mr. Buck?

1675 Mr. Buck. No.

1676 Ms. Williams. Mr. Buck votes no.

1677 Mr. Ratcliffe?

1678 Mr. Ratcliffe. No.

1679 Ms. Williams. Mr. Ratcliffe votes no.

1680 Mr. Trott?

1681 Mr. Trott. No.

1682 Ms. Williams. Mr. Trott votes no.

1683 Mr. Bishop?

1684 [No response.]

1685 Ms. Williams. Mr. Conyers?

1686 Mr. Conyers. Aye.

1687 Ms. Williams. Mr. Conyers votes aye.

1688 Mr. Nadler?

1689 Mr. Nadler. Aye.

1690 Ms. Williams. Mr. Nadler votes aye.

1691 Ms. Lofgren?

1692 Ms. Lofgren. Aye.

1693 Ms. Williams. Ms. Lofgren votes aye.

1694 Ms. Jackson Lee?

1695 [No response.]

1696 Ms. Williams. Mr. Cohen?

1697 Mr. Cohen. Aye.

1698 Ms. Williams. Mr. Cohen votes aye.

1699 Mr. Johnson?

1700 Mr. Johnson. Aye.

1701 Ms. Williams. Mr. Johnson votes aye.

1702 Mr. Pierluisi?

1703 Mr. Pierluisi. Aye.

1704 Ms. Williams. Mr. Pierluisi votes aye.

1705 Ms. Chu?

1706 Ms. Chu. Aye.

1707 Ms. Williams. Ms. Chu votes aye.

1708 Mr. Deutch?

1709 Mr. Deutch. Aye.

1710 Ms. Williams. Mr. Deutch votes aye.

1711 Mr. Gutierrez?

1712 [No response.]

1713 Ms. Williams. Ms. Bass?

1714 [No response.]

1715 Ms. Williams. Mr. Richmond?

1716 [No response.]

1717 Ms. Williams. Ms. DelBene?

1718 Ms. DelBene. Aye.

1719 Ms. Williams. Ms. DelBene votes aye.

1720 Mr. Jeffries?

1721 Mr. Jeffries. Aye.

1722 Ms. Williams. Mr. Jeffries votes aye.

1723 Mr. Cicilline?

1724 Mr. Cicilline. Aye.

1725 Ms. Williams. Mr. Cicilline votes aye.

1726 Mr. Peters?

1727 Mr. Peters. Aye.

1728 Ms. Williams. Mr. Peters votes aye.

1729 Chairman Goodlatte. The gentleman from Michigan?

1730 Mr. Bishop. No.

1731 Ms. Williams. Mr. Bishop votes no.

1732 Chairman Goodlatte. The gentleman from Virginia?

1733 Mr. Forbes. No.

1734 Ms. Williams. Mr. Forbes votes no.

1735 Chairman Goodlatte. Has every member voted who wishes

1736 to vote?

1737 [No response.]

1738 Chairman Goodlatte. The clerk will report.

1739 Ms. Williams. Mr. Chairman, 12 members voted aye, 18

1740 members voted no.

1741 Chairman Goodlatte. And the amendment is not agreed to.

1742 Are there further amendments to H.R. 758?

1743 [No response.]

1744 Chairman Goodlatte. A reporting quorum being present,

1745 the question is on the motion to report the bill, H.R. 758,

1746 favorably to the House.

1747 Those in favor will say aye?

1748 Those opposed, no?

1749       The ayes have it, and the bill is ordered reported  
1750 favorably.

1751       Mr. Conyers.   A recorded vote.

1752       Chairman Goodlatte.   A recorded vote is requested, and  
1753 the clerk will call the roll.

1754       Ms. Williams.   Mr. Goodlatte?

1755       Chairman Goodlatte.   Aye.

1756       Ms. Williams.   Mr. Goodlatte votes aye.

1757       Mr. Sensenbrenner?

1758       Mr. Sensenbrenner.   Aye.

1759       Ms. Williams.   Mr. Sensenbrenner votes aye.

1760       Mr. Smith?

1761       Mr. Smith.   Aye.

1762       Ms. Williams.   Mr. Smith votes aye.

1763       Mr. Chabot?

1764       Mr. Chabot.   Aye.

1765       Ms. Williams.   Mr. Chabot votes aye.

1766       Mr. Issa?

1767       Mr. Issa.   Aye.

1768       Ms. Williams.   Mr. Issa votes aye.

1769       Mr. Forbes?

1770       Mr. Forbes.   Aye.

1771 Ms. Williams. Mr. Forbes votes aye.  
1772 Mr. King?  
1773 [No response.]  
1774 Ms. Williams. Mr. Franks?  
1775 Mr. Franks. Aye.  
1776 Ms. Williams. Mr. Franks votes aye.  
1777 Mr. Gohmert?  
1778 Mr. Gohmert. Aye.  
1779 Ms. Williams. Mr. Gohmert votes aye.  
1780 Mr. Jordan?  
1781 Mr. Jordan. Yes.  
1782 Ms. Williams. Mr. Jordan votes yes.  
1783 Mr. Poe?  
1784 Mr. Poe. No.  
1785 Ms. Williams. Mr. Poe votes no.  
1786 Mr. Chaffetz?  
1787 [No response.]  
1788 Ms. Williams. Mr. Marino?  
1789 [No response.]  
1790 Ms. Williams. Mr. Gowdy?  
1791 Mr. Gowdy. Yes, ma'am.  
1792 Ms. Williams. Mr. Gowdy votes yes.

1793 Mr. Labrador?

1794 Mr. Labrador. Yes.

1795 Ms. Williams. Mr. Labrador votes yes.

1796 Mr. Farenthold?

1797 Mr. Farenthold. Yes.

1798 Ms. Williams. Mr. Farenthold votes yes.

1799 Mr. Collins?

1800 Mr. Collins. Yes.

1801 Ms. Williams. Mr. Collins votes yes.

1802 Mr. DeSantis?

1803 [No response.]

1804 Ms. Williams. Ms. Walters?

1805 Ms. Walters. Aye.

1806 Ms. Williams. Ms. Walters votes aye.

1807 Mr. Buck?

1808 Mr. Buck. Yes.

1809 Ms. Williams. Mr. Buck votes yes.

1810 Mr. Ratcliffe?

1811 Mr. Ratcliffe. Yes.

1812 Ms. Williams. Mr. Ratcliffe votes yes.

1813 Mr. Trott?

1814 Mr. Trott. Yes.

1815 Ms. Williams. Mr. Trott votes yes.  
1816 Mr. Bishop?  
1817 Mr. Bishop. Aye.  
1818 Ms. Williams. Mr. Bishop votes aye.  
1819 Mr. Conyers?  
1820 Mr. Conyers. No.  
1821 Ms. Williams. Mr. Conyers votes no.  
1822 Mr. Nadler?  
1823 Mr. Nadler. No.  
1824 Ms. Williams. Mr. Nadler votes no.  
1825 Ms. Lofgren?  
1826 Ms. Lofgren. No.  
1827 Ms. Williams. Ms. Lofgren votes no.  
1828 Ms. Jackson Lee?  
1829 [No response.]  
1830 Ms. Williams. Mr. Cohen?  
1831 Mr. Cohen. Aye.  
1832 Ms. Williams. Mr. Cohen votes aye.  
1833 Mr. Johnson?  
1834 Mr. Johnson. No.  
1835 Ms. Williams. Mr. Johnson votes no.  
1836 Mr. Pierluisi?



1837 Mr. Pierluisi. No.

1838 Ms. Williams. Mr. Pierluisi votes no.

1839 Ms. Chu?

1840 Ms. Chu. No.

1841 Ms. Williams. Ms. Chu votes no.

1842 Mr. Deutch?

1843 Mr. Deutch. No.

1844 Ms. Williams. Mr. Deutch votes no.

1845 Mr. Gutierrez?

1846 [No response.]

1847 Ms. Williams. Ms. Bass?

1848 [No response.]

1849 Ms. Williams. Mr. Richmond?

1850 [No response.]

1851 Ms. Williams. Ms. DelBene?

1852 Ms. DelBene. No.

1853 Ms. Williams. Ms. DelBene votes no.

1854 Mr. Jeffries?

1855 Mr. Jeffries. No.

1856 Ms. Williams. Mr. Jeffries votes no.

1857 Mr. Cicilline?

1858 Mr. Cicilline. No.

1859 Ms. Williams. Mr. Cicilline votes no.  
1860 Mr. Peters?  
1861 Mr. Peters. No.  
1862 Ms. Williams. Mr. Peters votes no.  
1863 Chairman Goodlatte. The gentleman from Pennsylvania?  
1864 Mr. Marino. Yes.  
1865 Ms. Williams. Mr. Marino votes yes.  
1866 Chairman Goodlatte. The gentleman from Ohio?  
1867 Mr. Cohen. Mr. Chair?  
1868 Chairman Goodlatte. The gentleman from Tennessee?  
1869 Mr. Cohen. Did my amendment pass?  
1870 Chairman Goodlatte. Your amendment failed.  
1871 Mr. Cohen. Oh, well, I meant to vote no.  
1872 [Laughter.]  
1873 Chairman Goodlatte. And we are not going to sing  
1874 "Kumbaya."  
1875 [Laughter.]  
1876 Chairman Goodlatte. Has every member voted who wishes  
1877 to vote?  
1878 [No response.]  
1879 Chairman Goodlatte. The clerk will report.  
1880 Ms. Williams. Mr. Chairman, 19 members voted aye, 13

1881 members voted no.

1882 Chairman Goodlatte. The ayes have it, and the bill is  
1883 ordered reported favorably to the House. Members will have 2  
1884 days to submit views.

1885 Pursuant to notice I now call up H.R. 526 for purposes  
1886 of markup, and move that the committee report the bill  
1887 favorably to the House.

1888 The clerk will report the bill.

1889 Ms. Williams. H.R. 526, to amend Title 11 of the United  
1890 States Code to require the public disclosure by trust  
1891 established under Section 524(g) of such title, of quarterly  
1892 reports that contained detailed information regarding the  
1893 receipt and disposition of claims for injuries based on  
1894 exposure to asbestos and for other purposes.

1895 Chairman Goodlatte. Without objection, the bill is  
1896 considered as read and open for amendment at any point.

1897 [The bill follows:]

1898

1899 Chairman Goodlatte. I will begin by recognizing myself  
1900 for an opening statement.

1901 Today we consider a bill that will help asbestos victims  
1902 that must look to the bankruptcy process to seek redress for  
1903 their or their loved ones' injuries. Unfortunately on too  
1904 frequent on occasion, by the time asbestos victims assert  
1905 their claims for compensation, the bankruptcy trust formed  
1906 for their benefit has been diluted by fraudulent claims,  
1907 leaving those victims without their entitled recovery.

1908 The reason that fraud is able to exist within the  
1909 asbestos trust system is the excessive lack of transparency  
1910 created by plaintiffs' firms. Due to a provision in the  
1911 Bankruptcy Code, plaintiffs' firms are essentially granted a  
1912 statutory veto right over a debtor's Chapter 11 plan that  
1913 seeks to restructure asbestos liabilities. Plaintiffs' firms  
1914 have exploited this leverage to obtain trust rules that  
1915 prevent information contained within the asbestos trust from  
1916 seeing the light of day.

1917 The predictable result from this reduced transparency  
1918 has been a growing wave of claims and reports of fraud. The  
1919 increase in fraudulent claims has caused many asbestos  
1920 bankruptcy trusts to reduce the recoveries paid to asbestos

1921 victims who emerge following the formation of trusts. For  
1922 example, a recent bankruptcy case in North Carolina for the  
1923 company Garlock Ceiling Technologies uncovered a series of  
1924 fraudulent claims.

1925       In 15 cases that were filed against Garlock in State  
1926 court, the plaintiffs disclosed that they were exposed to a  
1927 total of 32 products. Yet when the bankruptcy court  
1928 conducted some basic due diligence, it revealed that these  
1929 very same plaintiffs had asserted claims in the bankruptcy  
1930 courts for exposure from 284 different products. This type  
1931 of conduct depletes the finite amount of funds available in  
1932 the bankruptcy trust process to pay future victims of  
1933 asbestos.

1934       The FACT Act, introduced by Congressman Farenthold, will  
1935 combat this fraud by introducing long-needed transparency  
1936 into the asbestos bankruptcy trust system. The FACT Act  
1937 increases transparency through two simple measures. First,  
1938 it requires the asbestos trust to file quarterly reports on  
1939 their public bankruptcy dockets. These reports will contain  
1940 very basic information about demands to the trust and the  
1941 basis for payments made by the trust to claimants. Second,  
1942 the FACT Act requires asbestos trusts to respond to

1943 information requests about claimants asserted against and the  
1944 basis for payments made by the asbestos trust. These  
1945 measures are carefully designed to increase transparency  
1946 while providing claimants with sufficient privacy protection.

1947 To accomplish these goals, the bill leverages privacy  
1948 protections contained elsewhere in the Bankruptcy Code and  
1949 includes additional safeguards to preserve claimants'  
1950 privacy. A State court judge with 29 years of bench  
1951 experience described the privacy protections within the FACT  
1952 Act as far stronger than those afforded in State court. The  
1953 FACT Act also is deliberately structured to minimize the  
1954 administrative impact on asbestos trusts. Indeed, according  
1955 to testimony before the Judiciary Committee from an expert on  
1956 asbestos trusts, preparing the quarterly disclosure  
1957 requirements would be very simple and take minutes.

1958 The FACT Act strikes the appropriate balance between  
1959 achieving the transparency necessary to reduce fraud in an  
1960 efficient manner and providing claimants with sufficient  
1961 privacy protections. We cannot allow fraud to continue  
1962 reducing recoveries for future asbestos victims. The FACT  
1963 Act is a simple, narrow measure that will shed much needed  
1964 sunshine on a shadowy system.

1965           I thank Mr. Farenthold for introducing this legislation  
1966   and urge my colleagues to support the FACT Act. And it is  
1967   now my pleasure to recognize the ranking member of the  
1968   committee, the gentleman from Michigan, Mr. Conyers, for his  
1969   opening statement.

1970           Mr. Conyers. Thank you, Mr. Chairman. And to members  
1971   of the committee, I would like to take the liberty to  
1972   acknowledge the presence of Representative Bruce Vento, our  
1973   former colleague from Minnesota's, widow is here, Mrs. Sue  
1974   Vento. And we wanted to let her know that Bruce represented  
1975   Minnesota for 24 years until he passed from a form of cancer  
1976   in the lining of the chest cavity, mesothelioma, that is  
1977   often linked to exposure to asbestos fibers. And we are  
1978   pleased that she is in the audience with a number of asbestos  
1979   victims as well, and we appreciate all of them being here,  
1980   and commend them for their commitment and the memory of her  
1981   husband.

1982           There are, members of the committee, some concerns about  
1983   H.R. 526, Furthering Asbestos Claim Transparency Act. The  
1984   bill's reporting and disclosure requirements are an assault  
1985   against the privacy of asbestos victims who seek payment for  
1986   their injuries from bankruptcy trusts established for that

1987 purpose. H.R. 526 would force these trusts to publicly  
1988 disclose sensitive personal information of these asbestos  
1989 claimants, including their names and exposure histories. And  
1990 as a result, their private information will be irretrievably  
1991 released into the public domain available by way of the  
1992 internet.

1993 Just imagine what insurance companies, prospective  
1994 employers, lenders, data collectors could do with this  
1995 private information. Worse yet, these asbestos victims will  
1996 be more vulnerable to other predators. By exposing their  
1997 personal information to the public, H.R. 526 would allow  
1998 asbestos victims to be re-victimized, notwithstanding the  
1999 fact that such disclosure has absolutely nothing to do with  
2000 compensation for asbestos exposure.

2001 Now, while H.R. 526's supporters that it is intended to  
2002 help victims of asbestos exposure, asbestos victims  
2003 vigorously oppose 526. As a matter of fact, it has not been  
2004 brought to my attention that there are any asbestos victims  
2005 in support of the measure that we are now about to consider.  
2006 Because of this serious shortcoming of the bill, I intend to  
2007 offer an amendment that will at least protect the privacy of  
2008 asbestos claimants.



2009           Another problem is that it is fundamentally inequitable  
2010 because although the bill requires bankruptcy asbestos trusts  
2011 to make certain disclosures, it makes no comparable demand on  
2012 those whose products injured or even kills so many  
2013 unsuspecting American workers, service members, and  
2014 consumers. In fact, some manufacturers intentionally  
2015 concealed known risks of asbestos exposure and used every  
2016 trick in the book to avoid liability. They even fought the  
2017 Federal government's efforts to ban its use, and a result,  
2018 asbestos continued to be widely used in constructing our  
2019 homes, offices, and public schools. This very building in  
2020 which we are sitting is in the midst of a nearly 20-year  
2021 asbestos abatement effort.

2022           And now, the very same manufacturers ask us to help them  
2023 by passing H.R. 526, which effectively shifts some of the  
2024 costs of discovery away from them to asbestos bankruptcy  
2025 trusts. Unfortunately, H.R. 526 is nothing more than an  
2026 attempt by asbestos defendants to do an end run around the  
2027 discovery process available under non-bankruptcy law. Still  
2028 another flaw is that there is no evidence of endemic fraud  
2029 warranting such an invasive measure as H.R. 526. Oh, sure,  
2030 there has been some fraud, but there is no massive fraud

2031 going on that we or my staff can detect. While the  
2032 supporters of this measure will probably claim that the  
2033 asbestos trust system is rife with fraud, I have not seen any  
2034 claim to make that statement meritorious.

2035 And then there is the Government Accountability Office  
2036 report, GAO, and here is what it says. "There is no  
2037 empirical evidence of such fraud with respect to the trust  
2038 claims processing system." While not perfect, the trust  
2039 system set up under the Bankruptcy Code Section 524(g), has  
2040 generally proved to be beneficial to both asbestos victims  
2041 and to corporations facing mass tort liability for causing  
2042 asbestos injuries.

2043 In exchange for agreeing to fund these trusts, companies  
2044 are able to shed their massive asbestos tort liabilities and  
2045 reenter the business community on a competitive basis for the  
2046 benefit of their creditors and those who they injured. The  
2047 trusts in turn owe a fiduciary duty to all beneficiaries to  
2048 ensure that the only proper claims are paid to the extent  
2049 possible.

2050 These are some of the concerns that I have, and I should  
2051 note that others share the same concerns, including the  
2052 Military Order of the Purple Heart, Public Citizen, the

2053 American Federation of State, County, and Municipal  
2054 Employees, the AFL-CIO, the Environmental Working Group, the  
2055 Alliance for Justice, the American Association for Justice,  
2056 and others. And the bill is also opposed by asbestos victims  
2057 and their families.

2058       So what is H.R. 526 all about? It is a blatant attempt  
2059 to advance the interests of those companies that injured and  
2060 killed thousands of Americans at the expense of these very  
2061 same victims. And so, I urge my colleagues to carefully  
2062 follow this discussion and join me in opposing this flawed  
2063 measure. Thank you, Mr. Chairman.

2064       Chairman Goodlatte. The chair recognizes the author of  
2065 the legislation, the gentleman from Texas, Mr. Farenthold,  
2066 for his opening statement.

2067       Mr. Farenthold. Thank you, Mr. Chairman. One of my  
2068 priorities in Congress is looking for ways we can address  
2069 waste, fraud, and abuse, as well as abusive litigation. And  
2070 it is becoming increasingly clear that a major source of  
2071 fraud and abuse lies in the asbestos trusts created under the  
2072 Federal Bankruptcy Code.

2073       Federal Court District Judge Jan Jack from my hometown  
2074 of Corpus Christie, was one of the first to blow the lid off

2075 asbestos fraud in 2005. Unfortunately, the bankruptcy trusts  
2076 themselves have become a second avenue for unscrupulous  
2077 actors to fraudulently drain funds, thereby reducing the  
2078 payouts to victims of asbestos. That is why I introduced  
2079 H.R. 526, the Furthering Asbestos Claim Transparency Act of  
2080 2015, which is identical to the FACT Act that passed Congress  
2081 last term.

2082       It is designed to strike a balance between and inject a  
2083 much needed transparency into the system while protecting the  
2084 privacy of those seeking redress. This bill is for the  
2085 victims of asbestos-related diseases who deserve full  
2086 compensation for their injuries, including those not yet  
2087 showing any symptoms.

2088       Congress has now conducted four hearings on the topic,  
2089 and we have heard many stories about inconsistent,  
2090 questionable, and potentially fraudulent claims. Fraud in  
2091 and of itself is bad enough, but the fact that there are  
2092 limited resources in these trusts that were formed with  
2093 assets from bankrupt defendants makes it important that we  
2094 protect these funds for yet undiscovered victims.

2095       Already net payouts have decreased by nearly 50 percent  
2096 across eight potential payments in six of the major trusts.

2097 According to the *Wall Street Journal*, roughly half the trusts  
2098 have been forced to reduce their payouts to victims in recent  
2099 years in response to an unexpected glut in claims. Congress  
2100 must act to protect future victims and their families so they  
2101 can receive the support that they need.

2102 For those who would claim there is no evidence of  
2103 misconduct in the asbestos trust, I would strongly suggest  
2104 they take a look at the *In Re Garlock Ceiling Technologies*  
2105 case and the indictment of disgraced New York Assembly  
2106 Speaker Sheldon Silver. The extent of the abuse is now  
2107 clear, and the Furthering Asbestos Claim Transparency will  
2108 help ensure this asbestos litigation is no longer driven by  
2109 dollars, but by justice.

2110 There have been also some claims that the GAO report has  
2111 said there is not fraud present in the asbestos system. This  
2112 is inaccurate. The GAO report was not focused on finding  
2113 fraud. As a result, the GAO did not perform its own audits  
2114 of the asbestos bankruptcy trust or independently review the  
2115 trust claims. In fact, the GAO report found that the  
2116 asbestos trust system is not equipped to detect claims that  
2117 are supported by altered work histories or inconsistent  
2118 exposure patterns. This type of fraud is precisely what the

2119 FACT Act is aimed at uncovering.

2120       The FACT Act will shine disinfecting sunlight onto the  
2121 trust system so that all parties, including other asbestos  
2122 trusts and State court judges, will have access to  
2123 information to spot abuse while not subjecting the victims to  
2124 unnecessary invasion of their privacy. Amending the  
2125 Bankruptcy Code to require asbestos trusts to file quarterly  
2126 reports with the bankruptcy court just outlining the  
2127 claimant's name, alleged exposure history, and basis for any  
2128 payment is simple and non-burdensome, and it will provide a  
2129 great way to provide transparency to the system.

2130       The act includes great privacy protections. It bars the  
2131 disclosure of complete social security numbers or  
2132 confidential medical records. Reports filed under the FACT  
2133 Act will also be subject to existing bankruptcy rules to  
2134 protect personally identifiable information. The information  
2135 being disclosed in the report is nothing more than would be  
2136 typically found in State court pleadings.

2137       This legislation will help the asbestos trusts achieve  
2138 their designated goal: preserving funds to provide  
2139 compensation to the parties that have been truly aggrieved by  
2140 exposure to asbestos. The minimal cost associated with the

2141 FACT Act reporting will more than outweighed if a single  
2142 fraudulent claim is deterred.

2143 I would like to enter into the record today two letters  
2144 I received, one from the American Military Society and  
2145 another from the Texas Coalition of Veterans Organizations,  
2146 which represents 34 different veterans organizations in my  
2147 home State of Texas. Their support of this legislation is  
2148 important because it is also one of my top priorities to  
2149 ensure that the men and women who serve our country in the  
2150 military will have the support they need.

2151 I would like to draw attention to one line in particular  
2152 from the American Military Society that sums up why I think  
2153 this bill is important. Executive Director John May states,  
2154 "Put simply, every dollar paid to an undeserving claimant is  
2155 a dollar taken away from a veteran whose illness will  
2156 manifest in the future." That is what we are here to  
2157 prevent: unscrupulous attorneys abusing an opaque system,  
2158 leaving those who put everything on the line for this country  
2159 out to dry.

2160 Congress has taken up this bill numerous times. I urge  
2161 my colleagues to continue to support it. Thank you very  
2162 much.

2163 Chairman Goodlatte. The chair now recognizes the  
2164 gentleman from Georgia, the ranking member of the  
2165 Subcommittee on Regulatory Reform, Commercial and Antitrust  
2166 Law, for his opening statement.

2167 Mr. Johnson. Thank you, Mr. Chairman. I have serious  
2168 concerns with the so-called FACT Act, but let me first say  
2169 being an attorney myself, I understand that when a person is  
2170 charged with a crime, they have a presumption of innocence  
2171 which stays with them until such time as they should be  
2172 convicted. And Mr. Sheldon Silver, who was the former  
2173 speaker of the New York General Assembly, is a man who was  
2174 charged with a crime, but has not been found to have  
2175 committed that crime. So I would object to any insinuation  
2176 that his case and his name being associated is in any way an  
2177 example of some kind of need for this legislation.

2178 Not only does this bill create a major hurdle for  
2179 families already facing the insurmountable fight against  
2180 asbestos-related disease, it also violates their privacy by  
2181 publicizing sensitive information about claimants. As  
2182 written, little would stop this legislation from allowing  
2183 third parties to collect and monetize claimants' medical  
2184 history, or using this information to discriminate against



2185 victims and their families.

2186       Even if both parties were on equal footing, how does a  
2187 defendant's need for materials outside of discovery justify a  
2188 major privacy intrusion on a vulnerable class of persons?  
2189 That is why I would offer an amendment today, and I will  
2190 offer an amendment today, that seeks to protect the  
2191 personally identifiable information of asbestos victims from  
2192 the bill's disclosure requirements that are as onerous as  
2193 they are unnecessary.

2194       Indeed the information that the FACT Act would require  
2195 trusts to report is already discoverable if relevant to a  
2196 claim or defense at trial. State and Federal Rules of Civil  
2197 Procedure already allow a defendant to gain all relevant  
2198 information about a claimant's exposure during discovery. So  
2199 rather than providing for broader transparency for both  
2200 parties in litigation, as this bill purports to do, the FACT  
2201 Act instead creates significant hurdles for asbestos victims  
2202 and their families. This proposition is especially troubling  
2203 when we stop to consider the equities of these actions where  
2204 defendants and claimants are rarely on equal footing during  
2205 discovery or at any other stage of the litigation.

2206       Furthermore, if we remove the rhetoric behind the Fact

2207 Act, all we are left with is legislation that creates an  
2208 asbestos death database with the sole purpose of allowing  
2209 Honeywell, Koch Industries, and large asbestos insurers to  
2210 easily access other asbestos corporation's lists so they can  
2211 determine if asbestos victims are getting what they view as  
2212 too much justice, and if there is a way they can nickel and  
2213 dime the families they have devastated.

2214 That is what this bill is about. It guarantees that the  
2215 asbestos industry and its insurers pay as little to their  
2216 victims as possible. That alone is offensive, but the way  
2217 the bill achieves this objective is morally reprehensible.  
2218 Moreover, for the second straight Congress, the majority has  
2219 specifically chosen to ignore, disregard, and cast aside the  
2220 hardships and the testimony of asbestos victims and family.  
2221 In fact, during the subcommittee hearing on this bill,  
2222 victims and their families were made to suffer further insult  
2223 by being collectively asked to stand and respond to questions  
2224 at the demand of the majority.

2225 These families did not travel to Washington, D.C. to be  
2226 ridiculed or to be part of a legislative circus. They came  
2227 here to have their voices heard on a legislation that has  
2228 very real consequences for very real people. After

2229 retracting a promise to these families last Congress, I am  
2230 disappointed to report that the majority has again refused to  
2231 allow these families to testify on the real effects of this  
2232 bill, but instead has mocked their attempt to have voice.

2233 In closing, I strongly oppose this legislation, and with  
2234 that I yield back.

2235 Chairman Goodlatte. For what purpose does the gentleman  
2236 from Michigan seek recognition?

2237 Mr. Trott. Mr. Chairman, I would speak in favor of the  
2238 bill.

2239 Chairman Goodlatte. The gentleman is recognized for 5  
2240 minutes.

2241 Mr. Trott. Thank you, Mr. Chairman. Let us be clear  
2242 what we are talking about here today. If you oppose this  
2243 bill, you are saying that transparency is bad. You are  
2244 saying that you do not care about preserving the finite  
2245 resources for victims. You are saying that you are okay with  
2246 claimants potentially double dipping, that you are not in  
2247 favor of trying to reduce fraud and abuse in the claims  
2248 process, and that you generally believe it is a bad idea for  
2249 companies to be able to deal with their liabilities in a fair  
2250 and open manner.

2251       There have been a number of arguments offered in  
2252       opposition to this bill. There are two worthy of  
2253       consideration: first, that somehow the FACT Act will  
2254       compromise or infringe on the privacy of the victims. That  
2255       would most certainly be a very serious concern for all of us,  
2256       but that is not the case. The act requires that you simply  
2257       provide the name and the basis for the claim. It is much  
2258       less information that is required in any pleading  
2259       requirements in any State in this country.

2260       The second argument is that the act is somehow harmful  
2261       to victims, again, a very serious concern for all of us. But  
2262       contrary to what has been said, it does not create any major  
2263       or significant hurdles for the claimants. It does not limit  
2264       claims. It does not cap claims. It does not delay payments.  
2265       What the act does do is impose some very simple reporting  
2266       requirements so that more money will be available for valid  
2267       claims.

2268       Mr. Chairman, I practiced in bankruptcy court for 30  
2269       years. Filing a proof of claim in a bankruptcy proceeding is  
2270       a very serious matter. We worked hard to ensure they were  
2271       accurate, that there was a valid basis for the claim.  
2272       Section 524(g) of the Bankruptcy Act is an outlier, in my

2273 opinion, that is inconsistent with most other provisions in  
2274 the Bankruptcy Code. And if you file a claim that does not  
2275 have a proper basis, unlike our prior discussion regarding  
2276 the bill that was reported out of committee earlier today,  
2277 bankruptcy judges would readily impose sanctions against the  
2278 lawyer, putting your Bar license at risk, putting your  
2279 client's reputation at risk.

2280 We need to pass H.R. 526 so we can clean up this process  
2281 so more money will be available for victims. I yield back.

2282 Mr. Farenthold. Would the gentleman yield?

2283 Mr. Trott. The gentleman would be happy to yield. Yes,  
2284 sir.

2285 Mr. Farenthold. Thank you for yielding, and I wanted to  
2286 address one of the claims of the gentleman on the other side  
2287 of the aisle, my friend from Georgia, made about an  
2288 unwillingness to listen to the victims. We have had numerous  
2289 hearings, and what has happened is their side has chosen an  
2290 attorney or someone else as their witness. And the victims  
2291 were offered the opportunity to speak to members of Congress.  
2292 In fact, I checked with my staff to see if any asbestos  
2293 victim had even asked to come in and speak to me or anyone in  
2294 my office, and we have had not one person ask to speak about

2295 it.

2296 Of course, we are always willing to listen to folks, but  
2297 we have had four hearings on this issue, and I think we have  
2298 gotten numerous statements from victims that were entered  
2299 into the record. So I do think the victims' voices have been  
2300 heard.

2301 Mr. Johnson. Would the gentleman yield?

2302 Mr. Farenthold. It is not my time.

2303 Mr. Johnson. Mr. Trott?

2304 Mr. Trott. I am happy to yield to the gentleman from  
2305 Georgia.

2306 Mr. Johnson. Being a lawyer myself, I would ask is it  
2307 not good to hear from the lawyer representing the plaintiffs?  
2308 What is wrong with that? Is that not what our --

2309 Mr. Farenthold. Will the gentleman yield?

2310 Mr. Trott. I would be happy to yield to the gentleman  
2311 from Texas.

2312 Mr. Farenthold. And I agree. I think you make my point  
2313 there that the victims through an attorney have had their  
2314 say.

2315 Mr. Johnson. What is wrong with the lawyer for the  
2316 plaintiffs testifying?

2317           Mr. Farenthold. We had the lawyer testify. I think you  
2318 make my point that the victims were heard. Again, you know,  
2319 we have held four hearings on this, got a broad record. And  
2320 I disagree that this is anti-victim. This is pro-victim. We  
2321 are trying to avoid having their awards from the trust cut  
2322 because the trusts have run out of money. And I will yield  
2323 back.

2324           Chairman Goodlatte. For what purpose does the gentleman  
2325 from New York seek recognition?

2326           Mr. Nadler. Strike the last word.

2327           Chairman Goodlatte. The gentleman is recognized for 5  
2328 minutes.

2329           Mr. Nadler. Thank you. Mr. Chairman, I want to  
2330 associate myself with everything Mr. Johnson said about the  
2331 merits or rather the total and complete lack of merits of  
2332 this bill. And I want to comment in particular on one thing  
2333 because I really do not like to see total irrelevancies  
2334 brought into a discussion simply to use someone's name. And  
2335 I am talking about the reference by Mr. Farenthold to the  
2336 indictment of former Assembly Speaker Silver in New York.

2337           The indictment of Mr. Silver, and I agree with Mr.  
2338 Johnson, he has not been found guilty, so we really should

2339 not even be talking about it. But that has nothing to do  
2340 with asbestos trusts. Mr. Silver was indicted for allegedly,  
2341 he gave referrals of plaintiff cases to a law firm, and  
2342 allegedly accepted in return for them quid pro quo. Straight  
2343 bribery case. It has nothing to do.

2344 Now, yes, they were asbestos victims, and it was an  
2345 asbestos plaintiff law firm, but it had nothing to do with  
2346 bankruptcy trusts. It had nothing to do with anything we are  
2347 talking about here. And either there was a quid pro quo, in  
2348 which he was guilty, or there was not, in which case what he  
2349 did was perfectly legal, but it has nothing to do with what  
2350 we are talking about.

2351 He was also indicated for allegedly getting referrals in  
2352 return for a quid pro quo from a law firm for referring  
2353 certiorari cases to them. Are we going to say that,  
2354 therefore, that shows that there is general fraud in  
2355 certiorari cases and people ought not to be permitted to  
2356 protest their tax assessments on property taxes?

2357 Aside from just using someone whose name is in the news  
2358 in a derogatory manner, which is totally irrelevant. So I  
2359 would ask Mr. Farenthold, how does that indictment have any  
2360 relevance whatsoever to a discussion of this bill given the



2361 fact that it had nothing to do with bankruptcy trust, nothing  
2362 to do with disclosure, but was a straight bribery indictment  
2363 for something else? I will yield.

2364 Mr. Farenthold. Thank you. And I think the point I was  
2365 trying to make, and I certainly do not mean to imply that he  
2366 is guilty before he has been convicted.

2367 Mr. Nadler. No, I am not saying that.

2368 Mr. Farenthold. But I think the issue shows that the  
2369 asbestos claim has become such a high dollar industry for  
2370 lawyers, and you can see that from the ads that you still see  
2371 regulatory on television, that you have attorneys seeing this  
2372 as basically a pay-out machine. They are so anxious to get  
2373 these cases.

2374 Mr. Nadler. Reclaiming my time, in other words, this is  
2375 relevant only to show that some lawyers can make a lot of  
2376 money in asbestos claims, as lawyers can make a lot of money  
2377 in certiorari cases, in libel cases, in criminal defense  
2378 cases. Yes, lawyers make a lot of money, some of them  
2379 sometimes. Some of them do not. But it has nothing to do  
2380 with what we are talking about, and it has nothing to do in  
2381 particular with asbestos trusts.

2382 So having established the fact it was totally

2383 irrelevant, I will yield back.

2384 Chairman Goodlatte. Are there amendments to 526? The  
2385 clerk will report the amendment of the gentleman from  
2386 Michigan, Mr. Conyers.

2387 Ms. Williams. Amendment to H.R. 526, offered by Mr.  
2388 Conyers of Michigan, page 2, strike line --

2389 Chairman Goodlatte. Without objection, the amendment is  
2390 considered as read.

2391 [The amendment of Mr. Conyers follows:]

2392

2393 Chairman Goodlatte. And the gentleman is recognized for  
2394 5 minutes on his amendment.

2395 Mr. Conyers. Thank you, Mr. Chairman. Mr. Chairman and  
2396 members of the committee, the only beneficiaries of H.R. 526,  
2397 members of the committee, of the so-called FACT Act are the  
2398 very entities that knowingly produced a toxic substance that  
2399 killed or injured many unsuspecting American consumers. I  
2400 repeat: the only beneficiaries of this bill are the very  
2401 entities that knowingly produced a toxic substance that  
2402 killed or injured thousands of unsuspecting American  
2403 consumers and workers.

2404 Worse yet, this bill allows victims of asbestos exposure  
2405 to be further victimized by requiring information about their  
2406 illness to be made publicly to anyone who has access to the  
2407 internet. For example, the bill's reporting requirements  
2408 make the trust list all payment demands received as well as  
2409 the names and exposures of histories of each claimant  
2410 together with the basis for any payment from the trust to  
2411 such claimants.

2412 To address this serious failing of the bill, my  
2413 amendment would ensure that the quarterly reports required  
2414 under 526 contain only aggregate payment information. My

2415 amendment also deletes the bill's burdensome discovery  
2416 requirements. As noted by the widow of our former colleague,  
2417 Bruce Vento, whose life was taken away because of asbestos  
2418 life was taken away because of asbestos-induced mesothelioma,  
2419 the bill's public disclosure of victims' private information  
2420 could be used to deny employment credit, health, and  
2421 disability insurance. She also warned that asbestos victims  
2422 would be more vulnerable to identity thieves and other types  
2423 of predators.

2424 There is absolutely no reason in my view to violate the  
2425 privacy of asbestos victims, and accordingly, I urge my  
2426 colleagues to support my amendment, which will ensure that  
2427 the privacy of asbestos victims is protected. I urge support  
2428 of the amendment, and yield back the balance of my time.

2429 Chairman Goodlatte. For what purpose does the gentleman  
2430 from Texas seek recognition?

2431 Mr. Farenthold. I would like to move to strike the last  
2432 word to speak --

2433 Chairman Goodlatte. The gentleman is recognized for 5  
2434 minutes.

2435 Mr. Farenthold. Thank you very much, Mr. Chairman. I  
2436 oppose this amendment. You might as well not pass the FACT

2437 Act if you do this amendment. This guts the FACT Act and  
2438 does away with the key provision that requires the asbestos  
2439 trust to not give out medical records, but simply give out  
2440 the name, where someone claims to have been exposed, and what  
2441 the basis for any payment out of that trust is going to be.  
2442 That is not detailed medical records, but that is the  
2443 information that is necessary to detect the fraud and abuse  
2444 that this bill is designed to protect against.

2445 This bill is for the victims. It is designed to  
2446 preserve the assets of the trusts to compensate future  
2447 victims and to stop unscrupulous folks from double dipping.  
2448 This will provide a record of who has already been paid for  
2449 their injury so they cannot try to double dip against another  
2450 trust or in a State court tort proceeding. The simple  
2451 aggregation of this information, as the gentleman's amendment  
2452 calls for, does not provide that necessary information. And  
2453 I urge my colleagues to oppose the amendment and yield back.

2454 Chairman Goodlatte. The committee will stand in  
2455 recess --

2456 Voice. Do you want to take a break?

2457 Chairman Goodlatte. No. The committee will stand in  
2458 recess for the lunch hour. The gentleman from Georgia is

2459 wanting to be recognized. When we return, we will recognize  
2460 him and proceed with the amendment. But we will reconvene at  
2461 1:45 p.m. That will give members ample time to take care of  
2462 varied business.

2463 [Recess.]

2464 Chairman Goodlatte. The committee will reconvene.

2465 When the committee recessed, we were considering  
2466 amendments to H.R. 526, and the amendment offered by the  
2467 gentleman from Michigan was under consideration.

2468 And the gentleman from Georgia was seeking recognition.  
2469 The gentleman is recognized for 5 minutes.

2470 Mr. Johnson. Yes, thank you, Mr. Chairman.

2471 It has been stated in this hearing that there is no  
2472 privacy infringement by this bill because it only requires  
2473 the name of the claimant and the basis of the claim. That is  
2474 what has been said.

2475 But, in fact, what the bill's reporting requirements  
2476 would do would be to make all asbestos trusts list all  
2477 payment demands received as well as the names and, most  
2478 importantly, exposure histories of each claimant together  
2479 with the basis for any payment, so in other words,  
2480 information about the claim itself and the particulars of it.

2481           So that is more than just an innocuous name and basis  
2482   for the claim. It is actually personal information that does  
2483   implicate medical history.

2484           What it would do would be to place this information  
2485   online and make it available to the public so that it could  
2486   be exploited for any particular purpose by any particular  
2487   person, be it an employer or spouse or disgruntled ex-  
2488   employee, just for whatever use, for commercial purposes.

2489           This is dangerous for claimants. And what I seek to  
2490   understand is, what is the connection between placing that  
2491   private information in the public domain, how does that  
2492   affect or how does that support the payment process for  
2493   claimants?

2494           In other words, it is said that this is to protect the  
2495   ability of claimants to make a recovery. How does placing  
2496   this personal information in the public space accomplish that  
2497   goal?

2498           I would yield to my friend from Texas.

2499           Mr. Farenthold. Thank you.

2500           The bill specifically states that no confidential  
2501   medical records or the full Social Security number will be a  
2502   part of it. So I'm a little --

2503           Mr. Johnson. Reclaiming my time, the full medical  
2504 record would be exempt, but yet, pertinent parts of it would,  
2505 in fact, have to be disclosed. Isn't that correct?

2506           Mr. Farenthold. The specific language says the report  
2507 describes each demand the trust received, including the name  
2508 and exposure history of a claimant and the basis for any  
2509 claim.

2510           To me, in my understanding and the intent behind this,  
2511 is just to find out where they were exposed and what they are  
2512 claiming the damage was.

2513           Mr. Johnson. Reclaiming my time, the mere fact that  
2514 they are claiming exposure can be utilized for commercial or  
2515 for other reasons, by any and everybody with access to the  
2516 information. And it being posted online, that means everyone  
2517 throughout the world.

2518           My contention is that that is just very dangerous. It  
2519 chills the desire of claimants who have been aggrieved to  
2520 seek redress in the court of law for the harm that they  
2521 contend they have been exposed to.

2522           I believe that some would see that as beneficial. That  
2523 is why they would want to support this legislation. I am not  
2524 accusing anyone on this panel of having that desire, but I do



2525 understand that this would be beneficial to those who would  
2526 seek protection for their prior bad acts of having exposed  
2527 millions of people to a dangerous substance.

2528 With that, I would be happy to yield, but in the event  
2529 that there is nothing else, I would yield back.

2530 And I do yield back.

2531 Chairman Goodlatte. The question occurs on the  
2532 amendment offered by the gentleman from Michigan.

2533 All those in favor, respond by saying aye.

2534 Those opposed, no.

2535 In the opinion of the chair, the noes have it.

2536 Mr. Johnson. Recorded vote?

2537 Chairman Goodlatte. A recorded vote is requested, and  
2538 the clerk will call the roll.

2539 Ms. Williams. Mr. Goodlatte?

2540 Chairman Goodlatte. No.

2541 Ms. Williams. Mr. Goodlatte votes no.

2542 Mr. Sensenbrenner?

2543 [No response.]

2544 Ms. Williams. Mr. Smith?

2545 [No response.]

2546 Ms. Williams. Mr. Chabot?

2547 Mr. Chabot. No.

2548 Ms. Williams. Mr. Chabot votes no.

2549 Mr. Issa?

2550 [No response.]

2551 Ms. Williams. Mr. Forbes?

2552 [No response.]

2553 Ms. Williams. Mr. King?

2554 [No response.]

2555 Ms. Williams. Mr. Franks?

2556 [No response.]

2557 Ms. Williams. Mr. Gohmert?

2558 Mr. Gohmert. No.

2559 Ms. Williams. Mr. Gohmert votes no.

2560 Mr. Jordan?

2561 [No response.]

2562 Ms. Williams. Mr. Poe?

2563 [No response.]

2564 Ms. Williams. Mr. Chaffetz?

2565 [No response.]

2566 Ms. Williams. Mr. Marino?

2567 Mr. Marino. No.

2568 Ms. Williams. Mr. Marino votes no.

2569 Mr. Gowdy?  
2570 [No response.]  
2571 Ms. Williams. Mr. Labrador?  
2572 [No response.]  
2573 Ms. Williams. Mr. Farenthold?  
2574 Mr. Farenthold. No.  
2575 Ms. Williams. Mr. Farenthold votes no.  
2576 Mr. Collins?  
2577 Mr. Collins. No.  
2578 Ms. Williams. Mr. Collins votes no.  
2579 Mr. DeSantis?  
2580 [No response.]  
2581 Ms. Williams. Ms. Walters?  
2582 Ms. Walters. No.  
2583 Ms. Williams. Ms. Walters votes no.  
2584 Mr. Buck?  
2585 Mr. Buck. No.  
2586 Ms. Williams. Mr. Buck votes no.  
2587 Mr. Ratcliffe?  
2588 Mr. Ratcliffe. No.  
2589 Ms. Williams. Mr. Ratcliffe votes no.  
2590 Mr. Trott?

2591 Mr. Trott. No.

2592 Ms. Williams. Mr. Trott votes no.

2593 Mr. Bishop?

2594 Mr. Bishop. No.

2595 Ms. Williams. Mr. Bishop votes no.

2596 Mr. Conyers?

2597 Mr. Conyers. Aye.

2598 Ms. Williams. Mr. Conyers votes aye.

2599 Mr. Nadler?

2600 Mr. Nadler. Aye.

2601 Ms. Williams. Mr. Nadler votes aye.

2602 Ms. Lofgren?

2603 [No response.]

2604 Ms. Williams. Ms. Jackson Lee?

2605 [No response.]

2606 Ms. Williams. Mr. Cohen?

2607 [No response.]

2608 Ms. Williams. Mr. Johnson?

2609 Mr. Johnson. Aye.

2610 Ms. Williams. Mr. Johnson votes aye.

2611 Mr. Pierluisi?

2612 [No response.]

2613 Ms. Williams. Ms. Chu?

2614 [No response.]

2615 Ms. Williams. Mr. Deutch?

2616 [No response.]

2617 Ms. Williams. Mr. Gutierrez?

2618 [No response.]

2619 Ms. Williams. Ms. Bass?

2620 [No response.]

2621 Ms. Williams. Mr. Richmond?

2622 [No response.]

2623 Ms. Williams. Ms. DelBene?

2624 Ms. DelBene. Aye.

2625 Ms. Williams. Ms. DelBene votes aye.

2626 Mr. Jeffries?

2627 [No response.]

2628 Ms. Williams. Mr. Cicilline?

2629 [No response.]

2630 Ms. Williams. Mr. Peters?

2631 Mr. Peters. Aye.

2632 Ms. Williams. Mr. Peters votes aye.

2633 Chairman Goodlatte. The gentleman from Virginia?

2634 Mr. Forbes. No.

2635 Ms. Williams. Mr. Forbes votes no.

2636 Chairman Goodlatte. The gentleman from Arizona?

2637 Mr. Franks. No.

2638 Ms. Williams. Mr. Franks votes no.

2639 Chairman Goodlatte. Has every member voted who wishes

2640 to vote?

2641 Chairman Goodlatte. The clerk will report.

2642 Ms. Williams. Mr. Chairman, five members voted aye; 13

2643 members voted no.

2644 Chairman Goodlatte. The clerk will suspend.

2645 The gentleman from Florida?

2646 Mr. DeSantis. No.

2647 Ms. Williams. Mr. DeSantis votes no.

2648 Chairman Goodlatte. The clerk will report.

2649 Ms. Williams. Mr. Chairman, five members voted aye; 14

2650 members voted no.

2651 Chairman Goodlatte. The amendment is not agreed to.

2652 For what purpose does the gentleman from New York seek

2653 recognition?

2654 Mr. Nadler. Mr. Chairman, I have an amendment at the

2655 desk.

2656 Chairman Goodlatte. The clerk will report the

2657 amendment.

2658 Ms. Williams. Amendment to H.R. for 526, offered by Mr.

2659 Nadler of New York. Page 2 --

2660 Chairman Goodlatte. Without objection, the amendment

2661 will be considered as read.

2662 [The amendment of Mr. Nadler follows:]

2663

2664 Chairman Goodlatte. And the gentleman is recognized for  
2665 5 minutes on his amendment.

2666 Mr. Nadler. Thank you, Mr. Chairman.

2667 Mr. Chairman, this amendment would require asbestos  
2668 defendants who seek information from an asbestos trust to  
2669 report information concerning the health and safety of their  
2670 own products. The underlying legislation is unnecessary and  
2671 will impose burdensome reporting requirements on asbestos  
2672 trusts that will reduce the compensation available to victims  
2673 and will violate their privacy.

2674 Moreover, while supporters of the bill argue that more  
2675 transparency is needed, the bill's disclosure requirements  
2676 are completely one-sided. It is only fair that if we demand  
2677 information about asbestos victims be made public, we should  
2678 also require defendants to disclose information about the  
2679 impact their products have on public health and safety.

2680 A typical asbestos defendant who settles a case in the  
2681 tort system demands confidentiality as a condition of  
2682 settlement. This ensures that other victims cannot learn how  
2683 much the dependent has paid and for which products.

2684 More importantly, these secret settlements prevent the  
2685 public and regulators from learning about the damages and



2686 suffering these products cause, and make it more difficult to  
2687 prevent future injuries.

2688       My amendment would simply require that any defendant  
2689 seeking information that the FACT Act would make available  
2690 must be willing to provide information relevant to the case  
2691 that pertains to the protection of public health and safety  
2692 -- not all information, only that information that pertains  
2693 to public health and safety. This information would be  
2694 available to any other person or to any Federal or State  
2695 entity that has the authority to enforce the law regulating  
2696 activity relating to such information.

2697       In the name of transparency, this legislation  
2698 compromises the privacy of asbestos victims while draining  
2699 the funds available to compensate those victims for their  
2700 injuries. It seems only fair that we apply the same  
2701 transparency to these defendants and ensure that the public  
2702 has access to information about the tremendous damages and  
2703 suffering their products have caused and, more importantly,  
2704 information that may be used to thwart future injuries.

2705       I should note that the phenomenon of secret settlements  
2706 is not limited to asbestos cases. Many tort defendants  
2707 demand confidentiality as a condition of settlements,

2708 preventing the public from learning important information  
2709 regarding the health and safety effects of their products.

2710 That is why I have introduced the Sunshine in Litigation  
2711 Act, which requires that information related to public health  
2712 and safety and protective orders or settlement agreements be  
2713 made public, unless a court makes a specific finding that  
2714 there is a specific and substantial interest in keeping such  
2715 information secret that outweighs the public interest in its  
2716 disclosure.

2717 The peril of concealing essential information from the  
2718 public was all too apparent during the recall of faulty  
2719 ignition switches in cars made by General Motors. As far  
2720 back as 2005, GM entered into settlements with victims about  
2721 the defects in their cars that prevented information about  
2722 these defects from becoming public or being disclosed to  
2723 State and Federal regulators. If it were not for these  
2724 secret settlements, action could have been taken to improve  
2725 the safety of these vehicles.

2726 Instead, we learned this week that GM has approved the  
2727 100th death claim due to the faulty ignition agreement  
2728 milestone. If that information on those settlements had been  
2729 made public, presumably it would have been fixed first and

2730 many of those 100 people would be alive today.

2731 Sadly, this sort of cover-up is all too common.

2732 Through secret settlements, corporations conceal the facts  
2733 surrounding their misdeeds from the public and from  
2734 government agencies charged with enforcing health and safety  
2735 laws.

2736 Since supporters of the FACT Act are such advocates for  
2737 transparency, I am sure they will be lining up to cosponsor  
2738 my legislation.

2739 At a minimum, I would hope that they would support this  
2740 amendment and provide some balance in this legislation, which  
2741 is currently stacked in favor of asbestos defendants against  
2742 their victims. Transparency should not be a one-way street.

2743 I urge adoption of the amendment, and I yield back the  
2744 balance of my time.

2745 Chairman Goodlatte. For what purpose does the gentleman  
2746 from Michigan seek recognition?

2747 Mr. Trott. I seek recognition to speak in opposition to  
2748 the amendment.

2749 Chairman Goodlatte. The gentleman is recognized for 5  
2750 minutes.

2751 Mr. Trott. Thank you, Mr. Chairman.

2752        Among the largest problems that occur in asbestos State  
2753        court litigation is the reluctance of State court judges to  
2754        provide for or allow discovery to go forward against  
2755        federally supervised asbestos trusts and the general  
2756        reluctance of the trust to respond to discovery requests of  
2757        any kind. The FACT Act eliminates these problems by  
2758        requiring affirmative minimal disclosures from the trust and  
2759        allowing for access to additional information at the cost of  
2760        the requesting party.

2761        The amendment fails to solve these problems and instead  
2762        places broad additional burdens on defendants seeking to  
2763        prosecute discovery requests. Specifically, it requires  
2764        defendants potentially to comply with a host of unrelated  
2765        requests from unknown parties. This type of burden on a  
2766        defendant is unheard of, unnecessary, and would unduly impair  
2767        a party's ability to assert a defense.

2768        The FACT Act, by contrast, provides transparency where  
2769        it previously did not exist. The legislation merely levels  
2770        the playing field so all parties, including other trusts and  
2771        State court judges, have access to the same information.

2772        I urge my colleagues to oppose this amendment, and yield  
2773        back.

2774 Chairman Goodlatte. For what purpose does the gentleman  
2775 from Georgia seek recognition?

2776 Mr. Johnson. Move to strike the last word.

2777 Chairman Goodlatte. The gentleman is recognized for 5  
2778 minutes.

2779 Mr. Johnson. Thank you. I will yield some time to Mr.  
2780 Nadler.

2781 Mr. Nadler. I thank the gentleman for yielding.

2782 I would point out that what was just said by Mr. Trott  
2783 really is irrelevant to the amendment.

2784 He says the amendment doesn't solve the problem.

2785 Presumably, the bill solves the problem. Now, some of us  
2786 think it is a nonexistent problem, but to the extent that the  
2787 problem exists, the bill is designed to solve it and  
2788 presumably does solve it by requiring this information be  
2789 made public.

2790 The amendment doesn't affect that. The amendment  
2791 doesn't say that that information should not be made public.  
2792 The amendment simply says that in addition to the information  
2793 that the bill requires be made public on the part of the  
2794 plaintiffs, that the defendants must make public information  
2795 relevant to public health or safety, period.

2796           It doesn't deal with the underlying alleged problem that  
2797   the bill allegedly solves. It certainly doesn't detract from  
2798   that solution in any way. It simply says, in the interest of  
2799   fairness in the litigation, but also in the interest of  
2800   public health and safety, that information that the  
2801   defendants possess that affects public health and safety must  
2802   be made public, too.

2803           So I don't understand the objection to the amendment,  
2804   and I certainly don't understand what the gentleman said as  
2805   to why the amendment would detract in any way from the  
2806   alleged good the bill does.

2807           I thank the gentleman, and I yield back to him.

2808           Mr. Johnson. And I would yield to anyone who would want  
2809   to weigh in.

2810           With no requests, therefore, I would yield back.

2811           Chairman Goodlatte. For what purpose does the  
2812   gentlewoman from Washington seek recognition?

2813           Ms. DelBene. Move to strike the last word.

2814           Chairman Goodlatte. The gentlewoman is recognized for 5  
2815   minutes.

2816           Ms. DelBene. Thank you, Mr. Chair.

2817           I urge my colleagues on both sides to join me in

2818 strongly supporting the Nadler amendment.

2819       The FACT Act makes ridiculous demands veiled as  
2820 protective measures for asbestos victims, though not a single  
2821 victims group supports this bill. This is all done in the  
2822 name of transparency to address a supposedly systemic problem  
2823 with the asbestos trusts that even the GAO found does not  
2824 exist.

2825       The Nadler amendment would simply require the proponents  
2826 of this bill to provide the same transparency that they are  
2827 demanding. It is absolutely outrageous that Congress has  
2828 failed to require asbestos companies to make information  
2829 publicly available when it comes to public health and safety.

2830       In 1988, President Reagan actually signed into law the  
2831 Asbestos Information Act, which required manufacturers and  
2832 processors of asbestos-containing material to report  
2833 information about their products to the Environmental  
2834 Protection Agency, which was then directed to publish  
2835 information in the Federal Register. However, the Asbestos  
2836 Information Act was a one-time reporting requirement, and it  
2837 predated the use of the Internet.

2838       That is why I recently introduced the Reducing Exposure  
2839 to Asbestos Database Act, which amends the Asbestos

2840 Information Act to require those who manufacture, import, or  
2841 otherwise handle asbestos-containing products to annually  
2842 report to the EPA about the products in any publicly  
2843 accessible location in which the products have been known to  
2844 be present in the past year.

2845 This information would be made publicly available in an  
2846 online database, helping Americans avoid potential exposure  
2847 to asbestos and hopefully incentivizing the continued  
2848 reduction of asbestos in our Nation until it is finally  
2849 eliminated once and for all.

2850 So long as asbestos remains the United States, it is a  
2851 threat to the public health. And more transparency about  
2852 this product that kills up to 15,000 Americans a year, not  
2853 less, should be the rule of the road.

2854 Again, I urge my colleagues to support the Nadler  
2855 amendment so that we can start addressing the long history of  
2856 the asbestos industry concealing information that ought to be  
2857 openly available to protect American workers, children, and  
2858 families.

2859 I yield back.

2860 Chairman Goodlatte. The question occurs on the  
2861 amendment offered by the gentleman from New York.



2862 All those in favor, respond by saying aye.  
2863 Those opposed, no.  
2864 In the opinion of the chair, the noes have it. The  
2865 amendment does not agreed to.  
2866 Mr. Nadler. I request a recorded vote.  
2867 Chairman Goodlatte. A recorded vote is requested, and  
2868 the clerk will call the roll.  
2869 Ms. Williams. Mr. Goodlatte?  
2870 Chairman Goodlatte. No.  
2871 Ms. Williams. Mr. Goodlatte votes no.  
2872 Mr. Sensenbrenner?  
2873 [No response.]  
2874 Ms. Williams. Mr. Smith?  
2875 [No response.]  
2876 Ms. Williams. Mr. Chabot?  
2877 Mr. Chabot. No.  
2878 Ms. Williams. Mr. Chabot votes no.  
2879 Mr. Issa?  
2880 [No response.]  
2881 Ms. Williams. Mr. Forbes?  
2882 [No response.]  
2883 Ms. Williams. Mr. King?

2884 [No response.]

2885 Ms. Williams. Mr. Franks?

2886 Mr. Franks. No.

2887 Ms. Williams. Mr. Franks votes no.

2888 Mr. Gohmert?

2889 Mr. Gohmert. No.

2890 Ms. Williams. Mr. Gohmert votes no.

2891 Mr. Jordan?

2892 [No response.]

2893 Ms. Williams. Mr. Poe?

2894 [No response.]

2895 Ms. Williams. Mr. Chaffetz?

2896 [No response.]

2897 Ms. Williams. Mr. Marino?

2898 Mr. Marino. No.

2899 Ms. Williams. Mr. Marino votes no.

2900 Mr. Gowdy?

2901 [No response.]

2902 Ms. Williams. Mr. Labrador?

2903 [No response.]

2904 Ms. Williams. Mr. Farenthold?

2905 Mr. Farenthold. No.

2906 Ms. Williams. Mr. Farenthold votes no.  
2907 Mr. Collins?  
2908 Mr. Collins. No.  
2909 Ms. Williams. Mr. Collins votes no.  
2910 Mr. DeSantis?  
2911 Mr. DeSantis. No.  
2912 Ms. Williams. Mr. DeSantis votes no.  
2913 Ms. Walters?  
2914 Ms. Walters. No.  
2915 Ms. Williams. Ms. Walters votes no.  
2916 Mr. Buck?  
2917 Mr. Buck. No.  
2918 Ms. Williams. Mr. Buck votes no.  
2919 Mr. Ratcliffe?  
2920 Mr. Ratcliffe. No.  
2921 Ms. Williams. Mr. Ratcliffe votes no.  
2922 Mr. Trott?  
2923 Mr. Trott. No.  
2924 Ms. Williams. Mr. Trott votes no.  
2925 Mr. Bishop?  
2926 Mr. Bishop. No.  
2927 Ms. Williams. Mr. Bishop votes no.

2928 Mr. Conyers?

2929 Mr. Conyers. Aye.

2930 Ms. Williams. Mr. Conyers votes aye.

2931 Mr. Nadler?

2932 Mr. Nadler. Aye.

2933 Ms. Williams. Mr. Nadler votes aye.

2934 Ms. Lofgren?

2935 [No response.]

2936 Ms. Williams. Ms. Jackson Lee?

2937 [No response.]

2938 Ms. Williams. Mr. Cohen?

2939 Mr. Cohen. Aye.

2940 Ms. Williams. Mr. Cohen votes aye.

2941 Mr. Johnson?

2942 Mr. Johnson. Aye.

2943 Ms. Williams. Mr. Johnson votes aye.

2944 Mr. Pierluisi?

2945 [No response.]

2946 Ms. Williams. Ms. Chu?

2947 [No response.]

2948 Ms. Williams. Mr. Deutch?

2949 [No response.]

2950 Ms. Williams. Mr. Gutierrez?  
2951 [No response.]  
2952 Ms. Williams. Ms. Bass?  
2953 [No response.]  
2954 Ms. Williams. Mr. Richmond?  
2955 [No response.]  
2956 Ms. Williams. Ms. DelBene?  
2957 Ms. DelBene. Aye.  
2958 Ms. Williams. Ms. DelBene votes aye.  
2959 Mr. Jeffries?  
2960 [No response.]  
2961 Ms. Williams. Mr. Cicilline?  
2962 [No response.]  
2963 Ms. Williams. Mr. Peters?  
2964 Mr. Peters. Aye.  
2965 Ms. Williams. Mr. Peters votes aye.  
2966 Chairman Goodlatte. The gentleman from Texas?  
2967 Mr. Smith. No.  
2968 Ms. Williams. Mr. Smith votes no.  
2969 Chairman Goodlatte. The gentleman from Virginia?  
2970 Mr. Forbes. No.  
2971 Ms. Williams. Mr. Forbes votes no.

2972 Chairman Goodlatte. The gentleman from Idaho?

2973 Mr. Labrador. No.

2974 Ms. Williams. Mr. Labrador votes no.

2975 Chairman Goodlatte. Has every member voted who wishes

2976 to vote?

2977 The clerk will report.

2978 Ms. Williams. Mr. Chairman, six members voted aye; 16

2979 members voted no.

2980 Chairman Goodlatte. And the amendment is not agreed to.

2981 For what purposes does the gentleman from Tennessee seek

2982 recognition?

2983 Mr. Cohen. To offer another noncontroversial, kumbaya

2984 amendment.

2985 Chairman Goodlatte. The clerk will report the

2986 noncontroversial amendment.

2987 Ms. Williams. Amendment to H.R. 526, offered by Mr.

2988 Cohen of Tennessee. Page 2 --

2989 Mr. Cohen. I would move we do away with --

2990 Chairman Goodlatte. Without objection, the amendment

2991 shall be considered as read.

2992 [The amendment of Mr. Cohen follows:]

2993

2994 Chairman Goodlatte. And the gentleman is recognized for  
2995 5 minutes on his amendment.

2996 Mr. Cohen. Thank you, Mr. Chairman.

2997 The amendment would ensure that H.R. 526 will not apply  
2998 on trusts that already have an internal claims audit program  
2999 to ensure the claims are valid and supported. So that way,  
3000 we don't have duplicative work.

3001 Proponents of H.R. 526 argue that its reporting and  
3002 other information-sharing requirements are necessary to  
3003 ensure that asbestos victims are not committing fraud by  
3004 recovering money from trusts and through the tort system,  
3005 thereby double-dipping. That makes sense.

3006 These proponents of the bill have logically expressed  
3007 but have not necessarily shown any empirical evidence of  
3008 systemic fraud within the trust claims process. But if we  
3009 enact this new H.R. 526 law, it will impose additional  
3010 burdens and costs on trusts and expose claimants' private  
3011 information to possibly inappropriate exposure.

3012 The additional requirement on trusts will raise  
3013 administrative costs significantly, and the money used  
3014 ultimately means less money to compensate asbestos victims.

3015 This is particularly problematic in light of the fact

3016 that defendants can already obtain the information they want  
3017 using existing discovery tools without undermining  
3018 compensation for legitimate claims.

3019       The reporting requirement also raises privacy concerns.  
3020 While I recognize the bill specifically prohibits trusts from  
3021 making public any medical records or full Social Security  
3022 numbers, the bill still will require trusts to make public a  
3023 claimant's name and exposure history. I also recognize  
3024 limited additional privacy protections available under rule  
3025 107 of the bankruptcy code.

3026       Nevertheless, these measures are insufficient to fully  
3027 protect a claimant's privacy. As noted by my colleagues,  
3028 once out in the public, such information can be used for any  
3029 purpose, potential employers, insurance companies, lenders,  
3030 even those who may seek to harm an asbestos victim in some  
3031 way can have access without the victim's permission or  
3032 knowledge.

3033       In light of these concerns, and notwithstanding the lack  
3034 of any evidence of systemic fraud, my amendment ensures that  
3035 to the extent that a trust already has measures in place to  
3036 ferret out potential fraudulent claims, it should not have to  
3037 bear the costs and the privacy risks that are presented by



3038 H.R. 526.

3039 That is the main reason we offer this amendment, to make  
3040 it more cost-effective and not have the government go into  
3041 places where it doesn't need to go because the private sector  
3042 already properly has an audit system that works. So when the  
3043 private system has an audit system of the trusts, why should  
3044 the government come in and do it for them?

3045 Again, I have learned from the other side, and we need  
3046 to work from these already imposed and created private  
3047 mechanisms that protect the funds.

3048 If the proponents' concerns are about potential fraud,  
3049 which I am sure they are, then they will have no trouble  
3050 supporting this amendment that recognizes these processes  
3051 that are already in place to detect fraud and address those  
3052 concerns.

3053 So I would urge my colleagues to just have a voice vote,  
3054 pass this, and move on.

3055 Chairman Goodlatte. For what purpose does the gentleman  
3056 from Texas seek recognition?

3057 Mr. Farenthold. I would like to sing kumbaya with Mr.  
3058 Cohen on part of this, but I am going to have to oppose the  
3059 amendment, and would like to claim time in opposition.

3060 Chairman Goodlatte. The gentleman is recognized for 5  
3061 minutes.

3062 Mr. Farenthold. While I do agree with my friend, the  
3063 gentleman from Tennessee, that a vigorous audit system would  
3064 be in the best interest of the asbestos trust system, I am  
3065 going to have to oppose this amendment because I don't  
3066 believe an audit system would necessarily deal with the  
3067 issues that we are trying to deal with in the FACT Act.

3068 This amendment exempts asbestos trusts that have an  
3069 internal audit system from the requirements of the FACT Act.  
3070 Unfortunately, or just factually, there is no evidence that  
3071 asbestos trusts with internal audit systems are any less  
3072 susceptible to fraud than those trusts without an audit  
3073 system.

3074 Indeed, a GAO report found that internal audit systems  
3075 are typically designed to ensure compliance with internal  
3076 trust procedures, not to remedy the fraud that this bill  
3077 seeks to address. Internal audit systems are not equipped to  
3078 detect claims that are filed against different asbestos  
3079 trusts with disparate jurisdictions.

3080 The FACT Act, however, is designed to require disclosure  
3081 that will help root out this kind of fraud. This amendment

3082 will only serve to eliminate a critical source of information  
3083 without any proper justification for doing so.

3084 For these reasons, I am going to have to postpone my  
3085 round of kumbaya and urge my colleagues --

3086 Mr. Cohen. Would the gentleman yield for a question?

3087 Mr. Farenthold. I will.

3088 Mr. Cohen. Do you not remember when Sam Houston or  
3089 really Davy Crockett went down to Texas to Lamar Smith's  
3090 district and helped save Texas? I mean, Tennessee and Texas  
3091 have a long history of working together.

3092 Mr. Farenthold. We do.

3093 Mr. Cohen. This might be the time to respond in kind.

3094 Mr. Farenthold. While I appreciate the contributions of  
3095 Tennessee in the history of the great State of Texas,  
3096 unfortunately, that history is irrelevant, as asbestos was  
3097 not yet discovered at that time or being produced.

3098 So again, I continue to urge my colleagues to oppose  
3099 this amendment.

3100 Mr. Cohen. Well, thank you, sir. As the congressperson  
3101 from Davy Crockett's district, I appreciate you at least  
3102 recognizing his contributions.

3103 Chairman Goodlatte. The question occurs on the

3104 amendment offered by the gentleman from Tennessee.

3105 All those in favor, respond by saying aye.

3106 Those opposed, no.

3107 In the opinion of the chair, the noes have it.

3108 The amendment is not agreed to.

3109 Chairman Goodlatte. For what purpose does the  
3110 gentlewoman from Texas seek recognition?

3111 Mr. Cohen. I don't need a vote. I can count.

3112 Ms. Jackson Lee. I have an amendment at the desk, Mr.

3113 Chairman.

3114 Chairman Goodlatte. The clerk will report the amendment  
3115 of the gentlewoman from Texas.

3116 Ms. Williams. Amendment to H.R. 526, offered by Ms.

3117 Jackson Lee of Texas. Page 2 --

3118 Chairman Goodlatte. Without objection, the amendment is  
3119 considered as read.

3120 [The amendment of Ms. Jackson Lee follows:]

3121

3122 Chairman Goodlatte. And the gentlewoman is recognized  
3123 for 5 minutes on her amendment.

3124 Ms. Jackson Lee. Mr. Chairman, let me, first of all, if  
3125 I might, ask unanimous consent to place into the record,  
3126 because I was otherwise detained in a Homeland Security  
3127 security briefing, that I would have voted no on H.R. 758 for  
3128 the Lawsuit Abuses Reduction Act of 2015, had I been present.  
3129 I ask unanimous consent to have that placed appropriately in  
3130 the record.

3131 And on H.R. 526, had I been present, I would have voted  
3132 aye for the Conyers amendment -- this is the  
3133 Furthering Asbestos Claim Transparency Act of 2015 -- and aye  
3134 for the Nadler amendment.

3135 I ask that be placed appropriately in the record. I ask  
3136 unanimous consent.

3137 Chairman Goodlatte. Without objection, they will be  
3138 made a part of the record.

3139 Ms. Jackson Lee. Thank you.

3140 Mr. Chairman, I don't think there is any one of us,  
3141 whether we are lawyer or civilian, that has not been familiar  
3142 with the dastardly impact that asbestos has had on so many  
3143 families. In fact, we are continuing in our constituencies

3144 to meet individuals in our offices that continue to speak of  
3145 the impact of asbestos poisoning, contamination. Certainly,  
3146 in rural and inner-city areas around industries of certain  
3147 kinds, we have seen that this has helped to really decimate  
3148 families and to impact negatively on those who are afflicted  
3149 with the impact of asbestos.

3150 I would hope, again, I heard as I walked into the room  
3151 Mr. Cohen again extending the friendship between Tennessee  
3152 and Texas. I hope that I can seek to extend the friendship  
3153 between the members of this body around the relief to those  
3154 who have experienced the impact of asbestos.

3155 The amendment I offer would apply the transparency rules  
3156 in the bill equally to asbestos industry defendants by  
3157 requiring asbestos companies to report basic data on  
3158 settlements with asbestos victims in order to get the  
3159 privileges contained in H.R. 982.

3160 Let me say that for some reason, and I know my  
3161 colleagues who have been here, it seems that I have done this  
3162 bill before. It looks like this is something that has come  
3163 up over and over again. I don't know, I see Mr. Nadler  
3164 appearing to say yes. It seems as if we have been around  
3165 here long enough to see this legislation come before and

3166 before and before.

3167 But H.R. 526 is one-sided in that it demands specific  
3168 and detailed information about an asbestos victim and their  
3169 settlements with the trusts while maintaining the right of  
3170 asbestos defendants to maintain confidentiality.

3171 I would only make the argument that there is something  
3172 to equity, there is something to universal impact. This is  
3173 not in this bill. It asks the victims of asbestos, the  
3174 asbestos victim, to detail, but not the defendants, who, in  
3175 essence, have been the culprits behind this tragic set of  
3176 circumstances.

3177 A typical asbestos defendant who settles a case in the  
3178 tort system demands confidentiality as a condition of  
3179 settlement in order to ensure that other victims do not learn  
3180 how much they are paid. Trust payments represent settlements  
3181 of former asbestos defendants.

3182 The same defendants now want the trusts to disclose  
3183 specific settlement amounts that they do not themselves  
3184 provide nor would have provided before the trusts were  
3185 created.

3186 If transparency was the true goal of this bill, then why  
3187 doesn't the bill have equality? Why doesn't the bill require

3188 settling defendants to reveal settlement amounts or any other  
3189 type of information?

3190 Trust information is already public. In this bill, I  
3191 don't know why we need provisions like this because this  
3192 information is public. Trusts already disclose far more  
3193 information than solvent defendants do about their settlement  
3194 practices and amounts. The settlement criteria used by a  
3195 trust and the offer the trust would make if the criteria are  
3196 met are publicly available in the trust distribution  
3197 procedures for that trust.

3198 Trusts also file annual reports with the bankruptcy  
3199 courts and publish a list of products for which they have  
3200 assumed responsibility.

3201 If asbestos victims are going to be forced to reveal  
3202 private medical and work history information in a public  
3203 forum to the very industry that caused their harm, then  
3204 asbestos defendants should at least be subject to similar  
3205 rules. Why are we asking these individuals for their private  
3206 medical and work history? What is the purpose of this? What  
3207 is the purpose of intruding on already hurt persons, their  
3208 family members, maybe the person is deceased, that we are  
3209 asking for this most private information?



3210           It is not something that we would go into a hospital and  
3211 ask, "Give us all your information about your sick patients."  
3212 That is exactly what we are trying to do here.

3213           The bill seeks to override State law regarding  
3214 discovery, disclosure of information. State discovery rules  
3215 currently govern disclosure of a trust claimants' work and  
3216 exposure history. If such information is relevant to a State  
3217 law claim, a defendant can seek and get that information,  
3218 according to the rules of State court.

3219           Can we not do any less on the Federal level? Can we not  
3220 accept the fairness of the State process?

3221           The ultimate goal of asbestos defendants is to add  
3222 significant time and delay to the trust process. I don't  
3223 think that is right.

3224           And I would ask my colleagues again, in the effort of  
3225 bipartisanship, protect these victims as you would protect  
3226 others, because even States accept the fact that there is a  
3227 degree of privacy that these victims deserve.

3228           I ask my colleagues to support the Jackson Lee  
3229 amendment. I yield back.

3230           Chairman Goodlatte. For what purpose does the gentleman  
3231 from Texas seek recognition?

3232 Mr. Farenthold. I would like to speak in opposition to  
3233 the amendment.

3234 Chairman Goodlatte. The gentleman is recognized for 5  
3235 minutes.

3236 Mr. Farenthold. Thank you very much.

3237 I am going to have to oppose this amendment. One of the  
3238 issues the FACT Act addresses is that State court litigants  
3239 have a difficulty if not complete inability to obtain  
3240 information from the federally supervised asbestos trusts.

3241 The FACT Act eliminates this problem by requiring  
3242 affirmative minimum disclosures from the asbestos trusts,  
3243 allowing for access to additional information at the cost of  
3244 the requesting party.

3245 This amendment, by contrast, would place additional  
3246 disclosure requirements on defendants requesting information  
3247 from asbestos trusts. Also, releasing the dollar amounts of  
3248 average settlements I think would be potentially dangerous  
3249 and also an invasion of privacy of asbestos victims rights by  
3250 releasing the amount, the median amount, of these  
3251 settlements. If these amounts are large, or even if they are  
3252 reasonably large, it potentially puts these victims in the  
3253 sights of scam artists and others that some members earlier

3254 had expressed some concern about.

3255 Over the course of four separate hearings before our  
3256 committee, the issue highlighted was the lack of disclosure  
3257 by the asbestos bankruptcy trusts, not private party  
3258 litigants. There has been no record of plaintiff firms  
3259 encountering difficulties obtaining the information necessary  
3260 to sue the businesses.

3261 In fact, the evidence is to the contrary. Plaintiff  
3262 firms specializing in asbestos litigation frequently tout  
3263 their access to information necessary to sue companies. One  
3264 firm's Web site states, and I am quoting now, "We know about  
3265 the asbestos content of thousands of products and how the  
3266 asbestos was released. Our unique database helps us work  
3267 with you to identify the companies at fault with your case,  
3268 and includes photographs, trade magazines, product  
3269 advertisements, brochures, sample videos related to the use  
3270 of asbestos products."

3271 Another Web site reads: We know the local area and job  
3272 sites that have asbestos products. Asbestos.com is a Web  
3273 site that includes comprehensive lists of companies that  
3274 manufacture asbestos products, and mesothelioma.com is a Web  
3275 site that offers a state-by-state directory of jobsites where

3276 asbestos was used.

3277 To the extent a party cannot obtain information through  
3278 these publicly available sources, it can pursue this  
3279 information through the discovery process. That avenue is  
3280 largely unavailable to parties seeking information from the  
3281 asbestos trusts, which have erected significant barriers that  
3282 prevent or delay the enforcement of even some State court-  
3283 issued subpoenas.

3284 So I think we are in good shape with this. We don't  
3285 need this amendment. The FACT Act is designed to level the  
3286 playing field, so all parties have access to the same  
3287 information.

3288 An amendment that requires the defendant or any party to  
3289 provide additional information before they can access what  
3290 should be public information is unnecessary and should be  
3291 defeated. I urge my colleagues to oppose this amendment.

3292 Ms. Jackson Lee. Will the gentleman yield?

3293 Mr. Farenthold. I will.

3294 Ms. Jackson Lee. I thank the gentleman.

3295 I think we have an agreement, to the extent that the  
3296 information is accessible elsewhere, why burden victims who  
3297 are already suffering to give information that they may

3298 themselves view as personal, view as hurting, view as  
3299 difficult? Use the dot-coms and Web sites to provide that  
3300 information, as opposed to specifically burdening victims to  
3301 give that information. Everybody knows the asbestos victims  
3302 are, first of all, it is a devastating medical impact. Many  
3303 lose their lives, so you are talking with family members are  
3304 now grieving.

3305 My amendment is just simple, that it --

3306 Mr. Farenthold. Reclaiming my time.

3307 Ms. Jackson Lee. -- doesn't burden these victims.

3308 I yield back.

3309 Mr. Farenthold. The FACT Act doesn't require any action  
3310 on the part of the folks that were injured by asbestos. It  
3311 merely requires the asbestos trust to list the names, facts  
3312 surrounding the exposure, where folks were exposed, and the  
3313 fact that a claim was paid. We don't give Social Security  
3314 numbers. We don't give any information other than the basis  
3315 of the claim, where the exposure was and the name.

3316 The act specifically prohibits the release of medical  
3317 records and full Social Security numbers. We really are  
3318 trying to protect the victims' privacy, but we are also  
3319 trying to protect future victims, to make sure there is

3320 enough money left in these trusts to pay future claims.

3321 That is what we are trying to do in the FACT Act.

3322 And my time has expired.

3323 Chairman Goodlatte. The question occurs on the

3324 amendment offered by the gentlewoman from Texas.

3325 All those in favor, respond by saying aye.

3326 Those opposed, no.

3327 In the opinion of the chair, the noes have it.

3328 Ms. Jackson Lee. Roll call?

3329 Chairman Goodlatte. A recorded vote is requested, and

3330 the clerk will call the roll.

3331 Ms. Williams. Mr. Goodlatte?

3332 Chairman Goodlatte. No.

3333 Ms. Williams. Mr. Goodlatte votes no.

3334 Mr. Sensenbrenner?

3335 [No response.]

3336 Ms. Williams. Mr. Smith?

3337 Mr. Smith. No.

3338 Ms. Williams. Mr. Smith votes no.

3339 Mr. Chabot?

3340 Mr. Chabot. No.

3341 Ms. Williams. Mr. Chabot votes no.

3342 Mr. Issa?

3343 [No response.]

3344 Ms. Williams. Mr. Forbes?

3345 [No response.]

3346 Ms. Williams. Mr. King?

3347 [No response.]

3348 Ms. Williams. Mr. Franks?

3349 Mr. Franks. No.

3350 Ms. Williams. Mr. Franks votes no.

3351 Mr. Gohmert?

3352 Mr. Gohmert. No.

3353 Ms. Williams. Mr. Gohmert votes no.

3354 Mr. Jordan?

3355 [No response.]

3356 Ms. Williams. Mr. Poe?

3357 Mr. Poe. No.

3358 Ms. Williams. Mr. Poe votes no.

3359 Mr. Chaffetz?

3360 [No response.]

3361 Ms. Williams. Mr. Marino?

3362 Mr. Marino. No.

3363 Ms. Williams. Mr. Marino votes no.

3364 Mr. Gowdy?

3365 Mr. Gowdy. No.

3366 Ms. Williams. Mr. Gowdy votes no.

3367 Mr. Labrador?

3368 Mr. Labrador. No.

3369 Ms. Williams. Mr. Labrador votes no.

3370 Mr. Farenthold?

3371 Mr. Farenthold. No.

3372 Ms. Williams. Mr. Farenthold votes no.

3373 Mr. Collins?

3374 Mr. Collins. No.

3375 Ms. Williams. Mr. Collins votes no.

3376 Mr. DeSantis?

3377 [No response.]

3378 Ms. Williams. Ms. Walters?

3379 Ms. Walters. No.

3380 Ms. Williams. Ms. Walters votes no.

3381 Mr. Buck?

3382 [No response.]

3383 Ms. Williams. Mr. Ratcliffe?

3384 Mr. Ratcliffe. No.

3385 Ms. Williams. Mr. Ratcliffe votes no.



3386 Mr. Trott?

3387 Mr. Trott. No.

3388 Ms. Williams. Mr. Trott votes no.

3389 Mr. Bishop?

3390 Mr. Bishop. No.

3391 Ms. Williams. Mr. Bishop votes no.

3392 Mr. Conyers?

3393 Mr. Conyers. Aye.

3394 Ms. Williams. Mr. Conyers votes aye.

3395 Mr. Nadler?

3396 Mr. Nadler. Aye.

3397 Ms. Williams. Mr. Nadler votes aye.

3398 Ms. Lofgren?

3399 [No response.]

3400 Ms. Williams. Ms. Jackson Lee?

3401 Ms. Jackson Lee. Aye.

3402 Ms. Williams. Ms. Jackson Lee votes aye.

3403 Mr. Cohen?

3404 Mr. Cohen. Aye.

3405 Ms. Williams. Mr. Cohen votes aye.

3406 Mr. Johnson?

3407 Mr. Johnson. Aye.

3408 Ms. Williams. Mr. Johnson votes aye.

3409 Mr. Pierluisi?

3410 [No response.]

3411 Ms. Williams. Ms. Chu?

3412 [No response.]

3413 Ms. Williams. Mr. Deutch?

3414 [No response.]

3415 Ms. Williams. Mr. Gutierrez?

3416 [No response.]

3417 Ms. Williams. Ms. Bass?

3418 [No response.]

3419 Ms. Williams. Mr. Richmond?

3420 [No response.]

3421 Ms. Williams. Ms. DelBene?

3422 Ms. DelBene. Aye.

3423 Ms. Williams. Ms. DelBene votes aye.

3424 Mr. Jeffries?

3425 Mr. Jeffries. Aye.

3426 Ms. Williams. Mr. Jeffries votes aye.

3427 Mr. Cicilline?

3428 [No response.]

3429 Ms. Williams. Mr. Peters?

3430 [No response.]

3431 Chairman Goodlatte. The gentleman from Ohio?

3432 Mr. Jordan. No.

3433 Ms. Williams. Mr. Jordan votes no.

3434 Chairman Goodlatte. The gentleman from California?

3435 Mr. Issa. No.

3436 Ms. Williams. Mr. Issa votes no.

3437 Chairman Goodlatte. Has every member voted who wishes

3438 to vote?

3439 The clerk will report.

3440 Ms. Williams. Mr. Chairman, seven members voted aye; 17

3441 members voted no.

3442 Chairman Goodlatte. The amendment is not agreed to.

3443 For what purpose does the gentleman from Georgia seek

3444 recognition?

3445 Mr. Johnson. I have an amendment at the desk.

3446 Chairman Goodlatte. The clerk will report the

3447 amendment.

3448 Ms. Williams. Amendment to H.R. 526, offered by Mr.

3449 Johnson of Georgia.

3450 Mr. Johnson. I ask that it be considered --

3451 Chairman Goodlatte. Without objection, the amendment

3452 will be considered as read.

3453 [The amendment of Mr. Johnson follows:]

3454

3455 Chairman Goodlatte. And the gentleman is recognized for  
3456 5 minutes on his amendment.

3457 Mr. Johnson. Thank you.

3458 My amendment ensures that H.R. 526 will not sacrifice  
3459 the privacy of asbestos victims in the name of transparency  
3460 by excluding all personally identifiable information from the  
3461 FACT Act reporting requirements.

3462 In addition to the concerns I have expressed earlier  
3463 about this flawed legislation, the FACT Act would further  
3464 victimize asbestos claimants by requiring information about  
3465 their illness to be made publicly available to anybody who  
3466 has access to the Internet.

3467 The bill's reporting requirements would make asbestos  
3468 trusts list all payment demands received as well as the names  
3469 and exposure histories of each claimant together with the  
3470 basis for any payment from the trust to such claimant. This  
3471 information would have to be posted on the court's public  
3472 document, which is easily accessible through the Internet  
3473 with the payment of a nominal fee charged by the  
3474 Administrative Office of the U.S. Courts.

3475 Such information once placed online and in the public  
3476 domain could then be used by data collectors and other

3477 entities for purposes that have absolutely nothing to do with  
3478 compensation for asbestos exposure. These reporting  
3479 requirements would provide a treasure trove of data that  
3480 could be accessed by insurance companies, prospective  
3481 employers, lenders, and data collectors who could then use  
3482 such information for purposes having absolutely nothing to do  
3483 with compensation for asbestos exposure. And that could be  
3484 to the detriment of asbestos victims.

3485 In effect, this bill would allow unsuspecting asbestos  
3486 victims to be further victimized, all in the name of helping  
3487 those who harmed these victims in the first place.

3488 As Susan Vento, the widow of our former colleague, and  
3489 who is present here today -- our former colleague, Bruce  
3490 Vento, who died of mesothelioma in 2000 -- warned, "The  
3491 information on this public registry could be used to deny  
3492 employment; credit; health, life, and disability insurance.  
3493 We are also concerned that victims would be more vulnerable  
3494 to identity thieves, conmen, and other types of predators."

3495 Now Susan Vento is here today, but she has never been  
3496 privileged to be able to testify before this committee  
3497 because she was never invited to testify publicly. They say  
3498 that a lawyer for all the plaintiffs has testified, but the

3499 plaintiff's lawyer that was invited by the Democrats under a  
3500 regime where it was three to one, three Republican witnesses  
3501 to one Democrat, and the subject of the hearing had to do  
3502 with these bankruptcy trusts, where plaintiff's testimony was  
3503 not particularly on point, that is the only attorney who has  
3504 been able to testify on behalf of claimants.

3505 Mr. Marino. Will the gentleman yield?

3506 Mr. Johnson. I will in just a second.

3507 I do thank Susan Vento for being here, and for your long  
3508 work on behalf of claimants.

3509 Now, the majority may argue that the bill specifically  
3510 excludes claimants' confidential medical records or full  
3511 Social Security numbers. But at best, this is an admission  
3512 against interests, indicating that the majority well  
3513 understands the privacy risks inherent to the FACT Act  
3514 asbestos death worldwide web database. At worst, this  
3515 provision would still allow for the public disclosure of  
3516 asbestos victims' names, addresses, work histories, the last  
3517 four digits of their Social Security numbers, photographs,  
3518 information relating to their families, and other personally  
3519 identifying information.

3520 Just think of what insurance companies, identity

3521 thieves, prospective employers, lenders, or anyone else who  
3522 values access to large sets of personal data could do with  
3523 that information.

3524 My amendment would allow for the clear protection of  
3525 claimant personal information by specifically prohibiting the  
3526 trusts from registering the personal information of asbestos  
3527 victims and their families in a national database. Asbestos  
3528 victims who seek justice should receive the same privacy  
3529 protections as do the defendants.

3530 I ask my colleagues to support this amendment.

3531 And if I have time, I will yield to the gentleman, but  
3532 it looks like I am out of time.

3533 Chairman Goodlatte. For what purpose does the gentleman  
3534 from Pennsylvania seek recognition?

3535 Mr. Marino. I move to strike the last word.

3536 Chairman Goodlatte. The gentleman is recognized for 5  
3537 minutes.

3538 Mr. Marino. My colleague from the other side of the  
3539 aisle keeps saying that no victims were called to testify,  
3540 but I ask my colleague this question: Did you ever call a  
3541 victim or did your side ever call a victim to testify? And  
3542 were you denied that?



3543 A simple yes or no.

3544 Mr. Johnson. As I stated earlier --

3545 Mr. Marino. Did you ever ask and did your side ever ask  
3546 for a victim to come here and testify?

3547 Mr. Johnson. We have never had a hearing where the  
3548 majority has --

3549 Mr. Marino. We had four hearings. So the answer is no.  
3550 You never did that.

3551 Mr. Johnson. Well, one thing about it --

3552 Mr. Marino. Number two --

3553 Mr. Johnson. Let me ask you this question, has the  
3554 majority --

3555 Mr. Marino. This is my time.

3556 Chairman Goodlatte. The gentleman from Pennsylvania has  
3557 the time.

3558 Mr. Marino. It is my time.

3559 In the three to one, where the majority side gets three  
3560 witnesses and the minority side gets one witness, you did  
3561 that when you were in control. So let us be honest with the  
3562 American people --

3563 Mr. Johnson. Will the gentleman yield?

3564 Mr. Marino. -- about what is taking place.

3565 Mr. Johnson. Will the gentleman yield?

3566 Mr. Marino. I will yield.

3567 Mr. Johnson. Yes. When we had the majority, we tried  
3568 our best to have balanced hearings with witnesses for and  
3569 against. Although they might be --

3570 Mr. Marino. I am going to take back my time because I  
3571 checked that, and no.

3572 Mr. Johnson. It was --

3573 Mr. Marino. It was three to one.

3574 Mr. Johnson. The hearings were more balanced.

3575 Mr. Marino. Let us tell the truth, okay? Don't sit  
3576 there and tell half-truths. I am sick and tired of hearing  
3577 that. I am sick and tired of hearing half-truths.

3578 Mr. Johnson. Will the gentleman yield?

3579 Mr. Marino. I am sick and tired of hearing no victims  
3580 were allowed to come and testify.

3581 Mr. Johnson. Will the gentleman yield?

3582 Mr. Marino. Did you ever meet with them? I have family  
3583 members come and talk to me. They are here today, and we  
3584 talked today.

3585 Mr. Johnson. Will the gentleman yield?

3586 Mr. Marino. So let us be legitimate. Let us be

3587 straight to the fact.

3588 Mr. Johnson. Will the gentleman yield?

3589 Mr. Marino. I will yield.

3590 Mr. Johnson. With the three to one ratio that the  
3591 gentleman enjoys, has the other side ever called a  
3592 plaintiff's victim to testify in a balanced hearing?

3593 Mr. Marino. Don't go back to the balanced hearing  
3594 issue. You have never had a balanced hearing. We are  
3595 working under the same premise the you had.

3596 And yes, I have talked to victims. But you are the one  
3597 that is contesting this and saying no victims are allowed to  
3598 come in testify, and you have never asked for it.

3599 Mr. Johnson. Will the gentleman yield?

3600 Mr. Marino. Yes.

3601 Mr. Johnson. If we have another hearing, I will have a  
3602 panel full. If I control the witness panel, I will have  
3603 panel full of plaintiff witnesses.

3604 Mr. Marino. Well, I guarantee you are not going to  
3605 control the witness panel like we didn't when we were in the  
3606 minority. And you have had those opportunities, and you  
3607 didn't take advantage of it.

3608 Maybe if we do have a hearing, even on our subcommittee,

3609     you will, certainly, have an opportunity to call a victim,  
3610     and they can come in and testify, because I want to hear what  
3611     they have to say because I have been listening to the victims  
3612     from my district on what they have to say.

3613             Mr. Johnson. Will the gentleman yield?

3614             Mr. Marino. I think it is not fair, I think it is  
3615     unprofessional, to sit up here and say that we are preventing  
3616     you from doing that, because that is what you are implying.

3617             Mr. Johnson. Will the gentleman yield?

3618             Mr. Marino. Yes.

3619             Mr. Johnson. Has there been a hearing during this  
3620     session of Congress on this legislation, on the merits of  
3621     this legislation, where the other side and this side have had  
3622     an opportunity to call witnesses?

3623             Mr. Marino. Yes, there has been. You have never  
3624     requested it, and you wouldn't have been told no on this.

3625             Now I want to go to another issue.

3626             Give me an example of where someone is garnering  
3627     information from victims and cases and exploiting that. Do  
3628     you have an example? Can you tell me where a company, a  
3629     thief, a credit card company, has garnered information about  
3630     an asbestos victim in a case?

3631 Mr. Johnson. Will the gentleman yield?

3632 Mr. Marino. Yes.

3633 Mr. Johnson. Yes, at present, that kind of information  
3634 is protected from disclosure.

3635 Mr. Marino. Exactly.

3636 Mr. Johnson. This legislation would remove that --

3637 Mr. Marino. It does not remove that. It leaves that  
3638 authority up to a judge.

3639 Just earlier today, you were arguing that the judges  
3640 should have the discretion to make these decisions, and it  
3641 leaves that discretion with the judges as it is in this  
3642 legislation.

3643 Mr. Johnson. Will the gentleman yield?

3644 Mr. Marino. Yes.

3645 Mr. Johnson. Does the gentleman deny that the bill's  
3646 reporting requirements would make these asbestos trusts list  
3647 all payment demands as well as the names and exposure  
3648 histories of each claimant, and the basis for --

3649 Mr. Marino. Reclaiming my time, you are an attorney.  
3650 You handle cases. I am sure you have handled personal injury  
3651 cases. When have you not seen a case when a plaintiff is  
3652 claiming an injury where they did not have to have that

3653 information?

3654 Mr. Johnson. Will the gentleman yield?

3655 Mr. Marino. Yes.

3656 Mr. Johnson. This puts it into a national database.

3657 Mr. Marino. It does not.

3658 Mr. Johnson. This establishes a national database --

3659 Mr. Marino. Reclaiming my time.

3660 The court keeps this information and it is up to the  
3661 court whether it wants to disseminate this information, and  
3662 you have to go to the judge and ask for information to be  
3663 disseminated, and you have to actually have a standing to do  
3664 that.

3665 Mr. Johnson. Will the gentleman yield?

3666 Mr. Marino. Yes.

3667 Mr. Johnson. A trust, according to section 524(g) of 11  
3668 USC provides that a trust shall, subject to section 107, file  
3669 with the bankruptcy court not later than 60 days after the  
3670 end of every quarter, a report that shall be --

3671 Mr. Marino. Reclaiming my time, what does that have to  
3672 do with the information --

3673 Mr. Johnson. -- available on the court's public docket  
3674 and with --

3675 Chairman Goodlatte. The time of the gentleman has  
3676 expired.

3677 The gentleman will complete his remarks.

3678 Mr. Johnson. Because it is on the internet.

3679 Chairman Goodlatte. The gentleman will suspend.

3680 Mr. Marino. That has nothing to do with information  
3681 being available to the public. You still have to go through  
3682 the bankruptcy court to do that.

3683 Mr. Johnson. But it is on the public docket.

3684 Chairman Goodlatte. The time of the gentleman has  
3685 expired.

3686 The question occurs on the amendment offered by the  
3687 gentleman from Georgia.

3688 All those in favor, respond by saying aye.

3689 Those opposed, no.

3690 In the opinion of the chair, the noes have it.

3691 Mr. Johnson. I ask for a recorded vote.

3692 Chairman Goodlatte. A recorded vote is requested, and  
3693 the clerk will call the roll.

3694 Ms. Williams. Mr. Goodlatte?

3695 Chairman Goodlatte. No.

3696 Ms. Williams. Mr. Goodlatte votes no.

3697 Mr. Sensenbrenner?  
3698 [No response.]  
3699 Ms. Williams. Mr. Smith?  
3700 Mr. Smith. No.  
3701 Ms. Williams. Mr. Smith votes no.  
3702 Mr. Chabot?  
3703 Mr. Chabot. No.  
3704 Ms. Williams. Mr. Chabot votes no.  
3705 Mr. Issa?  
3706 Mr. Issa. No.  
3707 Ms. Williams. Mr. Issa votes no.  
3708 Mr. Forbes?  
3709 [No response.]  
3710 Ms. Williams. Mr. King?  
3711 [No response.]  
3712 Ms. Williams. Mr. Franks?  
3713 Mr. Franks. No.  
3714 Ms. Williams. Mr. Franks votes no.  
3715 Mr. Gohmert?  
3716 Mr. Gohmert. No.  
3717 Ms. Williams. Mr. Gohmert votes no.  
3718 Mr. Jordan?



3719 Mr. Jordan. No.

3720 Ms. Williams. Mr. Jordan votes no.

3721 Mr. Poe?

3722 Mr. Poe. No.

3723 Ms. Williams. Mr. Poe votes no.

3724 Mr. Chaffetz?

3725 [No response.]

3726 Ms. Williams. Mr. Marino?

3727 Mr. Marino. No.

3728 Ms. Williams. Mr. Marino votes no.

3729 Mr. Gowdy?

3730 Mr. Gowdy. No.

3731 Ms. Williams. Mr. Gowdy votes no.

3732 Mr. Labrador?

3733 Mr. Labrador. No.

3734 Ms. Williams. Mr. Labrador votes no.

3735 Mr. Farenthold?

3736 Mr. Farenthold. Nay.

3737 Ms. Williams. Mr. Farenthold votes nay.

3738 Mr. Collins?

3739 Mr. Collins. No.

3740 Ms. Williams. Mr. Collins votes no.

3741 Mr. DeSantis?  
3742 Mr. DeSantis. No.  
3743 Ms. Williams. Mr. DeSantis votes no.  
3744 Ms. Walters?  
3745 Ms. Walters. No.  
3746 Ms. Williams. Ms. Walters votes no.  
3747 Mr. Buck?  
3748 Mr. Buck. No.  
3749 Ms. Williams. Mr. Buck votes no.  
3750 Mr. Ratcliffe?  
3751 Mr. Ratcliffe. No.  
3752 Ms. Williams. Mr. Ratcliffe votes no.  
3753 Mr. Trott?  
3754 Mr. Trott. No.  
3755 Ms. Williams. Mr. Trott votes no.  
3756 Mr. Bishop?  
3757 Mr. Bishop. No.  
3758 Ms. Williams. Mr. Bishop votes no.  
3759 Mr. Conyers?  
3760 Mr. Conyers. Aye.  
3761 Ms. Williams. Mr. Conyers votes aye.  
3762 Mr. Nadler?

3763 Mr. Nadler. Aye.

3764 Ms. Williams. Mr. Nadler votes aye.

3765 Ms. Lofgren?

3766 [No response.]

3767 Ms. Williams. Ms. Jackson Lee?

3768 Ms. Jackson Lee. Aye.

3769 Ms. Williams. Ms. Jackson Lee votes aye.

3770 Mr. Cohen?

3771 Mr. Cohen. Aye.

3772 Ms. Williams. Mr. Cohen votes aye.

3773 Mr. Johnson?

3774 Mr. Johnson. Aye.

3775 Ms. Williams. Mr. Johnson votes aye.

3776 Mr. Pierluisi?

3777 [No response.]

3778 Ms. Williams. Ms. Chu?

3779 [No response.]

3780 Ms. Williams. Mr. Deutch?

3781 Mr. Deutch. Aye.

3782 Ms. Williams. Mr. Deutch votes aye.

3783 Mr. Gutierrez?

3784 [No response.]

3785 Ms. Williams. Ms. Bass?

3786 [No response.]

3787 Ms. Williams. Mr. Richmond?

3788 [No response.]

3789 Ms. Williams. Ms. DelBene?

3790 Ms. DelBene. Aye.

3791 Ms. Williams. Ms. DelBene votes aye.

3792 Mr. Jeffries?

3793 Mr. Jeffries. Aye.

3794 Ms. Williams. Mr. Jeffries votes aye.

3795 Mr. Cicilline?

3796 [No response.]

3797 Ms. Williams. Mr. Peters?

3798 Mr. Peters. Aye.

3799 Ms. Williams. Mr. Peters votes aye.

3800 Chairman Goodlatte. The gentleman from Virginia?

3801 Mr. Forbes. No.

3802 Ms. Williams. Mr. Forbes votes no.

3803 Chairman Goodlatte. Has every member voted who wishes

3804 to vote?

3805 The clerk will report.

3806 Ms. Williams. Mr. Chairman, nine members voted aye; 20

3807 members voted no.

3808 Chairman Goodlatte. And the amendment is not agreed to.

3809 For what purpose does the gentleman from New York seek  
3810 recognition?

3811 Mr. Jeffries. I have an amendment at the desk.

3812 Chairman Goodlatte. The clerk will report the moment.

3813 Ms. Williams. Amendment to H.R. 526, offered by Mr.

3814 Jeffries of New York. Page 2 --

3815 Chairman Goodlatte. Without objection, the amendment  
3816 will be considered as read.

3817 [The amendment of Mr. Jeffries follows:]

3818

3819 Chairman Goodlatte. And the gentleman is recognized for  
3820 5 minutes on his amendment.

3821 Mr. Jeffries. Thank you, Mr. Chairman.

3822 This amendment would provide for the disclosure of  
3823 payment information to parties to a pending court action  
3824 where: one, a written request is made; two, that request  
3825 seeks relevant information; and three, the information cannot  
3826 otherwise be obtained under applicable nonbankruptcy law.

3827 Today, we are considering legislation for passage that  
3828 is designed to combat fraud where the actual problem is the  
3829 pervasive victimization from asbestos exposure.

3830 In fact, not a scintilla of evidence has been presented  
3831 of systematic waste, fraud, or abuse in connection with  
3832 asbestos claims before either the full committee, the  
3833 subcommittee, or in any other context related to this  
3834 legislation.

3835 This is a bill in search of a problem instead of a  
3836 problem that requires a bill.

3837 This amendment also supports the careful balance of  
3838 federalism, which is extremely important to our  
3839 constitutional system. It preserves civil procedure laws and  
3840 discovery rules that have been carefully crafted by

3841 individual State courts and legislatures all throughout the  
3842 country.

3843 In every State, there are specific rules that govern  
3844 disclosure. Those disclosure rules should be respected, as  
3845 they have been crafted with the public policy sensitivities  
3846 particular to these individual jurisdictions.

3847 If the information that is sought by these companies is  
3848 relevant to a State law claim, the defendant can request and  
3849 obtain the information pursuant to State discovery rules. In  
3850 the absence of any meaningful evidence of systematic fraud or  
3851 any other compelling governmental interest, the outside  
3852 intrusion from this Congress as represented through the  
3853 vehicle of the FACT Act is unjustified, unnecessary, and  
3854 unwarranted.

3855 In addition, the current bill will result in delay and  
3856 obstruct claims made by asbestos victims for compensation and  
3857 undermine the ultimate resolution of these claims in a manner  
3858 that would hurt all parties.

3859 I would note again that the asbestos victims, the  
3860 stakeholders that we should all be concerned about, do not  
3861 support the underlying bill.

3862 This amendment would instead place disclosure

3863 responsibility with the judicial branch, as is customary in  
3864 other areas of law, in order to make sure that there is an  
3865 objective arbiter of the relevance of the information sought.

3866 For these reasons, I urge my colleagues to adopt this  
3867 amendment.

3868 And I yield back the balance of my time.

3869 Chairman Goodlatte. For what purpose does the gentleman  
3870 from Texas seek recognition?

3871 Mr. Farenthold. I seek time to speak in opposition to  
3872 the amendment.

3873 Chairman Goodlatte. The gentleman is recognized for 5  
3874 minutes.

3875 Mr. Farenthold. I do oppose the amendment. It  
3876 essentially replaces the quarterly reporting requirements in  
3877 the FACT Act with the requirement that the trusts provide  
3878 limited discovery to parties to pending State court actions  
3879 relating to asbestos exposure, provided that the discovery  
3880 cannot otherwise be obtained through applicable nonbankruptcy  
3881 law.

3882 However, the problem the FACT Act addresses is that the  
3883 nonbankruptcy law discovery presents significant obstacles  
3884 that are unnecessary.



3885           For example, many of the asbestos trusts prohibit  
3886   closure of any information except by subpoena issued by the  
3887   presiding bankruptcy court, notwithstanding a potentially  
3888   valid State-court-issued subpoena against the trust.  
3889   Additionally, some trust documents even go further and  
3890   affirmatively require that the asbestos trust object to any  
3891   discovery requests.

3892           These unnecessary barriers have led to a significant  
3893   decrease in the transparency of the asbestos bankruptcy trust  
3894   system.

3895           The bottom line is this: There is a Federal statute  
3896   that has to come into play here. We need the FACT Act. It  
3897   is necessary to ensure that State court litigants and other  
3898   asbestos bankruptcy trusts have access to the records of the  
3899   asbestos trusts, which exist under the authority of Federal  
3900   law. Applicable nonbankruptcy law is demonstrably  
3901   inadequate.

3902           I will urge my colleagues to oppose this amendment. I  
3903   yield back.

3904           Chairman Goodlatte. The question occurs on the  
3905   amendment offered by the gentleman from New York.

3906           All those in favor, respond by saying aye.

3907 Mr. Johnson. Mr. Chairman?

3908 Chairman Goodlatte. For what purpose does the gentleman  
3909 from Georgia seek recognition?

3910 Mr. Johnson. I move to strike the last word.

3911 Chairman Goodlatte. The gentleman is recognized for 5  
3912 minutes.

3913 Mr. Johnson. Thank you, Mr. Chairman.

3914 We often argue on this panel about the merits of our  
3915 respective positions, but let us never forget the fact that  
3916 it is human beings that our policies effect.

3917 With that, it is my sad duty, Mr. Chairman, to report  
3918 that while we sit comfortably debating this misguided bill,  
3919 George Dreith, an asbestos victim who attended prior  
3920 subcommittee hearings, has been pulled off of chemotherapy,  
3921 as his condition has worsened.

3922 George is living proof that mesothelioma can affect  
3923 anyone through no fault of their own.

3924 My thoughts are with George and his family.

3925 With that, I yield back.

3926 Chairman Goodlatte. For what purpose does the gentleman  
3927 from Texas seek recognition?

3928 Mr. Poe. Mr. Chairman, move to strike the last word.

3929 Chairman Goodlatte. The gentleman is recognized for 5  
3930 minutes.

3931 Mr. Poe. I thank the Chairman.

3932 As the chair knows, I have had some concerns with this  
3933 legislation in the past. But on this amendment, I am opposed  
3934 to the amendment, and I am also in favor of the underlying  
3935 bill, mainly because of the information that we have gained  
3936 from the North Carolina case, the Garlock case, where the  
3937 people involved claimed at one time they had 15 cases, and it  
3938 turned out that there were 32 -- rather, that 32 different  
3939 products were involved, and it turned out there were 284  
3940 products that were found to be involved, misleading two  
3941 courts.

3942 I am one who actually believes judges need lots of  
3943 information. Without this bill, we would be limiting the  
3944 information for judges to make justice-type decisions.

3945 So I would support the underlying bill and oppose this  
3946 amendment. I yield back.

3947 Chairman Goodlatte. The chair thanks the gentleman.

3948 The question occurs on amendment offered by the  
3949 gentleman from New York.

3950 All those in favor, respond by saying aye.

3951           Those opposed, no.

3952           In the opinion of the chair, the noes have it, and the  
3953 amendment is not agreed to.

3954           A recorded vote is requested, and the clerk will call  
3955 the roll.

3956           Ms. Williams. Mr. Goodlatte?

3957           Chairman Goodlatte. No.

3958           Ms. Williams. Mr. Goodlatte votes no.

3959           Mr. Sensenbrenner?

3960           [No response.]

3961           Ms. Williams. Mr. Smith?

3962           [No response.]

3963           Ms. Williams. Mr. Chabot?

3964           Mr. Chabot. No.

3965           Ms. Williams. Mr. Chabot votes no.

3966           Mr. Issa?

3967           Mr. Issa. No.

3968           Ms. Williams. Mr. Issa votes no.

3969           Mr. Forbes?

3970           Mr. Forbes. No.

3971           Ms. Williams. Mr. Forbes votes no.

3972           Mr. King?

3973 [No response.]

3974 Ms. Williams. Mr. Franks?

3975 Mr. Franks. No.

3976 Ms. Williams. Mr. Franks votes no.

3977 Mr. Gohmert?

3978 [No response.]

3979 Ms. Williams. Mr. Jordan?

3980 Mr. Jordan. No.

3981 Ms. Williams. Mr. Jordan votes no.

3982 Mr. Poe?

3983 Mr. Poe. No.

3984 Ms. Williams. Mr. Poe votes no.

3985 Mr. Chaffetz?

3986 [No response.]

3987 Ms. Williams. Mr. Marino?

3988 Mr. Marino. No.

3989 Ms. Williams. Mr. Marino votes no.

3990 Mr. Gowdy?

3991 Mr. Gowdy. No.

3992 Ms. Williams. Mr. Gowdy votes no.

3993 Mr. Labrador?

3994 Mr. Labrador. No.

3995 Ms. Williams. Mr. Labrador votes no.  
3996 Mr. Farenthold?  
3997 Mr. Farenthold. No.  
3998 Ms. Williams. Mr. Farenthold votes no.  
3999 Mr. Collins?  
4000 Mr. Collins. No.  
4001 Ms. Williams. Mr. Collins votes no.  
4002 Mr. DeSantis?  
4003 Mr. DeSantis. No.  
4004 [No response.]  
4005 Ms. Williams. Ms. Walters?  
4006 Ms. Walters. No.  
4007 Ms. Williams. Ms. Walters votes no.  
4008 Mr. Buck?  
4009 Mr. Buck. No.  
4010 Ms. Williams. Mr. Buck votes no.  
4011 Mr. Ratcliffe?  
4012 Mr. Ratcliffe. No.  
4013 Ms. Williams. Mr. Ratcliffe votes no.  
4014 Mr. Trott?  
4015 Mr. Trott. No.  
4016 Ms. Williams. Mr. Trott votes no.

4017 Mr. Bishop?

4018 [No response.]

4019 Ms. Williams. Mr. Conyers?

4020 Mr. Conyers. Aye.

4021 Ms. Williams. Mr. Conyers votes aye.

4022 Mr. Nadler?

4023 Mr. Nadler. Aye.

4024 Ms. Williams. Mr. Nadler votes aye.

4025 Ms. Lofgren?

4026 [No response.]

4027 Ms. Williams. Ms. Jackson Lee?

4028 [No response.]

4029 Ms. Williams. Mr. Cohen?

4030 Mr. Cohen. Aye.

4031 Ms. Williams. Mr. Cohen votes aye.

4032 Mr. Johnson?

4033 Mr. Johnson. Aye.

4034 Ms. Williams. Mr. Johnson votes aye.

4035 Mr. Pierluisi?

4036 [No response.]

4037 Ms. Williams. Ms. Chu?

4038 [No response.]

4039 Ms. Williams. Mr. Deutch?

4040 Mr. Deutch. Aye.

4041 Ms. Williams. Mr. Deutch votes aye.

4042 Mr. Gutierrez?

4043 [No response.]

4044 Ms. Williams. Ms. Bass?

4045 [No response.]

4046 Ms. Williams. Mr. Richmond?

4047 [No response.]

4048 Ms. Williams. Ms. DelBene?

4049 Ms. DelBene. Aye.

4050 Ms. Williams. Ms. DelBene votes aye.

4051 Mr. Jeffries?

4052 Mr. Jeffries. Aye.

4053 Ms. Williams. Mr. Jeffries votes aye.

4054 Mr. Cicilline?

4055 [No response.]

4056 Ms. Williams. Mr. Peters?

4057 Mr. Peters. Aye.

4058 Ms. Williams. Mr. Peters votes aye.

4059 Chairman Goodlatte. The gentleman from Texas, Mr.

4060 Smith?



4061 Mr. Smith. Mr. Chairman, I vote no.

4062 Ms. Williams. Mr. Smith votes no.

4063 Chairman Goodlatte. The gentleman from Michigan, Mr.

4064 Bishop?

4065 Mr. Bishop. Nay.

4066 Ms. Williams. Mr. Bishop votes nay.

4067 Chairman Goodlatte. Has every member voted who wishes

4068 to vote?

4069 The clerk will report.

4070 Ms. Williams. Mr. Chairman, eight members voted aye; 18

4071 members voted no.

4072 Chairman Goodlatte. And the amendment is not agreed to.

4073 For what purpose does the gentleman from California seek

4074 recognition?

4075 Mr. Peters. Thank you, Mr. Chairman.

4076 I ask first that a letter of February 4, 2015, from

4077 Patrick Little, who is the national commander of the Military

4078 Order of the Purple Heart, voicing opposition to the FACT Act

4079 be added to the record.

4080 Chairman Goodlatte. Without objection, it will be made

4081 a part of the record.

4082 [The information follows:]

4083

4084           Mr. Peters. Thank you very much. And I have an  
4085 amendment at the desk.

4086           Chairman Goodlatte. The clerk will report the  
4087 amendment.

4088           Ms. Williams. Amendment to H.R. 526, offered by Mr.  
4089 Peters of California. Page 2, line --

4090           Chairman Goodlatte. Without objection, the amendment  
4091 will be considered as read.

4092           [The amendment of Mr. Peters follows:]

4093

4094 Chairman Goodlatte. And the gentleman is recognized for  
4095 5 minutes on his amendment.

4096 Mr. Peters. Thank you very much, Mr. Chairman.

4097 San Diego County, part of which I represent, is home to  
4098 more than 200,000 veterans, 129,000 Navy personnel, and  
4099 35,000 Marine Corps personnel. We are a proud military town  
4100 at our heart.

4101 My amendment today seeks to support the military and the  
4102 veteran communities across the country. The underlying bill,  
4103 the Furthering Asbestos Claim Transparency, or FACT, Act,  
4104 would harm and undermine these communities in ways I will  
4105 explain.

4106 My amendment would exempt asbestos trusts from having to  
4107 file an onerous report to the bankruptcy court if the  
4108 claimant is a member of the Armed Forces or a civilian  
4109 employee of the Department of Defense, and their families, to  
4110 avoid any potential delay in these individuals receiving  
4111 their deserved compensation in a timely manner.

4112 The FACT Act, in an attempt to reform the asbestos claim  
4113 trust system, would actually prevent or delay adequate  
4114 compensation for asbestos victims. And the FACT Act's new  
4115 administrative requirement that the asbestos trusts file

4116 quarterly reports is unnecessary.

4117       Additionally, requiring these unnecessary reports will  
4118 divert critical funds and decrease compensation to asbestos  
4119 victims, unduly burdening veterans suffering from the effects  
4120 of asbestos exposure.

4121       Representatives for the trusts have calculated that  
4122 complying with just the new reporting requirements would  
4123 necessitate experienced managers and claim reviewers spending  
4124 in excess of 20,000 hours per year. That is unacceptable,  
4125 and it is unacceptable that these burdens could debilitate  
4126 the trusts' ability to process and pay claims, meaning many  
4127 mesothelioma victims would die before their claims are  
4128 processed or their cases resolved.

4129       We can't afford the possibility that this legislation  
4130 will cause asbestos victims, many of whom are veterans, to be  
4131 compensated even less than they currently are.

4132       This comes at a time when there is no evidence of  
4133 systemic fraud with asbestos trusts. And Veterans are  
4134 disproportionately affected by diseases caused by asbestos.

4135       Although veterans represent 8 percent of the Nation's  
4136 population, they comprise almost one-third of all known  
4137 mesothelioma deaths that have occurred in the country.

4138       Mesothelioma is a known result of asbestos exposure, and  
4139       asbestos is banned for virtually all uses in the United  
4140       States today, since it is recognized as a potent carcinogen  
4141       and the cause of death of tens of thousands of Americans.

4142       Mesothelioma also has an uncommonly long period of  
4143       latency of 20 to 30 years, which means that veterans exposed  
4144       to asbestos that retired from Active Duty decades ago are  
4145       getting sick today.

4146       While asbestos products were discontinued by about 1980,  
4147       hundreds of Navy ships and military installations dating back  
4148       to World War II were left with asbestos flooring, flooring  
4149       tiles, ceiling tiles, wall insulation, and more, and this  
4150       caused hundreds of thousands of workers and sailors to be  
4151       unknowingly exposed to dangerous asbestos dust. As a result,  
4152       many of those men and women contracted asbestos-related  
4153       diseases.

4154       The FACT Act must be amended to protect veterans who  
4155       were exposed to asbestos while serving their country from the  
4156       additional delays imposed by this bill.

4157       J. Patrick Little, the national commander of the  
4158       Military Order of the Purple Heart, wrote to House leadership  
4159       in direct opposition to the bill, stating, "The FACT Act adds

4160 insult to injury for veterans and their families at a time  
4161 when they are suffering from the devastating effects of  
4162 asbestos exposure."

4163       We need to move toward a future of greater  
4164 accountability and improved services for our veterans and  
4165 their families, not for asbestos corporations and their  
4166 insurers. As Congress, we cannot stand to delay justice for  
4167 anyone who has been a member of the Armed Forces, a civilian  
4168 employee of the Department of Defense, or a family member of  
4169 one of these individuals.

4170       I urge my colleagues to support this amendment and the  
4171 idea that our veterans suffering from mesothelioma aren't  
4172 left facing unnecessary and unacceptable delays.

4173       Thank you, Mr. Chairman. I yield back my time.

4174       Chairman Goodlatte. The chair thanks the gentleman.

4175       For what purpose does the gentleman from Texas seek  
4176 recognition?

4177       Mr. Farenthold. I seek time in opposition.

4178       Chairman Goodlatte. The gentleman is recognized for 5  
4179 minutes.

4180       Mr. Farenthold. Thank you, Mr. Chairman.

4181       This amendment would prevent asbestos trusts from

4182 disclosing claim information submitted by veterans and  
4183 servicemembers in its quarterly report in response to the  
4184 information request.

4185       Again, these are reporting requirements on the asbestos  
4186 trust. It is no additional burden on anyone, servicemembers  
4187 or not, seeking to file asbestos claims.

4188       Now, regardless of that, clearly, there are two groups  
4189 of individuals who we are not fearful are going to commit  
4190 fraud, and it is our Nation's veterans and servicemembers.  
4191 At the same time, however, there is no reason to distinguish  
4192 between the disclosure obligations of veterans and  
4193 servicemembers and the disclosure obligations of ordinary  
4194 citizens.

4195       Further, distinguishing between veterans and  
4196 servicemembers would create an additional and necessary  
4197 administrative burden on asbestos trusts.

4198       The FACT Act is supported by a number of veterans  
4199 groups, including the American Military Society; the Military  
4200 Veterans Coalition of Indiana; Save Our Veterans; the Air  
4201 Force Association, the Department of Indiana; the Hamilton  
4202 County Veterans; the Military Officers Association of  
4203 America, Indiana Chapter; the Reserve Officers Association,

4204 Department of Indiana; the Veterans Resource List; the Cost  
4205 of Freedom Inc. in Indiana; the Texas Coalition of Veterans  
4206 Organizations that represents 35 veterans groups and  
4207 associations; and the American Veterans, Department of  
4208 Wisconsin.

4209 Tellingly, none of these groups has asked that veterans  
4210 be treated differently under this legislation. In fact, in a  
4211 letter I submitted to the record earlier, the American  
4212 Military Society sums up why I think this bill is important.  
4213 In it, the executive director John May states, and I am  
4214 quoting, "Simply put, every dollar paid to an undeserving  
4215 claimant is a dollar taken away from a veteran whose illness  
4216 will manifest in the future."

4217 That is what we are here to prevent, unscrupulous  
4218 attorneys abusing an opaque system, leaving those like our  
4219 veterans who were exposed to asbestos hanging out to dry.

4220 The FACT Act should apply uniformly to all claimants,  
4221 and it should not impose any disparate burdens on veterans,  
4222 servicemembers, or other groups, or the asbestos trusts.

4223 I urge my colleagues to oppose this amendment.

4224 Chairman Goodlatte. The question occurs on the  
4225 amendment offered by the gentleman from California.



4226 All those in favor, respond by saying aye.  
4227 Those opposed, no.  
4228 In the opinion of the chair, the noes have it, and the  
4229 amendment is not agreed to.  
4230 Mr. Peters. Roll call, please.  
4231 Chairman Goodlatte. A recorded vote is requested, and  
4232 the clerk will call the roll.  
4233 Ms. Williams. Mr. Goodlatte?  
4234 Chairman Goodlatte. No.  
4235 Ms. Williams. Mr. Goodlatte votes no.  
4236 Mr. Sensenbrenner?  
4237 [No response.]  
4238 Ms. Williams. Mr. Smith?  
4239 [No response.]  
4240 Ms. Williams. Mr. Chabot?  
4241 Mr. Chabot. No.  
4242 Ms. Williams. Mr. Chabot votes no.  
4243 Mr. Issa?  
4244 Mr. Issa. No.  
4245 Ms. Williams. Mr. Issa votes no.  
4246 Mr. Forbes?  
4247 Mr. Forbes. No.

4248 Ms. Williams. Mr. Forbes votes no.  
4249 Mr. King?  
4250 [No response.]  
4251 Ms. Williams. Mr. Franks?  
4252 Mr. Franks. No.  
4253 Ms. Williams. Mr. Franks votes no.  
4254 Mr. Gohmert?  
4255 [No response.]  
4256 Ms. Williams. Mr. Jordan?  
4257 Mr. Jordan. No.  
4258 Ms. Williams. Mr. Jordan votes no.  
4259 Mr. Poe?  
4260 Mr. Poe. No.  
4261 Ms. Williams. Mr. Poe votes no.  
4262 Mr. Chaffetz?  
4263 [No response.]  
4264 Ms. Williams. Mr. Marino?  
4265 Mr. Marino. No.  
4266 Ms. Williams. Mr. Marino votes no.  
4267 Mr. Gowdy?  
4268 Mr. Gowdy. No.  
4269 Ms. Williams. Mr. Gowdy votes no.

4270 Mr. Labrador?

4271 Mr. Labrador. No.

4272 Ms. Williams. Mr. Labrador votes no.

4273 Mr. Farenthold?

4274 Mr. Farenthold. No.

4275 Ms. Williams. Mr. Farenthold votes no.

4276 Mr. Collins?

4277 Mr. Collins. No.

4278 Ms. Williams. Mr. Collins votes no.

4279 Mr. DeSantis?

4280 [No response.]

4281 Ms. Williams. Ms. Walters?

4282 [No response.]

4283 Ms. Williams. Mr. Buck?

4284 Mr. Buck. No.

4285 Ms. Williams. Mr. Buck votes no.

4286 Mr. Ratcliffe?

4287 Mr. Ratcliffe. No.

4288 Ms. Williams. Mr. Ratcliffe votes no.

4289 Mr. Trott?

4290 Mr. Trott. No.

4291 Ms. Williams. Mr. Trott votes no.

4292 Mr. Bishop?

4293 Mr. Bishop. No.

4294 Ms. Williams. Mr. Bishop votes no.

4295 Mr. Conyers?

4296 Mr. Conyers. Aye.

4297 Ms. Williams. Mr. Conyers votes aye.

4298 Mr. Nadler?

4299 Mr. Nadler. Aye.

4300 Ms. Williams. Mr. Nadler votes aye.

4301 Ms. Lofgren?

4302 [No response.]

4303 Ms. Williams. Ms. Jackson Lee?

4304 [No response.]

4305 Ms. Williams. Mr. Cohen?

4306 Mr. Cohen. Aye.

4307 Ms. Williams. Mr. Cohen votes aye.

4308 Mr. Johnson?

4309 Mr. Johnson. Aye.

4310 Ms. Williams. Mr. Johnson votes aye.

4311 Mr. Pierluisi?

4312 [No response.]

4313 Ms. Williams. Ms. Chu?

4314 [No response.]

4315 Ms. Williams. Mr. Deutch?

4316 Mr. Deutch. Aye.

4317 Ms. Williams. Mr. Deutch votes aye.

4318 Mr. Gutierrez?

4319 [No response.]

4320 Ms. Williams. Ms. Bass?

4321 [No response.]

4322 Ms. Williams. Mr. Richmond?

4323 [No response.]

4324 Ms. Williams. Ms. DelBene?

4325 Ms. DelBene. Aye.

4326 Ms. Williams. Ms. DelBene votes aye.

4327 Mr. Jeffries?

4328 Mr. Jeffries. Aye.

4329 Ms. Williams. Mr. Jeffries votes aye.

4330 Mr. Cicilline?

4331 [No response.]

4332 Ms. Williams. Mr. Peters?

4333 Mr. Peters. Aye.

4334 Ms. Williams. Mr. Peters votes aye.

4335 Chairman Goodlatte. The gentlewoman from California?

4336 Ms. Walters. No.

4337 Ms. Williams. Ms. Walters votes no.

4338 Chairman Goodlatte. Has every member voted who wishes

4339 to vote?

4340 The clerk will report.

4341 Ms. Williams. Mr. Chairman, eight members voted aye; 17

4342 --

4343 Chairman Goodlatte. The clerk will suspend.

4344 The gentleman from Texas?

4345 Mr. Smith. No.

4346 Ms. Williams. Mr. Smith votes no.

4347 Chairman Goodlatte. The gentlewoman from California?

4348 Ms. Chu. Yes.

4349 Ms. Williams. Ms. Chu votes yes.

4350 Chairman Goodlatte. The clerk will report.

4351 Ms. Williams. Mr. Chairman, nine members voted aye; 18

4352 members voted no.

4353 Chairman Goodlatte. And the amendment is not agreed to.

4354 Are there further amendments to H.R. 526?

4355 A reporting quorum being present, the question is on the

4356 motion to report the bill H.R. 526 favorably to the House.

4357 Those in favor will say aye.

4358           Those opposed, no.

4359           The ayes have it, and the bill is ordered reported

4360 favorably.

4361           Mr. Nadler. Recorded vote, please?

4362           Chairman Goodlatte. A recorded vote is requested, and

4363 the clerk will call the roll.

4364           Ms. Williams. Mr. Goodlatte?

4365           Chairman Goodlatte. Aye.

4366           Ms. Williams. Mr. Goodlatte votes aye.

4367           Mr. Sensenbrenner?

4368           [No response.]

4369           Ms. Williams. Mr. Smith?

4370           Mr. Smith. Aye.

4371           Ms. Williams. Mr. Smith votes aye.

4372           Mr. Chabot?

4373           Mr. Chabot. Aye.

4374           Ms. Williams. Mr. Chabot votes aye.

4375           Mr. Issa?

4376           Mr. Issa. Aye.

4377           Ms. Williams. Mr. Issa votes aye.

4378           Mr. Forbes?

4379           Mr. Forbes. Aye.

4380 Ms. Williams. Mr. Forbes votes aye.  
4381 Mr. King?  
4382 [No response.]  
4383 Ms. Williams. Mr. Franks?  
4384 Mr. Franks. Aye.  
4385 Ms. Williams. Mr. Franks votes aye.  
4386 Mr. Gohmert?  
4387 [No response.]  
4388 Ms. Williams. Mr. Jordan?  
4389 Mr. Jordan. Yes.  
4390 Ms. Williams. Mr. Jordan votes yes.  
4391 Mr. Poe?  
4392 Mr. Poe. Yes.  
4393 Ms. Williams. Mr. Poe votes yes.  
4394 Mr. Chaffetz?  
4395 [No response.]  
4396 Ms. Williams. Mr. Marino?  
4397 [No response.]  
4398 Ms. Williams. Mr. Gowdy?  
4399 Mr. Gowdy. Yes.  
4400 Ms. Williams. Mr. Gowdy votes yes.  
4401 Mr. Labrador?



4402 Mr. Labrador. Yes.

4403 Ms. Williams. Mr. Labrador votes yes.

4404 Mr. Farenthold?

4405 Mr. Farenthold. Aye.

4406 Ms. Williams. Mr. Farenthold votes aye.

4407 Mr. Collins?

4408 Mr. Collins. Aye.

4409 Ms. Williams. Mr. Collins votes aye.

4410 Mr. DeSantis?

4411 [No response.]

4412 Ms. Williams. Ms. Walters?

4413 Ms. Walters. Aye.

4414 Ms. Williams. Ms. Walters votes aye.

4415 Mr. Buck?

4416 Mr. Buck. Yes.

4417 Ms. Williams. Mr. Buck votes yes.

4418 Mr. Ratcliffe?

4419 Mr. Ratcliffe. Yes.

4420 Ms. Williams. Mr. Ratcliffe votes yes.

4421 Mr. Trott?

4422 Mr. Trott. Yes.

4423 Ms. Williams. Mr. Trott votes yes.

4424 Mr. Bishop?

4425 Mr. Bishop. Yes.

4426 Ms. Williams. Mr. Bishop votes yes.

4427 Mr. Conyers?

4428 Mr. Conyers. No.

4429 Ms. Williams. Mr. Conyers votes no.

4430 Mr. Nadler?

4431 Mr. Nadler. No.

4432 Ms. Williams. Mr. Nadler votes no.

4433 Ms. Lofgren?

4434 [No response.]

4435 Ms. Williams. Ms. Jackson Lee?

4436 [No response.]

4437 Ms. Williams. Mr. Cohen?

4438 Mr. Cohen. No.

4439 Ms. Williams. Mr. Cohen votes no.

4440 Mr. Johnson?

4441 Mr. Johnson. No.

4442 Ms. Williams. Mr. Johnson votes no.

4443 Mr. Pierluisi?

4444 [No response.]

4445 Ms. Williams. Ms. Chu?

4446 Ms. Chu. No.

4447 Ms. Williams. Ms. Chu votes no.

4448 Mr. Deutch?

4449 Mr. Deutch. No.

4450 Ms. Williams. Mr. Deutch votes no.

4451 Mr. Gutierrez?

4452 [No response.]

4453 Ms. Williams. Ms. Bass?

4454 [No response.]

4455 Ms. Williams. Mr. Richmond?

4456 [No response.]

4457 Ms. Williams. Ms. DelBene?

4458 Ms. DelBene. No.

4459 Ms. Williams. Ms. DelBene votes no.

4460 Mr. Jeffries?

4461 Mr. Jeffries. No.

4462 Ms. Williams. Mr. Jeffries votes no.

4463 Mr. Cicilline?

4464 [No response.]

4465 Ms. Williams. Mr. Peters?

4466 Mr. Peters. No.

4467 Ms. Williams. Mr. Peters votes no.

4468 Chairman Goodlatte. The gentleman from Florida?  
4469 Mr. DeSantis. Yes.  
4470 Ms. Williams. Mr. DeSantis votes yes.  
4471 Chairman Goodlatte. The gentleman from Pennsylvania?  
4472 Mr. Marino. Yes.  
4473 Ms. Williams. Mr. Marino votes yes.  
4474 Chairman Goodlatte. Has every member voted who wishes  
4475 to vote?  
4476 The clerk will report.  
4477 Ms. Williams. Mr. Chairman, 19 members voted aye; nine  
4478 members voted no.  
4479 Chairman Goodlatte. The ayes have it, and the bill is  
4480 ordered reported favorably to the House.  
4481 Members will have 2 days to submit views.  
4482 Pursuant to notice, I now call up House Concurrent  
4483 Resolution 13 for purposes of markup, and move that the  
4484 committee report the bill favorably to the House.  
4485 The clerk will report the bill.  
4486 Ms. Williams. H. Con. Res. 13, expressing the sense of  
4487 Congress that the radical Islamic movement in Afghanistan,  
4488 known as Taliban, should be recognized officially as a  
4489 foreign terrorist organization by the United States

4490 government.

4491 Chairman Goodlatte. Without objection, the resolution

4492 is considered as read and open for amendment at any point.

4493 [The information follows:]

4494

4495 Chairman Goodlatte. And I will begin by recognizing  
4496 myself for an opening statement.

4497 This House concurrent resolution introduced by  
4498 Representative David McKinley simply asks the State  
4499 Department to do what it should have done long ago:  
4500 recognize the Afghan Taliban as a foreign terrorist  
4501 organization. Pursuant to the Immigration and Nationality  
4502 Act, the Secretary of State has the power to designate groups  
4503 as foreign terrorist organizations. Such groups must be  
4504 foreign organizations that engage in terrorist activity or  
4505 retain the capability and intent to engage in terrorist  
4506 activity, which threatens the security of Americans or the  
4507 national security of the United States.

4508 The effect of such a designation is threefold. First,  
4509 aliens are subject to grounds of inadmissibility and  
4510 deportability for ties to all terrorist organizations whether  
4511 or not the groups have been designated by the Secretary of  
4512 State. However, the grounds are more expansive for aliens  
4513 with ties to designated organizations.

4514 In addition, the Administration's ability to waive the  
4515 terrorist grounds of inadmissibility with respect to an alien  
4516 is unavailable for aliens who are members or representatives

4517 of designated organizations, or have received military  
4518 training from such organizations.

4519       Second, persons who provide material support to  
4520 designated terrorist organizations are subject to Federal  
4521 criminal penalties. Third, the Immigration and Nationality  
4522 Act provides that the Secretary of Treasury may require U.S.  
4523 financial institutions possessing or controlling any assets  
4524 of designated organizations to block all financial  
4525 transactions involving those assets.

4526       I was troubled to learn that the State Department has  
4527 never designated the Afghan Taliban as a foreign terrorist  
4528 organization. Yes, the same Afghanistan Taliban that  
4529 provided a safe haven for al-Qaeda until U.S. forces  
4530 liberated Afghanistan from the Taliban's control after al-  
4531 Qaeda's September 11, 2001 terrorist attacks. The Taliban  
4532 has conducted a multitude of deadly attacks aimed at  
4533 civilians since it was overthrown, and is responsible for  
4534 most insurgent attacks in Afghanistan.

4535       Last year alone the United Nations reported that the  
4536 Taliban conducted 143 attacks aimed at civilians. In just  
4537 one of these attacks, Taliban terrorists attacked a  
4538 restaurant in Kabul killing 21 people, including three

4539 Americans. The Obama Administration has admitted that the  
4540 Taliban do "carry out tactics that are akin to terrorism.  
4541 They do pursue terror attacks in an effort to try to advance  
4542 their agenda."

4543       The Taliban's embrace of terrorism and the very real  
4544 threat it poses to American lives and the national security  
4545 of the United States makes it an obvious choice for  
4546 designation. So why has the Obama Administration not taken  
4547 the long overdue step of designating the Taliban as a  
4548 terrorist organization? The White House claims that the  
4549 Taliban is not a terrorist organization because its goals are  
4550 supposedly limited to reconquering Afghanistan. However,  
4551 after reading the Immigration and Nationality Act, it becomes  
4552 clear that this point is entirely irrelevant. The INA makes  
4553 no such distinction in its definition of "terrorist  
4554 organization."

4555       I can only hope that the Obama Administration did not  
4556 rely on this distinction without a difference to justifying  
4557 negotiating with the Taliban for the release of accused  
4558 deserter, Sergeant Bowe Bergdahl. Despite having a policy of  
4559 not negotiating with terrorists, the Administration  
4560 irresponsibly exchanged Sergeant Bergdahl for five Taliban



4561 terrorists detained at Guantanamo Bay. By so doing, the  
4562 Administration has emboldened all terrorist organizations and  
4563 has created the risk that five terrorists will reenter the  
4564 field of battle.

4565 Despite any embarrassment that designating the Taliban  
4566 as a terrorist organization might cause the Administration,  
4567 it is the right thing to do. And designation will make it  
4568 less likely that Taliban members and sympathizers will be  
4569 able to enter the United States.

4570 I would like to submit, and without objection will  
4571 submit, for the record an Associated Press article from  
4572 yesterday entitled, "14 Killed in Taliban Attack on Kabul  
4573 Guest House. American is Among Victims." So this is a very  
4574 timely matter, and the atrocities from the Taliban continue.

4575 I commend Representative McKinley for introducing this  
4576 concurrent resolution, and I urge my colleagues to support  
4577 it. And it is now my pleasure to recognize the ranking  
4578 member of the committee, the gentleman from Michigan, Mr.  
4579 Conyers, for his opening statement.

4580 Mr. Conyers. Mr. Chairman and members, I want to begin  
4581 this discussion by stating that we learned this measure, H.  
4582 Con. Resolution 13, would be marked up about 48 hours ago

4583 when the official notice of the markup was sent out. While  
4584 technically permitted under the rules of this committee,  
4585 providing minimal notice means members have had very little  
4586 time to review this complicated and important matter of  
4587 foreign policy.

4588 In fact, we have never had a hearing on this particular  
4589 measure at either the subcommittee level or the full  
4590 committee level. We have also not had a hearing on any of  
4591 the critical issues raised by this measure. I hope this  
4592 proves to be an anomaly and that the committee will not make  
4593 it a habit or occur again of bringing up measures of this  
4594 importance for consideration and that have received no  
4595 deliberative process whatsoever. This is especially  
4596 important when the members of the committee are not given  
4597 meaningful notice.

4598 Now, I want to make it clear that my inability to be  
4599 eager to support this resolution does not in any way mean  
4600 that I would hesitate to condemn the Taliban's support for  
4601 terrorist groups or its own terrorist acts. I agree that  
4602 what has been said about the terrible acts that the Taliban  
4603 has committed over the years and continues to commit to this  
4604 day. Afghanistan under Taliban rule was such a flagrant

4605 human rights abuser that the country was a pariah state in  
4606 the international arena.

4607       The Taliban continues to commit acts of deplorable  
4608 violence that threatens the peace, stability, and security of  
4609 Afghanistan, including an attack on a hotel in Kabul that  
4610 just occurred yesterday where 14 innocent people were killed.  
4611 Clearly the organization represents a serious threat to  
4612 peace, stability, and security of the region.

4613       Also, the fact that both the Obama and Bush  
4614 Administrations chose not to designate the Taliban, a foreign  
4615 terrorist organization, does not mean that either of them was  
4616 confused about whether the Taliban commits terrorist acts.  
4617 By executive order in 2002 and continuing to this day, the  
4618 Taliban is a specially designated global terrorist  
4619 organization, and as recently as last June, the United  
4620 Nations Security Council on which the United States has a  
4621 permanent seat, condemned the ongoing violence and terrorist  
4622 activity by the Taliban.

4623       While we must acknowledge that the Taliban has been a  
4624 tremendous destabilizing force in Afghanistan, we must also  
4625 acknowledge that it is a key factor in achieving peace and  
4626 stability in the future. Just 7 weeks ago, the Afghan

4627 president, representing the new unity government, addressed a  
4628 Joint Session of Congress. During his remarks, he talked  
4629 about his efforts to achieve peace and stability through  
4630 national reconciliation. He said, "The Taliban need to  
4631 choose not to be al-Qaeda, and if they choose to be Afghan,  
4632 they will be welcomed to be a part of the fabric of our  
4633 society."

4634       The Afghan government is working with the international  
4635 community, including the United States, to advance  
4636 reconciliation with all Afghan people, including members of  
4637 the Taliban. I am afraid now is not the time to express the  
4638 sense of Congress that the State Department should designate  
4639 the Taliban a foreign terrorist organization. Congress  
4640 placed that authority in the discretion of the Secretary of  
4641 State precisely because issuing such a designation is only  
4642 one of the tools at our disposal. Advancing this resolution  
4643 would make reconciliation harder, not easier. And that would  
4644 make peace and stability harder and not easier.

4645       I thank you for the time and yield back.

4646       Chairman Goodlatte. The chair thanks the gentleman.

4647       Are there any amendments to House Concurrent Resolution 13?

4648       For what purpose does the gentleman from Tennessee seek

4649 recognition?

4650 Mr. Cohen. Thank you, Mr. Chair. I would like to know  
4651 if there is a possibility we could have a hearing on this  
4652 because I think Cuba should be taken off the terrorist list.  
4653 And while it might be a mistake for the Administration not to  
4654 have put the Taliban on it, I think they are going to request  
4655 that Cuba come off. But I think we should initiate that.  
4656 Cuba is not a terrorist nation.

4657 Chairman Goodlatte. Would the gentleman yield?

4658 Mr. Cohen. Yes, sir.

4659 Chairman Goodlatte. The gentleman will be pleased to  
4660 know that Cuba is not on the list.

4661 Mr. Cohen. Well, they are one list that they should not  
4662 be on.

4663 Chairman Goodlatte. They are not on a list that this  
4664 committee has jurisdiction over.

4665 Mr. Cohen. They were taken off.

4666 Mr. Nadler. Last week.

4667 Mr. Cohen. Well, let us celebrate.

4668 [Laughter.]

4669 Mr. Nadler. Mr. Chairman? Mr. Chairman?

4670 Chairman Goodlatte. For what purpose does the gentleman

4671 seek recognition?

4672 Mr. Nadler. Strike the last word.

4673 Chairman Goodlatte. The gentleman is recognized for 5  
4674 minutes.

4675 Mr. Nadler. I have a lengthy statement here which I  
4676 would like to enter into the record on behalf of Ms. Lofgren  
4677 and myself.

4678 Chairman Goodlatte. Without objection, it will be made  
4679 a part of the record.

4680 [The information follows:]

4681

4682           Mr. Nadler. And rather than read the lengthy statement,  
4683 I just want to say this. I would like to say the following.  
4684 There are good reasons, and some people may think they are  
4685 sufficient and others may think they are not sufficient, not  
4686 to designate the Taliban as a terrorist group. The  
4687 Administration has chosen not to do it because they basically  
4688 think that it would be counterproductive to our foreign  
4689 policy, and that it would hinder the Ghani government in its  
4690 efforts to negotiate a peace agreement in Afghanistan.

4691           Now, that may very well be true. But the fact of the  
4692 matter is this is not the Foreign Affairs Committee, and we  
4693 probably should not be taking this up. It should be referred  
4694 to the Foreign Affairs Committee. But at the least we should  
4695 hold a hearing and find out what we are doing. This is a  
4696 serious matter. A sense of Congress resolution would send a  
4697 signal to the Taliban and to the Afghan government that we  
4698 are not interested, that we are opposed to their  
4699 reconciliation attempts, and it might hinder a settlement of  
4700 that war.

4701           Now, there are pros and cons to the view I just  
4702 expressed. But this committee is not equipped, maybe after a  
4703 hearing, to go into that, so probably we should refer this to

4704 the Foreign Affairs Committee, at the least hold a hearing  
4705 because frankly --

4706 Chairman Goodlatte. Would the gentleman yield?

4707 Mr. Nadler. Just one moment. It is a nice slogan.

4708 Yes, they have committed terrorist attacks clearly;  
4709 therefore, they should be on the terrorist list. What is the  
4710 practical effect of putting them on the terrorist list? What  
4711 does that do to our diplomacy there? What does that do the  
4712 odds of ending a war there? Let us hear the Administration's  
4713 view. This is not our bailiwick. I would be happy to yield.

4714 Chairman Goodlatte. I am sorry. Go ahead.

4715 Mr. Conyers. No, you go ahead.

4716 Chairman Goodlatte. I was just going to say to the  
4717 gentleman that the House Foreign Affairs Committee has a  
4718 sequential referral of this bill.

4719 Mr. Nadler. Well, then we should hold a hearing.  
4720 Reclaiming my time. Before we put our 2 cents in, we should  
4721 know something about what we are dealing with and hold a  
4722 hearing on this because we have had never any discussion  
4723 remotely relating to anything on this topic. I would yield  
4724 to the gentleman from Michigan.

4725 Mr. Conyers. Thank you for yielding. Mr. Chairman, I



4726 have never said this to you before, but could we please defer  
4727 this matter to at least one hearing before we decide to take  
4728 any action on this? I ask you sincerely to consider this,  
4729 please.

4730 Chairman Goodlatte. I thank the gentleman for his  
4731 request, but we on our side of the aisle are prepared to vote  
4732 that the Taliban are indeed a terrorist organization and  
4733 should be on this list. And I am more than happy to stand by  
4734 that position.

4735 Mr. Nadler. Mr. Chairman, reclaiming my time. People  
4736 may be happy to vote that they are a terrorist organization,  
4737 and they clearly are a terrorist organization. I think  
4738 nobody doubts the fact of the matter. The question is, and  
4739 that is a question that has not been considered for which  
4740 there are many pros and cons, what is the effect of the  
4741 United States Congress voting a sense of Congress that they  
4742 should be placed on the terrorism list?

4743 Does this have an effect? If it has no effect, I mean,  
4744 why bother? But if it has an effect, what effect is it?  
4745 Does it make settlement of the war there easier or harder?  
4746 Does it help our allied government or not? Those are the  
4747 questions, not the simple question of is it nice to declare a

4748 terrorist group a terrorist group. What are the practical  
4749 implications? We have no idea. We have had no discussion.  
4750 Therefore, we have to hold at least some discussion to figure  
4751 out what we are doing and what the effect of what we are  
4752 doing is. I yield back.

4753 Chairman Goodlatte. Are there any amendments?

4754 Mr. Gohmert. Mr. Chairman?

4755 Chairman Goodlatte. For what purpose does the gentleman  
4756 Texas seek recognition?

4757 Mr. Gohmert. Move to strike the last word.

4758 Chairman Goodlatte. The gentleman is recognized for 5  
4759 minutes.

4760 Mr. Gohmert. Thank you, Mr. Chairman. I appreciate my  
4761 friend from New York raising that question. And I would  
4762 submit having met numerous times and actually become friends  
4763 with some moderate Muslims in Afghanistan I have met with  
4764 over there a number of times, who fought and lost loved ones  
4765 fighting the Taliban with us and for us, who still stand  
4766 against the terrorists that the Taliban represent. It is for  
4767 one thing finally an affirmation to our friends who fought  
4768 and died with us, the moderate Muslims in Afghanistan, that  
4769 you fought a terrorist organization with us and for us. And

4770 sometimes just doing the right thing is the right thing to  
4771 do, and that is exactly what this bill is.

4772 My friend said they are a terrorist organization. They  
4773 were behind the 9/11 attacks. And I am telling you, the  
4774 message of us pronouncing the obvious is going to be a big  
4775 deal to those who try to stand against radical Islamists  
4776 around the world. It will mean a lot to our friends that I  
4777 have made, Muslim friends, in Egypt, in the UAE, in Lebanon,  
4778 in different places. It will be a big deal to them, and I am  
4779 pleased that we are taking this action. And I yield back my  
4780 time.

4781 Chairman Goodlatte. The chair thanks the gentleman.

4782 Are there any amendments to H. Con. Res. 13?

4783 [No response.]

4784 Chairman Goodlatte. If not --

4785 Mr. Johnson. Mr. Chairman?

4786 Chairman Goodlatte. For what purpose does the gentleman  
4787 from Georgia seek recognition?

4788 Mr. Johnson. I am just a little perplexed that --

4789 Chairman Goodlatte. The gentleman is recognized for 5  
4790 minutes.

4791 Mr. Johnson. I am perplexed --

4792 Chairman Goodlatte. Let me advise everyone that if we  
4793 do not finish, we have 6 minutes left in the vote. We will  
4794 come back after the vote to finish the bill.

4795 Mr. Johnson. I am perplexed, Mr. Chairman, that it  
4796 would take an Associated Press news article to drive an  
4797 important matter like this to the floor so quickly for  
4798 debate, and I am concerned about that with no hearing. And  
4799 with that, I will yield back.

4800 Chairman Goodlatte. The chair thanks the gentleman.  
4801 This has been a bill introduced some months ago and referred  
4802 to this committee. And we have been studying it for some  
4803 amount of time.

4804 The question now occurs on House Concurrent Resolution  
4805 13. A reporting quorum being present, the question is on the  
4806 motion to report the resolution, House Concurrent Resolution  
4807 13, favorably to the House.

4808 Those in favor will say aye.

4809 Those opposed, no.

4810 The ayes have it, and the bill is ordered reported  
4811 favorably.

4812 Voice. [Off audio.]

4813 Chairman Goodlatte. The request has been withdrawn.

4814 The ayes have it. The resolution is ordered reported  
4815 favorably to the House. Members will have 2 days to submit  
4816 views.

4817 [The information follows:]

4818

4819        [Whereupon, at 3:42 p.m., the committee was adjourned.]