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4 MARKUP OF H.R. 1927, THE FAIRNESS IN CLASS ACTION LITIGATION

5 ACT OF 2015.

6 Wednesday, June 24, 2015

7 House of Representatives

8 Committee on the Judiciary

9 Washington, D.C.

10 The subcommittee met, pursuant to call, at 10:26 a.m.,
11 in Room 2141, Rayburn Office Building, Hon. Bob Goodlatte
12 [chairman of the committee] presiding.

13 Present: Representatives Goodlatte, Smith, Chabot,
14 Issa, Forbes, King, Franks, Jordan, Poe, Chaffetz, Gowdy,
15 Labrador, Farenthold, Collins, DeSantis, Walters, Ratcliffe,
16 Trott, Bishop, Conyers, Nadler, Jackson Lee, Cohen, Johnson,
17 Pierluisi, Chu, Deutch, Richmond, DelBene, Jeffries,

18 Cicilline, and Peters.

19 Staff present: Shelley Husband, Majority Staff
20 Director; Branden Ritchie, Deputy Majority Staff Director and
21 Chief Counsel; Allison Halataei, Majority Parliamentarian and
22 General Counsel; Paul Taylor, Majority Counsel, Subcommittee
23 on the Constitution and Civil Justice; Kelsey Williams,
24 Majority Clerk; Perry Apelbaum, Minority Chief of Staff;
25 Danielle Brown, Minority Counsel and Parliamentarian; James
26 Park, Minority Counsel; and Danielle Burnette, Minority
27 Clerk.

28

29 Chairman Goodlatte. Good morning. The Judiciary
30 Committee will come to order, and without objection the chair
31 is authorized to declare a recess of the committee at any
32 time.

33 Pursuant to notice, I now call up H.R. 1927 for purposes
34 of markup, and move that the committee report the bill
35 favorably to the House.

36 The clerk will report the bill.

37 Ms. Williams. H.R. 1927, to amend Title 28, United
38 States Code, to improve fairness in class action litigation.

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

41 [The bill follows:]

42

43 Chairman Goodlatte. And I will begin by recognize
44 myself for an opening statement.

45 10 years ago I helped usher the Class Action Fairness Ac
46 through Congress and to the President's desk where it was
47 signed into law. That legislation corrected a serious flaw
48 in our Federal jurisdictional statutes that prevent Federal
49 courts from hearing most interstate class actions. While the
50 reforms contained in the Class Action Fairness Act have been
51 integral to improving the civil justice system in the United
52 States, abusive class action practices still exist today, and
53 there are further ways to improve the system to ensure that
54 class action lawsuits are benefiting the victims they are
55 intended to compensate.

56 The class action device is a necessary and important
57 part of our legal system. It promotes efficiency by allowing
58 plaintiffs with similar claims to adjudicate their cases in
59 one proceeding, and it promotes fairness by allowing claims
60 to be heard in cases in which there are small harms to a
61 large number of people that would otherwise go unaddressed
62 because the cost for an individual plaintiff to sue would far
63 exceed the benefits. Yet other than the Class Action
64 Fairness Act, no major reforms to the laws governing Federal

65 class actions have been adopted since 1966, even though
66 additional problems have arisen in the implementation of
67 class actions since the Class Action Fairness Act was enacted
68 10 years ago.

69 I am concerned that in the years since CAFA was enacted,
70 there has been a proliferation of class actions filed by
71 lawyers on behalf of classes, including members who have not
72 suffered any actual injury. These class actions are often
73 comprised of class members that do not even know that they
74 have been harmed, do not care about the minor or non-existent
75 injuries the lawsuit is based on, and generally have no
76 interest in pursuing wasteful litigation. Often these class
77 members are included in the lawsuit against their will as
78 they are entirely satisfied with the product the trial
79 lawyers claim is defective.

80 When classes are certified that include members who do
81 not have the same type and scope of injury as the class
82 representatives, those members siphon off limited
83 compensatory resources from those who are injured or who have
84 suffered injuries of much greater extent. That leads to a
85 substantial under compensation for consumers who have
86 suffered actual or significantly greater harm. Given that

87 class action lawsuits involve more money and touch more
88 Americans than virtually any other litigation pending in our
89 legal system, it is important that we have a Federal class
90 action system that benefits those who have been truly injured
91 and injured in comparable ways and is fair to both plaintiffs
92 and defendants.

93 To that end, I introduce the Fairness in Class Action
94 Litigation Act. The bill requires that a class be composed
95 of members with comparable injuries. The injuries of the
96 class members could be de minimis or even nonexistent as when
97 statutory damages are allowed in such cases. But members
98 whose injuries were only de minimis or nonexistent would have
99 to bring their case in a separate consisting of only of
100 members with de minimis or nonexistent injuries.

101 The bill would thereby achieve a very important reform:
102 clustering actually injured or similarly injured class
103 members in their own class. People who are injured deserve
104 to have their own class actions in which they present their
105 uniquely powerful cases and get the larger recoveries they
106 deserve. Under this legislation, uninjured or non-comparably
107 injured people can still join class actions, but they must do
108 so separately without taking away from the potential recovery

109 of actually injured or more significantly injured people. I
110 urge my colleagues to support this legislation.

111 Finally, I will offer a substitute amendment that
112 further clarifies the intent of the bill, which I will
113 address at the appropriate time. And now it is my pleasure
114 to recognize the ranking member of the committee, the
115 gentleman from Michigan, Mr. Conyers, for his opening
116 statement.

117 Mr. Conyers. Thank you very much, Chairman Goodlatte.
118 The Fairness in Class Action Litigation, H.R. 1927, I am
119 sorry to say, is a seriously flawed bill that would shield
120 corporate wrongdoers from being held accountable to victims
121 whom they have harmed. And the bill accomplishes this goal
122 in several ways.

123 To begin with, let's face it, H.R. 1927 will make it
124 even more difficult for these victims to obtain relief
125 through class actions by imposing a nearly impossible
126 requirement to show that every potential class member
127 suffered from the same type and scope of injury. Now, under
128 current procedure, the courts strictly limit the grounds by
129 which a large group of plaintiffs may be certified as a
130 class, including the requirement that their claims rise from

131 factual legal questions, and that the class representatives'
132 claims are typical of those of the other class members.

133 So rather than improving upon this class certification
134 process, however, H.R. 1927 imposes even more restrictive
135 requirements that will make the process further unfair to
136 plaintiffs. This is shocking. It does it by prohibiting a
137 Federal court from certifying a class action seeking monetary
138 relief for personal injury or economic loss unless a party
139 can prove that every putative class member suffered the same
140 type and scope of injury.

141 Federal courts have rejected this kind of commonality of
142 damages requirement for good reason. And as a coalition of
143 civil rights, consumer, and public interest groups noted in
144 opposing this bill, such a requirement would sound the death
145 knell for class actions because classes inherently include a
146 range of affected individuals, and virtually never does every
147 member of the class suffer the same extent of injury, even
148 from the same wrongdoing.

149 The bill would also undermine the primary goals of class
150 actions to promote judicial efficiency and access to justice.
151 Class actions offer consumers an important means to hold the
152 wrongdoers accountable without having to engage in multiple,

153 duplicative actions. Most importantly, class actions make it
154 economically feasible for those who have smaller, but not
155 inconsequential, injuries to obtain justice. These actions
156 include such diverse matters as breach of warranty, products
157 liability, and employment discrimination. Unfortunately,
158 since the enactment of the Class Action Fairness Act a decade
159 ago, class actions have become more difficult, expensive, and
160 cumbersome to pursue, particularly in light of a number of
161 Supreme Court decisions further restricting class actions.

162 Taken together, these developments have denied the
163 benefits of class action as a device to many. H.R. 1927 will
164 only exacerbate this problem by forcing plaintiffs to
165 demonstrate the same type and scope of injury on behalf of
166 all putative class members before certification. Having to
167 litigate a common factual question, such as the extent and
168 the nature of an alleged injury prior to certification and
169 prior to full discovery, defeats the point of having a class
170 action in the first place.

171 It also forces the parties to litigate the merits of
172 their case twice, once at the certification stage and a
173 second time during the trial on the merits. Undermining
174 efficiency would be bad for both plaintiffs and defendants by

175 adding time and expense to the litigation. It would also
176 further burden the already strained resources of Federal
177 courts. Moreover, the bill circumvents the extremely
178 thorough Rules Enabling Act process that the Federal
179 judiciary uses to consider amendments to Federal Procedure
180 Rules. Indeed, the Judicial Conference is currently
181 considering at this point whether to amend Rule 23, and I
182 hope that we will let the process continue.

183 Now, the foremost scholar, Arthur Miller, on Federal
184 practice and procedure warned that H.R. 1927 would undermine
185 the goals of judicial efficiency and access to courts that
186 class actions were designed to promote. And we should as
187 members of the Judiciary Committee heed this warning.

188 And finally, H.R. 1927's proponents have failed to
189 demonstrate that there is any need for this legislation. As
190 I noted, Rule 23 already sets forth extensive requirements
191 that plaintiffs must meet in order to obtain class
192 certification, and the Federal courts have applied these
193 requirements rigorously. Additionally, to the extent that
194 the bill's proponents seek to target class actions asserting
195 a benefit of the bargain theory, such cases, in fact, assert
196 a real injury.

197 When one unknowingly buys a product with a hidden design
198 defect, that individual does suffer an injury because the
199 product is worth less than what they thought they were paying
200 for it. It is irrelevant for purposes of determining whether
201 an injury exists that the defect did not result in any
202 additional harm to the consumer.

203 Class actions are an important tool for ensuring access
204 to justice and holding corporate wrongdoers accountable.
205 H.R. 1927 undermines this goal, and accordingly, I urge the
206 members of this committee to oppose it. And I thank the
207 chairman, and yield back.

208 Chairman Goodlatte. Thank you, Mr. Conyers. I would
209 now like to recognize Mr. Franks of Arizona, the chairman of
210 the Subcommittee on the Constitution and Civil Justice, for
211 his opening statement.

212 Mr. Franks. Well, thank you, Mr. Chairman. Mr.
213 Chairman, on February 27th, the Subcommittee on the
214 Constitution and Civil Justice held a hearing on the 10th
215 anniversary of the enactment into law of the Class Action
216 Fairness Act to explore further potentials to reform our
217 class action litigation system. One problem highlighted at
218 the hearing was that under current rules, Federal courts are

219 allowed to permit class action lawsuits to proceed before
220 there has been a showing that all the members of the class
221 actually share a comparable injury. Consequently, classes
222 have been certified to include, for example, all owners of an
223 allegedly defective product, but only a small fraction of
224 those who purchase the product suffered any bad results.

225 People who have no problems with their purchases at all
226 because they suffered little or no injury have been forced
227 into a lawsuit against their will because members of a class
228 action lawsuit do not have the option to opt out in the
229 lawsuit. They can only choose to opt out if they are aware
230 that they part of a lawsuit at all.

231 The House Judiciary Committee, Mr. Chairman, allowed me
232 to be part of introducing the Fairness in Class Action
233 Litigation Act of 2015, which would tighten Federal class
234 action rules such that a Federal class could only be
235 certified upon a showing that all unnamed members of the
236 proposed class have suffered injuries comparable to those of
237 the class representatives.

238 Currently, under existing Federal class action rules,
239 there are requirements that a class share questions of law
240 and fact in common, and that the claims and defenses of the

241 representative parties would be typical of that class. But
242 under those standards, courts have allowed classes to be
243 certified before there has been a showing that all members of
244 the class actually share comparable injuries. Consequently,
245 classes have been certified to include, for example, all
246 owners of a certain washing machine that allegedly produced
247 moldy smelling laundry.

248 But as it turned out in the case, only a very small
249 fraction of those who purchased the washing machine suffered
250 any adverse results. Yet those people were still lumped into
251 the class as members, greatly inflating the size of the class
252 and thereby unduly pressuring the company to settle by
253 dramatically growing the size of class for which damages
254 could be awarded.

255 A recent Defense Research Institute poll asked
256 respondents, "Would you support or oppose a law saying that
257 in order to join a class action lawsuit, a person has to show
258 that he or she has actually been harmed?" 78 percent of
259 those, Mr. Chairman, surveyed said that they would support
260 such a law, which includes 75 percent of women, 73 of percent
261 people aged 18 through 29, 71 percent of African Americans,
262 75 percent of Hispanics, 71 percent of registered Democrats,

263 73 percent of liberals, 86 percent of registered Republicans,
264 and 85 percent of conservatives.

265 The Fairness in Class Action Litigation Act is a simple
266 one-page bill that will help ensure that common sense
267 principles apply in class actions. And, Mr. Chairman, I
268 would urge all of my colleagues to join us in supporting that
269 legislation along with the amendment in the nature of a
270 substitute that you will offer.

271 And with that, I would yield back.

272 Chairman Goodlatte. The chair thanks the gentleman and
273 recognizes the gentleman from Tennessee, Mr. Cohen, the
274 ranking member of the Subcommittee on the Constitution and
275 Civil Justice, for his opening statement.

276 Mr. Cohen. Thank you, Mr. Chairman. The bill before us
277 is one that has been widely criticized by people who utilize
278 the process today. Class certifications, class actions have
279 helped a lot of people get a relief, and brought a lot of
280 companies to upgrade the production of their products to
281 those levels that do not harm the consumer, and are consumer
282 friendly, and economically deliver the product that they were
283 intended to deliver.

284 The proper forum for these changes would be through the

285 Federal judiciary, and right now there is a process that is
286 going on where the courts are analyzing and looking at the
287 cost of class actions with the direction that they do so with
288 an eye towards cost efficiency for all parties concerned and
289 for justice at the same time. The courts generally have been
290 against these changes as have many consumer groups.

291 Unfortunately, this proposal comes to us, and what it
292 would do is effectively wreck the opportunity for citizens to
293 have class actions because the whole process, and I have an
294 amendment that I will discuss it more fully in, this would
295 destroy the whole idea of a class being established and then
296 being able to ask, determine who the members should be.

297 One of the things I did on my break was to go through
298 the different class actions stockholder suits that I have
299 been given an opportunity to join and to file a claim on. It
300 was only after certification of a class action, somebody
301 coming forward, that they then sought to see if persons who
302 were affected thereby wanted to join the class and
303 participate. That is the traditional way that we operate
304 with class actions, and I think it is the way that we need to
305 continue to operate. And with the passage of this bill, we
306 would make it impossible to continue on that tradition and

307 for people, parties, and plaintiffs, to effectively --

308 Now, there is no way they are going to know who the
309 members of the class are unless it has been certified as a
310 class, and then they can find out. So while it may be well
311 intentioned, it is certainly well intentioned towards the
312 defendant and towards the manufacturer, and not toward the
313 consumer and not towards the justice system. And that is why
314 I will offer my amendment later and would ask us to vote
315 against the passage of this bill.

316 And with that, I yield back the balance of my time.

317 Chairman Goodlatte. Thank you, Mr. Cohen. I now
318 recognize myself for purposes of offering an amendment in the
319 nature of a substitute. And the clerk will report the
320 amendment.

321 Ms. Williams. Amendment in the nature of a substitute
322 to H.R. 1927, offered by Mr. Goodlatte of Virginia, strike
323 all after the --

324 Chairman Goodlatte. Without objection, the amendment in
325 the nature of a substitute is considered as read.

326 [The amendment of Chairman Goodlatte follows:]

327

328 Chairman Goodlatte. And I will recognize myself for an
329 explanation of the amendment.

330 I have an amendment in the nature of a substitute. On
331 April 29, 2015, the House Subcommittee on the Constitution
332 and Civil Justice held a hearing on H.R. 1927, the Fairness
333 in Class Action Litigation Act, which would require Federal
334 judges to restrict class actions such that all class members
335 in each class share the same type and extent of injury. The
336 purpose of the bill is to prevent the certification of
337 inflated classes that lump large numbers of class members who
338 are uninjured or minimally injured in with class members who
339 have suffered injuries or more significant injuries.

340 The valuable discussion at the hearing showed how the
341 bill could be productively clarified to minimize ambiguities
342 as much as reasonably possible. At the hearing it was
343 mentioned that the term "extent" in the bill as introduced
344 was too precise, and that it would require, for example,
345 separate class actions for those who suffered 5-dollar
346 injuries and those who suffered 7-dollar injuries, which
347 arguably could be considered injuries of a different extent.
348 To provide further clarity, the substitute amendment uses the
349 term "scope" instead of "extent" to clearly denote that

350 judges can include class members with comparable ranges of
351 the same type of injury in a single class action.

352 The hearing also included argument that the introduced
353 bill would somehow require Federal judges to conduct full-
354 blown trials at the class certification stage to determine
355 which class members had injuries of suitable similarity. To
356 make even clearer that this is not the case, the substitute
357 amendment explicitly states that all that is required under
358 the bill at the certification stage is the same rigorous
359 analysis the Supreme Court has required for certification
360 decisions. The term "rigorous analysis" is a term of art the
361 Supreme Court has repeatedly used to describe the large
362 variety of ways a Federal court can satisfy its obligations
363 regarding the review of evidence at the class certification
364 stage, well short of any kind of full-blown trial.

365 The hearing also included the argument that the bill's
366 definition of "injury," which included an effect on the
367 plaintiff's body or property, was too broad in that it could
368 be interpreted to include civil rights claims that did not
369 involve money damages, such as discriminatory policies that
370 could affect a person's body in some way that was not
371 associated with monetary losses. To provide further clarity,

372 the substitute amendment redefines the types of injuries the
373 bill covers to those seeking monetary relief for personal
374 injury or economic loss, terms that have much clearer legal
375 definitions. This change makes clear that civil rights cases
376 that do not involve monetary damages are excluded from the
377 scope of the bill, and I urge my colleagues to support the
378 amendment in the nature of a substitute.

379 I am pleased to recognize the gentleman from Michigan
380 for his comments on the substitute amendment.

381 Mr. Conyers. Thank you, Mr. Chairman. While I
382 appreciate that the bill was revised to narrow its scope,
383 many of the fundamental concerns that I have about it still
384 remain. And so, I regretfully must oppose the manager's
385 amendment to H.R. 1927.

386 The manager's amendment still requires that parties
387 seeking class actions and raising a wide range of claims to
388 prove that every potential class member suffered the same
389 type and scope of injury, and that they must do so at the
390 certification stage in the absence of full discovery. While
391 the bill's scope has been limited somewhat to class actions
392 seeking monetary relief for personal injury or economic loss,
393 such definition may still encompass many important claims,

394 including antitrust claims and employment discrimination
395 claims, among others. Also the showing required by the
396 manager's amendment, like the underlying bill, would still
397 raise costs to the point where most class actions would be
398 very difficult, if not impossible, to pursue.

399 Additionally, while the manager's amendment replaced the
400 required showing of the same extent of injury with same scope
401 of injury, I see this as a distinction without a difference.
402 Without a specific definition of "scope," a general
403 dictionary definition of "scope" would include "extent."

404 Now finally, the manager's amendment would still have
405 Congress circumvent the Rules Enabling Act process for
406 amending Federal Civil Procedure rules. And so, for those
407 cumulative reasons, members of the committee, I urge
408 opposition to the manager's amendment.

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

411 Chairman Goodlatte. Are there amendments to the
412 amendment?

413 Mr. Conyers. I have an amendment, Mr. Chairman.

414 Chairman Goodlatte. The clerk will report the amendment
415 offered by the gentleman from Michigan.

416 Ms. Williams. Amendment to the Goodlatte amendment in
417 the nature of a substitute to H.R. 1927, offered by Mr.
418 Conyers, line 5, strike --

419 Chairman Goodlatte. Without objection, the amendment is
420 considered as read.

421 [The amendment of Mr. Conyers follows:]

422

423 Chairman Goodlatte. And the gentleman is recognized for
424 5 minutes on his amendment.

425 Mr. Conyers. Thank you, Mr. Chairman. My colleagues,
426 my amendment would exempt from the legislation any claim for
427 monetary relief under Title 7 of the Civil Rights Act of
428 1964. Title 7 prohibits discrimination in employment on the
429 basis of race, color, sex, religion, or national origin.

430 During the subcommittee hearing on H.R. 1927, I
431 expressed concern about the effect this bill would have on
432 civil rights claims, a very important consideration for me.
433 In particular, I was concerned that the bill applied to all
434 class actions and that it restrictively defined "injury" to
435 mean the alleged impact of a defendant's action on a
436 plaintiff's body or property. Excuse me.

437 Although the manager's amendment that we consider today
438 deletes the narrow definition of "injury" from H.R. 1927 and
439 limits the bill's scope to class actions seeking monetary
440 relief for personal injury or economic loss, I remain
441 concerned that significant categories of civil rights cases
442 could still be effectively precluded by this bill.
443 Plaintiffs in discrimination cases that seek back pay and
444 other monetary relief for economic loss resulting from an

445 adverse employment decision frequently pursue class actions
446 because such employment cases tend to be the kind that are
447 well suited for class treatment. These cases often involve
448 multiple victims who were subjected to the same
449 discriminatory employment practice or policy.

450 While damages awarded pursuant to a single plaintiff may
451 not be large enough to deter the employer's alleged
452 wrongdoing, aggregate damages awarded to plaintiffs as the
453 result of a class action would have a deterrent effect.
454 Unfortunately, the manager's amendment would, like the bill
455 as introduced, still require class action plaintiffs to prove
456 at the certification stage that every potential class member
457 suffered the same type and the same scope of injury, a
458 requirement that is obviously virtually impossible and cost
459 prohibitive to meet.

460 This onerous requirement would effectively deter
461 employment discrimination plaintiffs from proceeding with any
462 class actions. Moreover, as noted in my opening statement,
463 Federal Rule of Civil Procedure 23 already imposes
464 significant constraints on the ability of plaintiffs to
465 pursue class actions. Indeed, it was in an employment
466 discrimination case, *Walmart v. Dukes*, that the Supreme Court

467 gave what, in my view, was a cramped interpretation of Rule
468 23's commonality requirement, making it harder for employees
469 claiming discrimination to proceed as a class. And now, this
470 legislation would make it nearly impossible for employees
471 claiming discrimination to proceed as a class.

472 Accordingly, I urge my colleagues to support my
473 amendment, and I yield back any time remaining, and thank the
474 chairman.

475 Chairman Goodlatte. I thank the gentleman, and I
476 recognize myself in opposition to the amendment. This
477 amendment would subject certain class members to unfair
478 treatment and should be rejected.

479 First, the substitute amendment only applied to proposed
480 classes seeking monetary relief for personal injury or
481 economic loss. Insofar as civil rights cases do not seek
482 monetary damages, they are completely unaffected by the
483 substitute and would proceed just as they do today. Indeed,
484 Rule 23(b) (2) expressly provides for civil rights cases in
485 which a class action can be certified when the defendant has
486 acted or refused to act on grounds that apply generally to
487 the class so that final injunctive relief or corresponding
488 declaratory relief is appropriate, respecting the class as a

489 whole.

490 Injunctive relief and declaratory relief, of course, are
491 not claims for monetary relief. However, if monetary damages
492 are sought by a proposed class, then, of course, they should
493 be subject to the procedures in the substitute amendment.
494 The purpose of a class action is to provide a fair means of
495 evaluating like claims, not to provide a means of
496 artificially inflating the size of a class to extort a larger
497 settlement value.

498 Exempting a subset of money damages cases from the bill,
499 as this amendment would do, would serve only to incentivize
500 the creation of artificially large classes to extort larger
501 and unfair settlements from innocent parties for the purposes
502 of disproportionately awarding uninjured parties. Any claims
503 seeking monetary relief for personal injury or economic loss
504 should be grouped in classes in which those who are most
505 injured receive the most compensation.

506 Why should civil rights claimants seeking money damages
507 under one specific statute be subject to a particularly
508 unfair treatment by being allowed to be forced into a class
509 action with other uninjured or minimally injured members,
510 only to see their own compensation reduced? That does a

511 disservice to those claimants, yet it is exactly what this
512 amendment would do, and I urge my colleagues to oppose the
513 amendment.

514 For what purpose does the gentleman from Louisiana seek
515 recognition?

516 Mr. Richmond. I move to strike the last word.

517 Chairman Goodlatte. The gentleman is recognized for 5
518 minutes.

519 Mr. Richmond. Mr. Chairman, as I look at the amendment
520 in the nature of a substitute and the amendment offered by
521 Mr. Conyers, which I support and I think makes this a more
522 workable bill, the question for me as I look at the bill is
523 that it is a solution looking for a problem. And the
524 language that starts to come out of this committee puts us
525 more in the position of being defenders of wrongdoers than
526 the defenders of people who are done harm in this country.

527 In just the cybersecurity bill that we marked up a few
528 weeks ago, the language that was inserted in there from this
529 committee was a short statute of limitations for the purpose
530 for wrongdoing by employees of the Federal government, that
531 they would get protection.

532 And now when I look at this, it is an impossible

533 standard. It says "each proposed class member," and we are
534 talking about some classes that have millions of people. And
535 I guess I am just wondering, is this just a bill to prevent
536 class actions? If so, let us say it, and let us just propose
537 a bill, and I am sure that your side could pass a bill that
538 says we are going to do away with class actions. But let's
539 not be artful and cute about it.

540 I mean, this standard is a standard that would be very,
541 very hard to reach when you say each proposed class member
542 suffered the same type. Then we go down and we insert
543 language that I do not know. I have practiced law. I do not
544 know if it is a term of art, a term of law, or a standard. I
545 have never seen it before. But "based on a rigorous analysis
546 of the evidence presented?" What is that?

547 I mean, the question becomes, you know, are we talking
548 about preponderance of the evidence? Are we talking about
549 more likely than not? I mean, I hate to say it, but it looks
550 like we are just making up stuff so that people do not get
551 compensated for injuries, and we are protecting these big
552 corporations.

553 Now, I will conclude with this. The basis of class
554 actions, which you mentioned, is so people that have suffered

555 common injuries can get some relief. But we are putting
556 ourselves in the position of judging what the damages,
557 whether they are significant enough so that people will go
558 out and try to get their wrong righted. So let's think of a
559 family in this country. Let's just assume it is one of the
560 cell phone companies overcharging, and they are owed \$250.
561 To some families, that \$250 means the world to them, but if
562 they cannot find a lawyer who can put a bunch of people in
563 that category, no lawyer, including myself, would file a
564 lawsuit and all of those things to right that wrong to that
565 family. But in these days, \$250 means an awful lot.

566 And I do not think we should bar people who are wronged
567 from getting relief, and I think that the more we make class
568 actions unattainable or put a barrier up, it just hurts
569 average working families who are trying to get ahead, who
570 somehow, some way were wronged by a corporation who through
571 negligence or on purpose decided that they would take the
572 cheaper route in terms of making their product or making sure
573 that their billing was accurate. And I just do not know if
574 this is the way to do it. I will never assume that you are
575 out to hurt the little person, so if I said that, I did not
576 mean that. But I think that this bill absolutely harms

577 average families and tilts the scales of justice far on the
578 side of corporations.

579 And with that, Mr. Chairman, I yield back.

580 Chairman Goodlatte. The question occurs on the
581 amendment offered by the gentleman from Michigan.

582 All those in favor, respond by saying aye.

583 Those opposed, no.

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

585 Mr. Conyers. Mr. Chairman, I ask for a record vote.

586 Chairman Goodlatte. A recorded vote is requested, and
587 the clerk will call the roll.

588 Ms. Williams. Mr. Goodlatte?

589 Chairman Goodlatte. No.

590 Ms. Williams. Mr. Goodlatte votes no.

591 Mr. Sensenbrenner?

592 [No response.]

593 Ms. Williams. Mr. Smith?

594 Mr. Smith. No.

595 Ms. Williams. Mr. Smith votes no.

596 Mr. Chabot?

597 [No response.]

598 Ms. Williams. Mr. Issa?

599 [No response.]
600 Ms. Williams. Mr. Forbes?
601 [No response.]
602 Ms. Williams. Mr. King?
603 Mr. King. No.
604 Mr. Williams. Mr. King votes no.
605 Mr. Franks?
606 Mr. Franks. No.
607 Ms. Williams. Mr. Franks votes no.
608 Mr. Gohmert?
609 [No response.]
610 Ms. Williams. Mr. Jordan?
611 [No response.]
612 Ms. Williams. Mr. Poe?
613 Mr. Poe. No.
614 Ms. Williams. Mr. Poe votes no.
615 Mr. Chaffetz?
616 [No response.]
617 Ms. Williams. Mr. Marino?
618 [No response.]
619 Ms. Williams. Mr. Gowdy?
620 [No response.]

621 Ms. Williams. Mr. Labrador?
622 [No response.]
623 Ms. Williams. Mr. Farenthold?
624 Mr. Farenthold. No.
625 Ms. Williams. Mr. Farenthold votes no.
626 Mr. Collins?
627 Mr. Collins. No.
628 Ms. Williams. Mr. Collins votes no.
629 Mr. DeSantis?
630 [No response.]
631 Ms. Williams. Ms. Walters?
632 [No response.]
633 Ms. Williams. Mr. Buck?
634 [No response.]
635 Ms. Williams. Mr. Ratcliffe?
636 Mr. Ratcliffe. No.
637 Ms. Williams. Mr. Ratcliffe votes no.
638 Mr. Trott?
639 Mr. Trott. No.
640 Ms. Williams. Mr. Trott votes no.
641 Mr. Bishop?
642 Mr. Bishop. No.

643 Ms. Williams. Mr. Bishop votes no.
644 Mr. Conyers?
645 Mr. Conyers. Aye.
646 Ms. Williams. Mr. Conyers votes aye.
647 Mr. Nadler?
648 Mr. Nadler. Aye.
649 Ms. Williams. Mr. Nadler votes aye.
650 Ms. Lofgren?
651 [No response.]
652 Ms. Williams. Ms. Jackson Lee?
653 Ms. Jackson Lee. Aye.
654 Ms. Williams. Ms. Jackson Lee votes aye.
655 Mr. Cohen?
656 Mr. Cohen. Aye.
657 Ms. Williams. Mr. Cohen votes aye.
658 Mr. Johnson?
659 Mr. Johnson. Aye.
660 Ms. Williams. Mr. Johnson votes aye.
661 Mr. Pierluisi?
662 [No response.]
663 Ms. Williams. Ms. Chu?
664 Ms. Chu. Aye.

665 Ms. Williams. Ms. Chu votes aye.
666 Mr. Deutch?
667 [No response.]
668 Ms. Williams. Mr. Gutierrez?
669 [No response.]
670 Ms. Williams. Ms. Bass?
671 [No response.]
672 Ms. Williams. Mr. Richmond?
673 Mr. Richmond. Aye.
674 Ms. Williams. Mr. Richmond votes aye.
675 Ms. DelBene?
676 Ms. DelBene. Aye.
677 Ms. Williams. Ms. DelBene votes aye.
678 Mr. Jeffries?
679 [No response.]
680 Ms. Williams. Mr. Cicilline?
681 Mr. Cicilline. Aye.
682 Ms. Williams. Mr. Cicilline votes aye.
683 Mr. Peters?
684 Mr. Peters. Aye.
685 Ms. Williams. Mr. Peters votes aye.
686 Chairman Goodlatte. The gentleman from Ohio?

687 Mr. Chabot. No.

688 Ms. Williams. Mr. Chabot votes no.

689 Chairman Goodlatte. The gentleman from Idaho?

690 Mr. Labrador. No.

691 Ms. Williams. Mr. Labrador votes no.

692 Chairman Goodlatte. The gentleman from Florida?

693 Mr. Deutch. Aye.

694 Ms. Williams. Mr. Deutch votes aye.

695 Chairman Goodlatte. The gentleman from Puerto Rico?

696 Mr. Pierluisi. Aye.

697 Ms. Williams. Mr. Pierluisi votes aye.

698 Chairman Goodlatte. The gentleman from South Carolina?

699 Mr. Gowdy. No.

700 Ms. Williams. Mr. Gowdy votes no.

701 Chairman Goodlatte. Has every member voted who wishes

702 to vote?

703 [No response.]

704 Chairman Goodlatte. The clerk will report.

705 Ms. Williams. Mr. Chairman, 12 members voted aye, 13

706 members voted no.

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

708 For what purpose does the gentlewoman from Texas seek

709 recognition?

710 Ms. Jackson Lee. Mr. Chairman, good morning. I have an
711 amendment at the desk.

712 Chairman Goodlatte. Good morning. The clerk will
713 report the report the amendment.

714 Ms. Williams. Amendment to the Goodlatte amendment in
715 the nature of a substitute to H.R. 1927, offered by Ms.
716 Jackson Lee, after line 17 --

717 Chairman Goodlatte. Without objection, the amendment
718 will be considered as read.

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

720

721 Chairman Goodlatte. And the gentlewoman is recognized
722 for 5 minutes on her amendment.

723 Ms. Jackson Lee. Mr. Chairman, thank you. Let me
724 comment that we have had an opportunity as senior members of
725 this committee to address this question before. Some of us
726 who have either been a member of the class action or seen
727 major legislation, the asbestos litigation, that was anchored
728 down and hunkered down in Federal courts in Texas, or class
729 actions dealing with medical devices impacting women, have
730 seen the value and the importance of class actions.

731 And as we look at the premise of this bill that would
732 specifically prohibit a Federal court from certifying any
733 proposed class actions seeking monetary relief for personal
734 injury or economic loss unless the party pursuing such class
735 certification demonstrates that each proposed class member
736 suffered an injury of the same type and scope as the injury
737 of the named class representatives.

738 Mr. Chairman, we are all of good will in this committee,
739 but I can assure you that we are looking at the rough side of
740 a mountain, imposing an impossible standard for innocent,
741 helpless, and needy individuals accessing the court of law,
742 which I believe is one of the strongest virtues of this

743 Nation. When you travel internationally or when you go to
744 the United Nations engaging in some deliberations, it is the
745 court system in America that raises the specter of human
746 rights and humanitarian posture that this Nation is noted
747 for.

748 So my amendment is a simple one. It conditions the
749 effective date on the Administrative Office study to the
750 House and Senate Judiciary Committees on the expected costs
751 of the bill on litigants and on Federal judicial resources.
752 H.R. 1927 if enacted would undermine a plaintiff's ability to
753 pursue many kinds of class actions, substantially reducing
754 the ability of people who have been harmed to seek justice.

755 Class actions are what they are. They are tens upon
756 tens, or hundreds upon hundreds, and sometimes thousands upon
757 thousands of individuals who are injured, who have no other
758 voice, and no way to march into the courthouse, and who are
759 not frivolous. But by many instances, they are impoverished,
760 they are confused, they are hurt at different levels. The
761 Jackson Lee amendment simply delays the effective date of the
762 bill until the completion of the Administrative Office of the
763 U.S. Court Study on potential harm to plaintiffs and the
764 judicial process that aids them. A simple process.

765 Class actions are a means of leveling the playing field
766 between large organizations, like corporations, on the one
767 hand and individuals or relatively small institutions or
768 businesses on the other hand. Class actions enable small
769 claimants to band together to fight back against deep
770 pocketed defendants in situations where individuals and
771 themselves may lack the means. This is not an attack on
772 large corporations or those who have the ability to go into
773 court. It is a question of evening the field of justice.

774 And for many who go back to the history books, there was
775 something called thalidomide that was utilized in the 1950s
776 that ultimately produced tragically deformed babies that
777 women used. And I would offer to say that those women were
778 in conditions that may not have allowed them individual cases
779 as horrific as the injury was, or maybe it was not to the
780 extent that their injury generated a child that was deformed,
781 although loved.

782 And I would argue to say that there are many heinous
783 instances yet to come that this class action would be useful,
784 and that we need to understand what H.R. 1927 is doing. In a
785 class action, one or more named plaintiffs stand up for the
786 entire group. Another advantage of a class action is that it

787 keeps the court system from getting clogged down. Come to
788 the Southern District. You wait a long time for a civil
789 case. This bill is particularly inappropriate at a time when
790 the rulemaking process established by Congress is currently
791 analyzing Federal class action practice and considering
792 possible amendments.

793 So I would just simply say to my colleagues this
794 amendment is in no way attempting to suggest that there is
795 not thoughtfulness. But it is to say what is our purpose
796 here in the Judiciary Committee? Is it to ensure that even
797 playing field that allows the tall, the in between, the
798 short, the rich, the impoverished, and the hard working to
799 walk into the halls of justice? I would imagine as this bill
800 is presently crafted to dig down into the deepness, Mr.
801 Chairman, of every single plaintiff, to suggest that their
802 injury is equal, and proving so is a mighty cross to bear.

803 I would ask my colleagues to support the Jackson Lee
804 amendment, and I would at this time, Mr. Chairman, graciously
805 yield back.

806 Chairman Goodlatte. The chair thanks the gentlewoman,
807 and recognizes himself in opposition to the amendment as it
808 would give the Administrative Office of the United States

809 Courts the power to veto this legislation, thereby making the
810 amendment effectively an amendment that guts the legislation.
811 Congress has never relinquished its constitutional authority
812 to create and alter the Rules of Federal Court Procedure, nor
813 should it. Congress has a duty to create and amend court
814 procedural rules to address pressing problems. Even
815 Congresses controlled by the Democratic Party have made clear
816 that Congress and not the Federal judiciary is the ultimate
817 arbiter of court rule changes as evidenced by various
818 Democrat Congress' rejection of court rules proposed by the
819 judiciary regarding privileges and the service of process.

820 So I urge my colleagues to oppose this amendment.

821 The question occurs on the amendment.

822 All those in favor of the amendment --

823 Ms. Jackson Lee. Mr. Chairman?

824 Mr. Nadler. Mr. Chairman?

825 Chairman Goodlatte. For what purpose does the gentleman
826 from New York seek recognition?

827 Mr. Nadler. Mr. Chairman, I rise in support of the
828 Jackson Lee amendment. If you read the bill, as Mr. Richmond
829 pointed out, its effect is largely speculative because its
830 language is speculative. The manager's amendment, for

831 instance, says that you cannot certify a class until you
832 affirmatively demonstrate that each proposed class member
833 suffered the same type and scope of injury as the named class
834 representative. The original bill said "same type and
835 extent." As obnoxious as that is, as destructive of ever
836 certifying a class action as that is, at least we know what
837 "extent" means. What does "scope" mean? All that would lead
838 to probably is more litigation.

839 But what does "scope" mean? You have to show that each
840 proposed class member suffered the same type and scope of
841 injury. I for one before I vote on this think it would be
842 very useful to know what we are talking about until the
843 Administrative Office of the Courts completes an assessment
844 of the likely financial and resource costs of this bill on
845 the courts. They can give us an estimate as to what the
846 result in increased litigation on the question of what does
847 "scope" mean might be.

848 The bill says that an order certifying a class shall
849 include a determination based on a rigorous analysis of the
850 evidence presented in the requirements in Subsection (a),
851 namely that every member of the class suffered the same type
852 and scope of injury as the named class representatives is

853 satisfied. Well, what does "rigorous analysis of the
854 evidence presented" mean? How are you going to determine
855 that? How much is it going to cost to determine that? How
856 much in court resources will it cost to determine that?

857 So aside from the underlying purpose and effect of the
858 bill, which basically makes class actions impossible because
859 how are you ever going to show, except for very small
860 classes. But with large classes where it is more necessary
861 to have a class action, how are you ever going to show that
862 every single member of the class suffers the same type and
863 scope? You would have to identify every single member of the
864 class, so you would have to then ascertain his or her
865 exposure in the given case, which defeats the whole purpose
866 of class actions. But aside from that, how much resources
867 are going to be taken up by the judiciary to do all this?

868 So the amendment by the gentlelady, which says that this
869 should not take effect until the Administrative Office of the
870 Courts completes an assessment of the financial and resource
871 costs of the bill on litigants and the courts, makes sense
872 because we are dealing with a bill that has an open-ended
873 requirement for possibly, I would think, huge, but some may
874 not so huge, but possibly huge resources by the courts.

875 Maybe we should appropriate more money for the courts to
876 enable it to effectuate this bill, but we do not really know
877 what we are talking about, and, therefore, the gentlelady's
878 amendment makes sense so we know what we are voting on, so we
879 know what expenses we are imposing on the court system and on
880 litigants.

881 Ms. Jackson Lee. Would the gentleman yield?

882 Mr. Nadler. So I support the gentlelady's amendment. I
883 urge its adoption, and I yield to her.

884 Ms. Jackson Lee. I thank the gentleman for his very
885 astute argument, and I respectfully say to the chairman quite
886 the contrary. My amendment does not gut the bill. What it
887 says is that all of us on this committee are concerned about
888 the access to justice and the resources, as the gentleman
889 from New York said, to be able to access justice.

890 We may find that the courts, the Administrative Office,
891 determines what modification this bill has the ability if the
892 doors of justice are not closed. They may give some
893 constructive instructions dealing with court resources. And
894 I think that in the spirit of the three branches of
895 government where we work constitutionally, but also in some
896 instances collaboratively, that this is a very important

897 aspect to this bill.

898 Again, I offer the point that this bill as presently
899 crafted, as the gentleman from New York has said, as the
900 ranking member, Mr. Conyers has said, causes you to dig into
901 the class and do a thermometer of each injury to even be able
902 to form the class and move forward. You have been injured,
903 but you only lost a finger. You got to lose an arm, two
904 legs, and, as the gentleman just got emotional and mentioned,
905 your life.

906 And we are only saying do not demonize class actions.
907 They are a pathway to justice. And I just hope my colleagues
908 would view this as not killing the bill, but enhancing the
909 bill. And I ask my colleagues to support the Jackson Lee
910 amendment. I yield back.

911 Chairman Goodlatte. For what purpose does the gentleman
912 from Michigan seek recognition?

913 Mr. Trott. I move to strike the last word.

914 Chairman Goodlatte. The gentleman is recognized for 5
915 minutes.

916 Mr. Trott. I oppose the amendment and support the
917 underlying bill. The question here is pretty simple, and we
918 can have a discussion about whether we need the

919 Administrative Offices of the U.S. Courts to assess cost.
920 But the real question is about fairness. Is it fair for
921 someone who has no damages to be a member in a class? Is it
922 fair to the defendant who has to come up with a pool of money
923 to pay money to folks who have not had any damages? Is it
924 fair to the other members of the class who have sustained
925 harm to have to have their amount of money watered down
926 because other people who have no damages receive money?

927 The gentleman from Louisiana a minute ago gave a very
928 compelling speech in support Ranking Member Conyers'
929 amendment, and he suggested that a cell phone company that
930 has overcharged its customers to the tune of \$250 will be
931 somehow protected by these changes proposed in this bill.
932 Let me take a little different version of that example and
933 suggest that let's say the class has members and consumers
934 who for whatever the reason did not suffer any damages from
935 the cell phone company, were not overcharged a single penny.
936 Is it fair for those folks to be part of the class? That is
937 the simple question we are addressing here today.

938 The bill bifurcates those claims so that folks that have
939 no harm or de minimis damages cannot be part of a class where
940 legitimate plaintiffs are entitled to money. I yield back.

941 Chairman Goodlatte. The question occurs on the
942 amendment offered by the gentlewoman from Texas.
943 All those in favor, respond by saying aye.
944 Those opposed, no.
945 In the opinion of the chair, the noes have it.
946 Ms. Jackson Lee. A recorded vote.
947 Chairman Goodlatte. A recorded vote is requested, and
948 the clerk will call the roll.
949 Ms. Williams. Mr. Goodlatte?
950 Chairman Goodlatte. No.
951 Ms. Williams. Mr. Goodlatte votes no.
952 Mr. Sensenbrenner?
953 [No response.]
954 Ms. Williams. Mr. Smith?
955 Mr. Smith. No.
956 Ms. Williams. Mr. Smith votes no.
957 Mr. Chabot?
958 Mr. Chabot. No.
959 Ms. Williams. Mr. Chabot votes no.
960 Mr. Issa?
961 [No response.]
962 Ms. Williams. Mr. Forbes?

963 Mr. Forbes. No.

964 Ms. Williams. Mr. Forbes votes no.

965 Mr. King?

966 Mr. King. No.

967 Mr. Williams. Mr. King votes no.

968 Mr. Franks?

969 Mr. Franks. No.

970 Ms. Williams. Mr. Franks votes no.

971 Mr. Gohmert?

972 [No response.]

973 Ms. Williams. Mr. Jordan?

974 Mr. Jordan. No.

975 Ms. Williams. Mr. Jordan votes no.

976 Mr. Poe?

977 [No response.]

978 Ms. Williams. Mr. Chaffetz?

979 [No response.]

980 Ms. Williams. Mr. Marino?

981 [No response.]

982 Ms. Williams. Mr. Gowdy?

983 [No response.]

984 Ms. Williams. Mr. Labrador?

985 [No response.]

986 Ms. Williams. Mr. Farenthold?

987 Mr. Farenthold. No.

988 Ms. Williams. Mr. Farenthold votes no.

989 Mr. Collins?

990 Mr. Collins. No.

991 Ms. Williams. Mr. Collins votes no.

992 Mr. DeSantis?

993 Mr. DeSantis. No.

994 Ms. Williams. Mr. DeSantis votes no.

995 Ms. Walters?

996 [No response.]

997 Ms. Williams. Mr. Buck?

998 [No response.]

999 Ms. Williams. Mr. Ratcliffe?

1000 Mr. Ratcliffe. No.

1001 Ms. Williams. Mr. Ratcliffe votes no.

1002 Mr. Trott?

1003 Mr. Trott. No.

1004 Ms. Williams. Mr. Trott votes no.

1005 Mr. Bishop?

1006 Mr. Bishop. No.

1007 Ms. Williams. Mr. Bishop votes no.
1008 Mr. Conyers?
1009 Mr. Conyers. Aye.
1010 Ms. Williams. Mr. Conyers votes aye.
1011 Mr. Nadler?
1012 Mr. Nadler. Aye.
1013 Ms. Williams. Mr. Nadler votes aye.
1014 Ms. Lofgren?
1015 [No response.]
1016 Ms. Williams. Ms. Jackson Lee?
1017 Ms. Jackson Lee. Aye.
1018 Ms. Williams. Ms. Jackson Lee votes aye.
1019 Mr. Cohen?
1020 Mr. Cohen. Aye.
1021 Ms. Williams. Mr. Cohen votes aye.
1022 Mr. Johnson?
1023 Mr. Johnson. Aye.
1024 Ms. Williams. Mr. Johnson votes aye.
1025 Mr. Pierluisi?
1026 Mr. Pierluisi. Aye.
1027 Ms. Williams. Mr. Pierluisi votes aye.
1028 Ms. Chu?

1029 Ms. Chu. Aye.

1030 Ms. Williams. Ms. Chu votes aye.

1031 Mr. Deutch?

1032 Mr. Deutch. Aye.

1033 Ms. Williams. Mr. Deutch votes aye.

1034 Mr. Gutierrez?

1035 [No response.]

1036 Ms. Williams. Ms. Bass?

1037 [No response.]

1038 Ms. Williams. Mr. Richmond?

1039 Mr. Richmond. Aye.

1040 Ms. Williams. Mr. Richmond votes aye.

1041 Ms. DelBene?

1042 Ms. DelBene. Aye.

1043 Ms. Williams. Ms. DelBene votes aye.

1044 Mr. Jeffries?

1045 Mr. Jeffries. Aye.

1046 Ms. Williams. Mr. Jeffries votes aye.

1047 Mr. Cicilline?

1048 Mr. Cicilline. Aye.

1049 Ms. Williams. Mr. Cicilline votes aye.

1050 Mr. Peters?

1051 Mr. Peters. Aye.

1052 Ms. Williams. Mr. Peters votes aye.

1053 Chairman Goodlatte. The gentleman from South Carolina?

1054 Mr. Gowdy. No.

1055 Ms. Williams. Mr. Gowdy votes no.

1056 Chairman Goodlatte. The gentleman from Texas?

1057 Mr. Poe. No.

1058 Ms. Williams. Mr. Poe votes no.

1059 Chairman Goodlatte. Has every member voted who wishes

1060 to vote?

1061 [No response.]

1062 Chairman Goodlatte. The clerk will report.

1063 Ms. Williams. Mr. Chairman, 13 members voted aye, 15

1064 members voted no.

1065 Chairman Goodlatte. And the amendment is not agreed to.

1066 For what purpose does the gentleman from Tennessee seek

1067 recognition?

1068 Mr. Cohen. Thank you, Mr. Chairman. Strike the word or

1069 words and start with economic loss from line 7 of the

1070 manager's amendment.

1071 Chairman Goodlatte. The clerk will report the amendment

1072 offered by the gentleman from Tennessee.

1073 Ms. Williams. Amendment to the Goodlatte amendment in
1074 the nature of a substitute to H.R. 1927, offered by Mr.
1075 Cohen, line 7, strike --

1076 Chairman Goodlatte. Without objection, the amendment is
1077 considered as read or is read.

1078 [The amendment of Mr. Cohen follows:]

1079

1080 Chairman Goodlatte. And the gentleman from Tennessee is
1081 recognized for 5 minutes on his amendment.

1082 Mr. Cohen. Thank you, Mr. Chair. This amendment would
1083 change the bill's limitations on class certification, and
1084 would only apply to putative class actions raising personal
1085 injury claims. So it is limited.

1086 Normally class members are identified after a class is
1087 certified. This is the purpose of having a class
1088 representative to represent the absent class members who are
1089 identified later when they receive notice of the class
1090 action. By requiring the class action plaintiffs asserting
1091 personal injury or imminent loss claims through the same type
1092 and scope of injury as a condition of class certification,
1093 before a trial on the merits, the manager's amendment would
1094 make many class actions almost impossible to pursue. It
1095 would undermine the whole point of having the class action
1096 device available.

1097 This is particularly true of claims alleging economic
1098 loss or identifying injured class members before the class
1099 has been certified is impossible. And where it is almost
1100 impossible to prove that every class member has suffered the
1101 same injury to the same degree. The manager's amendment also

1102 would undermine the goals of class actions to promote
1103 judicial efficiency and access to the courts for those claims
1104 that are too small or too burdensome to pursue on an
1105 individual basis.

1106 For personal injury actions, which are often the result
1107 of a mass accident, it much easier to identify the injured
1108 plaintiffs early in the process and easier to assess whether
1109 they have suffered the same type and scope of injury. It is
1110 appropriate, therefore, to remove "economic loss" and limit
1111 the bill's scope to personal injury action where it would be
1112 relatively easier to identify each class member prior to
1113 certification.

1114 It is evident that the ultimate goal of this legislation
1115 is unfortunately to end the use of class actions for long-
1116 range and potential claims. And my amendment will not fully
1117 cure this basic concern with the bill, but will in this
1118 important particular instance. Nonetheless, if this
1119 amendment is adopted, it will help to mitigate the concern to
1120 some degree, and I would urge the committee to adopt it. I
1121 yield back the balance of my time.

1122 Chairman Goodlatte. The chair thanks the gentleman, but
1123 recognizes himself in opposition to the amendment. The

1124 substitute defines the scope of class actions covered by the
1125 bill as those involving claims for monetary relief for
1126 personal injury or economic loss. Personal injury has a
1127 specific meaning. *Black's Law Dictionary* defines it as "in a
1128 negligence action, any harm caused to a person, such as a
1129 broken bone, a cut, or a bruise, bodily injury." But
1130 monetary relief can be sought in not more than just personal
1131 injury cases.

1132 "Economic loss" is defined by *Black's Law Dictionary* as
1133 "a monetary loss, such as lost wages or lost profits." In a
1134 products liability suit, economic loss includes the cost of
1135 repair or replacement of defective property, as well as
1136 commercial loss for the property's inadequate value, and
1137 consequent loss of profits or use. These sorts of claims
1138 should, of course, also be covered under the bill as they are
1139 claims for monetary relief, and those with significantly
1140 greater claims for such relief should have their own day in
1141 court and the chance to obtain the most compensation for
1142 their economic losses.

1143 And accordingly, I urge my colleagues to oppose the
1144 amendment.

1145 Mr. Conyers. Mr. Chairman?

1146 Chairman Goodlatte. For what purpose does the gentleman
1147 from Michigan seek recognition?

1148 Mr. Conyers. I rise in support of the Cohen amendment.

1149 Chairman Goodlatte. The gentleman is recognized for 5
1150 minutes.

1151 Mr. Conyers. I would like to urge my colleagues to
1152 support the amendment because it strikes at a very troubling
1153 part of a flawed bill. It does not make it perfect, but it
1154 improves it substantially.

1155 The manager's amendment prohibits the certification of
1156 any proposed class for actions of monetary relief for
1157 personal injury or economic loss unless the party seeking to
1158 maintain such a class action affirmatively demonstrates that
1159 each proposed class member suffered the same type and scope
1160 of injury as the named representative or representatives.
1161 This requirement puts the cart before the horse by requiring
1162 this showing at the certification stage, and the whole point
1163 of certification is to then allow the class representative to
1164 identify all other class members. Yet the bill would have
1165 plaintiffs identify class members and then prove damages at
1166 that initial stage.

1167 In addition, it would be impossible to show that every

1168 class member suffered the same scope of injury, and this is
1169 especially true when the injury is economic loss of some
1170 sort. And so, the Cohen amendment addresses this substantial
1171 flaw with the bill by striking "economic loss" from the
1172 bill's scope. And I urge the members of the committee to
1173 carefully support this amendment.

1174 And I thank the chairman and yield back my time.

1175 Chairman Goodlatte. The question occurs on the
1176 amendment offered by the gentleman from Tennessee.

1177 All those in favor, respond by saying aye.

1178 Those opposed, no.

1179 In the opinion of the chair, the noes have it, and the
1180 amendment is not agreed to.

1181 Mr. Cohen. Roll call.

1182 Chairman Goodlatte. A recorded vote is requested, and
1183 the clerk will call the roll.

1184 Ms. Williams. Mr. Goodlatte?

1185 Chairman Goodlatte. No.

1186 Ms. Williams. Mr. Goodlatte votes no.

1187 Mr. Sensenbrenner?

1188 [No response.]

1189 Ms. Williams. Mr. Smith?

1190 Mr. Smith. No.

1191 Ms. Williams. Mr. Smith votes no.

1192 Mr. Chabot?

1193 Mr. Chabot. No.

1194 Ms. Williams. Mr. Chabot votes no.

1195 Mr. Issa?

1196 Mr. Issa. No.

1197 Ms. Williams. Mr. Issa votes no.

1198 Mr. Forbes?

1199 Mr. Forbes. No.

1200 Ms. Williams. Mr. Forbes votes no.

1201 Mr. King?

1202 Mr. King. No.

1203 Mr. Williams. Mr. King votes no.

1204 Mr. Franks?

1205 Mr. Franks. No.

1206 Ms. Williams. Mr. Franks votes no.

1207 Mr. Gohmert?

1208 [No response.]

1209 Ms. Williams. Mr. Jordan?

1210 [No response.]

1211 Ms. Williams. Mr. Poe?

1212 [No response.]

1213 Ms. Williams. Mr. Chaffetz?

1214 [No response.]

1215 Ms. Williams. Mr. Marino?

1216 [No response.]

1217 Ms. Williams. Mr. Gowdy?

1218 [No response.]

1219 Ms. Williams. Mr. Labrador?

1220 [No response.]

1221 Ms. Williams. Mr. Farenthold?

1222 Mr. Farenthold. No.

1223 Ms. Williams. Mr. Farenthold votes no.

1224 Mr. Collins?

1225 Mr. Collins. No.

1226 Ms. Williams. Mr. Collins votes no.

1227 Mr. DeSantis?

1228 [No response.]

1229 Ms. Williams. Ms. Walters?

1230 [No response.]

1231 Ms. Williams. Mr. Buck?

1232 [No response.]

1233 Ms. Williams. Mr. Ratcliffe?

1234 Mr. Ratcliffe. No.

1235 Ms. Williams. Mr. Ratcliffe votes no.

1236 Mr. Trott?

1237 Mr. Trott. No.

1238 Ms. Williams. Mr. Trott votes no.

1239 Mr. Bishop?

1240 Mr. Bishop. No.

1241 Ms. Williams. Mr. Bishop votes no.

1242 Mr. Conyers?

1243 Mr. Conyers. Aye.

1244 Ms. Williams. Mr. Conyers votes aye.

1245 Mr. Nadler?

1246 Mr. Nadler. Aye.

1247 Ms. Williams. Mr. Nadler votes aye.

1248 Ms. Lofgren?

1249 [No response.]

1250 Ms. Williams. Ms. Jackson Lee?

1251 Ms. Jackson Lee. Aye.

1252 Ms. Williams. Ms. Jackson Lee votes aye.

1253 Mr. Cohen?

1254 Mr. Cohen. Aye.

1255 Ms. Williams. Mr. Cohen votes aye.

1256 Mr. Johnson?

1257 Mr. Johnson. Aye.

1258 Ms. Williams. Mr. Johnson votes aye.

1259 Mr. Pierluisi?

1260 Mr. Pierluisi. Aye.

1261 Ms. Williams. Mr. Pierluisi votes aye.

1262 Ms. Chu?

1263 Ms. Chu. Aye.

1264 Ms. Williams. Ms. Chu votes aye.

1265 Mr. Deutch?

1266 Mr. Deutch. Aye.

1267 Ms. Williams. Mr. Deutch votes aye.

1268 Mr. Gutierrez?

1269 [No response.]

1270 Ms. Williams. Ms. Bass?

1271 [No response.]

1272 Ms. Williams. Mr. Richmond?

1273 Mr. Richmond. Aye.

1274 Ms. Williams. Mr. Richmond votes aye.

1275 Ms. DelBene?

1276 Ms. DelBene. Aye.

1277 Ms. Williams. Ms. DelBene votes aye.

1278 Mr. Jeffries?

1279 Mr. Jeffries. Aye.

1280 Ms. Williams. Mr. Jeffries votes aye.

1281 Mr. Cicilline?

1282 Mr. Cicilline. Aye.

1283 Ms. Williams. Mr. Cicilline votes aye.

1284 Mr. Peters?

1285 [No response.]

1286 Chairman Goodlatte. The gentleman from South Carolina?

1287 Mr. Gowdy. No.

1288 Ms. Williams. Mr. Gowdy votes no.

1289 Chairman Goodlatte. The gentleman from Florida?

1290 Mr. DeSantis. No.

1291 Ms. Williams. Mr. DeSantis votes no.

1292 Chairman Goodlatte. The gentleman from Texas?

1293 Mr. Poe. No.

1294 Ms. Williams. Mr. Poe votes no.

1295 Chairman Goodlatte. Has every member voted who wishes

1296 to vote?

1297 The gentleman from California?

1298 Mr. Peters. Yes.

1299 Ms. Williams. Mr. Peters votes yes.

1300 Chairman Goodlatte. The clerk will report.

1301 Ms. Williams. Mr. Chairman, 13 members voted aye, 15

1302 members voted no.

1303 Chairman Goodlatte. And the amendment is not agreed to.

1304 For what purpose does the gentleman from Georgia seek

1305 recognition?

1306 Mr. Johnson. I have an amendment at the desk.

1307 Chairman Goodlatte. The clerk will report the

1308 amendment.

1309 Ms. Williams. Amendment to the Goodlatte amendment in

1310 the nature of a substitute to H.R. 1927, offered by Mr.

1311 Johnson, line 9, strike --

1312 Chairman Goodlatte. Without objection, the amendment

1313 will be considered as read.

1314 [The amendment of Mr. Johnson follows:]

1315

1316 Chairman Goodlatte. And the gentleman is recognized for
1317 5 minutes on his amendment.

1318 Mr. Johnson. Thank you, Mr. Chairman. My amendment
1319 would remove the language "and scope" from the chairman's
1320 substitute amendment before the committee today.

1321 Class action suits are beneficial to consumers because
1322 they give a potentially large group of individuals, who are
1323 injured in the same manner by the same defendants, the
1324 ability to hold wrongdoers accountable. Class actions make
1325 it economically feasible for these plaintiffs to seek
1326 justice. Effectively, the scope language unfairly requires
1327 plaintiffs to prove the merits of their case twice, once at
1328 the certification stage and once during the trial on the
1329 merits of their case.

1330 This language would eviscerate many claims for economic
1331 damages, including claims for defective products, fraud,
1332 price fixing, civil RICO, antitrust violations, mass consumer
1333 breach of warranty, business loss claims, and basic lost
1334 wages. Since it is impossible for large groups of
1335 individuals and businesses to prove their harm, which may be
1336 highly individualized, is exactly the same as the harm
1337 sustained by the named plaintiff.

1338 The owner of a vehicle recalled with a steering defect
1339 should not have to first be in a catastrophic accident prior
1340 to eligibility for certification in a class of plaintiffs in
1341 a product defect suit. Pursuing a class action requires
1342 extensive discovery and motion practice, which mandate a
1343 significant expenditure of time and resources. The scope
1344 language contained in the substitute amendment of H.R. 1927
1345 would only make these procedural hurdles even more burdensome
1346 and potentially cost prohibitive.

1347 The scope language should be stricken, and I would ask
1348 for my colleagues to support this amendment. And with that,
1349 I yield back.

1350 Chairman Goodlatte. The chair thanks the gentleman and
1351 recognizes himself in opposition to the amendment, which also
1352 would have a gutting effect on the bill.

1353 The bill requires that class action members share the
1354 same scope of injury, which is intended to prevent the
1355 certification of grossly overbroad class actions that include
1356 members with wildly varying injuries. The dictionary and
1357 ordinary meaning of "scope" is "the range of a relevant
1358 subject." Judges are certainly capable of determining the
1359 relevant range of injuries that would make class members

1360 suitably typical of one another.

1361 The bill as introduced used the word "extent" instead of
1362 "scope." My manager's amendment uses the word "scope" to
1363 make clear that all class members need not have suffered the
1364 same type of injury to the exact same extent, but they must
1365 still demonstrate they have suffered the same range of injury
1366 as determined by the court. And I urge my colleagues to
1367 oppose the amendment.

1368 For what purpose does the gentleman from Michigan seek
1369 recognition?

1370 Mr. Conyers. Mr. Chairman, I seek to support the
1371 amendment.

1372 Chairman Goodlatte. The gentleman is recognized for 5
1373 minutes.

1374 Mr. Conyers. I congratulate my colleague, Mr. Johnson,
1375 for this amendment because it strikes a vague requirement
1376 that could be interpreted and applied in such a way as to
1377 make class actions almost impossible to certify. The
1378 original language of this bill required, among other things,
1379 that a party seeking class certification prove that every
1380 potential class member suffered the same extent of injury.
1381 The manager's amendment replaced "extent" with "scope," but

1382 as far as I can tell, this is a distinction without a
1383 difference. *Webster* may have some other comments to add to
1384 that.

1385 We heard from a coalition of civil rights, consumer
1386 rights, antitrust organizations, and labor groups that it is
1387 almost impossible to show that every class member suffered
1388 the same extent or scope of injury. And so, this is an
1389 absurd result that this amendment avoids and makes the bill
1390 less objectionable.

1391 I urge my colleagues to support the Johnson amendment,
1392 and I return the balance of my time.

1393 Chairman Goodlatte. The question occurs on the
1394 amendment offered by the gentleman from Georgia.

1395 All those in favor, respond by saying aye.

1396 Those opposed, no.

1397 In the opinion of the chair, the noes have it, and the
1398 amendment is not agreed to.

1399 Mr. Johnson. Mr. Chairman, I would ask for a recorded
1400 vote.

1401 Chairman Goodlatte. A recorded vote is requested, and
1402 the clerk will call the roll.

1403 Ms. Williams. Mr. Goodlatte?

1404 Chairman Goodlatte. No.

1405 Ms. Williams. Mr. Goodlatte votes no.

1406 Mr. Sensenbrenner?

1407 [No response.]

1408 Ms. Williams. Mr. Smith?

1409 Mr. Smith. No.

1410 Ms. Williams. Mr. Smith votes no.

1411 Mr. Chabot?

1412 Mr. Chabot. No.

1413 Ms. Williams. Mr. Chabot votes no.

1414 Mr. Issa?

1415 Mr. Issa. No.

1416 Ms. Williams. Mr. Issa votes no.

1417 Mr. Forbes?

1418 Mr. Forbes. No.

1419 Ms. Williams. Mr. Forbes votes no.

1420 Mr. King?

1421 Mr. King. No.

1422 Mr. Williams. Mr. King votes no.

1423 Mr. Franks?

1424 [No response.]

1425 Ms. Williams. Mr. Gohmert?

1426 [No response.]

1427 Ms. Williams. Mr. Jordan?

1428 [No response.]

1429 Ms. Williams. Mr. Poe?

1430 [No response.]

1431 Ms. Williams. Mr. Chaffetz?

1432 [No response.]

1433 Ms. Williams. Mr. Marino?

1434 [No response.]

1435 Ms. Williams. Mr. Gowdy?

1436 [No response.]

1437 Ms. Williams. Mr. Labrador?

1438 [No response.]

1439 Ms. Williams. Mr. Farenthold?

1440 [No response.]

1441 Ms. Williams. Mr. Collins?

1442 Mr. Collins. No.

1443 Ms. Williams. Mr. Collins votes no.

1444 Mr. DeSantis?

1445 [No response.]

1446 Ms. Williams. Ms. Walters?

1447 Ms. Walters. No.

1448 Ms. Williams. Ms. Walters votes no.
1449 Mr. Buck?
1450 [No response.]
1451 Ms. Williams. Mr. Ratcliffe?
1452 Mr. Ratcliffe. No.
1453 Ms. Williams. Mr. Ratcliffe votes no.
1454 Mr. Trott?
1455 Mr. Trott. No.
1456 Ms. Williams. Mr. Trott votes no.
1457 Mr. Bishop?
1458 Mr. Bishop. No.
1459 Ms. Williams. Mr. Bishop votes no.
1460 Mr. Conyers?
1461 Mr. Conyers. Aye.
1462 Ms. Williams. Mr. Conyers votes aye.
1463 Mr. Nadler?
1464 Mr. Nadler. Aye.
1465 Ms. Williams. Mr. Nadler votes aye.
1466 Ms. Lofgren?
1467 [No response.]
1468 Ms. Williams. Ms. Jackson Lee?
1469 [No response.]

1470 Ms. Williams. Mr. Cohen?
1471 Mr. Cohen. Aye.
1472 Ms. Williams. Mr. Cohen votes aye.
1473 Mr. Johnson?
1474 Mr. Johnson. Aye.
1475 Ms. Williams. Mr. Johnson votes aye.
1476 Mr. Pierluisi?
1477 Mr. Pierluisi. Aye.
1478 Ms. Williams. Mr. Pierluisi votes aye.
1479 Ms. Chu?
1480 Ms. Chu. Aye.
1481 Ms. Williams. Ms. Chu votes aye.
1482 Mr. Deutch?
1483 [No response.]
1484 Ms. Williams. Mr. Gutierrez?
1485 [No response.]
1486 Ms. Williams. Ms. Bass?
1487 [No response.]
1488 Ms. Williams. Mr. Richmond?
1489 Mr. Richmond. Aye.
1490 Ms. Williams. Mr. Richmond votes aye.
1491 Ms. DelBene?

1492 Ms. DelBene. Aye.

1493 Ms. Williams. Ms. DelBene votes aye.

1494 Mr. Jeffries?

1495 Mr. Jeffries. Aye.

1496 Ms. Williams. Mr. Jeffries votes aye.

1497 Mr. Cicilline?

1498 Mr. Cicilline. Aye.

1499 Ms. Williams. Mr. Cicilline votes aye.

1500 Mr. Peters?

1501 Mr. Peters. Aye.

1502 Ms. Williams. Mr. Peters votes aye.

1503 Chairman Goodlatte. The gentleman from Utah?

1504 Mr. Chaffetz. No.

1505 Ms. Williams. Mr. Chaffetz votes no.

1506 Chairman Goodlatte. The gentleman from South Carolina?

1507 Mr. Gowdy. No.

1508 Ms. Williams. Mr. Gowdy votes no.

1509 Chairman Goodlatte. The gentleman from Florida?

1510 Mr. DeSantis. No.

1511 Ms. Williams. Mr. DeSantis votes no.

1512 Chairman Goodlatte. The gentleman from Texas?

1513 Mr. Farenthold. No.

1514 Ms. Williams. Mr. Farenthold votes no.

1515 Chairman Goodlatte. The gentleman from Texas, Mr. Poe?

1516 Mr. Poe. No.

1517 Ms. Williams. Mr. Poe votes no.

1518 Chairman Goodlatte. The gentleman from Arizona?

1519 Mr. Franks. No.

1520 Ms. Williams. Mr. Franks votes no.

1521 Chairman Goodlatte. Has very member voted who wishes to

1522 vote?

1523 [No response.]

1524 Chairman Goodlatte. The clerk will report.

1525 Ms. Williams. Mr. Chairman, 11 members voted aye, 17

1526 members voted no.

1527 Chairman Goodlatte. And the amendment is not agreed to.

1528 For what purpose does the gentleman from Georgia seek

1529 recognition?

1530 Mr. Johnson. Mr. Chairman, I have an amendment at the

1531 desk.

1532 Chairman Goodlatte. The clerk will report Johnson

1533 Amendment 003.

1534 Ms. Williams. Amendment to the Goodlatte amendment in

1535 the nature of a substitute to H.R. 1927, offered by Mr.

1536 Johnson, line 5, strike --

1537 Chairman Goodlatte. Without objection, the amendment is

1538 considered as read.

1539 [The amendment of Mr. Johnson follows:]

1540

1541 Chairman Goodlatte. And the gentleman is recognized for
1542 5 minutes on his amendment.

1543 Mr. Johnson. Thank you, Mr. Chairman. My second
1544 amendment would remove antitrust class action suits from the
1545 jurisdiction of this proposed legislation. As the ranking
1546 member of the Subcommittee on Regulatory Reform, Commercial,
1547 and Antitrust Law, I have observed how private class action
1548 suits successfully augment the Department of Justice's civil
1549 enforcement efforts under Federal competition laws.

1550 In recent years, the Antitrust Division of the
1551 Department of Justice has uncovered huge international price
1552 fixing and bid rigging schemes. Part suppliers have raised
1553 the price of cars, computers, and other electronics by
1554 millions of dollars, victimizing dealers and consumers alike.

1555 Antitrust conspiracy steal billions of dollars from
1556 American consumers and businesses every year. Class actions
1557 provide virtually the only way to compensate small businesses
1558 that are victims of antitrust violations. Simply put,
1559 without class actions, businesses cannot recover their stolen
1560 money.

1561 The legislation before the committee today would deny
1562 recourse to these consumers who rely on private class action

1563 lawsuits to recoup their losses. By removing antitrust suits
1564 from the jurisdiction of this legislation we continue to
1565 provide a deterrent for bad actors in the global marketplace,
1566 and ensure that victims of antitrust crimes are able to
1567 become whole again.

1568 I would ask for everyone's support for this amendment,
1569 and with that I will yield back.

1570 Chairman Goodlatte. The chair thanks the gentleman and
1571 recognizes himself in opposition to the amendment. There is
1572 no good policy reason to exempt antitrust actions from the
1573 application of the fair principle embedded in this bill,
1574 namely the class actions for monetary relief, which, of
1575 course, include antitrust cases, should include class members
1576 who share the same type and scope of injury. Indeed this
1577 amendment would subject certain class members to unfair
1578 treatment.

1579 The purpose of a class action is to provide a fair means
1580 of evaluating like claims, not to provide a means of
1581 artificially inflating the size of a class to extort a larger
1582 settlement value. Exempting a subset of money damage cases
1583 from the bill as this amendment would do would serve only to
1584 incentivize the creation of artificially large classes to

1585 extort larger and unfair settlements from innocent parties
1586 for the purpose of disproportionately awarding uninjured
1587 parties, and, in the process, increasing the prices of goods
1588 and services for everyone.

1589 Any claims seeking monetary relief for personal injury
1590 or economic loss should be grouped in classes in which those
1591 who are most injured receive the most compensation. Why
1592 should antitrust claimants seeking monetary damages be
1593 subject to particularly unfair treatment by being allowed to
1594 be forced into a class action with other injured or minimally
1595 injured members only to see their own compensation reduced?
1596 That does a disservice to those elements, yet that is exactly
1597 what this amendment would do, and I urge my colleague to
1598 oppose the amendment.

1599 Mr. Conyers. Mr. Chairman?

1600 Chairman Goodlatte. For what purpose does the gentleman
1601 from Michigan seek recognition?

1602 Mr. Conyers. I would like to rise in support of the
1603 Johnson amendment.

1604 Chairman Goodlatte. The gentleman is recognized for 5
1605 minutes.

1606 Mr. Conyers. Thank you. The amendment is a good one

1607 because it creates an exception from the manager's amendment
1608 for claims under the Federal and State antitrust laws.
1609 Private antitrust actions are important to our antitrust
1610 enforcement regime. While the government enforces antitrust
1611 laws, Congress also created a private right of action to
1612 enhance such enforcement action and efforts that victims of
1613 egregious anti-competitive conduct are compensated for the
1614 harm that they have suffered.

1615 Among its numerous flaws, H.R. 1927 undermines this
1616 longstanding and effective antitrust enforcement regime by
1617 making it very difficult to pursue antitrust class actions.
1618 Private antitrust actions depend on the class action device
1619 because individual damages may not be sufficient to justify
1620 filing an individual lawsuit and may not be enough to deter
1621 corporate wrongdoing. Yet H.R. 1927's limitations on class
1622 certifications would stifle the ability to pursue an
1623 antitrust class action. It is almost impossible to show that
1624 every victim of anti-competitive conduct suffered damages in
1625 the exact same dollar amount.

1626 This amendment mitigates the bill's harm to consumers
1627 and small businesses, and I urge my colleagues on the
1628 committee to support its adoption. And I yield back the

1629 balance of my time and thank the chairman.

1630 Chairman Goodlatte. The chair thanks the gentleman.

1631 The question occurs on the amendment offered by the

1632 gentleman from Georgia.

1633 All those in favor, respond by saying aye.

1634 Those opposed, no.

1635 In the opinion of the chair, the noes have it, and the

1636 amendment is not agreed to.

1637 Mr. Johnson. I ask for a recorded vote.

1638 Chairman Goodlatte. A recorded vote is requested, and

1639 the clerk will call the roll.

1640 Ms. Williams. Mr. Goodlatte?

1641 Chairman Goodlatte. No.

1642 Ms. Williams. Mr. Goodlatte votes no.

1643 Mr. Sensenbrenner?

1644 [No response.]

1645 Ms. Williams. Mr. Smith?

1646 Mr. Smith. No.

1647 Ms. Williams. Mr. Smith votes no.

1648 Mr. Chabot?

1649 Mr. Chabot. No.

1650 Ms. Williams. Mr. Chabot votes no.

1651 Mr. Issa?

1652 Mr. Issa. No.

1653 Ms. Williams. Mr. Issa votes no.

1654 Mr. Forbes?

1655 Mr. Forbes. No.

1656 Ms. Williams. Mr. Forbes votes no.

1657 Mr. King?

1658 Mr. King. No.

1659 Mr. Williams. Mr. King votes no.

1660 Mr. Franks?

1661 Mr. Franks. No.

1662 Ms. Williams. Mr. Franks votes no.

1663 Mr. Gohmert?

1664 [No response.]

1665 Ms. Williams. Mr. Jordan?

1666 [No response.]

1667 Ms. Williams. Mr. Poe?

1668 Mr. Poe. No.

1669 Ms. Williams. Mr. Poe votes no.

1670 Mr. Chaffetz?

1671 [No response.]

1672 Ms. Williams. Mr. Marino?

1673 [No response.]

1674 Ms. Williams. Mr. Gowdy?

1675 [No response.]

1676 Ms. Williams. Mr. Labrador?

1677 [No response.]

1678 Ms. Williams. Mr. Farenthold?

1679 [No response.]

1680 Ms. Williams. Mr. Collins?

1681 Mr. Collins. No.

1682 Ms. Williams. Mr. Collins votes no.

1683 Mr. DeSantis?

1684 [No response.]

1685 Ms. Williams. Ms. Walters?

1686 Ms. Walters. No.

1687 Ms. Williams. Ms. Walters votes no.

1688 Mr. Buck?

1689 [No response.]

1690 Ms. Williams. Mr. Ratcliffe?

1691 Mr. Ratcliffe. No.

1692 Ms. Williams. Mr. Ratcliffe votes no.

1693 Mr. Trott?

1694 Mr. Trott. No.

1695 Ms. Williams. Mr. Trott votes no.
1696 Mr. Bishop?
1697 Mr. Bishop. No.
1698 Ms. Williams. Mr. Bishop votes no.
1699 Mr. Conyers?
1700 Mr. Conyers. Aye.
1701 Ms. Williams. Mr. Conyers votes aye.
1702 Mr. Nadler?
1703 Mr. Nadler. Aye.
1704 Ms. Williams. Mr. Nadler votes aye.
1705 Ms. Lofgren?
1706 [No response.]
1707 Ms. Williams. Ms. Jackson Lee?
1708 [No response.]
1709 Ms. Williams. Mr. Cohen?
1710 Mr. Cohen. Aye.
1711 Ms. Williams. Mr. Cohen votes aye.
1712 Mr. Johnson?
1713 Mr. Johnson. Aye.
1714 Ms. Williams. Mr. Johnson votes aye.
1715 Mr. Pierluisi?
1716 Mr. Pierluisi. Aye.

1717 Ms. Williams. Mr. Pierluisi votes aye.
1718 Ms. Chu?
1719 Ms. Chu. Aye.
1720 Ms. Williams. Ms. Chu votes aye.
1721 Mr. Deutch?
1722 [No response.]
1723 Ms. Williams. Mr. Gutierrez?
1724 [No response.]
1725 Ms. Williams. Ms. Bass?
1726 [No response.]
1727 Ms. Williams. Mr. Richmond?
1728 [No response.]
1729 Ms. Williams. Ms. DelBene?
1730 Ms. DelBene. Aye.
1731 Ms. Williams. Ms. DelBene votes aye.
1732 Mr. Jeffries?
1733 Mr. Jeffries. Aye.
1734 Ms. Williams. Mr. Jeffries votes aye.
1735 Mr. Cicilline?
1736 Mr. Cicilline. Aye.
1737 Ms. Williams. Mr. Cicilline votes aye.
1738 Mr. Peters?

1739 Mr. Peters. Aye.

1740 Ms. Williams. Mr. Peters votes aye.

1741 Chairman Goodlatte. The gentleman from Florida?

1742 Mr. DeSantis. No.

1743 Ms. Williams. Mr. DeSantis votes no.

1744 Chairman Goodlatte. The gentleman from Texas?

1745 Mr. Farenthold. No.

1746 Ms. Williams. Mr. Farenthold votes no.

1747 Chairman Goodlatte. Has every member voted who wishes

1748 to vote?

1749 [No response.]

1750 Chairman Goodlatte. The clerk will report.

1751 Ms. Williams. Mr. Chairman, 10 members voted aye, 15

1752 members voted no.

1753 Chairman Goodlatte. And the amendment is not agreed to.

1754 For what purpose does the gentleman from Rhode Island

1755 seek recognition?

1756 Mr. Cicilline. Mr. Chairman, I have an amendment at the

1757 desk.

1758 Chairman Goodlatte. The clerk will report the

1759 amendment.

1760 Ms. Williams. Amendment to the Goodlatte amendment in

1761 the nature of a substitute to H.R. 1927, offered by Mr.

1762 Cicilline, after line 17, insert --

1763 Chairman Goodlatte. Without objection, the amendment is

1764 considered as read.

1765 [The amendment of Mr. Cicilline follows:]

1766

1767 Chairman Goodlatte. And the gentleman is recognized for
1768 5 minutes on his amendment.

1769 Mr. Cicilline. Thank you, Mr. Chairman. My amendment
1770 would postpone the enactment of this legislation until after
1771 the Judicial Conference has approved the changes that it
1772 imposes on class action certification. It would preserve the
1773 role of the conference under the Rules Enabling Act as the
1774 policymaking arm of the Federal judiciary tasked with
1775 amending the Federal Rules of Civil Procedure. And it would
1776 provide the conference with time to complete its ongoing
1777 review of Rule 23 and determine whether such drastic changes
1778 are truly needed.

1779 This bill imposes new requirements on class action
1780 litigation. It is based upon the false premise that the
1781 system is particularly vulnerable to abuse in its current
1782 form, and that the judiciary cannot evaluate or police itself
1783 and such litigation effectively. However, I believe that
1784 this bill is a solution to a problem that does not exist, and
1785 only serves to circumvent the expert guidance of the Judicial
1786 Conference.

1787 The empirical evidence illustrates that the courts are
1788 already aggressively screening class action filings and

1789 filtering out those without merit. For instance, a 2008
1790 study by the Federal Judicial Center found that only 25
1791 percent of diversity actions filed as class actions resulted
1792 in class certification motions. 9 percent settled, and none
1793 of them went to trial. And I ask unanimous consent, Mr.
1794 Chairman, that this report entitled "Impact of Class Action
1795 Fairness Act on the Federal Courts" be included in the
1796 record.

1797 Chairman Goodlatte. The chair thanks the gentleman and
1798 recognizes himself in opposition to the amendment.

1799 Mr. Cicilline. Mr. Chairman, I just asked that this be
1800 included in the record.

1801 Chairman Goodlatte. Oh, I am sorry. Without objection,
1802 the document will be made a part of the record.

1803 [The information follows:]

1804

1805 Mr. Cicilline. Thank you, Mr. Chairman.

1806 Chairman Goodlatte. The gentleman may continue under
1807 his time.

1808 Mr. Cicilline. Moreover, consistent with its authority
1809 under the Rules Enabling Act, the Judicial Conference is
1810 already conducting a comprehensive review of Rule 23 to
1811 address any flaws that may exist within the current system.
1812 The Rule 23 Subcommittee released preliminary proposals for
1813 reform in March, and it is believed that the final changes
1814 will be announced within the calendar year.

1815 My amendment would allow the conference to complete this
1816 review before we hastily enact this legislation. It will
1817 provide us with the wisdom of decades on the bench and
1818 valuable firsthand knowledge of class action litigation.
1819 Otherwise, their expertise and insights will simply will be
1820 cast aside and preempted by this legislation.

1821 I urge my colleagues to support this amendment and
1822 preserve the role of the Judicial Conference, and ensure that
1823 all Americans will benefit from their experience and wisdom
1824 on this important issue. And with that, I yield back the
1825 remainder of my time.

1826 Chairman Goodlatte. Now the chair thanks the gentleman

1827 and recognizes himself in opposition to the amendment, which
1828 is very similar to the amendment offered by the gentlewoman
1829 from Texas, Ms. Jackson Lee, as it effectively gives the
1830 Federal courts veto power over this legislation, in her case,
1831 the Administrative Office of the U.S. Courts, in this case
1832 the Judicial Conference.

1833 The Judicial Conference has written that it opposes any
1834 Federal legislation that is "inconsistent with the
1835 longstanding Judicial Conference policy opposing direct
1836 amendment of the Federal rules by legislation." The Judicial
1837 Conference's policy quite literally is to oppose any change
1838 proposed by members who are the duly elected representatives
1839 of the Nation's citizenry.

1840 But Congress has never relinquished its constitutional
1841 authority to create and alter the rules of Federal Court
1842 Procedure. Rather, Congress has a duty to create and amend
1843 court procedural rules to address pressing problems. And for
1844 that reason, I oppose the amendment and hope my colleagues
1845 will join me in doing so.

1846 For what purpose does the gentleman from Michigan seek
1847 recognition?

1848 Mr. Conyers. Thank you, Mr. Chairman. I rise in

1849 support of the Cicilline amendment.

1850 Chairman Goodlatte. The gentleman is recognized for 5
1851 minutes.

1852 Mr. Conyers. Thank you. This amendment conditions the
1853 bill's effective date on the Judicial Conference of the
1854 United States approving the changes to class action
1855 certification made by the bill. I support the amendment
1856 because of the many concerns that are raised by H.R. 1927.
1857 One is that is it circumvents through the thorough rules
1858 enabling process that entrusts the Federal courts with the
1859 reviewing an amendment to the Federal Rules of Civil
1860 Procedure. It avoids it.

1861 We know that the Judicial Conference of the United
1862 States, the Federal judiciary's policymaking arm, we all know
1863 that, has opposed previous attempts by Congress to directly
1864 amend a civil procedure rule such as this measure, H.R. 1927,
1865 would effectively do. Moreover, we know that the Judicial
1866 Conference is currently reviewing the class action rules and
1867 considering potential amendments to those rules. That is
1868 going on right now.

1869 We should allow that process to continue, and Congress
1870 will subsequently have the opportunity to review any of the

1871 Conference's expert recommendations. But if we are to
1872 proceed with this bill, at least we should have the
1873 judiciary's expert approval. And so, for those reasons I
1874 urge support of Cicilline Amendment Number 4.

1875 Chairman Goodlatte. Would the gentleman yield?

1876 Mr. Conyers. Yes, I would be delighted to yield to the
1877 chairman.

1878 Chairman Goodlatte. I thank the gentleman for yielding.
1879 I just want to clarify one point with regard to the
1880 gentleman's observations, which are accurate in that a
1881 subcommittee of the Judicial Conference is considering
1882 changes to Rule 23. But the record is clear that even though
1883 the problems addressed by this bill have been raised by some
1884 of the commenters in that process, no consideration is
1885 presently being given any proposed changes to address those
1886 issues.

1887 I think, therefore, it is time for the Congress to act.
1888 And in the interest of fairness, and in the interest of
1889 seeing that those who are comparably injured get the form and
1890 compensation they deserve, I would say that the Congress
1891 needs to act, notwithstanding the attention being paid by
1892 that subcommittee.

1893 Mr. Conyers. Well, I thank the gentleman and I yield
1894 back the balance of my time.

1895 Chairman Goodlatte. The chair thanks the gentleman.

1896 The question occurs on the amendment offered by the
1897 gentleman from Rhode Island.

1898 All those in favor, respond by saying aye.

1899 All those opposed, no.

1900 In the opinion of the chair, the noes have it, and the
1901 amendment is not agreed to.

1902 Mr. Cicilline. Mr. Chairman, I ask for a recorded vote.

1903 Chairman Goodlatte. A recorded vote is requested, and
1904 the clerk will call the roll.

1905 Ms. Williams. Mr. Goodlatte?

1906 Chairman Goodlatte. No.

1907 Ms. Williams. Mr. Goodlatte votes no.

1908 Mr. Sensenbrenner?

1909 [No response.]

1910 Ms. Williams. Mr. Smith?

1911 Mr. Smith. No.

1912 Ms. Williams. Mr. Smith votes no.

1913 Mr. Chabot?

1914 Mr. Chabot. No.

1915 Ms. Williams. Mr. Chabot votes no.
1916 Mr. Issa?
1917 Mr. Issa. No.
1918 Ms. Williams. Mr. Issa votes no.
1919 Mr. Forbes?
1920 Mr. Forbes. No.
1921 Ms. Williams. Mr. Forbes votes no.
1922 Mr. King?
1923 Mr. King. No.
1924 Mr. Williams. Mr. King votes no.
1925 Mr. Franks?
1926 Mr. Franks. No.
1927 Ms. Williams. Mr. Franks votes no.
1928 Mr. Gohmert?
1929 [No response.]
1930 Ms. Williams. Mr. Jordan?
1931 [No response.]
1932 Ms. Williams. Mr. Poe?
1933 Mr. Poe. No.
1934 Ms. Williams. Mr. Poe votes no.
1935 Mr. Chaffetz?
1936 [No response.]

1937 Ms. Williams. Mr. Marino?
1938 [No response.]
1939 Ms. Williams. Mr. Gowdy?
1940 [No response.]
1941 Ms. Williams. Mr. Labrador?
1942 [No response.]
1943 Ms. Williams. Mr. Farenthold?
1944 [No response.]
1945 Ms. Williams. Mr. Collins?
1946 Mr. Collins. No.
1947 Ms. Williams. Mr. Collins votes no.
1948 Mr. DeSantis?
1949 [No response.]
1950 Ms. Williams. Ms. Walters?
1951 Ms. Walters. No.
1952 Ms. Williams. Ms. Walters votes no.
1953 Mr. Buck?
1954 [No response.]
1955 Ms. Williams. Mr. Ratcliffe?
1956 Mr. Ratcliffe. No.
1957 Ms. Williams. Mr. Ratcliffe votes no.
1958 Mr. Trott?

1959 Mr. Trott. No.

1960 Ms. Williams. Mr. Trott votes no.

1961 Mr. Bishop?

1962 Mr. Bishop. No.

1963 Ms. Williams. Mr. Bishop votes no.

1964 Mr. Conyers?

1965 Mr. Conyers. Aye.

1966 Ms. Williams. Mr. Conyers votes aye.

1967 Mr. Nadler?

1968 Mr. Nadler. Aye.

1969 Ms. Williams. Mr. Nadler votes aye.

1970 Ms. Lofgren?

1971 [No response.]

1972 Ms. Williams. Ms. Jackson Lee?

1973 [No response.]

1974 Ms. Williams. Mr. Cohen?

1975 Mr. Cohen. Aye.

1976 Ms. Williams. Mr. Cohen votes aye.

1977 Mr. Johnson?

1978 Mr. Johnson. Aye.

1979 Ms. Williams. Mr. Johnson votes aye.

1980 Mr. Pierluisi?

1981 Mr. Pierluisi. Aye.

1982 Ms. Williams. Mr. Pierluisi votes aye.

1983 Ms. Chu?

1984 Ms. Chu. Aye.

1985 Ms. Williams. Ms. Chu votes aye.

1986 Mr. Deutch?

1987 [No response.]

1988 Ms. Williams. Mr. Gutierrez?

1989 [No response.]

1990 Ms. Williams. Ms. Bass?

1991 [No response.]

1992 Ms. Williams. Mr. Richmond?

1993 [No response.]

1994 Ms. Williams. Ms. DelBene?

1995 Ms. DelBene. Aye.

1996 Ms. Williams. Ms. DelBene votes aye.

1997 Mr. Jeffries?

1998 Mr. Jeffries. Aye.

1999 Ms. Williams. Mr. Jeffries votes aye.

2000 Mr. Cicilline?

2001 Mr. Cicilline. Aye.

2002 Ms. Williams. Mr. Cicilline votes aye.

2003 Mr. Peters?

2004 Mr. Peters. Aye.

2005 Ms. Williams. Mr. Peters votes aye.

2006 Chairman Goodlatte. The gentleman from Florida?

2007 Mr. DeSantis. No.

2008 Ms. Williams. Mr. DeSantis votes no.

2009 Chairman Goodlatte. The gentleman from South Carolina?

2010 Mr. Gowdy. No.

2011 Ms. Williams. Mr. Gowdy votes no.

2012 Chairman Goodlatte. Has every member voted who wishes

2013 to vote?

2014 [No response.]

2015 Chairman Goodlatte. The clerk will report.

2016 Ms. Williams. Mr. Chairman, 10 members voted aye, 15

2017 members voted no.

2018 Chairman Goodlatte. And the amendment is not agreed to.

2019 Are there further amendments to H.R. 1927?

2020 [No response.]

2021 Chairman Goodlatte. A reporting quorum being present,

2022 the question is on the amendment in the nature of a

2023 substitute to H.R. 1927.

2024 Those in favor will respond by saying aye.

2025 Those opposed, no.

2026 In the opinion of the chair, the ayes have it, and the
2027 amendment is agreed to.

2028 Mr. Issa. May we have a recorded vote on that?

2029 Chairman Goodlatte. We are going to go to final
2030 passage. Do you want to vote on the amendment in the nature
2031 of a substitute, which will be the same vote, I believe.

2032 So the question now occurs on the motion to report the
2033 bill, H.R. 1927, as amended, favorably to the House.

2034 Those in favor will say aye.

2035 Those opposed, no.

2036 In the opinion of the chair, the ayes have it, and the
2037 bill, as amended, is ordered reported favorably.

2038 Mr. Conyers. May I have a recorded vote, Mr. Chairman?

2039 Chairman Goodlatte. A recorded vote is requested by the
2040 gentleman from Michigan and the gentleman from California,
2041 and the clerk will call the roll.

2042 Ms. Williams. Mr. Goodlatte?

2043 Chairman Goodlatte. Aye.

2044 Ms. Williams. Mr. Goodlatte votes aye.

2045 Mr. Sensenbrenner?

2046 [No response.]

2047 Ms. Williams. Mr. Smith?
2048 Mr. Smith. Aye.
2049 Ms. Williams. Mr. Smith votes aye.
2050 Mr. Chabot?
2051 Mr. Chabot. Aye.
2052 Ms. Williams. Mr. Chabot votes aye.
2053 Mr. Issa?
2054 Mr. Issa. Aye.
2055 Ms. Williams. Mr. Issa votes aye.
2056 Mr. Forbes?
2057 Mr. Forbes. Aye.
2058 Ms. Williams. Mr. Forbes votes aye.
2059 Mr. King?
2060 Mr. King. Aye.
2061 Ms. Williams. Mr. King votes aye.
2062 Mr. Franks?
2063 Mr. Franks. Aye.
2064 Ms. Williams. Mr. Franks votes aye.
2065 Mr. Gohmert?
2066 [No response.]
2067 Ms. Williams. Mr. Jordan?
2068 [No response.]

2069 Ms. Williams. Mr. Poe?
2070 Mr. Poe. Aye.
2071 Ms. Williams. Mr. Poe votes aye.
2072 Mr. Chaffetz?
2073 [No response.]
2074 Ms. Williams. Mr. Marino?
2075 [No response.]
2076 Ms. Williams. Mr. Gowdy?
2077 Mr. Gowdy. Yes.
2078 Ms. Williams. Mr. Gowdy votes yes.
2079 Mr. Labrador?
2080 [No response.]
2081 Ms. Williams. Mr. Farenthold?
2082 [No response.]
2083 Ms. Williams. Mr. Collins?
2084 Mr. Collins. Yes.
2085 Ms. Williams. Mr. Collins votes yes.
2086 Mr. DeSantis?
2087 Mr. DeSantis. Aye.
2088 Ms. Williams. Mr. DeSantis votes aye.
2089 Ms. Walters?
2090 Ms. Walters. Aye.

2091 Ms. Williams. Ms. Walters votes aye.
2092 Mr. Buck?
2093 [No response.]
2094 Ms. Williams. Mr. Ratcliffe?
2095 Mr. Ratcliffe. Yes.
2096 Ms. Williams. Mr. Ratcliffe votes yes.
2097 Mr. Trott?
2098 Mr. Trott. Aye.
2099 Ms. Williams. Mr. Trott votes aye.
2100 Mr. Bishop?
2101 Mr. Bishop. Aye.
2102 Ms. Williams. Mr. Bishop votes aye.
2103 Mr. Conyers?
2104 Mr. Conyers. No.
2105 Ms. Williams. Mr. Conyers votes no.
2106 Mr. Nadler?
2107 Mr. Nadler. No.
2108 Ms. Williams. Mr. Nadler votes no.
2109 Ms. Lofgren?
2110 [No response.]
2111 Ms. Williams. Ms. Jackson Lee?
2112 [No response.]

2113 Ms. Williams. Mr. Cohen?
2114 Mr. Cohen. No.
2115 Ms. Williams. Mr. Cohen votes no.
2116 Mr. Johnson?
2117 Mr. Johnson. No.
2118 Ms. Williams. Mr. Johnson votes no.
2119 Mr. Pierluisi?
2120 Mr. Pierluisi. No.
2121 Ms. Williams. Mr. Pierluisi votes no.
2122 Ms. Chu?
2123 Ms. Chu. No.
2124 Ms. Williams. Ms. Chu votes no.
2125 Mr. Deutch?
2126 [No response.]
2127 Ms. Williams. Mr. Gutierrez?
2128 [No response.]
2129 Ms. Williams. Ms. Bass?
2130 [No response.]
2131 Ms. Williams. Mr. Richmond?
2132 [No response.]
2133 Ms. Williams. Ms. DelBene?
2134 Ms. DelBene. No.

2135 Ms. Williams. Ms. DelBene votes no.
2136 Mr. Jeffries?
2137 Mr. Jeffries. No.
2138 Ms. Williams. Mr. Jeffries votes no.
2139 Mr. Cicilline?
2140 Mr. Cicilline. No.
2141 Ms. Williams. Mr. Cicilline votes no.
2142 Mr. Peters?
2143 Mr. Peters. No.
2144 Ms. Williams. Mr. Peters votes no.
2145 Chairman Goodlatte. Has every member voted who wishes
2146 to vote?
2147 [No response.]
2148 Chairman Goodlatte. The clerk will report.
2149 Ms. Williams. Mr. Chairman, 15 members voted aye, 10
2150 members voted no.
2151 Chairman Goodlatte. The ayes have it, and the bill, as
2152 amended, is ordered reported favorably to the House. Members
2153 will have 2 days to submit views.
2154 [The information follows:]
2155

2156 Chairman Goodlatte. Without objection, the bill will be
2157 reported as a single amendment in the nature of a substitute
2158 incorporating any adopted amendments. And staff is
2159 authorized to make technical and conforming changes.

2160 This concludes our business for today. I thank all the
2161 members for attending, and the meeting is adjourned.

2162 [Whereupon, at 12:04 p.m., the committee was adjourned.]