RPTR BRYANT

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MARKUP OF:

H.R. 720, THE LAWSUIT ABUSE REDUCTION ACT OF 2017; AND

H.R. 725, THE INNOCENT PARTY PROTECTION ACT

Thursday, February 2, 2017

House of Representatives,

Committee on the Judiciary,

Washington, D.C.

The committee met, pursuant to call, at 10:28 a.m., in Room 2141, Rayburn House Office Building, Hon. Bob Goodlatte [chairman of the committee] presiding.

Present: Representatives Goodlatte, Sensenbrenner, Smith, Chabot, Issa, King, Franks, Jordan, Poe, Chaffetz, Marino, Gowdy, Labrador, Collins, DeSantis, Buck, Ratcliffe, Bishop, Roby, Gaetz, Johnson of Louisiana, Biggs, Conyers, Nadler, Lofgren, Jackson Lee, Cohen, Johnson of Georgia, Chu, Deutch, Gutierrez, Bass, Jeffries, Cicilline, Swalwell, Lieu, Raskin, and Jayapal.

Staff Present: Shelley Husband, Staff Director; Branden Ritchie, Deputy Staff Director; Zach Somers, Parliamentarian and General Counsel; Paul Taylor, Chief Counsel, Subcommittee on the Constitution and Civil Justice; Dan Huff, Counsel, Subcommittee on Regulatory Reform, Commercial and Antitrust Law; Alley Adcock, Clerk; Perry Apelbaum, Minority Chief Counsel and Staff Director; Danielle Brown, Minority Parliamentarian and Chief Legislative Counsel; Susan Jensen, Minority Senior Counsel; James Park, Minority Chief Counsel, Subcommittee on the Constitution and Civil Justice; David Shahoulian, Minority Chief Counsel, Subcommittee on Immigration and Border Security; Slade Bond, Minority Chief Counsel, Subcommittee on Regulatory Reform; David Greengrass, Minority Counsel; Rosalind Jackson, Minority Professional Staff; and Veronica Eligan, Minority Professional Staff.

Chairman Goodlatte. Good morning. The Judiciary Committee will come to order. And, without objection, the chair is authorized to declare a recess at any time.

Pursuant to notice, I now call up H.R. 720 for purposes of markup and move that the committee report the bill favorably to the House.

The clerk will report the bill.

Ms. Adcock. H.R. 720, to amend Rule 11 of the Federal Rules of Civil Procedure to improve attorney accountability, and for other purposes.

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

[The bill follows:]

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

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

H.R. 720, the Lawsuit Abuse Reduction Act, would restore mandatory sanctions for frivolous lawsuits filed in Federal court.

Many Americans may not realize it, but, today, under what is called Rule 11 of the Federal Rules of Civil Procedure, there is no requirement that those who file frivolous lawsuits pay for the unjustified legal costs they impose on their victims, even when those victims prove to a judge the lawsuit was without any basis in law or fact.

As a result, the current Rule 11 goes largely unenforced because the victims of frivolous lawsuits have little incentive to pursue additional litigation to have the case declared frivolous when there is no guarantee of compensation at the end of the day.

H.R. 720 would finally provide light at the end of the tunnel for the victims of frivolous lawsuits by requiring sanctions against the filers of frivolous lawsuits, sanctions which include paying back victims for the full cost of their reasonable expenses incurred as a direct result of the Rule 11 violation, including attorneys' fees.

The bill also strikes the current provisions of Rule 11 that allow lawyers to avoid sanctions for making frivolous claims and demands by simply withdrawing them within 21 days. This change eliminates the free pass lawyers now have to file frivolous lawsuits in Federal court.

The current lack of mandatory sanctions leads to the regular filing of lawsuits that are baseless, so many frivolous pleadings

currently go under the radar because the lack of mandatory sanctions for frivolous filings forces victims of frivolous lawsuits to roll over and settle the case because doing that is less expensive than litigating the case to a victory in court.

Correspondence written by someone filing a frivolous lawsuit, which became public, concisely illustrates how the current lack of mandatory sanctions for filing frivolous lawsuits leads to legal extortion. That correspondence to a victim of a frivolous lawsuit states, quote, "I really don't care what the law allows you to do. It is a more practical issue. Do you want to send your attorney a check every month indefinitely as I continue to pursue this?", end quote.

Under the Lawsuit Abuse Reduction Act, those who file frivolous lawsuits would no longer be able to get off scot-free, and, therefore, they couldn't get away with those sorts of extortionary threats any longer.

The victims of lawsuit abuse are not just those who are actually sued; rather, we all suffer under a system in which innocent Americans everywhere live under the constant fear of a potentially bankrupting, frivolous lawsuit.

As the former chairman of the Home Depot company has written, quote, "An unpredictable legal system casts a shadow over every plan and investment. It is devastating for startup costs. The cost of even one ill-timed abusive lawsuit can bankrupt a growing company and cost hundreds of thousands of jobs," end quote.

The prevalence of frivolous lawsuits in America is reflected in

the absurd warning labels companies must place on their products to limit their exposure to frivolous claims. A 5-inch brass fishing lure with three hooks is labeled, "Harmful if swallowed." A household iron contains the warning, "Never iron clothes while they are being worn." A piece of ovenware warns, "Ovenware will get hot when used in oven."

And here are just a couple of examples of frivolous lawsuits brought in Federal court where judges failed to award compensation to the victims.

A man sued a television network for $2.5 million because he said a show it aired raised his blood pressure. When the network publicized his frivolous lawsuit, he demanded the court make them stop. Although the court found the case frivolous, not only did it not compensate the victim, it granted the man who filed the frivolous lawsuit an exemption from even paying the ordinary court filing fees.

In another case, lawyers filed a case against a parent, claiming the parent's discipline of their child violated the Eighth Amendment of the Constitution, which prohibits cruel and unusual punishment by the government, not private citizens. When one of the lawyers even admitted signing the complaint without reading it, the court found the case frivolous but awarded the victim only about a quarter of its legal costs because Rule 11 currently doesn't require that a victim's legal costs be paid in full. The Lawsuit Abuse Reduction Act would change that.

I thank the former chairman of the Judiciary Committee, Lamar Smith, for introducing this simple, commonsense legislation that would

do so much to prevent lawsuit abuse and restore Americans' confidence in the legal system. I urge my colleagues to support it today, and I oppose all weakening amendments.

It is now my pleasure to recognize the ranking member of the Judiciary Committee, the gentleman from Michigan, Mr. Conyers, for his opening statement.

Mr. Conyers. Thank you, Chairman Goodlatte. That was a very amusing presentation you made there.

And I want my colleagues to know that H.R. 720 is, in ways, unacceptable because it will chill the advancement of civil rights claims and increase exponentially the volume and cost of litigation in the Federal courts.

And these concerns are not hypothetical. H.R. 720 restores the deeply flawed version of Rule 11 in effect from 1983 to 1993 in the following ways: first, requiring mandatory sanctions for even unintentional violations, rather than leaving the imposition of sanctions to the court's discretion, as is currently the case. Also, it is flawed because of eliminating the current rule's 21-day safe harbor provision, which allows the offending party to correct or withdraw allegedly offending submissions.

Simply put, H.R. 720 will have a disastrous impact on the administration of justice. To begin with, the bill will chill legitimate civil rights litigation. And that is my major concern here.

Civil rights cases often raise novel legal arguments, which made such cases particularly susceptible to sanction motions under the 1983

rule. For example, a Federal Judicial Center study found that the incidence of Rule 11 motions under the 1983 rule was higher in civil rights cases than in some other type of cases. Another study showed that, while civil rights cases comprised about 11 percent of Federal cases filed, more than 22 percent of the cases in which sanctions had been imposed were civil rights cases -- 22 percent. Under the 1983 rule, civil rights cases were clearly disadvantaged, yet H.R. 720 would restore this problematic regime.

Although the bill's rule of construction is a welcome acknowledgement of this problem, it does nothing to prevent the defendant from using Rule 11 as a weapon to discourage civil rights plaintiffs, who will be paying additional legal fees to keep a case going on and on and on. Even a landmark case like Brown v. the Board of Education would have been delayed or may not even have been pursued to its conclusion had H.R. 720's change to Rule 11 been in effect at that time. Certainly, the legal arguments in the case were novel and not based on then-existing law.

In addition, H.R. 720 will substantially increase the amount, costs, and intensity of civil litigation and create more grounds for unnecessary delay and harassment in the courtroom. We don't want that; we don't need that.

By making sanctions mandatory and having no safe harbor, the 1983 rule spawned a cottage industry of Rule 11 litigation. Each party had a financial incentive to tie up the other in Rule 11 proceedings. It was almost two tracks of cases going on at the same time. We heard

testimony on a previous version of this bill that almost one-third of all Federal lawsuits during the decade that the 1983 rule was in effect were burdened by such satellite litigation, where the parties tried the underlying case and then put each side's counsel on trial.

Finally, H.R. 720 strips the judiciary of its discretion and independence. H.R. 720 overrides judicial independence by removing the discretion that Rule 11 currently gives judges in determining whether to impose sanctions and what type of sanctions would be most appropriate. It also circumvents the painstakingly thorough Rules Enabling Act process, a process that Congress established more than 80 years ago.

So, my colleagues, for all of these reasons, I urge you to join me in opposing this highly problematic legislation.

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

Chairman Goodlatte. The chair thanks the gentleman.

And it is now my pleasure to recognize the sponsor of the bill, the gentleman from Texas, Mr. Smith, for his opening statement.

Mr. Smith. Thank you, Mr. Chairman. And also, Mr. Chairman, thank you for bringing this bill up to markup.

The Lawsuit Abuse Reduction Act, known as LARA, is just one page long, but it would prevent the filing of thousands of frivolous lawsuits in Federal courts. These absurd lawsuits cost many families their savings and often ruin their reputations.

Frivolous lawsuits have been filed against a weather channel for failing to accurately predict storms, against television shows people

claimed were too scary, against a university that awarded a low grade, and against a high school that dropped a member of the track team.

Lawyers who bring these cases have everything to gain and nothing to lose under current rules, which permit plaintiffs' lawyers to file frivolous suits without any penalty. Meanwhile, defendants are often faced with years of litigation and substantial attorneys' fees.

Prior to 1993, it was mandatory for judges to impose sanctions, such as orders to pay for the other side's legal expenses, when lawyers filed frivolous lawsuits. Then the Civil Rules Advisory Committee, an obscure branch of the courts, made penalties optional. This needs to be reversed by Congress.

LARA requires lawyers who file frivolous lawsuits to pay the attorneys' fees and court costs of innocent defendants. Further, LARA expressly provides that no changes, quote, "shall be construed to bar or impede the assertion or development of new claims, defenses, or remedies under Federal, State, or local laws, including civil rights laws, or under the Constitution of the United States," end quote. Consequently, civil rights law would not be affected in any way by LARA.

Opponents argue that reinstating mandatory sanctions for frivolous lawsuits impedes judicial discretion, but this is obviously false. Under LARA, judges retain the discretion to determine whether or not a claim is frivolous. If a judge determines that a claim is frivolous, then they must award sanctions. This ensures that victims of frivolous lawsuits do, in fact, obtain compensation. But the decision to determine whether a claim is frivolous or not remains with

the judge.

This legislation also is necessary to discourage abusive filings, which further strain court dockets with lengthy backlogs.

The American people are looking for solutions to obvious lawsuit abuse. LARA restores accountability to our legal system by reinstating sanctions for attorneys who are found by a judge to have filed frivolous lawsuits. Though it will not stop all lawsuit abuse, LARA encourages attorneys to think twice before making an innocent party's life miserable.

I thank the chairman for taking up this much-needed legislation. And I ask my colleagues who oppose frivolous lawsuits and who want to protect innocent Americans from false charges to support this bill.

I will yield back.

Chairman Goodlatte. The chair thanks the gentleman and now would like to recognize the gentleman from Tennessee, Mr. Cohen, the ranking member of the subcommittee, for his opening statement.

Mr. Cohen. Thank you, Mr. Chairman.

H.R. 720, the Lawsuit Abuse Reduction Act of 2017, after 2016, 2015, 2014, 2013, ad nauseam, is a deeply problematic bill that will threaten to do more harm than good if enacted.

It is particularly disconcerting that, at a time when our Nation appears to be in the midst of several constitutional crises due to the actions of the Trump administration -- the Bannon administration -- that the majority has chosen instead to move forward with a flawed civil procedure bill as part of the very first markup

session of this Congress, as if this was the most pressing concern facing the country.

The Judiciary Committee should be more focused. From the travesty of President Trump's executive order banning certain refugees and immigrants on the basis of their religion -- and Rudy Giuliani has made it clear and the language makes it clear with its waiver clause on minority religions -- to his repeated threats to press freedom -- "We know who you are, and we have your names, and we suggest you just be quiet and listen" -- to his innumerable conflicts of interest, including potential violations of the Constitution's Emoluments Clause, which is presently in court in New York City, to his thinly veiled call for voter suppression, there are many things that we should be examining closely.

Instead, we are here to consider a bill that we already have considered in the last three Congresses, a bill the Judicial Conference of the United States, the American Bar Association, and consumer groups oppose. We are fiddling while Rome burns.

H.R. 720 would restore the 1983 version -- it should have probably been the 1984 version, because I think we are living in 1984 -- of Rule 11 of the Federal Rules of Civil Procedure by making sanctions for Rule 11 violations mandatory and by eliminating the current safe harbor provision that allows a party to withdraw or correct any allegedly offending submission to the court within 21 days after service of such submission.

Moreover, the bill would go beyond the 1983 rule by requiring a

court to award reasonable attorneys' fees and costs related to Rule 11 litigation. Current Rule 11 makes such awards entirely discretionary.

No empirical evidence suggests any need for a change to the current Rule 11. Maybe alternative evidence, but no empirical evidence.

There were good reasons why the Judicial Conference amended the 1983 version of Rule 11. For these same reasons, the committee should reject H.R. 720.

The 1983 rule caused excessive litigation. Many civil cases had a parallel track of litigation, referred to as satellite litigation, over Rule 11. Violations because of having mandatory sanctions and no safe harbor provision caused parties on both sides of Rule 11 motions to litigate the Rule 11 matter to the bitter end.

The dramatic increase in litigation spawned by the 1983 rule not only resulted in delays in resolving the underlying case but increased costs for the litigants and strained judicial resources -- judicial resources that are limited because the last Senate did not approve, I think it was, 40 district court judges who were on hold since April of last year.

In light of this history, it is clear that H.R. 720 will result in more, not less, litigation and will impose a great burden on the Federal judiciary.

We also know that the 1983 rule had a disproportionately chilling impact on civil rights cases. And there is no reason to think this

rule will not have a similar effect, because there can be sanctions and it causes folks to think twice or three times before filing an action.

You know, civil rights cases, in particular, depend on novel arguments -- novel arguments like separate is not equal, like people of different races should have a right to get married -- you know, novel arguments. But they are unique for the extension, modification, or reversal of existing law and were particularly susceptible to Rule 11 motions under 1983 rules.

Finally, H.R. 720 threatens judicial independence by removing the discretion that the current Rule 11 gives judges to determine when to impose sanctions and what kind of sanctions are most appropriate.

Ultimately, the type of Rule 11 sanctions regime that H.R. 720 envisions will not only favor those with money and resources to fight expensive and drawn-out litigation battles. At a minimum, defendants could use Rule 11, as amended by this H.R. 720, as a weapon to dissuade plaintiffs or weaken their resolve.

H.R. 720 is a flawed bill for many reasons. When we travel, most people around the globe say what they respect about America most is the rule of law. This is diminishing the rule of law. I urge my colleagues to stand up for the rule of law and oppose this bill.

Chairman Goodlatte. The chair thanks the gentleman.

Are there any amendments to H.R. 720?

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

Chairman Goodlatte. The clerk will report the amendment of the

gentleman from Michigan.

Ms. Adcock. Amendment to H.R. 720 offered by Mr. Conyers. Beginning on page 2, line 23 --

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

[The amendment of Mr. Conyers follows:]

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

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

Mr. Conyers. Thank you very much.

I want to begin by asking unanimous consent to introduce into the record a letter I received just yesterday from the two co-chairs of the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States.

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

Mr. Conyers. Thank you very much.

[The letter follows:]

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

Mr. Conyers. It tracks, Mr. Chairman and members, the arguments that have been put forward by myself and the gentleman from Tennessee as to why this is not a good bill.

As I explained during my opening remarks, 720 may have a seriously deleterious effect on the ability of individuals to protect their civil and constitutional rights in Federal court. Accordingly, my amendment would simply exempt these types of cases from the bill.

Based on a decade of experience with the 1983 rule, we know that civil rights cases were, in fact, disproportionately impacted because they often raised novel arguments. For example, in 1991, a Federal Judicial Center study found that the incidence of Rule 11 motions was higher in civil rights cases than in some other types of cases. Another study showed that, while civil rights cases comprised only about 11 percent of Federal cases filed, more than 22 percent of the cases in which sanctions had been imposed were, in fact, civil rights cases.

The bill contains a rule of construction intended to clarify that it not be construed to bar the assertion of new claims, defenses, or remedies, including those arising under civil rights laws or the Constitution. Inclusion of this language is an acknowledgement of the disproportionate impact that the 1983 rule had on civil rights cases, as stated several times already here this morning, and we should applaud its intent.

Nonetheless, I fear that this rule of construction, by itself, will not prevent defendants from using Rule 11 as a weapon to dissuade civil rights plaintiffs from pursuing their claims. So my amendment

makes an explicit exception for civil rights and constitutional actions. As a result, litigants will be clearly aware of its existence and will not be able to force opposing parties into satellite litigation when the case is brought under a civil rights law.

This amendment is necessary to avoid even the possibility of a chilling effect the amendments made by the bill to Rule 11 could have on those advocating for civil rights and constitutional law protections.

As the late Robert Carter, a former United States district court judge for the Southern District of New York, who earlier in his career represented some of the plaintiffs in the Brown v. the Board of Education, said of the 1983 version of Rule 11, quote, "I have no doubt that the Supreme Court's opportunity to pronounce separate schools inherently unequal" -- in the Brown v. Board of Education case -- "would have been delayed for a decade had my colleagues and I been required, upon pain of potential sanctions, to plead our legal theory explicitly from the start."

And so I, accordingly, urge the adoption of this amendment, which would at least help this measure before us. And I urge my colleagues to consider what this could do, as has been repeatedly put forward to you, to civil rights litigation.

And so I thank you and yield back the balance of my time, sir.

Chairman Goodlatte. The chair thanks the gentleman.

For what purpose does the gentleman from Texas seek recognition?

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

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Smith. Mr. Chairman, I appreciate the ranking member's concerns, but, again, the base bill already makes clear, as I mentioned in my opening statement, that, quote, "nothing in this act or an amendment made by this act shall be construed to bar or impede the assertion or development of new claims, defenses, or remedies under Federal, State, or local laws, including civil rights laws, or under the Constitution of the United States."

This provision clearly preserves the right to assert claims under the civil rights laws or the Constitution. I really don't know how the language could be made more clear.

This amendment would allow frivolous claims to be brought under the civil rights laws and the Constitution without any of the penalties required by the base bill. If this amendment were adopted, the bill would invite the filing of frivolous civil rights and constitutional claims without penalty.

So I urge my colleagues to oppose the amendment, which regrettably would expose innocent Americans to abusive and frivolous lawsuits.

I will yield back.

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

Chairman Goodlatte. The gentleman from Illinois is recognized for 5 minutes.

Mr. Gutierrez. Thank you, Mr. Chairman.

Well, I just have to say I support the amendment of the gentleman from Michigan and the leader of the minority here on this committee.

Having said that, I do find it a little bit troubling and disconcerting that we have an immigration chaos and problem in the United States of America and that this committee, which has jurisdiction specifically in the Congress of the United States over immigration policy, is taking up frivolous lawsuits as a priority.

Now, I am not going to object to the fact that staff members of the majority helped, according to many news reports, to draft said executive orders and other legislation that has caused the very chaos. I mean, they have time to help cause the chaos, but we don't have any time for a remedy or a cure or a debate in this Congress about a fundamentally important issue that the American public is grappling with.

We have got American citizens who are accompanied by their permanent-resident spouses being held back from entering the United States of America. We have students who can't come. We have people with heart conditions. We have people who have spent years going through a vetting system, refugees, yes, from Aleppo and Syria, that have spent years going -- and they are already approved. And then they say we are going to make a 120-day exception, when we all on this Judiciary Committee know that if you are approved as a refugee you have 90 days in which to take that approval and get into the United States of America.

So we have a refugee crisis in the world. We have an executive order which basically says you can't come, because I am not going to allow you for 120 days and you only got a permit for 90. And some of

that stuff, allegedly, has been written, sponsored by staff members on this committee.

How can we, on the one hand, allow that to happen and, on the other hand, not speak to the issues that are fundamental to the United States of America?

Now, you all know that I joined this committee particularly to deal and to serve under the leadership of Zoe Lofgren on our side on the issues of immigration. But they are clearly fundamental to who we are. And the country is having a debate.

A Muslim ban? One day, they say it is a Muslim ban; the next day, it isn't. But Rudy Giuliani says that they have disguised it. We should be discussing that. This is the Judiciary Committee -- Judiciary Committee -- where we should be examining the laws and the constitutionality of actions of the President of the United States.

And the country is having a debate and a conversation, the whole country, every household, for or against, is having this conversation and a dialogue and a debate about this fundamental issue. But here, the committee sanctioned by the Congress of the United States to take up this issue decides we are going to take up frivolous lawsuits. Frivolous lawsuits?

People's lives are at stake, Mr. Chairman -- people's lives. American citizens' rights are being violated. There are reports that there are people that attempted to enter the United States and that there are offices -- my office called, Mr. Chairman. And I just want

to say, my office called and said, we would like some information. You know what they told us? Call Washington. Another Congressman called, and they said, call Trump if you want to know what is going on. That is the kind of chaos.

We could not get answers, as Members of Congress, from the pertinent agencies of the Federal Government so that we could protect the rights of our constituents and the clamor of our constituents for fairness and justice as people were attempting to enter the country last Saturday. It was utter chaos.

And it wasn't just chaos; it was very painful and very destructive. And we may have caused people to return to their country to almost certain death. How do you weigh that, certain death, with frivolous lawsuits?

Certainly, we have time for frivolous lawsuits if you want to take it up. But I just think the country is having one conversation, and this committee is just turning its back on the real conversation and dialogue that this country is demanding that we have on the President's executive orders and on his actions as it pertains to immigrants in this country.

Thank you, Mr. Chairman.

Chairman Goodlatte. The chair thanks the gentleman.

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

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

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Nadler. Thank you, Mr. Chairman.

I want to make some brief observations on this bill and this amendment.

This bill obviously seeks to reinstate and go further than the provisions the mandatory sanctions regime imposed in 1983 and repealed, in effect, in 1993. And we know the result of that. The result of that was that every case had two sets of litigation, one on the merits and one should there be sanctions, because you always challenge the sanctions. It didn't decrease the volume of litigation; it increased it. It didn't decrease the expense of litigation; it greatly increased it.

The judges recognize that. The Judicial Conference has opposed this bill. We have a letter here from current judges opposing this bill. The judges have not asked for this bill. Quite the contrary. And believe me, if this would really reduce frivolous litigation, the judges would be for it, not against it. They are not interested in wasting their time on frivolous litigation. Number one.

Number two, we also know -- and this speaks to the amendment -- that lots of claims that the courts have vindicated on constitutional rights advanced the law, advanced the then-understanding of the law, and under this bill would be subject to mandatory sanctions because you are advancing a claim that at first blush doesn't look right or someone says is not the law.

So Mr. Conyers' amendment saying that this act and the amendments made by this act shall not apply to cases brought under the Constitution

or under any civil rights laws is very important, because you don't want to deter people from making civil rights claims, many of which the courts eventually vindicate.

Thirdly, Mr. Gutierrez is entirely right. Why are we wasting our time with this -- we have gone through this every year -- when we ought to be spending our time on the current crisis?

I was at Kennedy Airport most of Saturday, along with Congresswoman Velazquez. We helped get two people released who had been held there. One of them was someone who had worked with the 101st Airborne Division for 10 years, saved American lives consistently, was at risk. He had IEDs placed in front of his home. The militants had announced they were going to kill him. And he and his wife came on the plane with a special visa authorized by Congress a couple years ago for people who had risked their lives to help American forces. He is then detained. And if we hadn't been there, maybe he would have been returned.

His wife and kids were let off the plane, I think, in the confusion, because the CBP, Customs and Border Protection, people then came out to the waiting area and asked them to come back into the secure area. But by then, the lawyers said, don't do that, go home or go somewhere.

And the fact is that -- and the second fellow, he hadn't helped American forces; his wife had been an interpreter for American forces. And she and the kids were living in Houston for several years. He came in on a refugee visa to join his wife and kids. He was detained and

almost returned, and we succeeded in getting him changed.

But why should people who risked their lives to help American forces be returned to face death threats from Al Qaeda or from ISIS?

Secondly, it is very trying and the direct jurisdiction of this committee. These people, not only them but others -- we knew about these two individuals because they had legal representation from various groups from the time they were in Iraq. We found out there were 10 other people being detained who had no legal representation. We couldn't find out their names. The lawyers couldn't get in touch with them.

The CBP person in charge told me, well -- I said, when can they get legal representation? Well, if they are paroled into the United States to get a credible-fear hearing, they will be shipped to Elizabeth, New Jersey, and there they will be entitled to talk to a lawyer before the credible-fear hearing. Do they know that they have the right to ask for a credible-fear hearing? No, not necessarily. Can anybody tell them? No, they are held incommunicado.

Why would we hold someone incommunicado, not allow them to talk to attorneys, pressure them in some cases? We know that some people were told, "Sign this piece of paper. If you don't sign this piece of paper, you will be returned and be prohibited from applying to come to the United States for 5 years." They weren't told that if they signed the piece of paper they were waiving all their rights and they would be shipped home immediately. And people were deported immediately because they were coerced, many of them, into signing an

English piece of paper when they didn't speak English. No one explained it to them, and no lawyer could tell them, "Don't sign it," or whatever.

In fact, the husband of the person who had -- the second detainee that we knew about, who was released later that evening, they tried to get him to sign something. He couldn't talk to the lawyer, but he could talk to his wife in Houston, and she could talk to the lawyer, and we told him, "Don't sign anything."

So there are some real procedural issues -- never mind the overall intelligence of this order at all, but within it there are real procedural issues that we ought to be dealing with and dealing with immediately, because they are going to recur. This, frankly, can wait.

I yield back.

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

Mr. Cohen. To strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Cohen. I concur with much of what Mr. Gutierrez and Mr. Nadler have said, and this is an important issue. But, you know, the most fundamental issue we probably ought to be looking at in this committee is the Russians trying to intervene in our election processes.

It is a fact that they were able to get into several voter bases. There is no proof that they tampered with the results, but the fact that they got into voter bases is of concern to every American and should

be.

Voting and the voting system is part of the jurisdiction of this committee and the subcommittee of which Mr. King chairs and I am the ranking member. And there is nothing more fundamental than our voting system being sacrosanct. And we ought to be having public hearings, not private, nonpublic Intelligence Committee hearings, which should be going on, but there should be public hearings about what the Russians were doing, contacting and getting information from our election data.

Further, there is information from our intelligence agencies that they hacked information, committed crimes in this country, stealing information, and disseminated it for the purpose of influencing the opinion of Americans so as to influence the way they voted. That is fundamental to democracy.

And, instead, we have this before us as our first bill, something to be a salve to corporate America.

Let me ask to be introduced into the record, without objection, a letter from 51 groups opposing this bill that include most of the consumer organizations, most of the environmental organizations, Public Law, groups from throughout this country; and another letter from Public Citizen opposing this law. And, without objection, I would like to have them entered into the record.

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

[The letters follow:]

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

Mr. Cohen. There is a reason why they oppose this particular law: Because, as we pass bills like this, which probably won't pass the Senate, and we repeal regulations, consumers lose. Consumers lose. And who do they lose to? They lose to corporate America.

That is not what most of the people that voted for Trump wanted. They wanted the little man remembered. They didn't want Bigfoot stepping on them. They wanted jobs for sure, and they should get jobs, and we need to provide jobs. And they wanted to be remembered. But they don't want corporate America to step all over them. When they buy a defective product, they want access to the courts, and they don't want to have this type of law to deter them from doing such.

But I go back to my original premise. This committee should be looking into our election laws, what the Russians were looking for, why they were looking for them, how we are vulnerable and how we are vulnerable in the future, and what the hacking produced, why they did it, and if there was any involvement from any Americans in concert with them to sway the opinion of people in America and affect the election of the President of the United States.

I have been to Russia with Mr. King and others. That is not a country that is operating under the ideals that Mr. King and I and most everybody on this committee -- I think everybody on this committee -- feels are the right ideals, of democracy and human rights and the opportunity to speak out. They don't allow that at all. Political enemies are killed.

We went over there, and there was a desire for us to go to Chechnya.

We didn't go. Ramzan. Putin's plan. Accused of killing one of his major opponents right in the shadow of the Kremlin. And the two people who were arrested for it were his people. Did it go further? They won't investigate it.

We should be advancing democracy and making our country more safe for democracy. And I look forward to working with Mr. King to seeing that that is our end.

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

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

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

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Johnson of Georgia. Thank you, Mr. Chairman.

I rise in support of the gentleman's amendment.

And I would note that it has been a tough 12 days here in America for the majority of the people, for a growing majority of the people in this Nation. It has been a tough 12 days. It seems that January 20 was so long ago. We have descended so far since that time. It is dark days in America.

The President this morning at the National Prayer Breakfast told everyone that he was going to pray for Arnold Schwarzenegger, who was doing a terrible job as his stand-in on "The Apprentice." And I am sure that those who were sitting there solemnly had to think, what did I just hear? What is going on here? Where have we gone? I know that this is not right.

And, you know, the people are sitting back watching this. Growing numbers are deciding that this is just too much, I am going to have to get out and do something, I am going to have to take control, I am so frustrated and I am so angered and I am so frightened that I have to do something, and if the only thing I can do is go out and join the growing movement of people in America who believe that America is that shining city on the hill and we are not going to let anybody cut the lights out -- people have to do something.

And they are going to continue to do it. I mean, we are only 12 days in, and we have 4 years to go. I mean, we are looking at this very soberly. We are looking at everything that this President does that is trying to take this country back to days of medieval times that we have never been in in this country. And it is simply because he just does not know what he does not know.

And so it troubles me that we here in Congress, who know what the President does not know, we know what his aides don't know, and we know, each one of us on both sides of the aisle, know the direction that this country is headed for, but yet we still come to do our business, and we are not doing it for the sake of all, we are doing it for the sake of corporations, corporate interests. That is what this legislation is all about, this Lawsuit Abuse Reduction Act.

Certainly, corporations don't want anybody to be suing them, because they want to be able to do exactly what they want to do without any accountability. This Lawsuit Abuse Reduction Act removes accountability from corporations as they go about doing their business

without regard to the health, safety, and well-being of the American people. If you can do whatever you want to do and you don't have to be accountable for it in a court of law, then that takes America down.

We are not going back to a time when people had no redress and the only thing you could do was take your six-shooter out into the public square and threaten somebody with a duel for wronging you. We are much further along as a culture than that. But this kind of legislation takes us back to those times when the only recourse that people have is to do something crazy.

I want my colleagues on the other side of the aisle to think about it. Don't shut the courthouse door closed on people who have civil rights violations or who have consumer protection issues that they need to be addressed. And when those cases are addressed, it positively impacts us all. Don't just pay attention and do your work for the corporations, because it is the people who are watching. The corporations don't have blood running through their veins; they are not watching. They are not aware of what is happening. They are just simply receptacles to take in more dollars.

People hurt when they are hurt by corporations. And let's allow them to go into court, adjudicate their concerns without being hampered by the Lawsuit Abuse Reduction Act of 2017.

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

Chairman Goodlatte. For what purpose does the gentleman from Rhode Island seek recognition?

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

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Cicilline. Mr. Chairman, I associate myself with the remarks of my colleagues. There is some cruel irony that, in the midst of a series of events, that we are taking up this bill today. And I support the gentleman's amendment, which I think attempts to mitigate some of the worst consequences of this.

As has been suggested, we have been confronted with substantial information about the activity of the Russians in hacking in our elections and their effort to promote one candidate and undermine another. We have seen efforts all across the country to make it more difficult for people to exercise their right to vote and the evisceration of the Voting Rights Act. And so the very functioning of our democracy has been questioned.

We then saw a series of immigration and refugee orders which strike at the very heart of provisions of our Constitution and have already found four courts that have stricken down or prevented the enforcement of certain key provisions. We saw the firing of the Acting Attorney General of the United States when she expressed her opinion that these executive actions did not comport with our Constitution.

And we have a series of executive orders that are raising real dangers to the national security of the United States by compromising our ability to work with our allies, collect intelligence.

And in the midst of all of this, the Judiciary Committee decides to make it more difficult for people to access justice and to advance the powerful corporate special interests over the interests of

ordinary, hardworking Americans.

And I think it is a sad commentary that we are not taking up many of the issues which face our country, which have serious consequences for the people we represent, and which would give them some comfort that we remain a country of laws and not of men, where we will honor our Constitution and protect the right of people to advance their interests in the courts and make sure that it is balanced, that we don't give special preference to powerful corporate special interests. And, instead, we are taking up bills today that will reduce people's access to justice and to our courts.

I thank the ranking member for proposing this amendment, because, at the very least, it will carve out important issues of constitutional claims and civil rights that very often involve the raising of novel legal claims.

But I think the larger context of what we are doing, as America watches the first meeting of this committee and the first set of bills that we take up that fails to respond to any of the pressing issues of the day -- and instead use this very important moment to continue to empower and protect corporate special interests over the interests of ordinary, hardworking Americans. And it is something I think we should be ashamed of.

And, with that, I yield back.

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

All those in favor, respond by saying aye.

Those opposed, no.

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

Mr. Conyers. May I have a recorded vote?

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

Ms. Adcock. Mr. Goodlatte?

Chairman Goodlatte. No.

Ms. Adcock. Mr. Goodlatte votes no.

Mr. Sensenbrenner?

[No response.]

Ms. Adcock. Mr. Smith?

Mr. Smith. No.

Ms. Adcock. Mr. Smith votes no.

Mr. Chabot?

Mr. Chabot. No.

Ms. Adcock. Mr. Chabot votes no.

Mr. Issa?

[No response.]

Ms. Adcock. Mr. King?

Mr. King. No.

Ms. Adcock. Mr. King votes no.

Mr. Franks?

[No response.]

Ms. Adcock. Mr. Gohmert?

[No response.]

Ms. Adcock. Mr. Jordan?

Mr. Jordan. No.

Ms. Adcock. Mr. Jordan votes no.

Mr. Poe?

[No response.]

Ms. Adcock. Mr. Chaffetz?

[No response.]

Ms. Adcock. Mr. Marino?

Mr. Marino. No.

Ms. Adcock. Mr. Marino votes no.

Mr. Gowdy?

Mr. Gowdy. No.

Ms. Adcock. Mr. Gowdy votes no.

Mr. Labrador?

Mr. Labrador. No.

Ms. Adcock. Mr. Labrador votes no.

Mr. Farenthold?

[No response.]

Ms. Adcock. Mr. Collins?

Mr. Collins. No.

Ms. Adcock. Mr. Collins votes no.

Mr. DeSantis?

Mr. DeSantis. No.

Ms. Adcock. Mr. DeSantis votes no.

Mr. Buck?

Mr. Buck. No.

Ms. Adcock. Mr. Buck votes no.

Mr. Ratcliffe?

Mr. Ratcliffe. No.

Ms. Adcock. Mr. Ratcliffe votes no.

Mr. Bishop?

Mr. Bishop. No.

Ms. Adcock. Mr. Bishop votes no.

Mrs. Roby?

Mrs. Roby. No.

Ms. Adcock. Mrs. Roby votes no.

Mr. Gaetz?

[No response.]

Ms. Adcock. Mr. Johnson?

Mr. Johnson of Louisiana. No.

Ms. Adcock. Mr. Johnson votes no.

Mr. Biggs?

Mr. Biggs. No.

Ms. Adcock. Mr. Biggs votes no.

Mr. Conyers?

Mr. Conyers. Aye.

Ms. Adcock. Mr. Conyers votes aye.

Mr. Nadler?

Mr. Nadler. Aye.

Ms. Adcock. Mr. Nadler votes aye.

Ms. Lofgren?

[No response.]

Ms. Adcock. Ms. Jackson Lee?

[No response.]

Ms. Adcock. Mr. Cohen?

Mr. Cohen. Aye.

Ms. Adcock. Mr. Cohen votes aye.

Mr. Johnson?

Mr. Johnson of Georgia. Aye.

Ms. Adcock. Mr. Johnson votes aye.

Ms. Chu?

[No response.]

Ms. Adcock. Mr. Deutch?

[No response.]

Ms. Adcock. Mr. Gutierrez?

[No response.]

Ms. Adcock. Ms. Bass?

[No response.]

Ms. Adcock. Mr. Richmond?

[No response.]

Ms. Adcock. Mr. Jeffries?

Mr. Jeffries. Aye.

Ms. Adcock. Mr. Jeffries votes aye.

Mr. Cicilline?

Mr. Cicilline. Aye.

Ms. Adcock. Mr. Cicilline votes aye.

Mr. Swalwell?

Mr. Swalwell. Aye.

Ms. Adcock. Mr. Swalwell votes aye.

Mr. Lieu?

[No response.]

Ms. Adcock. Mr. Raskin?

Mr. Raskin. Aye.

Ms. Adcock. Mr. Raskin votes aye.

Ms. Jayapal?

Ms. Jayapal. Aye.

Ms. Adcock. Ms. Jayapal votes aye.

Chairman Goodlatte. The gentleman from California, Mr. Issa.

Mr. Issa. No.

Ms. Adcock. Mr. Issa votes no.

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

Mr. Poe. No.

Ms. Adcock. Mr. Poe votes no.

Chairman Goodlatte. The gentleman from Florida, Mr. Deutch.

Mr. Deutch. Aye.

Ms. Adcock. Mr. Deutch votes aye.

Chairman Goodlatte. The gentleman from California, Mr. Lieu.

Mr. Lieu. Aye.

Ms. Adcock. Mr. Lieu votes aye.

Chairman Goodlatte. Has every member voted who wishes to vote?

The clerk will report.

Ms. Adcock. Mr. Chairman, 11 members voted aye, 18 members voted no.

Chairman Goodlatte. And the amendment is not agreed to.

Are there --

Mr. Conyers. Mr. Chairman, may I have unanimous consent to put in a letter I received yesterday from the Judicial Conference of the United States?

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

Mr. Conyers. Thank you.

[The letter follows:]

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

Chairman Goodlatte. Are there further amendments to H.R. 720?

For what purpose does the gentleman from Tennessee seek recognition?

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

The Chairman. The gentleman is recognized -- the clerk will report the amendment.

Ms. Adcock. Amendment to H.R. 720 offered by Mr. Cohen. Add, at the end of the bill, the following --

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

[The amendment of Mr. Cohen follows:]

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

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

Mr. Cohen. Thank you, sir.

This amendment would delay the effective date of H.R. 720 until the Administrative Office of the United States Courts has the chance to assess the potential effects of the bill on Federal court resources, including both financial and nonfinancial resources, as well as on litigation costs for private litigants, to the extent that the office has such data.

The Administrative Office of the U.S. Courts is a pretty conservative, nonpartisan, kind of okay group that nobody really objects to. And to wait and listen to them and have them tell us about the effects of the bill on Federal costs, you know, the deficit, that mantra of the past, that wouldn't be a bad idea.

The amendment also requires a similar assessment to be made by the Department of Justice of the potential effects on litigation costs for the government. Both the Administrative Office and the Department of Justice will be required to submit reports to the House and Senate Judiciary Committees outlining their opinions, their assessments.

We often hear from the majority, particularly in the context of debates over regulatory legislation, about the need for Federal agencies to conduct cost-benefit analysis to justify new regulations. A somewhat similar principle should apply here with respect to the impact that an amended Rule 11 would have on the resources of Federal courts, the Department of Justice, and private litigants, including

whistleblowers and civil rights plaintiffs.

I understand the Congressional Budget Office found no impact on the Federal budget when assessing this legislation last Congress. The CBO, however, appeared to reach that conclusion after determining that, because only private litigants would pay sanctions, there would be no impact on the Federal budget. It seems there was no assessment of the bill's potential effect on the judiciary's, on the Justice Department's financial resources where it was engaged in civil litigation and being subject to Rule 11, as amended by this bill.

There was no assessment of the potential effect on nonfinancial resources, such as the diversion of judges' or attorneys' time away from other critical matters as a result of increased Rule 11 satellite litigation. We know from experience with the 1983 version of Rule 11 that the volume of satellite litigation increased exponentially during the 10 years that the 1983 version was in effect. Civil procedure experts agree that the reason for that sharp increase was the mandatory sanctions regime of the 1983 rule and its lack of safe harbor provision, two provisions this bill restores. This increase in litigation also led to increases in costs for litigants and strained judicial resources, which are more limited than ever.

As with any good cost-benefit analysis, it is fair to ask what the cost will be for the courts, for the Department of Justice, and for private litigants and whether these costs outweigh what I believe are the nonexistent benefits of H.R. 720 before this legislation takes effect.

This amendment does nothing to stop the bill. As I am reading this, I kind of flash back on our motions to recommit when the Democrat always says, this bill will not kill the bill, it will not send it back to committee. Those are like the death knell words, because as soon as those words are said, it is going to be a failing proposition. So I would like to go back and take that language out.

It only merely asks for an assessment of the potential impact of the bill on various entities, including the potential for increased burdens on the taxpayer. And that seems something reasonable that I am sure the gentleman from the land of the Alamo will accept.

RPTR BAKER

EDTR SECKMAN

[11:27 a.m.]

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

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

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Smith. Mr. Chairman, I oppose this amendment because it allows the Administrative Office of the Courts and the Attorney General to effectively veto the Lawsuit Abuse Reduction Act, although I think I ought to admit that I am less concerned with this Attorney General than with the previous Attorney General.

For too long, bad actors have used our civil justice system to prey on innocent parties. Defendants, plaintiffs, small businesses, and all victims of abusive litigation deserve better. The underlying bill ensures that if a party is injured by a frivolous claim, they are guaranteed compensation. This amendment delays the Rule 11 reforms until the Administrative Office of the Courts and the AG assess the bill and report to Congress. There is no guarantee that such assessment and report will ever occur because there is no deadline. The status quo likely will continue, which guarantees victims of lawsuit abuse and rewards unscrupulous lawyers. Even if there was a deadline, there is no good reason to delay enactment of this legislation. So I urge my colleagues to join me in opposing this

amendment. I yield back the balance of my time.

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

All those in favor, respond by saying aye.

All those opposed, no.

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

Are there further amounts to H.R. 720? For what purpose does the gentleman from Tennessee seek recognition?

Mr. Cohen. I have another amendment at the table.

Chairman Goodlatte. The clerk will report the amendment.

Ms. Adcock. Amendment to H.R. 720 offered by Mr. Cohen. Add, at the end of the bill, the following: Section 3. Protecting actions --

Chairman Goodlatte. Without objection, the amendment is considered as read, and the gentleman is recognized for 5 minutes on his amendment.

[The amendment of Mr. Cohen follows:]

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

Mr. Cohen. Thank you, Mr. Chair.

This one is particularly pertinent and bipartisan because so much of what we spent in the last Congress was concerned with executive orders. This amendment would exempt from H.R. 720 any action brought to challenge the legality of any executive order.

Tomorrow will mark 2 weeks since Donald Trump assumed the Presidency of the United States. In that short time, he has issued a flurry of executive orders, including one that bans all refugees from entering the U.S. for 120 days, and Syrian refugees indefinitely, and bans anyone from 7 Muslim-majority countries for 90 days.

He has also issued an executive order that declares the United States will build a physical wall on the border with Mexico, a Western Hemisphere wailing wall.

He also issued one that will revoke Federal grant money from sanctuary cities to help deport the undocumented.

He issued an order to require agencies to cut two regulations for any regulation they issue. That is brilliant. No matter what they are, we are going to cut two for every one you have. Math, not logic, not judging the regulation, not judging the regulations you cut. They cut one; we will cut two.

He also issued one to reestablish the global gag rule. There is already global gagging going on right now but a different type. That prevents foreign nongovernmental organizations that receive U.S. funds from providing counseling or referrals for abortion or advocating for abortion services in their home countries.

He has also issued one that approves the Keystone XL and Dakota Access pipelines -- yes, creating jobs, jobs to clean up the spills; there will be lots of jobs -- and instructs Federal agencies to take steps that weaken the Affordable Care Act's implementation.

While I certainly think that all these orders represent bad policy decisions, at least some of them also raise serious questions about their legality, and this committee cares about executive orders. For instance, even conservative commentators have noted that the sanctuary cities order raises serious potential federalism and separation-of-power concerns. And, of course, we know that there have been several suits filed around the country challenging the legality of the refugee Muslim ban order.

Last Congress, the majority complained constantly about what it said was President Obama's so-called executive overreach with respect to a number of policy areas. They even established an entire task force for that purpose. In fact, now would be a great time to revive the Executive Overreach Task Force, just like we had the executive in need of restraint law. With or without such a task force, the last thing we ought to do is make it harder for those harmed by potentially unconstitutional or illegal executive actions to challenge those actions. As Chairman Goodlatte rightly noted in his recent remarks to the Federalist Society, quote: "Our constitutional government only works when each branch checks and restrains the others from exceeding their legal limits." Part of this obligation includes ensuring the judicial branch can play its proper constitutional role in ensuring

that the executive branch does not exceed its constitutional limits and that Congress does not unduly interfere with the judiciary's role. Yet that is exactly what H.R. 720 would do. By circumventing the judiciary to make Rule 11 sanctions mandatory or eliminate the 21-day safe harbor, the bill will drive up the burdens and costs of litigation while doing nothing to address the abuses. Access to the courts is a fundamental part of our Democratic system of government. Anything that makes it harder for ordinary people to keep an aggressive and expansive branch in check by using our courts is an affront to our democracy.

With one-party rule, it is more and more important that the courts remain as a bulwark for democracy and a safeguard for our citizens, and anything that makes it more difficult for the courts to act as a safeguard, as a check and balance, is an affront to and a danger to our Republic. I urge the committee to adopt the amendment.

Chairman Goodlatte. The chair thanks the gentleman.

For what purpose does the gentleman from Texas seek recognition?

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

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Smith. Mr. Chairman, I oppose this amendment, which would exempt lawsuits challenging executive orders from attorney sanctions for frivolous lawsuits. The Lawsuit Abuse Reduction Act in no way limits the ability for parties to bring their claims and grievances to court. The amendment's goal is to protect claims that have no basis in law or fact from Rule 11 sanctions. This amendment would continue

to allow frivolous claims, which is unfortunate, and that is why I oppose the amendment.

And I yield back.

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

All those in favor, respond by saying aye.

Those opposed, no.

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

Mr. Cohen. We --

Chairman Goodlatte. I take that as a request for a recorded vote. A recorded vote is requested, and the clerk will call the roll.

Ms. Adcock. Mr. Goodlatte?

Chairman Goodlatte. No.

Ms. Adcock. Mr. Goodlatte votes no.

Mr. Sensenbrenner?

Mr. Sensenbrenner. No.

Ms. Adcock. Mr. Sensenbrenner votes no.

Mr. Smith?

Mr. Smith. No.

Ms. Adcock. Mr. Smith votes no.

Mr. Chabot?

Mr. Chabot. No.

Ms. Adcock. Mr. Chabot votes no.

Mr. Issa?

[No response.]

Ms. Adcock. Mr. King?

[No response.]

Ms. Adcock. Mr. Franks?

[No response.]

Ms. Adcock. Mr. Gohmert?

[No response.]

Ms. Adcock. Mr. Jordan?

Mr. Jordan. No.

Ms. Adcock. Mr. Jordan votes no.

Mr. Poe?

[No response.]

Ms. Adcock. Mr. Chaffetz?

[No response.]

Ms. Adcock. Mr. Marino?

Mr. Marino. No.

Ms. Adcock. Mr. Marino votes no.

Mr. Gowdy?

Mr. Gowdy. No.

Ms. Adcock. Mr. Gowdy votes no.

Mr. Labrador?

Mr. Labrador. No.

Ms. Adcock. Mr. Labrador votes no.

Mr. Farenthold?

[No response.]

Ms. Adcock. Mr. Collins?

Mr. Collins. No.

Ms. Adcock. Mr. Collins votes no.

Mr. DeSantis?

Mr. DeSantis. No.

Ms. Adcock. Mr. DeSantis votes no.

Mr. Buck?

Mr. Buck. No.

Ms. Adcock. Mr. Buck votes no.

Mr. Ratcliffe?

Mr. Ratcliffe. No.

Ms. Adcock. Mr. Ratcliffe votes no.

Mr. Bishop?

Mr. Bishop. No.

Ms. Adcock. Mr. Bishop votes no.

Mrs. Roby?

Mrs. Roby. No.

Ms. Adcock. Mrs. Roby votes no.

Mr. Gaetz?

[No response.]

Ms. Adcock. Mr. Johnson?

Mr. Johnson of Louisiana. No.

Ms. Adcock. Mr. Johnson votes no.

Mr. Biggs?

Mr. Biggs. No.

Ms. Adcock. Mr. Biggs votes no.

Mr. Conyers?

[No response.]

Ms. Adcock. Mr. Nadler?

[No response.]

Ms. Adcock. Ms. Lofgren?

[No response.]

Ms. Adcock. Ms. Jackson Lee?

[No response.]

Ms. Adcock. Mr. Cohen?

Mr. Cohen. Aye.

Ms. Adcock. Mr. Cohen votes aye.

Mr. Johnson?

Mr. Johnson of Georgia. Aye.

Ms. Adcock. Mr. Johnson votes aye.

Ms. Chu?

[No response.]

Ms. Adcock. Mr. Deutch?

[No response.]

Ms. Adcock. Mr. Gutierrez?

[No response.]

Ms. Adcock. Ms. Bass?

Ms. Bass. Aye.

Ms. Adcock. Ms. Bass votes aye.

Mr. Richmond?

[No response.]

Ms. Adcock. Mr. Jeffries?

Mr. Jeffries. Aye.

Ms. Adcock. Mr. Jeffries votes aye.

Mr. Cicilline?

[No response.]

Ms. Adcock. Mr. Swalwell?

Mr. Swalwell. Aye.

Ms. Adcock. Mr. Swalwell votes aye.

Mr. Lieu?

Mr. Lieu. Aye.

Ms. Adcock. Mr. Lieu votes aye.

Mr. Raskin?

Mr. Raskin. Aye.

Ms. Adcock. Mr. Raskin votes aye.

Ms. Jayapal?

Ms. Jayapal. Aye.

Ms. Adcock. Ms. Jayapal votes aye.

Chairman Goodlatte. The gentleman from Iowa, Mr. King?

Mr. King. No.

Ms. Adcock. Mr. King votes no.

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

Mr. Issa. No.

Ms. Adcock. Mr. Issa votes no.

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

Mr. Poe. No.

Ms. Adcock. Mr. Poe votes no.

Chairman Goodlatte. The gentlewoman from California, Ms. Chu?

Ms. Chu. Aye.

Ms. Adcock. Ms. Chu votes aye.

Chairman Goodlatte. The gentleman from Florida, Mr. Deutch?

Mr. Deutch. Aye.

Ms. Adcock. Mr. Deutch votes aye.

Chairman Goodlatte. Has every member voted who wishes to vote? The clerk will report.

Ms. Adcock. Mr. Chairman, 10 members voted aye; 19 members voted no.

Chairman Goodlatte. And the amendment is not agreed to.

Are there further amendments to H.R. 720?

Mr. Johnson of Georgia. Mr. Chairman, I have an amendment at the desk.

Chairman Goodlatte. The clerk will report the amendment.

Ms. Adcock. Amendment to H.R. 720 offered by Mr. Johnson of Georgia. Add, at the end of the bill --

Chairman Goodlatte. Without objection, the amendment will be considered as read, and the gentleman is recognized for 5 minutes on his amendment.

[The amendment of Mr. Johnson of Georgia follows:]

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

Mr. Johnson of Georgia. Thank you, Mr. Chairman.

My amendment would delay the amendment of the LARA act until the Federal Judicial Conference has had an opportunity to review Rule 11 through the Rules Enabling Act process to determine whether Rule 11 needs to be changed. This is a commonsense amendment that would enable the Federal Judicial Conference, which is the preeminent body of judges whose primary objective is to design best practices and policy guidelines for the Federal practice, give them the opportunity to review a fundamental change in how a rule of Federal procedure should be interpreted and enforced.

My amendment makes sense because the changes put forth in the original bill have been already implemented by the Federal courts over a period of 10 years. The key parts of this bill, such as mandatory sanctions for Rule 11 violations, the removal of safe harbor provisions, and the requirement that parties pay the cost of the sanction-related litigation, were part of a civil justice reform experiment from 1983 to 1993. After 10 years, the Federal judiciary found that the results were so disastrous that the practice was abandoned, and that has been 23 years ago. This failed experiment was strongly rejected by a majority of the plaintiffs, defendants, and, most importantly, the judges. The Judicial Conference itself found itself at odds with the 1983 rule because it resulted in an explosion of unnecessary litigation focused on pursuing Rule 11 sanctions, and that diverted judicial resources way from adjudicating the merits of the underlying litigation, the overwhelming majority of such

litigation being meritorious and not frivolous. If our goal is to streamline the judicial system and reduce frivolous lawsuits, then why would we push for a change to civil procedure that would result in more specious litigation?

As a former litigator and magistrate judge, I find myself perplexed at my colleagues on the other side of the aisle, who insist on marking up this bill, would do so again. The only logical reason is that they are doing the bidding of their corporate sponsors. By mandating Rule 11 sanctions, public-interest litigants, especially privacy, civil rights, employment, and consumer-protection cases will find themselves buried in time-consuming, distracting, and specious litigation. These plaintiffs cannot afford to be burdened with the extra costs and time and the risk that diversionary litigation forces them to endure. This is why my amendment is so important. It gives the Judicial Conference the ability to reevaluate the rules created by H.R. 720 and determine if there is a better approach. After all, they are the ones who are intimately familiar with the ill-fated Rule 11 changes from the 1983 experiment.

Let's defer to the real experts and give them the opportunity to fine-tune Rule 11 so that it actually helps judges, not hinders them. As more worker-, environmental-, and consumer-protection rules begin to get rolled back by this new administration, it is important that we keep our legal system operating in a manner that is efficient, transparent, and equitable.

And, with that, Mr. Chairman, I thank you, and I yield back.

Chairman Goodlatte. The chair thanks the gentleman.

For what purpose does the gentleman from Texas seek recognition?

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

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Smith. Mr. Chairman, I oppose this amendment, which gives the Judicial Conference veto power over the Lawsuit Abuse Reduction Act, or LARA. The Conference by its own admission objects to any amendments to the Federal rules it doesn't propose. But Congress does have the constitutional authority to establish and amend the Federal rules, and we should exercise that authority. It also has the duty to address problems with the judicial system that fall within its enumerated powers. Reducing frivolous lawsuits and ensuring that those who face meritless filings are able to receive compensation for losses caused by frivolous claims is a significant improvement to our justice system. I urge my colleagues to strengthen Rule 11 and reject this amendment.

Mr. Chairman, power to Congress, power to the people. Oppose this amendment.

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

All those in favor, respond by saying aye.

Those opposed, no.

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

Mr. Johnson of Georgia. Request a recorded vote.

Chairman Goodlatte. A recorded vote is requested, and the clerk will call the rule.

Ms. Adcock. Mr. Goodlatte?

Chairman Goodlatte. No.

Ms. Adcock. Mr. Goodlatte votes no.

Mr. Sensenbrenner?

Mr. Sensenbrenner. No.

Ms. Adcock. Mr. Sensenbrenner votes no.

Mr. Smith?

Mr. Smith. No.

Ms. Adcock. Mr. Smith votes no.

Mr. Chabot?

Mr. Chabot. No.

Ms. Adcock. Mr. Chabot votes no.

Mr. Issa?

[No response.]

Ms. Adcock. Mr. King?

[No response.]

Ms. Adcock. Mr. Franks?

[No response.]

Ms. Adcock. Mr. Gohmert?

[No response.]

Ms. Adcock. Mr. Jordan?

[No response.]

Ms. Adcock. Mr. Poe?

[No response.]

Ms. Adcock. Mr. Chaffetz?

[No response.]

Ms. Adcock. Mr. Marino?

[No response.]

Ms. Adcock. Mr. Gowdy?

[No response.]

Ms. Adcock. Mr. Labrador?

Mr. Labrador. No.

Ms. Adcock. Mr. Labrador votes no.

Mr. Farenthold?

[No response.]

Ms. Adcock. Mr. Collins?

Mr. Collins. No.

Ms. Adcock. Mr. Collins votes no.

Mr. DeSantis?

Mr. DeSantis. No.

Ms. Adcock. Mr. DeSantis votes no.

Mr. Buck?

Mr. Buck. No.

Ms. Adcock. Mr. Buck votes no.

Mr. Ratcliffe?

Mr. Ratcliffe. No.

Ms. Adcock. Mr. Ratcliffe votes no.

Mr. Bishop?

Mr. Bishop. No.

Ms. Adcock. Mr. Bishop votes no.

Mrs. Roby?

Mrs. Roby. No.

Ms. Adcock. Mrs. Roby votes no.

Mr. Gaetz?

[No response.]

Ms. Adcock. Mr. Johnson?

Mr. Johnson of Louisiana. No.

Ms. Adcock. Mr. Johnson votes no.

Mr. Biggs?

Mr. Biggs. No.

Ms. Adcock. Mr. Biggs votes no.

Mr. Conyers?

[No response.]

Ms. Adcock. Mr. Nadler?

[No response.]

Ms. Adcock. Ms. Lofgren?

[No response.]

Ms. Adcock. Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

Ms. Adcock. Ms. Jackson Lee votes aye.

Mr. Cohen?

[No response.]

Ms. Adcock. Mr. Johnson?

Mr. Johnson of Georgia. Aye.

Ms. Adcock. Mr. Johnson votes aye.

Ms. Chu?

Ms. Chu. Aye.

Ms. Adcock. Ms. Chu votes aye.

Mr. Deutch?

[No response.]

Ms. Adcock. Mr. Gutierrez?

[No response.]

Ms. Adcock. Ms. Bass?

Ms. Bass. Aye.

Ms. Adcock. Ms. Bass votes aye.

Mr. Richmond?

[No response.]

Ms. Adcock. Mr. Jeffries?

Mr. Jeffries. Aye.

Ms. Adcock. Mr. Jeffries votes aye.

Mr. Cicilline?

Mr. Cicilline. Aye.

Ms. Adcock. Mr. Cicilline votes aye.

Mr. Swalwell?

Mr. Swalwell. Aye.

Ms. Adcock. Mr. Swalwell votes aye.

Mr. Lieu?

Mr. Lieu. Aye.

Ms. Adcock. Mr. Lieu votes aye.

Mr. Raskin?

Mr. Raskin. Aye.

Ms. Adcock. Mr. Raskin votes aye.

Ms. Jayapal?

Ms. Jayapal. Aye.

Ms. Adcock. Ms. Jayapal votes aye.

Chairman Goodlatte. The gentleman from California?

Mr. Issa. No.

Ms. Adcock. Mr. Issa votes no.

Chairman Goodlatte. The gentleman from Iowa?

Mr. King. No.

Ms. Adcock. Mr. King votes no.

Chairman Goodlatte. The gentleman from Ohio?

Mr. Jordan. No.

Ms. Adcock. Mr. Jordan votes no.

Chairman Goodlatte. The gentlemen from Texas?

Mr. Poe. No.

Ms. Adcock. Mr. Poe votes no.

Chairman Goodlatte. The gentleman from South Carolina?

Mr. Gowdy. No.

Ms. Adcock. Mr. Gowdy votes no.

Chairman Goodlatte. The gentleman from Pennsylvania?

Mr. Marino. No.

Ms. Adcock. Mr. Marino votes no.

Chairman Goodlatte. Has every member voted who wishes to vote?

The clerk will report the clerk will report.

Ms. Adcock. Mr. Chairman, 10 members voted yes; 19 members voted no.

Chairman Goodlatte. And the amendment is not agreed to. Are there further agreements to H.R. 720?

For what purpose does the gentlewoman from Texas seek recognition?

Ms. Jackson Lee. I have an amendment at the desk that is No. 2 on the roster.

Chairman Goodlatte. The clerk will report the amendment.

Ms. Adcock. Amendment to H.R. 720 offered by Ms. Jackson Lee of Texas. Page 2 --

Chairman Goodlatte. Without objection, the amendment is considered as read, and the gentlewoman is recognized for 5 minutes on her amendment.

[The amendment of Ms. Jackson Lee follows:]

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

Ms. Jackson Lee. To my colleague from Texas, I was so overwhelmed and moved with emotion when my colleague offered the words "power to the people." I could not imagine his standing with those of us that were in college some short years ago and joined in a number of organizations, like the Black Panthers and others, James Brown, speaking about power to the people.

So I join him in that, and I, frankly, believe that my amendment reflects the power to the people.

He also indicated power to the Congress. And I do believe that the Congress has a right to right wrongs and to ensure that the people's voice or voices are heard.

So allow me to ask my friend whether or not we want to go back to 1983 and to 1993, when the mandatory sanctions were implemented, seemingly in response to the rise in civil rights cases, the limitation or elimination of judicial discretion, and, in essence, engendered a lot of time-consuming satellite litigation, the spill-off because if I couldn't get it this way, I am going to get it this way.

I think the most difficult hurdle for me is what the mandatory sanctions would do for the idea of civil rights. In the earlier version, or the version that we have now, there is a safe harbor. That is appropriate because I would offer to say that lawyers take an oath. And I have found most of my friends at the bar adhere to that oath, which is to represent their clients. When it may be discerned that their lawsuit is less than stable, I believe it is appropriate to allow those pleadings to be withdrawn. So my amendment would change the

sanctions. As written, H.R. 720 would change the sanctions for violation of Federal Rules of Civil Procedure 11 to a cost-shifting sanction payable to the opposing party, an antiquated version of the rule in effect from 1983 to 1993. The cost-shifting provision was eliminated by the courts because it encouraged, as I said, satellite litigation. The Jackson Lee amendment would preserve -- and I would call that fly-by-night litigation -- would preserve the sanctions currently available under rule of law, which provide the correct balance in punishing unwarranted conduct without encouraging necessary litigation. Specifically, my amendment will eliminate H.R. 720's provision mandating the award of reasonable attorneys' fees and costs and preserve the trial judge's discretion to award such fees and costs when warranted.

Think of a poor client that has been so badly abused by treatment that relates to many of our civil rights laws and is attempting a response. What about those who call my office? They have had a personal injury, meaning they would need a personal injury lawyer, or they have had some grievance. They don't even know which direction to go. They have a Federal matter. And so those are the kinds of plaintiffs that we would punish. The Jackson Lee amendment preserves the balance found in the current version, gives a court discretion, whereas H.R. 720 seeks to return to the failed and discredited sanction regime rightly abandoned in 1983. It is, in essence, the essence of power to the people.

By eliminating the mandatory fee-shifting provision, the 1993

rule discouraged satellite litigation and encouraged parties to move forward with the merits of the case, meaning what came after the 1983 to 1993 moment. Under the prior rule, mandatory fee-shifting was used to discourage plaintiffs from bringing meritorious claims using novel legal theories in civil rights and employment rights cases. That is their right. That is the right of a well-trained lawyer. That is the right of those of us who have taken our oath as lawyers to be the defenders of those who cannot defend themselves. And it is the right of a court to use this discretion and to look at both the plaintiff and the defendant and make the appropriate decision.

So reinstating this mandatory fee shifting is a chilling -- or will have a chilling effect on plaintiffs' claims, especially individual plaintiffs taking on large interests. The Jackson Lee amendment would preserve the current version of the rule, restore the true balance between punishing unwarranted conduct, and the old rule disproportionately affected plaintiffs, especially plaintiffs in civil rights cases, among others. Sanctions were most often imposed against plaintiffs than defendants and most often imposed against certain kinds of cases, primarily civil rights and discrimination cases. The imposition of mandatory fees and cost shifts, the purpose of the rule from deterrence to compensation, encouraging parties to always file Rule 11 motions in hopes of gaining additional compensation.

Finally, Mr. Chairman, let me just say, it provides an opportunity for the litigants to abuse one another. And the one thing we want by

the scales of justice, whether you are the little guy seeking power to the people or you come in embodied with all of the power of richness and institutionalism, you should be equal in the courts. This rule -- amendment -- under H.R. 720 abuses that balance, and I ask my colleagues to ensure that the imbalance against civil rights cases versus other cases in the way this would now be constructed would not be passed.

And I ask the Jackson Lee amendment to be passed, and I ask for your support.

Chairman Goodlatte. The time of the gentlewoman has expired.

For what purpose does the gentleman from Texas seek recognition?

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

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Smith. Mr. Chairman, this amendment would strike the provision for penalties for filers of frivolous lawsuits and thus defeat the purpose of the bill. Today, there is no guarantee that an acknowledged victim of a frivolous lawsuit will be compensated, even when a court finds the case to be frivolous. This legislation gives the victims of frivolous lawsuits the ability to receive compensation from those who abuse the legal system. So I urge opposition to the amendment.

I yield back.

Chairman Goodlatte. The chair thanks the gentleman.

The question occurs on the amendment offered by the gentleman from Texas.

Mr. Raskin. Mr. Chair.

Chairman Goodlatte. For what purpose does the gentleman from Maryland seek recognition?

Mr. Raskin. I want to speak in favor, Mr. Chairman.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Raskin. Thank you very much.

I won't take that long, but I want to be clear that the legislation is attempting to reinstate the way that the law was for a decade, beginning in 1983, with mandatory sanctions being leveled against plaintiffs. And the gentlelady from Texas has simply proposed that we make it discretionary and allow the judge to make the decision in the particular case, which is what the law stipulates today. And I think that is an entirely appropriate amendment to the legislation, as opposed to making it compulsory and mandatory in every single case.

Remember, what we are talking about is the ability of people to go to court and to have a case heard. This is not a left, right, or liberal, conservative issue. I remind my distinguished colleagues on the other side of the aisle that there are lots of public-interest groups that operate on the conservative side of the aisle, like Judicial Watch, like Center for Individual Rights, who have pushed the boundaries of the law, as well they should, in their view, just like there is the ACLU and the NAACP Legal Defense Fund on the other side. Do we really want to open the door for a situation in which sanctions are going to be mandatory or obligatory if you can get a judge to say that the bringing of a lawsuit was frivolous in the first place?

I mean, I am thinking about the Friedrichs case, which was recently brought in order to overthrow compulsory agency dues by unions, and this was very clearly a radical break from prior precedent that very easily could have been termed frivolous in the eyes of a particular judge. And then that conservative public interest group would have been subject to mandatory compulsory Rule 11 sanctions. I am thinking also now of the lawsuit that was brought by CREW recently against President Trump for conflicts of interest, structural conflicts of interest, in violation of the Emoluments Clause in New York, in New York district court. Now, would we really want to say, because we have never had an Emoluments Clause case before and therefore there is no precedent upon which we can operate -- and the reason there is no precedent, of course, is because no President has ever tested the line as much as this President, who has vast business holdings all over the world he has refused to divest. And so now we have a group of constitutional law professors, public-interest groups, who have said: This is a violation of the Emoluments Clause.

They have got significant procedural hurdles to get over in terms of standing, the political question doctrine, and then they have got the merits of the case. Now, do we really want to politicize the court so much as to say that a judge who disagrees with them and says, "We think that this was frivolous; it has never been brought before," now has to level mandatory sanctions against the litigants. And so, for that reason, I would say we are in the justice business in the Judiciary Committee. We want the doors of justice to be open. We want real

access to justice.

And I am going to vote for this amendment, and I hope that colleagues on both sides of the aisle would do so.

Thank you, Mr. Chair.

Chairman Goodlatte. The chair thanks the gentleman.

For what purpose does the gentleman from Georgia seek recognition?

Mr. Johnson of Georgia. Move to strike the last word.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Johnson of Georgia. I yield to the gentlelady from Texas.

Ms. Jackson Lee. Thank you so very much. Let me thank Professor Raskin for a journey through the constitutional process that really speaks to either the uniqueness of your lawsuit or the unequalness of petitioners, and many times they do come into the court unequal. I think you have clearly made a very strong and powerful argument.

And I would like to emphasize the many cases that have come dealing with the question of choice on the other side advocating for the right to life. Many of those cases have come, cases that have come to restrict individuals' rights to voting, using a variety of creative arguments. I oppose them, but I would offer to say that I would want discretion on the court as to whether or not the cases were frivolous.

And I think the emoluments case by CREW is another aspect of creative lawyering premised on legitimate issues of a private right to sue. However, that may be thought of under this law as to immediately render mandatory sanctions.

So let me chronicle some other cases that are civil rights cases, and I ask unanimous consent to insert this document into the record prepared by us. Unanimous consent to insert a document, Mr. Chairman?

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

[The information follows:]

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

Ms. Jackson Lee. Thank you. The Brown v. Board of Education of Topeka. I might imagine in 1994, what a frivolous, notion to integrate public education. It was a separate and equal or equal and separate, and it might have been classified as unworthy even though it had reached the United States Supreme Court. All along its journey, it might have been in that category and been subjected. If you put it 40, 50 years later in the mandatory sanction light, why are you here?

Griswold v. Connecticut was a landmark case that dealt with the right to privacy and out-of-the box thinking in terms of its arguments dealing with a Connecticut law that prohibited the use of contraceptives. Someone might have thought that that was a law that went against the sense of humanity, but it went forward in a historic manner.

Lawrence v. Texas, whether adult consensual sexual activity.

Massachusetts v. Environmental Protection Agency. Twelve states sued dealing with carbon dioxide. We now understand greenhouse gasses.

Loving v. Virginia, an enormously powerful case of dealing with the idea that people who love each other could marry and that the Lovings, who spent their time hiding, deserve not to live under those auspices.

New York Times v. United States, whether The New York Times and Washington Post could publish the then-classified Pentagon papers. Many of us grind our law school days on that case, a very vital case that was crucial to where we are today in understanding that the

American people do deserve to be told the truth, either through us as Representatives or certainly through lawyers who take these cases without concern for their personal jeopardy or for compensation.

Finally, the Texas Valley Authority v. Hill, the TVA case 1978, affirmed the court of appeals case, which agreed with the Secretary of the Interior that operation of the Federal Tellico Dam would eradicate an endangered species. Way off the margin, if you will, of anyone being very happy about that case in a lot of different places.

And so frivolous cases are worthy, and I thank the gentleman for yielding, and I yield back to the gentleman.

Mr. Johnson of Georgia. Thank you, gentlelady. If we want to politicize the courts, then you will pass this legislation. Those who are interested in this administration appointing judges like Judge Gorsuch, who is antiplaintiff, antiwomen, antiworker, pro-corporate, and that is his claim to fame, and we have a bench stacked with those types of judges, then we will get a bunch of frivolous litigation findings and sanctions against people who really have meritorious lawsuits. And so, for that reason, I urge my colleagues on the other side to adopt this amendment.

And, with that, I yield back.

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

All those in favor, respond by saying aye.

Those opposed --

Ms. Jackson Lee. Recorded vote, Mr. Chairman.

Chairman Goodlatte. Before the noes were said, a recorded vote was requested, and the clerk will call the roll.

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

Ms. Adcock. Mr. Goodlatte?

Chairman Goodlatte. No.

Ms. Adcock. Mr. Goodlatte votes no.

Mr. Sensenbrenner?

Mr. Sensenbrenner. No.

Ms. Adcock. Mr. Sensenbrenner votes no.

Mr. Smith?

Mr. Smith. No.

Ms. Adcock. Mr. Smith votes no.

Mr. Chabot?

Mr. Chabot. No.

Ms. Adcock. Mr. Chabot votes no.

Mr. Issa?

[No response.]

Ms. Adcock. Mr. King?

Mr. King. No.

Ms. Adcock. Mr. King votes no.

Ms. Adcock. Mr. Franks?

[No response.]

Ms. Adcock. Mr. Gohmert?

[No response.]

Ms. Adcock. Mr. Jordan?

[No response.]

Ms. Adcock. Mr. Poe?

[No response.]

Ms. Adcock. Mr. Chaffetz?

[No response.]

Ms. Adcock. Mr. Marino?

Mr. Marino. No.

Ms. Adcock. Mr. Marino votes no.

Mr. Gowdy?

Mr. Gowdy. No.

Ms. Adcock. Mr. Gowdy votes no.

Mr. Labrador?

Mr. Labrador. No.

Ms. Adcock. Mr. Labrador votes no.

Mr. Farenthold?

[No response.]

Ms. Adcock. Mr. Collins?

Mr. Collins. No.

Ms. Adcock. Mr. Collins votes no.

Mr. DeSantis?

Mr. DeSantis. No.

Ms. Adcock. Mr. DeSantis votes no.

Mr. Buck?

Mr. Buck. No.

Ms. Adcock. Mr. Buck votes no.

Mr. Ratcliffe?

Mr. Ratcliffe. No.

Ms. Adcock. Mr. Ratcliffe votes no.

Mr. Bishop?

Mr. Bishop. No.

Ms. Adcock. Mr. Bishop votes no.

Mrs. Roby?

Mrs. Roby. No.

Ms. Adcock. Mrs. Roby votes no.

Mr. Gaetz?

Mr. Gaetz. No.

Ms. Adcock. Mr. Gaetz votes no.

Mr. Johnson?

Mr. Johnson of Louisiana. No.

Ms. Adcock. Mr. Johnson votes no.

Mr. Biggs?

Mr. Biggs. No.

Ms. Adcock. Mr. Biggs votes no.

Mr. Conyers?

[No response.]

Ms. Adcock. Mr. Nadler?

[No response.]

Ms. Adcock. Ms. Lofgren?

[No response.]

Ms. Adcock. Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

Ms. Adcock. Ms. Jackson Lee votes aye.

Mr. Cohen?

[No response.]

Ms. Adcock. Mr. Johnson?

Mr. Johnson of Georgia. Aye.

Ms. Adcock. Mr. Johnson votes aye.

Ms. Chu?

Ms. Chu. Aye.

Ms. Adcock. Ms. Chu votes aye.

Mr. Deutch?

[No response.]

Ms. Adcock. Mr. Gutierrez?

[No response.]

Ms. Adcock. Ms. Bass?

Ms. Bass. Aye.

Ms. Adcock. Ms. Bass votes aye.

Mr. Richmond?

[No response.]

Ms. Adcock. Mr. Jeffries?

Mr. Jeffries. Aye.

Ms. Adcock. Mr. Jeffries votes aye.

Mr. Cicilline?

Mr. Cicilline. Aye.

Ms. Adcock. Mr. Cicilline votes aye.

Mr. Swalwell?

Mr. Swalwell. Aye.

Ms. Adcock. Mr. Swalwell votes aye.

Mr. Lieu?

Mr. Lieu. Aye.

Ms. Adcock. Mr. Lieu votes aye.

Mr. Raskin?

Mr. Raskin. Aye.

Ms. Adcock. Mr. Raskin votes aye.

Ms. Jayapal?

[No response.]

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

Mr. Issa. No.

Ms. Adcock. Mr. Issa votes no.

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

Mr. Jordan. No.

Ms. Adcock. Mr. Jordan votes no.

Chairman Goodlatte. The gentleman from Florida, Mr. Deutch?

Mr. Deutch. Aye.

Ms. Adcock. Mr. Deutch votes aye.

Chairman Goodlatte. Has every member voted who wishes to vote?

The clerk will report.

Ms. Adcock. Mr. Chairman, 10 members voted aye; 19 members voted no.

Chairman Goodlatte. And the amendment is not agreed to.

Are there further amendments to H.R. 720?

For what purpose does the gentleman from Maryland seek recognition?

Mr. Raskin. Mr. Chairman, I have got an amendment at the desk.

Chairman Goodlatte. The clerk will report the amendment.

Ms. Adcock. Amendment to H.R. 720 offered by Mr. Raskin. Add, at the end of the bill, the following --

Chairman Goodlatte. Without objection, the amendment is considered as read, and the gentleman is recognized for 5 minutes on his amendment.

[The amendment of Mr. Raskin follows:]

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

Mr. Raskin. Thank you very kindly, Mr. Chairman.

The amendment says simply this: Nothing in this act shall be construed to apply to actions that pertain to ethics in government. And I thought I would use my few moments here not to vilify or demonize or lambast anybody, but really to try to talk to my colleagues about what we are about to do. I have only been in Congress for a few weeks now, and I come from the Maryland State Senate where we really try to use the hearings and the markup sessions to discuss things in a meaningful way. So I think that I have got a point that I would love to have both sides of the aisle hear me about.

The amendments that have been offered have suggested that there is a danger in passing this legislation, in chilling significant public interest litigation. The history of American law is a history of great reversals, great U-turns, and great transformations in the law. So in Brown v. Board Education, the Supreme Court proclaimed that separate is inherently unequal, reversing 50 years of jurisprudence under Plessy v. Ferguson, where the Supreme Court had said that it is completely up to the States to segregate and to create an apartheid regime if they want to do that.

But that is not the only example. That is the most famous example, but there are literally dozens and dozens of Supreme Court precedents where something that was considered scandalous or frivolous or absurd at one point suddenly becomes orthodox and adopted by the majority of the Supreme Court. And they go in both directions, for example. Recently, in 2010, the Supreme Court proclaimed that a

corporation enjoys the political free expression rights of the people under the First Amendment, reversing two centuries of understanding that a corporation is not a person within the meaning of the First Amendment or within the meaning of the Constitution going all the way back to Chief Justice John Marshall's decision in the Dartmouth College v. Woodward case, but the Supreme Court overturned that. Now, another court might have said this is a completely frivolous argument and essentially punished the litigants for even raising it in court.

The same thing happened in the Hobby Lobby decision. You will recall where the Supreme Court said for the first time in American history that a corporation, a for-profit business corporation, enjoys the First Amendment free religious rights of the people and under the Religious Freedom Restoration Act as well. So there are lots of surprises in American law, and we shouldn't politicize the situation to the point where if you think that the court is going to go with you, you are all right; but if you think the court is going to rule against you, then you might be facing punishing and demoralizing and crippling sanctions.

Lots of Members of Congress on both sides of the aisle were elected in this election, pledged to ethics in government. And in some sense, the Presidential election was fought over the question of ethics in government. There was a series of allegations made about the Democratic candidate relating to emails and about the Republican candidate related to structural conflicts of interest with his business concerns all over the world and potential violations of the Emoluments

Clause.

But all of us on this committee and in Congress are committed to ethics in government. All this amendment says is let's make sure if you have got a conservative group, like Judicial Watch, raising an ethics in government concern or a more liberal group raising ethics in government concern, like the ACLU, that they will not face mandatory judicial sanctions simply for having raised a legal theory that has not yet been adopted by the courts. That is how the law evolves.

And so I would hope that all of us would agree to say that nothing in the act shall be construed to apply to actions that pertain to ethics in government.

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

Chairman Goodlatte. The chair thanks the gentleman.

For what purpose does the gentleman from Texas seek recognition?

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

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Smith. Mr. Chairman, I oppose the amendment because it would exempt claims that involve government ethics from attorney sanctions. The Lawsuit Abuse Reduction Act in no way limits the ability for parties to bring ethics claims. The bill merely ensures that if claims are determined to be frivolous, sanctions are required. This amendment's goal is to protect claims that have no basis in law or fact from Rule 11 sanctions. The amendment would allow the filing of frivolous ethics claims, which uses scarce government resources and frustrates the administration of justice, so I urge my colleagues to resist this

amendment and yield back.

Chairman Goodlatte. The question occurs on the amendment offered by the gentleman from Maryland.

All those in favor, respond by saying aye.

Those opposed, no.

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

Are there further amendments?

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

Mr. Raskin. I am sorry. I was asking for a recorded vote.

Chairman Goodlatte. It is a little late, but since you are new, we will do it. Go ahead. The clerk will call the roll.

Ms. Adcock. Mr. Goodlatte?

Chairman Goodlatte. No.

Ms. Adcock. Mr. Goodlatte votes no.

Mr. Sensenbrenner?

Mr. Sensenbrenner. No.

Ms. Adcock. Mr. Sensenbrenner votes no.

Mr. Smith?

Mr. Smith. No.

Ms. Adcock. Mr. Smith votes no.

Mr. Chabot?

[No response.]

Ms. Adcock. Mr. Issa?

Mr. Issa. No.

Ms. Adcock. Mr. Issa votes no.

Mr. King?

[No response.]

Ms. Adcock. Mr. Franks?

[No response.]

Ms. Adcock. Mr. Gohmert?

[No response.]

Ms. Adcock. Mr. Jordan?

Mr. Jordan. No.

Ms. Adcock. Mr. Jordan votes no.

Mr. Poe?

[No response.]

Ms. Adcock. Mr. Chaffetz?

[No response.]

Ms. Adcock. Mr. Marino?

Mr. Marino. No.

Ms. Adcock. Mr. Marino votes no.

Mr. Gowdy?

Mr. Gowdy. No.

Ms. Adcock. Mr. Gowdy votes no.

Mr. Labrador?

Mr. Labrador. No.

Ms. Adcock. Mr. Labrador votes no.

Mr. Farenthold?

[No response.]

Ms. Adcock. Mr. Collins?

Mr. Collins. No.

Ms. Adcock. Mr. Collins votes no.

Mr. DeSantis?

Mr. DeSantis. No.

Ms. Adcock. Mr. DeSantis votes no.

Mr. Buck?

Mr. Buck. No.

Ms. Adcock. Mr. Buck votes no.

Mr. Ratcliffe?

Mr. Ratcliffe. No.

Ms. Adcock. Mr. Ratcliffe votes no.

Mr. Bishop?

Mr. Bishop. No.

Ms. Adcock. Mr. Bishop votes no.

Mrs. Roby?

Mrs. Roby. No.

Ms. Adcock. Mrs. Roby votes no.

Mr. Gaetz?

Mr. Gaetz. No.

Ms. Adcock. Mr. Gaetz votes no.

Mr. Johnson?

Mr. Johnson of Louisiana. No.

Ms. Adcock. Mr. Johnson votes no.

Mr. Biggs?

Mr. Biggs. No.

Ms. Adcock. Mr. Biggs votes no.

Mr. Conyers?

[No response.]

Ms. Adcock. Mr. Nadler?

[No response.]

Ms. Adcock. Ms. Lofgren?

[No response.]

Ms. Adcock. Ms. Jackson Lee?

[No response.]

Ms. Adcock. Mr. Cohen?

[No response.]

Ms. Adcock. Mr. Johnson?

Mr. Johnson of Georgia. Aye.

Ms. Adcock. Mr. Johnson votes aye.

Ms. Chu?

[No response.]

Ms. Adcock. Mr. Deutch?

[No response.]

Ms. Adcock. Mr. Gutierrez?

[No response.]

Ms. Adcock. Ms. Bass?

[No response.]

Ms. Adcock. Mr. Richmond?

[No response.]

Ms. Adcock. Mr. Jeffries?

Mr. Jeffries. Aye.

Ms. Adcock. Mr. Jeffries votes aye.

Mr. Cicilline?

Mr. Cicilline. Aye.

Ms. Adcock. Mr. Cicilline votes aye.

Mr. Swalwell?

Mr. Swalwell. Aye.

Ms. Adcock. Mr. Swalwell votes aye.

Mr. Lieu?

Mr. Lieu. Aye.

Ms. Adcock. Mr. Lieu votes aye.

Mr. Raskin?

Mr. Raskin. Aye.

Ms. Adcock. Mr. Raskin votes aye.

Ms. Jayapal?

[No response.]

Chairman Goodlatte. Has every member voted who wishes to vote?

The clerk will report.

Ms. Adcock. Mr. Chairman, 6 members voted aye; 17 members voted no.

Chairman Goodlatte. The amendment is not agreed to.

And now we will turn to the gentleman from New York. The clerk will report the amendment.

Ms. Adcock. Amendment to H.R. 27 offered by Mr. Jeffries. Add, at the end of the bill, the following.

Chairman Goodlatte. Without objection, the amendment is considered as read, and the gentleman is recognized for 5 minutes on his amendment.

[The amendment of Mr. Jeffries follows:]

******** INSERT 2-5 ********

Mr. Jeffries. Thank you, Mr. Chairman.

Donald Trump came to Washington promising to drain the swamp. The last time that I checked, he himself is a living, breathing conflict of interest. He has problems. His White House has problems. His Cabinet nominees have problems. The Trump Organization has problems. The Trump Foundation has ethical problems. He is a living, breathing conflict of interest. So if the new President wants to drain the swamp, I have a suggestion: he should start at 1600 Pennsylvania Avenue.

Now this amendment would exempt from the underlying bill all actions where whistleblowers allege misconduct or malfeasance in connection with the Federal Government. A whistleblower is defined as one who reveals wrongdoing within an organization that is taxpayer-funded in the hope of stopping it. Our country has long recognized the importance of protecting these individuals who risk their very livelihoods to do what is right on behalf of the people. This is evidenced by the many legal protections enacted by this body which allow individuals who witness government malfeasance to come forward without the threat of retaliation. Under the protection of these laws, whistleblowers have helped expose corruption, government waste, unconstitutional practices, and abuses of public trust. They are essential to protecting the integrity of our democracy.

Our objective here in the United States Congress, if we truly believe in good government, should be not to erect barriers that will impede people from coming forward by subjecting claimants or their counsel to mandatory sanctions. This amendment is designed to ensure

that individuals who have witnessed abuse of power or the misuse of public funds will continue to be protected when they bring an action through the judicial system rather than have such courageous behavior chilled by this legislative overreach that we are considering here today.

This amendment supports many of the principles that my colleagues across the aisle constantly talk about or champion, including the First Amendment right to free speech, transparency in government, and protection against so-called waste, fraud, and abuse.

The need for continued protection under whistleblower statutes is clear now more than ever. Within the first 14 days of this new administration, Donald Trump and his team have acted swiftly to silence civil servants who speak out against their agenda or who have the nerve to forward information related to the images that came forth from his inauguration.

Many of his Cabinet nominees are unfamiliar with the great responsibility that comes with their new roles. Some, it will be the first time they have ever had to work in the best interest of the American people or handled billions of dollars in taxpayer funds. In the words of Supreme Court Justice Louis Brandeis, sunlight is said to be the best of disinfectants. And this piece of legislation, absent this amendment, will hurt the ability of hardworking, ethical, and principled public servants from coming forward whenever they uncover wrongdoing.

We have already seen a willingness from this administration to

reach into the legislative branch in violation of the sacred principle of separate but equal to manipulate staff members for their own narrow ends. I would think that this isn't a partisan issue. This is a constitutional issue that relates to the very fabric of our democracy, and my friends on the other side of the aisle should be alarmed at the overreach that we have seen. It took Richard Nixon 6 years to provoke a constitutional crisis. It has taken this administration about 14 days.

And this amendment will help in some small way deal with the overreach that we have seen. I ask for its consideration. I urge its adoption, and I yield back.

Chairman Goodlatte. The chair thanks the gentleman.

For what purpose does the gentleman from Texas seek recognition?

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

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Smith. Mr. Chairman, the Lawsuit Abuse Reduction Act makes three important changes to Rule 11 to significantly limit lawsuit abuse by imposing sanctions for bringing frivolous lawsuits. These changes apply to all cases brought in Federal district court. However, this amendment would change that. If this amendment is adopted, the changes to Rule 11 made by LARA would not apply to lawsuits brought in relation to whistleblower claims. There is no reason to make this or other exemptions. The changes made by the Lawsuit Abuse Reduction Act should apply uniformly throughout the Federal courts. Because this amendment excludes certain cases from the bill's coverage and thereby allows

frivolous lawsuits to be filed in those cases without any of the penalties required by the bill, I oppose it.

Mr. Chairman, in the interest of comity, I am going to ask the gentleman to withdraw his amendment because he represents a district where my grandfather attended elementary school.

I yield back.

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

Chairman Goodlatte. The gentleman from California is recognized for 5 minutes.

Mr. Swalwell. Thank you, Mr. Chairman.

First, I just want to say that I am delighted to join this committee. There are a number of brilliant lawyers and lawmakers on both sides, and I look forward to working with the committee.

Also, I support the amendment but also echo what some of my colleagues have raised, which is a concern that our democracy was attacked this past election, and perhaps one of the most urgent things we could be taking up is answering that attack and undertaking an investigation that gets to the bottom of what happened. That is ever more urgent right now as it was just announced moments ago that President Trump has rolled back sanctions against Russia's security service, the same service that an intelligence report found was responsible for hacking our election.

So the President of the United States in the last 24 hours it has been learned has managed to antagonize a faithful ally in Australia but also roll back the sanctions against the security service that was

responsible for undermining our election. We were attacked. It was electronic. It was nearly invisible, and it sought to undermine our democracy. This attack was ordered by Vladimir Putin. It sought to help Donald Trump, and most concerning, and I think what should really propel us forward, is Russia is undertaking an effort right now to learn from the attack so they may attack us again or attack our allies.

The best thing that this committee can do to protect our country from future attacks, to secure our democracy, is to ensure that a full investigation in the light of day is undertaken so that the facts may be declassified, so that we may depoliticize what happened, and that we may debunk the myths that the President has put out there that this attack did not occur.

Mr. King. Would the gentleman yield? Here, Iowa.

Mr. Swalwell. I will not yield. And, Mr. Chairman --

Mr. King. I had a respectful and polite question to ask.

Mr. Swalwell. The gentleman is not yielding.

Mr. Chairman, I ask that this committee and I hope Republicans join me because this attack may have went after Democrats this time, but if history has its way and if Russia or other adversaries who see this as an opportunity have their way, the victim next time might be a different party. And what should always be the constant, regardless of who is attacking us, is that we stand together, as Republicans and Democrats, and say these fights, these elections, these spirited dialogues always belong to us, and we will never tolerate an outside actor interfering in our elections.

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

Chairman Goodlatte. The chair thanks the gentleman. For what purpose does the gentleman from Iowa seek recognition?

Mr. King. Thank you, Mr. Chairman.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. King. Thank you, Mr. Chairman.

I would just like to state that there is a level of comity in this committee -- and sometimes we drift away from it; I like it when we can drift back to it -- that when we have a request for an open dialogue, we generally allow yielding back and forth, and I hope we can get back to that in this committee.

But what concerned me was statements by the gentleman about the alleged facts that the Russians hacked into our election data. This would also be from the gentleman from Tennessee, that Russians tried to influence the American vote. I don't doubt the Russians wanted to influence the American vote. I think that happens all over the world in the global communications that we have, and I don't know that it is anything that is particularly insidious. But the briefing that I went to and the evidence that I have seen lacks evidence to support the statements that were made by the previous administration's intelligence observations. And we are stating these things as if they are facts, and in fact, they are opinions from the intelligence community that was appointed by former President Barrack Obama. And I think we should take a deep breath and with caution look at the statements that they have made and then look for the evidence that may

support their opinions but also trust the judgment of the intelligence community that is being formed under this new administration.

And I think when the President of the United States evaluates that information -- and he has, and we have not -- we should give deference to that opinion rather than simply say the previous opinions that I took to be partisan from the intelligence community are the facts. They are not facts. They are opinions of the intelligence community, and we have seen no facts to support that the Russians hacked into our election data. But I don't deny they hacked into the DNC. And therein lies the difference. But the security measures that were in the RNC apparently were good enough that they were not hacked into. And so I just wanted to make that point and clarify the issue.

And then, while I have the floor, Mr. Chairman, maybe broaden this topic out just a little bit and just make the statement that we are here to reduce lawsuit abuse and frivolous law cases. The public knows that we are faced with these high costs, and they are watching as small businesses are being crushed by frivolous lawsuits. They are watching as the costs go up. These costs go up on the consumers. When I hear the statement that it is regulations that benefit the consumers, I would say it is frivolous lawsuits that go against the consumers, and the only people that benefit from that are the plaintiffs when they get their settlement and the attorneys. I have sat in this committee and tried to move reform and gone to the floor and engaged in a debate on the floor when we tried to do lawsuit reform, and someone will invariably get up and make a statement that is hard to rebut. We can

pass this out of the House of Representatives, but when it gets to the Senate, we should have an understanding that, at least at time, that it is a wholly-owned subsidiary of the Trial Lawyers Association. So when I hear this debate in here, piece after piece, amendment after amendment, chipping away to try to undermine this effort to provide this to streamline the law and to take some of this fraud out of it and hold lawyers accountable for filing frivolous lawsuits, I just see that there is an initiative on that side. The trial lawyers don't want this. It is pretty clear. The American citizens do want this reform.

And it is part and parcel of this new administration's agenda. We need a streamlined government that brings the truth back to what we do. We need the rule of law restored. We do, as the gentleman said, need respect for the Constitution. And by the way, this nomination process of Judge Gorsuch comes into this thought, and he is a justice that has demonstrated throughout his years that he will rule on the original understanding of the Constitution or the amendments as they came and the text of the Constitution and the text and the meaning of the law. How refreshing to get back to that, and I would like it if Democrats and Republicans who speak in that fashion would also vote in that fashion.

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

RPTR BRYANT

EDTR SECKMAN

[12:27 p.m.]

Chairman Goodlatte. The chair thanks the gentleman.

For what purpose does the gentleman from Georgia seek recognition?

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

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Johnson of Georgia. Thank you, Mr. Chairman.

I rise in support of the amendment. And I would interject at this time that this Nation is in serious difficulty. We have had this past week kind of the administration throwing a lot of red herrings out there. They are not really red herrings, but yet there are a lot of things that they are doing to try to distract public attention away from their main effort.

Their main effort is to consolidate power in the executive branch, in the Presidency. And what has the President done to do that? What he did was he issued an executive order banning Muslims from certain nations and also banning refugees, got the public riled up about it. People went to court, won lawsuits, won restraining orders. And what did the executive do? Defied court orders while at the same time removing reference to the judicial branch from the White House website, which only speaks on the legislative branch and the executive branch.

So he is looking to neuter the judicial branch in everything that

he has done and said since he was sworn in. And what happened, what makes that a red herring is the fact that he has placed the Nation's national security interests into the hands of Steve Bannon while removing the Joint Chiefs of Staff and the Director of National Intelligence from the Nation's highest -- from the National Security Council.

So, in other words, he is getting the voice of people who have business interests in Russia. He is getting the advice of those people over and above the advice of professionals who know the history; they know the niceties of our national security framework. And it is putting our Nation at risk. Why? Because of the business interests of the President and his cronies. And it puts us all at risk.

Meanwhile, this Congress is diverted away from its obligation to serve as a check and a balance on executive excess. It is busy turning over the store to the corporations that sponsor them. This is the dilemma that the American people find themselves in. We on this side of the aisle will continue to resist this handoff of government to corporate interests. We will continue to resist the shirking of responsibility by the legislative branch, giving the executive wholesale king-like powers to rule. It is something that is bad for our country. It is bad for the Nation. It is bad for the world order.

And I am calling upon my colleagues now to wake up to what is happening in this country. The American people see it, and you yourselves know it, but for some reason, you are just unable to do anything to resist yourselves. But I predict that the American people

will prevail, and things will get better, but they are going to get a little worse before they get better. So hang on, tighten your seatbelt, tighten your chinstrap, and let's get out here, people, and do what we need to do in order to preserve and protect our liberties.

And, with that, I am going to yield back.

Chairman Goodlatte. For what purpose does the gentleman from Rhode Island seek recognition?

Mr. Cicilline. I seek time in support of the amendment.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Cicilline. Thank you, Mr. Chairman.

I want to applaud the gentleman from New York for offering this amendment and to suggest to my colleagues on the committee that it is important that we consider this amendment in the context of the times in which we are currently living. These are not ordinary times. We have seen a new administration that has in so many ways attempted to stifle dissent. We have seen reports that civil servants were directed not to use Twitter to share information with the American people, other civil servants being directed not to speak to the press. We have seen a threat just today or yesterday by our new President to cut funding in response to a university protest in California. We see the firing of the Acting Attorney General when she dared to share with the administration her assessment that their actions were unconstitutional. And we saw, of course, a special counsel to the President who for the first time revealed to us that they rely on alternative facts.

So these are extraordinary times. And we just heard my friend on the other side of the aisle claim that there was nothing particularly nefarious or insidious about the Russian hacking and attempt to influence our election. So we also are, I think, dealing with a set of conditions and circumstances that raise very serious questions about the current administration's willingness to take criticism seriously.

And so this amendment attempts to protect people who, in fact, come forward and have the courage to be a whistleblower and to share information that is worthy of review by a court and ultimately by the American people. These are extraordinary times. And these efforts I think will become especially important in this administration.

And so I would urge my colleagues to support this amendment, to support the ability of people to bring forth information that is evidence of misconduct or malfeasance, particularly in the context of an administration that is riddled with examples of conflicts of interest led by a President who said: "I have no conflicts of interest. I am the President. I can do whatever I want." These are alarming statements. It makes the urgency of Mr. Jeffries' amendment even clearer to me and I hope to my colleagues.

And, with that, I would like to yield to Mr. Raskin the balance of my time.

Mr. Raskin. Thank you very much, Mr. Cicilline.

I just want to echo precisely what you said. These are times of great danger for our Constitution, for our Bill of Rights and for the rule of law.

In a free society, we are not afraid of dissent. We welcome freedom of expression and we encourage whistleblowing, in order to save the people's money and the people's trust and integrity in government. But we are living in a time of growing retaliation, growing reprisal, and growing crackdown on people's ability to express themselves. So the amendment moves us precisely in the right direction.

I would also like to just go back to one thing that the distinguished chairman of the Constitution Subcommittee said, and I just want to make sure I got it right, or perhaps he could clarify my understanding.

There are two points. One, he said that he did not think that foreign attempts to undermine and subvert our elections were particularly insidious. And perhaps I heard him wrong, and I hope that he will correct that, because I think it is desperately insidious when we have foreign powers that are trying to undermine and sabotage American elections, American democracy, regardless of whose ox is gored, regardless of who wins or loses.

But then I also heard him to say that we shouldn't trust the judgments of the intelligence community that were released a couple months ago because that was under President Obama and those were President Obama's appointees. Now, as I understand it, there were 16 different intelligence agencies that were part of the report that was released saying with great confidence, with high confidence that Russia had attempted to undermine and sabotage our election. They included Air Force intelligence, Army intelligence, CIA, Coast Guard

intelligence, DIA, Department of Energy, DHS, State Department, Treasury, DEA, FBI, Marine Corps intelligence, National Geospatial-Intelligence Agency, National Reconnaissance Agency, NSA, and Navy intelligence.

Is it the case that all of those intelligence agencies were operating as partisan actors? I mean, is the suggestion they were trying to mislead the American people, or is the suggestion that the people taking over in the Trump administration will instead revise and abolish the findings of the intelligence agencies based on partisan and political criteria imposed by the President?

And I would be happy to yield to my distinguished colleague for clarification.

Mr. King. I would be happy to accept that request. And we are going to have to ask for unanimous consent for an additional minute.

Chairman Goodlatte. Without objection, I will be happy to do that. The gentleman who controls the time has left the room, so we are going to ask unanimous consent to allow the gentleman from Iowa to respond to the gentleman. And, without objection, he is granted 1 minute to do so.

Mr. King. Thank you, Mr. Chairman.

I appreciate the gentleman making these points and as part of what I appreciate is bringing these things to clarity. When I said it wasn't particularly insidious, I would point out that the Director of National Intelligence's first point was that the Russians were seeking to influence U.S. elections through RT, Russian TV.

Well, Russian TV isn't particularly insidious, and I think there are many nation-states that put out messages that are designed to affect American public opinion, and we put out messages designed to affect theirs. That is the component that I think is not particularly insidious.

And then, with regard to the intelligence community, I have been to a good number of classified briefings and other briefings, and I have seen the change when an administration came in. And I recall the testimony before classified briefings -- and these statements I have made publicly in the past -- that I thought we got factual and tactical information from the people from the Bush administration; and the same people that were there at the beginning of the Obama administration, even in classified briefings, their testimony became political rather than factual and tactical. And that is an analysis from 8 years ago that I drew.

And I have heard very high-level individuals in classified briefings lie to Members of Congress. So I have a healthy skepticism, I believe, and it is time for a fresh start. And that is my point. And I thank the gentleman for giving me an opportunity to clarify.

Chairman Goodlatte. The time of the gentleman has clarified.

The question is on the amendment offered by the gentleman from New York.

All those in favor, respond by saying aye.

Those opposed, no.

The noes have it.

Mr. Swalwell. May we have a recorded vote?

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

Ms. Adcock. Mr. Goodlatte?

Chairman Goodlatte. No.

Ms. Adcock. Mr. Goodlatte votes no.

Mr. Sensenbrenner?

[No response.]

Ms. Adcock. Mr. Smith?

Mr. Smith. No.

Ms. Adcock. Mr. Smith votes no.

Mr. Chabot?

[No response.]

Ms. Adcock. Mr. Issa?

[No response.]

Ms. Adcock. Mr. King?

Mr. King. No.

Ms. Adcock. Mr. King votes no.

Mr. Franks?

[No response.]

Ms. Adcock. Mr. Gohmert?

[No response.]

Ms. Adcock. Mr. Jordan?

Mr. Jordan. No.

Ms. Adcock. Mr. Jordan votes no.

Mr. Poe?

[No response.]

Ms. Adcock. Mr. Chaffetz?

[No response.]

Ms. Adcock. Mr. Marino?

Mr. Marino. No.

Ms. Adcock. Mr. Marino votes no.

Mr. Gowdy?

Mr. Gowdy. No.

Ms. Adcock. Mr. Gowdy votes no.

Mr. Labrador?

Mr. Labrador. No.

Ms. Adcock. Mr. Labrador votes no.

Mr. Farenthold?

[No response.]

Ms. Adcock. Mr. Collins?

Mr. Collins. No.

Ms. Adcock. Mr. Collins votes no.

Mr. DeSantis?

[No response.]

Ms. Adcock. Mr. Buck?

Mr. Buck. No.

Ms. Adcock. Mr. Buck votes no.

Mr. Ratcliffe?

Mr. Ratcliffe. No.

Ms. Adcock. Mr. Ratcliffe votes no.

Mr. Bishop?

Mr. Bishop. No.

Ms. Adcock. Mr. Bishop votes no.

Mrs. Roby?

Mrs. Roby. No.

Ms. Adcock. Mrs. Roby votes no.

Mr. Gaetz?

[No response.]

Ms. Adcock. Mr. Johnson?

Mr. Johnson of Louisiana. No.

Ms. Adcock. Mr. Johnson votes no.

Mr. Biggs?

Mr. Biggs. No.

Ms. Adcock. Mr. Biggs votes no.

Mr. Conyers?

[No response.]

Ms. Adcock. Mr. Nadler?

[No response.]

Ms. Adcock. Ms. Lofgren?

[No response.]

Ms. Adcock. Ms. Jackson Lee?

[No response.]

Ms. Adcock. Mr. Cohen?

[No response.]

Ms. Adcock. Mr. Johnson?

Mr. Johnson of Georgia. Aye.

Ms. Adcock. Mr. Johnson votes aye.

Ms. Chu?

[No response.]

Ms. Adcock. Mr. Deutch?

[No response.]

Ms. Adcock. Mr. Gutierrez?

[No response.]

Ms. Adcock. Ms. Bass?

[No response.]

Ms. Adcock. Mr. Richmond?

[No response.]

Ms. Adcock. Mr. Jeffries?

Mr. Jeffries. Aye.

Ms. Adcock. Mr. Jeffries votes aye.

Mr. Cicilline?

Mr. Cicilline. Aye.

Ms. Adcock. Mr. Cicilline votes aye.

Mr. Swalwell?

Mr. Swalwell. Aye.

Ms. Adcock. Mr. Swalwell votes aye.

Mr. Lieu?

Mr. Lieu. Aye.

Ms. Adcock. Mr. Lieu votes aye.

Mr. Raskin?

Mr. Raskin. Aye.

Ms. Adcock. Mr. Raskin votes aye.

Ms. Jayapal?

[No response.]

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

Mr. Issa. No.

Ms. Adcock. Mr. Issa votes no.

Chairman Goodlatte. The gentleman from Wisconsin, Mr. Sensenbrenner?

Mr. Sensenbrenner. No.

Ms. Adcock. Mr. Sensenbrenner votes no.

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

Mr. Franks. No.

Ms. Adcock. Mr. Franks votes no.

Chairman Goodlatte. Has every member voted who wishes to vote?

The clerk will report.

Ms. Adcock. Mr. Chairman, 6 members voted aye; 17 members voted no.

Chairman Goodlatte. And the amendment is not agreed to.

Are there further amendments to H.R. 720?

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

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

Chairman Goodlatte. The clerk will report the amendment.

Ms. Adcock. Amendment to H.R. 720 offered by Mr. Cicilline. Page 2, line 2 --

Chairman Goodlatte. Without objection, the amendment is considered as read, and the gentleman is recognized for 5 minutes on his amendment.

[The amendment of Mr. Cicilline follows:]

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

Mr. Cicilline. Thank you, Mr. Chairman.

Mr. Chairman, the bill proposed by my distinguished colleagues and being considered by this committee claims to address an alleged rise in frivolous civil litigation and to do so through the deterrence of mandatory sanctions.

However, even if such a problem existed, history tells us that the proposed cure will be much worse than the problem to be solved. The last time that such a legislative proposal was in effect, from 1983 to 1993, it caused unnecessary and abusive litigation. During that decade, when mandatory Rule 11 sanctions were in effect, nearly 7,000 motions were generated, many purely tactical in nature. And, in fact, a 1989 study found that roughly one-third of all Federal civil lawsuits at the time involved Rule 11 litigation. Roughly one-fourth of all the cases on the Federal docket were burdened by Rule 11 actions that did not result in sanctions.

The 1983 rule also had a harmful chilling effect on civil rights cases, as we have heard throughout the morning. Plaintiffs in these cases are especially vulnerable to Rule 11 motions because they often rely on novel arguments to support the alteration or reversal of existing law. And as the gentleman from Maryland, Mr. Raskin, so eloquently explained, that happens on both sides of issues, and it crosses boundaries of conservative, liberal, Republican or Democrat. Indeed, a 1992 study showed that, although civil rights cases made up only about 11 percent of Federal cases filed, sanctions were disproportionately imposed on plaintiffs in civil rights cases.

To curb the rise in abusive litigation, the 1983 rule was re-amended to create a 21-day safe harbor provision, allowing a litigant to withdraw or amend a claim before the court moves forward with Rule 11 proceedings. The Eastern District Court of New York noted that the safe harbor provision has had the beneficial impact of providing appropriate due process considerations to sanction litigation, reducing Rule 11 volume, and eliminating abuses prescribed by this law -- by this rule.

My amendment would preserve the safe harbor provision. It would allow courts to focus more on the merits of cases, preventing much of the pure gamesmanship that accompanied the previous version of Rule 11. And so I urge my colleagues to support this amendment.

And I yield back the balance of my time.

Chairman Goodlatte. The chair thanks the gentleman.

For what purpose does the gentleman from Texas seek recognition?

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

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Smith. Mr. Chairman, I oppose this amendment because it allows lawyers who file frivolous claims to escape any sanction. It is essential that LARA reverse the 1993 amendments to Rule 11. The current rule allows those who file frivolous lawsuits to avoid sanctions by withdrawing claims within 21 days after a motion for sanctions has been filed. This loophole, which LARA closes, gives unscrupulous lawyers an unlimited number of free passes to file frivolous pleadings with impunity.

Justice Scalia correctly predicted that such amendments would, in fact, encourage frivolous lawsuits. Opposing the 1993 amendments in which the 21-day rule was instated, Justice Scalia wrote, quote: "In my view, those who file frivolous suits and pleadings should have no safe harbor. The rule should be solicitous of the abused, the courts, and the opposing party, and not of the abuser. Under the revised rule, parties will be able to file thoughtless, reckless, and harassing pleadings, secure in the knowledge that they have nothing to lose. If an objection is raised, they can retreat without penalty," end quote.

LARA would get rid of the free pass lawyers today have to file frivolous lawsuits under today's Rule 11. This amendment would eliminate the free pass that is actually so costly to innocent Americans. So I oppose the amendment.

I yield back.

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

All those in favor, respond by saying aye.

Those opposed, no.

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

Mr. Swalwell. I request a recorded vote, Mr. Chairman.

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

Ms. Adcock. Mr. Goodlatte?

Chairman Goodlatte. No.

Ms. Adcock. Mr. Goodlatte votes no.

Mr. Sensenbrenner?

[No response.]

Ms. Adcock. Mr. Smith?

Mr. Smith. No.

Ms. Adcock. Mr. Smith votes no.

Mr. Chabot?

[No response.]

Ms. Adcock. Mr. Issa?

Mr. Issa. No.

Ms. Adcock. Mr. Issa votes no.

Mr. King?

[No response.]

Ms. Adcock. Mr. Franks?

Mr. Franks. No.

Ms. Adcock. Mr. Franks votes no.

Mr. Gohmert?

[No response.]

Ms. Adcock. Mr. Jordan?

Mr. Jordan. No.

Ms. Adcock. Mr. Jordan votes no.

Mr. Poe?

[No response.]

Ms. Adcock. Mr. Chaffetz?

[No response.]

Ms. Adcock. Mr. Marino?

Mr. Marino. No.

Ms. Adcock. Mr. Marino votes no.

Mr. Gowdy?

Mr. Gowdy. No.

Ms. Adcock. Mr. Gowdy votes no.

Mr. Labrador?

Mr. Labrador. No.

Ms. Adcock. Mr. Labrador votes no.

Mr. Farenthold?

[No response.]

Ms. Adcock. Mr. Collins?

Mr. Collins. No.

Ms. Adcock. Mr. Collins votes no.

Mr. DeSantis?

[No response.]

Ms. Adcock. Mr. Buck?

Mr. Buck. No.

Ms. Adcock. Mr. Buck votes no.

Mr. Ratcliffe?

Mr. Ratcliffe. No.

Ms. Adcock. Mr. Ratcliffe votes no.

Mr. Bishop?

Mr. Bishop. No.

Ms. Adcock. Mr. Bishop votes no.

Mrs. Roby?

Mrs. Roby. No.

Ms. Adcock. Mrs. Roby votes no.

Mr. Gaetz?

[No response.]

Ms. Adcock. Mr. Johnson?

Mr. Johnson of Louisiana. No.

Ms. Adcock. Mr. Johnson votes no.

Mr. Biggs?

Mr. Biggs. No.

Ms. Adcock. Mr. Biggs votes no.

Mr. Conyers?

[No response.]

Ms. Adcock. Mr. Nadler?

[No response.]

Ms. Adcock. Ms. Lofgren?

[No response.]

Ms. Adcock. Ms. Jackson Lee?

[No response.]

Ms. Adcock. Mr. Cohen?

[No response.]

Ms. Adcock. Mr. Johnson?

Mr. Johnson of Georgia. Aye.

Ms. Adcock. Mr. Johnson votes aye.

Ms. Chu?

[No response.]

Ms. Adcock. Mr. Deutch?

[No response.]

Ms. Adcock. Mr. Gutierrez?

[No response.]

Ms. Adcock. Ms. Bass?

[No response.]

Ms. Adcock. Mr. Richmond?

[No response.]

Ms. Adcock. Mr. Jeffries?

[No response.]

Ms. Adcock. Mr. Cicilline?

Mr. Cicilline. Aye.

Ms. Adcock. Mr. Cicilline votes aye.

Mr. Swalwell?

Mr. Swalwell. Aye.

Ms. Adcock. Mr. Swalwell votes aye.

Mr. Lieu?

Mr. Lieu. Aye.

Ms. Adcock. Mr. Lieu votes aye.

Mr. Raskin?

[No response.]

Ms. Adcock. Ms. Jayapal?

[No response.]

Chairman Goodlatte. The gentleman from Wisconsin,

Mr. Sensenbrenner?

Mr. Sensenbrenner. No.

Ms. Adcock. Mr. Sensenbrenner votes no.

Chairman Goodlatte. The gentleman from Iowa, Mr. King?

Mr. King. No.

Ms. Adcock. Mr. King votes no.

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

Mr. Poe. No.

Ms. Adcock. Mr. Poe votes no.

Chairman Goodlatte. Has every member voted who wishes to vote?

The clerk will report.

Ms. Adcock. Mr. Chairman, 4 members voted aye; 18 members voted no.

Chairman Goodlatte. And the amendment is not agreed to.

For what purpose does the gentleman from California seek recognition?

Mr. Swalwell. Thank you, Mr. Chairman.

My amendment, which I am sponsoring with the Congressman --

Chairman Goodlatte. Hold up just a second. The gentleman will suspend. Does the gentleman have an amendment at the desk?

Mr. Swalwell. I am sorry. Mr. Chairman, I have an amendment at the desk.

Chairman Goodlatte. The clerk will report the amendment.

Ms. Adcock. Amendment to H.R. 720 offered by Mr. Swalwell of California. Add at the end of the bill the following --

Chairman Goodlatte. Without objection, the amendment is considered as read, and the gentleman is recognized for 5 minutes on his amendment.

[The amendment of Mr. Swalwell follows:]

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

Mr. Swalwell. Thank you, Mr. Chairman.

My amendment, which I am sponsoring with Congresswoman Jayapal, would exclude cases involving our immigration laws from H.R. 720, the so-called Lawsuit Abuse Reduction Act. This amendment would be to address the real and present crisis caused by the President's recent executive order on immigration.

Over the weekend, we had a 5-year-old child separated from his mother for hours, for no reason except for the fact that he was coming from Iran. And Iraqi translators, who risked their lives to assist American soldiers, are being told to stay out of our country. President Trump's Muslim ban has not only made us less safe; it has made us less American.

This past weekend, at airports across the United States, as the Muslim ban was enforced, there was chaos and confusion at our airports. Ensnared in the ban were green card holders, already vetted and allowed to enter the United States, who found themselves being detained. I went to San Francisco Airport, and I saw thousands of protesters who showed up to show solidarity for those Muslims seeking to enter our country and to protest the ban. I learned a constituent of mine had been detained for 30 hours.

Fortunately, Mr. Chairman, there was a bright light in this foggy confusing harbor: the lawyers, the lawyers who showed up to provide help to the detained. Immigration lawyers showed up to help people they had never met. And because these immigration lawyers showed up and joined forces with congressional caseworkers across the country,

including my colleague Mr. Nadler, who led the charge at JFK Airport, because they showed up for the Muslims caught in the President's unconstitutional un-American ban, these lawyers helped secure the freedom of many detained.

This bill will chill an immigration lawyer's ability to stand up for their clients. The victims of the Muslim ban also had a pretty powerful lawyer on their behalf, America's lawyer, Acting Attorney General Sally Yates. She was fired for refusing to defend the illegal Muslim ban.

Passing this bill is essentially a complement to the Muslim ban with a lawyer ban, a ban on the right to counsel, a chilling effect on a detained person's ability to seek help when they need it the most. Our amendment excepts immigration cases to protect some of the most vulnerable at a time of great uncertainty.

I yield back.

The Chairman. For what purpose does the gentleman from Louisiana seek recognition?

Mr. Johnson of Louisiana. Mr. Chairman, I oppose this amendment.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Johnson of Louisiana. Mr. Chairman, I oppose the amendment because it would exempt immigration filings from attorney sanctions. The Lawsuit Abuse Reduction Act in no way limits the ability for parties to bring their claims and grievances to court. The bill ensures that if claims are determined to be frivolous, sanctions are required.

This amendment's goal is to protect claims that have no basis in

law or fact from Rule 11 sanctions. And one can only conclude that proponents of the amendment might then approve of filing frivolous claims on immigration matters. We simply can't have that, and I urge my colleagues to defeat this amendment.

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

All those in favor, respond by saying aye.

Those opposed, no.

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

Mr. Swalwell. Mr. Chairman, may we have a recorded vote?

Chairman Goodlatte. A recorded vote is requested. The clerk will call the roll.

Ms. Adcock. Mr. Goodlatte?

Chairman Goodlatte. No.

Ms. Adcock. Mr. Goodlatte votes no.

Mr. Sensenbrenner?

[No response.]

Ms. Adcock. Mr. Smith?

Mr. Smith. No.

Ms. Adcock. Mr. Smith votes no.

Mr. Chabot?

[No response.]

Ms. Adcock. Mr. Issa?

[No response.]

Ms. Adcock. Mr. King?

[No response.]

Ms. Adcock. Mr. Franks?

Mr. Franks. No.

Ms. Adcock. Mr. Franks votes no.

Mr. Gohmert?

[No response.]

Ms. Adcock. Mr. Jordan?

Mr. Jordan. No.

Ms. Adcock. Mr. Jordan votes no.

Mr. Poe?

Mr. Poe. No.

Ms. Adcock. Mr. Poe votes no.

Mr. Chaffetz?

[No response.]

Ms. Adcock. Mr. Marino?

Mr. Marino. No.

Ms. Adcock. Mr. Marino votes no.

Mr. Gowdy?

Mr. Gowdy. No.

Ms. Adcock. Mr. Gowdy votes no.

Mr. Labrador?

Mr. Labrador. No.

Ms. Adcock. Mr. Labrador votes no.

Mr. Farenthold?

[No response.]

Ms. Adcock. Mr. Collins?

Mr. Collins. No.

Ms. Adcock. Mr. Collins votes no.

Mr. DeSantis?

[No response.]

Ms. Adcock. Mr. Buck?

Mr. Buck. No.

Ms. Adcock. Mr. Buck votes no.

Mr. Ratcliffe?

[No response.]

Ms. Adcock. Mr. Bishop?

Mr. Bishop. No.

Ms. Adcock. Mr. Bishop votes no.

Mrs. Roby?

Mrs. Roby. No.

Ms. Adcock. Mrs. Roby votes no.

Mr. Gaetz?

[No response.]

Ms. Adcock. Mr. Johnson?

Mr. Johnson of Louisiana. No.

Ms. Adcock. Mr. Johnson votes no.

Mr. Biggs?

Mr. Biggs. No.

Ms. Adcock. Mr. Biggs votes no.

Mr. Conyers?

[No response.]

Ms. Adcock. Mr. Nadler?

[No response.]

Ms. Adcock. Ms. Lofgren?

[No response.]

Ms. Adcock. Ms. Jackson Lee?

[No response.]

Ms. Adcock. Mr. Cohen?

[No response.]

Ms. Adcock. Mr. Johnson?

Mr. Johnson of Georgia. Yes.

Ms. Adcock. Mr. Johnson votes yes.

Ms. Chu?

[No response.]

Ms. Adcock. Mr. Deutch?

[No response.]

Ms. Adcock. Mr. Gutierrez?

[No response.]

Ms. Adcock. Ms. Bass?

[No response.]

Ms. Adcock. Mr. Richmond?

[No response.]

Ms. Adcock. Mr. Jeffries?

[No response.]

Ms. Adcock. Mr. Cicilline?

Mr. Cicilline. Aye.

Ms. Adcock. Mr. Cicilline votes aye.

Mr. Swalwell?

Mr. Swalwell. Aye.

Ms. Adcock. Mr. Swalwell votes aye.

Mr. Lieu?

Mr. Lieu. Aye.

Ms. Adcock. Mr. Lieu votes aye.

Mr. Raskin?

[No response.]

Ms. Adcock. Ms. Jayapal?

[No response.]

Chairman Goodlatte. The gentleman from Wisconsin?

Mr. Sensenbrenner. No.

Ms. Adcock. Mr. Sensenbrenner votes no.

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

Mr. Poe. No.

Ms. Adcock. No.

Chairman Goodlatte. The gentleman from Texas, Mr. Ratcliffe?

Mr. Ratcliffe. No.

Ms. Adcock. Mr. Ratcliffe votes no.

Chairman Goodlatte. The gentleman from Iowa, Mr. King?

Mr. King. No.

Ms. Adcock. Mr. King votes no.

Chairman Goodlatte. Has every member voted who wishes to vote?

The clerk will report.

Ms. Adcock. Mr. Chairman, 4 members voted aye; 17 members voted no.

Chairman Goodlatte. And the amendment is not agreed to.

Are there any other amendments to H.R. 720?

A reporting quorum being present, the question is on the motion to report the bill H.R. 720 favorably to the House.

Those in favor will respond by saying aye.

Those opposed, no.

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

Mr. Johnson of Georgia. A recorded vote is requested.

The Chairman. A recorded vote is requested, and the clerk will call the roll.

Ms. Adcock. Mr. Goodlatte?

Chairman Goodlatte. Aye.

Ms. Adcock. Mr. Goodlatte votes aye.

Mr. Sensenbrenner?

Mr. Sensenbrenner. Aye.

Ms. Adcock. Mr. Sensenbrenner votes aye.

Mr. Smith?

Mr. Smith. Aye.

Ms. Adcock. Mr. Smith votes aye.

Mr. Chabot?

[No response.]

Ms. Adcock. Mr. Issa?

Mr. Issa. Aye.

Ms. Adcock. Mr. Issa votes aye.

Mr. King?

[No response.]

Ms. Adcock. Mr. Franks?

Mr. Franks. Aye.

Ms. Adcock. Mr. Franks votes aye.

Mr. Gohmert?

[No response.]

Ms. Adcock. Mr. Jordan?

Mr. Jordan. Yes.

Ms. Adcock. Mr. Jordan votes yes.

Mr. Poe?

[No response.]

Ms. Adcock. Mr. Chaffetz?

[No response.]

Ms. Adcock. Mr. Marino?

Mr. Marino. Yes.

Ms. Adcock. Mr. Marino votes yes.

Mr. Gowdy?

Mr. Gowdy. Yes.

Ms. Adcock. Mr. Gowdy votes yes.

Mr. Labrador?

Mr. Labrador. Yes.

Ms. Adcock. Mr. Labrador votes yes.

Mr. Farenthold?

[No response.]

Ms. Adcock. Mr. Collins?

Mr. Collins. Yes.

Ms. Adcock. Mr. Collins votes yes.

Mr. DeSantis?

[No response.]

Ms. Adcock. Mr. Buck?

Mr. Buck. Aye.

Ms. Adcock. Mr. Buck votes aye.

Mr. Ratcliffe?

Mr. Ratcliffe. Yes.

Ms. Adcock. Mr. Ratcliffe votes yes.

Mr. Bishop?

Mr. Bishop. Yes.

Ms. Adcock. Mr. Bishop votes yes.

Mrs. Roby?

[No response.]

Ms. Adcock. Mr. Gaetz?

[No response.]

Ms. Adcock. Mr. Johnson?

Mr. Johnson of Louisiana. Aye.

Ms. Adcock. Mr. Johnson votes aye.

Mr. Biggs?

Mr. Biggs. Aye.

Ms. Adcock. Mr. Biggs votes aye.

Mr. Conyers?

[No response.]

Ms. Adcock. Mr. Nadler?

[No response.]

Ms. Adcock. Ms. Lofgren?

[No response.]

Ms. Adcock. Ms. Jackson Lee?

Ms. Jackson Lee. No.

Ms. Adcock. Ms. Jackson Lee votes no.

Mr. Cohen?

[No response.]

Ms. Adcock. Mr. Johnson?

Mr. Johnson of Georgia. No.

Ms. Adcock. Mr. Johnson votes no.

Ms. Chu?

[No response.]

Ms. Adcock. Mr. Deutch?

[No response.]

Ms. Adcock. Mr. Gutierrez?

[No response.]

Ms. Adcock. Ms. Bass?

[No response.]

Ms. Adcock. Mr. Richmond?

[No response.]

Ms. Adcock. Mr. Jeffries?

[No response.]

Ms. Adcock. Mr. Cicilline?

Mr. Cicilline. No.

Ms. Adcock. Mr. Cicilline votes no.

Mr. Swalwell?

Mr. Swalwell. No.

Ms. Adcock. Mr. Swalwell votes no.

Mr. Lieu?

Mr. Lieu. No.

Ms. Adcock. Mr. Lieu votes no.

Mr. Raskin?

[No response.]

Ms. Adcock. Ms. Jayapal?

[No response.]

Chairman Goodlatte. The gentleman from Iowa, Mr. King?

Mr. King. Aye.

Ms. Adcock. Mr. King votes aye.

Chairman Goodlatte. The gentleman from Texas, Mr. Ratcliffe?

Mr. Ratcliffe. Yes.

Ms. Adcock. Yes.

Chairman Goodlatte. The gentlewoman from California, Ms. Bass?

Ms. Bass. No.

Ms. Adcock. Ms. Bass votes no.

Chairman Goodlatte. The gentlewoman from Alabama, Mrs. Roby?

Mrs. Roby. Aye.

Ms. Adcock. Mrs. Roby votes aye.

Chairman Goodlatte. Has every member voted who wishes to vote? The clerk will report.

Ms. Adcock. Mr. Chairman, 17 members voted aye; 6 members voted no.

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

Pursuant to notice, I now call up H.R. 725 for purposes of markup and move that the committee report the bill favorably to the House.

The clerk will report the bill.

Ms. Adcock. H.R. 725, to amend title 28, United States Code, to prevent fraudulent joinder.

[The bill follows:]

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

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

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

America's small businesses are some of the leading victims of frivolous lawsuits and the extraordinary cost that our legal system imposes. Every day local business owners routinely have lawsuits filed against them based on claims they have no substantive connection to as a means of forum shopping on the part of the lawyers filing the case. These lawsuits impose a tremendous burden on small businesses and their employees.

The Innocent Party Protection Act will help reduce the litigation abuse that regularly drags small businesses into court for no other reason than as part of a lawyer's forum shopping strategy. In order to avoid the jurisdiction of the Federal courts, plaintiffs' attorneys regularly join in-State defendants to the lawsuits they file in State court even if the in-State defendants' connections to the controversy are minimal or nonexistent.

Typically, the fraudulently joined in-State defendant is a small business or the owner or employee of a small business. Even though these in-State defendants often don't face any liability as a result of being named as a defendant, they nevertheless have to spend money to hire a lawyer and take valuable time away from their businesses to deal with matters related to a lawsuit to which they have no real connection.

Trial lawyers join these unconnected in-State defendants to their lawsuits because the current rules for determining whether fraudulent joinder has occurred provide little disincentive to adding an in-State defendant, no matter how frivolous the claim is against that defendant.

Currently, a case can be kept in State court by simply joining as a defendant a local party that shares the same local residence as the person bringing the lawsuit. When the defendant moves to remove the case to Federal court, the addition of that local defendant will generally defeat removal under a variety of approaches judges currently take to determine whether the joined defendant prevents removal to Federal court.

One approach judges take is to require a showing that there is no possibility of recovery against the local defendant before a case can be removed to Federal court or some practically equivalent standard. Others require the judge to resolve any doubts regarding removal in favor of the person bringing the lawsuit. Still others require the judge to find that the local defendant was added in bad faith before they allow the case to be removed to Federal court.

The current law is so unfairly heavy-handed against defendants that Federal appeals court Judge J. Harvie Wilkinson of the Fourth Circuit Court of Appeals has publicly supported congressional action to change the standards for joinder, saying, quote: "That is exactly the kind of approach to Federal jurisdiction reform that I like because it is targeted, and there is a problem with fraudulent jurisdiction law as it exists today, I think, and that is that you have to establish

that the joinder of a nondiverse defendant is totally ridiculous and that there is no possibility of ever recovering, that it's a sham, that it's corrupt and everything. That is very hard to do. So I think making the fraudulent joinder law a little bit more realistic appeals to me because it seems to me the kind of intermediate step that addresses some real problems. One of the problems here is that fraudulent jurisdiction, the bar is so terribly high," end quote.

The Innocent Party Protection Act brings some balance to a Federal court's ability to determine whether a case that has been removed from State to Federal court should remain in Federal court. It does this by allowing judges to review more evidence earlier in the case to determine whether or not a plausible case can be made for the in-State defendant's liability under State law or that there is no good-faith intent on the part of the trial lawyers to continue the case against all defendants.

I urge my colleagues to support this commonsense legislation and oppose all weakening amendments.

It is now my pleasure to recognize the gentleman from Georgia, Mr. Johnson, for his opening statements.

Mr. Johnson of Georgia. Thank you, Mr. Chairman.

And I would ask that the statements of both Ranking Member John Conyers and also ranking member of the Constitution committee, Steve Cohen, that their statements be admitted for the record, without objection.

Chairman Goodlatte. Without objection, they will be made part

of the record.

[The statement of Mr. Conyers follows:]

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

[The statement of Mr. Cohen follows:]

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

Mr. Johnson of Georgia. And thank you.

I rise in opposition to the Innocent Party Protection Act of 2017. It is misnamed, as much of the legislation that crosses our desks is. I think a more apt name for it would be the Wolf in Sheep's Clothing Protection Act of 2017.

This bill is another tool for corporate defendants to undermine the ability of State courts to hear cases involving residents of the State. In a clever play on words, the corporate defendants are banking on distracting us with buzzwords such as "innocent party" when in fact this bill is just a new version of forum shopping.

If you find yourself injured, whether it is a personal injury due to a car accident while ridesharing or a traumatic injury due to sexual assault attack while at a nursing home or if it is due to the creation of phony bank accounts by a bank teller working for a big bank, you have the option to sue in State or Federal court based on the residence of the defendants. However, when you have multiple defendants and one is in your hometown but the other isn't, you can still sue in State court.

The proponents of this bill call that fraudulent joinder, but this is not fraud in the ordinary sense. Instead, it is simply a legal practice dating back over 100 years that provides balance and prevents more powerful interests from choosing which court the case can be heard. For example, if your grandmother was neglected or sexually assaulted at a nursing home, you would not only seek criminal charges, but you would want to file for a civil suit against both the individual attacker

and also the company in charge of the facility. It is becoming increasingly common for these nursing homes to be owned by large conglomerates or out-of-State hedge funds. Rather than going all the way to Federal court in the State the corporation is based, you have the option to stay in your State court. H.R. 725 would do away with that option, thus unfairly increasing the burden on those suffering harm and making it less likely for the smaller party to sue in the first place. For that reason, I urge my colleagues to oppose the bill.

And, with that, I yield back.

Chairman Goodlatte. The chair thanks the gentleman.

And it is now my pleasure to recognize the sponsor of the bill, the gentleman from Colorado, Mr. Buck, for his opening statement.

Mr. Buck. Thank you, Mr. Chairman.

In many cases, trial lawyers' main target is a large national business, but if the only defendant in the case is an out-of-State business, the case can be heard in Federal court rather than in a State court. Trial lawyers often fraudulently join a local defendant into the suit to keep the case in a State court, which the trial lawyers often prefer.

Trial lawyers who choose to sue innocent local individuals and small businesses in order to keep the lawsuit in their preferred State court usually end up dropping the case against those innocent local parties. Unfortunately, this only occurs after the case is safely back in State court and only after the innocent local parties have spent time and money dealing with the lawsuit. This practice is wrong, a

perversion of our justice system. Trial lawyers should not have the power to subject innocent local citizens and small businesses to costly and time-consuming lawsuits just to rig the system.

This bill would protect innocent local defendants in two main ways. First, the bill allows Federal judges greater discretion to release local defendants from a case where it is not plausible to conclude, as a legal matter, that applicable State law would impose liability on a local defendant. The term "plausible" is taken from the Supreme Court's jurisprudence interpreting Rule 8 of the Federal Rules of Civil Procedure, and the court's decisions provide substantial guidance as to the meaning of the term.

Initially, in Bell Atlantic Corporation v. Twombly, the court distinguished between plausible claims and claims that are speculative. Factual allegations must be enough to raise a right to relief above the speculative level, the court said. Later, in Ashcroft v. Iqbal, the court stated: The plausibility standard asks for more than a sheer possibility that a defendant has acted unlawfully. This standard demands more than an unadorned "the defendant unlawfully harmed me" accusation or threadbare recitals of the elements of a cause of action supported by mere conclusory statements.

Professor Martin Redish, one of the Nation's foremost scholars of Federal court jurisprudence, has written that the Twombly-Iqbal plausibility standard represents the fairest and most efficient resolution of the conflicting interests in the context of pleading. It will similarly provide a fair and efficient approach in the context

of fraudulent joinder.

Second, this bill codifies a proposition that the Supreme Court has long recognized, that in deciding whether joinder is fraudulent, courts may consider whether the plaintiff has a good-faith intention of seeking a judgment against the local defendant. Consistent with Supreme Court precedent, courts continue to find fraudulent joinder when objective evidence clearly demonstrates there is no good faith intention to prosecute the action against all defendants.

As the Federal court in Faulk v. Husqvarna Consumer Outdoor Products, N.A., said: Where the plaintiffs' collective litigation actions, viewed objectively, clearly demonstrate a lack of good-faith intention to pursue a claim to judgment against a nondiverse -- that is, local -- defendant, the court should dismiss the nondiverse defendant and retain jurisdiction over the case. The language of this provision is taken almost verbatim from an often-cited decision of the third circuit.

In re: Briscoe, the court said that joinder is fraudulent if there is no real intention in good faith to prosecute the action against the defendant or seek a legal judgment -- a joint judgment.

I urge all my colleagues to support this simple commonsense bill that will protect innocent local parties from being dragged into expensive and time-consuming lawsuits for the sole reason of furthering a trial lawyer's forum shopping strategy.

I thank the chair, and I yield back.

Chairman Goodlatte. The chair thanks the gentleman.

Are there any amendments to H.R. 725?

A reporting quorum being present, the question is on the motion to report the bill H.R. 725 favorably to the House.

Those in favor, respond by saying aye.

Those opposed, no.

The ayes have it. The ayes have it.

Mr. Johnson of Georgia. I ask for a recorded vote.

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

Ms. Adcock. Mr. Goodlatte?

Chairman Goodlatte. Aye.

Ms. Adcock. Mr. Goodlatte votes aye.

Mr. Sensenbrenner?

[No response.]

Ms. Adcock. Mr. Smith?

[No response.]

Ms. Adcock. Mr. Chabot?

Mr. Chabot. Aye.

Ms. Adcock. Mr. Chabot votes aye.

Mr. Issa?

[No response.]

Ms. Adcock. Mr. King?

Mr. King. Aye.

Ms. Adcock. Mr. King votes aye.

Mr. Franks?

Mr. Franks. Aye.

Ms. Adcock. Mr. Franks votes aye.

Mr. Gohmert?

[No response.]

Ms. Adcock. Mr. Jordan?

[No response.]

Ms. Adcock. Mr. Poe?

[No response.]

Ms. Adcock. Mr. Chaffetz?

[No response.]

Ms. Adcock. Mr. Marino?

Chairman Goodlatte. I am sorry, did Mr. Marino vote?

Mr. Marino. Yes.

Ms. Adcock. Mr. Marino votes yes.

Mr. Gowdy?

Mr. Gowdy. Yes.

Ms. Adcock. Mr. Gowdy votes yes.

Mr. Labrador?

Mr. Labrador. Yes.

Ms. Adcock. Mr. Labrador votes yes.

Mr. Farenthold?

[No response.]

Ms. Adcock. Mr. Collins?

Mr. Collins. Yes.

Ms. Adcock. Mr. Collins votes yes.

Mr. DeSantis?

[No response.]

Ms. Adcock. Mr. Buck?

Mr. Buck. Aye.

Ms. Adcock. Mr. Buck votes aye.

Mr. Ratcliffe?

Mr. Ratcliffe. Yes.

Ms. Adcock. Mr. Ratcliffe votes yes.

Mr. Bishop?

Mr. Bishop. Yes.

Ms. Adcock. Mr. Bishop votes yes.

Mrs. Roby?

Mrs. Roby. Aye.

Ms. Adcock. Mrs. Roby votes aye.

Mr. Gaetz?

[No response.]

Ms. Adcock. Mr. Johnson?

Mr. Johnson of Louisiana. Yes.

Ms. Adcock. Mr. Johnson votes yes.

Mr. Biggs?

Mr. Biggs. Yes.

Ms. Adcock. Mr. Biggs votes yes.

Mr. Conyers?

[No response.]

Ms. Adcock. Mr. Nadler?

[No response.]

Ms. Adcock. Ms. Lofgren?

[No response.]

Ms. Adcock. Ms. Jackson Lee?

[No response.]

Ms. Adcock. Mr. Cohen?

[No response.]

Ms. Adcock. Mr. Johnson?

Mr. Johnson of Georgia. No.

Ms. Adcock. Mr. Johnson votes no.

Ms. Chu?

[No response.]

Ms. Adcock. Mr. Deutch?

[No response.]

Ms. Adcock. Mr. Gutierrez?

[No response.]

Ms. Adcock. Ms. Bass?

[No response.]

Ms. Adcock. Mr. Richmond?

[No response.]

Ms. Adcock. Mr. Jeffries?

[No response.]

Ms. Adcock. Mr. Cicilline?

[No response.]

Ms. Adcock. Mr. Swalwell?

Mr. Swalwell. No.

Ms. Adcock. Mr. Swalwell votes no.

Mr. Lieu?

Mr. Lieu. No.

Ms. Adcock. Mr. Lieu votes no.

Mr. Raskin?

[No response.]

Ms. Adcock. Ms. Jayapal?

[No response.]

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

Mr. Issa. Aye.

Ms. Adcock. Mr. Issa votes aye.

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

Mr. Jordan. Yes.

Ms. Adcock. Mr. Jordan votes yes.

Chairman Goodlatte. The gentleman from Utah, Mr. Chaffetz?

Mr. Chaffetz. Present. Yes.

Ms. Adcock. Mr. Chaffetz votes yes.

Chairman Goodlatte. The gentleman from Maryland, Mr. Raskin?

Mr. Raskin. No.

Ms. Adcock. Mr. Raskin votes no.

Chairman Goodlatte. Has every member voted who wishes to vote?

The clerk will report.

Ms. Adcock. Mr. Chairman, 17 members voted aye; 4 members voted

no.

Chairman Goodlatte. And the bill is ordered reported favorably to the House. Members will have 2 days to submit views.

This concludes our business for today. Thanks to all our members for attending, and the markup is adjourned.

[Whereupon, at 12:28 p.m., the committee was adjourned.]