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MARKUP OF COMMITTEE PRINT OF
MATERIAL TO BE TRANSMITTED TO THE
COMMITTEE ON THE BUDGET PURSUANT
TO SECTION 201 OF H.CON.RES. 112;
AND H.R. 365, THE "NATIONAL BLUE
ALERT ACT OF 2011"

Wednesday, April 25, 2012

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

The committee met, pursuant to call, at 1:32 p.m., in Room 2141, Rayburn House Office Building, Hon. Lamar Smith [chairman of the committee] presiding.

Present: Representatives Smith, Coble, Gallegly, Goodlatte, Lungren, Chabot, Issa, Forbes, King, Franks, Jordan, Poe, Chaffetz, Griffin, Gowdy, Ross, Adams, Quayle, Amodei, Conyers, Berman, Nadler,

Scott, Watt, Lofgren, Waters, Cohen, Johnson, Pierluisi, Quigley, Deutch, Sanchez, and Polis.

Staff Present: Richard Hertling, Staff Director; Travis Norton, Parliamentarian; Sarah Kish, Clerk; Aaron Hiller, Minority Counsel; and Danielle Brown, Minority Parliamentarian.

Chairman Smith. The Judiciary Committee will come to order.

Declare recesses of the committee at any time.

The clerk will call the roll to establish a quorum.

The Clerk. Mr. Smith.

Chairman Smith. Present.

The Clerk. Mr. Sensenbrenner.

[No response.]

The Clerk. Mr. Coble.

[No response.]

The Clerk. Mr. Gallegly.

[No response.]

The Clerk. Mr. Goodlatte.

[No response.]

The Clerk. Mr. Lungren.

[No response.]

The Clerk. Mr. Chabot.

[No response.]

The Clerk. Mr. Issa.

[No response.]

The Clerk. Mr. Pence.

[No response.]

The Clerk. Mr. Forbes.

[No response.]

The Clerk. Mr. King.

[No response.]

The Clerk. Mr. Franks.

[No response.]

The Clerk. Mr. Gohmert.

[No response.]

The Clerk. Mr. Jordan.

[No response.]

The Clerk. Mr. Poe.

[No response.]

The Clerk. Mr. Chaffetz.

[No response.]

The Clerk. Mr. Griffin.

[No response.]

The Clerk. Mr. Marino.

[No response.]

The Clerk. Mr. Gowdy.

[No response.]

The Clerk. Mr. Ross.

[No response.]

The Clerk. Mrs. Adams.

[No response.]

The Clerk. Mr. Quayle.

[No response.]

The Clerk. Mr. Amodei.

[No response.]

The Clerk. Mr. Conyers.

[No response.]

The Clerk. Mr. Berman.

[No response.]

The Clerk. Mr. Nadler.

[No response.]

The Clerk. Mr. Scott.

Mr. Scott. Present.

The Clerk. Mr. Watt.

[No response.]

The Clerk. Mr. Lofgren.

[No response.]

The Clerk. Ms. Jackson Lee.

[No response.]

The Clerk. Ms. Waters.

[No response.]

The Clerk. Mr. Cohen.

[No response.]

The Clerk. Mr. Johnson.

[No response.]

The Clerk. Mr. Pierluisi.

[No response.]

The Clerk. Mr. Quigley.

[No response.]

The Clerk. Ms. Chu.

[No response.]

The Clerk. Mr. Deutch.

[No response.]

The Clerk. Ms. Sanchez.

[No response.]

The Clerk. Mr. Polis.

[No response.]

Chairman Smith. The chairman from Arizona.

The Clerk. Mr. Franks.

Mr. Franks. Here.

Chairman Smith. The gentlewoman from California, Ms. Lofgren.

Ms. Lofgren. Present.

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

Mr. Forbes. Present.

Chairman Smith. The gentleman from Tennessee, Mr. Cohen.

Mr. Cohen. Proud to be here, present and accounted for.

Chairman Smith. The gentleman from North Carolina.

Mr. Coble. Present.

Chairman Smith. The gentleman from Illinois.

Mr. Quigley. Here.

Chairman Smith. The gentleman from Utah.

Mr. Chaffetz. Present.

Chairman Smith. The gentleman from North Carolina says he is present.

Mr. Watt. Present.

Chairman Smith. And the gentleman from Virginia, Mr. Goodlatte.

Mr. Goodlatte. Present.

Chairman Smith. The gentleman and ranking member from Michigan.

Mr. Conyers. Present.

Chairman Smith. And the indispensable person of the day as well, you have made the quorum.

Pursuant to notice, I now call up Judiciary Committee Print 112-6, the proposed reconciliation submission to the Budget Committee for the purposes of markup; and the clerk does not need to report the matter.

We will now resume consideration of amendments.

Mr. Cohen. Mr. Chairman?

Chairman Smith. The gentleman from Tennessee is recognized. Does the gentleman have an amendment?

Mr. Cohen. Thank you, sir, I do. That was a good guess.

Chairman Smith. The clerk will report Mr. Cohen's amendment.

The Clerk. Amendment to Judiciary Committee Print 112-6 offered by Mr. Cohen of Tennessee.

Page 11, insert after line 21 the following and redesignate provisions accordingly:

Section 7. Exemption from damage limitations for certain health care lawsuits.

Section 3(b) and section 5(b)(2) shall not apply to health care law.

Mr. Cohen. We would like to move that it be considered as read.

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

[The amendment of Mr. Cohen follows:]

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

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

Mr. Cohen. Thank you, Mr. Chairman.

As the great number 8 of the New York Yankees, Mr. Yogi Berra, once said, it's deja vu all over again. Yes, it is.

This amendment was offered when we marked up the bill the first time and it was submitted for consideration, but the Rules Committee in one of its errant decisions chose not to say it was in order. So here we are considering the same bill; and, unfortunately, it contains the same flaws that it did the last time.

Scott Fitzgerald said there are no second acts in life. There are in legislation. But this one seems to have the same flaws.

I recognize that some reforms to the medical malpractice system may be in order. But strict arbitrary limits on tort damages are unfair and would fail to compensate some of the most egregious cases of malpractice.

This amendment illustrates just one example of how this bill would affect real people. My amendment would exempt from the caps on damages any malpractice cases brought because of a wrong site or a wrong patient surgery and instances where a foreign object is left in a patient during a surgery.

So if they were supposed to take off -- remove my appendix and they remove the chairman's appendix, the chairman should have a right to sue and not be limited.

Or if there was -- certainly I never wanted to have an foreign

object left in my body. I had always heard those as something wrestlers used to hurt the bad guy or the bad guy hurt the good guy or something like that.

So we are talking about cases where you go in for an operation on your left leg and they operate on your right leg, just about as bad as operating on the wrong person. You go in to have your tonsils taken out and they end up mixing it up with a heart transplant patient. Well, bad news, all of a sudden you are Dick Cheney's alter ego. Or you come out of surgery and you find out that they left some sort of medical device in you.

All these things are egregious, and you don't have to be a doctor to know that these cases constitute serious malpractice. This is something that any human being who is supposed to operate on a left leg rather than a right leg and makes that mistake, that is something that any human being should be held responsible for. And the person who is the victim should get compensation not limited at some arbitrary number. Or if they do the surgery on the wrong person or the foreign object case.

Simply, these things occur; and it is not something that this -- just where it falls. The consequences that patients suffer as a result of these mistakes are devastating.

In May of 2002, Linda McDougal from Wisconsin was diagnosed with an aggressive form of cancer. Her doctors recommended radical treatment, including the removal of both breasts. The day after the surgery a doctor revealed that McDougal's test results had been

switched with another woman's. That is right. She never had cancer. She suffered unnecessary surgery when her biopsy slide was confused with another patients and they removed both of her breasts.

Mr. Conyers. Would the gentleman yield briefly?

Mr. Cohen. Always for you.

Mr. Conyers. Well, I just want to confirm that this amendment which exempts wrong site patient surgeries from the cap is a very modest proposal when you consider the incredible harm that some of these injuries would go way beyond a quarter of a million dollars.

Mr. Cohen. Yes, sir. It is indeed modest and not in the sense of Jonathan Swift. Yes, sir.

On top of that, the other patient who did indeed have cancer needed to be identified and treated quickly. Kind of like those situations where DNA evidence finds the bad person and then gets the innocent person released but gives you an opportunity to find the bad person, the criminal. In this, the other patient didn't have surgery and they needed to be treated quickly.

That is one incident. According to the Joint Commission Center for Transforming Health Care which accredits hospitals, as many as 40 cases of wrong site or wrong patient surgery are reported every week in the United States, 40 cases every week.

In addition, the Journal of American Medicine reported that there are 1,500 incidents of surgical tools, a/k/a foreign objects, left in patients each year.

Sometimes the actual economic damage in these cases may be

minimal, but that doesn't mean that there isn't serious, long-lasting pain and suffering that deserves sufficient compensation. This bill would limit those damages in all these cases, including the lady that lost both breasts, had both breasts removed, the lady that didn't get the immediate care, etc., etc., to \$250,000 tops.

And you just can't make them all -- they are not cookie cutters. Each case is different and particularly these because they are the most egregious.

How do you tell Linda McDougal or the thousands of others that 250 is it? And while your case may be a \$5 million case in somebody's eyes and somebody else's case would be 250, the 250 gets the 250 and you have to give up 4 and 3 quarter million and you have to live the rest of your life like that and so does your family.

How much of a deterrent will it be to doctors if they know that the cap is 250, even in extreme malpractice? Are they going to double-check for foreign objects? Are they going to think -- obviously, they are not thinking when they do these type things anyway but have somebody else find some basis to make their decisions more accurate.

My point is not to attack doctors. My father was a doctor. My uncle was a doctor. I have a cousin who is a doctor. It was a great disappointment that I was not a doctor. So I have the greatest respect for the profession.

But the fact is the very small percentages of doctors who commit the lion's share of malpractice should be held accountable, and that

is a deterrent to their doing things to other patients. And the victim who endures the pain and suffering resulting from malpractice deserves just compensation.

This bill will have real consequences for real people, and I urge us, in the same sense as F. Scott Fitzgerald, proving him wrong, that there can be second acts and second opportunities to clean this bill up and make this an exemption from the bill.

Chairman Smith. The gentleman's time has expired.

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

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

Mr. Franks. Well, Mr. Chairman, once again, our friends on the other side of the aisle here fail to point out that these egregious examples that they cite can have the economic damages restored. I don't know what a court would suggest that a leg was worth or some of the things that the gentleman speaks of, but it would be very significant. And it is sort of unfair to try to paint the notion of somebody losing their leg to malpractice that they wouldn't have any recovery, that 250,000 would be their only recovery.

We have pointed out examples here time and again where the actual economic damages are very significant, sometimes in the tens of millions of dollars. So the bottom line, this amendment, even though it has a little different twist to it, is really no different. And what this amendment misses is that the very tort reforms in the HEALTH Act will reduce medical errors.

The only large study that we have -- really, there is two large studies, Mr. Chairman, of hospital records -- they both concluded that under 1 percent of hospital charts showed significant negligent medical injury. Nevertheless, the litigation reforms in the HEALTH Act will reduce the incidents of medical malpractice because the threat of potentially infinite liability in an unregulated tort system prevents doctors from discussing medical errors and looking for ways to improve the system in the delivery of health care.

In other words, Mr. Chairman, if doctors have some ability to pay the actual damages and not have infinite lawsuits, their focus can be on the patients and being able to talk about these things --

Mr. Cohen. Would the gentleman yield?

Mr. Franks. Yes, I will yield.

Mr. Cohen. I would have to imagine, sir, just like in law when you have continuing legal education at those seminars you learn about malpractice, doctors have continuing requirements; and I am sure they discuss and their insurance companies discuss with them errors of malpractice cases and they urge them to improve their care. This isn't going to necessarily -- it is not a muzzle.

Mr. Franks. Reclaiming my time. I would suggest if that if malpractice lawsuits that are applied to the medical field were applied to the legal field that our whole tort law system would be changed profoundly, because the trial attorneys and others would recognize how impossible this would make their trade to execute.

So I guess I will just stop there, Mr. Chairman, and say that I

believe the two things here that we overlook, first of all, this amendment is really not a lot different than the other amendments. It seeks to somehow portray that we are not allowing people with these grievous injuries that are indeed grievous to gain any sort of compensation for it, and that is not true. And, secondly, if this amendment would pass, it would ultimately take this bill in a direction that I think in the long run would reduce -- in the long run would reduce doctors being able to talk to each other openly and without fear and in the long run I think it would reduce improvement of the system. And with that I yield back.

Chairman Smith. Thank you, Mr. Franks.

Are there other members who wish to be heard on the amendment?

All in favor of the amendment, say aye. Opposed, nay.

And the clerk will call the roll.

The Clerk. Mr. Smith.

Chairman Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner.

[No response.]

The Clerk. Mr. Coble.

Mr. Coble. No.

The Clerk. Mr. Coble votes no.

Mr. Gallegly.

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Mr. Goodlatte.

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Mr. Lungren.

Mr. Lungren. No.

The Clerk. Mr. Lungren votes no.

Mr. Chabot.

[No response.]

The Clerk. Mr. Issa.

[No response.]

The Clerk. Mr. Pence.

[No response.]

The Clerk. Mr. Forbes.

[No response.]

The Clerk. Mr. King.

Mr. King. No.

The Clerk. Mr. King votes no.

Mr. Franks.

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Mr. Gohmert.

[No response.]

The Clerk. Mr. Jordan.

Mr. Jordan. No.

The Clerk. Mr. Jordan votes no.

Mr. Poe.

[No response.]

The Clerk. Mr. Chaffetz.

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz votes no.

Mr. Griffin.

[No response.]

The Clerk. Mr. Marino.

[No response.]

The Clerk. Mr. Gowdy.

Mr. Gowdy. No.

The Clerk. Mr. Gowdy votes no.

Mr. Ross.

Mr. Ross. No.

The Clerk. Mr. Ross votes no.

Mrs. Adams.

Mrs. Adams. No.

The Clerk. Mrs. Adams votes no.

Mr. Quayle.

Mr. Quayle. No.

The Clerk. Mr. Quayle votes no.

Mr. Amodei.

[No response.]

The Clerk. Mr. Conyers.

Mr. Conyers. Aye.

The Clerk. Mr. Conyers votes aye.

Mr. Berman.

[No response.]

The Clerk. Mr. Nadler.

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye.

Mr. Scott.

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt.

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye.

Ms. Lofgren.

[No response.]

The Clerk. Ms. Jackson Lee.

[No response.]

The Clerk. Ms. Waters.

[No response.]

The Clerk. Mr. Cohen.

Mr. Cohen. Aye.

The Clerk. Mr. Cohen votes aye.

Mr. Johnson.

[No response.]

The Clerk. Mr. Pierluisi.

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi votes aye.

Mr. Quigley.

Mr. Quigley. Aye.

The Clerk. Mr. Quigley votes aye.

Ms. Chu.

[No response.]

The Clerk. Mr. Deutch.

Mr. Deutch. Aye.

The Clerk. Mr. Deutch votes aye.

Ms. Sanchez.

[No response.]

The Clerk. Mr. Polis.

Mr. Polis. Aye.

The Clerk. Mr. Polis votes aye.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 9 members voted aye; 13 members voted nay.

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

Are there other members who wish to offer amendments?

The gentleman from Florida, Mr. Deutch, is recognized.

Mr. Deutch. I thank you.

Mr. Chairman, I have an amendment 044 to be called up.

Chairman Smith. The clerk will report the amendment.

The Clerk. Amendment to Judiciary Committee Print 112-6 offered

by Mr. Deutch of Florida.

Page 14, line 4, strike "against" and insert "against or by".

[The amendment of Mr. Deutch follows:]

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

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

Mr. Deutch. Thank you, Mr. Chairman.

Today, this committee is tasked with reducing the Federal deficit by \$39.7 billion over the next 10 years, but the majority's supposed solution to our budgetary woes is yet another example of this Congress putting the interests of large corporations ahead of the well-being of the American people. My amendment is simply an attempt to level the playing field.

If the majority insists on placing draconian limits on claims made by injured patients, then insurance companies and medical professionals should be subject to those limitations as well. These limits are good for the goose; why shouldn't they be good for the gander?

H.R. 5, as it is written, applies to all "health care lawsuits." However, the definition of health care lawsuit is limited to only cases against a health care provider, a health care organization, or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product. My amendment would apply H.R. 5 to suits by health care providers, health care organizations, and manufacturers as well. Claims by providers, insurance companies, and drug companies should be limited in the same way as claims limited -- as claims by patients are limited in this bill.

If proponents of this bill truly believe that cost savings will occur through passage of H.R. 5 and if the goal of the bill really is to save money and save the health care system from a scourge of medical

lawsuits, than it only makes sense to get the most out of those savings and apply the limitations fairly across the board. The only reasonable approach is to also apply these reforms to corporations. Because these are the actual cases that are growing each year.

While medical malpractice cases brought by patients are shrinking in number, business versus business litigation is on the rise. Tort filings, it is important to note, declined by 25 percent between 1999 and 2008. On the other hand, contract disputes in courts rose by 63 percent over the same period.

Corporations argue that access to the courthouse should be restricted, yet businesses suing other businesses account for the vast majority of all verdict dollars. In fact, across the top 100 verdicts in the United States, business versus business cases account for more than two-thirds of all of the verdict dollars.

Insurance companies, drug companies, and nursing home corporations have far more resources than individuals. So why should patients rights be restricted when the cases that are actually clogging our courts are brought by businesses? There should at the very least be parity between claims brought by patients and claims initiated by health care corporations. It is a waste of this committee's time to ensure even higher profits for insurance companies while not doing a thing to help the sick people in America or to help the doctors who take care our families and our communities. There is no reason to hold up this artificial distinction, and I hope the committee will accept this amendment to fairly apply these limitation across the board.

Chairman Smith. Thank you, Mr. Deutch.

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

Mr. Franks. Mr. Chairman, first of all, it is probably important just to repeat that this bill limits noneconomic and punitive damage in health care suits. If you apply this amendment in most cases it seems it would be nonsensical to me. I am not aware of any case of a hospital or insurance company or drug manufacturer that filed a lawsuit seeking pain and suffering or mental anguish damages in a health care lawsuit.

Mr. Deutch. Will the gentleman yield?

Mr. Franks. I will finish. Then I will yield.

Another possible effect of the amendment would be to somehow turn a claim that would not ordinarily be a health care claim into a health care claim simply because the plaintiff happened to be a nurse or doctor. And that is probably not what is intended, but I am afraid that could be implied that way. But whatever its intention, the underlying bill already treats similarly situated parties exactly the same. The bill applies equally to any person bringing a health care liability suit. And because this amendment either does nothing or creates unintended negative consequences, I hope we will reject it, Mr Chairman.

And I will yield.

Mr. Deutch. I thank the gentleman.

The gentleman is right. This bill absolutely applies in the same manner and fairly to individuals who are bringing suits against health

care corporations and manufacturers. It only applies to individuals. It does not apply to cases that are brought not just against those companies but by those companies. And I would ask the gentleman if the gentleman is prepared to suggest to this committee that in all of the health care company versus health care company cases, all of the cases that we should be applying this limitation to, that in all of those cases is the gentleman prepared to suggest that punitive damages are never sought, that those are never a part of that litigation?

Mr. Franks. You know I can't say that, because I don't have the breadth of knowledge of all the cases. But it does seem a little bit nonintuitive to me that one company would say, well, the pain and suffering of our corporation here deserves to be compensated. They would sue for compensation. It just seems like there is a lot of unintended consequences.

Would you suggest that that is a common occurrence, that companies recover pain and suffering when they sue another company? Are you suggesting that?

Mr. Deutch. I am suggesting -- I am stating that this is not a question of what is or is not nonintuitive. I am suggesting that the issue is what is or what is not fair. And what is not fair is to have a law that limits the ability of individuals to exercise their rights under the Constitution to pursue a claim before a jury but has artificial limits imposed on them without getting at the one area in our court system where we have seen the largest increase, that accounts for the largest amount of increase in cost and that really could save

this budget the largest amount of money if we simply apply it fairly.

Mr. Franks. Mr. Chairman, reclaiming my time, I just remind everyone that the bill applies to a, quote, a demand by any person in a health care claim. So the limits apply to any person bringing a health care claim or health care liability claim, whether the person is a doctor, an insurance salesman, an auto mechanic, or a congressman -- that is pretty scary. But the reality is, Mr. Chairman, I think the gentleman's amendment is kind of focusing outside the scope of the bill, and I hope that we will reject it.

And with that I yield back.

Chairman Smith. Thank you, Mr. Franks.

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

Mr. Watt. Move to strike the last work.

Chairman Smith. The gentleman is recognized for 5 minutes.

Mr. Watt. Yield to the gentleman from Florida.

Mr. Deutch. I thank the gentleman.

It is absolutely true that this legislation does apply equally to cab drivers and Members of Congress and small business owners and mothers and dads. And you name it. If they are an individual, their ability to exercise their constitutional rights under this bill are affected and limited.

But what this bill does not do is it does not truth health care providers, health care organizations, pharmaceutical and device manufacturers the same way that it treats individuals. And I would simply say that there is not -- there is nothing inconsistent at all

in suggesting that a bill which currently applies those limitations only to individuals against these companies shouldn't be amended to simply say that, instead of against, it is against or by. It is perfectly consistent with what we are trying to do here in this bill. It is perfectly consistent and in fact furthers this committee's aim and the sponsor's aim in saving money.

And I would yield back the balance of my time to Mr. Watt.

Mr. Watt. I yield back.

Mr. Franks. Would the gentleman yield? I would just ask one brief question --

Mr. Watt. Yes.

Mr. Franks. Just for clarify here, and I am not trying to be a smart aleck, since when has a corporation ever sued someone for removing the wrong leg of the corporation?

Mr. Deutch. That is a great question, and I would imagine the answer to that is never.

But I would also suggest that -- Mr. Franks, you provide an opportunity to talk about what is really happening in this bill. There has been a focus on removing the wrong leg or leaving something inserted. I understand. But you are asking the question based on the conversation today.

The fact is that what this bill does is it puts a cap on punitive damages. Punitive damages have been recognized since they were recognized in England in 1763. Punitive damages are been an accepted part of our common law in this country since early in the 19th century.

So to suggest that somehow this limitation of punitive damages should only apply to individuals because individuals pursue one kind of claim that gives them the opportunity to pursue one kind of suit without applying the same limitation on punitive damages, which is what this bill is really about, to health care companies across the board, it just doesn't make sense to me.

Mr. Franks. Would the gentleman yield one last time? I would only ask one other quick thing.

If you look, it says the bill says a demand by any person. Now it appears to me that if you are correct that a pharmaceutical manufacturer would seek pain and suffering damages in a lawsuit in the first place -- and perhaps that is humanly possible. But that would be by any person. Would that also not include corporations?

Mr. Deutch. Well, as a matter of fact no. It would not.

I would be glad to have a longer conversation about the rights of corporations as people. That is an issue that I happen to care deeply about, and I think it is relevant to this Congress and this country right now. But that is not this discussion.

All I am trying to do is clarify that instead of claims being filed against -- by individuals against these corporations that we simply say it is against or by. It is the equitable thing to do. It is the best way for us to save money. And I thank Mr. Watt for yielding the time.

Mr. Watt. Can I just make two points here?

If it is covered under the law, I am going to apply the Barney

Frank theory that duplication in the law is better than uncertainty in the law. And to write it in just confirms what both parties seem to be saying, that, apparently, Mr. Franks agrees with the Supreme Court that corporations or groups or anybody is an individual under the Constitution. I don't believe that. But, apparently, at least the Supreme Court has said that corporations are, for some purposes, for contribution purposes -- I don't think they have said whether they are or are not for other purposes --

But you have got two things going on here. There is some uncertainty about whether the word "persons" covers corporations, and you have got both parties saying the same thing. So the worst that could happen here is you have a confirmation that corporations are intended to be covered. So I am not sure what we are arguing about. It seems to me --

Mr. Franks. If the gentleman would yield.

Mr. Watt. I will yield as soon as I finish my sentence.

It seems to me a logical addition to the bill.

I ask unanimous consent for 30 additional seconds and yield to the gentleman.

Chairman Smith. Without objection, the gentleman is yielding an additional 30 seconds.

Mr. Watt. And I yield to the gentleman not necessarily 30 seconds, but I will yield to him.

Mr. Franks. Well, 15. The bottom line is, regardless of the other discussions here, this amendment would increase companies'

ability in pain and suffering and only increase their ability to sue others. It would only increase the costs that we have.

With that, I yield back.

Mr. Watt. I don't understand a thing the gentleman said, but if he yields back, I yield back, too.

Chairman Smith. The gentleman yields back.

Any other members who wish to be heard on the amendment?

If not, all in favor of the amendment, say aye. Opposed, nay.

The clerk will call the roll.

The Clerk. Mr. Smith.

Chairman Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner.

[No response.]

The Clerk. Mr. Coble.

[No response.]

The Clerk. Mr. Gallegly.

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Mr. Goodlatte.

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Mr. Lungren.

Mr. Lungren. No.

The Clerk. Mr. Lungren votes no.

Mr. Chabot.

[No response.]

The Clerk. Mr. Issa.

Mr. Issa. No.

The Clerk. Mr. Issa votes no.

Mr. Pence.

[No response.]

The Clerk. Mr. Forbes.

[No response.]

The Clerk. Mr. King.

Mr. King. No.

The Clerk. Mr. King votes no.

Mr. Franks.

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Mr. Gohmert.

[No response.]

The Clerk. Mr. Jordan.

Mr. Jordan. No.

The Clerk. Mr. Jordan votes no.

Mr. Poe.

[No response.]

The Clerk. Mr. Chaffetz.

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz votes no.

Mr. Griffin.

Mr. Griffin. No.

The Clerk. Mr. Griffin votes no.

Mr. Marino.

[No response.]

The Clerk. Mr. Gowdy.

Mr. Gowdy. No.

The Clerk. Mr. Gowdy votes no.

Mr. Ross.

Mr. Ross. No.

The Clerk. Mr. Ross votes no.

Mrs. Adams.

Mrs. Adams. No.

The Clerk. Mrs. Adams votes no.

Mr. Quayle.

Mr. Quayle. No.

The Clerk. Mr. Quayle votes no.

Mr. Amodei.

[No response.]

The Clerk. Mr. Conyers.

Mr. Conyers. Aye.

The Clerk. Mr. Conyers votes aye.

Mr. Berman.

[No response.]

The Clerk. Mr. Nadler.

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye.

Mr. Scott.

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt.

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye.

Ms. Lofgren.

[No response.]

The Clerk. Ms. Jackson Lee.

[No response.]

The Clerk. Ms. Waters.

[No response.]

The Clerk. Mr. Cohen.

Mr. Cohen. Aye.

The Clerk. Mr. Cohen votes aye.

Mr. Johnson.

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Mr. Pierluisi.

Mr. Pierluisi. Aye.

Mr. Pierluisi votes aye.

Mr. Quigley.

Mr. Quigley. Aye.

The Clerk. Mr. Quigley votes aye.

Ms. Chu.

[No response.]

The Clerk. Mr. Deutch.

Mr. Deutch. Aye.

The Clerk. Mr. Deutch votes aye.

Ms. Sanchez.

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez votes aye.

Mr. Polis.

Mr. Polis. Aye.

The Clerk. Mr. Polis votes aye.

Chairman Smith. The clerk will report.

The clerk will suspend.

How is Mr. Forbes recorded?

The Clerk. Not recorded, sir.

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Mr. Watt. Mr. Chairman, is that consistent with the rule you were applying last week?

Chairman Smith. It is very consistent. In fact, I made --

Mr. Watt. I just wanted to make sure.

Chairman Smith. I made an extra effort to be consistent. I wouldn't have wanted to treat the majority differently than I treated the minority last week.

Mr. Watt. I am just asking a question.

Chairman Smith. It is nice to know that --

Mr. Watt. I believe in everybody voting myself. So I am not objecting.

Chairman Smith. However, we may be stretching it right now.

Since the clerk has not yet reported -- the gentleman from Texas, Mr. Poe.

Mr. Poe. No.

The Clerk. Mr. Poe votes no.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 11 members voted aye; 16 members voted nay.

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

Are there other amendments?

Mr. Deutch. Mr. Chairman.

Chairman Smith. The gentleman from Florida, Mr. Deutch, is recognized.

Mr. Deutch. Mr. Chairman, the Quigley-Deutch amendment 64 at the desk.

Chairman Smith. The clerk will report the amendment.

The Clerk. 112-6 offered by Mr. Quigley of Illinois and Mr. Deutch.

Page 7, beginning on line 16 strike, subsection (c) and redesignate provisions accordingly.

[The amendment of Mr. Quigley and Mr. Deutch follows:]

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

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

Mr. Deutch. Thank you, Mr. Chairman.

Mr. Chairman, this amendment would exempt medical product manufacturers from the punitive damage immunity afforded under H.R. 5 which allows negligent manufacturers of FDA-approved drugs and devices to not be subject to punitive damage awards, even if that drug or device turns out to be dangerous and defective and causes egregious injuries or death.

H.R. 5 gives manufacturers of defective medical devices complete immunity from punitive damages for product-related deaths and injuries. Currently, the bill allows for only two exceptions to this immunity: if a person knowingly misrepresents or withholds information from the FDA about a defective product or makes an illegal payment to the FDA to get a product approved. This amendment would create a third exception for medical product manufacturers who negligently manufacture or distribute defective products from the liability protections in this bill.

Under H.R. 5, negligent drug manufacturers would be immune from liability for punitive damages for reckless behavior. Punitive damages are reserved for only the very worst kind of cases, where the defendant's conduct is extremely egregious.

A plaintiff generally will have to prove reckless or even intentional misconduct. Punitive damages are used to punish the defendant and deter others similarly situated from engaging in a

particular type of wrongful conduct in the future.

Manufacturers who create and/or distribute a defective medical device or drug that causes injury or death should not be able to hide behind either the FDA's stamp of approval or FDA-established guidelines in order to avoid liability. There must be accountability. By allowing these negligent manufacturers a get-out-of-jail-free card, there is no incentive to make the products safer for the U.S. market for patients and for consumers.

This amendment would hold all manufacturers accountable for negligently manufacturing or distributing a defective product, regardless if the product has been approved by the FDA or has been generally recognized among qualified experts as safe and effective pursuant to conditions established by the FDA. This is -- without the threat of full liability, especially liability for punitive damages, there are no financial disincentives for keeping profitable but dangerous medical devices off of the market.

I ask my colleagues to support this amendment.

Chairman Smith. Thank you, Mr. Deutch.

The gentleman from Arizona, Mr. Franks.

Mr. Franks. Mr. Chairman, to help encourage new drug development and contain the costs of lifesaving drugs, the HEALTH Act contains a safe harbor from punitive damages for defendants whose drugs or medical products comply with rigorous rules and regulations. Why should a manufacturer, perhaps a lifesaving drug, whose product has already been approved as safe under stringent cost-benefit analysis applied by the

FDA, have to litigate the issue of punitive damages? All that does is take money away from the research on lifesaving drugs and increase the costs of those drugs.

Repealing this entire provision would leave physicians potentially liable for damages in cases where they properly prescribed a medically necessary drug or device in compliance with all the applicable laws and regulations.

Mr. Chairman, it is just inherently unjust to allow lawsuits against a physician for complying with all of the relevant requirements of the law. That leaves them in a no-win situation.

And with that I would hope that my colleagues would oppose the amendment.

Chairman Smith. Thank you, Mr. Franks.

Are there other members who wish to be heard?

The gentlewoman from California, Ms. Sanchez.

Ms. Sanchez. I move to strike the last word.

Chairman Smith. The gentlewoman is recognized for 5 minutes.

Ms. Sanchez. Thank you, Mr. Chairman. And I would yield to my colleague from Florida, Mr. Deutch.

Mr. Deutch. I thank my friend from California.

Just two points I would make. The first, this is -- and I think this point is important. It cannot be lost here. This is not simply a case of products that were approved. It is also products that are generally recognized among qualified experts as safe and effective pursuant to conditions established by the FDA. There is

nothing -- this immunity that is granted would do great damage to holding accountable those who are reckless or those where the behavior at least warrants the consideration of these sorts of claims.

Last Christmas, GlaxoSmithKline agreed to resolve a lawsuit over charges that the knowingly manufactured and sold contaminated drugs, including the heavily prescribed antidepressant Paxil. They were reportedly informed by their employees of the substandard conditions at one of the manufacturing plants, including bacteria-laden water used to produce the drug tablets, problems with sterility, manufacturing problems that allegedly resulted in drugs getting mixed up with other drugs, and drugs of varying strengths showing up in mislabeled bottles. Even after being informed, they continued to manufacture and market these products to U.S. consumers.

This is the type of grossly negligent behavior which ought to at least provide the opportunity for the full range of damages, including punitive damages. What this legislation does is it strips away the very possibility of even considering punitive damages which, as we have discussed, has been a staple in our judicial system for centuries.

And I yield back.

Mr. Franks. Does the gentleman yield?

Mr. Deutch. I will.

Mr. Franks. Just very briefly, just for clarity.

The bill already specifically creates exemptions to the provisions of the bill for those companies who deliberately adulterate their drugs. But, more importantly, it is important to remind all of

us once again that any company who carelessly makes a product that hurts someone, they are still subject to unlimited liability in terms of economic damages. I know that point has been made a number of times, but it is important.

Thank you for yielding.

Mr. Deutch. Just reclaiming my time.

I think another point that is just worth repeating in the context of the broader context of what this legislation does is the fact that it takes away what has been an accepted and fundamental part of the civil justice system in this country for centuries, and it artificially imposes caps, thereby depriving individuals of their right to a jury trial under the United States Constitution Seventh Amendment.

I appreciate the opportunity to make that point, and I yield back to Ms. Sanchez.

Ms. Sanchez. I yield back the balance of my time.

Chairman Smith. The gentlewoman yields back the balance of her time.

The question is on the amendment. All in favor, say aye.
Opposed, nay.

The clerk will call the roll.

The Clerk. Mr. Smith.

Chairman Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner.

[No response.]

The Clerk. Mr. Coble.

[No response.]

The Clerk. Mr. Gallegly.

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Mr. Goodlatte.

[No response.]

The Clerk. Mr. Lungren.

Mr. Lungren. No.

The Clerk. Mr. Lungren votes no.

Mr. Chabot.

[No response.]

The Clerk. Mr. Issa.

Mr. Issa. No.

The Clerk. Mr. Issa votes no.

Mr. Pence.

[No response.]

The Clerk. Mr. Forbes.

[No response.]

The Clerk. Mr. King.

Mr. King. No.

The Clerk. Mr. King votes no.

Mr. Franks.

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Mr. Gohmert.

[No response.]

The Clerk. Mr. Jordan.

Mr. Jordan. No.

The Clerk. Mr. Jordan votes no.

Mr. Poe.

Mr. Poe. No.

The Clerk. Mr. Poe votes no.

Mr. Chaffetz.

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz votes no.

Mr. Griffin.

[No response.]

The Clerk. Mr. Marino.

[No response.]

The Clerk. Mr. Gowdy.

Mr. Gowdy. No.

The Clerk. Mr. Gowdy votes no.

Mr. Ross.

Mr. Ross. No.

The Clerk. Mr. Ross votes no.

Mrs. Adams.

Mrs. Adams. No.

The Clerk. Mrs. Adams votes no.

Mr. Quayle.

Mr. Quayle. No.

The Clerk. Mr. Quayle votes no.

Mr. Amodei.

Mr. Amodei. No.

The Clerk. Mr. Amodei votes no.

Mr. Conyers.

Mr. Conyers. Aye.

The Clerk. Mr. Conyers votes aye.

Mr. Berman.

[No response.]

The Clerk. Mr. Nadler.

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye.

Mr. Scott.

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt.

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye.

Ms. Lofgren.

[No response.]

The Clerk. Ms. Jackson Lee.

[No response.]

The Clerk. Ms. Waters.

[No response.]

The Clerk. Mr. Cohen.

[No response.]

The Clerk. Mr. Johnson.

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Mr. Pierluisi.

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi votes aye.

Mr. Quigley.

Mr. Quigley. Aye.

The Clerk. Mr. Quigley votes aye.

Ms. Chu.

[No response.]

The Clerk. Mr. Deutch.

Mr. Deutch. Aye.

The Clerk. Mr. Deutch votes aye.

Ms. Sanchez.

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez votes aye.

Mr. Polis.

Mr. Polis. Aye.

The Clerk. Mr. Polis votes aye.

Chairman Smith. The gentleman from Virginia.

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Chairman Smith. The gentleman from Arkansas.

Mr. Griffin. No.

The Clerk. Mr. Griffin votes no.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 10 members voted aye; 16 members voted nay.

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

Are there other amendments?

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

Chairman Smith. The gentleman from Georgia is recognized for the purpose of offering an amendment.

The clerk will report the amendment.

The Clerk. Amendment to Judiciary Committee Print 112-6 offered by Mr. Johnson of Georgia.

Page 14, lines 2 through 3, strike "State or Federal court or pursuant to an alternative dispute resolution system" and insert "Federal court".

Page 14, lines 18 through 19, strike "State or Federal court or pursuant to an alternative" --

Mr. Johnson. I ask that the amendment be considered as read.

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

[The amendment of Mr. Johnson follows:]

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

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

Mr. Johnson. Thank you, Mr. Chairman.

This amendment would limit the application of the bill to cases that are brought in Federal court. The 10th Amendment to the Constitution provides that powers not provided to the Federal Government nor prohibited to the States are reserved to the States or to the people.

What we have with H.R. 5 is a traditional State activity, which is regulating tort laws within its boundaries. I will quote the National Conference of State Legislatures, a bipartisan organization representing the legislatures of all 50 States. They submitted a letter to this committee in strong opposition to H.R. 5, and they mention in their letter that medical malpractice, product liability, and other areas of tort reform are areas of law that have been traditionally and successfully regulated by the States.

NCSL's medical malpractice policy explicitly and firmly states that American Federalism contemplates diversity among the States in establishing rules and respects the ability of the States to act in their own best interests.

They further state that the adoption of a one-size-fits-all approach to medical malpractice as envisioned in H.R. 5 would undermine that diversity and disregard factors unique to each particular State.

Federal malpractice legislation inappropriately seeks to preempt various areas of State law. Therefore, the resounding bipartisan

conclusion was that Federal malpractice legislation is unnecessary.

I will put it in the words of my friend, Congressman Louie Gohmert of Texas, a former judge. I think he was one of those who voted against this bill when it passed on the floor of the House not long ago. He said that the right of the States for self determination is enshrined in the 10th Amendment. I am reticent to support Congress imposing its will on the States by dictating new State law in their own State courts.

I haven't heard from Judge Gohmert today. I did hear from my friend, Congressman Ted Poe, who voted on one of these amendments just a few moments ago. And to quote Congressman Poe, also a former judge, State court of Texas, he puts it like this: The question is, does the Federal Government have the authority under the commerce clause to override all State law on liability caps?

I believe that each individual State should allow the people of that State to decide, not the Federal Government. If the people of a particular State don't want liability caps, that is their prerogative under the 10th Amendment. But I have concerns with the current bill as written.

I sure hope that Congressman Ted Poe will come and help me get this amendment passed in this body today. I sure hope that he will do that. And I will --

Mr. Conyers. Would the gentleman yield?

Mr. Johnson. Yes, I would.

Mr. Conyers. Thank you.

I support this amendment, and, you know, I am looking at

conservative scholars that ironically agree with those of us that support the Johnson amendment: Ken Cuccinelli, Virginia's Attorney General; the Heritage Foundation, no bastion of liberalism; Randy Barnett, constitutional law professor; Senator Tom Coburn himself; and they actually quote our colleagues Ted Poe and Gohmert and Ron Paul.

So, you know, this whole idea that H.R. 5 violates States' rights and the 10th Amendment is a very flexible interpretation. And I thank the gentleman for making these similar points on behalf of his amendment, and I strongly support it.

Mr. Johnson. Thank you, Mr. Ranking Member.

Reclaiming my time, I would also quote Congressman Lee Terry, who is a Republican from Nebraska. And he says, if you are a true believer in the 10th Amendment then why are we not allowing the States to continue to create their own laws and decide what is in their best interests for their residents?

And with that I will yield back.

But I have got to say if Congress has authority under the commerce clause to override State law on liability caps because lawsuits affect the cost of health care delivery, shouldn't it also follow that Congress has the authority to enact the Affordable Care Act, since both the cost of insurance and the cost of health care also affect interstate commerce?

But the question is answered in the negative by some of my colleagues on the other side of the aisle. I think it --

Chairman Smith. The gentleman is --

Mr. Johnson. -- demonstrates hypocrisy.

Chairman Smith. The gentleman's time has expired.

The gentleman from Arizona, Mr. Franks.

Mr. Franks. Mr. Chairman, I guess the first point I would make is that, under this bill, if a person has legitimate 10th Amendment considerations, the punitive damages and noneconomic damages number, the 250,000, the States can name and rename that number anything they want to. So it doesn't restrict the States from doing that.

Secondly, on the other issue, the Constitution's commerce clause, it was James Madison himself that said that the Constitution's commerce clause was necessary to allow Congress to prevent some States from increasing the cost of goods and services in all States. And that is precisely what this legislation would do, Mr. Chairman. It would prevent unlimited litigation in some States from increasing health care costs in other States.

It would also stem the flow of doctors from one State to another as they flee States to avoid excessive liability costs. We have doctor shortages, skyrocketing health care costs, and patients not being able to get the treatment they need in their own community because of frivolous claims in general. And if we limit this to Federal cases only it simply won't address the problem.

I would like to address the gentleman's other issue. Unlike the unconstitutional individual mandate in the health care bill that forces citizens to engage in economic activities, the HEALTH Act is constitutional because it applies only to those who are already engaged

in those economic activities of providing health care or bringing lawsuits.

And with that --

RPTS MCKENZIE

DCMN SECKMAN

[2:36 p.m.]

Mr. Johnson. Would the gentleman yield?

Mr. Franks. I yield.

Mr. Johnson. Thank you, sir. And you have been very good about yielding, and I admire your courage in doing so.

As far as the individual mandate, I asked a question last week: Was it unconstitutional for Congress to enact the Social Security law, which requires -- it has an individual mandate, that mandate being that you pay into the system as an employee up to a certain amount of your income. I never did get a response to that question.

Mr. Franks. If the gentleman would yield, as far as Social Security legislation, that was enacted under the Constitution's taxation power, the Congress' power to tax. That is a simple response to that. But the more complex response is, if the government can tell us that we must buy a particular product, if we must do that, what on Earth can't the government tell us?

Mr. Johnson. Well, there is a lot, my friend, that Congress -- a lot of authority that Congress has given. But I would point out to you that one of those expressly is not mentioned in the Constitution and that is a State's system of tort law. This is a traditionally State activity and the 10th Amendment reserves the ability of the States to govern within their domains State or tort law.

And I would mention to you that Arizona is one of five States that has amended its State constitution to prohibit the kind of caps that H.R. 5 is proposing. So this Federal law would override Arizona's ability to govern in accordance with the needs of its people. This supersedes Arizona law. And I think that there are probably a lot of people in the Arizona legislature who would not appreciate being dictated to by the Federal Government. And I know that the people of the State of Georgia would not appreciate --

Mr. Franks. I will have to reclaim my time, Mr. Johnson. The truth is, the Arizona restriction there was something that the trial lawyers put on the ballot, and it was completely misconstrued by most of the people. If we pass this legislation, the people of Arizona may make me governor of the world. So let me just say to you, they are not going to be unhappy if we pass this bill.

With that, I yield back.

Chairman Smith. The gentleman yields back his time.

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

Mr. Conyers. Mr. Chairman.

Chairman Smith. The gentleman from Michigan, the ranking member Mr. Conyers.

Mr. Conyers. I would like to put into the record, in support of his amendment, some illustrations of how H.R. 5 preempts State law in some States, namely the States of the members of the House Judiciary Committee. I am citing what H.R. 5 would do in Arizona, Arkansas, California, Florida, Indiana, Iowa, New York, North Carolina, Ohio,

Pennsylvania, South Carolina, Texas, Virginia and Wisconsin.

If this became law, it would preempt State laws in these States of the very members of the House Judiciary Committee that may not be aware that that would be a logical consequence if this bill ever were enacted into law. And I ask unanimous consent --

Chairman Smith. Without objection, the gentleman's materials will be made a part of the record.

[The information follows:]

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

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

Chairman Smith. The gentleman yields back the balance of his time.

All in favor of the amendment say aye.

Opposed, nay.

The clerk will call the roll.

The Clerk. Mr. Smith?

Chairman Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Mr. Goodlatte?

[No response.]

The Clerk. Mr. Lungren?

[No response.]

The Clerk. Mr. Chabot?

[No response.]

The Clerk. Mr. Issa?

[No response.]

The Clerk. Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

[No response.]

The Clerk. Mr. King?

[No response.]

The Clerk. Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

[No response.]

The Clerk. Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz votes no.

Mr. Griffin?

Mr. Griffin. No.

The Clerk. Mr. Griffin votes no.

Mr. Marino?

[No response.]

The Clerk. Mr. Gowdy?

Mr. Gowdy. No.

The Clerk. Mr. Gowdy votes no.

Mr. Ross?

Mr. Ross. No.

The Clerk. Mr. Ross votes no.

Mrs. Adams?

Mrs. Adams. No.

The Clerk. Mrs. Adams votes no.

Mr. Quayle?

Mr. Quayle. No.

The Clerk. Mr. Quayle votes no.

Mr. Amodei?

Mr. Amodei. No.

The Clerk. Mr. Amodei votes no.

Mr. Conyers?

Mr. Conyers. Aye.

The Clerk. Mr. Conyers votes aye.

Mr. Berman?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye.

Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye.

Ms. Lofgren?

[No response.]

The Clerk. Ms. Jackson Lee?

[No response.]

Ms. Waters?

Ms. Waters. Aye.

The Clerk. Ms. Waters votes aye.

Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen votes aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi votes aye.

Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley votes aye.

Ms. Chu?

[No response.]

The Clerk. Mr. Deutch?

[No response.]

The Clerk. Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez votes aye.

Mr. Polis?

Mr. Polis. Aye.

The Clerk. Mr. Polis votes aye.

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

Mr. Deutch. Aye.

The Clerk. Mr. Deutch votes aye.

Chairman Smith. The gentleman from California, Mr. Berman.

Mr. Berman. Aye.

The Clerk. Mr. Berman votes aye.

Chairman Smith. The gentleman from California, Mr. Lungren.

Mr. Lungren. No.

The Clerk. Mr. Lungren votes no.

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

Mr. Issa. No.

The Clerk. Mr. Issa votes no.

Chairman Smith. The gentleman from Ohio, Mr. Jordan.

Mr. Jordan. No.

The Clerk. Mr. Jordan votes no.

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

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

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

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Chairman Smith. The gentleman from Iowa, Mr. King.

Mr. King. No.

The Clerk. Mr. King votes no.

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

Mr. Poe. Yes.

The Clerk. Mr. Poe votes yes.

Chairman Smith. Are there other members who wish to be recorded?

If not, the clerk will report.

The Clerk. Mr. Chairman, 14 members voted aye; 16 members voted nay.

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

Are there any other amendments? If not, a reporting quorum being present, the question is on a motion to transmit the reconciliation submission and all appropriate accompanying material, including additional supplemental or dissenting views to the House Budget Committee, pursuant to section 201(a) of the concurrent resolution on the budget for fiscal year 2012.

Those in favor say aye.

All opposed say no.

The clerk will call the roll.

The Clerk. Mr. Smith?

Chairman Smith. Aye.

The Clerk. Mr. Smith votes aye.

Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

[No response.]

The Clerk. Mr. Gallegly?

Mr. Gallegly. Aye.

The Clerk. Mr. Gallegly votes aye.

Mr. Goodlatte?

Mr. Goodlatte. Aye.

The Clerk. Mr. Goodlatte votes aye.

Mr. Lungren?

Mr. Lungren. Aye.

The Clerk. Mr. Lungren votes aye.

Mr. Chabot?

[No response.]

The Clerk. Mr. Issa?

Mr. Issa. Aye.

The Clerk. Mr. Issa votes aye.

Mr. Pence?

[No response.]

The Clerk. Mr. Forbes?

[No response.]

The Clerk. Mr. King?

Mr. King. Aye.

The Clerk. Mr. King votes aye.

Mr. Franks?

Mr. Franks. Aye.

The Clerk. Mr. Franks votes aye.

Mr. Gohmert.

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. Yes.

The Clerk. Mr. Jordan votes aye.

Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

Mr. Chaffetz. Aye.

The Clerk. Mr. Chaffetz votes aye.

Mr. Griffin?

Mr. Griffin. Aye.

The Clerk. Mr. Griffin votes aye.

Mr. Marino?

[No response.]

The Clerk. Mr. Gowdy?

Mr. Gowdy. Yes.

The Clerk. Mr. Gowdy votes yes.

Mr. Ross?

Mr. Ross. Aye.

The Clerk. Mr. Ross votes aye.

Mrs. Adams?

Mrs. Adams. Aye.

The Clerk. Mrs. Adams votes aye.

Mr. Quayle?

Mr. Quayle. Aye.

The Clerk. Mr. Quayle votes aye.

Mr. Amodei?

Mr. Amodei. Yes.

The Clerk. Mr. Amodei votes aye.

Mr. Conyers?

Mr. Conyers. No.

The Clerk. Mr. Conyers votes no.

Mr. Berman?

Mr. Berman. No.

The Clerk. Mr. Berman votes no.

Mr. Nadler?

Mr. Nadler. No.

The Clerk. Mr. Nadler votes no.

Mr. Scott?

Mr. Scott. No.

The Clerk. Mr. Scott votes no.

Mr. Watt?

Mr. Watt. No.

The Clerk. Mr. Watt votes no.

Ms. Lofgren?

[No response.]

The Clerk. Ms. Jackson Lee?

[No response.]

The Clerk. Ms. Waters?

Ms. Waters. No.

The Clerk. Ms. Waters votes no.

Mr. Cohen?

Mr. Cohen. No.

The Clerk. Mr. Cohen votes no.

Mr. Johnson?

Mr. Johnson. No.

The Clerk. Mr. Johnson votes no.

Mr. Pierluisi?

Mr. Pierluisi. No.

The Clerk. Mr. Pierluisi votes no.

Mr. Quigley?

Mr. Quigley. No.

The Clerk. Mr. Quigley votes no.

Ms. Chu?

[No response.]

The Clerk. Mr. Deutch?

Mr. Deutch. No.

The Clerk. Mr. Deutch votes no.

Ms. Sanchez?

Ms. Sanchez. No.

The Clerk. Ms. Sanchez votes no.

Mr. Polis?

Mr. Polis. No.

The Clerk. Mr. Polis votes no.

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

Mr. Forbes. Yes.

The Clerk. Mr. Forbes votes yes.

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

Mr. Poe. No.

The Clerk. Mr. Poe votes no.

Chairman Smith. The clerk will report.

The Clerk. Mr. Chairman, 16 members voted aye; 14 members voted nay.

Chairman Smith. A majority having voted in favor of the reconciliation submission to the Budget Committee, the motion is agreed to.

We have one more bill to consider today. To my knowledge, it is a bipartisan bill. And I believe there is only one amendment pending to the bill.

Pursuant to notice, I now call up H.R. 365 for purposes of markup and the clerk will report the bill.

The Clerk. H.R. 365, a bill to encourage enhance and integrate Blue Alert plans throughout the United States in order to disseminate information when a law enforcement officer is seriously injured or killed in the line of duty.

Chairman Smith. Will the clerk suspend for a minute?

I am going to recognize the gentleman for the purposes of -- does the gentleman from Ohio want to offer unanimous consent as to how he would have been recorded had he been present for the last vote?

Mr. Chabot. I would make that request. I would have voted "yes."

Chairman Smith. Okay. Without objection, that will be made a part of the record.

The clerk will proceed.

The Clerk. H.R. 365, a bill to encourage, enhance, and integrate Blue Alert plans throughout the United States in order to disseminate information when a law enforcement officer is seriously injured or killed in the line of duty. Be it enacted by the Senate --

Chairman Smith. Without objection, the bill will be considered as read and open for amendment at any point.

[The information follows:]

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

Mrs. Adams. Mr. Chairman.

Chairman Smith. Without objection, my statement will be a made a part of the record, and I will yield my time to the gentlewoman from Florida.

Mrs. Adams. Mr. Chairman, I have an amendment at the desk.

Chairman Smith. Well, let me finish with the opening statement. My opening statement will be made a part of the record.

Mr. Conyers. I will do the same.

Chairman Smith. Thank you, Mr. Conyers.

The gentlewoman from Florida is recognized for the purpose of offering an amendment.

The clerk will report the amendment.

The Clerk. Amendment in the nature of a substitute to H.R. 365, offered by Mrs. Adams of Florida. Strike all after the enacting clause and insert the following: Section one, short title. This act may be cited --

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

[The amendment of Mrs. Adams follows:]

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

Mrs. Adams. Thank you, Mr. Chairman. My amendment in the nature of a substitute makes additions to H.R. 365, the National Blue Alert Act of 2012. Every year, hundreds of law enforcement officers are killed or seriously injured in the line of duty. Since 1791, nearly 21,000 law enforcement officers have been killed in the line of duty in the United States.

This is something that hits particularly close to home for me. Over 23 years ago, I lost my husband, a police officer. Just this weekend, I was with three other widows who also experienced the same knock at the door that I had 23 years ago.

Despite the dangers they face, our brave officers still put their lives on the line each and every day, running an incredibly high risk of being injured or killed by the same criminals who would victimize our communities. Blue Alerts provide the means to a speedy apprehension violent criminals who kill or seriously injure law enforcement officers. Like amber alerts, Blue Alerts will help hinder the offender's ability to flee and will facilitate a speedy capture. This is exactly why we need the national Blue Alert.

Authored by Congressman Michael Grimm who most recently served our country in the FBI before he came to Congress, H.R. 365 would enhance an integrated Blue Alert communications network through the United States in order to disseminate information among local, State, and Federal authorities, law enforcement agencies, and the general public.

H.R. 365 also directs the Department of Justice to designate a

Blue Alert national coordinator who will encourage States which have not already done so to develop Blue Alert plans and establish voluntary guidelines using existing COPS funding.

In order to ensure we are responsible stewards of our taxpayer dollars, my amendment would clarify that an existing officer at DOJ will be assigned to be the national Blue Alert coordinator and that the advisory group will include an organization representing rank and file officers. Finally, this amendment restricts the national coordinator from official travel, lobbying States to fund or implement Blue Alert plans and hosting conferences that would spend Federal funds. Again, it restricts that.

Some of the proudest days of my life were when I was a deputy sheriff in Florida. As a former law enforcement officer who worked alongside others who were aware of the risk and the inherent dangers associated with putting on a uniform every day, I ask for your support on the amendment in the nature of a substitute and on the bill.

Mr. Chairman, I also ask for unanimous consent to submit the following letters of support for the record.

Chairman Smith. Without objection, the letters referred to by the gentlewoman from Florida will be made a part of the record.

I believe they are letters from Representative Michael Grimm of New York, Representative David Reichert of Washington, National Fraternal Order of Police, National Sheriffs' Association, Federal Law Enforcement Officers Association, and the Sergeants Benevolent Association.

[The information follows:]

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

Mrs. Adams. That is correct, Mr. Chairman.

And I yield back the balance of my time.

Chairman Smith. The gentlewoman yields back the balance of her time.

The gentleman from Puerto Rico, Mr. Pierluisi.

Mr. Pierluisi. Thank you, Mr. Chairman. I will be very brief. I will submit a statement for the record. I just want to say that I am the lead Democratic cosponsor of H.R. 365 and that I believe this bill is an example of the common ground that can be found when we work together to identify solutions to some of the challenges that confront us.

I encourage my colleagues from both sides of the aisle to support Congresswoman Adams' amendment and to vote in favor of H.R. 365. Thank you.

I yield back.

Chairman Smith. Thank you, Mr. Pierluisi.

The gentleman from Virginia, Mr. Scott, is recognized.

Mr. Scott. Thank you, Mr. Chairman.

Mr. Chairman, I am pleased today that we are considering an important bill that will make us safer from those who would attack and kill or seriously injure police officers. This bill will establish a network of communications in the Department of Justice to issue Blue Alerts to help apprehend individuals suspected of committing these serious crimes. We would encourage States to establish Blue Alert notification systems.

Seventeen States, including my home State of Virginia, have Blue Alert systems in place to use broadcast media and roadside message signs to disseminate within their respective borders information giving detailed descriptions about those who are suspected of killing or seriously injuring Federal, State, and local police officers. The type of information broadcast would include descriptions of the suspects' vehicles and license plate numbers. And this will enable the public to assist in locating the perpetrators. This bill will encourage more States to establish these programs and will establish the Department of Justice as a facilitator of sharing Blue Alert information among States so that notification may be disseminated across State lines and throughout a geographic area most likely to be reasonably reached by the suspect.

At I would note, Mr. Chairman, that the \$10 million authorized by the Blue Alert grant program to assist States to establish and maintain these systems is directed to come out of the amounts authorized to be appropriated for the COPS program. So this will be yet another good reason for all of us to support robust appropriations for the very successful COPS program.

Mr. Chairman, the Adams amendment will conform the bill to one previously reported by the Senate Judiciary Committee, and it approves the bill. I would support the amendment and support committee approval of the bill.

I yield back.

Chairman Smith. Thank you, Mr. Scott.

The gentleman from South Carolina, Mr. Gowdy, is recognized.

Mr. Gowdy. Very briefly, Mr. Chairman, I want to commend Congresswoman Adams not just for this bill but also for her service in law enforcement.

You know, Mr. Chairman, when there is an attack made on a law enforcement officer, it really is an attack on all of us. They are all that separate us from the criminal element.

So, in conclusion, I just want to call the names of the law enforcement officers that I worked with who were killed in the line of duty, to honor them and to honor their families: Eric Nicholson, Kevin Carper, Russ Sorrow, and Marcus Whitfield.

Chairman Smith. Thank you, Mr. Gowdy.

Are there other members who wish to be heard on this amendment?

The gentlewoman has well explained it. I, too, want to commend her for offering the amendment and for her prior law enforcement service as well.

All those in favor of the amendment in the nature of a substitute say aye.

Opposed, nay.

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

Those in favor say aye.

Opposed, no.

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

favorably.

Without objection, the bill will be reported as a single amendment in the nature of a substitute incorporating the amendment adopted. And staff is authorized to make technical and conforming changes. Members will have 2 days to submit views.

Without objection, other members' opening statements will be made a part of the record.

I thank all the members for being here today and for their commitment and their participation.

[Whereupon, at 3:00 p.m., the committee was adjourned.]