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APPROVAL OF COMMITTEE RULES AND RATIFICATION OF SUBCOMMITTEE
CHAIRMANSHIPS AND MEMBERSHIPS

Wednesday, January 19, 2011

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

The committee met, pursuant to call, at 3:04 p.m., in Room 2141, Rayburn House Office Building, Hon. Lamar Smith [chairman of the committee] presiding.

Present: Representatives Smith, Sensenbrenner, Coble, Gallegly, Goodlatte, Lungren, Chabot, Issa, Pence, Forbes, King, Franks, Gohmert, Jordan, Poe, Chaffetz, Reed, Griffin, Marino, Gowdy, Ross, Adams, Quayle, Conyers, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Cohen, Johnson, Quigley, Chu, Deutch, and Wasserman Schultz.

Staff Present: Sean McLaughlin, Staff Director/General

Counsel; Allison Halatei, Deputy Chief of Staff/Parliamentarian; Sara Kish, Clerk; and Perry Apelbaum, Minority Staff Director, Chief Counsel.

Chairman Smith. Welcome to everyone. The Judiciary Committee will come to order, and the clerk will call the roll to establish a quorum.

Ms. Kish. Mr. Smith.

Chairman Smith. Present.

Ms. Kish. Mr. Sensenbrenner.

Mr. Sensenbrenner. Here.

Ms. Kish. Mr. Coble.

Mr. Coble. Here.

Ms. Kish. Mr. Gallegly.

[No response.]

Ms. Kish. Mr. Goodlatte.

[No response.]

Ms. Kish. Mr. Lungren.

Mr. Lungren. Here.

Ms. Kish. Mr. Chabot.

[No response.]

Ms. Kish. Mr. Issa.

[No response.]

Ms. Kish. Mr. Pence.

[No response.]

Ms. Kish. Mr. Forbes.

Mr. Forbes. Here.

Ms. Kish. Mr. King.

[No response.]

Ms. Kish. Mr. Franks.

Mr. Franks. Here.

Ms. Kish. Mr. Gohmert.

[No response.]

Ms. Kish. Mr. Jordan.

[No response.]

Ms. Kish. Mr. Poe.

[No response.]

Ms. Kish. Mr. Chaffetz.

Mr. Chaffetz. Present.

Ms. Kish. Mr. Reed.

Mr. Reed. Present.

Ms. Kish. Mr. Griffin.

[No response.]

Ms. Kish. Mr. Marino.

[No response.]

Ms. Kish. Mr. Gowdy.

Mr. Gowdy. Present.

Ms. Kish. Mr. Ross.

[No response.]

Ms. Kish. Mrs. Adams.

Mrs. Adams. Present.

Ms. Kish. Mr. Quayle.

[No response.]

Ms. Kish. Mr. Conyers.

[No response.]

Ms. Kish. Mr. Berman.

[No response.]

Ms. Kish. Mr. Nadler.

Mr. Nadler. Here.

Ms. Kish. Mr. Scott.

Mr. Scott. Here.

Ms. Kish. Mr. Watt.

[No response.]

Ms. Kish. Ms. Lofgren.

[No response.]

Ms. Kish. Ms. Jackson Lee.

[No response.]

Ms. Kish. Ms. Waters.

[No response.]

Ms. Kish. Mr. Cohen.

[No response.]

Ms. Kish. Mr. Johnson.

[No response.]

Ms. Kish. Mr. Pierluisi.

[No response.]

Ms. Kish. Mr. Quigley.

[No response.]

Ms. Kish. Ms. Chu.

Ms. Chu. Here.

Ms. Kish. Mr. Cohen votes aye.

Ms. Kish. Mr. Deutsche.

[No response.]

Ms. Kish. Ms. Sanchez.

[No response.]

Ms. Kish. Ms. Wasserman Schultz.

[No response.]

Mr. Gohmert. Might I ask how I am recorded?

Ms. Kish. Not present, sir.

Mr. Gohmert. I think I am. I am not all here but partially.

Mr. Gallegly. The jury is out.

Ms. Kish. Mr. Conyers.

Mr. Conyers. Present.

Ms. Kish. Mr. Poe.

Mr. Poe. I am all here.

Ms. Kish. Mr. Gallegly.

Mr. Gallegly. Present.

Ms. Kish. Mr. Gowdy.

Mr. Gowdy. Present.

Ms. Kish. Mr. Watt.

Mr. Watt. Present.

Ms. Kish. Mr. Quayle.

Mr. Quayle. Present.

Ms. Kish. Ms. Lofgren.

Ms. Lofgren. Present.

Ms. Kish. Mr. Griffin.

Mr. Griffin. Present.

Chairman Smith. Are there any additional members who wish to record their presence?

If not, the clerk will report.

Ms. Kish. Mr. Chairman, 21 members have responded present.

Chairman Smith. Okay. A quorum being present, I will recognize myself for purposes of an opening statement.

Welcome to both new and returning members of the House Judiciary Committee. Today we meet to organize for the 112th Congress, adopt committee rules, and ratify subcommittee chairmanships and member assignments.

The House Judiciary Committee is often referred to as guardian of the Constitution. We have a responsibility to protect the principles of liberty, equality, and justice for all Americans. The issues that fall within this committee's jurisdiction are some of the most important issues facing our country. For that reason, it is imperative that we work together to achieve meaningful solutions that yield real results for the American people.

Chairman Emeritus John Conyers guided this committee with respect for all members, and I hope to continue that tradition. He and I have worked together on many issues over the years and those collaborative efforts have set a good precedent. Our seats have changed, but our good working relationship has not. Certainly, members of this

committee will not always agree on the legislation and oversight topics that come before us, but we can produce a process for honest debate that allows members of the committee to be heard and their views considered.

Before recognizing Ranking Member Conyers, let me introduce nine new members on our side of the aisle. First, Tim Griffin of Arkansas. Tim, let me recognize you. Although he joins the Judiciary Committee as one of our seven freshmen members, he is no stranger to the world of politics. Before his election, Congressman Griffin served as senior counsel for the House Government Reform Committee and assistant to the President and deputy director in a previous administration. He is also a former assistant U.S. attorney and U.S. attorney in Little Rock. Welcome to you, Tim.

Next is Sandy Adams of Florida. Her careers in the U.S. Air Force, law enforcement, and the Florida Legislature provide experience that will be valuable to the committee. Congresswoman Adams served as a deputy county sheriff for 17 years. We are pleased to have her join us as well.

We are also joined by Trey Gowdy of South Carolina. Most recently he served as the solicitor for South Carolina's seventh judicial circuit. In this role, he prosecuted the full range of Federal crimes. Importantly, Congressman Gowdy is almost a Texan, having graduated from Baylor University. And we welcome him to the committee as well.

Mr. Gowdy. Thank you.

Chairman Smith. Next is Tom Marino of Pennsylvania. He is both

a former district attorney and U.S. attorney. While serving as U.S. attorney, he was known for cracking down on organized crime and drug trafficking. Congressman Marino brings much law enforcement experience to the Judiciary Committee.

Also joining us is Ben Quayle of Arizona. He was a law firm associate before becoming founder and managing director of a company specializing in the acquisition and growth of small businesses. His knowledge of the private sector will be an asset. Although he follows in his father's footsteps as a Member of Congress, he is the first Representative Quayle to sit on the Judiciary Committee. We welcome him to the committee as well.

Next is Dennis Ross of Florida. He is not here yet, but I am going to introduce him. Like many of the new freshmen members, he has extensive legal experience. Although in his capacity as in-house counsel for Walt Disney World, he may have had more fun than the rest of our former law firm associates, after getting his fill of the rides at Disney World, Congressman Ross started his own law practice. And we are glad he will be here shortly.

Next is Tom Reed of New York. His membership on this committee will come in handy in the event of any athletic competitions. Among his notable accomplishments, he was an NCAA all-American swimmer. After working for a law firm in his home State of New York, Congressman Reed opened his own law firm and started several other small businesses. Before his election to Congress, he was the mayor of Corning, and we welcome him as well.

Mr. Reed. Thank you, Chairman.

Chairman Smith. Next we are glad for the return two of veterans to the committee. First, Steve Chabot of Ohio. Apparently he did not get his fill of Congress during the 14 years he served the people of Ohio. When previously serving on the Judiciary Committee, he helped lead efforts to block taxation of the Internet, pass product liability reform measures, and toughen anti-drug laws. And we are pleased to have him with us once again.

Mr. Chabot. Mr. Chairman, I was just wondering if you might have changed your position on cameras in the courtroom.

Chairman Smith. I will say to the gentleman from Ohio, my position has not changed, but I understand his may well change.

Also returning to the committee is Mike Pence of Indiana. Although he left the committee to serve as Republican Conference chairman, we are confident that he made the right decision in returning to join our ranks once again. We are pleased to have Congressman Pence's insights and adherence to principles as a member of this committee, and we welcome him back as well.

Mr. Pence. Thank you, Chairman.

Chairman Smith. I will now recognize our distinguished Ranking Member John Conyers of Michigan for his remarks.

Mr. Conyers. Thank you, Chairman Smith. You know, the view doesn't look as good from this side of the aisle as it did when we were over there. I don't know why it is. But I came in, and I went to my seat, and there were a lot of people who I did not used to see over

on here. I mean, you remember, you came to me and you asked me, Is there anything that we can do for you? At first I said nothing. And then I said, Wait a minute. There is one thing. Why don't you keep the same seating arrangements that we had in the 111th? And you declined, the only thing I asked you to do.

But I am here because this committee is one of the most important. We passed 38 measures into law, signed by the President, in the 111th Congress. 57 others ran into difficulty in the other body, as we call them. And there are Members who will be remembered for what they did on these bills. The Crush Video Act; Fraud Enforcement for mortgage fraud; Help Haiti; the 9/11 First Responders bill; Jerry Nadler and Mrs. Maloney; the Satellite Home Viewers law, Fair Sentencing Act.

So we have enjoyed a good relationship on this committee. And I don't mind saying publicly that notwithstanding the strongly-held views of everybody on this committee, we never descended into personal attacks or the kinds of debate that lowers in the public's mind the importance of the lawmaking work that we have. So it is not just the subject matter, it is the people here on the committee in the way they interact with one another.

Speaking of subject matter, it is our responsibility to not only interpret the Constitution and the way the legislators perceive it, but also to receive any amendments to the Constitution. Although we didn't have many hearings in that regard, we got dozens of constitutional amendments that I am sure will be reintroduced again in this Congress.

Oversight of the Department of Justice, the Federal Bureau of Investigation, the Federal Corrections System, intellectual property, just a few of the many pieces of legislation in our jurisdiction.

Now I am supposed to introduce the new member. But who here thinks that Debbie Wasserman Schultz is a new member coming to the committee? She has been on the committee for years.

Ms. Wasserman Schultz. Thank you, Mr. Chairman.

Mr. Conyers. It is official now. It is an important distinction. So I am very pleased to be with you today. I congratulate all of the members joining the committee. And just between myself and the person sitting to my right, I think we should change seats, as I first originally suggested. Thank you, Mr. Chairman.

Chairman Smith. Thank you, John, for those comments. My memory seems to be fading about that initial offer, but we will certainly consider it.

Pursuant to notice, our next order of business is the adoption of the committee rules for the 112th Congress, a copy of which I hope is on everyone's desk. The Clerk will report the rules.

Ms. Kish. U.S. House of Representatives Committee on the Judiciary, Rules of Procedure. Rule one --

[The information follows:]

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

Chairman Smith. The rules will be considered as read. And I will recognize myself for an opening statement.

The proposed committee rules for this Congress include several important changes and I hope that these changes are viewed as an effort to make our actions here at the committee more purposeful and accountable. First, the committee will provide 3 days notice for all markups. Markup text will be made available to members at least 48 hours before the commencement of a markup.

The rules also urge members to submit their amendments 24 hours in advance of the markup. After receiving amendments, we will prepare and distribute a roster of amendments. The roster will list the amendments in the order that their movers will be recognized. Members who submit their amendments 24 hours in advance will get priority consideration. This amendment process has worked well for the other two committees that I sit on, Homeland Security and Science and Technology, so I am hoping they will work on the Judiciary Committee as well.

By providing the text of the bill earlier than House rules require and by putting our amendments out for review in advance of a markup, we can do a better job as legislators and produce a more thoughtful legislative product. In an effort to increase the transparency of our activities, the new rules mirror the House rules, which now require all adopted amendment text to be posted on the committee Web site within 24 hours. The committee is also going above and beyond the House rule

requirements in several ways. We will require our markup transcripts and amendments that were offered but not adopted to be posted on the Web site within 3 days of the markup.

Finally, there are some changes to the names and jurisdiction of the subcommittees. Intellectual property jurisdiction will move from the full committee to the Subcommittee on Intellectual Property, Competition, and the Internet. Courts and Commercial Administrative Law will be joined in the same subcommittee. And Legal Reform will move from the full committee to Constitution Subcommittee. Several of the other subcommittee names have been streamlined to accurately and succinctly reflect their jurisdiction. I believe the rules will result in an open and effective committee process.

And I now recognize the distinguished gentleman from Michigan, Ranking Member John Conyers, again for his remarks.

Mr. Conyers. Thank you, Mr. Chairman.

Our caucus has gone through these rules. And one issue came up that I pledged to bring to your attention, and that is, it was recommended that either by amendment to the rules or by an agreement to custom that members would be recognized when they enter the hearing as opposed to seniority determining that because many more freshmen members are here for hours and then a senior member comes in and is recognized over them. So I bring it to your attention and leave it for us to discuss.

Chairman Smith. Would the gentleman yield just for a minute?

First of all, I appreciate your arguing on behalf of the seven

Republican freshmen who will benefit from that type of arrangement. But more seriously, let me consider that. I have served under both procedures. One where members are recognized on the basis of their seniority and other times where members are recognized in the order in which they appear at a particular hearing. And I see pros and cons on both sides. Let's you and I continue to talk about that and we will come to some arrangement soon. But thank you for bringing that up.

Ms. Wasserman Schultz. Mr. Chairman?

Chairman Smith. The gentleman from New York, Mr. Nadler, is recognized.

Mr. Nadler. If Ms. Wasserman Schultz wants to talk on this topic, I will yield to her.

Chairman Smith. Okay. Let me recognize the gentlewoman from Florida, Ms. Wasserman Schultz.

Ms. Wasserman Schultz. Thank you. Thank you, Mr. Chairman. Speaking from the last chair in the minority, no less, I do want to, on behalf of Ms. Sanchez -- and I think I am comfortable speaking for the seven Republican freshmen that serve on this committee. I spent 5 years on this committee with a brief lapse last year and can share from personal experience the frustration that one faces when you are diligent about being here, spend hours in a committee hearing, only to have it reach your turn to ask a question, and a more senior member on the committee arrives and they trump you. So in terms of fairness and also in terms of just assisting you in ensuring that the House is full for the people that we have asked to come and testify, it would

be a combination of fairness and fullness.

Chairman Smith. Would the gentlewoman yield?

Ms. Wasserman Schultz. I would be happy to yield.

Chairman Smith. As you know, that is the way that the Judiciary Committee has operated both under Chairman Conyers and, I believe, under Chairman Sensenbrenner. I will have to confess to you, I was leaning the other way. But we will revise that and reconsider.

Ms. Wasserman Schultz. Thank you.

Chairman Smith. I don't want to pit freshmen against senior members, so that is not going to come up to a vote, but we will try to weigh pros and cons, and we will either come up with a first-come/first-serve rule or with a modified seniority rule, one or the other.

Ms. Wasserman Schultz. Thank you very much.

Chairman Smith. I appreciate your comments and the gentleman from New York, Mr. Nadler, is recognized.

Mr. Nadler. Thank you. I just had a question, Mr. Chairman. Certainly I agree with you -- I agree with, rather, the new rules proposals for advanced submission of amendments and so forth. I was not clear about what happens -- I mean, sometimes in the course of a markup, especially an extended markup, one may be discussing a text or an amendment, and a new amendment will occur to someone and they will write it up on the spot. How will that be considered under this proposal?

Chairman Smith. If the gentleman will yield, that will be

considered on an individual basis. I recognize that sometimes there are relatively minor amendments that are constructed on the spot, as you just suggested, and those might well be considered. But that would be the exception to the rule. The general rule would be that we will operate with the understanding that those amendments that are offered prior to 24 hours before the markup will get first consideration. But again, there are exceptions to the rule.

Mr. Nadler. Reclaiming my time. It is not necessarily minor because sometimes you will be having a fierce debate over a text in over someone's proposed amendment. And someone will come up and say, Wait a minute. If we had this amendment, everybody would agree with that.

Chairman Smith. Again, those will be considered on an individual basis. The general rule, I think, will serve us well, but there are exceptions and that would be an exception.

Any other questions or observations? The question is on adopting the rules of the Judiciary Committee for the 112th Congress. All in favor say aye. Aye. Opposed, no. The ayes have it, and the rules are adopted.

Our final order of business is the ratification of the subcommittee assignments for the 112th Congress. And every member should have a copy, again, on their desk. The Clerk will report the subcommittee assignments.

Ms. Kish. U.S. House of Representatives Committee on the Judiciary, Lamar Smith, chairman. Subcommittee assignments.

Subcommittee on Courts, Commercial and Administrative Law.

[The information follows:]

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

Chairman Smith. Subcommittee assignments will be considered as read. And I will recognize myself for the purpose of a statement.

We now turn to the ratification of the subcommittee assignments. Do members have before them a roster showing the chairman, vice chairman, ranking member, and other majority and minority members for each subcommittee? I would also like to introduce the subcommittee chairmen and vice chairmen. Congressman Bob Goodlatte will serve as chairman of the Subcommittee on Intellectual Property, Competition, and the Internet. He is also the co-chair of the Congressional Internet Caucus and chairman of the House Republican High-Tech Working Group. Howard Coble will serve as the vice chairman of the subcommittee. He also has been a leader for many years in the technology and intellectual property arenas.

Chairman Emeritus Jim Sensenbrenner will serve as the chairman of the Subcommittee on Crime, Terrorism and Homeland Security. As a former chairman of the full committee and the author of the original USA PATRIOT Act, his experience on the Crime Subcommittee will be very helpful. Louie Gohmert will serve as the vice chairman of the Crime Subcommittee. His years of experience as a judge as well as his tenure as the ranking member of the subcommittee will prove valuable to that subcommittee. Elton Gallegly will be the chairman of the Subcommittee on Immigration Policy and Enforcement. His commitment to immigration issues goes back many years and is indicated by the 1996 L.A. Times headline, "Gallegly leaves hospital bed to join immigration debate."

He will be a strong leader of this important subcommittee. Steve King will serve as vice chairman of the Immigration Subcommittee. Like Mr. Gallegly, he brings knowledge and dedication to the issues before that subcommittee.

Howard Coble will serve as the chairman of the Subcommittee on Courts, Commercial and Administrative Law. His wealth of experience will make him an effective and dedicated subcommittee chairman. Trey Gowdy of South Carolina will serve as vice chairman. His notable success in the courtroom will give him a unique and valuable perspective as the subcommittee addresses a myriad of issues related to the Federal Judiciary.

Finally, Trent Franks will serve as chairman of the Constitution Subcommittee. He is a former ranking member of that subcommittee. Mike Pence, who is returning to the committee after being chairman of the Republican Conference, will serve as the vice chairman of the subcommittee.

Ranking member Conyers is now recognized to introduce his subcommittee ranking members.

Mr. Conyers. Thank you, Mr. Chairman.

We have three members who are returning to lead their respective subcommittees now as ranking members, but they were subcommittee chairmen. Jerry Nadler, Constitution Subcommittee; Bobby Scott, Crime Committee; Zoe Lofgren, Immigration Committee; Mel Watt, Subcommittee on Intellectual Property; and Steve Cohen on the Subcommittee on Courts. And those are the members that we have agreed

upon. And I think when combined with the members that you and your caucus have agreed upon, we will have some great leadership coming out of this Judiciary Committee. Thank you.

Chairman Smith. Thank you, Mr. Conyers. And I agree. Is there any further discussion on these assignments before we vote? The question is on approving the appointments and assignments for subcommittee chairs, vice chairs, ranking members, and majority and minority members, as shown on the roster. All in favor say aye. Aye. All opposed, no. The ayes have it, and the assignments are approved.

That concludes our business for today. I want to thank all members for coming today. I hope this is not the last time that we have such good attendance. And the meeting is adjourned.

[Whereupon, at 3:30 p.m., the committee was adjourned.]