loss of life and the complete elimination of towns and villages.

I have met with many from the Pakistan-American community, doctors who are attempting to be of help, the Indian embassy that is helping as well; but focused resources are going to be crucial.

We know that the world family is looking at the kinds of resources that are needed, but we need the donor community joined with the United States to be part of this very important effort. We know that the United States has given $50 million. It is not enough. I have asked that we raise this question with the donor community so those dollars can continue to mount.

Here are the reasons why: certainly we know the medical crisis is going to be ongoing. But as I said earlier, major cities have been wiped out. People are living in tents, those who can get tents. There is a lack of food, lack of water, and a lack of how the government will rebuild the infrastructure. We realize it is in the Kashmir area, and that is a very difficult area. It is a difficult area politically and as it relates to the conflict, and so it is imperative that that area be rebuilt quickly and the infrastructure be brought into that area.

I ask my colleagues to support the motion to instruct, as I do. I want to again applaud the ranking member and the chairman of the subcommittee. I look forward to working with both of them on ways we can provide a more expedited and certainly a higher level of assistance; and, of course, I ask for the Secretary of State, Secretary Rice, and the President of the United States to consider requesting more dollars for assistance. I ask my colleagues to support the motion to instruct.

Ms. PELOSI. Mr. Speaker, I rise in strong support of the Democratic motion to support the Senate funding level of $3 billion for our global AIDS initiatives. The funding level includes $500 million for the Global Fund to Fight AIDS, Tuberculosis, and Malaria.

Appropriations Foreign Operations Subcommittee Ranking Member NITA LOWEY and Chairman JIM KOLBE are to be commended for their leadership in the fight against the global AIDS pandemic. They are a model of bipartisan effectiveness and are leading the way in providing needed funding under tight budget constraints.

In 2003, President Bush and Congress took a bold step in authorizing $15 billion over five years toward AIDS prevention and treatment. The Senate funding levels in the Foreign Operations and Labor-HHS Appropriations bills would put the U.S. on track to meet this commitment in future years.

At this critical juncture in history, the U.S. has the opportunity and the responsibility to fully fund an ambitious global effort to combat AIDS. The statistics are staggering. Of the 40 million people currently living with HIV, 95 percent live in the developing world. This week, UNICEF released a report showing that 18 million children in Africa could be orphaned by AIDS by the end of 2010.

We know how to treat this devastating disease. Success stories can be found in every part of the world. In Uganda and Senegal, HIV rates have been brought down through effective prevention campaigns. In the past year alone, an estimated 350,000 African AIDS patients have received access to anti-retroviral drugs that will keep them alive to work and care for their families. Unfortunately, only 500,000 of the 4.7 million people in need of anti-retroviral drugs have them.

If we support what works, we can prevent nearly two-thirds of the 45 million new HIV infections projected by 2020. When we invest more resources, more people have access to life-saving drugs, more people learn how to protect themselves and their partners, more people have access to voluntary testing and counseling, and more pregnant women have services to prevent mother-to-child transmission. The longer we go without fully investing in stopping the AIDS pandemic, the further it will spread worldwide and the more expensive the bottom line will be.

The moral case is reason alone to fully fund our global AIDS initiatives, but it is also in our national security interest. As we have seen in the case of Afghanistan and Sudan, impoverished states can become incubators for terrorism and conflict. We must address the root causes of instability so that the "fury of despair" does not provoke more violence.

It is in this global context that I support the Senate funding levels for global AIDS. Let us all come together today to fully support our commitments to fight the global AIDS pandemic.

Mrs. LOWEY. Mr. Speaker, I yield back the balance of my time.

Mr. KOLBE. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentlewoman from New York (Mrs. LOWEY).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mrs. LOWEY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

GENERAL LEAVE

Mr. SMITH of Texas. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 420.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

LAWSUIT ABUSE REDUCTION ACT OF 2005

The SPEAKER pro tempore (Mr. PUTNAM). Pursuant to House Resolution 508 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 420.

□ 1345

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 420) to amend Rule 11 of the Federal Rules of Civil Procedure to improve attorney accountability, and for other purposes, with Mr. LATHAM in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered read the first time.

The gentleman from Texas (Mr. SMITH) and the gentleman from New York (Mr. NADLER) each will control 30 minutes.

The Chair recognizes the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I support H.R. 420, the Lawsuit Abuse Reduction Act of 2005.

Frivolous lawsuits bankrupt individuals, ruin reputations, drive up insurance premiums, increase health care costs, and put a drag on the economy.

Frivolous lawsuits are brought, for example, when there is no evidence that shows negligence on the part of the defendant. These nuisance lawsuits make a mockery of our legal system.

Of course, many Americans have legitimate legal grievances, from someone wrongly disfigured during an operation to a company responsible for contaminating a community's water supply. No one who deserves justice should be denied justice; however, gaming of the system by a few lawyers drives up the cost of doing business and drives down the integrity of the judicial system.

Let me give some examples. The chief executive officer of San Antonio's Methodist Children's Hospital was sued after he stepped into a plaintiff's hospital room and asked how the patient was doing. Of course, a jury cleared him of any wrongdoing.

A Pennsylvania man sued the Frito-Lay Company claiming that Doritos chips were "inherently dangerous" after one stuck in his throat. After 8 years of costly litigation, the Pennsylvania Supreme Court threw out the case, writing that there is "a commonsense notion that it is necessary to properly chew hard foodstuffs prior to swallowing." But, of course, the defendants had to absorb hundreds of thousands of dollars in legal fees.

In a New Jersey Little League game, a player lost sight of a fly ball hit because of the sun. He was injured when the ball struck him in the eye. The coach, who was forced to hire a lawyer after the boy's parents sued, had to settle the case for $25,000.

Today almost any party can bring any suit in almost any jurisdiction. That is because plaintiffs and their attorneys have nothing to lose. All they

want is for the defendant to settle. This is legalized extortion. It is lawsuit lottery.

Defendants, on the other hand, can unfairly lose their lifetime savings, their careers, their businesses, and their reputations. This is simply not justice.

There is a remedy: the Lawsuit Abuse Reduction Act. It passed the House last year by a margin of almost 60 votes. The bill applies to both plaintiffs who file frivolous lawsuits to extort financial settlements and to defendants who unnecessarily prolong the legal process. If a judge determines that a claim is frivolous, they can order the plaintiff to pay the attorneys' fees of the defendant who was victim of their frivolous claim. This will make a lawyer think twice before filing a frivolous lawsuit.

It is a problem that even the American Trial Lawyers Association has tried to address in its own code of conduct by declaring, ''No American Trial Lawyers Association member shall file or maintain a frivolous suit, issue, or position.'' However, ATLA has not disciplined a single attorney for violation of this code of conduct in the last 2 years.

This legislation also prevents forum shopping. It requires that personal injury claims be filed only where the plaintiff resides, where the injury occurred, or the defendant's principal place of business is located. This provision addresses the growing problem of attorneys who shop around the country for judges who routinely award excessive amounts.

One of the Nation's wealthiest trial lawyers, Dickie Scruggs, has told us exactly how this abuse occurs. Here is what he says about forum shopping:

''What I call the magic jurisdiction . . . is where the judiciary is elected with verdict money. The trial lawyers have established relationships with the judges that are elected; they're State Court judges; they're populists. They've got large populations of voters who are in on the deal. They're getting their piece in many cases. And so it's a political force in their jurisdiction, and it's almost impossible to get a fair trial if you're a defendant in some of these places. The plaintiff lawyer walks in there and writes the number on the blackboard, and the first juror meets the last one coming out the door with that amount of money . . . Any lawyer fresh out of law school can walk in there and win the case, so it doesn't matter what the evidence or law is.''

Forum shopping is a part of lawsuit abuse, and we must pass legislation to stop it from occurring. Even several largely recognized Democrats have acknowledged the need to end frivolous lawsuits. For instance, the John Kerry for President campaign endorsed national legislation in which ''lawyers who file frivolous cases would face tough mandatory sanctions.'' And former Vice Presidential candidate Senator Edwards stated, ''Lawyers who bring frivolous cases should face tough, mandatory sanctions.''

The Lawsuit Abuse Reduction Act is sensible reform that will help restore confidence to America's justice system.

Mr. Chairman, the following organizations support H.R. 420: American Tort Reform Association, National Association of Home Builders, National Association of Manufacturers, National Restaurant Association, American Insurance Association, and the United States Chamber of Commerce. And this legislation is the top legislative priority of the National Federation of Independent Businesses.

Mr. Chairman, I reserve the balance of my time.

Mr. NADLER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I oppose this bill because it will not reduce frivolous lawsuits, but will instead increase the cost of litigation at the State and Federal level, set back the fairness of civil rights litigation, and favor foreign corporate defendants at the expense of their domestic competitors. As a result of this misguided legislation, satellite litigation, costs and delays will result, and litigation abuses will not be reduced.

H.R. 420 makes significant changes to Rule 11 sanctions without following the statutory rulemaking process. The Association of Chief Justices of the States and the Federal Judicial Council have both criticized skipping the statutory rulemaking process. This bill would revert Rule 11 back to the 1983 version and unduly affects plaintiffs in civil rights cases. The current Rule 11 was adopted in 1993 specifically to correct abuses by defendants in civil rights cases. By rolling back this rule and requiring a mandatory sanctions system to civil rights cases, H.R. 420 will chill many legitimate and important civil rights actions.

Although the bill states that the proposed Rule 11 changes shall not be construed to ''bar or impede the assertion or development of new claims or remedies under Federal, State, or local civil rights law,'' the language does not clearly and simply exempt civil rights and discrimination cases, as it should. Determining what a new claim or remedy is will be a daunting and complex issue for most courts and clearly does not cover all civil rights cases.

The Honorable Robert Carter, United States District Court Judge for the Southern District of New York, who was one of the pioneers in civil rights legislation and worked on the Brown v. Board of Education case, stated, ''I have no doubt that the Supreme Court's opportunity to pronounce separate schools inherently unequal in Brown v. Board of Education would have been delayed for a decade had my colleagues and I been required, upon pain of potential sanctions, to plead our legal theory explicitly from the start.'' This is a good example of the dreadfully detrimental effect of this rule on civil rights cases.

Furthermore, this bill will operate to benefit foreign corporate defendants at the expense of their domestic counterparts. Section 4, the ''forum shopping'' provision, would operate to provide a litigation and financial windfall to foreign corporations at the expense of their domestic competitors. This is because instead of permitting claims to be filed wherever a corporation does business or has minimum contacts, as most State long-arm statutes provide, the bill permits the suit to be brought only where the defendant's principal place of business is located. In the case of a foreign corporation, that does not exist in the United States. If a U.S. citizen is harmed by a product manufactured by a foreign competitor, under this bill the injured U.S. citizen would have no recourse against a foreign corporation, whereas he or she would have recourse against the comparable U.S. corporation. This is unfair to both the U.S. citizen with no recourse and to all U.S. companies that must compete against the foreign firm. Consequently American employers and employees would be put at an unfair disadvantage vis-a-vis their foreign counterparts, not exactly what we would want to be doing not only from a standpoint of fairness, but from a standpoint of our economy.

Mr. Chairman, this bill has another deleterious effect. Because it provides for reasonable attorneys' fees in the case of a sanction, because many Rule 11 sanctions are minor, and in any complex case there are almost invariably going to be some, the current law, first of all, permits the judge discretion whether to impose sanctions or not. This makes it mandatory for even the most picayune infractions.

Second of all, the current law says that if it is pointed out to an attorney that he has done something that would fall under Rule 11, he has 21 days to correct it. If he does not correct it, he is subject to sanctions. This would say they have no time to correct it. They get automatic sanctions. That is unfair.

Thirdly, because under those circumstances this bill provides for attorneys' fees, they had better have their head examined if they want to sue a large corporation, because if they are the little guy, and they have one attorney, and he is paid a reasonable fee, and they can afford the litigation, they hope; but if they are suing the big company, and General Motors has 32 attorneys lined up over there, and they are all charging $800 an hour, then reasonable attorneys' fees are going to be a lot of money, and they have to anticipate, if they file that suit, that because of the mandatory nature of the Rule 11 sanctions that this bill would impose, because of the lack of an ability to correct it, because of the automatic sanctions and mandatory sanctions, they have to assume that they are going to have to pay those sanctions, and they are going to have to pay the mandatory attorneys' fees, so they had better not sue the big boys.

What this bill is really saying is big corporations shall be exempt from lawsuits by people who cannot afford to pay huge attorneys' fees of the big corporations, because we have to assume that will happen, and because this bill leaves no discretion to the judge.

It is no surprise that the United States Judicial Conference, the National Association for the Advancement of Colored People, the Alliance for Justice, Public Citizen, People for the American Way, the American Association of People with Disabilities, the Lawyers Committee for Civil Rights in Law, the American Bar Association, the National Conference of State Legislatures, National Partnership for Women, National Women's Law Center, the Center for Justice and Democracy, Consumers Union, the National Association of Consumer Advocates, and the NAACP Legal Defense Fund all oppose the bill.

In other words, if Members care about civil rights, if they care about the ability of the consumer to have justice with a large corporation, if they care about civil liberties, if they care about people being able to use the Federal or State courts, they must vote against this bill.

I urge my colleagues to vote against this poorly drafted and unfair legislation.

Mr. Chairman, I reserve the balance of my time.

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN. Visitors in the gallery will refrain from showing approval or disapproval of proceedings.

Mr. SMITH of Texas. Mr. Chairman, I yield 5 minutes to the gentleman from Florida (Mr. KELLER), a member of the Judiciary Committee.

Mr. KELLER. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I rise today as a cosponsor and strong supporter of the Lawsuit Abuse Reduction Act. I am going to tell the Members why I support this legislation and what the key components of this legislation is.

First, why do we need this legislation? We need tough mandatory sanctions to crack down on frivolous lawsuits. We need to care about each other more and sue each other less. We need to get back to the old-fashioned principles of personal responsibility and get away from this new culture where people play the victim and blame others for their problems. Most importantly, we need to protect those small business people who are out there creating 70 percent of all new jobs in America. These small business people work hard and play by the rules, but they cannot afford to defend themselves from meritless litigation.

For example, if they have a suit brought against them, to take it to trial to successfully win the suit, they often have to pay over $100,000 to a defense attorney. So what do they do? They have to pay about 10 grand to settle the case to get rid of it for strictly business reasons even though they did nothing wrong.

This bill will help crack down on these frivolous suits by doing three key things. First, it provides tough mandatory sanctions, not discretionary sanctions, if a judge finds that we have a violation of Rule 11, which may include the payment of the other side's attorneys' fees. Second, this bill has teeth in it by having a three-strikes-and-you're-out penalty. Three strikes and you're out means if a judge finds that they have violated Rule 11 bringing a frivolous claim on three separate occasions, they will be suspended from practicing law in that particular Federal court for 1 year and will have to reapply for practice there. That is a tough sanction. I happen to be the author of it. But it is key for Members to know that there is a bipartisan idea, three strikes and you're out.

□ 1400

To my left here, you see a quote from Senator John Edwards, himself a lifelong well-known personal injury lawyer, a former Senator from North Carolina and former Vice Presidential candidate. He said in Newsweek magazine, December 15, 2003, ''Frivolous lawsuits waste good people's time and hurt the real victims. Lawyers who bring frivolous cases should face tough mandatory sanctions with a three-strikes penalty.''

Senator Edwards is not the only one who holds that view. You will see that Senator Edwards' running mate, Senator JOHN KERRY, told the Associated Press on October 10, 2004, ''Lawyers who file frivolous cases would face tough mandatory sanctions, including a three-strikes-and-you're-out provision that forbids lawyers who file frivolous cases from bringing another suit for the next 10 years.''

President George W. Bush, back when he was a candidate, February 9, 2000 said, ''As President, I will bring common sense to our courts and curb frivolous lawsuits. If a lawyer files three junk lawsuits, he will lose the right to appear in Federal Court for 3 years. Three strikes and you're out.''

The Austin American Statesman summarized President Bush's plan as saying, ''Bush's plan includes stiffer penalties for lawsuits determined by judges to be frivolous, including a three-strikes-and-you're-out rule for lawyers who repeatedly file such claims.''

On the day before we marked up this bill in the Judiciary Committee, May 24, 2005, I visited with President Bush in his personal residence and asked him, Mr. President, do you still stand by this policy that we need three strikes and you're out to crack down on frivolous lawsuits? He said, I absolutely do. That is the policy of the White House.

So we have the Democrat Presidential candidate, Mr. KERRY; the Democrat Vice Presidential candidate, Mr. Edwards; the President of the United States; and the Judiciary Committee on a voice vote adopted this three-strikes-and-you're-out provision.

The third key element of this Lawsuit Abuse Reduction Act is language to avoid forum shopping. It is the same language that we had in the class action legislation, which was approved on a bipartisan basis by both the House and the Senate and signed into law. Essentially, if there is an accident, the claim will be brought where the accident is or where the plaintiff resides or where the defendant resides.

For example, if you lived in Orlando, Florida, like I do, and you went to your local McDonald's and you slipped on a puddle of water, you could bring your suit in Orlando, where it should be. What you could not do is say, well, I know that Madison County, Illinois is a judicial hellhole, and there are lots of plaintiff-friendly judges, and McDonald's does business up in Madison County, Illinois. We are going to go file our suit there and do a little forum shopping. That is the kind of thing that is not going to be allowed here.

In short, this is a commonsense bill that provides tough mandatory sanctions to crack down on frivolous suits and includes provisions that enjoy bipartisan support. This bill has already passed the House. I urge my colleagues to vote ''yes'' on this important legislation.

Mr. NADLER. Mr. Chairman, I observe the gentleman tells us that President Bush assures us of the problem of frivolous lawsuits. President Bush assured us there were weapons of mass destruction in Iraq and a lot of other nonsense. So I do not give that too much credence.

Mr. Chairman, I yield 5 minutes to the distinguished gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the ranking member, and I thank my good friend and colleague from Texas (Mr. SMITH). There are many opportunities that we have to agree. I believe in his unabiding commitment to the integrity to the judicial system. That is why I rise to quote him when he says that there is a premise that we all deserve justice and that justice, in essence, should not be denied. He agrees with that, and I agree with that. Frankly, however, this legislation is not merely a denial of justice. It is an obliteration, a complete destruction of justice.

It is interesting in the backdrop of the United States promoting democratization in Iraq, challenging Iran, and now with the proceedings against Saddam Hussein and the very basis of our dependence upon a fair and impartial judicial system that will allow lawyers to be able to petition for their client or defend their client, that we would stand here on the floor of the House today and in essence create the lawsuit elimination legislation rather than the suggestion that we are preventing abuse.

Let me tell you what this legislation intends to do. This legislation intends

to ride roughshod over States' rights, forcing State courts to enact burdensome procedures and even stripping their jurisdiction over certain cases. That means that, in essence, it forces State judges within 30 days of a case being filed to conduct an extensive and lengthy pretrial hearing to determine whether Federal Rule 10 must be imposed. We already know that Federal Rule 11 has given the court system an effective tool to ensure, if you will, that if there is frivolous activity in the courthouse, or a lawyer files a frivolous case, that lawyer can be sanctioned.

This now protects foreign corporations at the expense of consumers. Why? Because you may be able to sue in a State court, but the State court may not have jurisdiction over that foreign corporation, leaving the victim of products liability, the victim of a terrible heinous accident left without remedy in a State court.

It makes sanctions mandatory rather than discretionary. It undermines the Federal judiciary system and the court system. It says to our judges that although you have gone to the highest litmus test, confirmation on the Federal bench, elections and bar scrutiny, we are telling you that we are going to pierce your courtroom and we are going to take away the rights of Rule 11 where you have discretion and we are going to simply tell you to throw a lawyer out.

Then for myself as an African American and someone whose very existence is based upon the privileges that Thurgood Marshall had, and many other lawyers, to go into the courthouse, and at that time and era in the early 1940s and 1950s, speak language that could have been considered frivolous, I would suggest that just in a general sense, whether or not this particular legislation speaks particularly to that issue, there are many times in our history where lawyers may be considered frivolous because they are speaking a language that opposes society.

The question of an equal education under Brown v. Topeka might have been frivolous. I do not want to have a Federal law that suggests that you cannot go into the courthouse. This bill allows judges to order individuals to reimburse litigation costs, including attorneys' fees, by specifically stating that reasonable attorneys' fees should be taken into account when assessing the amount of the sanction. That means that the poorer client is going to be thrown out.

This is supposed to help small businesses. At the same time, it may be the small business that is a petitioner. They may think their case is legitimate.

For example, what about this lawsuit for one business against another. That is frivolous lawsuits, when you had Enterprise, a very big company, filed a lawsuit against Rent-A-Wreck of America, a tiny rental company, and Hertz Corporation and threatened to file lawsuits against several other rental car companies that used the phrase, ''pick you up,'' claiming that ''We'll pick you up'' is Enterprise's slogan. Then there was a whole bunch of other lawsuits around who will pick you up, and who is not picking you up and why you are being picked up.

We could label frivolous lawsuits across the board. It should be left to the judges in Rule 11. This legislation removes the safe harbor provision of the rule which allows an attorney a period of 21 days to withdraw an objectionable pleading. That undermines justice. Maybe the lawyer made a mistake and therefore we do not have that opportunity.

Mr. Chairman, I would simply say this is a bill that has no basis in need, and we should unanimously defeat it.

Mr. Chairman, I rise in opposition to the base bill before the Committee of the Whole H.R. 4571, the Lawsuit Abuse Reduction Act of 2005 and state my support for the substitute offered by the Gentleman from as California, Mr. SCHIFF.

As I mentioned during the Committee on the Judiciary's oversight hearing on this legislation during its iteration in the 108th Congress and reiterated in my statement for the markup, one of the main functions of the Congress before it passes legislation is to analyze potentially negative impact against the benefits that it might have on those affected. The base bill before the House today does not represent the product of careful analysis.

In the case of H.R. 4571, the Lawsuit Abuse Reduction Act, the oversight functions of the Judiciary Committee allowed us to craft a bill that will protect those affected from negative impacts of the shield from liability that it proposes. This legislation required an overhaul in order to make it less of a misnomer—to reduce abuse rather than encourage it.

The goal of the tort reform legislation is to allow businesses to externalize, or shift, some of the cost of the injuries they cause to others. Tort law always assigns liability to the party in the best position to prevent an injury in the most reasonable and fair manner. In looking at the disparate impact that the new tort reform laws will have on ethnic minority groups, it is unconscionable that the burden will be placed on these groups—that are in the worst position to bear the liability costs.

When Congress considers pre-empting State laws, it must strike the appropriate balance between two competing values—local control and national uniformity. Local control is extremely important because we all believe, as did the Founders two centuries ago, that state governments are closer to the people and better able to assess local needs and desires. National uniformity is also an important consideration In federalism—Congress' exclusive jurisdiction over interstate commerce has allowed our economy to grow dramatically over the past 200 years.

This legislation would reverse the changes to Rule 11 of the Federal Rules of Civil Procedure, FRCP, that were made by the Judicial Conference in 1993 such that (1) sanctions against an attorney whose litigation tactics are determined to harass or cause unnecessary delay or cost or who has been determined to have made frivolous legal arguments or unwarranted factual assertions would become mandatory rather than discretionary to the court, (2) discovery-related activity would be included within the scope of the Rule, and (3) the Rule would be extended to state cases affecting interstate commerce so that if a state judge decides that a case affects interstate commerce, he or she must apply Rule 11 if violations are found.

This legislation strips State and Federal judges of their discretion in the area of applying Rule 11 sanctions. Furthermore, it infringes States' rights by forcing state courts to apply the rule if interstate commerce is affected. Why is the discretion of the judge not sufficient in discerning whether Rule 11 sanctions should be assessed?

If this legislation moves forward in this body, it will be important for us to find out its effect on indigent plaintiffs or those who must hire an attorney strictly on a contingent-fee basis. Because the application of Rule 11 would be mandatory, attorneys will pad their legal fees to account for the additional risk that they will have to incur in filing lawsuits and the fact that they will have no opportunity to withdraw the suit due to a mistake. Overall, this legislation will deter indigent plaintiffs from seeking counsel to file meritorious claims given the extremely high legal fees.

Furthermore, H.R. 4571, as drafted, would allow corporations that perform sham and non-economic transactions in order to enjoy economic benefits in this country. Therefore, I planned to offer an amendment that would preclude these entities from so benefiting.

The text of the amendment defined the term ''Benedict Arnold Corporation'' and proposed to prevent such companies from benefiting from the legal remedies that H.R. 4571 purports to offer.

The ''Benedict Arnold Corporation'' refers to a company that, in bad faith, takes advantage loopholes in our tax code to establish bank accounts or to ship jobs abroad for the main purpose of tax avoidance. A tax-exempt group that monitors corporate influence called ''Citizen Works'' has compiled a list of 25 Fortune 500 Corporations that have the most offshore tax-haven subsidiaries. The percentage of increase in the number of tax havens held by these corporations since between 85.7 percent and 9,650 percent.

This significant increase in the number of corporate tax havens is no coincidence when we look at the benefits that can be fund in doing sham business transactions. Some of these corporations are ''Benedict Arnolds'' because they have given up their American citizenship; however, they still conduct a substantial amount of their business in the United States and enjoy tax deductions of domestic corporations.

Such an amendment would preclude these corporations from enjoying the benefit of mandatory attorney sanctions for a Rule 11 violation. By forcing these corporate entities to fully litigate matters brought helps to put their true corporate identity into light and discourages them from performing as many domestic transactions that may be actionable for a claimant.

In the context of the Judiciary's consideration of the Terrorist Penalties Enhancement Act, H.R. 2934, my colleagues accepted an amendment that I offered that ensured that corporate felons were included in the list of individuals eligible for prosecution for committing

terrorist offenses. The amendment that I would have offered for this bill has the same intent—to increase corporate accountability and to encourage corporate activity with integrity.

I ask that my colleagues support the Substitute offered by Mr. Schiff and defeat the base bill. We must carefully consider the long-term implications that this bill, as drafted, will have on indigent claimants, the trial attorney community, and facilitation of corporate fraud.

Mr. SMITH of Texas. Mr. Chairman, I yield 4 minutes to the gentleman from Ohio (Mr. CHABOT), the chairman of the Constitutional Law Subcommittee of the Judiciary Committee.

Mr. CHABOT. Mr. Chairman, I want to first of all commend the gentleman from Texas for his leadership in this area. This is a very important piece of legislation. I think he does us all proud by pushing for this and ultimately, I believe, being successful in its passage.

I am pleased to be a cosponsor of H.R. 420, legislation that will help curtail frivolous lawsuits. It is reassuring to once again see that the Congress is taking measures to help rid our court system of lawsuits that are costly and hurt both consumers and businesses in our country. The legislation is aimed at enforcing the laws that govern attorneys in relation to filing frivolous lawsuits. The actual standard of what constitutes a frivolous lawsuit will not change. But consequences for such actions will.

In 1993, the Civil Rules advisory committee, an unelected body, decided that sanctions against attorneys who file frivolous lawsuits should be optional. Justice David Brewer once wrote: ''America is the paradise of lawyers.''

In my opinion, this ''paradise'' has resulted in increased prices for consumer goods and higher insurance premiums and a decrease in domestic manufacturing, which has been one of the things that we have heard more and more discussion about in this country, the loss of manufacturing jobs.

H.R. 420 seeks to rein in lawsuit-happy litigators by restoring mandatory sanctions for filing frivolous lawsuits, a violation of Rule 11 of the Federal Rules of Civil Procedure. This bill also prevents forum shopping by requiring that personal injury cases be brought only where the plaintiff resides, where the plaintiff was allegedly injured, or where the defendant's principal place of business is located.

Finally, the bill would apply a three-strikes-and-you-are-out rule, as we have heard, to attorneys who commit three or more Rule 11 violations in Federal district court. As a member of the House Judiciary Committee, as well as a member of the Small Business Committee, I have heard endless accounts of family-owned small businesses being led to financial ruin by the exorbitant cost of frivolous lawsuits.

According to the NFIB, the National Federation of Independent Businesses, small business owners ranked the cost and availability of liability insurance as the second most important problem facing small business owners today. Small business owners know that if they are sued, they are likely to have to choose between a long and costly trial or an expensive settlement. Either choice significantly impacts the operations of a business and the livelihood of its employees. This hurts the little guy because of these lawsuits.

Most business decisions today are made with this new reality in mind. This bill will help make American small businesses more competitive by lowering their unnecessary legal expenses, allowing business owners to focus on hiring new employees and expanding available products.

This bill will help make American businesses more competitive. It will allow business owners to focus on hiring new employees, which is really critical in this economy that we are faced with, and expanding the availability of products and services and improving the American economy.

Mr. Chairman, I again want to thank the gentleman from Texas for his leadership in introducing this important piece of legislation. It is time that we put an end to these frivolous lawsuits that are impacting the economy, that are hurting, especially, small businesses and are resulting in the loss of jobs of many, many Americans in this country.

Mr. NADLER. Mr. Chairman, I yield 3 minutes to the gentlewoman from Ohio (Mrs. JONES).

Mrs. JONES of Ohio. Mr. Chairman, I thank my good friend from New York for yielding me the time.

Mr. Chairman, I rise in opposition to H.R. 420, legislation that would have a chilling effect on a plaintiff's ability to seek recourse in court. As I have listened to my colleagues on the floor talk about three-strikes-and-you-are-out with regard to a counsel, you would think this was a criminal situation. They took discretion away from judges with mandatory sentencing. They said, Judge, no matter what the facts are of the case, if this is the penalty, then you impose such penalty.

What is very interesting is, even though my colleague cited JOHN KERRY, John Edwards, President Bush, and the Judiciary Committee, not one of them have sat as a judge in a case, making decisions about Rule 11 cases.

□ 1415

I am proud to say that I served as a judge for 10 years in the trial court in the State of Ohio and have had the ability to review complaints, review discovery decisions, review pleadings. And judges should be vested with the same discretion they are vested with in other situations and not be subjected to this Rule 11 sanctions piece that is being proposed by this legislation.

It is unconscionable that the claim that businesses get on with more business or they can hire more employees, to use that to play against the ability of a plaintiff to bring a lawsuit. What is going to make business do better in the United States of America is this country having a policy that encourages business. What is going to make people work better in the United States of America is having greater opportunity for business, and you cannot blame business not doing well on lawsuits, just as you cannot blame doctors running all over creation because of medical malpractice.

I encourage all of my colleagues to take a close look at what this legislation will do, to take a close look and listen to the arguments that are being made by my colleagues with regard to this legislation, and vote in opposition to H.R. 420.

Mr. SMITH of Texas. Mr. Chairman, I reserve the balance of my time.

Mr. NADLER. Mr. Chairman, I yield myself such time as I may consume.

I will summarize in a few words what we are really talking about. There are frivolous lawsuits. There are also novel legal claims which some may consider frivolous, but which, in the fullness of time, yield legal progress. The claims against Plessy v. Ferguson were considered frivolous at first, but eventually the courts accepted them, and so with many other arguments.

The courts have Rule 11 sanctions available at their discretion. Any judge who thinks an attorney is being frivolous, is wasting the court's time, is wasting his adversary's time, can impose the sanctions today. The courts have not asked for further power. The courts have certainly not asked us to tie their hands and to mandate that they impose sanctions whenever they are requested and a technicality may have been violated. That is not justice, to enforce technicalities against the discretion of the judge.

The Association of State Chief Justices are not in favor of this. The Judicial Council of the United States is not in favor of this.

To mandate that attorneys be sanctioned on any technicality, to say that an attorney may not correct his own mistake, you must sanction him; to say that three sanctions on three technicalities means he cannot practice anymore is to tell attorneys, do not try novel legal arguments, do not argue new claims. To say that attorneys' fees, reasonable attorneys' fees, will be assessed mandatorily, whatever the judge thinks, whether he thinks or she thinks it is reasonable or not, is to say that you better not sue the big boys, that you better not sue General Motors, and a small business, a supplier cannot sue Wal-Mart lest the attorney violate some technicality and the attorneys' fees of Wal-Mart, with their 45 attorneys sitting there, be assessed against the small supplier.

This is not justice. What this bill is, Mr. Chairman, is another attempt, another in a series of attempts, the class action bills, the various other bills we have had here, to close the courts, to close the courts to anyone who would try to hold giant corporations accountable. That is what this is. This is a bill

that says, do not try to use the courts for civil rights, do not try to use the courts to sue large corporations. We are going to make sure you do not. We are going to punish you if you do, and we are going to make sure you cannot find an attorney who will take the case because they are worried about draconian imposition of draconian attorneys' fees.

So I urge my colleagues to reject this bill. It should be rejected, because the courts ought to be opened to all people who need to use them. Otherwise there is no justice.

Ms. JACKSON-LEE of Texas. Mr. Chairman, will the gentleman yield?

Mr. NADLER. I yield to the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I was listening to the gentleman framing the question, and the gentleman framed the question I think in the way that we should ask our colleagues for them to give us an answer. I think what the gentleman has suggested in his very detailed and eloquent presentation, there is a judicial system in place that is functioning and functional. We should take the Boy Scouts' oath, make your camp better than you found it. Therefore, if there are issues that we can improve in the judiciary, let us do it.

But I am just looking at some information here that tells me that Federal litigation is, in fact, decreasing. A 2005 report issued by the U.S. Department of Justice says that the U.S. district courts in some areas, of course, fell 79 percent, fell 79 percent, the cases, the tort cases, between 1985 and 2003. According to the Administrative Office of the U.S. Courts, tort actions in the U.S. district courts went down from 29 percent from 2002 to 2003, so it fell 28 percent. In addition, over the last 5 years, Federal civil filings have not only decreased 8 percent, but the prefilings that are personal injury cases has also declined. State litigation is decreasing. The numbers show they are decreasing. Lawsuit filings are decreasing. As I said, tort filings have declined 5 percent since 1993. Contract filings have declined.

I do not particularly consider that a good omen. I would like people to legitimately feel they can go into the courts for their remedies. But the question is, it is not broken, and here we are putting heavier burdens on the court system that literally shuts the door closed to a number of individuals, and I think that is completely unacceptable for the responsibility of this Congress.

Mr. NADLER. Mr. Chairman, reclaiming my time, I thank the gentlewoman.

I think the gentlewoman has established not only that the system is not broken, but that any claim of an avalanche of frivolous litigation is absurd for these kinds of statistics of declining use of the courts, of declining caseloads, of declining filings. Again, the courts have not requested this, they have not said that there is any problem, there is any problem existing. This is an attempt again to shut the courthouse doors to people who need access to the courts, and on the most fundamental grounds of justice, this bill ought to be soundly rejected.

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

Mr. SMITH of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the scourge of frivolous litigation mars the fabric of our legal system and undermines the vitality of our economy. As President Bush has stated, ''We have a responsibility to confront frivolous litigation head on.'' H.R. 420 would do exactly that.

Frivolous lawsuits have become a form of legalized extortion. Without the serious threat of certain punishment for filing frivolous claims, innocent people and small businesses will continue to confront the stark economic reality that simply paying off frivolous claims through monetary settlements is always cheaper than litigating the case until no fault is found. Frivolous lawsuits subvert the proper role of the tort system and affront fundamental notions of fairness that are central to our system of justice.

The effects of frivolous litigation are both clear and widespread. Churches are discouraging counseling by ministers. Children have learned to threaten teachers with lawsuits. Youth sports are shutting down in the face of lawsuits for injuries and even hurt feelings. Common playground equipment is now an endangered species. The Girl Scouts in the metro Detroit area alone have to sell 36,000 boxes of cookies each year just to pay for their liability insurance. Good Samaritans are discouraged. When one man routinely cleared a trail after snowstorms, the county had to ask him to stop. The supervisor of district operations wrote, ''If a person falls, you are more liable than if you had never plowed at all.''

Unfortunately, the times we are in allow for a much more litigious environment than common sense would dictate. A Federal lawsuit has even been filed against U.S. weather forecasters after the South Asian tsunami disaster.

Today results of frivolous lawsuits are written on all manner of product warnings that aim to prevent obvious misuse. A warning label on a baby stroller cautions, ''Remove child before folding.'' A five-inch brass fishing lure with three hooks is labeled, ''Harmful if swallowed.'' And household irons warn, ''Never iron clothes while they are being worn.''

Small businesses and workers suffer the most. The Nation's oldest ladder manufacturer, family-owned John S. Tilley Ladders Company near Albany, New York, recently filed for bankruptcy protection and sold off most of its assets due to litigation costs. Founded in 1855, the Tilley firm could not handle the cost of liability insurance, which had risen from 6 percent of sales a decade ago to 29 percent, while never losing an actual court judgment. The workers of John S. Tilley Ladders never faced a competitor they could not beat in the marketplace, but they were no match for frivolous lawsuits.

When Business Week published an extensive article on what the most effective legal reforms would be, it stated that what is needed are ''Penalties That Sting.'' As Business Week recommends, ''Give judges stronger tools to punish renegade lawyers.''

Before 1993, it was mandatory for judges to impose sanctions such as public censures, fines, or orders to pay for the other side's legal expenses. Then the Civil Rules Advisory Committee, an obscure branch of the courts, made penalties optional. This needs to be reversed by Congress. Today, H.R. 420 would do exactly that.

Rule 11 of the Federal Rules of Civil Procedure presently does not require sanctions against parties who bring frivolous lawsuits. Without certain punishment for those who bring these suits and the threat of serious monetary penalties to compensate the victims of frivolous lawsuits, there is little incentive for lawsuit victims to spend time and money seeking sanctions for lawsuit abuse. In fact, as currently written, Rule 11 allows lawyers to entirely avoid sanctions for filing frivolous claims by withdrawing them within 3 weeks. Such a rule actually encourages frivolous claims because personal injury attorneys can file harassing pleadings secure in the knowledge that they have nothing to lose. If someone objects, they can always retreat without penalty.

H.R. 420 would restore mandatory sanctions and monetary penalties under Federal Rule 11 for filing frivolous lawsuits and abusing the litigation process. It would also extend these same protections to cover State cases that a State judge determines have interstate implications and close the loopholes of a tort system that often resembles a tort lottery.

The legislation applies to frivolous lawsuits brought by businesses as well as individuals, and it expressly precludes application of the bill to civil rights cases if applying the bill to such cases would bar or impede the assertion or development of new claims or remedies under Federal, State, or local civil rights law. The Class Action Fairness Act, which was recently signed into law after receiving broad support in both Houses, prohibits the unfair practice of forum shopping for favorable courts when the case is styled as a class action. The same policy should apply to individual lawsuits as well.

One of the Nation's wealthiest personal injury attorneys, Richard ''Dickie'' Scruggs, and I quoted him at length a while ago, but I will quote him a little bit shorter right now, described what he calls ''magic jurisdictions'' as ''What I call the 'magic jurisdictions' is where it is almost impossible to get

a fair trial if you are a defendant. Any lawyer fresh out of law school can walk in there and win the case, so it does not matter what the evidence or the law is.''

America's system of justice deserves better, much better. H.R. 420 prevents the unfair practice of forum shopping by requiring that personal injury cases be brought only where there is some reasonable connection to the case; namely, where the plaintiff lives or was allegedly injured, where the defendant's principal place of business is located, or where the defendant resides.

The time for congressional action to close the loopholes that create incentives for frivolous lawsuits is now. Too many jobs have been lost and more will not be created if this legislation is not enacted into law.

I urge my colleagues to return a measure of fairness to America's legal system by passing the Lawsuit Abuse Reduction Act.

Mr. TERRY. Mr. Chairman, I rise in opposition of H.R. 420, the Lawsuit Abuse Reduction Act of 2005. This legislation runs roughshod over States' rights, forcing State courts to enact onerous procedures and stripping States' jurisdiction in certain cases. This bill would also force restrictive venue provisions on all State courts, which essentially tells State courts they do not have jurisdiction over certain claims brought by its own citizens. Let State legislatures and State judiciaries set their own Rules. And, by the way, a frivolous, meritless lawsuit is damaging to the system and the offending parties should be punished.

This bill also protects foreign corporations at the expense of consumers in that it unfairly dictates to States where their citizens can enforce legal right against a corporation based outside of the United States. While H.R. 420 allows a victim to file a claim in a court in his or her home State, because of existing jurisdictional rules that State may be unable to exercise power over the foreign corporation.

For example, a corporation in Mexico sells cribs in the United States and those cribs are shipped to Kansas and sold in Nebraska. The cribs turn out to be defective and one collapses on a baby in Nebraska, killing it. It may be impossible, under this proposed bill, for that Nebraska family to file a lawsuit in Nebraska. The family may have to file the suit in Kansas but would have to take the case to Mexico under H.R. 420. I cannot in good conscience support a bill preventing a family in this situation from filing a lawsuit in its own State.

Mr. STARK. Mr. Chairman, I rise in opposition to the so-called Lawsuit Abuse Reduction Act because it would hurt all Americans by exposing them and their attorneys to motions intended to harass them and slow down the legal process, a tactic often used by wealthy defendants in civil rights trials.

Prior to 1993, defendants in civil rights cases would file a crushing number of motions alleging frivolous actions on the part of the plaintiff in a blatant attempt to delay the case. In 1993, the rules were changed and judges were empowered to determine sanctions for frivolous lawsuits on a case-by-case basis, removing this delay tactic from wealthy defendants. However, since the Republican Party doesn't think judges have any business deciding how to run their courts, they want to repeal this change and revert back to the days of delayed justice.

This is one of many reasons why the U.S. Judicial Conference, headed by Chief Justice John Roberts, opposes this bill. Further, H.R. 420 is unconstitutional because it forces every State court to implement new court rules and procedures, even though Congress has no jurisdiction over State courts.

Justice delayed is justice denied and I am proud to stand up for our Constitution, judicial system, and all Americans by voting no on this bill. If that makes me a friend of the trial lawyers, then I proudly stand with the brilliant litigators Thurgood Marshall and Abraham Lincoln in opposition to political hacks like Karl Rove and George W. Bush.

Mr. UDALL of Colorado. Mr. Chairman, I am not opposed to changing Federal court rules to try to make it less likely that small business owners or other Americans will be forced to defend themselves against frivolous lawsuits. So, I could support many of the provisions of this bill. However, the bill has such serious flaws that I cannot support it in its current form.

Part of the bill would change Rule 11 of the Federal Rules of Civil Procedure in ways that would basically restore that rule as it was in 1992. As a result, lawyers filing frivolous lawsuits in Federal courts would face mandatory sanctions in the form of payments to those who were victimized by those lawsuits. I think that could be an effective deterrent, and can support it.

I also can support strong provisions to deter—and, if necessary punish—repeated violations of the rules against misuse of the courts through frivolous lawsuits. However, I am not enthusiastic about the idea of Congress's attempting to micro-manage the State courts or to take over the job of regulating the practice of law in State courts in the way that this bill would do.

And I am definitely opposed to changing the rules in ways that could make it impossible for people with valid claims to receive proper consideration of their cases.

For that reason, I must object to the provisions of the bill which, as the non-partisan Congressional Research Service explains, ''would preclude litigation in United States courts that would be authorized under current law. For instance, [under current law] . . . if a corporation has stores, factories, offices, or property anywhere in the United States . . . a Federal suit might be brought against it in one of the judicial districts where . . . [an objectionable] activity occurs or property [is located. But] . . . enactment of H.R. 420 apparently could result in a plaintiffs being left without a judicial forum in the United States for his or her tort claim.''

Leaving some Americans with no recourse to the courts even for valid claims would be bad enough. But I find it even more unacceptable that prime beneficiaries of these provisions could be American companies who have chosen to fly a foreign flag in order to escape paying their Federal taxes.

I voted for the Schiff-Kind amendment because I favor strong measures against frivolous lawsuits but oppose giving those fugitive corporations such an unfair advantage over truly American companies. Unfortunately, however, that amendment was not adopted—and as a result I must vote against this bill as it stands.

Mr. HONDA. Mr. Chairman, I rise in opposition to H.R. 420, a measure that purports to reduce frivolous lawsuits. While no one likes to see unnecessary, merit-less lawsuits clogging our court system, this bill only serves as an unneeded intrusion of Federal authority into State matters.

H.R. 420 substantially changes State court procedure by forcing State judges, within 30 days of a case being filed, to conduct an extensive and lengthy pre-trial hearing to determine whether Federal sanctions must be imposed in a State proceeding. This would require a judge to examine evidence in detail and even to make a pre-trial judgment as to what the outcome of a case might be. These requirements will only serve to add time and expense to the proceedings. Federal judges overwhelmingly agree that the Federal court rules operate more efficiently and fairly when they are discretionary rather than mandatory.

Mr. Chairman, States already have some version of the rule that is exactly or substantially similar to the federally available sanction. State courts should not be forced to spend scarce taxpayer money to conduct an expensive hearing in order to apply a Federal rule that mirrors a mechanism they already have in place.

Mr. MORAN of Virginia. Mr. Chairman, I rise in reluctant opposition to the Lawsuit Abuse Reduction Act. As an advocate for reasoned and balanced reform to our American judicial system, I am afraid that today's bill overreaches and sets a dangerous precedent for future legislation. H.R. 420 treads unnecessarily on judicial independence and makes litigation overly burdensome for legitimate cases to have their fair day in court.

Primarily, this legislation encroaches on the judicial rulemaking process by changing the Federal Rules of Civil Procedure, over which Congress has no rightful jurisdiction. This rulemaking process is the responsibility of the Judicial Conference and the Supreme Court. Furthermore, the requirement that State courts apply these new Federal rules is an intrusion on State judicial authority.

I strongly believe that the integrity of the judiciary is in question if we impose our own set of rules on this independent body, particularly as Congress continues to limit judicial discretion. This action is wrong, and one of the reason that judges from across the Nation overwhelmingly oppose this legislation.

Furthermore, I believe this bill inhibits legitimate cases from having their day in court. Plaintiffs that have just cause for action, particularly in cases dealing with civil rights, may reconsider because of the threat of mandated sanctions and the elimination of the 21-day ''safe harbor'' rule. This chilling effect on meritorious legal claims does not offer honest Americans justice.

I also have concern that this bill will not deter frivolous lawsuits. Despite the anecdotes my colleagues have offered, there is no empirical evidence that Rule 11, which this bill seeks to change, is not working. In fact, recent studies indicate that frivolous litigation is declining.

Mr. Chairman, I will continue to approach tort reform with the objective of ensuring that any legitimate cases have their day in court. I don't believe the bill before us today meets this standard.

Mr. SHAYS. Mr. Chairman, I rise in support of H.R. 420, the Lawsuit Abuse Reduction Act.

The simple fact is, we have too many junk lawsuits being filed. It is imperative we reform our tort system, and it seems to me this legislation is an important step in this direction.

The House has passed several common sense bills that will help make our court system less prone to abuse and more fair for victims, such as medical malpractice reform and class action reform.

Today's legislation would restore mandatory sanctions on lawyers and law firms filing frivolous lawsuits and eliminate the current safe harbor provision that allows lawyers to avoid sanctions by quickly withdrawing meritless claims. The legislation also prevents forum shopping by requiring suits to be filed where a plaintiff resides, where an injury occurred, or where the defendant's principal place of business is located.

Tort reform will make American businesses more competitive and lower costs to consumers while ensuring true victims' rights to sue for damages. Frivolous lawsuits have discouraged product development, stifled innovative research and cost millions in insurance and legal fees—costs that often get passed on to consumers. Making the system less costly will increase job creation, benefiting businesses and consumers alike.

I support this legislation and encourage my colleagues to do so as well.

Mr. SMITH of Texas. Mr. Chairman, I yield back the balance of my time.

□ 1430

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the amendment in the nature of a substitute printed in the bill shall be considered as an original bill for the purpose of amendment under the 5-minute rule and shall be considered read.

The text of the amendment in the nature of a substitute is as follows:

H.R. 420

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Lawsuit Abuse Reduction Act of 2005''.

SEC. 2. ATTORNEY ACCOUNTABILITY.

Rule 11(c) of the Federal Rules of Civil Procedure is amended—

(1) by amending the first sentence to read as follows: ''If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the attorney, law firm, or parties that have violated this subdivision or are responsible for the violation, an appropriate sanction, which may include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper, that is the subject of the violation, including a reasonable attorney's fee.'';

(2) in paragraph (1)(A)—

(A) by striking ''Rule 5'' and all that follows through ''corrected.'' and inserting ''Rule 5.''; and

(B) by striking ''the court may award'' and inserting ''the court shall award''; and

(3) in paragraph (2), by striking ''shall be limited to what is sufficient'' and all that follows through the end of the paragraph (including subparagraphs (A) and (B)) and inserting ''shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the parties that were injured by such conduct. The sanction may consist of an order to pay to the party or parties the amount of the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorney's fee.''.

SEC. 3. APPLICABILITY OF RULE 11 TO STATE CASES AFFECTING INTERSTATE COMMERCE.

In any civil action in State court, the court, upon motion, shall determine within 30 days after the filing of such motion whether the action substantially affects interstate commerce. Such court shall make such determination based on an assessment of the costs to the interstate economy, including the loss of jobs, were the relief requested granted. If the court determines such action substantially affects interstate commerce, the provisions of Rule 11 of the Federal Rules of Civil Procedure shall apply to such action.

SEC. 4. PREVENTION OF FORUM-SHOPPING.

(a) IN GENERAL.—Subject to subsection (b), a personal injury claim filed in State or Federal court may be filed only in the State and, within that State, in the county (or Federal district) in which—

(1) the person bringing the claim, including an estate in the case of a decedent and a parent or guardian in the case of a minor or incompetent—

(A) resides at the time of filing; or

(B) resided at the time of the alleged injury;

(2) the alleged injury or circumstances giving rise to the personal injury claim allegedly occurred;

(3) the defendant's principal place of business is located, if the defendant is a corporation; or

(4) the defendant resides, if the defendant is an individual.

(b) DETERMINATION OF MOST APPROPRIATE FORUM.—If a person alleges that the injury or circumstances giving rise to the personal injury claim occurred in more than one county (or Federal district), the trial court shall determine which State and county (or Federal district) is the most appropriate forum for the claim. If the court determines that another forum would be the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subsection.

(c) DEFINITIONS.—In this section:

(1) The term ''personal injury claim''—

(A) means a civil action brought under State law by any person to recover for a person's personal injury, illness, disease, death, mental or emotional injury, risk of disease, or other injury, or the costs of medical monitoring or surveillance (to the extent such claims are recognized under State law), including any derivative action brought on behalf of any person on whose injury or risk of injury the action is based by any representative party, including a spouse, parent, child, or other relative of such person, a guardian, or an estate; and

(B) does not include a claim brought as a class action.

(2) The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, but not any governmental entity.

(3) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and any other territory or possession of the United States.

(d) APPLICABILITY.—This section applies to any personal injury claim filed in Federal or State court on or after the date of the enactment of this Act.

SEC. 5. RULE OF CONSTRUCTION.

Nothing in section 3 or in the amendments made by section 2 shall be construed to bar or impede the assertion or development of new claims or remedies under Federal, State, or local civil rights law.

SEC. 6. THREE-STRIKES RULE FOR SUSPENDING ATTORNEYS WHO COMMIT MULTIPLE RULE 11 VIOLATIONS.

(a) MANDATORY SUSPENSION.—Whenever a Federal district court determines that an attorney has violated Rule 11 of the Federal Rules of Civil Procedure, the court shall determine the number of times that the attorney has violated that rule in that Federal district court during that attorney's career. If the court determines that the number is 3 or more, the Federal district court—

(1) shall suspend that attorney from the practice of law in that Federal district court for 1 year; and

(2) may suspend that attorney from the practice of law in that Federal district court for any additional period that the court considers appropriate.

(b) APPEAL; STAY.—An attorney has the right to appeal a suspension under subsection (a). While such an appeal is pending, the suspension shall be stayed.

(c) REINSTATEMENT.—To be reinstated to the practice of law in a Federal district court after completion of a suspension under subsection (a), the attorney must first petition the court for reinstatement under such procedures and conditions as the court may prescribe.

SEC. 7. PRESUMPTION OF RULE 11 VIOLATION FOR REPEATEDLY RELITIGATING SAME ISSUE.

Whenever a party attempts to litigate, in any forum, an issue that the party has already litigated and lost on the merits on 3 consecutive prior occasions, there shall be a rebuttable presumption that the attempt is in violation of Rule 11 of the Federal Rules of Civil Procedure.

SEC. 8. ENHANCED SANCTIONS FOR DOCUMENT DESTRUCTION.

(a) IN GENERAL.—Whoever influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, a pending court proceeding through the intentional destruction of documents sought in, and highly relevant to, that proceeding—

(1) shall be punished with mandatory civil sanctions of a degree commensurate with the civil sanctions available under Rule 11 of the Federal Rules of Civil Procedure, in addition to any other civil sanctions that otherwise apply; and

(2) shall be held in contempt of court and, if an attorney, referred to one or more appropriate State bar associations for disciplinary proceedings.

(b) APPLICABILITY.—This section applies to any court proceeding in any Federal or State court that substantially affects interstate commerce.

The CHAIRMAN. No amendment to the committee amendment is in order except those printed in House Report 109–253. Each amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

AMENDMENT NO. 1 OFFERED BY MR. SMITH OF TEXAS

Mr. SMITH of Texas. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 printed in House Report 109–253 offered by Mr. SMITH of Texas:

Page 4, strike lines 8 through 11 and insert the following:

(a) IN GENERAL.—Subject to subsection (b), a personal injury claim filed in State or Federal court may be filed only in the State and, within that State, in the county (or if there is no State court in the county, the nearest county where a court of general jurisdiction is located) or Federal district in which—

Page 5, line 23, strike ''and''.

Page 5, line 25, strike the period at the end and insert ''; and''.

Page 5, after line 25, insert the following:

(C) does not include a claim against a debtor in a case pending under title 11 of the United States Code that is a personal injury tort or wrongful death claim within the meaning of section 157(b)(5) of title 28, United States Code.

Page, 7, strike line 16 and all that follows through the end of the bill and insert the following new sections:

SEC. 7. PRESUMPTION OF RULE 11 VIOLATION FOR REPEATEDLY RELITIGATING SAME ISSUE.

Whenever a party presents to a Federal court a pleading, written motion, or other paper, that includes a claim or defense that the party has already litigated and lost on the merits in any forum in final decisions not subject to appeal on 3 consecutive occasions, and the claim or defense involves the same plaintiff and the same defendant, there shall be a rebuttable presumption that the presentation of such paper is in violation of Rule 11 of the Federal Rules of Civil Procedure.

SEC. 8. ENHANCED SANCTIONS FOR DOCUMENT DESTRUCTION IN PENDING FEDERAL COURT PROCEEDINGS.

Whoever willfully and intentionally influences, obstructs, or impedes, or attempts to influence, or obstruct, or impede, a pending Federal court proceeding through the willful and intentional destruction of documents sought pursuant to the rules of such Federal court proceeding and highly relevant to that proceeding—

(1) shall be punished with mandatory civil sanctions of a degree commensurate with the civil sanctions available under Rule 11 of the Federal Rules of Civil Procedure, in addition to any other civil sanctions that otherwise apply; and

(2) shall be held in contempt of court and, if an attorney, referred to one or more appropriate State bar associations for disciplinary proceedings.

SEC. 9. BAN ON CONCEALMENT OF UNLAWFUL CONDUCT.

(a) IN GENERAL.—In any Rule 11 of the Federal Rules of Civil Procedure proceeding, a court may not order that a court record not be disclosed unless the court makes a finding of fact that identifies the interest that justifies the order and determines that that interest outweighs any interest in the public health and safety that the court determines would be served by disclosing the court record.

(b) APPLICABILITY.—This section applies to any record formally filed with the court, but shall not include any records subject to—

(1) the attorney-client privilege or any other privilege recognized under Federal or State law that grants the right to prevent disclosure of certain information unless the privilege has been waived; or

(2) applicable State or Federal laws that protect the confidentiality of crime victims, including victims of sexual abuse.

The CHAIRMAN. Pursuant to House Resolution 508, the gentleman from Texas (Mr. SMITH) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the bipartisan manager's amendment I am offering today reflects the important contributions of the gentleman from New York (Mr. NADLER) and the gentleman from Virginia (Mr. SCOTT). It incorporates into the base bill provisions imposing sanctions for the destruction of relevant documents in a pending Federal court proceeding, an amendment setting standards for a court's determination that certain court records should be sealed, and an amendment providing for a presumption on a Rule 11 violation when the same issue is repeatedly relitigated.

This manager's amendment also makes clear that in the antiforum-shopping provisions, if there is no State court in the county in which the injury occurred, the case can be brought in the nearest adjacent county where a court of general jurisdiction is located.

Finally, the manager's amendment makes clear that the legislation does not affect personal injury claims that Federal bankruptcy law requires to be heard in a Federal bankruptcy court. This reasonable request was made by the National Bankruptcy Conference Committee on Legislation.

I urge my colleagues to join me in supporting this bipartisan manager's amendment.

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

The CHAIRMAN. Does any Member seek recognition in opposition?

Mr. NADLER. Mr. Chairman, I do not seek recognition in opposition to the amendment.

The CHAIRMAN. Without objection, the gentleman from New York is recognized for 5 minutes.

There was no objection.

Mr. NADLER. Mr. Chairman, I am pleased that Chairman SENSENBRENNER has included in the manager's amendment two provisions that I offered in the Judiciary Committee markup of the bill, and I thank the chairman for his support.

The first amendment included in the manager's amendment provides for mandatory sanctions for destroying documents relating to a court proceeding. Delays during litigation provide ample opportunities for wrongdoers to destroy incriminating documents. Because this can result in the complete inability to hold these defendants accountable for their wrongful acts, parties who knowingly destroy relevant and incriminating documents should be severely sanctioned.

Secondly, the second amendment bans the concealment of unlawful conduct when the interests of public health and safety outweigh the interest of litigating parties in concealment. Very often in civil litigation, a company producing an unsafe product or an unsafe procedure will settle with the plaintiff.

The settlement will include a payment of a sum to the defendant, but will also often include an agreement that the records will be sealed and no one will ever talk about it. That is the condition that the defendant company puts on it.

So the defendant pays the money, the plaintiff gets the settlement, everybody keeps quiet. But meanwhile, hundreds of thousands of people may continue to be injured by that product in the future.

The defendant company forces the plaintiffs never to discuss the problems with anyone else, no one knows about it, and more people keep getting hurt because the product remains on the market.

When it comes to public health and safety, people must have access to information about an unsafe product, not only to protect themselves but also to serve as a deterrent against companies that may continue to place the public in harm's way.

Secrecy agreements should not be enforced unless they meet stringent standards to protect the public interest and the public health. This amendment prevents this harmful practice. The amendment says that an agreement to keep a settlement secret, the terms and conditions of settlement secret, cannot be approved by the court unless the court determines that the interests of the parties in secrecy, perhaps legitimate interests outweigh the interests of the public in knowledge of whatever it is.

If the court so determines, the court can order the secrecy upheld. But if the court determines that the interest and the public knowledge outweigh the secrecy, then the court must say that and disapprove the concealment agreement.

I support the manager's amendment because it includes these two amendments and other good ideas. But these changes are not enough for me to support final passage of what is still an egregious bill.

Again, I would like to thank Chairman SENSENBRENNER for working together in addressing these issues. I believe the manager's amendment provides some positive changes in what is otherwise an egregious bill.

I urge my colleagues to vote for the manager's amendment, but against the final bill.

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

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. SMITH).

The amendment was agreed to.

AMENDMENT IN THE NATURE OF A SUBSTITUTE NO. 2 OFFERED BY MR. SCHIFF

Mr. SCHIFF. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute No. 2 printed in House Report 109–253 offered by Mr. SCHIFF:

Strike all after the enacting clause and insert the following:

SECTION 1. "THREE STRIKES AND YOU'RE OUT" FOR ATTORNEYS WHO FILE FRIVOLOUS LAWSUITS.

(a) SIGNATURE REQUIRED.—Every pleading, written motion, and other paper in any action shall be signed by at least 1 attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) CERTIFICATE OF MERIT.—By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are reasonable based on a lack of information or belief.

(c) MANDATORY SANCTIONS.—

(1) FIRST VIOLATION.—If, after notice and a reasonable opportunity to respond, a court, upon motion or upon its own initiative, determines that subsection (b) has been violated, the court shall find each attorney or party in violation in contempt of court and shall require the payment of costs and attorneys fees. The court may also impose additional appropriate sanctions, such as striking the pleadings, dismissing the suit, and sanctions plus interest, upon the person in violation, or upon both such person and such person's attorney or client (as the case may be).

(2) SECOND VIOLATION.—If, after notice and a reasonable opportunity to respond, a court, upon motion or upon its own initiative, determines that subsection (b) has been violated and that the attorney or party with respect to which the determination was made has committed one previous violation of subsection (b) before this or any other court, the court shall find each such attorney or party in contempt of court and shall require the payment of costs and attorneys fees, and require such person in violation (or both such person and such person's attorney or client (as the case may be)) to pay a monetary fine. The court may also impose additional appropriate sanctions, such as striking the pleadings, dismissing the suit and sanctions plus interest, upon such person in violation, or upon both such person and such person's attorney or client (as the case may be).

(3) THIRD AND SUBSEQUENT VIOLATIONS.—If, after notice and a reasonable opportunity to respond, a court, upon motion or upon its own initiative, determines that subsection (b) has been violated and that the attorney or party with respect to which the determination was made has committed more than one previous violation of subsection (b) before this or any other court, the court shall find each such attorney or party in contempt of court, refer each such attorney to one or more appropriate State bar associations for disciplinary proceedings (including suspension of that attorney from the practice of law for one year or disbarment), require the payment of costs and attorneys fees, and require such person in violation (or both such person and such person's attorney, or client (as the case may be)) to pay a monetary fine. The court may also impose additional appropriate sanctions, such as striking the pleadings, dismissing the suit, and sanctions plus interest, upon such person in violation, or upon both such person and such person's attorney or client (as the case may be).

(4) APPEAL; STAY.—An attorney has the right to appeal a sanction under this subsection. While such an appeal is pending, the sanction shall be stayed.

(5) NOT APPLICABLE TO CIVIL RIGHTS CLAIMS.—Notwithstanding subsection (d), this subsection does not apply to an action or claim arising out of Federal, State, or local civil rights law or any other Federal, State, or local law providing protection from discrimination.

(d) APPLICABILITY.—Except as provided in subsection (c)(5), this section applies to any paper filed on or after the date of the enactment of this Act in—

(1) any action in Federal court; and

(2) any action in State court, if the court, upon motion or upon its own initiative, determines that the action affects interstate commerce.

SEC. 2. "THREE STRIKES AND YOU'RE OUT" FOR ATTORNEYS WHO ENGAGE IN FRIVOLOUS CONDUCT DURING DISCOVERY.

(a) SIGNATURES REQUIRED ON DISCLOSURES.—Every disclosure made pursuant to subdivision (a)(1) or subdivision (a)(3) of Rule 26 of the Federal Rules of Civil Procedure or any comparable State rule shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

(b) SIGNATURES REQUIRED ON DISCOVERY.—

(1) IN GENERAL.—Every discovery request, response, or objection made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection is:

(A) consistent with the applicable rules of civil procedure and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

(2) STRICKEN.—If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(c) MANDATORY SANCTIONS.—

(1) FIRST VIOLATION.—If without substantial justification a certification is made in violation of this section, the court, upon motion or upon its own initiative, shall find each attorney or party in contempt of court and shall require the payment of costs and attorneys fees. The court may also impose additional sanctions, such as imposing sanctions plus interest or imposing a fine upon the person in violation, or upon such person and such person's attorney or client (as the case may be).

(2) SECOND VIOLATION.—If without substantial justification a certification is made in violation of this section and that the attorney or party with respect to which the determination is made has committed one previous violation of this section before this or any other court, the court, upon motion or upon its own initiative, shall find each attorney or party in contempt of court and shall require the payment of costs and attorneys fees, and require such person in violation (or both such person and such person's attorney or client (as the case may be)) to pay a monetary fine. The court may also impose additional sanctions upon such person in violation, or upon both such person and such person's attorney or client (as the case may be).

(3) THIRD AND SUBSEQUENT VIOLATIONS.—If without substantial justification a certification is made in violation of this section and that the attorney or party with respect to which the determination is made has committed more than one previous violation of this section before this or any other court, the court, upon motion or upon its own initiative, shall find each attorney or party in contempt of court, shall require the payment of costs and attorneys fees, require such person in violation (or both such person and such person's attorney or client (as the case may be)) to pay a monetary fine, and refer such attorney to one or more appropriate State bar associations for disciplinary proceedings (including the suspension of that attorney from the practice of law for one year or disbarment). The court may also impose additional sanctions upon such person in violation, or upon both such person and such person's attorney or client (as the case may be).

(4) APPEAL; STAY.—An attorney has the right to appeal a sanction under this subsection. While such an appeal is pending, the sanction shall be stayed.

(d) APPLICABILITY.—This section applies to any paper filed on or after the date of the enactment of this Act in—

(1) any action in Federal court; and

(2) any action in State court, if the court, upon motion or upon its own initiative, determines that the action affects interstate commerce.

SEC. 3. BAN ON CONCEALMENT OF UNLAWFUL CONDUCT.

(a) IN GENERAL.—In any Rule 11 of the Federal Rules of Civil Procedure proceeding, a court may not order that a court record not be disclosed unless the court makes a finding of fact that identifies the interest that justifies the order and determines that the interest outweighs any interest in the public health and safety that the court determines would be served by disclosing the court record.

(b) APPLICABILITY.—This section applies to any record formally filed with the court, but shall not include any records subject to—

(1) the attorney-client privilege or any other privilege recognized under Federal or State law that grants the right to prevent disclosure of certain information unless the privilege has been waived; or

(2) applicable State or Federal laws that protect the confidentiality of crime victims, including victims of sexual abuse.

SEC. 4. ENHANCED SANCTIONS FOR DOCUMENT DESTRUCTION.

Whoever willfully and intentionally influences, obstructs, or impedes, or attempts to influence, or obstruct, or impede, a pending Federal court proceeding through the willful and intentional destruction of documents sought pursuant to the rules of such Federal court proceeding and highly relevant to that proceeding—

(1) shall be punished with mandatory civil sanctions of a degree commensurate with the civil sanctions available under Rule 11 of the Federal Rules of Civil Procedure, in addition to any other civil sanctions that otherwise apply; and

(2) shall be held in contempt of court and, if an attorney, referred to one or more appropriate State bar associations for disciplinary proceedings.

SEC. 5. ABILITY TO SUE CORPORATE FINANCIAL TRAITORS AND FOREIGN CORPORATIONS.

(a) GENERAL RULE.—In any civil action for injury that was sustained in the United States and that relates to the acts of a foreign business, the Federal court or State court in which such action is brought shall have jurisdiction over the foreign business if—

(1) the business purposefully availed itself of the privilege of doing business in the United States or that State;

(2) the cause of action arises from the business's activities in the United States or that State; and

(3) the exercise of jurisdiction would be fair and reasonable.

(b) ADMISSION.—If in any civil action a foreign business involved in such action fails to furnish any testimony, document, or other thing upon a duly issued discovery order by the court in such action, such failure shall be deemed an admission of any fact with respect to which the discovery order relates.

(c) PROCESS.—Process in an action described in subsection (a) may be served wherever the foreign business is located, has an agent, or transacts business.

(d) DEFINITION.—In this section, the term ''foreign business'' means a business that has its principal place of business, and substantial business operations, outside the United States and its Territories.

SEC. 6. PRESUMPTION OF RULE 11 VIOLATION FOR REPEATEDLY RELITIGATING SAME ISSUE.

(a) IN GENERAL.—Whenever a party presents to a Federal court a pleading, written motion, or other paper, that includes a claim or defense that the party has already litigated and lost on the merits in any forum in final decisions not subject to appeal on 3 consecutive occasions, and the claim or defense involves the same plaintiff and the same defendant, there shall be a rebuttable presumption that the presentation of such paper is in violation of Rule 11 of the Federal Rules of Civil Procedure.

(b) EXCEPTION.—Subsection (a) does not apply to a claim arising under the Constitution of the United States.

The CHAIRMAN. Pursuant to House Resolution 508, the gentleman from California (Mr. SCHIFF) and the gentleman from Texas (Mr. SMITH) each will control 20 minutes.

The Chair recognizes the gentleman from California (Mr. SCHIFF).

Mr. SCHIFF. Mr. Chairman, I yield myself such time as I may consume.

I rise today to offer an amendment in the nature of a substitute to H.R. 420, the Lawsuit Abuse Reduction Act of 2005, with the gentleman from Wisconsin (Mr. KIND).

I thank the Rules Committee for affording us this opportunity to offer and debate our substitute amendment on the floor today.

Mr. Chairman, the base bill certainly has an important and worthy stated goal of cracking down on the filing of frivolous lawsuits. As a former Federal prosecutor and a member of the bar, I strongly support this meritorious goal, as any responsible attorney should.

However, I am forced to oppose the legislation in its current form as it contains a number of serious deficiencies which I believe the substitute amendment will remedy. First, the legislation would revert to a failed regime that has been soundly criticized by those best equipped to comment on the proposed changes, the Federal judiciary.

Second, the legislation would inappropriately involve the States in the application of the Federal Rules of Civil Procedure. And, third, the legislation's forum-shopping provisions drastically change State venue laws to benefit foreign corporations over domestic corporations and victims, to say nothing of doing a great deal to damage States' rights.

Finally, the legislation would harm those seeking relief from civil rights violations. Instead, I ask my colleagues to support the Schiff-Kind substitute amendment, a proposal that would crack down vigorously on frivolous lawsuits. Members on both sides of the aisle agree that our laws and rules of procedure must prohibit frivolous litigation.

Our substitute amendment has a strong three-strikes-and-you-are-out provision for attorneys who file frivolous lawsuits. Unlike the base bill, these frivolous proceedings and pleadings could have been filed in any court. The mandatory sanctions begin after the very first violation; but after the third, the attorney shall be found in contempt of court and referred to the appropriate State bar associations for disciplinary proceedings, including suspension.

Unlike the base bill, the third sanction can also include disbarment.

Our substitute amendment also has strong three-strikes-and-you-are-out provisions for attorneys who engage in frivolous conduct during discovery, including causing unnecessary delay or needless increases in the costs of litigation. Again, mandatory sanctions begin after the first violation, and a third violation in any Federal court can include suspension and even disbarment.

Our substitute also limits the ability of wrongdoers to conceal any conduct harmful to the public welfare by requiring that such court records not be sealed unless the court finds that a sealing is justified. This important provision will help ensure that information on dangerous products and actions is made available to the public.

The Schiff-Kind substitute also includes tough enhanced sanctions for document destruction by parties punishable by mandatory sanctions under Rule 11 and referral to the appropriate State bars for disciplinary proceedings, including disbarment. We also include strong language to provide a presumption of a Rule 11 violation for repeatedly relitigating the same issue.

I am pleased that some of these important provisions have recently been added to the base bill. The venue provisions, however, in section 4 of the base bill would recast State and Federal court jurisdiction and venue in personal injury cases.

This section would actually operate to provide a litigation and financial windfall to foreign corporations at the expense of their domestic competitors. Instead of permitting claims to be filed wherever a corporation does business or has minimum contacts, as most State long-arm jurisdiction statutes provide, section 4 only permits the suit to be brought where the defendant's principal place of business is located.

This means that it would be far more difficult to pursue a personal injury or product liability action against a foreign corporation in the United States. In fact, this section could operate to make it impossible to sue a foreign corporation in this country, only further promoting the disturbing process of corporations in our country relocating their headquarters overseas to avoid U.S. taxes.

This is bad policy. And our substitute amendment includes language to ensure that jurisdiction for such legal actions is not limited in this manner.

Finally, by requiring a mandatory sanctions regime that would apply to civil rights cases, the base bill will chill many legitimate and important civil rights actions. This is due to the fact that much, if not most, of the impetus for the 1993 changes stemmed from abuses by defendants in civil rights cases, namely, the civil rights defendants were choosing to harass civil rights plaintiffs by filing a series of Rule 11 motions intended to slow down and impede meritorious civil rights cases.

A 1991 Federal judicial study found that the incidence of Rule 11 sanctions or sua sponte orders is higher in civil rights cases than in some other types of cases. Another study found that there is ample evidence to suggest that plaintiffs in civil rights cases, plaintiffs in particular, were far more likely than defendants to be the target of Rule 11 motions and the recipient of sanctions.

While the base bill purports to encourage that the provisions not be applied to civil rights cases, the fact of the matter is it does not explicitly exempt civil rights cases as our substitute does.

Mr. Chairman, this is a commonsense substitute. It cracks down on frivolous lawsuits in a tough fashion, but without jeopardizing civil rights claims or providing unnecessary shields to foreign corporations. It is a better bill,

and I urge the House to adopt the substitute rather than the base proposal.

Mr. Chairman, I reserve the balance of my time.

Mr. SMITH of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in opposition to this substitute amendment. And I have to point out that this same substitute amendment was defeated in the last Congress. Mr. Chairman, where to begin. I will begin with the title of the first section of the substitute. It is entitled, ''Three Strikes and You're Out.'' But the title of section 1 does not reflect the text it contains.

In fact, the substitute provides that following three violations of its provisions: ''The court shall refer each such attorney to one or more appropriate State bar associations for disciplinary proceedings.''

The substitute does not say the attorney shall be suspended from the practice of law. However, the base bill explicitly provides for such a sanction. Specifically, the base bill states that after three strikes: ''The Federal district court shall suspend that attorney from the practice of law in that Federal district court.''

The base bill contains a substantive three-strikes-and-you-are-out provision that will prevent attorneys who file frivolous lawsuits from getting into the courtroom. The substitute merely requires that repeat offenders be reported to State bar associations.

But it gets worse. Not only are filers of frivolous lawsuits not out after three strikes under the substitute, but the substitute even changes what constitutes a strike under existing law. Currently, Rule 11 contains four criteria that can lead to a Rule 11 violation.

The substitute references only three. Currently, Rule 11 allows sanctions against frivolous filers whose denials of factual contentions are not warranted on the evidence or are not reasonably based on a lack of information or belief.

The substitute removes this protection for victims of frivolous pleadings under existing law. In addition, the substitute for the first time without penalty allows defendants to file papers with the court that include factual denials of the allegations against them that are not warranted by the evidence and not reasonably based.

Instead, the substitute provides additional protection for defendants filing frivolous defenses that are not warranted by the evidence and not reasonably based.

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This is a step backward for victims of frivolous lawsuits under both State and Federal law. So the substitute not only undermines the clarity of the three strikes and you're out rule, it purports to establish, it dramatically expands the potential for even more frivolous lawsuits.

Furthermore, the base bill provides that those who file frivolous lawsuits can be made to pay all costs and attorneys' fees that are ''incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation.'' The substitute does not include that critical language which is necessary to make clear that those filing frivolous lawsuits must be made to pay the full costs imposed on their victim by the frivolous lawsuit.

The proponent of this amendment claims that the anti-forum shopping standards in H.R. 420 regarding where a personal injury lawsuit can be brought are somehow unfair, even though they are the very same standards contained in the vast majority of State venue laws. In fact, the gentleman from California's own State venue law provides as follows: ''If the action is for injury to person or personal property or for death from wrongful act or negligence, the superior court in either the county where the injury occurs or the injury causing death occurs or the county where the defendants, or some of them reside at the commencement of the action, is the proper court for the trial of the action.''

Insofar as foreign corporations cannot be sued in some limited circumstances in this country, that is not the fault of H.R. 420, nor is it the fault of California's venue law. It is a result of the Supreme Court's interpretation of the Due Process Clause.

Mr. Chairman, the substitute does not provide for three strikes and you're out. It provides for three strikes and you get referred to a State bar association that can continue to let the offending attorney practice law.

The Democratic substitute weakens existing law that protects plaintiffs from defendants that file frivolous denials that are not warranted by the evidence and not reasonably based. This substitute amendment includes provisions that are unconstitutional and penalizes those who would challenge those unconstitutional rules. That is more than three strikes against the substitute, Mr. Chairman, and I urge my colleagues to return it to the bench and vote yes for the job-protecting and job-creating Lawsuit Abuse Reduction Act when it gets to final passage.

Mr. Chairman, I reserve the balance of my time.

Mr. SCHIFF. Mr. Chairman, I yield 4 minutes to the gentleman from Wisconsin (Mr. KIND).

Mr. KIND. Mr. Chairman, I thank the gentleman from California for yielding me this time and for the leadership that he has shown on the issue. I also commend the gentleman from New York (Mr. NADLER) for the important issues that he has raised in regards to this important legislation.

Mr. Chairman, I think we can all concede or stipulate that no one is in favor of frivolous lawsuits in this country. As a former special prosecutor, State prosecutor in Wisconsin, and as a young lawyer who used to handle corporate litigation in a large law firm, I saw firsthand some of the abuses that take place in the judicial process. But I believe that there is a right and a wrong way of moving forward in dealing with the frivolous lawsuit situation in the country.

Unfortunately, the majority base bill today, I think, is the wrong approach, whereas the substitute that we are offering here cures a lot of defects that the majority is offering and would put some substance behind cracking down on the filing of frivolous lawsuits. But first let us correct some of the facts.

There has been a lot of rhetoric from some of our colleagues here claiming that the real bane of the judicial system today are a bunch of trial attorneys running around chasing ambulances, filing needless personal injury cases, clogging the court system, driving up litigation costs, increasing the expenses of corporations, and that is what is to be blamed in regards to dealing with frivolous lawsuits, when, in fact, the facts indicate just the opposite.

A recent comprehensive study by Public Citizen has shown that the explosion in the filing of lawsuits has really rested with the corporations of this country, who have been filing four to five times more claims and lawsuits than individual plaintiffs in this country. Furthermore, when Rule 11 sanctions have been applied, they have been applied in 69 percent of the cases against corporations that are abusing the discovery process or filing needless lawsuits. So it is not these money-grubbing trial attorneys that so many want to believe that exist out there that are causing a lot of the problem in the judicial system; it is rather corporations that are increasing it. It is those who are most eager to support the majority base bill who are most likely to take advantages of the opportunities of filing lawsuits in our country. I find that a bit ironic.

But we are also today, and both of us, the majority and the substitute, is really usurping the Rules Enabling Act. When Congress passed that, it was a recognition that we here really do not have a lot of good expertise, and we are not in the trenches dealing with these rules every day. That is why the Judicial Conference looks at rules changes. They submit it to the Supreme Court for approval, who then finally submits it to Congress for our consideration to adopt or to revise at the end of the day. That whole process is being usurped.

Finally, and as the gentleman from California indicated, we have a short-term memory problem in this Congress. This has been tried between 1983 and 1993, and the rules were changed because it was not working, because we were taking away too much discretion from the judges in the application of Rule 11. It had a disproportionate impact on the filing of civil rights actions in this country. Our substitute bill

cures that by exempting the filing of civil rights under this legislation.

This is significant, because as the gentleman from California pointed out that when there were attempts to stifle meritorious claims from going forward or increasing the litigation costs in lawsuits, it was usually in the civil rights actions that were taken during this period which led to the change and the reform of mandatory sanctions back to a discretionary system, allowing the judges to decide the application of the appropriate penalties based on the facts and circumstances of the case.

What is this debate about today? I would commend a recently released movie called ''North Country'' to all of my colleagues before they consider the final passage of this legislation. It is about a young mother of two who took a job in the Taconite Mining Company in northern Minnesota and entered an atmosphere and environment of pervasive sexual harassment that not only applied to her, but all the women that were working in that company. She was the first to file a class action suit on behalf of herself and the other women in the country and the Nation. Because she was meritorious, she prevailed in that lawsuit that lead to incredible changes in regards to the treatment of women in the modern workplace.

That is what is at stake in allowing the civil rights actions to at least go through. We allow that in the substitute, and I ask adoption of the substitute.

Mr. SMITH of Texas. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, I want to point out to the gentleman from Wisconsin who just spoke that I could have saved him a lot of time. And I would like to remind him that he might want to take a look at the language of H.R. 420, that it applies just as much to businesses as it does individuals, despite statements to the contrary.

Mr. Chairman, I yield 3 minutes to the gentleman from Utah (Mr. CANNON), the chairman of the Administrative Law Subcommittee of the Judiciary Committee.

Mr. CANNON. Mr. Chairman, I rise in support of H.R. 420, the Lawsuit Abuse and Reduction Act, LARA, and I oppose the substitute amendment.

This bill, the underlying bill, continues the commitment of the House Republicans to grow our economy, help small businesses, and put a stop to abusive lawsuits. This bill does that and will help millions of small businesses combat some of the worst abuses by frivolous lawsuits.

In particular, LARA would make mandatory the sanctions and monetary penalties under Federal Rule 11 of the Federal Rules of Civil Procedure for filing frivolous lawsuits and abusing the litigation process. Or it would also abolish the free pass provisions that allow parties and their attorneys to avoid sanctions by withdrawing a suit within 21 days after a motion for sanctions has been filed.

It would also permit monetary sanctions including reimbursement of reasonable attorneys' fees and litigation costs in connection with frivolous lawsuits.

It would extends Rule 11's provisions to include State cases in which the State judge finds the case substantially affects interstate commerce.

Frivolous lawsuits have discouraged and stifled American businesses long enough. The more we control lawsuit abuse, the stronger our businesses will be, and the more jobs will be created.

This legislation protects the integrity of the judicial system by penalizing the bad actors in litigation, both plaintiffs and defendants, I might say.

Civil litigation was once a last-resort remedy to settle limited disputes and quarrels, but recent years have brought a litigation explosion. The number of civil lawsuits has tripled since the 1960s and has gripped the American citizens and small businesses with a fear of costly and unwarranted lawsuits.

The threat of abusive litigation forces businesses to settle frivolous claims, rather than to go through the expensive and time-consuming process of defending lawsuits from the discovery process all the way to trial. This is, in essence, legal blackmail and needs to be ended.

While it costs the plaintiff only a little more than a small filing fee to begin a lawsuit, it costs much more for a small business to defend against it, jeopardizing its ability to survive. LARA tells those attorneys who are intent on filing a lawsuit to take the responsibility to review the case and make sure it is legitimate before filing, or be ready for sanctions.

I would like to thank the gentleman from Texas, the chairman of the Subcommittee on Courts, the Internet, and Intellectual Property, for having prepared this legislation and moved it forward as he has. I urge my colleagues to support this legislation and oppose the substitute amendment.

Mr. SCHIFF. Mr. Chairman, before I recognize my colleague from Texas, I want to respond to a couple of points made by my other colleague from Texas; that is, comparing the strength of the three strikes and you're out provisions in the substitute and base bill. The three strikes language in the Democratic substitute would apply to frivolous proceedings that are filed in any court. The base bill, on the other hand, would apply the three strikes provision only to the specific court in which the violation occurred. That is a narrower provision of the base bill.

Similarly, my substitute provides for the referral to the appropriate State bars for disciplinary proceedings, including disbarment after the third strike. With the first violation there is the required payment of costs and attorneys' fees. With the second, the attorney is held in contempt with a monetary fine. And then the third provision of referral to the State bar for possible disbarment, compared to the base bill which calls for a 1-year suspension only in the specific court where the three violations occurred. The violations have to occur in the same court. If you move from one court where you are sanctioned to another to another, the base bill seems to have far less strength and applicability than the substitute.

Second, I wanted to rebut the claim that the substitute will somehow promote litigation more than the base bill. In fact, when you ask the judges who have operated under both systems, the one that is proposed by the base bill and the one that is proposed by the substitute, the courts were quite clear that the earlier form of Rule 11, which we would go back to in the base bill, spawned a cottage industry where someone would file a Rule 11 motion, the opposing counsel would file a Rule 11 motion on the Rule 11 motion, and then you would have litigation over whose Rule 11 motion should succeed.

In fact, in 1993, the Judicial Conference remarked that the experience with the amended rule since 1993, since we got away from what the base bill would take us back to, has demonstrated a marked decline to Rule 11 satellite litigation without any noticeable increase in the number of frivolous filings.

Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. GENE GREEN).

Mr. GENE GREEN of Texas. Mr. Chairman, I thank my colleague from California for yielding me time.

I rise in opposition of H.R. 420 and in support of the substitute.

This bill would not do anything to reduce frivolous lawsuits. In fact, my concern about it is it is unnecessary, and it will infringe on States being able to manage their own court systems.

Rule 11 of the Federal Rules of Civil Procedure was amended in 1993 to its current state because it was being abused by defendants in civil rights cases who filed a series of Rule 11 motions to harass the men and women who challenged discrimination.

Until now there has been no demonstrated problems with the current version of the rule. Usually this type of change in civil procedure goes through a process of the Rules Enabling Act. But in this instance we have decided to circumvent the United States Judicial Conference and the United States Supreme Court. We have taken it upon ourselves to decide what is best for the judicial system.

The Lawsuit Reduction Act would amend Rule 11 of the Federal Rules of Civil Procedure and revert back to that pre-1993 status. By doing this, again, we take away States' discretion to impose sanctions on improper and frivolous pleadings.

This would eliminate the current safe harbor provision, permitting the attorneys to withdraw improper frivolous

motions within 21 days after they have been challenged by an opposing counsel. Additionally, this bill dictates where plaintiffs can file a personal injury lawsuit against a corporation in a State court. Do we really want to get into the jurisdictional battles in our States?

Reverting back to the previous Rule 11 would make people less likely to challenge unjust laws because they are putting themselves at risk for being harassed. At the time some people thought Brown v. Board of Education was a frivolous lawsuit, but it did not look like it had a chance until the Supreme Court recognized that separate was not equal.

□ 1500

If we had this strict version of Rule 11 back then, maybe Brown v. Board of Education would have never made it to the Supreme Court.

This bill is another example of Congress intruding on States' rights. Our system of government is designed to keep our judicial system separate, particularly our State judicial system.

We simply do not have the right to tell State and county courthouses across the Nation how to enforce sanctions in their courtrooms or where the plaintiff may file a lawsuit in the State courts.

Mr. SCHIFF. Mr. Chairman, it gives me great pleasure to yield such time as she may consume to the gentlewoman from California (Ms. PELOSI), our minority leader.

Ms. PELOSI. Mr. Chairman, I thank the gentleman for yielding me time, and I congratulate him and the gentleman from Wisconsin (Mr. KIND) for their leadership in proposing this good Democratic substitute.

Mr. Chairman, here we go again. The madness continues. Once again, the Republicans must prove that they are the handmaidens of the special interests by putting this bill on the floor today. Just when we should be talking about creating good jobs for the American people, expanding access to quality health care, broadening opportunity in education, having a strong national defense and doing it all in a fiscally sound way, the Republicans are wasting the time of this Congress and testing the patience of the American people with legislation that is frivolous. It is something that is, again, another reflection of the culture of cronyism that exists under the Republican leadership in Washington, DC.

This legislation before us again seeks to protect their friends. The outrageous venue provisions in the Republican bill give defendant corporations special advantages by overriding State minimum-contact provisions and limiting the locations in which a suit can be brought and could render foreign corporations out of reach of the American justice system.

Today, we will take the opportunity to address the Republican culture of cronyism. The gentleman from Georgia (Mr. BARROW) will be offering a motion to recommit to make sure that politically connected cronies and no-bid contractors that defraud and cheat the government in providing goods and service after a natural disaster will never again be able to use these special bids. They should never be used by government contractors that specifically intend to profit excessively from the disaster.

Mr. Chairman, I really want to congratulate the gentleman from Wisconsin (Mr. KIND) and the gentleman from California (Mr. SCHIFF) for putting together a really excellent substitute to get rid of loopholes in the Republican bill that favors big corporate interests and foreign corporations and to protect civil rights claims.

We all agree that if there are frivolous lawsuits, those who bring them should pay a price. That we will have three-strikes-you-are-out for doing that is a very important provision in the substitute. The substitute seeks to stop the madness that exists on the floor of this House when it is used as a venue to promote the special interests in our country.

We must stand up for the American people, not for the politically connected cronies who are getting a no-bid contract. Let us take a stand to end this culture of cronyism and corruption. Let us get back to the real issues that are affecting the American people.

We must vote for this substitute and send this bill back to ensure that no one who defrauds the American people during natural disasters is ever permitted to take undue advantage of our legal system.

We must, again, stop the madness by voting for the substitute that the gentleman from Wisconsin (Mr. KIND) and the gentleman from California (Mr. SCHIFF) have proposed. It has very excellent provisions and is worthy of the support of our colleagues.

Mr. SCHIFF. Mr. Chairman, I have no further speakers, and I reserve the balance of my time.

Mr. SMITH of Texas. Mr. Chairman, I believe I have the right to close, and I am the remaining speaker on this side, so I will reserve the balance of my time.

Mr. SCHIFF. Mr. Chairman, I just have a parliamentary inquiry. Does my colleague have the opportunity to close or does the offerer of the amendment?

The CHAIRMAN. The gentleman from Texas (Mr. SMITH) has the right to close the debate.

Mr. SCHIFF. Mr. Chairman, I know my colleague will close very well. How much time do I have remaining?

The CHAIRMAN. The gentleman from California (Mr. SCHIFF) has 3 minutes remaining, and the gentleman from Texas (Mr. SMITH) has 12 minutes remaining.

Mr. SCHIFF. Mr. Chairman, I yield myself such time as I may consume.

In my concluding comments I want to reiterate some of the points that have been made with respect to the civil rights provisions and quote from the testimony of Professor Theodore Eisenberg, who testified before the House Committee on the Judiciary in the 108th Congress and said: ''A Congress considering reinstating the fee-shifting aspect of Rule 11 in the name of tort reform should understand what it will be doing. It will be discouraging the civil rights cases disproportionately affected by the old Rule 11 in the name of addressing purported abuse in an area of law, personal injury tort, found to have less abuse than other areas.''

I would also like to cite the testimony of the Honorable Robert L. Carter, U.S. District Judge for the Southern District of New York when he stated: ''I have no doubt that the Supreme Court's opportunity to pronounce separate schools inherently unequal in Brown v. Board of Education would have been delayed for a decade had my colleagues and I been required, upon pain of potential sanctions, to plead our legal theory explicitly from the start.''

We do not want to put off a Brown v. Board of Education civil rights case like that for a decade because of a Rule 11 that has been rejected by the Federal courts already.

The language in the substitute makes it clear that neither the sanctions approach we have taken in the substitute nor the sanctions approach taken in the base bill would apply in civil rights cases; and while there is some language of suggestion in the base bill, it is not definitive.

In fact, the NAACP wrote in respect to the language in the base bill: ''While language nominally intended to mitigate the damage that this bill will cause to civil rights cases has been added, it is vague and simply insufficient in addressing our concerns.''

So on the basis of a need not to chill civil rights legislation, which I think we have only seen the greater importance with, as Katrina ripped off the veneer of poverty and inequality in the country once again for all to see, as we consider that the base bill would implement a change that the courts themselves have rejected and found spawned a cottage industry in meritless Rule 11 litigation, and as the base bill has a stronger and I think more sensible three-strikes-and-you-are-out provision, I would urge my colleagues to support the Democratic substitute in preference to the flawed base bill.

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

Mr. SMITH of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the gentlewoman from California who spoke previously to the gentleman from California who just finished used a couple of words that I would like to return to and clarify. She used the word ''madness,'' but anyone listening to this debate or anyone having a firsthand knowledge of frivolous

lawsuits knows that the real madness is the filing of thousands of frivolous lawsuits across this country that unfairly tarnish the reputations of innocent citizens, that unfairly destroy the businesses of small business owners across the country. That is the type of madness that this bill addresses.

She also used the phrase ''special interests,'' but again, I think anyone listening to this debate today and anyone knowing firsthand the agony and the losses and the destruction caused by frivolous lawsuits realizes that the special interests that this bill hopes to protect are really the special interests of the American people who have stuttered and staggered and been burdened by frivolous lawsuits too many times and much too often in our history.

The special interests, if there are any, involved in this legislation again are obvious to those who listened to the debate, the trial lawyers of America; and, Mr. Chairman, let me take a minute here just to dwell on that subject because I happen to believe the vast majority of trial lawyers or personal injury lawyers are honorable people and they are members of an honorable profession.

I think one of the aspects of the debate that most troubles me is, in fact, the lack of sanctioning lawyers who engage in frivolous lawsuits by the Trial Lawyers of America. Their own code of conduct reads as follows: ''No ATLA member shall file or maintain a frivolous suit, issue or position.'' We checked and not a single member of the Trial Lawyers Association, not a single lawyer, had been sanctioned in the last 2 years; and, in fact, no one can even tell us when the last time any attorney was sanctioned for filing a frivolous lawsuit.

I think the trial lawyers would have a lot more credibility on this subject if, in fact, they had monitored their own ranks and, in fact, had sanctioned just a single trial lawyer for filing one of those tens of thousands of frivolous lawsuits that have been filed.

That, as I say, is discouraging; and I hope the Trial Lawyers of America will see fit in the future to sanction some attorney somewhere, somehow who has filed a frivolous lawsuit.

Mr. Chairman, anyone who is worried about what frivolous lawsuits will do to them, their family, their friends or their businesses ought to oppose this substitute amendment. It is an amendment that would do very little to prevent frivolous lawsuits. The underlying bill, however, will deter lawyers from filing those frivolous lawsuits.

Let me give some examples of actual suits that are frivolous, but that would be allowed under the Democratic substitute amendment.

A New Jersey man filed suit against Galloway Township School District claiming that assigned seating in a school lunchroom violated his 12-year-old daughter's right to free speech.

A Florida high school senior filed suit after her picture was left out of the school's yearbook.

An Arizona man filed suit against his hometown after he broke his leg sliding into third base during a softball tournament.

An Alabama person sued the school district after his daughter did not make the cheerleading squad, claiming that the rejection caused her humiliation and mental anguish.

The families of two North Haven, Connecticut, sophomores filed suit because of the school's decision to drop the students from the drum majorette squad.

A Pennsylvania teenager sued her former softball coach, claiming that the coach's incorrect teaching style ruined her chances for an athletic scholarship.

After a wreck in which an Indiana man collided with a woman who was talking on her cell phone, the man sued the cell phone manufacturer.

A Knoxville, Tennessee, woman sued McDonald's, alleging that a hot pickle dropped from a hamburger burned her chin and caused her mental injury.

A Michigan man filed suit claiming that television ads that showed Bud Light as the source of fantasies involving tropical settings and beautiful women misled him and caused him physical and mental injury, emotional distress, and financial loss.

A woman sued Universal Studios trying to get damages because the theme park's haunted house was too scary.

In every one of these instances and in thousands of others, the individuals sued were forced to spend considerable amounts of money, time and effort to defend themselves. This is a travesty of justice, and it is simply wrong.

H.R. 420 will end the filing of frivolous lawsuits. Unfortunately, the substitute amendment will still allow small businesses, churches, schools, hospitals, sports leagues, cities and others to be burdened with these meritless and frivolous claims.

This substitute amendment provides no disincentive to file a frivolous lawsuit. It would still subject small business owners to the cost of frivolous lawsuits and subject individuals to the cost of rising insurance premiums and health care costs that result from frivolous lawsuits.

In other words, Mr. Chairman, this substitute amendment does not provide any relief to those who would be unfairly targeted by frivolous lawsuits. The underlying bill would.

The substitute includes no real consequences for the attorney who repeatedly files frivolous lawsuits. The underlying bill does.

The substitute includes nothing to address the problem of forum shopping which is also a large part of the problem. The underlying bill does.

Mr. Chairman, I urge my colleagues to oppose the substitute amendment and vote ''yes'' on the underlying bill, which, in fact, would deter lawsuit abuse.

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

The CHAIRMAN. The question is on the amendment in the nature of substitute offered by the gentleman from California (Mr. SCHIFF).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. SCHIFF. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 184, noes 226, not voting 23, as follows:

[Roll No. 551]

AYES—184

Abercrombie
Ackerman
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boren
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Case
Chandler
Clay
Cleaver
Conyers
Cooper
Costa
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
Delahunt
DeLauro
Dicks
Dingell
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Herseth
Higgins
Hinchey
Hinojosa
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (IL)
Johnson, E. B.
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lowey
Lynch
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Melancon
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Napolitano
Neal (MA)
Oberstar
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Ross
Rothman
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Woolsey
Wu
Wynn

NOES—226

Aderholt
Akin
Alexander
Allen
Andrews
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Burgess
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble

Cole (OK)
Conaway
Costello
Crenshaw
Cubin
Culberson
Cunningham
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeGette
DeLay
Dent
Doggett
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson, Sam
Jones (NC)
Jones (OH)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
Kuhl (NY)
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lofgren, Zoe
Lucas
Lungren, Daniel E.
Manzullo
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nadler
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schmidt
Schwarz (MI)
Sessions
Shadegg
Shays
Sherwood
Shimkus
Shuster
Simpson
Smith (NJ)
Smith (TX)
Snyder
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—23

Blunt
Boswell
Brown-Waite, Ginny
Clyburn
Diaz-Balart, L.
Diaz-Balart, M.
Foley
Gingrey
Hall
Harris
Hastings (FL)
Mack
Marchant
Meeks (NY)
Obey
Reyes
Ros-Lehtinen
Roybal-Allard
Sensenbrenner
Shaw
Simmons
Tauscher
Wexler

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1536

Mr. SOUDER, Ms. ZOE LOFGREN of California, Ms. DEGETTE, and Mr. NUSSLE changed their vote from ''aye'' to ''no.''

Mr. MURTHA changed his vote from ''no'' to ''aye.''

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. HASTINGS of Washington) having assumed the chair, Mr. LATHAM, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 420) to amend Rule 11 of the Federal Rules of Civil Procedure to improve attorney accountability, and for other purposes, pursuant to House Resolution 508, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. BARROW

Mr. BARROW. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. BARROW. Yes, Mr. Speaker, in its present form.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. BARROW moves to recommit the bill H.R. 420 to the Committee on the Judiciary with instructions to report the same back to the House forthwith with the following amendment:

At the end of the bill, add the following:

SEC. ___. NOT APPLICABLE TO CLAIMS AGAINST DISASTER PROFITEERING BUSINESSES.

(a) IN GENERAL.—A claim against a disaster profiteering business may be filed in any court that has jurisdiction over the corporation, notwithstanding section 4.

(b) DEFINITIONS.—In this section—

(1) the term ''business'' includes a corporation, company, association, firm, partnership, society, and joint stock company, as well as an individual; and

(2) the term ''disaster profiteering business'' means any business engaged in a contract with the Federal Government for the provision of goods or services, directly or indirectly, in connection with relief or reconstruction efforts provided in response to a presidentially declared major disaster or emergency that, knowingly and willfully—

(A) executes or attempts to execute a scheme or artifice to defraud the United States;

(B) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(C) makes any materially false, fictitious, or fraudulent statements or representations, or makes or uses any materially false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; or

(D) materially overvalues any good or service with the specific intent to excessively profit from the disaster or emergency.

Mr. BARROW (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

The SPEAKER pro tempore. The gentleman from Georgia (Mr. BARROW) is recognized for 5 minutes on his motion.

Mr. BARROW. Mr. Speaker, if bills in this Chamber required names that accurately describe their consequences, this bill would best be called the Frivolous Litigation Proliferation Act and not the Lawsuit Abuse Reduction Act.

Many of us who oppose the underlying bill do so because it will actually increase the volume of frivolous litigation. For example, some sort of Rule 11 procedure exists in virtually every State in the country. To impose a new Federal law in every State court action will make State courts conduct a minilawsuit on Federal validity before conducting a minilawsuit on State law validity, before they ever get to the merits of the case. A lawsuit within a lawsuit within a lawsuit. Mr. Speaker, that is as absurd as it sounds.

If Members think that there are too many frivolous lawsuits against good, honest corporations, and the only way to fix this is to make it harder for everyone to sue anyone, and that this bill is the only way to do it, then vote for the bill.

But if there is one area where we do not have a problem with too many frivolous lawsuits, it is with lawsuits against price gougers. And if there is any area where we want to make it easier to get to the merits of the underlying claim, not harder, it is an area of lawsuits against Federal contractors who are engaged in defrauding the public.

Right now the government is awash in government contracts awarded on a no-bid basis. Whether it is disaster relief or the war on terror, we have never done so much of the public's business on a no-bid basis. There has never been more opportunity for waste, fraud, and abuse in the conduct of the public's business than right now.

This motion to recommit gives us one opportunity to protect our constituents from price gougers. The motion to recommit is simple. It says that Federal contractors, engaged in price gouging in disaster relief work can still be sued anyplace where they can be sued now, in any State where both the laws of the State and the U.S. Constitution says it is okay to sue them.

The underlying bill gives price gougers extra protections, the same benefits that we are extending to honest corporations. One such protection, the only one addressed by this motion to

recommit, is the right to avoid lawsuits in States where the Constitution says it is okay to seek justice. Since price gougers do not deserve this protection, and since they do not need this protection, they should not get this protection.

This House has voted time and again to protect companies that are gouging consumers in the wake of natural disasters and national tragedies. If Members vote against this motion to recommit, they are voting to give the same special protections that we give to honest corporations to Federal contractors who are engaged in price gouging in public relief work.

Mr. Speaker, the folks I represent back home in Georgia want relief from price gougers, not relief for price gougers. For that reason I urge my colleagues to support this commonsense and limited motion to recommit.

Mr. SMITH of Texas. Mr. Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore. The gentleman from Texas (Mr. SMITH) is recognized for 5 minutes.

Mr. SMITH of Texas. Mr. Speaker, I oppose this completely irrelevant motion to recommit. First, nothing in H.R. 420, the Lawsuit Abuse Reduction Act, prohibits anyone from being sued for fraud to the full extent of Federal law. Second, the motion to recommit relates to contract claims when the section of the bill that it modifies relates only to personal injury claims.

There is no flaw in the bill that needs to be corrected, but even if there were, the motion to recommit fails to correct it because it relates to contract claims rather than personal injury claims.

□ 1545

Mr. Speaker, I just received a statement of administration policy from the executive office of the President which I would like to read, because it provides a good summary of H.R. 420, the Lawsuit Abuse Reduction Act of 2005. This statement reads as follows:

''The administration supports House passage of H.R. 420 in order to address the growing problem of frivolous litigation. H.R. 420 would rein in the negative impact of frivolous lawsuits on the Nation's economy by establishing a strong disincentive to file such suits in Federal and State courts. Junk lawsuits are expensive to fight and often force innocent small businesses to pay exorbitant costs to make these claims go away. These costs hurt the economy, clog our courts, and are burdening the American businesses of America. The administration believes the bill is a step in the right direction toward the goal of ending lawsuit abuse.''

Mr. Speaker, I urge my colleagues to oppose this absolutely irrelevant motion to recommit and support the underlying bill.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. BARROW. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 8 and clause 9 of rule XX, this 15-minute vote on the motion to recommit will be followed by 5-minute votes on passage of H.R. 420, if ordered, and the motion to instruct on H.R. 3057.

The vote was taken by electronic device, and there were—ayes 196, noes 217, not voting 20, as follows:

[Roll No. 552]

AYES—196

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boren
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Case
Chandler
Clay
Cleaver
Conyers
Cooper
Costa
Costello
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Herseth
Higgins
Hinchey
Hinojosa
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (IL)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Ross
Rothman
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Woolsey
Wu
Wynn

NOES—217

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Burgess
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole (OK)
Conaway
Crenshaw
Cubin
Culberson
Cunningham
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Manzullo
Marchant
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris
Mica
Miller (FL)
Miller (MI)
Miller, Gary G.
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schmidt
Schwarz (MI)
Sessions
Shadegg
Shays
Sherwood
Shimkus
Shuster
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—20

Blunt
Boswell
Brown-Waite, Ginny
Clyburn
Diaz-Balart, L.
Diaz-Balart, M.
Foley
Hall
Harris
Hastings (FL)
Mack
Obey
Reyes
Ros-Lehtinen
Roybal-Allard
Sensenbrenner
Shaw
Simmons
Tauscher
Wexler

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. HASTINGS of Washington) (during the vote). Members are advised 2 minutes remain in this vote.

□ 1605

Mr. LINDER changed his vote from ''yea'' to ''nay.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. SMITH of Texas. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 228, noes 184, not voting 21, as follows:

[Roll No. 553]

AYES—228

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boustany
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Burgess
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Cardoza
Carter
Case
Castle
Chabot
Chocola
Coble
Cole (OK)
Conaway
Cramer
Crenshaw
Cubin
Cuellar
Culberson
Cunningham
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Drake
Dreier
Duncan
Edwards
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Flake
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Gordon
Granger
Green (WI)
Gutknecht
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Holden
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Marchant
Marshall
Matheson
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schmidt
Schwarz (MI)
Scott (GA)
Sessions
Shadegg
Shays
Sherwood
Shimkus
Shuster
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Tanner
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOES—184

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boucher
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Carnahan
Carson
Chandler
Clay
Cleaver
Conyers
Cooper
Costa
Costello
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doolittle
Doyle
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Fitzpatrick (PA)
Ford
Frank (MA)
Gonzalez
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Herseth
Higgins
Hinchey
Hinojosa
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
King (NY)
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Manzullo
Markey
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Ross
Rothman
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Terry
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Woolsey
Wu
Wynn

NOT VOTING—21

Blunt
Boswell
Brown-Waite, Ginny
Clyburn
Diaz-Balart, L.
Diaz-Balart, M.
Foley
Graves
Hall
Harris
Hastings (FL)
Mack
Obey
Reyes
Ros-Lehtinen
Roybal-Allard
Sensenbrenner
Shaw
Simmons
Tauscher
Wexler

□ 1615

Mrs. LOWEY and Mr. DAVIS of Illinois changed their vote from ''aye'' to ''no.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. GRAVES. Mr. Speaker, on rollcall No. 553 I was unavoidably detained. Had I been present, I would have voted "aye."

MESSAGE FROM THE SENATE

A message from the Senate by Ms. Curtis, one of its clerks, announced that the Senate has passed without amendment bills of the House of the following titles:

H. Con. Res. 276. Concurrent Resolution requesting the President to return to the House of Representatives the enrollment of H.R. 3765 so that the Clerk of the House may reenroll the bill in accordance with the action of the two Houses.

The message also announced that the Senate has passed a bill of the following title in which the concurrence of the House is requested:

S. 939. An act to expedite payments of certain Federal emergency assistance authorized pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, to authorize the reimbursement under that Act of certain expenditures, and for other purposes.

MOTION TO GO TO CONFERENCE ON H.R. 3057, FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2006

MOTION TO INSTRUCT OFFERED BY MRS. LOWEY

The SPEAKER pro tempore (Mr. HASTINGS of Washington). The pending business is the vote on the motion to instruct on H.R. 3057 offered by the gentlewoman from New York (Mrs. LOWEY) on which the yeas and nays are ordered.

The Clerk will redesignate the motion.

The Clerk redesignated the motion.

The SPEAKER pro tempore. The question is on the motion to instruct.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 259, nays 147, not voting 27, as follows:

[Roll No. 554]

YEAS—259

Abercrombie
Ackerman
Aderholt
Allen
Andrews
Baca
Bachus
Baird
Baldwin
Barrow
Bean
Beauprez
Becerra
Berkley
Berman
Biggert
Bishop (GA)
Bishop (NY)
Blumenauer
Boehlert
Boren
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capito
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Case
Chandler
Chocola
Clay
Cleaver
Conaway
Conyers
Cooper
Costa
Costello
Cramer
Crowley
Cuellar
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Tom
DeFazio
DeGette
Delahunt
DeLauro
Dent
Dicks
Dingell
Doggett
Doyle
Edwards
Ehlers
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Evans
Farr
Fattah
Ferguson
Filner
Fitzpatrick (PA)
Fossella
Frank (MA)
Gerlach
Gilchrest
Gillmor
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Herger
Herseth
Higgins
Hinchey
Hinojosa
Hobson
Holden
Holt
Honda
Hooley
Hoyer
Hulshof
Hyde
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)