RPTS JOHNSON

DCMN BURRELL

MARKUP OF VOTE TO CLOSE TO THE PUBLIC THE CLASSIFIED FULL COMMITTEE HEARING ON SEPTEMBER 18, 2013 ENTITLED "OVERSIGHT OF THE ADMINISTRATION'S USE OF FISA AUTHORITIES"; H.R. 2655, THE "LAWSUIT ABUSE REDUCTION ACT OF 2013"; H.R. 2871, TO AMEND TITLE 28, UNITED STATES CODE, TO MODIFY THE COMPOSITION OF THE SOUTHERN JUDICIAL DISTRICT OF MISSISSIPPI TO IMPROVE JUDICIAL EFFICIENCY, AND FOR OTHER PURPOSES; AND, H.R. 2922, TO EXTEND THE AUTHORITY OF THE SUPREME COURT POLICE TO PROTECT COURT OFFICIALS AWAY FROM THE SUPREME COURT GROUNDS

Wednesday, September 11, 2013

House of Representatives,

Committee on the Judiciary,

Washington, D.C.

The committee met, pursuant to call, at 10:00 a.m., in Room 2141, Rayburn House Office Building, Hon. Bob Goodlatte [chairman of the committee] presiding.

Present: Representatives Goodlatte, Sensenbrenner, Coble,

Smith of Texas, Chabot, Bachus, Issa, Forbes, King, Franks, Poe, Chaffetz, Marino, Gowdy, Amodei, Labrador, Farenthold, Holding, DeSantis, Smith of Missouri, Conyers, Scott, Watt, Jackson Lee, Cohen, Johnson, Pierluisi, Chu, Bass, DelBene, Garcia, and Jeffries.

Staff Present: Shelley Husband, Staff Director; Branden Ritchie, Deputy Staff Director/Chief Counsel; Allison Halataei, Parliamentarian; Kelsey Deterding, Clerk; David Whitney, Counsel; Perry Apelbaum, Minority Staff Director; Danielle Brown, Minority Parliamentarian; David Lachmann, Minority Counsel; and James Park, Minority Counsel.

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

Pursuant to notice, I now call up H.R. 2871 for purposes of markup, and move that the committee report the bill favorably to the House. The clerk will report the bill.

Ms. Deterding. H.R. 2871, to amend title 28, United States Code to modify the composition of the Southern Judicial District of Mississippi to improve judiciary efficiency, and for other purposes.

[The bill follows:]

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

Chairman Goodlatte. Without objection, the bill is considered as read and open for amendment at any point. And I will begin by recognizing myself for an opening statement.

I thank the Courts, Intellectual Property, and Internet Subcommittee Chairman Howard Coble for introducing H.R. 2871 and working to advance this important measure as soon as possible. The bill is simple and straightforward. It responds to a particular question: How should the Federal judicial districts in the State of Mississippi be organized to best serve the needs of litigants, jurors, the bar, and the public once the Meridian, Mississippi courthouse closes this fall. The answer was developed by an ad hoc committee of judges which formed last year and fashioned a solution that has been reviewed and endorsed by everyone from the affected local bar associations and inns of court to the Judicial Conference of the United States. Specifically, the committee recommended, one, abolishing the Southern District's current Eastern Division; two, modifying the statutory designations of places to hold court; three, realigning the remaining four divisions and places of holding court; and four, renaming the realigned divisions. The judiciary and Department of Justice report they will receive substantial cost savings when this proposal is fully implemented. This legislation is time-sensitive, though, as the affected courts are already engaged in the time-consuming and expensive process of replenishing their jury wheel. As a result, they have asked us to review and move on this amendment to title 28 so that they can complete that process in the most

economically efficient and least disruptive manner possible.

I again thank the gentleman from North Carolina, Mr. Coble, for recognizing the importance of moving this legislation expeditiously, and I also thank Ranking Member Watt, Subcommittee Member Holding and Representatives Harper -- this is from another committee -- Oh, and Representatives Harper, Thompson and Palazzo from Mississippi for their interest and support of this measure. I urge my colleagues to support the bill's passage.

And I now would like to yield the remainder of my time to the chairman of the Courts, Intellectual Property, and the Internet Subcommittee, and sponsor of the legislation, the gentleman from North Carolina, Mr. Coble, for some remarks on the legislation.

Mr. Coble. Thank you, Mr. Chairman. You pretty well touched every base that needs to be touched. I would like to say this, that this bill also manages to achieve cost savings. In fact, the Administrative Office of the Courts estimates that the bill is expected to save $135,000 between jury wheel replenishment costs and expenses otherwise incurred by the U.S. Attorney's Office and the U.S. Marshal Service, plus any other general savings in terms of judicial and juror travel, which we expect to be significant. It is a good bill. As I say, you pretty well touched it.

I ask unanimous consent that my entire statement be made a part of the record. Mr. Chairman, I yield back.

[The statement of Mr. Coble follows:]

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

Chairman Goodlatte. Thank you, Mr. Chairman. And without objection, it will be made a part of the record. And the chair is now pleased to recognize the ranking member of the committee, the gentleman from Michigan, Mr. Conyers, for his opening statement.

Mr. Conyers. Thank you, Mr. Chairman. I think everyone understands what we are doing here. And I ask unanimous consent to put my statement in the record. I support your description of the bill, and I support the bill, and I yield back the balance of my time.

[The statement of Mr. Conyers follows:]

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

Chairman Goodlatte. I thank the gentleman. And the chair now recognizes the gentleman from North Carolina, the ranking member of the subcommittee, Mr. Watt, for his opening statement.

Mr. Watt. Thank you, Mr. Chairman. I am also a cosponsor of the bill, which also has the support of my good friend and Mississippi colleague, Representative Benny Thompson, the ranking member of the Homeland Security Committee, as well as affected judges and the local bar. Rarely is there a bill before us that is direct and uncomplicated, has full bipartisan support, and is expected to save money.

So I encourage my colleagues to support it, and yield back.

Chairman Goodlatte. The chair thanks the gentleman. The bill is now open for amendments.

Are there any amendments?

There being none, a reporting quorum being present, the question is on the motion to report the bill H.R. 2871 favorably to the House.

Those in favor will say aye.

Those opposed no.

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

Pursuant to notice, and with a majority of our committee members present, it is now in order for us to vote to close our September 18th full committee hearing entitled "Oversight of the Administration's Use of FISA Authorities," pursuant to the requirements of House rule XI, clause (2)(g). The chair would like to note that this committee held an open hearing on this topic on July 17. However, there are

classified aspects of this topic that can only be examined in a closed, classified setting. In order to fully engage in oversight over these important laws in our jurisdiction, we must conduct a classified hearing.

Pursuant to House rule XI, clause (2)(g), the motion is on closing to the public September 18, 2013, 10 a.m. full committee hearing entitled "Oversight of the Administration's Use of FISA Authorities."

Does the gentleman from Michigan, the ranking member, have any statement to make regarding this motion?

There being none, and because a recorded vote is required, the clerk will call the roll.

Ms. Deterding. Mr. Goodlatte?

Chairman Goodlatte. Aye.

Ms. Deterding. Mr. Goodlatte votes aye.

Mr. Sensenbrenner?

[No response.]

Ms. Deterding. Mr. Coble?

Mr. Coble. Aye.

Ms. Deterding. Mr. Coble votes aye.

Mr. Smith of Texas?

Mr. Smith of Texas. Aye.

Ms. Deterding. Mr. Smith of Texas votes aye.

Mr. Chabot?

Mr. Chabot. Aye.

Ms. Deterding. Mr. Chabot votes aye.

Mr. Bachus?

Mr. Bachus. Aye.

Ms. Deterding. Mr. Bachus votes aye.

Mr. Issa?

Mr. Issa. Aye.

Ms. Deterding. Mr. Issa votes aye.

Mr. Forbes?

[No response.]

Ms. Deterding. Mr. King?

Mr. King. Aye.

Ms. Deterding. Mr. King votes aye.

Mr. Franks?

Mr. Franks. Aye.

Ms. Deterding. Mr. Franks votes aye.

Mr. Gohmert?

[No response.]

Ms. Deterding. Mr. Jordan?

[No response.]

Ms. Deterding. Mr. Poe?

Mr. Poe. Yes.

Ms. Deterding. Mr. Poe votes aye.

Mr. Chaffetz?

Mr. Chaffetz. Aye.

Ms. Deterding. Mr. Chaffetz votes aye.

Mr. Marino?

Mr. Marino. Yes.

Ms. Deterding. Mr. Marino votes aye.

Mr. Gowdy?

Mr. Gowdy. Yes.

Ms. Deterding. Mr. Gowdy votes aye.

Mr. Amodei?

Mr. Amodei. Yes.

Ms. Deterding. Mr. Amodei votes aye.

Mr. Labrador?

Mr. Labrador. Yes.

Ms. Deterding. Mr. Labrador votes aye.

Mr. Farenthold?

[No response.]

Ms. Deterding. Mr. Holding?

Mr. Holding. Aye.

Ms. Deterding. Mr. Holding votes aye.

Mr. Collins?

[No response.]

Ms. Deterding. Mr. DeSantis?

Mr. DeSantis. Aye.

Ms. Deterding. Mr. DeSantis votes aye.

Mr. Smith of Missouri?

Mr. Smith of Missouri. Aye.

Ms. Deterding. Mr. Smith of Missouri votes aye.

Mr. Conyers?

Mr. Conyers. Aye.

Ms. Deterding. Mr. Conyers votes aye.

Mr. Nadler?

[No response.]

Ms. Deterding. Mr. Scott?

Mr. Scott. Aye.

Ms. Deterding. Mr. Scott votes aye.

Mr. Watt?

Mr. Watt. Aye.

Ms. Deterding. Mr. Watt votes aye.

Ms. Lofgren?

[No response.]

Ms. Deterding. Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

Ms. Deterding. Ms. Jackson Lee votes aye.

Mr. Cohen?

[No response.]

Ms. Deterding. Mr. Johnson?

[No response.]

Ms. Deterding. Mr. Pierluisi?

[No response.]

Ms. Deterding. Ms. Chu?

[No response.]

Ms. Deterding. Mr. Deutch?

[No response.]

Ms. Deterding. Mr. Gutierrez?

[No response.]

Ms. Deterding. Ms. bass?

[No response.]

Ms. Deterding. Mr. Richmond?

[No response.]

Ms. Deterding. Ms. DelBene?

Ms. DelBene. Aye.

Ms. Deterding. Ms. DelBene votes aye.

Mr. Garcia?

[No response.]

Ms. Deterding. Mr. Jeffries?

Mr. Jeffries. Aye.

Ms. Deterding. Mr. Jeffries votes aye.

Chairman Goodlatte. The gentleman from Wisconsin.

Mr. Sensenbrenner. Aye.

Ms. Deterding. Mr. Sensenbrenner votes aye.

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

Mr. Forbes. Aye.

Ms. Deterding. Mr. Forbes votes aye.

Chairman Goodlatte. The gentlewoman from Texas, Ms. Jackson Lee. Oh, she has voted. You are already recorded.

The chair will suspend for a moment. We understand there are some other members close by. Is there any member who has not been recorded who wishes to record their vote? The clerk will report.

Ms. Deterding. Mr. Chairman, 25 members voted aye, zero members voted nay.

Chairman Goodlatte. And the motion is agreed to. We will now turn to H.R. 2922. Pursuant to notice, I now call up H.R. 2922 for purposes of markup, and move that the committee report the bill favorably to the House. The clerk will report the bill.

Ms. Deterding. H.R. 2922, to extend the authority of the Supreme Court Police to protect court officials away from the Supreme Court grounds.

[The bill follows:]

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

Chairman Goodlatte. Without objection, the bill is considered as read and open for amendment at any point. And I will begin by recognizing myself for an opening statement. I want to thank Representative Holding for his introduction of this bill, and want to commend the support of the ranking member of the full committee, Mr. Conyers, and the chairman, vice chairman, and ranking member of the Courts, Intellectual Property, and the Internet Subcommittee, Representatives Coble, Marino, and Watt respectively, for their leadership in advancing this measure.

It is essential to the functioning of the Supreme Court that justices, court employees, and official visitors be provided adequate and appropriate protective services. For more than 3 decades, Congress has specifically authorized the Supreme Court Police to provide security beyond the court building for these persons. This authority, which is due to expire at the end of this year, has been extended by Congress seven times since 1986. The purpose of H.R. 2922 is to extend this authority an additional 6 years.

This is a good bill that deserves our support. And I now yield the rest of my time to a member of the Courts, Intellectual Property, and the Internet Subcommittee, the sponsor of the legislation, the gentleman from North Carolina, Mr. Holding, for his opening remarks.

Mr. Holding. Thank you, Mr. Chairman. I think you have adequately explained the nature of this bill and its intent and what it would be able to do. Therefore, I would ask unanimous consent to enter my full statement into the record, and yield back.

[The statement of Mr. Holding follows:]

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

Chairman Goodlatte. I thank the gentleman. And I am now pleased to recognize the ranking member of the committee, the gentleman from Michigan, Mr. Conyers, for his opening statement.

Mr. Conyers. I will put my statement in the record and ask that that be done, and I of course support the measure, and yield back my time.

[The statement of Mr. Conyers follows:]

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

Chairman Goodlatte. The chair thanks the gentleman, and recognizes the gentleman from North Carolina, Mr. Watt, for his opening statement.

Mr. Watt. Thank you, Mr. Chairman. Let me thank my colleague and friend, Mr. Holding from North Carolina, for introducing this commonsense legislation. And I am also an original cosponsor. The bill extends the authority of the U.S. Marshal Service and Supreme Court Police to provide for the security of the justices on and off the grounds of the Supreme Court for an additional 6 years. It also authorizes those enforcement agencies to protect Supreme Court employees performing official duties and official guests of the Court when they are not on Court premises.

In 1982, Congress first responded to the call of Chief Justice Warren Burger, who was reportedly concerned about an increase in street crime, assassination attempts, and terrorism, to provide for the safety of the justices while traveling or otherwise away from the Court complex. Since that time, we have reauthorized the statute for various lengths of time. This bill would do so again for a period of 6 years. So I support the measure.

I also wonder, though, Mr. Chairman, whether it might not be time to consider making this authority permanent. The work of the Supreme Court is vital to our Nation. And the role of any one justice can tip the scales one way or the other on matters of grave consequence. Over the past decade, at least three of the justices have been victims of random street crime. Justice Ginsburg was the victim of a purse

snatching in 1996. Then-Justice Souter was mugged while jogging in 2004. And Justice Breyer was the subject of a home invasion at his vacation home in 2012. Just as the President and Vice President are protected by Secret Service, and congressional leadership are protected by the U.S. Capitol Police, it may be time to consider providing the Supreme Court Police force permanent authority to provide comparable personal protection for the justices. Today's world has certainly become more dangerous than it was in 1982, when we first enacted this. And I think it is possibly time for us to look at this more thoroughly considering timeliness, cost, and other factors that may bear on this decision. And I will put the rest of my statement in the record. No sense to belabor that. We do support the bill. And this gets it done for a period of time.

[The statement of Mr. Watt follows:]

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

Chairman Goodlatte. Would the gentleman yield on that point?

Mr. Watt. Be happy to yield, Mr. Chairman.

Chairman Goodlatte. I thank the gentleman. I think he makes a very excellent point. I think the ongoing work of the Supreme Court and the likelihood of their needing security indefinitely into the future would argue for making it permanent. And I would support that. Regrettably, we have received objection from that from the Senate. And this was actually done by this committee, I am reliably told, in 2000, where we passed a permanent grant of this authority here and the Senate blocked it. So we are basically following the path of least resistance. But if the Senate indicates a change in that objective, I would be happy to work with the gentleman on a manager's amendment moving forward to change it or to take a Senate bill that would make it permanent. But either way, the gentleman is correct --

Mr. Watt. Reclaiming my time, Mr. Chairman, you know I don't have much influence with the Senate these days, and not much inclination to say anything negative either. So I think I will just yield back.

Mr. King. Would the gentleman yield?

Chairman Goodlatte. If the gentleman -- the gentleman has yielded back. I am going to yield myself --

Mr. Watt. I will yield to the gentleman.

Chairman Goodlatte. I thank the gentleman. I just want to say that I understand the gentleman's frustration and concern. I am very pleased to have the gentleman here with us for as long as we can keep him. But I also think that he has been recognized for other

opportunities, and I hope they are availed of him at some point in time.

Mr. Watt. My good friend Mr. Scott says if I had any influence with the Senate I wouldn't be here today.

Did somebody else want me to yield to them? Mr. King.

Mr. King. I thank the gentleman from North Carolina. And I will make this very brief. I agree with you on the consensus we seem to have here as far as protection is concerned. But I would note that the three incidents that you pointed out, as far as my knowledge of them, were random acts, not necessarily targeted at justices. So it reflects the crime in the broader society more so than targeting justices. And I would just like that to be part of the record. But I agree with the consensus, and I yield back.

Mr. Watt. I yield back, Mr. Chairman.

Ms. Jackson Lee. Mr. Chairman?

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

Ms. Jackson Lee. To strike the last word.

Chairman Goodlatte. The gentlewoman is recognized.

Ms. Jackson Lee. I wish the gentleman from North Carolina best wishes, and I think he will prevail. I just wanted to add and associate myself with the author of the legislation, chairman and ranking member, and ranking member of the subcommittee, and just to say that whatever the reason for the incidences that involved criminal acts against the Supreme Court justices, I think we are doing the right thing. And maybe a reconsideration by the Senate would be appropriate. But I want to

just associate with supporting the legislation, and indicating how vital it is to protect all three branches of government, and also to have a continuing assessment of what is the best approach in that protection. Because a lot of these activities occurred away from the Court. And the Court also has its protocol. I would also like to say that maybe particularly the Congress and the Supreme Court could also work collaboratively on protocols for security, particularly since on occasion we are in and out of the respective buildings, both the Supreme Court and the Congress.

Lastly, I want to express support after the fact for H.R. 2871 that deals with a combining of courts in the Southern Judicial District of Mississippi. I understand both Mr. Thompson, Mr. Harper, members of the Mississippi delegation support. And it is not only judicial efficiency, but it is also an important reflection of how important Federal courts are. And so I wanted to comment on the H.R. 2871, and add my support as well to the record for H.R. 2922.

With that, Mr. Chairman, I yield back.

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

Mr. Bachus. Strike the last word.

Chairman Goodlatte. The gentleman is recognized.

Mr. Bachus. One thing, following up on what Mr. King said, but actually I asked to be recognized prior to that, while I support this bill, these were random acts of violence. And when we wrap our public officials into protections that the ordinary citizen does not enjoy,

and sort of in a protective cocoon, you wonder if they are not insulated from life's experiences that they need to have to make judgments in cases that come before them. And I do recognize that there is an increased likelihood of them being targeted. Members of Congress, we don't enjoy this protection. However, I do support it. But at the same time, I sort of like the Senate approach of considering this and not making it permanent, because we have to I think ensure that those who sit in judgment of their fellow man, or decide on issues involving crime or law enforcement or constitutional rights, that they are to a certain extent immersed in the experiences that other Americans have. And they often are not. And sometimes the longer you are on the bench or the longer you are away from that common experience you become somewhat insulated. And therefore I would caution us in what we do in cases of this nature.

So I yield back the balance of my time.

Chairman Goodlatte. The chair thanks the gentleman very much for his comments.

The bill is now open for amendment. Are there any amendments to H.R. 2922?

There being none, a reporting quorum being present, the question is on the motion to report the bill H.R. 2922 favorably to the House.

Those in favor will say aye.

Those opposed no.

The ayes have it. The bill is ordered reported favorably. Members will have 2 days to submit views.

And the chair intends to recess the committee, as there is a ceremony on the Capitol steps in remembrance of September 11, 2001. The chair would just say to the members that I was here in this hearing room when the second plane -- in fact, I was in the back room when the second plane struck the World Trade Center towers. And then we nonetheless continued with a hearing. I think the gentleman from Alabama was present that day as well, and I am sure some others. And we then heard that a plane had struck the Pentagon. And of course at that point we immediately recessed because we knew that this city was under attack as well as New York City. And we are blessed that the United States Capitol building itself was not taken down. And I think that was a selfless heroism of some people on a plane that crashed in a field in Pennsylvania. So I think it would be appropriate before we recess to go to the Capitol steps that we also here have a moment of silence in memory of the events of that day and in honor of our military, our law enforcement, our first responders, and the victims and their families of that tragedy.

Thank you very much. The committee will stand in recess until 1 p.m. We will have an opportunity for lunch, and then we will resume. We have one more bill that does have some amendments to it. We will take a little time starting at 1 p.m.

[Whereupon, at 10:50 a.m., the committee was recessed, to reconvene at 1:00 p.m. this same day.]

RPTS MCKENZIE

DCMN BURRELL

[1:20 p.m.]

Chairman Goodlatte. The committee will reconvene. And pursuant to notice, I now call up H.R. 2655 for purposes of markup and move that the committee report the bill favorably to the House.

The clerk will report the bill.

Ms. Deterding. H.R. 2655, to amend rule 11 of the Federal Rules of Civil Procedure to improve attorney accountability and for other purposes.

[The bill follows:]

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

Chairman Goodlatte. Without objection, the bill is considered as read and open for amendment at any point. And I will begin by recognizing myself for an opening statement.

H.R. 2655, the Lawsuit Abuse Reduction Act, would restore mandatory sanctions for frivolous lawsuits filed in Federal court. Many Americans may not realize it but today under what is called rule 11 of the Federal Rules of Civil Procedure, there is no requirement that those who file frivolous lawsuits pay for the unjustified legal costs they impose on their victims. As a result, the current rule 11 goes largely unenforced because the victims of frivolous lawsuits have little incentive to pursue additional litigation to have the case declared frivolous when there is no guarantee of compensation.

H.R. 2655 would finally provide light at the end of the tunnel for the victims of frivolous lawsuits by requiring sanctions against the filers of frivolous lawsuits that require them to pay their victims the full cost of their reasonable expenses incurred as a direct result of the rule 11 violation, including attorneys' fees.

The bill also strikes the current provision in rule 11 that allows lawyers to avoid sanctions for making frivolous claims and demands by simply withdrawing them within 21 days. This change eliminates the free pass lawyers now have to file frivolous lawsuits in Federal court. The current lack of mandatory sanctions leads to the regular filing of lawsuits that are clearly baseless. For example, a man sued a small business owner for violations of Federal regulations in a parking lot he doesn't own or lease. A woman had her car repossessed and then filed

a $5 million Federal lawsuit for the half tank of gas she had left in the car. A high school teacher sued a school district, claiming it discriminated against her because she has a phobia, a fear of young children. Her case was dismissed by the Equal Employment Opportunity Commission, but that didn't prevent her from filing a Federal lawsuit.

These real yet absurd cases have real-life consequences for their victims. But the victims of lawsuit abuse are not just those who are actually sued. Rather, we all suffer under a system in which innocent Americans everywhere live under the constant fear of a potentially bankrupting frivolous lawsuit. As the former chairman of the Home Depot Company has written, an unpredictable legal system casts a shadow over every plan and investment. It is devastating for startups. The cost of even one ill-timed abusive lawsuit can bankrupt a growing company and cost hundreds of jobs. Today absurd lawsuits can sometimes bring sanctions against those who filed them. But even when they do, the current rules result in far too little compensation for the victims of the frivolous lawsuit. For example, a maximum security inmate in Michigan filed a Federal lawsuit for his dental problems in jail. His case was thrown out after a jury heard that he had entered prison with just five teeth. In that case the inmate was ordered to pay $353 for nominal court transcript costs and copy fees, but that amount didn't come close to covering the costs paid by taxpayers in defending against that frivolous lawsuit at trial. H.R. 2655 would require full compensation to the victims of frivolous lawsuits.

The prevalence of frivolous lawsuits is reflected in the absurd

warning labels companies must place on their products to limit their liability. A 5-inch brass fishing lure with three hooks is labeled "harmful if swallowed." A warning label on a baby stroller cautions, "Remove child before folding." A sticker on a 13-inch wheel on a wheelbarrow warns "Not intended for highway use." A household iron contains the warning, "Never iron clothes while they are being worn." And a cardboard car sunshield that keeps sun off the dashboard warns, "Do not drive with sunshield in place."

In his 2011 State of the Union Address, President Obama said, quote, I am willing to look at other ideas to rein in frivolous lawsuits. Now that the administration has realized its 2,000-page health care law is so unworkable that it has unilaterally declared it won't enforce many of its main provisions until after the next election, I hope the President has time to read this one-page bill and lend his support to a proposal that would significantly reduce the burden of frivolous litigation on innocent Americans.

I thank the former chairman of this committee, Lamar Smith, for introducing this simple, commonsense legislation that would do so much to prevent lawsuit abuse and restore Americans' confidence in the legal system.

And it is now my pleasure to recognize the ranking member of the committee, the gentleman from Michigan, Mr. Conyers, for his opening statement.

Mr. Conyers. Thank you, Chairman. Very funny.

The Lawsuit Abuse Reduction Act may have some problems that

haven't yet come to your attention. And that is why it is very important that I begin by noting that we have just received a letter from the American Bar Association -- well, it was to Chairman Smith and myself -- that it is clear that they are opposed to this legislation. And I will just indicate to you who these organizations are. In addition to the American Bar Association, the Consumer Federation of America, the National Consumers League, Public Citizen, and the United States Public Interest Research Group. In addition, it is opposed by the Judicial Conference of the United States.

Now while there may be members who are convinced of the merits of this bill, there are others that need to realize that this bill concerns a fundamental issue, access to the courts. The very least we should do is to follow regular order that allows a thorough examination of the bill and its impact.

What this bill accomplishes by undoing the 1993 amendments to rule 11 of the Federal Rules of Civil Procedure is by restricting judicial discretion, requiring mandatory sanctions for even unintentional violations. And it may have the, I think, unintended effect of discouraging civil rights cases. Simply put, this bill -- despite the humorous anecdotes that have been advanced in support of it -- will have a disastrous impact on the administration of justice.

Think of civil rights litigation, which often concern novel issues which made them particularly susceptible to rule 11 before the 1993 amendments. For example, a 1991 Federal judicial study found that the incidence of rule 11 motions was higher in civil rights cases than

in some other kinds of cases. Another study showed that while civil rights cases comprised 11 percent of Federal cases filed, more than 22 percent of the cases in which sanctions had been imposed were upon civil rights cases. H.R. 2655 would restore this problematic regime and provide no recourse for appeal when sanctions are imposed.

Another serious failing of this legislation is that it will substantially increase the amount and cost of civil litigation and create more grounds for unnecessary delays and harassment in the courtroom. Experts in civil procedure are virtually unanimous on this point.

Well, since my time is running out, I just want to quote the very brief comment of Professor Ted Eisenberg of Cornell University who demonstrated about a third of all Federal lawsuits were burdened by so-called satellite litigation. And during the period when this version of the rule was in effect, attorneys had a double duty: One, to try to case and the other, to try the opposing counsel. It also strips the courts of their discretion. And in this respect, H.R. 2655, believe it or not, is even worse than the 1983 version of rule 11.

And so I thank the chairman for allowing me the extra time that I required. I yield back. Thank you.

Chairman Goodlatte. The chair thanks the gentleman and is pleased to recognize the gentleman from Texas, Mr. Smith, the former chairman of the committee and the sponsor of this legislation for his opening statement.

Mr. Smith of Texas. Thank you, Mr. Chairman. Before I explain

the bill, what I would like to do is make a clarification and make it abundantly clear to all members of this committee that the requirement that judges issue the sanctions only occurs if they find that the lawsuit is frivolous. So there doesn't need to be any concern about the sanctions until the finding that the lawsuit itself is frivolous and without merit. So that should address a lot of the questions that members might have.

I would also like to direct the attention of the ranking member and perhaps others to page 2 of the bill, Rule of Construction, because I think that this will reassure them as well. And I will read it out loud. "Nothing in this Act or an amendment made by this Act shall be construed to bar or impede the assertion or development of new claims, defenses, or remedies under Federal, State, or local laws, including civil rights laws" -- including civil rights laws -- "or under the Constitution of the United States."

So I hope this, again, will address some concerns. And I certainly intend to point this out in response to an expected amendment as well.

Let me explain the bill again and then we can move on. The Lawsuit Abuse Reduction Act, known as LARA, is only one and a half pages long, but it would prevent the filing of hundreds of thousands of pages of frivolous lawsuits in Federal court. For example, in recent years frivolous lawsuits have actually been filed against the Weather Channel for failing to accurately predict storms and against television shows people claimed were too scary. Meanwhile, playgrounds are shutting

down because of liability concerns, and fast food companies are being sued because inactive children gain weight.

Frivolous lawsuits have become too common in our society. Lawyers who bring these cases have everything to gain and nothing to lose under current rule 11 of the Federal Rules of Civil Procedure, which permits plaintiffs' lawyers to file frivolous suits no matter how absurd the claims without any penalty whatsoever. Meanwhile, defendants are faced with years of litigation and substantial attorneys' fees. This is a threat to their lives, livelihoods, and their reputations. These cases, and many like them, have wrongly cost innocent individuals and business owners their reputation and their hard-earned dollars. According to research firm Towers Perrin, the annual direct cost of American tort litigation now exceeds $260 billion a year, or over $850 per person. When Business Week wrote an extensive article on the most effective legal reforms, it recommended, quote, penalties that sting. Business Week recommended give judges stronger tools to punish and mitigate 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 on lawyers who filed frivolous lawsuits. Members of the Civil Rules Advisory Committee, an obscure branch of the courts, made penalties optional. This needs to be reversed by Congress.

As Chairman Goodlatte noted, even President Obama has expressed a willingness to limit frivolous lawsuits. If the President is serious about stopping these meritless claims, he should support mandatory

sanctions for frivolous lawsuits to avoid making frivolous promises.

LARA requires lawyers who file frivolous lawsuits to pay the attorneys' fees and court costs of innocent defendants. It reverses the amendments to rule 11 that made rule 11 sanctions discretionary, rather than mandatory; and as a result, they are almost never used. It also eliminates the safe harbor rule that allows parties and their attorneys to avoid sanctions for making frivolous claims by withdrawing them within 21 days after a motion for sanctions has been filed. Further, LARA expressly provides that nothing in the changes it makes to rule 11 -- I quoted this just a minute ago -- shall be construed to bar or impede the assertion or development of new claims, defenses, or remedies under Federal, State, or local laws, including civil rights laws, or under the Constitution of the United States. Consequently, civil rights law would not be affected in any way by LARA. LARA applies to both plaintiffs and defendants. It applies to cases brought by individuals as well as by businesses, including business claims filed to harass competitors and illicitly gain market share.

The American people are looking for solutions to obvious problems, like lawsuit abuse. LARA restores accountability to our legal system by reinstating mandatory sanctions for attorneys who file frivolous lawsuits. Although it will not stop all lawsuit abuse, LARA encourages attorneys to think twice before filing a frivolous lawsuit.

I want to thank the chairman for taking up this much needed legislation. And I ask my colleagues who oppose frivolous lawsuits and who want to protect hardworking Americans from false claims to

support this bill.

Thank you, Mr. Chairman. I yield back.

Chairman Goodlatte. The chair thanks the gentleman. The bill is now open for amendment.

Mr. Conyers. Mr. Chairman?

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

Mr. Conyers. I have an amendment at the desk, and I would like to call it up now.

Chairman Goodlatte. The clerk will report the amendment.

Ms. Deterding. Amendment to H.R. 2655, offered by Mr. Conyers of Michigan.

Beginning on page 2 --

[The amendment of Mr. Conyers follows:]

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

Chairman Goodlatte. Without objection, the amendment is considered as read. And the gentleman is recognized in support of his amendment for 5 minutes.

Mr. Conyers. Thank you.

Members of the committee, civil rights cases often concerned novel issues which made them particularly susceptible to rule 11 before the 1993 amendment. Under the 1983 version, civil rights cases were clearly disadvantaged. But what H.R. 2655 would restore is this problematic regime and provide no recourse for appeals when sanctions are imposed. And in the last Congress, the committee accepted an amendment by the gentleman from Virginia -- the chairman, no less -- adding a rule of construction that said that nothing will be construed to bar or impede the assertion of defenses or remedies under Federal or State or local laws, including civil rights laws. And I supported that amendment and believe that this committee acknowledged that. I am, however, still concerned that this language, by itself, will not prevent defendants from using new provisions to stymie civil rights claims by using or threatening extensive litigation under rule 11.

Consider cases of an earlier era and how this legislation might have affected it, starting with Brown v. The Board of Education, the ruling that paved the way for integration and the civil rights movement. Professor Ted Eisenberg, who testified before this committee, said that 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 civil rights cases disproportionately affected by 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.

So in Brown v. The Board and other historic civil rights cases, the law had been clear for a very long time. It took courage to challenge them, and it would have been a terrible impediment to progress if those seeking to protect institutions of Jim Crow had access to this powerful weapon to stymie progress in civil rights.

Judge Carter of the New York court said, I have no doubt that the Supreme Court's opportunity to pronounce separate schools inherently unequal, as in Brown v. The Board, would have been delayed for a decade had my colleagues and I been required, under penalty of potential sanctions, to plead our legal theory explicitly from the Court.

So it is from our own hearings and the witnesses that came before them that I am arguing for my amendment. And I must oppose any law that would tilt the playing field unfairly against citizens seeking to vindicate their civil and/or constitutional rights. And so I urge the adoption of this amendment.

I thank the chair and yield back the balance of my time.

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

Mr. Smith of Texas. Thank you, Mr. Chairman. I oppose the amendment.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Smith of Texas. Mr. Chairman, I won't read the provision again in the bill, but the base bill clearly preserves the right to assert claims under the civil rights laws or the Constitution. That is entirely appropriate. What is not appropriate and what would largely negate the bill is this amendment that would explicitly allow frivolous claims to be brought under the civil rights laws and the Constitution without any of the penalties required by the base bill. If this amendment were adopted, the bill would invite the filing of frivolous civil rights and constitutional claims without any penalty. No one who supports civil rights laws or the Constitution should support the filing of frivolous claims without penalty. But that is what this amendment intentionally or unintentionally would allow.

I urge all my colleagues to join me in opposing this amendment, which would expose innocent Americans everywhere to abusive frivolous lawsuits.

I yield back the balance of my time.

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

Mr. Gowdy. To strike the last word and speak for 5 minutes, if I may.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Gowdy. Mr. Chairman, do either of my colleagues on either side of the aisle know whether or not prisoner petitions are included within the rubric of civil rights cases?

Chairman Goodlatte. If the gentleman would yield, it is my clear

understanding that many prisoner petitions would constitute civil rights cases.

Mr. Gowdy. I think, not surprisingly, the chairman is correct.

Mr. Johnson. Would the gentleman yield?

Mr. Gowdy. I would be happy to yield if the gentleman from Georgia can answer whether or not 1983 actions filed by prisoners constitutes civil rights cases.

Mr. Johnson. I believe Justice Clarence Thomas wrote a decision some years ago, opining that a cruel and unusual punishment did not include a beat-down in a jail cell by prison guards. So I am not sure.

Mr. Gowdy. Well, I actually am. Because I worked for a Federal judge and we spent a lot of time dealing with prisoner petitions. My pillow is too hard. I don't have enough visitors. They were filed under 1983. I, personally -- maybe it is just my opinion -- I think it cheapens the definition of "civil rights" to include 1983 actions filed by prisoners. But I will move on and ask another question.

Does anyone know within the 1983 realm how many cases were dismissed either under rule 12 or rule 56? And among those cases dismissed under rule 12 -- and of course rule 12 is that your complaint doesn't even state a claim upon which relief can be granted. It is such a bad complaint that we can't even give you what you asked for, it is so poorly drafted. That is rule 12. Rule 56 is, there is no disagreement on the facts. But you lose on the law. And my question is, in those categories -- rule 12 and rule 56 -- how many times have sanctions ever been imposed on a lawyer?

I am happy to yield.

Mr. Conyers. Would the gentleman yield?

Mr. Gowdy. Yes, sir.

Mr. Conyers. Because I think what the prisoner writes about, the subject matter, would determine whether it is a civil rights matter or not. I don't think all prisoner cases are civil rights issues.

Chairman Goodlatte. Would the gentleman yield?

I just want to say that in my opening statement I made reference to a maximum security inmate in Michigan who filed a Federal lawsuit for his dental problems in jail. This case was thrown out after the jury heard that he had entered prison with just five teeth. In that case, the inmate was ordered to pay $353. That case was filed as a civil rights action.

Mr. Johnson. Would the gentleman yield?

Chairman Goodlatte. I have that case right here. Without objection, that case will be made a part of the record.

[The information follows:]

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

Chairman Goodlatte. It is the gentleman from South Carolina's time.

Mr. Johnson. Would the gentleman yield?

Mr. Gowdy. I will. I just want to say this quickly -- because at my age, I won't remember it if I don't say it now, to my friend from Georgia -- Mr. Conyers, who I have great respect for, made reference to Brown v. Board of Education. That is a case -- I don't think anyone in the world would oppose your amendment based on that. But my experience with 1983 actions has been much more like what the chairman made reference to and prisoner petitions saying, my pillow is too hard or too soft. So if you can't impose sanctions on prisoners who have nothing to do except file frivolous lawsuits, then when can you ever do it? What would stop a prisoner from filing serial false 1983 claims?

And I will be happy to yield to the gentleman from Georgia.

Mr. Johnson. Thank you. I might point out two things: One, the gentleman who filed the lawsuit, the prisoner with the five teeth, it went all the way to the jury and got a verdict of -- yeah, got an adverse verdict. He apparently overcame summary judgment. And so there was a genuine issue of fact in that case that made it to a jury. It doesn't seem to have been a candidate for a frivolous complaint. But at any rate, the Prison Litigation Reform Act is a Federal law that was enacted in 1996 in response to a significant increase in prisoner litigation in the Federal courts.

Mr. Gowdy. Well, I am out of time. So I will have to reclaim my time from my friend from Georgia.

But I would, Mr. Chairman, in conclusion, ask again, this category of cases -- rule 12, which can't even survive a reading of the complaint, and rule 56, where there is no fact in dispute, how many times has any attorney been sanctioned who had cases bounced out under those two rules?

Can you give me a number?

Chairman Goodlatte. Who seeks recognition? If not, the question occurs on the amendment offered by the gentleman from Michigan.

All those in favor respond by saying aye.

Those opposed, no.

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

Mr. Conyers. Mr. Chairman, may I get a record vote?

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

Ms. Deterding. Mr. Goodlatte?

Chairman Goodlatte. No.

Ms. Deterding. Mr. Goodlatte votes no.

Mr. Sensenbrenner?

[No response.]

Ms. Deterding. Mr. Coble?

Mr. Coble. No.

Ms. Deterding. Mr. Coble votes no.

Mr. Smith of Texas?

Mr. Smith of Texas. No.

Ms. Deterding. Mr. Smith of Texas votes no.

Mr. Chabot?

[No response.]

Ms. Deterding. Mr. Bachus?

[No response.]

Ms. Deterding. Mr. Issa.

[No response.]

Ms. Deterding. Mr. Forbes.

[No response.]

Ms. Deterding. Mr. King?

Mr. King. No.

Ms. Deterding. Mr. King votes no.

Mr. Franks?

Mr. Franks. No.

Ms. Deterding. Mr. Franks votes no.

Mr. Gohmert?

[No response.]

Ms. Deterding. Mr. Jordan.

[No response.]

Ms. Deterding. Mr. Poe?

Mr. Poe. No.

Ms. Deterding. Mr. Poe votes no.

Mr. Chaffetz?

Mr. Chaffetz. No.

Ms. Deterding. Mr. Chaffetz votes no.

Mr. Marino?

Mr. Marino. No.

Ms. Deterding. Mr. Marino votes no.

Mr. Gowdy?

Mr. Gowdy. No.

Ms. Deterding. Mr. Gowdy votes no.

Mr. Amodei?

Mr. Amodei. No.

Ms. Deterding. Mr. Amodei votes no.

Mr. Labrador?

[No response.]

Ms. Deterding. Mr. Farenthold?

Mr. Farenthold. No.

Ms. Deterding. Mr. Farenthold votes no.

Mr. Holding?

Mr. Holding. No.

Ms. Deterding. Mr. Holding votes no.

Mr. Collins?

[No response.]

Ms. Deterding. Mr. DeSantis?

[No response.]

Ms. Deterding. Mr. Smith of Missouri?

Mr. Smith of Missouri. No.

Ms. Deterding. Mr. Smith of Missouri votes no.

Mr. Conyers?

Mr. Conyers. Aye.

Ms. Deterding. Mr. Conyers votes aye.

Mr. Nadler?

[No response.]

Ms. Deterding. Mr. Scott?

Mr. Scott. Aye.

Ms. Deterding. Mr. Scott votes aye.

Mr. Watt?

Mr. Watt. Aye.

Ms. Deterding. Mr. Watt votes aye.

Ms. Lofgren?

[No response.]

Ms. Deterding. Ms. Jackson Lee?

[No response.]

Ms. Deterding. Mr. Cohen?

[No response.]

Ms. Deterding. Mr. Johnson?

Mr. Johnson. Aye.

Ms. Deterding. Mr. Johnson votes aye.

Mr. Pierluisi?

[No response.]

Ms. Deterding. Ms. Chu?

Ms. Chu. Aye.

Ms. Deterding. Ms. Chu votes aye.

Mr. Deutch?

[No response.]

Ms. Deterding. Mr. Gutierrez?

[No response.]

Ms. Deterding. Ms. Bass?

[No response.]

Ms. Deterding. Mr. Richmond?

[No response.]

Ms. Deterding. Mr. DelBene?

Ms. DelBene. Aye.

Ms. Deterding. Mr. DelBene votes aye.

Mr. Garcia?

Mr. Garcia. Aye.

Ms. Deterding. Mr. Garcia votes aye.

Mr. Jeffries?

Mr. Jeffries. Aye.

Ms. Deterding. Mr. Jeffries votes aye.

Chairman Goodlatte. The gentleman from Alabama.

Mr. Bachus. No.

Ms. Deterding. Mr. Bachus votes no.

Chairman Goodlatte. The gentleman from Virginia.

Mr. Forbes. No.

Ms. Deterding. Mr. Forbes votes no.

Chairman Goodlatte. Are there other members who wish to vote who have not voted?

The gentleman from Tennessee.

Mr. Cohen. Aye.

Ms. Deterding. Mr. Cohen votes aye.

Chairman Goodlatte. The clerk will report.

Ms. Deterding. Mr. Chairman, 9 members voted aye, 15 members voted nay.

Chairman Goodlatte. And the amendment is not agreed to.

Are there further amendments?

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

Chairman Goodlatte. The clerk will report the amendment.

Ms. Deterding. Amendment to H.R. 2655, offered by Mr. Jeffries of New York.

Add at the end of the bill the following:

[The amendment of Mr. Jeffries follows:]

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

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

Mr. Jeffries. Thank you, Mr. Chairman.

This amendment would exempt from the underlying bill all actions where serious bodily harm or wrongful death is alleged in the claim that is brought into Federal court through diversity jurisdiction. The second President of the United States, John Adams, observed in 1774 that the way to secure liberty is to place it in the people's hands; that is, to give them the power at all times to defend it in the legislature and in the courts of justice.

Unencumbered access to the civil justice system is essential to the integrity of our democracy. That is particularly the case when an individual has been seriously injured or killed and seeks access to the courts to determine if the negligent acts of another individual or entity resulted in the life-altering event. This amendment is designed to ensure that individuals who have been killed, brain damaged, maimed, blinded, lost a leg or arm, or otherwise experienced a life-altering injury have the opportunity to seek redress in the court system. Under these circumstances, we should not erect barriers that might impede the ability of anyone, particularly low-income individuals in both rural America or urban area, to secure legal representation. Our objective should be to discourage frivolous litigation. We should not discourage legal representation that otherwise would be provided by subjecting claimants or their counsel

to mandatory sanctions. Congress should seek to strengthen the civil justice system so that when merited all Americans, particularly the most vulnerable ones, have an opportunity for their day in court.

And I would simply add that as I understand it there is nothing in the current procedural landscape as it presently exists that would prevent a court from imposing sanctions. But they have the discretion to impose sanctions to the extent that they determine that a lawsuit is frivolous and it rises to the level of that sort of judicial action.

And so we have got judges that have been nominated by Republican Presidents and Democratic Presidents. We have got judges that have been confirmed by Republican majority-held Senates and Democratic majority-held Senates. And each of those Article 3 judges, with lifetime tenure, so that they are free of any outside political pressure, have the opportunity on a case-by-case basis to make a decision as to whether a frivolous lawsuit rises to the level of sanctions and what the extent of those sanctions should be. That is why in this instance I am urging the adoption of this amendment.

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

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

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Smith of Texas. Thank you, Mr. Chairman.

The Lawsuit Abuse Reduction Act makes important changes to rule 11 to significantly limit lawsuit abuse by imposing mandatory sanctions for bringing unjustified lawsuits. These changes apply to all cases

brought in Federal District Court. However, this amendment would change this. The amendment will adopt the changes to rule 11 made by LARA would not apply to certain suits brought pursuant to Federal diversity jurisdiction. There is no good reason, in my judgment, to make this exception. Tort cases brought pursuant to Federal diversity jurisdiction account for over 20 percent of all cases filed in Federal court each year. This amendment would exclude a significant percentage of these cases from coverage under rule 11.

Why should this committee adopt an amendment that excludes these cases from the bill's protections? The Supreme Court established long ago that Federal procedural rules, such as rule 11, apply in diversity cases. There is no reason to depart from this precedent in order to encourage the filing of unjustified lawsuits. The changes made by the Lawsuit Abuse Reduction Act should apply uniformly throughout the Federal courts. Because this amendment excludes certain diversity cases from the bill's coverage and, thereby, allows frivolous lawsuits to be filed in those cases without any of the penalties required by the bill, I must oppose the amendment.

Chairman Goodlatte. Would the gentleman yield?

Mr. Smith of Texas. I would be happy to yield to the chairman.

Chairman Goodlatte. I thank the gentleman for yielding. And I thank the gentleman from New York for expressing concern about protecting meritorious serious bodily harm and wrongful death cases brought before a Federal court. But I would note to the gentleman from Texas that the more time spent on frivolous suits, the less time the

court has to spend on meritorious cases involving serious bodily harm or wrongful death. And as a result, I would have to join the gentleman from Texas in opposing the amendment.

Who seeks time?

For what purpose does the gentleman from North Carolina seek recognition?

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

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Watt. Mr. Chairman, I want to be brief. But I want to raise a concern here that I think we have not taken into account. We all have our philosophical beliefs about various things. But when we take action, there are implications generally in the real world of what we do. For example, when we got infatuated with mandatory minimums and judges were raising concerns about it, a lot of them started finding ways around mandatory minimums, prosecutors started using their discretion in a different way.

I want to raise the concern that you may be, by passing this legislation, increasing the number of lawsuits that don't get categorized as "frivolous." By taking away the discretion that judges have, sometimes they declare a case marginal or even not at the margin frivolous because they don't have to impose sanctions. If you require a monetary sanction, I want to advance the concern that some of those cases judges are going to avoid imposing the sanction by deciding that the case, though marginal, is not frivolous; and you are going to have more of those kinds of decisions. So, you know, I don't know how this

cuts in this whole equation. But sometimes we just don't think about the logical consequences of what we are about here. And I have no beef to make for frivolous lawsuits. But to the extent that we put judges -- many of whom, most of whom have expressed their opposition to removing their discretion in a position where we remove their discretion, they may choose to exercise that discretion in a way that is counter to the objective that you are seeking in this legislation.

So I am just raising this. It marginally has to do with Mr. Jeffries' amendment. It had to do, to some extent, with the amendment that Mr. Conyers raised. I think we do our judicial system a disservice by not trusting judges to exercise discretion in individual cases in a way that the facts don't always follow our political philosophy or not follow our political philosophy to appear hard on frivolous cases or on other kinds of cases.

So I am going to support Mr. Jeffries' amendment. But I hope we are not setting ourselves up for more frivolous lawsuits having to be tried because we require judges to impose a monetary sanction on people. I just think that is a real concern.

Mr. Smith of Texas. Would the gentleman from North Carolina yield?

Mr. Watt. I am happy to yield to the former chair of this committee.

Mr. Smith of Texas. Thank you, Mr. Watt.

I want to say to the gentleman from North Carolina, I appreciate his nuanced points. And perhaps it would be helpful to him and helpful

to the members to know how Federal judges, themselves, felt about the rule 11 before the 1993 amendments. And according to a survey that I am looking at of Federal judges that dealt with rule 11 before the 1993 amendments, 80 percent believe that the pre-1993 version of rule 11 had an overall positive effect --

Mr. Watt. Well, let me reclaim my time.

Mr. Smith of Texas. -- and should not be changed.

Mr. Watt. If that is a current survey, it is certainly relevant. But having given the judges that discretion and having 10 years of experience under the other system, unless it is a current survey, I wouldn't give much credence to it.

Mr. Smith of Texas. Once again, who would be better qualified to sort of comment on the pre-1993 rule than the judges themselves who --

Mr. Watt. That is not the question I am raising. I am raising the question, when was the survey that you are citing done? Was it done in 1993?

Mr. Smith of Texas. It was a survey of judges taken before the 1993 --

Mr. Watt. That was in 1993.

Mr. Smith of Texas. And 80 percent were happy with the rule.

Mr. Watt. And 80 percent of them were happy with the ruling because that was the rule at that time. But for the last 10 years, my point is that has not been the rule. They have had the discretion. And Mr. Conyers has cited you to objections that the judges,

themselves, have raised now. Having given them that discretion and having them exercise that discretion for the last 10 years, you might well get an 80/20 split in the opposite direction, is the point I am making.

I yield back, Mr. Chairman, unless somebody else wants --

Chairman Goodlatte. The time of the gentleman has expired.

For what purpose does the gentleman from Michigan seek recognition?

Mr. Conyers. I rise in support of the Jeffries amendment.

Chairman Goodlatte. The gentleman is recognized for 5 minutes.

Mr. Conyers. Mr. Chairman and members of the committee, we have a survey of judges on rule 11, and 85 percent of the judges surveyed viewed groundless litigation as no more than a small problem in the courtroom. 91 percent opposed the proposed requirement that sanctions be opposed for every rule 11 violation. 91 percent strongly or moderately supported rule 11's safe harbor provision. And so I want to get back to -- an important consideration here is that we are going back to the 1983 rule if we don't get some serious modification in here. And one of the important points about Mr. Jeffries' amendment is that without this and some other corrections, this legislation is going to substantially increase the cost of litigation, and it is going to bear on the lower income plaintiff in a very, very negative way. It will create also more grounds for unnecessary delay and harassment in the courtroom. And so undoing the 1993 amendment would create a cure far worse than the problem that it intended to solve and, in addition,

contravenes longstanding Judicial Conference policy, opposing direct amendment to the Federal rules by legislation instead of through the careful deliberate process that we established in the Rules Enabling Act.

And so for those reasons, I strongly support the amendment. And I yield to Mr. Watt.

Mr. Watt. Well, I have now been provided a response to Mr. Smith's concern, his 1993 survey. In 2005, 84 percent disagreed with the proposition that an award of attorneys' fees should be mandatory for every rule 11 violation. That was 2005. Now we still don't know what the statistics are in 2013. But I think it bears a point. I mean, you know, we have given these judges discretion for the last 20 years now. The notion that a survey that was done in 1993, 20 years ago -- that is when I just got to Congress, by the way. You know, a lot has changed in 20 years.

Mr. Smith of Texas. If the gentleman would yield. What would be real interesting if we had a survey of judges who were on the bench before or after, not just one or the other. That would probably be more instructive.

Mr. Watt. I think some of these judges, in 2005, would have been on the bench both before and after.

Mr. Smith of Texas. That survey by the way had a very, very small sample of judges. I think it was 158 out of thousands. But in any case --

Mr. Watt. My point is, be careful in what you are asking for here

because you are inviting now judges at the margins to say, you know, I am not going to impose sanctions. If I have got to impose sanctions, monetary sanctions, and this is a marginally frivolous case, I am going to let the case go forward to keep from imposing sanctions because it is unfair. And that goes back to Mr. Gowdy's point, too. You know, it is a pain to do all these 1983 cases from prisoners. But what judge wants to impose a bunch of monetary sanctions on the guy that is sitting in prison that is going to be there for the next 50, 100 years? I mean, you know, who is going to want to do that in the real world? And the point I was making originally is, sometimes we forget that we operate in the real world.

I yield back to Mr. Conyers.

Mr. Conyers. Look, I am going to enter into the record the Committee on Rules of Practice and Procedure of the Judicial Conference who have come out against what it is we are proposing to do today in the House Judiciary Committee. It seems to me that it is this article, it is dated July 23, 2013. And it backs up arguments that have been made by those who are not anxious to move this proposal, H.R. 2655, forward. And I just hope that some of you who may be willing to support us would get a look at this because it is the judges, themselves, talking. This isn't an outside expert or a plaintiff's attorney or association of defendant of the bar. These are the judges that are telling us that this is a cure far worse than the problem that it is meant to serve. And it is in that spirit that I hope that the members here will undergo a careful consideration of what we are doing in this

measure before us.

I thank the chairman. My time has expired.

[The letter follows:]

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

Chairman Goodlatte. The chair recognizes himself in opposition to the amendment. The gentleman from Michigan has correctly noted the letter from the Judicial Conference of the United States. Unfortunately, the credibility of the Judicial Conference in opposing legislation coming through the Congress related to a Federal rule is severely damaged in my mind and in the mind of many others because of their longstanding policy cited, in fact, in this letter, of automatically -- automatically opposing any direct amendment of the Federal rules by legislation when, in fact, the Constitution provides to the elected Representatives of the people, the United States Congress, the constitutional authority to amend those rules.

So while I appreciate the input from the conference, as long as they have a policy of automatically opposing any initiative brought by any Member of Congress of any political party that thinks that we, the Representatives of people, acting on behalf of the people can have a better idea for amending those rules, I think their credibility in making these recommendations is harmed by taking that position.

So I will, again, join with the gentleman from Texas in opposing the amendment. But I also have to say that while I appreciate the input from the court, as long as they maintain that position of automatically opposing anything that we are constitutionally provided to undertake, that damages their credibility and the advice they give to Congress and, quite frankly, causes great concern to me about their interpretation of other sections of the United States Constitution.

Who seeks recognition?

Mr. Conyers. I wanted to --

Chairman Goodlatte. I yield to the gentleman.

Mr. Conyers. Yes. Thank you.

Ladies and gentlemen, the conference wasn't criticizing our ability to legislate as we do on constitutional matters. That is why they call this the Judiciary Committee. What the conference was taking exception to was the fact that we are now superimposing our legislation on the Judiciary Committee's recommendations of how they conduct their business.

Chairman Goodlatte. Reclaiming my time. Their language is very clear. And what they say is, they oppose direct amendment of the Federal rules by legislation without their approval first. That is exactly their point. Unless they tell us that they want a change in the rules of procedure, they are automatically going to oppose anything that the Congress -- not just the Judiciary Committee, but the entire Congress puts forward. Quite frankly, I think it is offensive. I think it is a bad position for them to take, and it damages their credibility in offering their views and I respect their views on the underlying substance of any rule that we offer. That is contained and specifically cited in their letter.

Mr. Johnson. Would the gentleman yield?

Chairman Goodlatte. I would be happy to yield to the gentleman from Georgia.

Mr. Johnson. Could it not be that the Judicial Conference, in its management of the affairs of the court, thinks that it should have

a voice before Congress rules with new legislation?

Chairman Goodlatte. Reclaiming my time, I think they definitely should have a voice. And I would be more willing to listen to them if they said, In addition to our other concerns, we automatically oppose this because we have not first called for it ourselves.

Mr. Issa. Would the gentleman further yield?

Chairman Goodlatte. I would be happy to yield to the gentleman from California.

Mr. Issa. Being a non-attorney on the court, but trying to understand --

The conference, itself, is made up, with the exception of the Supreme Court. All the other courts are courts created by this committee, are they not?

Chairman Goodlatte. They are, indeed.

Mr. Issa. So the rules they are making are, by definition, rules that we allow them to make or don't allow them to make by past Judiciary Committee decisions; isn't that true?

Chairman Goodlatte. That is correct.

Mr. Issa. As I join with the gentleman in the concern that the body that created the conference itself and created their ability to make rules, by definition, is being questioned if we want to further define that.

Last question, isn't it true that every court could be eliminated, except the Supreme Court, by an act of Congress?

Mr. Johnson. Well, I don't think it could.

Mr. Issa. I was speaking to the chairman.

Mr. Johnson. If I might answer --

Mr. Issa. I am not suggesting it, Mr. Chairman.

Mr. Johnson. What would that do to our delicate balance of power?

Chairman Goodlatte. While my time remains, I just want to call the attention to members that we have a vote that just began. I am happy to continue the debate after the votes. But it is possible, since this is to my knowledge the last amendment, that we can get to a final vote on the bill.

Mr. Issa. I think the chairman made his point. And I yield.

Chairman Goodlatte. Who seeks recognition?

The gentleman from Florida is recognized for 5 minutes.

Mr. Garcia. Mr. Chairman, I yield the time to Mr. Jeffries.

Mr. Jeffries. I thank my good friend from Florida. And in recognition of the fact that votes have been called, I just want to make the observation, I thank the distinguished ranking member as well as Representative Watt for their observations. And just say that I think Congressman Watt, with his analogy, as it relates to what we reacted to when we imposed mandatory minimums, is an atmosphere and an environment where many are often responding to an extreme case in the criminal justice space often that was an extreme crime that occurred that any decent human being would conclude was egregious and requires some sort of response. But what is irresponsible is when -- perhaps as a result of the passions of the people, and I get that in the constitutional fabric, that is the charge that was given to us by this

House of Representatives and the other side of the Congress is supposed to cool those passions. But I do think it would be responsible of us not always to react to an extreme case in the criminal justice context or in the civil justice context. The distinguish chairman did raise some cases that I think any reasonable American would find egregious and/or frivolous. But that doesn't mean that those individual extreme cases should merit a wholesale intrusion into the civil procedure process, stripping away the discretion of the independent judiciary.

Mr. Conyers. Would the gentleman yield?

Mr. Garcia. I yield to Mr. Conyers.

Mr. Conyers. We have an enabling act that allows us to permit the judiciary to create its rules. We do not have anything, nor would we stand for the Judiciary Committee to determine rules that would control or guide the Congress. And so we are in here, members, with an issue of separation of powers. And for us now to come back and say, after we give them the ability to create their own rules in their conference, we now say, how dare you try to stop us when we think we know what kind of rules you ought to have in the first instance. And so I think it all underscores the fact that we are worsening this rule rather than improving it. Please, let us support the Jeffries amendment, at least.

Thank you for yielding.

Mr. Gowdy. Would the gentleman from Florida yield?

Mr. Garcia. If I have got time, absolutely, Mr. Gowdy.

Mr. Gowdy. Just very briefly, Mr. Chairman. As Mr. Conyers was

talking, I thought of all the limitations we currently face on the courts. We limit the jurisdiction. We limit the mandatory sentence. We limit the mandatory minimum, the maximum, the dollar amount in controversy. But Mr. Chairman, what all was most probative was the second sentence in rule 11. It contains the word "must." In fact, the word "must" is used 11 different times in rule 11. The word "may" is only used a couple of times. But the second clause in rule 11 says, "absent exceptional circumstances, a law firm must be held jointly responsible for a violation." So if the word "must" is good enough for the second sentence in rule 11, why is it not good enough for the first sentence in rule 11?

And with that, I would yield back.

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

All those in favor respond by saying aye.

Those opposed, no.

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

Mr. Jeffries. Mr. Chairman, I ask for a recorded vote.

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

Ms. Deterding. Mr. Goodlatte?

Chairman Goodlatte. No.

Ms. Deterding. Mr. Goodlatte votes no.

Mr. Sensenbrenner?

[No response.]

Ms. Deterding. Mr. Coble?

Mr. Coble. No.

Ms. Deterding. Mr. Coble votes no.

Mr. Smith of Texas?

Mr. Smith of Texas. No.

Ms. Deterding. Mr. Smith of Texas votes no.

Mr. Chabot?

Mr. Chabot. No.

Ms. Deterding. Mr. Chabot votes no.

Mr. Bachus?

Mr. Bachus. No.

Ms. Deterding. Mr. Bachus votes no.

Mr. Issa?

Mr. Issa. No.

Ms. Deterding. Mr. Issa votes no.

Mr. Forbes?

[No response.]

Ms. Deterding. Mr. King?

Mr. King. No.

Ms. Deterding. Mr. King votes no.

Mr. Franks?

Mr. Franks. No.

Ms. Deterding. Mr. Franks votes no.

Mr. Gohmert?

[No response.]

Ms. Deterding. Mr. Jordan.

[No response.]

Ms. Deterding. Mr. Poe?

[No response.]

Ms. Deterding. Mr. Chaffetz?

[No response.]

Ms. Deterding. Mr. Marino?

Mr. Marino. No.

Ms. Deterding. Mr. Marino votes no.

Mr. Gowdy?

Mr. Gowdy. No.

Ms. Deterding. Mr. Gowdy votes no.

Mr. Amodei?

Mr. Amodei. No.

Ms. Deterding. Mr. Amodei votes no.

Mr. Labrador?

[No response.]

Ms. Deterding. Mr. Farenthold?

Mr. Farenthold. No.

Ms. Deterding. Mr. Farenthold votes no.

Mr. Holding?

Mr. Holding. No.

Ms. Deterding. Mr. Holding votes no.

Mr. Collins?

[No response.]

Ms. Deterding. Mr. DeSantis?

Mr. DeSantis. No.

Ms. Deterding. Mr. DeSantis votes no.

Mr. Smith of Missouri?

Mr. Smith of Missouri. No.

Ms. Deterding. Mr. Smith of Missouri votes no.

Mr. Conyers?

Mr. Conyers. Aye.

Ms. Deterding. Mr. Conyers votes aye.

Mr. Nadler?

[No response.]

Ms. Deterding. Mr. Scott?

Mr. Scott. Yes.

Ms. Deterding. Mr. Scott votes aye.

Mr. Watt?

Mr. Watt. Aye.

Ms. Deterding. Mr. Watt votes aye.

Ms. Lofgren?

[No response.]

Ms. Deterding. Ms. Jackson Lee?

[No response.]

Ms. Deterding. Mr. Cohen?

[No response.]

Ms. Deterding. Mr. Johnson?

Mr. Johnson. Aye.

Ms. Deterding. Mr. Johnson votes aye.

Mr. Pierluisi?

Mr. Pierluisi. Aye.

Ms. Deterding. Mr. Pierluisi votes aye.

Ms. Chu?

Ms. Chu. Aye.

Ms. Deterding. Ms. Chu votes aye.

Mr. Deutch?

[No response.]

Ms. Deterding. Mr. Gutierrez?

[No response.]

Ms. Deterding. Ms. Bass?

[No response.]

Ms. Deterding. Mr. Richmond?

[No response.]

Ms. Deterding. Mr. DelBene?

Ms. DelBene. Aye.

Ms. Deterding. Mr. DelBene votes aye.

Mr. Garcia?

Mr. Garcia. Aye.

Ms. Deterding. Mr. Garcia votes aye.

Mr. Jeffries?

Mr. Jeffries. Aye.

Ms. Deterding. Mr. Jeffries votes aye.

Chairman Goodlatte. The gentleman from Virginia.

Mr. Forbes. No.

Ms. Deterding. Mr. Forbes votes no.

Chairman Goodlatte. The gentleman from Utah.

Mr. Chaffetz. No.

Ms. Deterding. Mr. Chaffetz votes no.

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

The gentleman from Texas.

Mr. Poe. No.

Ms. Deterding. Mr. Poe votes no.

Mr. Chairman, 9 members voted aye; 18 members voted nay.

Chairman Goodlatte. And the amendment is not agreed to.

Are there any other amendments?

A reporting quorum being present, the question is on the motion to report the bill, H.R. 2655, favorably to the House.

Those in favor will say aye.

Those opposed no.

In the opinion of the chair, the ayes have it. And the bill is ordered reported favorably.

For what purpose does the gentleman from Michigan seek recognition?

Mr. Conyers. I think we ought to have a record vote on this.

Chairman Goodlatte. A recorded vote is requested.

The clerk will call the roll.

Ms. Deterding. Mr. Goodlatte?

Chairman Goodlatte. Aye.

Ms. Deterding. Mr. Goodlatte votes aye.

Mr. Sensenbrenner?

[No response.]

Ms. Deterding. Mr. Coble?

Mr. Coble. Aye.

Ms. Deterding. Mr. Coble votes aye.

Mr. Smith of Texas?

Mr. Smith of Texas. Aye.

Ms. Deterding. Mr. Smith of Texas votes aye.

Mr. Chabot?

Mr. Chabot. Aye.

Ms. Deterding. Mr. Chabot votes aye.

Mr. Bachus?

Mr. Bachus. Aye.

Ms. Deterding. Mr. Bachus votes aye.

Mr. Issa?

Mr. Issa. Aye.

Ms. Deterding. Mr. Issa votes aye.

Mr. Forbes?

Mr. Forbes. Aye.

Ms. Deterding. Mr. Forbes votes aye.

Mr. King?

Mr. King. Aye.

Ms. Deterding. Mr. King votes aye.

Mr. Franks?

Mr. Franks. Aye.

Ms. Deterding. Mr. Franks votes aye.

Mr. Gohmert?

[No response.]

Ms. Deterding. Mr. Jordan.

[No response.]

Ms. Deterding. Mr. Poe?

[No response.]

Ms. Deterding. Mr. Chaffetz?

Mr. Chaffetz. Aye.

Ms. Deterding. Mr. Chaffetz votes aye.

Mr. Marino?

Mr. Marino. Yes.

Ms. Deterding. Mr. Marino votes aye.

Mr. Gowdy?

Mr. Gowdy. Yes.

Ms. Deterding. Mr. Gowdy votes aye.

Mr. Amodei?

Mr. Amodei. Yes.

Ms. Deterding. Mr. Amodei votes aye.

Mr. Labrador?

[No response.]

Ms. Deterding. Mr. Farenthold?

Mr. Farenthold. Aye.

Ms. Deterding. Mr. Farenthold votes aye.

Mr. Holding?

Mr. Holding. Aye.

Ms. Deterding. Mr. Holding votes aye.

Mr. Collins?

[No response.]

Ms. Deterding. Mr. DeSantis?

Mr. DeSantis. Aye.

Ms. Deterding. Mr. DeSantis votes aye.

Mr. Smith of Missouri?

Mr. Smith of Missouri. Aye.

Ms. Deterding. Mr. Smith of Missouri votes aye.

Mr. Conyers?

Mr. Conyers. No.

Ms. Deterding. Mr. Conyers votes no.

Mr. Nadler?

[No response.]

Ms. Deterding. Mr. Scott?

Mr. Scott. No.

Ms. Deterding. Mr. Scott votes no.

Mr. Watt?

Mr. Watt. No.

Ms. Deterding. Mr. Watt votes no.

Ms. Lofgren?

[No response.]

Ms. Deterding. Ms. Jackson Lee?

[No response.]

Ms. Deterding. Mr. Cohen?

[No response.]

Ms. Deterding. Mr. Johnson?

Mr. Johnson. No.

Ms. Deterding. Mr. Johnson votes no.

Mr. Pierluisi?

Mr. Pierluisi. No.

Ms. Deterding. Mr. Pierluisi votes no.

Ms. Chu?

Ms. Chu. No.

Ms. Deterding. Ms. Chu votes no.

Mr. Deutch?

[No response.]

Ms. Deterding. Mr. Gutierrez?

[No response.]

Ms. Deterding. Ms. Bass?

[No response.]

Ms. Deterding. Mr. Richmond?

[No response.]

Ms. Deterding. Mr. DelBene?

Ms. DelBene. No.

Ms. Deterding. Mr. DelBene votes no.

Mr. Garcia?

Mr. Garcia. No.

Ms. Deterding. Mr. Garcia votes no.

Mr. Jeffries?

Mr. Jeffries. No.

Ms. Deterding. Mr. Jeffries votes no.

Chairman Goodlatte. The gentleman from Texas.

Mr. Poe. No.

Ms. Deterding. Mr. Poe votes no.

Chairman Goodlatte. Are there any other members who have not voted who wish to vote?

The clerk will report.

Ms. Deterding. Mr. Chairman, 17 members voted aye; 10 members voted nay.

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

Members will have 2 days to submit views.

Without objection, the bill will be reported.

The chair thanks all the members of the committee. And the markup is adjourned.

[Whereupon, at 2:30 p.m., the committee was adjourned.]