

RPTS KESTERSON

DCMN BURRELL

MARKUP OF H.R. 3195, ADA
RESTORATION ACT OF 2007, AND
H.R. 3546, TO AUTHORIZE THE
EDWARD BYRNE MEMORIAL JUSTICE
ASSISTANCE GRANT PROGRAM AT FISCAL
YEAR 2006 LEVELS THROUGH 2012

Wednesday, June 18, 2008

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

The committee met, pursuant to call, at 10:25 a.m., in Room 2141, Rayburn House Office Building, Hon. John Conyers, Jr. [chairman of the committee] presiding.

Present: Representatives Conyers, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Delahunt, Sanchez, Cohen, Johnson, Sutton, Sherman, Baldwin, Davis, Wasserman Schultz,

Ellison, Smith, Sensenbrenner, Coble, Gallegly, Goodlatte, Chabot, Cannon, Keller, Issa, Forbes, King, Feeney, Franks, Gohmert, and Jordan.

Staff Present: Perry Apelbaum, Staff Director/Chief Counsel; Ted Kalo, General Counsel/Deputy Staff Director; George Slover, Legislative Counsel/Parliamentarian; Sean McLaughlin, Minority Chief of Staff/General Counsel; Allison Halataei, Minority Deputy Chief of Staff/Parliamentarian; and Anita L. Johnson, Clerk.

Chairman Conyers. Good morning. The committee will come to order. Pursuant to notice, I call up H.R. 3195, the ADA Restoration Act. The Clerk will report the bill.

The Clerk. H.R. 3195, a bill to restore the intent and protections of the Americans With Disabilities Act of 1990.

[The information follows:]

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

Chairman Conyers. Without objection, the bill is considered as read, open for amendment at any point. And I will ask the chairman of the Constitution Committee to begin our discussion.

Mr. Nadler. Thank you, Mr. Chairman. I want to commend you for your efforts to bring this legislation forward today. This is truly a historic moment.

As I was saying, the Americans with Disabilities Act is a success story, but it is also a promise that is yet to be fulfilled: Its coverage and its enforcement of unimpaired, full access to American life. I believe we have waited long enough and we really cannot afford to let these problems go unaddressed.

Although it often gets lost in the debate, the ADA is a civil rights bill. It is often treated as if it is something else. Perhaps that is because unlike many civil rights laws, this one requires people to spend money and make an effort, albeit modest, to do what is right.

I have very little sympathy for complaints about these required efforts. No business would make its customers climb a rope to make a purchase. Businesses provide elevators and a variety of other means to bring customers in. Yet when it comes to people who need other ways to enter the building, all of a sudden it is a huge problem.

That is just wrong.

The same is true in employment. This society is poor when it fails to take full advantage of all of the talents of all of its members. If not in the name of simple decency and justice, then in the name of rational self-interest, we must ensure that the promise of the ADA is fulfilled.

Unfortunately, the Supreme Court has gone out of its way to undermine the clear intent of Congress. The Court has erected a monstrous Catch-22 in which an individual can face discrimination on the basis of an actual past or perceived disability and yet be deemed not sufficiently disabled to deserve a legal remedy. That defies logic, reason and the plain text of the ADA. Where in the act does it say, as the Court has said, that, quote, mitigating measures, unquote, must be taken into account when determining whether an individual is disabled?

In fact, Congress said just the opposite. The report on the original ADA said, quote, whether a person has a disability should be assessed without regard to the availability of mitigating measures. For example, a person who is hard of hearing is substantially limited in the major life activity of hearing, even though the loss may be corrected through the use of a hearing aid. Likewise, persons with impairments such as epilepsy or diabetes which substantially limit a major life activity are covered under

the first prong of the definition of disability, even if the effects of the impairment are controlled by medication, closed quote.

That is from the ADA. Somehow Congress -- somehow that language was not clear enough for the Court. As a result, the courts deem people with a variety of disabilities not to be disabled. The ADA Amendments Act, which is before us today, which was introduced by our distinguished majority leader, Mr. Hoyer, and by the gentleman from Wisconsin, Mr. Sensenbrenner, is necessary to make clear to the Court that we really meant what we said.

This bill deals specifically with the definition of who is disabled. This is a basic threshold question. It was never intended to be a high bar that could be used to deny protection. It was never the intent of Congress to force people to litigate over whether or not they are disabled. The question should be whether you are qualified for the job and whether there was discrimination. This bill before us today does not deal with whether the individual meets the requirements of the job, with whether an accommodation is reasonably available, with whether it is possible to make a building accessible or with any other such question. Those parts of the law will remain unchanged.

This bill would simply make it clear that this law covers everyone, with an actual past or perceived

disability. Those people who are discriminated against because of an actual past or perceived disability will now have the opportunity to make their case. It makes no sense to exclude from the ADA's coverage people who suffer discrimination on the basis of a disability. The purpose of this bill is to remedy that irrational quirk in the law created by the Court and return the Americans with Disabilities Act to Congress' original intent.

This bill has broad bipartisan support and the substitute we will consider today is the result of months of careful negotiation between disability rights advocates and the business community. It represents a compromise and takes into accounts the needs and concerns of all the stakeholders. While these changes are long overdue, they are also especially timely. Thousands of our men and women in uniform are returning home with serious injuries, including the loss of limbs, head trauma, damage to their vision and their hearing and a variety of other life altering injuries. We cannot stand by and allow them to come home to face discrimination without any legal remedy. Anyone who has ever made a speech about supporting our troops should have a special interest in the passage of this bill. We owe these young Americans no less.

Mr. Chairman, I thank you for bringing this bill forward. I urge my colleagues to give it their full

support, and I yield back the balance of my time.

Chairman Conyers. Thank you, Mr. Nadler. The Chair wants to observe that after discussions with Darrell Issa, we are including important report language about the doorknob circumstances that he has been ranting about for 13 years. So I wish him to rest more comfortably.

Mr. Issa. Thank you, Mr. Chairman. And I would ask unanimous consent that I be able to put additional information in the record at this time that would be germane to that period of about 7-1/2 years that I have been asking for better ADA compliance within the House of Representatives. And I thank you, Mr. Chairman.

[The information follows:]

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

Chairman Conyers. Without objection. We recognize now the ranking member of the Judiciary Committee, Mr. Smith.

Mr. Smith. Thank you, Mr. Chairman. The Americans with Disabilities Act, enacted almost 18 years ago, removed many physical barriers disabled people faced in their daily lives. It also helped remove the mental barriers that often prevented nondisabled Americans from looking beyond wheelchairs and walking canes and seeing disabled Americans as the friends and coworkers that they are.

When the ADA was originally enacted in 1990, it was a result of bipartisan efforts in Congress. So I am pleased that various interested parties have been able to reach agreement on language which is embodied in the manager's amendment that will be offered shortly and that I support. I also support the compromise and believe it was reached in good faith.

However, I do have some concerns regarding how the courts could interpret the legislative language we will consider today. So let me express what I believe to be the nature and import of this new manager's amendment text. Excuse me.

First, the common understanding in Congress is that this legislation would simply restore the original intent of the ADA by granting the statutory text in line with the

legislative history of the original ADA. That legislative history from both the House Education and Labor and Senate committees' reports provided that, quote, persons with minor trivial impairments such as a simple infected finger are not impaired in a majority life activity, end quote. And consequently, those that had such minor, trivial impairments would not be covered by the ADA. I believe that understanding is entirely appropriate, and I would expect the courts to agree with and apply that interpretation. If that interpretation were not to hold but were to be broadened improperly by the judiciary, an employer would be under a Federal obligation to accommodate people with stomach aches, a common cold, mild seasonal allergies or even a hangnail.

So I want to make clear that I believe that the drafters and supporters of this legislation, including myself, intend to exclude minor and trivial impairments from coverage under the ADA, as they have always been excluded.

Second, the Supreme Court in *Toyota Motor Manufacturing v. Williams* held that under the original ADA, quote, the impairment's impact must also be permanent or long term, end quote. While the findings in the language before us today state that the purpose of the legislation is to provide a new definition of "substantially limits" to indicate that Congress intends to depart from the strict and demanding

standard applied by the Supreme Court in Toyota Motor Manufacturing, I understand that this finding is not meant to express disagreement with or to overturn the Court's determination that the ADA apply only to individuals with impairments that are permanent or long term. If these understandings of the language before us today do not prevail, the courts may be flooded with frivolous cases brought by those who are not intended to be protected under the original ADA. If that happens, those who would have been clearly covered under the original ADA, such as paralyzed veterans or the blind, will be forced to wait in line behind thousands of others filing cases regarding minor or trivial impairments.

I don't believe anyone supporting this new language wants that to happen, and I want to make that clear for the record. With the understandings that I have expressed, I strongly support the Americans with Disabilities Act, Restoration Act.

I yield the balance of my time, Mr. Chairman. If I have another amendment -- or may I ask unanimous consent for an additional amendment and yield back to the ranking member of the Constitution Subcommittee, the gentleman from Arizona, Mr. Franks.

[The information follows:]

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

Chairman Conyers. Without objection.

Mr. Franks. Well, thank you, Mr. Chairman, and I thank the ranking member. Mr. Chairman, I just want to express my own support for the Americans with Disabilities Act. For too long the members of the disabled community were forced to cope not only with their own disabilities, but with the invidious discrimination practiced by others. And Congress rightfully corrected this injustice in 1990 when it passed the Americans with Disabilities Act. And the original ADA defined disability as a physical or mental impairment that substantially limits one or more of the major life activities of such an individual, a record of such impairment or being regarded as having such impairment.

In 1999, the Supreme Court handed down three cases on the same day that addressed the meaning of this definition. And those three cases and another more recent case were all decided either unanimously or by a vote of 7 to 2. But they were understood in many quarters to have too stringently interpreted the text of the ADA such that many people who should have been protected under the ADA as disabled were not. And because I am sympathetic to that position, I am a cosponsor of H.R. 3195.

But as I said at the Constitution Committee hearing on the legislation last year, I have concerns with 3195 as

introduced, as it may have gone beyond what the sponsors of the bill were intending. I am pleased, therefore, that the U.S. Chamber of Commerce and various organizations representing the disability community have come together and crafted language that I can support and that such language will be offered in the form of a manager's amendment.

I want to associate myself again with the comments made regarding this legislation by Ranking Member Lamar Smith. And that said, I support the underlying text and the manager's amendment and yield back.

Thank you.

Chairman Conyers. Thank you both. We appreciate that. All the other opening statements will be included in the record.

I have a manager's amendment at the desk and ask the Clerk to report it.

The Clerk. Amendment in the nature of a substitute to H.R. 3195 offered by Mr. Conyers and Mr. Sensenbrenner. Strike all after the enacting clause and insert the following: Section 1, short title --

[The information follows:]

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

Chairman Conyers. Without objection, the amendment will be considered as read. And I merely want to thank all the members of this committee that have worked on this measure for so long. Several months in crafting this manager's amendment, there were admittedly several difficulties, but I think they have been met and overcome.

Last October, the Constitution Subcommittee had several witnesses who came forward and supported the bill, but others representing employers and businesses expressed concern that the bill as introduced was not as narrowly tailored as it could be and might impose unnecessary or unforeseen compliance burdens. And so over that period of time, members on both sides of the aisle on this committee have worked with disability and business communities alike to find a fair balance, and I think that is what is achieved in this manager's amendment.

What we do is achieve some balance in clarifying the definition of disability to restore Congress' intended protection for the broad range of individuals with disabilities. It overturns the Supreme Court holding that a person can't qualify as disabled if he or she is managing the disability with mitigating measures such as medicine, hearing aids, prosthetic devices or other measures that would help lessen the impact of the impairment. The law

should encourage individuals to manage their impairments if they can, not penalize them for doing so. So that is the first thing that we correct in the manager's amendment by mutual agreement.

Then the substitute before you clarifies that it is sufficient for coverage that a disability materially restricts, quote, a major life activity. In other words, the disability need not completely prevent or severely restrict the individual's performance of the activity.

And lastly, this substitute clarifies the law's coverage of discrimination against an individual based on his or her being regarded as having an impairment. The point of this third item is that it ensures that, as Congress originally intended, individuals who suffer discrimination because of unfounded concerns or stereotypes or prejudices about disabilities are protected. To respond to concerns that this clarification could give rise to claims brought by individuals with minor ailments, things like a cold or such, the substitute provides a limited exception, and Lamar Smith has referenced this, making it clear that such an individual is not covered if the impairment is minor.

So with those thanks, I would now turn to the chairman emeritus, Jim Sensenbrenner of Wisconsin, who has worked, I think, on the original legislation of this kind and I

recognize him now.

Mr. Sensenbrenner. Mr. Chairman, I rise in support of the substitute.

Chairman Conyers. The gentleman is recognized.

Mr. Sensenbrenner. Mr. Chairman, one of our finest moments occurred 18 years ago when President George H.W. Bush signed the ADA into law. It was with that stroke of a pen that this country took a significant step forward in eliminating the barriers that far too long kept disabled Americans from fully participating in the American dream.

Prior to the Americans with Disabilities Act of 1990, disabled Americans faced not only physical barriers in almost all aspects of society, but also attitudinal barriers which relegated them to a form of second-class citizenship. Moreover, because Federal and State laws were ill-equipped to protect disabled Americans at the time, these false stereotypes and discriminatory treatment employed by others created a vicious cycle.

Last summer I joined my friend, Majority Leader Steny Hoyer, to introduce the ADA Restoration Act, or ADARA. The bipartisan legislation we introduced quickly garnered nearly 250 cosponsors. We introduced ADARA to enable disabled Americans utilizing the ADA to focus on the discrimination that they have experienced rather than first having to prove that they fall within the scope of the ADA's protection.

With this bill, the ADA's clear and comprehensive national mandate for the elimination of discrimination on the basis of disability would be properly restored and the ADA can rightfully reclaim its place among our Nation's civil rights laws.

ADARA was originally drafted as a response to a number of Supreme Court cases that chipped away at the broad protections of the ADA. The impact of these decisions has been to exclude millions of disabled workers from the ADA's protections and requirements for employers. Let me say that again. Millions of Americans who want to work and who are otherwise intended by Congress to be able to work free from discrimination have had the door slammed in their faces because of these decisions. The courts have created a situation in which disabled Americans can now be discriminated against by their employers because of their impairment, but these citizens are not considered disabled enough by our Federal courts to invoke the protections of the ADA.

This is unacceptable. No other civil rights law, including title VII of the Civil Rights Act of 1964, requires a victim of discrimination to first prove that he or she is worthy of the law's protection before proving a discrimination case. And nor should the ADA require such proof. The ADA is a civil rights law and should be

interpreted as such.

The substitute amendment that I am joining Chairman Conyers in offering reflects a hard fought compromise between members of the disability community and members of the business community. By its very nature, no one is completely satisfied with the compromise. Both sides made concessions to the other during the arduous negotiations.

As the original ADA that passed Congress in 1990, the substitute keeps the requirement that an impairment must substantially limit a major life activity in order to be considered a disability. As written, ADARA would have broadened the definition of disability. The compromise defines "substantially limits" as, quote, materially restricts, and contains explicit language rejecting the Supreme Court's more restrictive interpretation.

The substitute also contains a nonexhaustive list of examples of major life activities that further notes that major life activities also include major bodily functions and contains a nonexhaustive list of examples of major bodily functions. The substitute amendment contains language making it clear that the "regarded as" prong of the definition covers situations in which an employee is discriminated against because of his or her actual or perceived impairment, whether or not the impairment is perceived as substantially limiting of major life activity.

"Regarded as" would not apply to transitory and minor impairments where an impairment is considered as transitory if it has an expected duration of 6 months or less.

Accommodations need not be made to someone who is disabled solely because he or she is regarded as disabled. The ADA has been one of the most effective civil rights laws passed by Congress. This continued effectiveness is paramount to ensuring that the transformation that our Nation has undergone continues in the future and that the guarantees and promises on which this country was established continue to be recognized on behalf of all of our citizens.

The substitute before us today is the result of hard work and countless good hours or hours of good faith negotiation between staff, disability advocates and business groups. I look forward to its passage by the committee today and expect bipartisan support broadly when the bill reaches the House floor.

Finally, if I may have an additional minute or so, I would like to pay tribute to my wife Cheryl, who is sitting in the front row. She is the --

Chairman Conyers. Without objection, so ordered.

Mr. Sensenbrenner. Thank you. She is the national chairman of the board of the American Association of Disabled Persons and has been not only on my case to get

this bill in shape to pass, but on the backs of many people on both sides of the aisle who have gotten to know her and respect her over the years. I would like to thank Cheryl for sensitizing me and perhaps other members of the committee to what life is like as a disabled person, and I would encourage a quick passage of this bill over in the Senate so she can start bugging them. And I thank the chairman.

Chairman Conyers. Thank you very much.

Mr. Gallegly. Would the gentleman yield for 5 seconds?

Mr. Sensenbrenner. I yield.

Mr. Gallegly. I would just ask that perhaps Cheryl would be kind enough to maybe give us a 10-minute briefing on how she was able to do that.

Mr. Sensenbrenner. Reclaiming my time, it would take longer than 10 minutes. And I yield back.

Chairman Conyers. Are there any further discussion about the manager's amendment?

Ms. Jackson Lee. Mr. Chairman.

Chairman Conyers. Yes, the gentlelady from Texas, Sheila Jackson Lee.

Ms. Jackson Lee. I thank you very much, Mr. Chairman. And I am personally delighted to see Ms. Sensenbrenner here knowing the advocacy she has offered for this issue. And I do want to acknowledge the very difficult and I would add

tension-filled dilemma between the business community and, of course, the disabled community, both in terms of physical and mental challenges. But let me just say this. I will vote for the negotiated compromise. But this is the restoration of rights and I have seen more often than not the impact, the negative impact of the restraining or the restricting of the rights of those who are challenged. And I guess it is the metaphor or the phrase no one knows until they walk a mile or sit a mile or understand the mile of those who are challenged. And the restoration act was meant to do just that, to restore the rights, to indicate that disability means a physical or mental impairment, a record of a mental or physical impairment being regarded as having a mental or physical impairment without restrictions, without the heavy hand of business, an employer, financial assessments being made as to whether or not you deserve or don't deserve to be treated as such. It also was to use the language "substantially limits" and the original language was no need to consider whether the impairment substantially limits the individual in any fashion because I don't know if there is anyone that wants to voluntarily be in a disabled condition. And of course, some will argue that there are those who want to misrepresent. But the ones that have come into my office, my congressional office, my district office who need assistance for whatever reason are coming with the

kind of sincerity and challenges that we should look head on and try to address.

I think the other aspect is the major life activity where the original bill said no need to consider whether the impairment substantially limits a major life activity of the individual. Maybe it is because we thought it was obvious. But I know that we have to walk a line where we get -- where we can get the ADA Restoration Act passed, and I do want to congratulate the proponents of the negotiated compromise and the manager's amendment because they probably had a difficult challenge to achieve. But to the disabled community, those who suffer from mental disabilities and more and more of them will be coming back, though they may be veterans, but they will be in the mix of our communities because many of them will have been returning Iraq and Afghanistan veterans having their own separate line of benefit, but still impacting their families.

To those in the ADA community, let me thank you for your advocacy, because you are fighting for those who cannot speak for themselves. And we should define this as having no shame for the disability that you have and that you continue to fight for.

Mr. Chairman, I support the manager's amendment with my own qualification, of wishing it was restored as the original language, but respecting the need for the

compromise and hoping that it are work for the many millions of those who are disabled not of their own choice.

I yield back.

Chairman Conyers. Thank you.

Ms. Wasserman Schultz. Mr. Chairman.

Chairman Conyers. Who seeks? Yes. The gentlelady from Florida is recognized.

Ms. Wasserman Schultz. Thank you, Mr. Chairman. And I move to strike the last word.

Chairman Conyers. Without objection.

Ms. Wasserman Schultz. Thank you very much. I commend the majority leader and our former chairman, Mr. Sensenbrenner, for this long overdue and badly needed legislation. But I do want to state that I think that we are missing an opportunity in this legislation to address a glaring problem with the Americans with Disabilities Act in that in some States like mine, small businesses in particular are being overrun with frivolous lawsuits filed against them in which they have no opportunity to take corrective action for the inconsequential violation of the ADA. And as a result, you have a piece of the trial bar that has sprung up as a cottage industry that is solely in business to pursue complaints against small businesses in the hopes and likelihood of recovering damages and attorney's fees between 3 and \$5,000 per violation with

really no choice for the small business but to settle because there is no opportunity for corrective action before that case reaches its conclusion.

And so, for example, in Miami, we have one attorney who filed 700 cases in a 3-year period, typically settling each case for 3 to \$5,000 in attorney's fees and a promise to remedy the violation when, you know, the vast majority of these small businesses earnestly want to make sure that they are compliant, rely upon their contractors to assure them that they are compliant, only to have an attorney come in later on and find an incidental violation that was unintentional. And instead of litigating it all out to the end, they end up finding themselves in a situation where they have to settle for a pretty good chunk of change. And all they really wanted to be able to do was make sure that their business was compliant.

And I think there is an opportunity in this legislation as we move forward to reach a compromise. There are various proposals out there that we could deal with this issue. I think it is one that we need to strike a balance. As someone who has a reputation of being a very strong supporter of the trial bar, this is one area where I think we need to strike a balance, and I would urge the sponsors of the legislation as we move forward and the disability community with whom I have had a longstanding alliance to

work together to address this oversight in this long needed, badly needed legislation.

Thank you. I yield back the balance of my time.

Chairman Conyers. I want to thank the gentlelady for bringing this into sharp focus, and we are going to examine what can be done between now and the time we go to conference and in conference itself.

Ms. Wasserman Schultz. Thank you very much.

Mr. Keller. Mr. Chairman, move to strike the last word.

Chairman Conyers. Yes, Ric Keller of Florida is recognized.

Mr. Keller. Thank you, Mr. Chairman. I would like to follow up on the comments from my friend and colleague from Florida, Ms. Wasserman Schultz, which I concur in completely. I have actually offered that legislation of which she mentioned. It is H.R. 3479, the ADA Notification Act. And I concur in her sentiments that this is a challenge that needs to be addressed. I did not offer that as an amendment today, and I will just be frank and tell you why.

My good friend and colleague, former Chairman Sensenbrenner, has spent so much time and effort over the years in negotiating this fragile compromise with Mr. Hoyer that I did not want to do anything that would upset all the

hard work that has been put into it. But hopefully by bringing this issue to light we can resolve it in a way that is acceptable to everybody.

Here is the problem. Someone goes into a family restaurant in central Florida, a small mom and pop restaurant, they walk up to the stall, they are working for a law firm and they measure the safety bar in the disability stall and they see that it is a quarter inch too high. They then go back to the attorney that they work for. It might be the attorney that has already filed 700 of these lawsuits. And he files a letter with the employer saying I am going to sue you for injunctive relief and you are going to have to pay all my attorney's fees, which are going to be in excess off \$100,000, unless you pay me off 5 to 10 grand and then I will go away.

What happens is that small business owner says, well, I can go to court and spend 100 grand and maybe I will win or maybe I won't or I will pay this guy the extortion fee of 5 to \$10,000. What really needs to happen is we need to think of the disabled folks first. And what my bill says is if that scenario happens, let us give that restaurant or small business 90 days to fix it. So we fix it for the disabled community. After all, that is the whole purpose. And if it doesn't get fixed, then let us let the lawsuit go forward at that time.

So it is a commonsense remedy to avoid litigation because what we need to do is care more about each other and file less lawsuits here. And so I agree with Ms. Wasserman Schultz's sentiments. This is a bill and a concept that will prevent frivolous litigation and help the disability community, and I hope moving forward that we can move together on a commonsense bipartisan compromise either as part of this legislation or independently that achieves both these objectives, and I would yield back the balance of my time.

Chairman Conyers. Thank you, Ric. The Floridians are making a very effective point. Do you have any comments, Jerry Nadler?

Mr. Nadler. Yes. Thank you, Mr. Chairman. I move to strike the last word.

Chairman Conyers. Without objection, the gentleman is recognized.

Mr. Nadler. Mr. Chairman, I simply want to say that I disagree with the gentleman from -- with the gentleman who just spoke from Florida, I think. But our purpose today -- I think that there are provisions about minor frivolous litigation. But our purpose today is to deal with the fundamental purpose of this bill, which is to overturn the Supreme Court decisions that have misinterpreted the definition of disability and have therefore excluded

individuals from coverage of the bill and individuals that we always intended to cover. I don't think that the issue that was raised is a severe issue that needs changed by amending the bill.

But that discussion -- I am glad the gentleman didn't offer his amendment today. That is a discussion for another day. And today we simply ought to focus on fixing what this bill and the substitute before us does, which is overturning essentially four Supreme Court decisions that it went against what was the express will of the Congress and created the necessity to litigate whether you are disabled. That was never our intent. Our intent today is to get rid of that and make it an issue simply of we are discriminated against and what is your remedy and not having to prove that you are disabled.

So I am glad we don't have to get into the other side issue today. We can discuss that on a different occasion.

Chairman Conyers. It is a side issue, but it is important.

Mr. Nadler. And I will yield to the gentleman from Virginia.

Mr. Scott. Thank you. And I would like to associate myself with your remarks and also offer a note of caution for these notice requirements because we are relying to a very large extent on businesses to correct their

deficiencies on their own. If you have a notice requirement, then you eliminate any incentive that a business would have on doing anything henceforth until such time as they got a legalistically correct notice. Then they could take action then.

So I appreciate the comments of the gentleman, and we can continue the discussion to make sure to eliminate as many of the so-called frivolous cases as possible. But there is another side to this and we should have those discussions outside of this building. And I appreciate the gentleman not offering the amendment.

Mr. Nadler. Reclaiming my time, I appreciate the comments of the gentleman from Virginia. I agree with him. I would point out that this bill depends -- or this law depends, as most laws do, on voluntary compliance, that the deal -- the underlying deal that was struck in the ADA and this is reaffirmed in this bill was struck by the disability community and the business community and that we wouldn't want to do anything to remove the incentive of voluntary compliance and to substantially change the structure of the agreement, the continued agreement between the disability community and the business community at large.

So I am glad we are not going to get into this other issue today and that we can concentrate on the proper definition, the broader definition of disabled, and get back

to what it was or was intended to be in the original ADA.

I thank you and I yield back.

Chairman Conyers. Keith Ellison, do you have a comment?

Mr. Ellison. Very briefly. I move to strike the last word.

Chairman Conyers. Without objection, the gentleman is recognized.

Mr. Ellison. I just want to say that I agree that it is not a good idea to plow new ground with this bill. This is a delicate compromise and I think we should go through as we are. But I just want to point out too, you know, that trial lawyers, Mr. Chair, do a tremendous amount of good for our society. They help our water to be cleaner, our food to be safer, our pajamas to be safer and all kinds of products to be better. Are there excesses sometimes? I am sure that there are. But the fact is if you look at the legal system itself, you have Rule 11, you have other types of things that will allow frivolous lawsuits to be routed out.

So again, you know, I have sort of decided to sort of stick up for the trial bar whenever it gets bashed in. And so I just want to say that trial lawyers do a lot of good. We don't need frivolous lawsuits. But I hope we do just focus on the bill that is before us today because I think to do otherwise would be opening up a new can of worms.

Mr. Cannon. Would the gentleman yield?

Mr. Ellison. I would be glad to.

Mr. Cannon. Is the gentleman aware of any Rule 11 sanctions that have actually been carried out?

Mr. Ellison. I think that is really not the point. I mean, they are there. The courts are there to enforce them. I think the litigants are there to say, hey, look I think this is a frivolous lawsuit. But there is also a 12(b)(6) motion. There is also summary judgment motions. There is all kinds of procedures to route out frivolous lawsuits. I don't think we have a frivolous lawsuit problem in America. I mean, in my opinion, the 700 cases that the gentleman referred to could just be indicative of the fact that we have a proliferation and a widespread problem with compliance with the ADA and that it is difficult for people who have disabilities to -- our society has not accommodated.

Mr. Nadler. Would the gentleman yield for a moment?

Mr. Ellison. I certainly would.

Mr. Nadler. I agree with the gentleman, but I wanted to point out that there are rules in most State courts and State procedures that are designed to get rid of frivolous litigation. Was the gentleman aware, for example, that in California a vexatious litigant was ordered by the courts to get pre-suit approval from the courts before bringing any

lawsuits?

Mr. Ellison. I was not aware.

Mr. Nadler. And there are such remedies available of such types in most State courts?

Mr. Ellison. Reclaiming my time. I was not aware, but I am not surprised. And I think that much of the dialogue around frivolous litigation is frivolous.

Thank you.

Chairman Conyers. I thank the gentleman. Are there any amendments to the manager's amendment? If there isn't, the question now occurs on the amendment to the -- we are now ready if there are no amendments to vote on the manager's substitute. All members in favor say aye. All opposed say no. The ayes have it unanimously and the manager's amendment is agreed to.

A quorum is present. So the question is reporting H.R. 3195 as amended -- no -- reporting it as an amendment, as amended, and all in favor say aye. All opposed say no. The ayes have it. And the bill, as amended, is ordered reported --

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

Chairman Conyers. All right. The Clerk will call the roll.

The Clerk. Mr. Chairman.

Chairman Conyers. Aye.

The Clerk. Mr. Conyers votes aye.

Mr. Berman.

[No response.]

The Clerk. Mr. Boucher.

[No response.]

The Clerk. Mr. Nadler.

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye.

Mr. Scott.

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt.

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye.

Ms. Lofgren.

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye.

Ms. Jackson Lee.

[No response.]

The Clerk. Ms. Waters.

Ms. Waters. Aye.

The Clerk. Ms. Waters votes aye.

Mr. Delahunt.

[No response.]

The Clerk. Mr. Wexler.

[No response.]

The Clerk. Ms. Sanchez.

[No response.]

The Clerk. Mr. Cohen.

Mr. Cohen. Aye.

The Clerk. Mr. Cohen votes aye.

Mr. Johnson.

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Ms. Sutton.

Ms. Sutton. Aye.

The Clerk. Ms. Sutton votes aye.

Mr. Gutierrez.

[No response.]

The Clerk. Mr. Sherman.

[No response.]

The Clerk. Ms. Baldwin.

Ms. Baldwin. Aye.

The Clerk. Ms. Baldwin votes aye.

Mr. Weiner.

[No response.]

The Clerk. Mr. Schiff.

[No response.]

The Clerk. Mr. Davis.

[No response.]

The Clerk. Ms. Wasserman Schultz.

Ms. Wasserman Schultz. Yes.

The Clerk. Ms. Wasserman Schultz votes aye.

Mr. Ellison.

Mr. Ellison. Aye.

The Clerk. Mr. Ellison votes aye.

Mr. Smith.

Mr. Smith. Aye.

The Clerk. Mr. Smith votes aye.

Mr. Sensenbrenner.

Mr. Sensenbrenner. Aye.

The Clerk. Mr. Sensenbrenner votes aye.

Mr. Coble.

Mr. Coble. Aye.

The Clerk. Mr. Coble votes aye.

Mr. Gallegly.

Mr. Gallegly. Aye.

The Clerk. Mr. Gallegly votes aye.

Mr. Goodlatte.

Mr. Goodlatte. Aye.

The Clerk. Mr. Goodlatte votes aye.

Mr. Chabot.

Mr. Chabot. Aye.

The Clerk. Mr. Chabot votes aye.

Mr. Lungren.

[No response.]

The Clerk. Mr. Cannon.

Mr. Cannon. Aye.

The Clerk. Mr. Cannon votes aye.

Mr. Keller.

Mr. Keller. Aye.

The Clerk. Mr. Keller votes aye.

Mr. Issa.

Mr. Issa. Aye.

The Clerk. Mr. Issa votes aye.

Mr. Pence.

[No response.]

The Clerk. Mr. Forbes.

Mr. Forbes. Aye.

The Clerk. Mr. Forbes votes aye.

Mr. King.

Mr. King. Aye.

The Clerk. Mr. King votes aye.

Mr. Feeney.

Mr. Feeney. Aye.

The Clerk. Mr. Feeney votes aye.

Mr. Franks.

Mr. Franks. Aye.

The Clerk. Mr. Franks votes aye.

Mr. Gohmert.

Mr. Gohmert. Aye.

The Clerk. Mr. Gohmert votes aye.

Mr. Jordan.

Mr. Jordan. Yes.

The Clerk. Mr. Jordan votes aye.

Chairman Conyers. Any other members? Any members that wish to change their vote? The Clerk will report.

The Clerk. Mr. Chairman, 27 members voted aye, and we didn't have any members voting no.

Chairman Conyers. Thank you. And so the bill is reported as a single amendment. The ayes have it. And the bill as amended is ordered reported favorably. Without objection, the bill will be reported as a single amendment in the nature of a substitute, incorporating the amendment adopted, and staff is authorized to make technical and conforming changes. Members will have 2 days for additional views.

Pursuant to notice, I now call up H.R. 3546, a bill to authorize the Edward Byrne Memorial Justice Assistant Grant Program and ask the Clerk to report the bill.

The Clerk. The H.R. 3546, a bill to authorize the Edward Byrne Memorial Justice Assistance Grant Program at fiscal year 2006 levels through 2012.

[The information follows:]

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

Chairman Conyers. Without objection, the bill is ordered considered as read and open for amendment at any point. And I invite Chairman Scott of the Crime Committee to make the opening description of the bill.

Mr. Scott. Thank you, Mr. Chairman. Mr. Chairman, the Subcommittee on Crime, Terrorism and Homeland Security, having had under consideration the bill H.R. 3546, reports it favorably to the committee and moves its favorable recommendation to the full House.

The Byrne grant program named after Edward Byrne, a New York City police officer killed by a violent drug gang 20 years ago, is the only source of Federal funding for multi-jurisdictional efforts to prevent and fight crime. The Byrne Memorial Justice Assistance Grant, or Byrne/JAG program, allows States and local programs to support a broad range of activities to prevent and control crime and to improve the criminal justice system which States and local governments have come to rely on to ensure public safety.

States use the Byrne/JAG grants for law enforcement prosecution and court programs, prevention and education, corrections and community programs, drug treatment, planning, evaluation, technology improvement programs and crime victim and witness programs. The grant enables States to employ all aspects of fighting crime rather than simply

using the so-called "get tough" approach focusing on just arrests and increasing sentences.

For example, in my home State of Virginia, in fiscal year 2007 alone, Byrne/JAG grants enabled task forces to reduce violent crime as much as 20 percent in targeted areas through a multi-faceted approach to crime. Nine different law enforcement regional information networks were established connecting 85 agencies. The Virginia Firearms Transaction Program increased its instant background checks for firearm purchases by 50 percent and over 2,000 high school students received training in traffic safety, crime prevention and substance abuse. In its earlier years, the program enjoyed appropriations that enabled it to work effectively.

Unfortunately, funding has diminished over the past several years, threatening its ability to function. Although Congress authorized over a billion dollars in appropriations, only \$520 million were appropriated in fiscal 2007. In 2008, the appropriation was further reduced to only \$170 million and the President has proposed still further cuts in fiscal 2009.

Reduced funding in fiscal 2008 has already threatened the functionality in programs the grants support. Further, the reductions would put the existence of the programs in doubt. The trend to reduce programs may result in part from

instances where Byrne/JAG grant program funding has been abused. For example, in 1999, Byrne/JAG funding was used in the infamous Tulia case where a rogue police narcotics officer in Texas set up dozens of people, most of them African American, in false cocaine trafficking charges. In other incidents, jurisdictions used Byrne grant money for task forces that focused solely on ineffective, low-level drug arrests which has put the task force concept and the diminished standards for drug enforcement it has come to represent in the national spotlight.

But reducing funding is not the answer. Instead we must ensure that the funds are used appropriately because the success of the program far outweighs its failures. Nationwide the grant program has resulted in major innovations in crime control, including drug courts, gang prevention strategies and prisoner re-entry programs, all of which provide proven, highly effective crime prevention. These innovations have demonstrated that the best crime policy incorporates programs that help at-risk youth avoid criminal behavior and prepares prisoners for re-entry into society so they have meaningful and productive alternatives to crime when they return home.

The programs are an indispensable resource that States use to combat crime. I want to thank our colleague from Georgia, Mr. Johnson, for authoring this important

legislation and urge my colleagues to support the reauthorization of funding.

In closing, Mr. Chairman, I support the objectives and urge my colleagues to support the bill and yield back the balance of my time.

Chairman Conyers. Thank you, Chairman Scott. Ranking Member Lamar Smith.

Mr. Smith. Thank you, Mr. Chairman. The Edward Byrne Memorial Justice Assistance Grant Program, or Byrne/JAG allows States and local governments to support a broad range of activities to prevent and reduce crime and to improve the criminal justice system. The Department of Justice administers this program and allocates funds using a formula based on State population in the annual Unified Crime Report statistics. The program has a minimum allocation to ensure that each State and Territory receives an appropriate share of the Federal funds.

Byrne/JAG funds can be used to pay for personnel overtime and equipment. Funds are also used for statewide initiatives, technical assistance and training and support for local and rural jurisdictions.

Last week, the FBI released the 2002 Unified Crime Report detailing the statistics and tracking trends for violent crime nationwide. The national rate for violent crimes, including robbery, sexual assault and murder,

decreased nationally. Paradoxically, the report also showed the rate of violent crime rate increased in some cities.

The most recent data demonstrates that although State and local law enforcement officials are working to reduce the rate of violent crime nationwide, they still need our help specifically in the cities. Earlier this week, I had an opportunity to meet with the chiefs of police of Austin and San Antonio when I was back home in Texas. During my meetings with the chiefs, we discussed what resources local law enforcement officials need to ensure safe neighborhoods and communities. They both stated that Byrne/JAG grants will help them accomplish their law enforcement goals.

Mr. Chairman, Congress can play an important role in supporting State and local law enforcement officials by continuing to reauthorize and fund this program at appropriate levels.

I, too, support this bill, and I will yield the balance of my time to the ranking member of the Crime Subcommittee, the gentleman from Texas, Mr. Gohmert.

Mr. Gohmert. Thank you, Ranking Member Smith. The Crime Subcommittee held its legislative hearing on this bill to reauthorize the Byrne/JAG grant program on May 20, 2008. At that hearing, the committee heard from a diverse panel of witnesses representing the law enforcement community, including police officers and prosecutors. Each witness

recounted the value of the Federal funding to local law enforcement that comes from the Byrne/JAG grant program and urges us to support its reauthorization.

Byrne/JAG has traditionally received bipartisan support in both Chambers of Congress. There is a consensus that Congress should help our states and cities to effectively enforce the law. Mr. Johnson's bill, H.R. 3546, is a one-sentence, straight reauthorization of the Byrne/JAG grant program at fiscal year 2006 levels through 2012. This bill is a model of legislative restraint, and I urge my colleagues to follow my friend Mr. Johnson's example and not load down this bill. If, however, members do propose amendments, I urge them to remember that the chief benefit of the Byrne/JAG program is its flexibility. Let us not hamstring the ability of States and localities to use funds in an effective manner tailored to their particular needs.

I support the reauthorization of the Byrne/JAG program, urge my colleagues to do the same, and yield back to the ranking member.

Chairman Conyers. Thank you very much. The gentleman from Georgia, Hank Johnson, formerly a magistrate.

Mr. Johnson. Thank you, Mr. Chairman, also thank the ranking member of the full committee as well as ranking member of the subcommittee, Crime Subcommittee.

Byrne/JAG funding is a critical component of law

enforcement and prevention in the United States. It is the only Federal program that funds crime prevention and crime fighting through law enforcement prosecution and court programs, prevention and education, corrections and community programs, drug treatment, planning, evaluation, technology improvement programs, crime victim and witness programs, and also drug courts, gang prevention strategies, prisoner re-entry programs, all of which provide proven and effective crime prevention.

It enhances not only crime fighting but drug use prevention, and in my home State of Georgia, Mr. Chairman, Byrne/JAG grants provide for a well-trained, highly specialized corps of drug enforcement agencies that work closely together, sharing intelligence and resources with each other, and the Federal Government. The results speak for themselves.

Byrne/JAG has led to the seizure of 54,000 weapons, the destruction of 5.5 million grams of methamphetamine, and the elimination of nearly 9,000 meth labs per year. It has the support of multiple law enforcement coalitions, including the Fraternal Order of Police, the National Sheriffs Association, the International Association of Chiefs of Police, and the National Narcotics Officers Association Coalition.

I am well aware of the abuses that have tainted drug

law enforcement for decades and in recent years, in particular the outrageous injustice perpetrated in Tulia, Texas. But to blame such sins on the Byrne/JAG program risks diverting accountability from the individual officers and departments who should be held to account for their crimes through State and/or Federal prosecution for any violations of law committed by those law enforcement agents or entities in connection with activities by their drug task forces.

Withholding or threatening to withhold this funding only risks delaying or preventing altogether the deployment of this essential money to the local jurisdictions where it is desperately needed to keep our streets, kids and fellow citizens safe from criminal activity and drugs. Already Byrne/JAG has been consistently underfunded by the Bush administration. Our States face severe budgetary constraints and need significant Federal help to maintain law and order. Now is not the time to dangle these critical funds over the heads of local law enforcement and local officials who need the funds today.

I am eager to work with my colleagues promptly and aggressively to prevent unfair law enforcement and to abolish the unjust practice of racial profiling through stand-alone legislation and not by amendment to this bill which has already passed the Senate by unanimous consent.

We must consider the importance of delivering this money in full as soon as possible. We must, can and will address the critical issues of injustice and discrimination, but let us not risk tying up this critical funding by subjecting it to conditions that make this bill's final passage less certain. And I will yield back.

RPTS JURA

DCMN MAGMER

[11:22 a.m.]

Chairman Conyers. I thank you.

Steve King of Iowa is recognized now.

Mr. King. Thank you, Mr. Chairman.

I appreciate your bringing this bill before the committee, and I appreciate the Chair of the subcommittee and the ranking member of the full and the subcommittee on this subject matter of the Byrne/JAG grants. I happen to live in one of those nexuses for illegal drugs because of the interstates cross in my district and other reasons.

But Byrne/JAG funding is essential to help State and local police officers identify and dismantle the local, State and regional drug crime trafficking syndicates. Federal law enforcement agents rely on information from Byrne/JAG task forces to identify and disrupt international drug trafficking rings. Tom Constantine, the former head of the Federal Drug Enforcement Administration, told Congress he could not remember a single case that did not originate from a Byrne/JAG task force.

Now, I am glad to see that H.R. 3546 is being taken up by this committee today, and I support its passage, although I challenge this Congress to do more. I believe Byrne/JAG funding should be increased. Unfortunately, Congress has

consistently appropriated far less than the amount authorized.

For instance, H.R. 3546 will set the authorized amount at 2006 levels, which were a little over \$1 billion, \$1,095,000,000. However, for fiscal year 2006, only \$608 million was appropriated to the program; fiscal year 2007, \$709 million was appropriated; and, in 2008, that amount was reduced down to \$374 million, Mr. Chairman. So that is 47 percent less than appropriated in the previous year.

Words are cheap, but Congress needs to follow them up with action. More funds need to be actually appropriated to Byrne/JAG. Otherwise, the successful interagency law enforcement infrastructure that led to the lowest U.S. violent crime rates in 30 years will begin to disappear.

Byrne/JAG has been a key weapon in the fight against illegal drugs such as methamphetamine. Since 2001, law enforcement officers have dismantled over 50,000 clandestine meth labs nationwide. That is mostly in Midwestern and Western states. However, according to the Department of Justice, the number of meth cases filed nationwide quadrupled over the past decade. Without Byrne/JAG, State and local law enforcement will not be able to fight this growing problem. I strongly urge us all to support the State and local law enforcement officers on the front lines in the war on drugs by increasing Byrne/JAG funding.

In March of this year, I wrote a letter to Chairman Obey asking he and Ranking Member Lewis of the Appropriations Committee -- requesting that they increase Byrne/JAG funding.

I support 3546; and I would add that when I came to Congress I sat down and listened to William Bennett, former Secretary of Education, who made this statement. He said: I can solve for you 75 percent of society's pathologies if we just get married, stay married, get a job, keep a job.

Now, I have thought about that, Mr. Chairman; and I think that perhaps a larger share than the remaining 25 percent is the result of the illegal and mind-altering drugs that are abused in this country. When I negotiate with the people that are running the government of Mexico and I say to them, you are sending us perhaps 90 percent of the illegal drugs used in America, maybe \$65 billion -- and that is the number according to the Drug Enforcement Agency, \$65 billion coming into the United States not always from Mexico but from that border -- they say back to me: That is the demand in the United States. There is a demand for illegal drugs. We can't stop it, because you are demanding it. The people in the streets of America are demanding it.

We address illegal drugs in two fashions: One of them is rehabilitation, which I believe in. The other is interdiction, which Byrne/JAG does. The unaddressed portion

is to shut down the demand of illegal drugs. That can, in my mind, only be done if we are willing to actually test in the workplace, test in education, test on welfare. If we are able to do that, reestablish the stigma, we can cut down on the demand, Mr. Chairman.

I appreciate your attention to all of these things, and I urge that we increase the funding for Byrne/JAG, and I yield back the balance of my time.

Chairman Conyers. You want to test everybody?

Mr. King. I want to test everybody. Incrementally, I want to phase this in.

Chairman Conyers. But not Congress?

Mr. King. Yes, Congress. I will happily step up first, Mr. Chairman. Not for caffeine, though.

Chairman Conyers. Rick Keller, for an observation.

Mr. Keller. Thank you very much, Mr. Chairman.

I want to thank you for bringing up this bill. I want to thank Mr. Johnson for filing it. I strongly support H.R. 3546, and I want to briefly speak as a real-life example why I am a supporter of Byrne grants.

I represent Orlando, Florida, and from 2004 to 2007 our murder rate went up 129 percent; robbery in Orange County went up 89 percent. And I wanted to see what was going on, so I went out in my community and went along with five separate ride-arounds with our police officers and deputies

and ATF agents to go into these violent crime areas and see firsthand what the problem was.

I learned from this firsthand experience that violent crime certainly is a primarily local issue, but the Feds have a role in three specific ways: One, we can put more cops on the street through the COPS program, and one out of five cops in my area were hired through the COPS program. Two, we can send violent crime impact teams down from ATF to help go after the worst of the worst gun and drug-related crimes, and that has made a difference. And, three, we can help provide the locals with crime-fighting technology; and that is where Byrne grants have made a big impact in my district and many others.

My Orange County sheriff's office received a \$1.1 million Byrne grant a year ago, and that money is used in crime-fighting technologies to go after the worst of the worst drug dealers, robbers and other violent criminals.

And I can tell you that I am not critical at all that some agencies have used this money to go after drug dealers. I don't think we have to be apologetic about it, and I will tell you why. In my hometown of Orlando, when you look at the data, 73 percent of the murders were drug related. It was either a drug deal gone bad or one gang member killing another one because he came into his drug territory or it was someone robbing a house and committing murder because

they needed money for drugs.

And when you go after the big drug dealers, you have got to start sometimes with getting the small guys and you arrest them. And your goal is not to put someone who just bought a bunch of crack cocaine in jail forever. You want to get them to roll over on the next biggest guy, and you want to get that guy. And that is how they build their cases against folks.

And so I have seen these Byrne grants be funneled into crime-fighting technologies. I have been in the police cars with the cops as they use these technologies and surveillance devices, which I won't get into the specifics of to protect the classified nature of what they are doing, but it has made a big difference. And the good news is violent crime has now dipped this year in my hometown, and the murder rate has gone down, and we have seen nationwide for the first time in 3 years the FBI uniformed crime statistics have showed a dip.

I think programs like Byrne/JAG and COPS programs have played a key role in that, and I commend you for bringing this legislation and urge all of my colleagues on both sides of the aisle to support it because it has merit and is supported by our local chiefs of police and sheriffs.

I yield back the balance of my time.

Chairman Conyers. I thank the distinguished gentleman.

The Chair recognizes the gentlelady from Wisconsin,
Tammy Baldwin.

Ms. Baldwin. Thank you, Mr. Chairman. I have an
amendment at the desk.

Chairman Conyers. The Clerk will report the amendment.

The Clerk. Amendment to H.R. 3546, offered by
Ms. Baldwin of Wisconsin.

Ms. Baldwin. Mr. Chairman, I ask unanimous consent
that the amendment be considered as read.

[The information follows:]

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

Chairman Conyers. Without objection, the gentlelady is recognized in support of her amendment.

Ms. Baldwin. Thank you, Mr. Chairman.

Starting with full disclosure, I intend to withdraw this amendment after speaking to it in the spirit of Mr. Gohmert's comments that such legislative restraint has been shown in the drafting of the underlying bill. But I do want to speak to this issue, because I think it is a very important one, and we know that stand-alone legislation addressing this might take some time. Perhaps I might even be able to work with the committee Chair and the author of the bill and the ranking member on report language relating to this concern.

As I noted during our hearing last month on this legislation, Byrne/JAG funding is critical to State and local law enforcement officers' ability to fight crime and assist in the prevention of drug use and abuse; and I thank my colleague, Mr. Johnson from Georgia, for his leadership on this bill.

However, I remain concerned that we lack sufficient oversight for one of the most popular uses of Byrne/JAG funds, the multi-jurisdictional anti-drug task forces. And at our hearing, Domingo Herraiz, director of the Bureau of Justice Assistance at the Department of Justice, stated his

belief that State and local law enforcement have made significant progress in developing a comprehensive approach to oversight in response to a number of highly publicized missteps involving anti-drug task forces, and I wholeheartedly commend these efforts. Yet testimony from our representative from the National Association of Attorneys General, Arkansas Attorney General Justin McDaniel, illuminated for me that, while progress has been made, we can do more in establishing uniform criteria to enhance supervision and accountability of these anti-drug task forces, particularly the unique teams that work across State and city lines.

Indeed, many civil rights groups, including the ACLU, the Brennan Center for Justice, the National Council of La Raza, just to name a few, have expressed similar concerns that the anti-drug task forces funded by the Byrne/JAG program urgently need increased Federal oversight. And I would comment that some of the scandals that we have heard about obviously relate to misdeeds and crimes by individuals, but studies of this program have said that the multi-jurisdictional nature make it sort of structurally more prone to problems, and that is why we need this additional oversight.

I was pleased to hear from both Mr. Herraiz and Mr. McDaniel at our hearing their belief that local law

enforcement as well as State attorneys general would be more than willing to come together with the Department of Justice in developing an oversight model that will work effectively to ensure accountability of the multi-jurisdictional anti-drug task forces.

The amendment that I have prepared today would provide momentum for just that sort of collaboration. My amendment directs the U.S. Attorney General, in consultation with State attorneys general, to establish voluntary guidelines for effective oversight functions of anti-drug task forces within one year. Particularly because I have full faith that the States will willingly contribute to the development of and then voluntarily comply with these more uniform oversight functions, my amendment does not include any financial consequences to compel them to do so.

An earlier version of my amendment did cut funding for multi-jurisdictional drug task forces after 2 years if they failed to adopt accountability measures, but the one before you today does not have those financial consequences.

It is my hope that these guidelines will be incentive enough for local agencies and States to work together with the Federal Government to ensure the best possible performance and multi-jurisdictional cooperation of these anti-drug task forces.

I want to again thank you, Mr. Chairman, and Ranking

Member Smith, as well as Mr. Scott and Mr. Gohmert, for your work on authorizing this bill. I look forward to working with all of you as well as Mr. Johnson to ensure that the Byrne/JAG program works as effectively as possible towards its vital mission.

With that, Mr. Chairman, I would withdraw my amendment but hope, as I said, to work with you to include these improvements in the underlying program.

Chairman Conyers. The gentlelady's amendment is withdrawn, and I assure her that we need to examine this with greater criticalness as we move forward.

The gentlelady from California, Maxine Waters.

Ms. Waters. Thank you, Mr. Chairman. I move to strike the last word.

Chairman Conyers. The gentlelady is recognized.

Ms. Waters. Mr. Chairman, I, too, have prepared an amendment that would indeed provide for some oversight and accountability as it relates to the anti-drug task forces. I have decided not to offer the amendment because it seems that there is a consensus here that everyone is so supportive of Byrne/JAG they want nothing to perhaps interfere with it; and, of course, Congressman Johnson's representation that it had passed the Senate without any amendments and it would place the bill in the process of having to go into conference, which may jeopardize the

Byrne/JAG grant, certainly is taken into consideration.

I would just like to say that I am a little bit disappointed that we are afraid to step forward to do the kind of oversight that needs to be done to ensure that these funds are being used as they are intended. I do not think that you can just allude to the Tulia case without being very, very concerned about the way that an entire community was violated and the majority of the males in that community were indicted on false cocaine trafficking charges. That is serious, and it should not be swept aside.

Again, I respect the statements of some of the members of this committee about how useful the Byrne/JAG Grants are in their community, but of course I have had for some time tremendous concerns about the entire war on drugs, including the anti-drug task forces. It seems that because we don't have enough accountability we don't have the reduction in crimes that are caused by those who are involved in the drug trafficking and the use of drugs. And I would just say that this bill appears to be on the path to getting passage here today without dissent, but we have a responsibility to follow through with Ms. Baldwin's developments relative to oversight. I think she offers a good way by which we should get involved in providing and making sure that there is accountability.

Chairman Conyers. Would the gentlelady yield?

Ms. Waters. I will yield to the chairman.

Chairman Conyers. I want to inquire of Chairman Scott if he has given any consideration of how we may deal with this in the near future of the gentleladies from both Wisconsin and California.

Mr. Scott. If the gentlelady will yield? Thank you, Mr. Chairman.

Mr. Chairman, the underlying assumption in this amendment and the former amendment that was withdrawn, the underlying assumption is that the Crime Subcommittee has not had sufficient oversight on this issue. Unfortunately --

Chairman Conyers. I don't think that was implied.

Mr. Scott. Unfortunately, Mr. Chairman, I think you are right.

Chairman Conyers. Oh, you do. That implication was correct.

Mr. Scott. And in partial explanation, Mr. Chairman, there are a lot of issues we haven't been able to get to. The Crime Subcommittee has been one of the most active in Congress, and there have been a lot of issues that we have not had sufficient oversight, and they have identified one. And, unfortunately, they are right. The Tulia incident, the abuses in some of these cases, drug strategy, parenthetically, Mr. Chairman.

Chairman Conyers. Does the chairman plead guilty as

charged?

Mr. Scott. Unfortunately, Mr. Chairman, I do. I do commit to having oversight hearings on this issue in the near future.

I would point out, however, that, as the ranking member has pointed out, this is a one-sentence reauthorization. If we don't reauthorize it, the program will expire at the end of the year. But I will commit to work closely with the gentlelady from Wisconsin and the gentlelady from California to make sure that the Crime Subcommittee looks very closely at some of these abuses, oversight and accountability. I don't expect them to be satisfied with the commitment, but I hope they will be satisfied with the oversight.

Chairman Conyers. I don't see why they wouldn't be satisfied with the chairman of the Crime Committee's commitment.

Ms. Waters. Reclaiming my time, I thank the gentleman for his candid admission that we all have more work to do.

Again, I think that the outline of how to do this has been set forth by Ms. Baldwin, and I basically agree with that. And I would hope that we could move as soon as possible to deal with it.

I yield back the balance of my time.

Chairman Conyers. I thank the gentlelady of California.

Mr. Gohmert. Mr. Chairman.

Chairman Conyers. Judge Gohmert.

Mr. Gohmert. Thank you, Mr. Chairman.

I appreciate the sensitivities and concerns of my friends, Ms. Baldwin and Ms. Waters. And since this is a one-sentence reauthorization, I think it is best to proceed as we are since the Senate has moved. But you raise good issues. We do need proper oversight.

The proposal for States attorneys general and the Attorney General to establish voluntary guidelines Ms. Baldwin proposed has merit to it, and the suggestion in the amendment by Ms. Waters of the Inspector General doing the audit has merit. But what I would suggest is, and hopefully we could work together on this to ensure proper oversight, but it is my understanding that the Office of Justice Programs currently does some auditing on the Byrne/JAG programs. And rather than creating an additional perhaps duplication, it might be that we could get the Office or have legislation to require the Office of Justice Programs to have a more rigorous audit along the lines Ms. Waters is suggesting that would also hopefully be -- and we can check with the attorneys general -- satisfactory with them to do that kind of audit for us.

So I would hope that we could work together on that to make sure that there is adequate oversight to address these

issues.

And obviously it is not enough for us to just have hearings. If we don't have somebody that actually goes in, digs through the files, sees how the money is spent, then we really do not have adequate information to do our oversight hearings.

So I would look forward to working with the majority. I know my colleagues on this side of the aisle, we are always happy with good oversight and certainly good audits to make sure money is properly spent.

So thank you, Mr. Chairman. I yield back, and I look forward to working with our other members.

Chairman Conyers. I thank the gentleman.

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

Chairman Conyers. The gentleman is recognized.

Mr. Johnson. Mr. Chairman, I do feel that there is great merit in Congresswoman Baldwin's proposal for the Attorney General to establish voluntary guidelines and implement effective oversight functions for anti-drug task forces, particularly multi-jurisdictional. And that is a great piece of work that I think we need to focus in on with stand-alone legislation, and I am looking forward to working with the Crime Committee and Ms. Baldwin to make sure that that happens.

And with respect to Congresswoman Waters' amendment, or with respect to her proposal which would cause more auditing and thus better opportunity to oversee these multi-jurisdictional task forces with respect to their use of Federal money, I think that that is certainly a laudable goal that I will be looking forward to pursuing as well.

Thank you. I yield back.

Chairman Conyers. I thank the gentlelady for her excellent discussion.

And if there is no further discussion or any amendments, reporting a quorum being present, the question is on reporting the bill favorably to the House. Those in favor, say aye. Those opposed, say no.

The ayes unanimously have it; and, without objection, the bill is ordered reported favorably.

Without objection, staff is authorized to make technical and conforming changes; and members will have 2 days to submit views.

Before we adjourn, I would just like to recognize the Youth Dialogues on Race and Ethnicity in Metropolitan Detroit young students are visiting us today. Would they stand up if they are in the audience here? We want to thank you for coming forward. Thank you so very much.

There being no further business, the committee stands adjourned.

[Whereupon, at 11:47 a.m., the committee was adjourned.]