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2 HEARING TO CONSIDER A RESOLUTION AND REPORT FINDING KARL ROVE
3 IN CONTEMPT FOR FAILURE TO APPEAR PURSUANT TO SUBPOENA AND
4 RECOMMENDING TO THE HOUSE OF REPRESENTATIVES THAT MR. ROVE BE
5 CITED FOR CONTEMPT OF CONGRESS;
6 AND MARKUP OF: H.R. 6577, TO EXPRESS THE CONSENT AND
7 APPROVAL OF CONGRESS TO AN INTERSTATE COMPACT REGARDING WATER
8 RESOURCES IN THE GREAT LAKES-ST. LAWRENCE RIVER BASIN;
9 H.R. 6126, THE "FAIRNESS IN NURSING HOME ARBITRATION ACT OF
10 2008";
11 H.R. 5950, THE "DETAINEE BASIC MEDICAL CARE ACT OF 2008";
12 H.R. 2575, FOR THE RELIEF OF MIKAEL ADRIAN CHRISTOPHER
13 FIGUEROA ALVAREZ;
14 H.R. 5243, FOR THE RELIEF OF KIM IIZUKA-BARCENA;
15 H.R. 6064, THE "NATIONAL SILVER ALERT ACT";
16 H.R. 6503, THE "MISSING ALZHEIMER'S DISEASE PATIENT ALERT
17 PROGRAM REAUTHORIZATION OF 2008";
18 H.R. 6353, THE "RYAN HAIGHT ONLINE PHARMACY CONSUMER
19 PROTECTION ACT OF 2008";
20 H.R. 5167, THE "JUSTICE FOR VICTIMS OF TORTURE AND TERRORISM
21 ACT";

22 H.R. 2140, THE "INTERNET GAMBLING STUDY ACT";
23 H.R. 6088, THE "NATIONAL DOMESTIC VIOLENCE VOLUNTEER ATTORNEY
24 NETWORK ACT";
25 AND H.R. 4779, TO ENACT CERTAIN LAWS RELATING TO PUBLIC
26 CONTRACTS AS TITLE 41, UNITED STATES CODE, "PUBLIC CONTRACTS"
27 Wednesday, July 30, 2008
28 House of Representatives,
29 Committee on the Judiciary,
30 Washington, D.C.

31 The committee met, pursuant to call, at 10:21 a.m., in
32 Room 2141, Rayburn House Office Building, Hon. John Conyers
33 [chairman of the committee] presiding.

34 Present: Representatives Conyers, Berman, Boucher,
35 Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Delahunt,
36 Wexler, Sanchez, Cohen, Johnson, Sutton, Gutierrez, Sherman,
37 Baldwin, Weiner, Schiff, Davis, Wasserman Schultz, Ellison,
38 Smith, Sensenbrenner, Coble, Gallegly, Goodlatte, Chabot,

39 Lungren, Cannon, Keller, Issa, Forbes, King, Feeney, Franks,
40 Gohmert, and Jordan.

41 Staff present: Perry Apelbaum, Staff Director/Chief
42 Counsel; Ted Kalo, General Counsel/Deputy Staff Director;
43 George Slover, Legislative Counsel/Parliamentarian; Sean
44 McLaughlin, Minority Chief of Staff/General Counsel; Allison
45 Halataei, Minority Deputy Chief of Staff/Parliamentarian; and
46 Anita L. Johnson, Clerk.

47 Chairman Conyers. [Presiding.] Good morning. The
48 committee will come to order. We have an agenda with nine
49 items. Two or three of them may go very rapidly. We have a
50 large agenda on the floor as well.

51 Pursuant to notice, I call up the report and resolution
52 recommending that the House find Karl Rove in contempt of
53 Congress for violating a committee subpoena for purposes of
54 consideration, and I ask the clerk to read the report.

55 The Clerk. Resolution recommending that the House of
56 Representatives find Karl Rove in contempt of Congress for
57 refusal to comply-

58 [The report follows:]

59 ***** INSERT *****

60 Chairman Conyers. Without objection, the report will be
61 considered as read. Distinguished members of the committee,
62 this resolution recommends that the House pursue statutory
63 contempt against Mr. Rove and pursue other legal remedies to
64 enforce the subpoena as appropriate.

65 It is regrettable, but it has become necessary to pursue
66 this course because we have been left with no other options.
67 For more than a year, the committee has worked to obtain
68 sworn testimony from Karl Rove concerning his involvement in
69 the politization of the Department of Justice. His name has
70 come up repeatedly in the hearings on that subject.

71 We have made extensive efforts to find a compromise
72 under which he could voluntarily agree to appear before us.
73 When those efforts did not succeed, I was compelled to issue
74 a subpoena requiring him to appear, but he refused to appear
75 even under the authority of a subpoena, claiming that
76 congressional subpoenas are not binding on him.

77 That breach of our process presents a grave challenge to
78 the authority of the Judiciary Committee. We must respond
79 appropriately but fairly, and make clear that our subpoenas
80 are binding obligations, not optional invitations.

81 As members consider this issue, I close with a couple
82 points. First, the need for testimony from Mr. Rove on these
83 issues is very great. As we see from this week's inspector
84 general's report, the politization of the Department of

85 Justice was pervasive and, in some ways, more pervasive than
86 we even knew, and it has greatly harmed the nation.

87 Former attorney general and former United States
88 attorney Dick Thornburgh testified before two of our
89 subcommittees that the committees work had revealed the
90 department "fired U.S. attorneys not for performance-based
91 reasons but for political ones," end quotation.

92 The nonpartisan American Judicature Society wrote last
93 year that on the basis of the facts we—as we know them today,
94 the dismissals are indefensible.

95 The Siegelman case has drawn a concern from a bipartisan
96 array of officials, including a bipartisan group of former
97 state attorneys general who wrote last year calling for us to
98 investigate.

99 Republican former attorney general of Arizona Grant
100 Woods has stated that he believes Don Siegelman, Democrat and
101 former Alabama governor, was selected for prosecution to
102 further the political interests of the Alabama Republican
103 Party.

104 Any suggestion that these issues are not important or
105 that no administration misconduct has been revealed is, to
106 me, inconsistent with the plain facts. Many important
107 questions remain that only Mr. Rove can answer.

108 For example, the earliest e-mail we have found
109 discussing the plan to fire U.S. attorneys is titled

110 "Question from Karl Rove," and it reveals Mr. Rove asking if
111 U.S. attorneys could be fired en masse or selectively
112 replaced. He must explain why he was raising this issue and
113 what role he played in the firings.

114 He has also been implicated in sworn testimony before
115 the committee about his role in the prosecution of Don
116 Siegelman. These important matters cannot be fully
117 investigated without Karl Rove's sworn testimony.

118 And yet he refuses to testify based on legally invalid
119 claims of immunity and privilege. No court has ever
120 recognized or approved claims of the sort made here.

121 We hear again and again that Janet Reno herself approved
122 the extreme immunity position relied on by Mr. Rove in
123 breaching our subpoena, but that simply is not the case.

124 Instead, the so-called Reno opinion addressed only the
125 very different situation of current presidential advisers,
126 not former advisers like Mr. Rove. And the opinion itself
127 recognized that a court might not accept such a bold theory.

128 More important, the Clinton administration did not
129 ultimately insist upon those theories of immunity but instead
130 compromised and allowed both its current and former senior
131 advisers to testify before Congress on many occasions.

132 And so his so-called offers of accommodation to the
133 committee have been fairly illusory. None of those offers
134 involved any agreement by Mr. Rove to even discuss his role

135 in the U.S. attorney firings.

136 And his offer to answer questions in writing was
137 obviously unacceptable. Written questioning of this sort is
138 in no way a substitute of the give and take and follow up of
139 live testimony.

140 This is clear from the written answers Mr. Rove's
141 attorney provided to our ranking member, Lamar Smith, which
142 leaves key issues open and failed to address many matters of
143 interest to the committee.

144 We made it clear several times that we are open to
145 reasonable compromise. We even offered to interview Mr. Rove
146 informally without prejudice to the subpoena if he would
147 discuss all of his involvement in the apparent politization
148 of the department functions.

149 But he has consistently refused offers, a stance that is
150 particularly unreasonable given his repeated public
151 statements on these same matters. He seems willing to speak
152 about these matters in almost any other forum but ours and
153 does not seem inclined to want to answer questions before the
154 members of this committee.

155 Finally, some may argue that we should not pursue the
156 contempt because the legal claim may be resolved in the civil
157 lawsuit we have pending in the United States District Court
158 against Harriet Miers and Josh Bolten.

159 But for many reasons, we cannot afford to wait. We have

160 no way of knowing when the case will be resolved, how long
161 appeals may take or anything else about the case. The judge
162 may address the legal issues of immunity, but then again he
163 may not.

164 And so I invite our colleagues, every one of you, to
165 think carefully about this matter, and the bottom line is
166 this. Mr. Rove has breached his obligation to the committee
167 and it is our duty to respond.

168 I now recognize our distinguished ranking member, Lamar
169 Smith.

170 Mr. Smith. Thank you, Mr. Chairman.

171 Mr. Chairman, last month the Judiciary Committee hosted
172 its first book-of-the-month club featuring Scott McClelland's
173 personal opinions.

174 Last Friday, we had an anger management class for those
175 who support impeachment.

176 Today, the Judiciary Committee opens the curtain on its
177 version of a Salem witch trial of Karl Rove. With a
178 disregard of the facts, Congress and some members of the
179 media have rushed to judgment.

180 There is no credible evidence to support a contempt
181 resolution against Mr. Rove. Every individual involved in
182 the claimed incident, including Don Siegelman himself, has
183 denied allegations by Jill Simpson.

184 Time and again, Mr. Rove made it clear that he was

185 prepared to answer voluntarily, in writing, any questions
186 regarding the Siegelman matter. All the Democratic majority
187 had to do was to send him the questions. They chose not to.

188 Congressional approval ratings have sunk to a record
189 low. Only 9 percent of those polled believe that Congress is
190 doing a good job. The American people have a low opinion of
191 Congress because of Congress' partisanship. This contempt
192 report contributes to that view.

193 Instead of conducting witch hunts, we should consider
194 bipartisan legislation to reduce the price of gas, reduce
195 crime and secure our borders.

196 Americans are tired of partisanship and want solutions
197 that unite our country. They want lower gas prices. They
198 want to keep our children safe from violent crime and sexual
199 predators. And they want to live, work and raise their
200 families in a United States free from terrorist attacks.

201 The relentless efforts to malign those who served in the
202 outgoing administration only lower the public's opinion of
203 Congress.

204 Incredibly, the Democratic majority has taken no steps
205 to question or confirm the accusations hurled at Mr. Rove by
206 Jill Simpson and Don Siegelman. That is because there is no
207 evidence, and any charges would be thrown out of court.

208 In D.C. today, like Salem years ago, guilt is assumed,
209 and the constitutional presumption of innocence is forgotten.

210 Pending litigation against former presidential aide Harriet
211 Miers and Chief of Staff Josh Bolten will resolve whether
212 advisers like Mr. Rove can be compelled to testify before
213 Congress.

214 The committee has asked for an expedited decision in
215 that case. We ought to wait for that decision to be made
216 rather than rush to a contempt resolution.

217 Before the Democratic majority presses for contempt,
218 Karl Rove's accusers—Jill Simpson and Don Siegelman—should be
219 subpoenaed for a hearing.

220 Meanwhile, we should submit written questions to Karl
221 Rove, Jill Simpson and Don Siegelman. Karl Rove will answer
222 them. Jill Simpson and Don Siegelman will not, because they
223 cannot prove their unfounded accusations.

224 The Republican minority already took Mr. Rove up on his
225 offer to respond to written questions. He gave his answers
226 knowing that the criminal code sanctions the making of
227 misrepresentations before Congress.

228 In his response, Mr. Rove denied any involvement in the
229 Siegelman prosecution, stating, "I have never communicated,
230 either directly or indirectly, with Justice Department or
231 Alabama officials about the investigation, indictment,
232 potential prosecution, prosecution, conviction or sentencing
233 of Governor Siegelman or about any other matter related to
234 this case, nor have I asked any other individual to

235 communicate about these matters on my behalf. I have never
236 attempted, either directly or indirectly, to influence these
237 matters."

238 These answers are consistent with what the career
239 department official who led Don Siegelman's prosecution has
240 said about Mr. Rove. The truth is that the department's
241 career attorneys were responsible for prosecuting Don
242 Siegelman, not Mr. Rove.

243 I only wish the members of this committee had taken the
244 time to read Mr. Rove's answers to the questions Republicans
245 submitted to him and Mr. Rove's questions for Jill Simpson
246 and Don Siegelman. If they had, I am absolutely sure they
247 would have voiced their reservations about this committee's
248 actions today.

249 Many members of this committee have rightfully expressed
250 concern about due process for those charged with wrongdoing.
251 I hope that they will have the same reservations about going
252 forward with the contempt resolution proposed today.

253 Thank you, Mr. Chairman, and I will yield back.

254 Chairman Conyers. I thank the gentleman and recognize
255 the distinguished chair of the Commercial and Administrative
256 Law Subcommittee, the gentlelady from California, Linda
257 Sanchez.

258 Ms. Sanchez. Thank you, Mr. Chairman.

259 I urge support of the resolution and-report recommending

260 to the House of Representatives that Karl Rove, former White
261 House deputy chief of staff, be cited for contempt of
262 Congress and that the House pursue enforcing the subpoena
263 through other legal remedies as appropriate.

264 This is a very simple and straightforward issue. Karl
265 Rove is under subpoena to appear before the House Judiciary
266 Committee. Instead of abiding by that subpoena, he snubbed
267 this committee, the Congress and the American people.

268 We have a duty to protect this committee's institutional
269 prerogatives to conduct meaningful oversight and gather facts
270 for lawmaking in the future. If we refuse to act on Mr.
271 Rove's brazen snub, then we are responsible for the results.

272 Congress will no longer be a co-equal branch of
273 government and our system of checks and balances will be
274 irreparably eroded.

275 I am extremely disappointed that Mr. Rove, a private
276 citizen, based his failure to comply with the subpoena on the
277 White House's sweeping claim of immunity.

278 In a letter to Mr. Rove's attorney, White House counsel
279 Fred Fielding indicated that Mr. Rove is constitutionally
280 immune from compelled congressional testimony about matters
281 that arose during his tenure as a presidential aide and
282 relate to his official duties.

283 However, not a single court decision supports the
284 contention that a former White House aide can refuse to show

285 up to a congressional hearing. The Commercial and
286 Administrative Law Subcommittee carefully considered the
287 claims of absolute immunity in a meeting earlier this month.

288 In a detailed ruling, I found that these claims were not
289 properly asserted and not legally valid. The ruling was
290 upheld by subcommittee members in a 7-1 recorded vote.

291 We should not be distracted by the specious arguments
292 and excuses proffered by the minority in defense of Mr. Rove.
293 The minority has argued that Mr. Rove was out of town,
294 essentially arguing that his absence should be excused much
295 like when a doctor provides a sick note for a student who
296 misses a day of school.

297 However, interestingly enough, neither Mr. Rove nor his
298 counsel informed the majority that he would be out of the
299 country during the scheduled hearing. Had Mr. Rove truly
300 intended to comply with the subpoena, he should have
301 responded to it by asking to schedule a mutually agreeable
302 date.

303 Instead of complying with the subpoena, as every other
304 American would do, Mr. Rove left the country.

305 The minority has argued that Mr. Rove agreed to answer
306 questions from the committee in writing and did, in fact,
307 provide answers to questions about the Siegelman matter
308 proposed by Ranking Member Smith.

309 However, these written questions are not adequate—not an

310 adequate substitute for live testimony. The answers were not
311 made under oath, were not signed by Mr. Rove, and failed to
312 address the U.S. attorney firings or the broader issue of
313 politization.

314 Why is Mr. Rove willing to talk about these matters in
315 scripted settings that he controls but will not submit to
316 public questioning by all the members of this committee?

317 The minority has argued that this committee's
318 investigation into the politization of the Justice Department
319 has been a fishing expedition that has caught no fish.

320 However, the report by the inspector general and the
321 Office of Professional Responsibility that was released on
322 Monday found that former White House liaison Monica Goodling
323 and many other Justice Department officials committed
324 misconduct by violating both federal law and department
325 policy.

326 The report made clear that Karl Rove and the White House
327 Office of Political Affairs and presidential personnel
328 routinely gave recommendations for candidates for career
329 positions at the department, and many of those candidates
330 were placed into those civil service positions even when they
331 were less qualified than other candidates.

332 We now need to hear directly from Mr. Rove not only so
333 that we can fully understand his role in politicizing the
334 Justice Department but so that we can pursue additional lines

335 of inquiry.

336 Only after full disclosure of the facts and exposure of
337 misguided and illegal activities can we return the department
338 to its core mission of ensuring the fair and impartial
339 administration of justice for all Americans.

340 Despite the flurry of arguments from the minority, let's
341 not lose sight of the critical issue here. Mr. Rove has
342 defied a congressional subpoena and should face the
343 consequences.

344 I hope that my colleagues on the other side of the aisle
345 will stand up for this body's institutional prerogatives by
346 supporting the resolution and the report.

347 After all, our actions set a precedent for future
348 relations between the legislative and executive branches,
349 regardless of which party holds the majority in Congress or
350 occupies the White House.

351 Thank you, Mr. Chairman, and I yield back the balance of
352 my time.

353 Chairman Conyers. Thank you.

354 I am pleased now to recognize the distinguished ranking
355 minority member of the Commercial and Administrative Law
356 Subcommittee, the gentleman from Utah, Chris Cannon.

357 Mr. Cannon. Thank you, Mr. Chairman.

358 I would like to agree with the gentlelady who just
359 pointed out that our prerogatives are important, and they, in

360 fact, are and always have been to me, and I have been
361 consistent with that on this committee.

362 But what purpose will this proposed contempt citation
363 resolution serve other than the purpose of theater? At the
364 July 10 subcommittee hearing to which Karl Rove was
365 subpoenaed, the majority staked out four issues about which
366 it wanted to question him: The alleged selective prosecution
367 of Don Siegelman; secondly, the resignation of U.S. Attorney
368 David Iglesias; three, the resignation of U.S. Attorney Bud
369 Cummins; and four, the placement of U.S. Attorney Steve
370 Biskupic on a department list of U.S. attorneys who could be
371 asked to resign.

372 Before the hearing, Mr. Rove repeatedly offered to
373 answer the committee's questions about the Siegelman matter
374 voluntarily and in writing. The committee refused.

375 Why? Because it knew that if it subpoenaed Mr. Rove to
376 appear in person at a hearing, he would be instructed by the
377 president not to appear under the absolute immunity theory,
378 and we knew that Mr. Rove would honor the president's order.

379 A subpoena was thus the perfect way to create a needless
380 contempt scenario that could set Mr. Rove up for criminal
381 prosecution.

382 Notwithstanding the majority's refusal to take the
383 information, the minority sought it and got it through
384 written questions served on July 15th and answered in writing

385 on July 22nd.

386 Those written answers, all offered subject to the
387 criminal sanctions of 18 USC section 1001, resolved the
388 matter of whether Karl Rove ever attempted to orchestrate the
389 prosecution of Don Siegelman. He did not.

390 Ranking Member Smith quoted that Mr. Rove—what Mr. Rove
391 said about the Siegelman prosecution. Let me quote what he
392 said about Jill Simpson, whose fairy tales touched off this
393 whole affair.

394 Rove said, "I have never communicated, either directly
395 or indirectly, with Simpson about the investigation,
396 indictment, potential prosecution, prosecution, conviction or
397 sentencing of Governor Siegelman, about any other matter
398 related to his case or about any other matter whatsoever. I
399 have never communicated, either directly or indirectly, with
400 Simpson about any political campaigns before, during or after
401 2001 or about any other matter whatsoever. I do not have—I
402 do not and have never known Simpson personally. It is
403 possible that Simpson may have met me at a public function,
404 but I do not know her. I have never worked with her. And I
405 have never communicated with her, either directly or
406 indirectly," all stated in writing, under pain of criminal
407 sanction.

408 Case closed. Or, if the majority insists, let's hold a
409 hearing with Jill Simpson and Don Siegelman to see what they—

410 or see if they can impeach Mr. Rove's statements under their
411 own pain of criminal sanction.

412 What purpose will it serve to hold Karl Rove in contempt
413 instead? None, other than to allow a selective prosecution
414 of Karl Rove.

415 What about the three U.S. attorneys? There is no need
416 to hold Karl Rove in contempt about those matters either.
417 Committee Republicans gathered the evidence on that long ago.
418 We reported on it in our minority views on last year's
419 unwarranted contempt resolution against Harriet Miers and
420 Josh Bolten.

421 As renowned legal professor Stephen Presser reaffirmed
422 for the committee just last week, there is no "there" there.
423 There is no evidence of White House wrongdoing.

424 Further, the president ordered Mr. Rove not to appear
425 before us to discuss the U.S. attorneys matter on the same
426 grounds now pending in the committee's lawsuit against
427 Harriet Miers and Josh Bolten.

428 The committee asked the court for an expedited ruling in
429 that case. The committee should expect that it will be—get
430 one. Once it does, that ruling will control whether or not
431 Karl Rove does or does not have to—a requirement to appear.

432 Presumably, if the courts rule against the president's
433 position, we need only recall Mr. Rove and the president will
434 allow him to appear. So what is the point of holding Mr.

435 Rove in contempt? There is none. It is all an attempt to
436 selectively throw Karl Rove into a criminal contempt docket.

437 Now, Mr. Chairman, I would ask unanimous consent to make
438 part of the record a letter on Patton Boggs letterhead which
439 includes the answers to questions by Mr. Karl Rove.

440 Chairman Conyers. Without objection, so ordered.

441 [The information follows:]

442 ***** INSERT *****

443 Mr. Cannon. Thank you, Mr. Chairman. I yield back.

444 Chairman Conyers. I thank the gentleman.

445 Did the gentleman have an amendment that he would like
446 to call forward at this time?

447 Mr. Cannon. I do not, Mr. Chairman.

448 Chairman Conyers. All right.

449 Does anyone have an amendment? Are there any—are there
450 any amendments?

451 If not, the chair will call the question. All those in
452 favor of issuing this contempt, signify by saying "aye."

453 [A chorus of ayes.]

454 All those opposed, say "no."

455 [A chorus of noes.]

456 The ayes have it.

457 Do you want a record vote?

458 Mr. Smith. Yes, sir, please.

459 Chairman Conyers. All right. A record vote has been
460 called.

461 The Clerk. Mr. Conyers?

462 Chairman Conyers. Yes.

463 The Clerk. Mr. Conyers votes yes.

464 Mr. Berman?

465 [No response.]

466 Mr. Boucher?

467 [No response.]

468 Mr. Nadler?
469 Mr. Nadler. Yes.
470 The Clerk. Mr. Nadler votes yes.
471 Mr. Scott?
472 [No response.]
473 Mr. Watt?
474 Aye.
475 The Clerk. Mr. Watt votes aye.
476 Ms. Lofgren?
477 Ms. Lofgren. Aye.
478 The Clerk. Ms. Lofgren votes aye.
479 Ms. Jackson Lee?
480 Ms. Jackson Lee. Aye.
481 The Clerk. Ms. Jackson Lee votes aye.
482 Ms. Waters?
483 Ms. Waters. Aye.
484 The Clerk. Ms. Waters votes aye.
485 Mr. Delahunt?
486 Mr. Delahunt. Aye.
487 The Clerk. Mr. Delahunt votes aye.
488 Mr. Wexler?
489 [No response.]
490 Ms. Sanchez?
491 Ms. Sanchez. Aye.
492 The Clerk. Ms. Sanchez votes aye.

493 Mr. Cohen?

494 Mr. Cohen. Aye.

495 The Clerk. Mr. Cohen votes aye.

496 Mr. Johnson?

497 Mr. Johnson. Absolutely 100 percent aye.

498 The Clerk. Mr. Johnson votes aye.

499 Ms. Sutton?

500 Ms. Sutton. Aye.

501 The Clerk. Ms. Sutton votes aye.

502 Mr. Gutierrez?

503 [No response.]

504 Mr. Sherman?

505 No response.]

506 Ms. Baldwin?

507 Ms. Baldwin. Aye.

508 The Clerk. Ms. Baldwin votes aye.

509 Mr. Weiner?

510 Mr. Weiner. Aye.

511 The Clerk. Mr. Weiner votes aye.

512 Mr. Schiff?

513 Mr. Schiff. Aye.

514 The Clerk. Mr. Schiff votes aye.

515 Mr. Davis?

516 Mr. Davis. Aye.

517 The Clerk. Mr. Davis votes aye.

518 Ms. Wasserman Schultz?
519 Ms. Wasserman Schultz. Aye.
520 The Clerk. Ms. Wasserman Schultz votes aye.
521 Mr. Ellison?
522 Mr. Ellison. Aye.
523 The Clerk. Mr. Ellison votes aye.
524 Mr. Smith?
525 Mr. Smith. No.
526 The Clerk. Mr. Smith votes no.
527 Mr. Sensenbrenner?
528 Mr. Sensenbrenner. No.
529 The Clerk. Mr. Sensenbrenner votes no.
530 Mr. Coble?
531 Mr. Coble. No.
532 The Clerk. Mr. Coble votes no.
533 Mr. Gallegly?
534 [No response.]
535 Mr. Goodlatte?
536 Mr. Goodlatte. No.
537 The Clerk. Mr. Goodlatte votes no.
538 Mr. Chabot?
539 [No response.]
540 Mr. Lungren?
541 Mr. Lungren. No.
542 The Clerk. Mr. Lungren votes no.

543 Mr. Cannon?
544 Mr. Cannon. No.
545 The Clerk. Mr. Cannon votes no.
546 Mr. Keller?
547 Mr. Keller. No.
548 The Clerk. Mr. Keller votes no.
549 Mr. Issa?
550 [No response.]
551 Mr. Pence?
552 [No response.]
553 Mr. Forbes?
554 Mr. Forbes. No.
555 The Clerk. Mr. Forbes votes no.
556 Mr. King?
557 Mr. King. No.
558 The Clerk. Mr. King votes no.
559 Mr. Feeney?
560 Mr. Feeney. No.
561 The Clerk. Mr. Feeney votes no.
562 Mr. Franks?
563 Mr. Franks. No.
564 The Clerk. Mr. Franks votes no.
565 Mr. Gohmert?
566 Mr. Gohmert. No.
567 The Clerk. Mr. Gohmert votes no.

568 Mr. Jordan?

569 Mr. Jordan. No.

570 The Clerk. Mr. Jordan votes no.

571 Chairman Conyers. Are there any members who wish to—

572 Mr. Scott. Mr. Chairman?

573 Chairman Conyers. Yes, Mr. Scott?

574 Mr. Scott. Mr. Chairman, how am I—how am I recorded?

575 The Clerk. Mr. Scott is not recorded.

576 Mr. Scott. Aye.

577 The Clerk. Mr. Scott votes aye.

578 Chairman Conyers. Yes, Mr. Issa?

579 Mr. Issa. No.

580 The Clerk. Mr. Issa votes no.

581 Ms. Wasserman Schultz. Mr. Chairman?

582 Chairman Conyers. Yes, Ms. Wasserman Schultz?

583 Ms. Wasserman Schultz. How am I recorded?

584 The Clerk. Ms. Wasserman Schultz votes aye.

585 Ms. Wasserman Schultz. Thank you.

586 Mr. Ellison. Mr. Chairman, how—

587 Chairman Conyers. Mr. Ellison?

588 Mr. Ellison. Mr. Chairman, how am I recorded?

589 The Clerk. Mr. Ellison votes aye.

590 Chairman Conyers. Mr. Gutierrez?

591 The Clerk. Mr. Gutierrez votes aye.

592 Ms. Jackson Lee. Mr. Chairman? Mr. Chairman?

593 Chairman Conyers. The gentlelady from Texas?

594 Ms. Jackson Lee. How am I recorded?

595 The Clerk. Ms. Jackson Lee is recorded as aye.

596 Ms. Jackson Lee. Thank you.

597 Chairman Conyers. Mr. Boucher?

598 The Clerk. Mr. Boucher votes aye.

599 Chairman Conyers. Are there any other members that wish
600 to cast or change their vote?

601 The clerk will report.

602 The Clerk. Mr. Chairman, 20 members voted aye, 14
603 members voted nay.

604 Chairman Conyers. The contempt citation is agreed to.
605 And without objection, the report will be favorably reported
606 to the House as a single document incorporating amendments
607 adopted, and the staff is directed to make any technical and
608 conforming changes. Members will have 2 days to submit
609 views.

610 The next item on the agenda is H.R. 3—excuse me, H.R.
611 2575 for the relief of Mikael Adrian Christopher Figueroa
612 Alvarez.

613 Pursuant to notice, I call up this private bill for the
614 relief—of this one person for purposes of markup and ask the
615 clerk to report the bill.

616 The Clerk. H.R. 2575, a bill for the relief of Mikael
617 Adrian Christopher Figueroa Alvarez.

618 [The bill follows:]

619 ***** INSERT *****

620 Ms. Lofgren. Mr. Chairman?

621 Chairman Conyers. Okay.

622 Mr. Wexler. Mr. Chairman?

623 Chairman Conyers. I yield to the gentleman from—for
624 what purpose would the gentleman like to be recognized?

625 Mr. Wexler. Just to ask unanimous consent, Mr.

626 Chairman—I was at a Florida delegation meeting regarding an
627 issue integral to my district. I missed the vote, and I just
628 would like unanimous consent, if I could, to suggest had I
629 been there I would have voted yes.

630 Chairman Conyers. Without objection.

631 Mr. Wexler. Thank you.

632 Chairman Conyers. Yes?

633 Mr. Sherman. [OFF MIKE]

634 Chairman Conyers. All right. Brad Sherman makes the
635 same unanimous consent request, without objection.

636 Ms. Lofgren. Mr. Chairman?

637 Chairman Conyers. The clerk will—

638 Ms. Lofgren. Mr. Chairman?

639 Chairman Conyers. Zoe Lofgren?

640 Ms. Lofgren. On H.R. 2575, this Mikael Alvarez,
641 nickname Mackie, was born in the Philippines in October of
642 1984. His parents brought him to the United States in 1991
643 when he was 6 years old. He and his family, including three
644 older siblings, entered the country legally with tourist

645 visas which later lapsed.

646 His family spent years trying to regularize their
647 immigration status. His parents' case, which began in 1994
648 when Mackie was 9 years old, was ultimately denied on appeal
649 in 2001, and the family was eventually ordered removed that
650 year.

651 The immigration cases of his siblings were severed from
652 their parents' case, and these siblings are all now legal
653 permanent residents of the United States.

654 But because Mackie was the youngest child in his family
655 and was a minor at the time, his case remained attached to
656 his parents' denied application even though his siblings were
657 not.

658 During this time, he graduated from Homestead High
659 School in Santa Clara, California, where he was a member of
660 the volleyball team. He then attended De Anza Community
661 College, served as a swim instructor at the De Anza Cupertino
662 Aquatic Center until his arrest and detention by ICE on May
663 2nd, 2007. He was detained for 3 months, until August 7th.

664 He is now 22 years old. He grew up and was educated in
665 the United States, having received no schooling in the
666 Philippines. After 16 years in the United States, he does
667 not speak Tagalog, the language of the Philippines, and he
668 has few memories of his birthplace.

669 If allowed to remain in the U.S., he aspires to transfer

670 to a 4-year institution where he can pursue a career in
671 elementary level teaching and develop his interest in
672 computer engineering.

673 We have received a report from the United States Citizen
674 and Immigration Service indicating that he has no other basis
675 to immigrate to the United States and they have no adverse
676 information about him.

677 The bill was reported out of the subcommittee on July
678 10th, and I would ask that members approve this private bill,
679 which was delayed from our last markup because we ran out of
680 time.

681 And there is one other private bill I will urge after
682 this.

683 Chairman Conyers. Thank you.

684 The chair recognizes Lamar Smith.

685 Mr. Smith. Thank you, Mr. Chairman.

686 This private bill grants permanent residence to Mikael
687 Adrian Christopher Alvarez. Mr. Alvarez was born in the
688 Philippines in 1984. His parents came with him to the United
689 States on tourist visas when he was 6 years old.

690 Mr. Alvarez' parents' asylum applications were
691 ultimately denied in 2001 and the family was ordered removed.
692 His brothers and sisters have since become legal permanent
693 residents through marriage to U.S. citizens.

694 Mr. Alvarez is now 22 years old. He states and swears

695 that he first became aware that he was not a legal resident
696 in 2007. I must state that I support this bill with
697 reservations.

698 However, I did indicate to Immigration Subcommittee
699 Chairwoman Lofgren that I would support the bill on the
700 assurance that it will not be used to set precedent for the
701 consideration of future private bills, and I want to keep
702 that commitment.

703 I now yield the balance of my time to Steve King,
704 ranking member of the Subcommittee on Immigration, Border
705 Security and International Law.

706 Mr. King. I thank you, Mr. Smith, for yielding to me.

707 And I speak in opposition of the bill. I appreciate the
708 viewpoint that has been brought to this, and I appreciate the
709 humanitarian arguments that are made.

710 But I oppose the bill because it is one—this is a single
711 incident of an individual who would fit into, I believe, a
712 broader category, and that broader category would be the
713 people who would have similar or the same storie. And this
714 is the category that is the DREAM Act.

715 And the DREAM Act would allow state universities to
716 grant resident illegal immigration students in-state tuition
717 rates while it denied those same rates to U.S. citizen
718 students from out of state.

719 The DREAM Act would also provide amnesty to illegal

720 immigrants who entered the U.S. before they were 16 years old
721 and have graduated from high school. Again, it fits the
722 definition of the DREAM Act.

723 It would grant them permanent residence and eventually
724 citizenship once they have completed 2 years of college or
725 have served in the armed services unless, of course, these
726 requirements are waived.

727 The DREAM Act also was included in the Senate amnesty
728 bill that was defeated last year, the bill that shut down the
729 switchboard of the United States Senate.

730 The DREAM Act was then brought up independently by the
731 Senate Democratic leadership and it was defeated—

732 Mr. Cannon. Would the gentleman yield?

733 Mr. King. To?

734 Mr. Cannon. Behind you.

735 Mr. King. I would yield.

736 Mr. Cannon. Thank you.

737 Could I just clarify? You just suggested that the DREAM
738 Act is amnesty because it allows children who came here
739 before they were 16 to stay. But amnesty generally speaking
740 relates to crimes. How could a 16-year-old commit a crime?
741 Why would that be amnesty?

742 Mr. King. Well, reclaiming my time, and I appreciate
743 the difference in viewpoint between myself and the gentleman
744 from Utah, I have consistently defined amnesty as—to grant

745 amnesty is to pardon the immigration lawbreakers and reward
746 them with the objective of their crime.

747 And so my definition is that this rewards the
748 lawbreakers with the definition of their crime.

749 Mr. Cannon. Well, would the gentleman yield further?

750 Mr. King. And that was my response.

751 Briefly, I would.

752 Mr. Cannon. Well, thank you.

753 The crime in this case would have been committed by the
754 parents who brought their child into the United States. So
755 for them, there may be a crime. But this is not amnesty for
756 the parents. This is giving a child an opportunity to
757 develop his God-given skills and talents.

758 Mr. King. Well, reclaiming my time for the last time,
759 no. I would disagree with the gentleman from Utah, that it
760 is a crime to enter the United States illegally, and so that
761 does fit the definition of the—of amnesty that I have
762 consistently used over the last couple of years.

763 And continuing on with my statement, that the DREAM Act
764 was then brought up independently by the Senate leadership
765 and defeated.

766 I believe that the DREAM Act, which the subject of this
767 private bill fits exactly into the definition, will only
768 encourage more illegal immigration as parents who enter the
769 U.S. illegally bring their children with them in the

770 expectation that they will benefit from a future DREAM Act or
771 a private bill and be rewarded with the objective of the
772 crimes that were committed.

773 And whether it is committed by the individual as a child
774 or by the parents on behalf of the child, the reward is the
775 same.

776 So unfortunately, I don't believe that the situation in
777 the—of the beneficiary in this private bill, as sympathetic
778 as it is, can be distinguished from that of many other
779 potential beneficiaries of the DREAM Act.

780 Private bills are for unique situations of extraordinary
781 hardship, and that is why I oppose this bill. If we pass
782 every individual private bill that tugs at our heartstrings,
783 eventually we have no immigration policy whatsoever.

784 And that is why I oppose this legislation. I would urge
785 my colleagues to oppose it.

786 And I would point out also, with the chair of the
787 Immigration Subcommittee's remark that the subject of this,
788 Mikael Adrian Christopher Alvarez, doesn't speak the language
789 of the Philippines, I remember the president of the
790 Philippines coming here, speaking to us in English and
791 thanking us for going to the Philippines in 1898, teaching
792 them English, because now Filipinos can go anywhere in the
793 world and get a job, and 1.6 million of them do. So I don't
794 think it is a hardship to go to the Philippines speaking

795 English.

796 And I would then urge a "no" vote on this private bill,
797 and I would yield back the balance of my time to the
798 gentleman from Texas.

799 Chairman Conyers. I thank the gentleman.

800 Mr. Cannon. Mr. Chairman?

801 Mr. Smith. I will yield back as well.

802 Chairman Conyers. Thank you very much.

803 Mr. Cannon. Mr. Chairman?

804 Chairman Conyers. Yes, the gentleman from Utah?

805 Mr. Cannon. I would like 5 minutes for—

806 Chairman Conyers. The gentleman is granted.

807 Mr. Cannon. Thank you. I thank the chair.

808 This is a case of an individual and ought to be
809 considered in the context of an individual.

810 But I think it appropriate to respond to some of the
811 things that Mr. King has said, because it goes to—much of his
812 statement went to a much broader policy.

813 The fact is the DREAM Act or, as we called it over here,
814 the Student Adjustment Act, is not an amnesty and can't be
815 characterized by any stretch of the imagination as an
816 amnesty.

817 While I agree with Mr. King that there may be some
818 distant incentive to people coming to the United States to
819 think that their children can get an education here, the

820 primary incentive for people coming—breaking the law and
821 coming to the United States is to have a better life for
822 themselves immediately and to not have a distant possibility
823 for their children.

824 Ms. Lofgren. Thank you.

825 Mr. Cannon. That said, it is—there are two elements
826 that I think should be made clear about the DREAM Act.

827 In the first place, if you believe as a conservative in
828 a limited role of the federal government, then the decision
829 as to whether to charge in-state tuition or not ought to be a
830 state decision. The DREAM Act does that, or the Student
831 Adjustment Act does that.

832 In the second place, if you believe in enforcing the
833 law, then you should believe in enforcing the law at every
834 level, which is if parents have committed a crime by coming
835 here, then there is some reason and rationale for pursuing
836 those criminals.

837 We ought to do it rationally, instead of in the
838 arbitrary and capricious manner that we have seen
839 prosecutions thus far.

840 But that said, it is—it does not make sense to impute a
841 crime to a child who can't commit a crime. And then to call
842 giving him a social benefit a—an amnesty is—just makes a
843 mockery of the English language.

844 So I would hope the gentleman would reconsider his views

845 on the Student Adjustment Act in general and on this
846 particular case as we move forward to a vote.

847 And I thank the chairman and yield back.

848 Ms. Lofgren. Would the gentleman yield?

849 Mr. Cannon. Oh, I would be happy to yield.

850 Ms. Lofgren. I would just like to thank the gentleman
851 for the clarification.

852 I would note that in many cases young people who are
853 here entered lawfully. I mean, and that was—in fact, this is
854 a private bill. It is not the DREAM Act we are voting on.

855 But as a matter of fact, that is true in this case. He
856 was a small child and entered legally to the United States
857 and now is kind of stranded.

858 But I appreciate the support of the gentleman, and I
859 appreciate the gentleman yielding.

860 Mr. Cannon. Thank you.

861 And reclaiming my time, I just point out that, yes, he
862 may have come as a very small child, but anyone—any child who
863 comes here cannot, by the nature of his age, be accused of
864 having committed a crime.

865 And we have a big problem with immigration, and having a
866 little bit more time, let me just point out that I was on the
867 floor recently, or a year or two ago—maybe longer than that—
868 with one of the members of this committee who was looking at
869 gaining support from Republicans for the Student Adjustment

870 Act.

871 And he had a list of votes, and as he was going down
872 those votes, he was looking at people who might be amenable
873 to co-sponsoring, and he got to my name, and he looked at me,
874 and he said, "My goodness, Chris, you are not a liberal on
875 this issue."

876 And the fact is I am not. I believe in enforcing the
877 laws, but enforcing the laws with compassion is what makes
878 sense. And distorting the English language to create
879 animosity and anger and unfairly categorizing people as
880 groups and going to extremes on those issues does not help us
881 in our job of creating laws that can be enforced reasonably
882 and fairly.

883 And I would encourage members of the committee to
884 consider that and recognize that this is a young boy who is
885 in a difficult position not of his own choice but one that
886 we, for lack of other alternatives, have the opportunity to
887 help him avoid.

888 And with that, Mr. Chairman, I yield back.

889 Chairman Conyers. I thank the gentleman.

890 Steve King, you are recognized.

891 Mr. King. Move to strike the last word. Thank you, Mr.
892 Chairman.

893 In response to the gentleman from Utah and the remark
894 that my definition of amnesty distorts the English language,

895 that is the first time that I have heard such a statement as
896 consistently as I have defined amnesty.

897 I have carefully sat down and drafted it. I have gone
898 through legal definitions. I crafted the language and I
899 floated it and tested it. I tested it on this committee and
900 on the subcommittee many times. I tested it in the media.

901 To grant amnesty is to pardon immigration lawbreakers
902 and reward them with the objective of their crime. This
903 gentleman in question is an adult. He was an adult—he has
904 been an adult for 4 years, which means he has been in
905 violation of immigration law for 4 years as an adult as well
906 as a period of time prior to that.

907 And there are thousands and thousands of people in the
908 United States today that would fit within the definitions of
909 the—of Mr. Alvarez, who is the subject of this private bill.

910 And so not only does it scream to us to take a look at
911 what we are doing here, because this issue—his political
912 leverage was significant enough to get the attention of this
913 Congress, thousands and thousands in the same category did
914 not have the same political leverage.

915 If there was to be relief for people that fit this kind
916 of definition, then people that agree with Mr. Cannon should
917 then pass the DREAM Act, if that can actually withstand the
918 scrutiny of the American voting public, and it has not been
919 able to do so in the two events that it came up in the Senate

920 in the past.

921 I would argue that the situation we are dealing with
922 when we look to the broader subject of the DREAM Act, which
923 is a subject of our discussion here, at least—that we have to
924 draw the line somewhere.

925 And the idea that a state should be able to determine
926 who they will grant in-state tuition discounts to—they need
927 to answer, then, the equal protection question. And maybe
928 there is a legal discussion there that can ensue.

929 But I would say the hardest question to be answered by
930 the proponents of the DREAM Act is what do you say to the son
931 or the daughter, whose father or mother was killed fighting
932 for our freedom in a place like Iraq or Afghanistan, who
933 wants to go to college out of state in a place like Utah or
934 California, who has to pay out-of-state tuition in order to
935 sit in a desk next to someone who would be deported if ICE
936 was the one that delivered the scholarship that you would
937 grant under the DREAM Act?

938 That is the question that can't be answered by the
939 people that are advocate for the DREAM Act, or whatever the
940 other definition of it is, and that is the moral and
941 fundamental question that is underneath this private bill
942 here today.

943 So I urge my colleagues—take a look at this. Let's not
944 be swept up in the emotionalism of individual cases and

945 anecdotes. Let's look at real definitions.

946 Let's be logical and rational about this, as the people
947 who formed this country were, and a measure that—when we do
948 private bills they have to be in a narrow definition. They
949 must be unique.

950 They need to deal with a—within the parameters that we
951 have established to this point or be in such unique
952 situation.

953 This is not a unique situation, however much it tugs at
954 our heartstrings, and so—and I would urge my colleagues to
955 oppose this private bill.

956 And I would hope that we would not be bringing private
957 bills that were as broad as this one is as far as widening
958 the parameters with private bills.

959 And I would remind us again that we have to answer to
960 those veterans that have fought for our freedom, and they—the
961 veterans themselves as well who might come back from
962 Afghanistan or Iraq and have to pay out-of-state tuition to
963 sit in a desk next to Mr. Alvarez.

964 I would say no. I would ask you to—also to vote no. I
965 appreciate everybody's position on this.

966 And I would yield back the balance of my time.

967 Chairman Conyers. Thank you.

968 Artur Davis, briefly?

969 Mr. Davis. Mr. Chairman, thank you.

970 And I won't take the 5 minutes, but I wanted to actually
971 pay a compliment to a colleague of mine because I think
972 everyone in the room should take note of this.

973 It is very rare that any member of the Congress
974 knowingly takes a position that gets him in political
975 trouble, holds to that position even if it means he loses a
976 party primary. That is what Mr. Cannon has done.

977 So without saying I agree with every aspect of Mr.
978 Cannon's position, I do want to acknowledge him and salute
979 him for having the courage to maintain a position that proved
980 to be untenable politically.

981 Chairman Conyers. I thank the gentleman.

982 Are there any amendments?

983 A reporting quorum being present, the question is on
984 reporting the bill favorably to the House. Those in favor,
985 say "aye."

986 [A chorus of ayes.]

987 Those opposed, say "no."

988 [A chorus of noes.]

989 The ayes have it.

990 Mr. Smith. Mr. Chairman?

991 Chairman Conyers. Yes.

992 Mr. Smith. I ask for a recorded vote.

993 Chairman Conyers. Absolutely.

994 The Clerk. Mr. Conyers?

995 Chairman Conyers. Aye.

996 The Clerk. Mr. Conyers votes aye.

997 Mr. Berman?

998 [No response.]

999 Mr. Boucher?

1000 [No response.]

1001 Mr. Nadler?

1002 Mr. Nadler. Aye.

1003 The Clerk. Mr. Nadler votes aye.

1004 Mr. Scott?

1005 Mr. Scott. Aye.

1006 The Clerk. Mr. Scott votes aye.

1007 Mr. Watt?

1008 Mr. Watt. Aye.

1009 The Clerk. Mr. Watt votes aye.

1010 Ms. Lofgren?

1011 Ms. Lofgren. Aye.

1012 The Clerk. Ms. Lofgren votes aye.

1013 Ms. Jackson Lee?

1014 [No response.]

1015 Ms. Waters?

1016 Ms. Waters. Aye.

1017 The Clerk. Ms. Waters votes aye.

1018 Mr. Delahunt?

1019 Mr. Delahunt. Aye.

1020 The Clerk. Mr. Delahunt votes aye.
1021 Mr. Wexler?
1022 [No response.]
1023 Ms. Sanchez?
1024 Ms. Sanchez. Aye.
1025 The Clerk. Ms. Sanchez votes aye.
1026 Mr. Cohen?
1027 Mr. Cohen. Aye.
1028 The Clerk. Mr. Cohen votes aye.
1029 Mr. Johnson?
1030 Mr. Johnson. Aye.
1031 The Clerk. Mr. Johnson votes aye.
1032 Ms. Sutton?
1033 Ms. Sutton. Aye.
1034 The Clerk. Ms. Sutton votes aye.
1035 Mr. Gutierrez?
1036 [No response.]
1037 Mr. Sherman?
1038 Mr. Sherman. Aye.
1039 The Clerk. Mr. Sherman votes aye.
1040 Ms. Baldwin?
1041 Ms. Baldwin. Aye.
1042 The Clerk. Ms. Baldwin votes aye.
1043 Mr. Weiner?
1044 Mr. Weiner. Aye.

1045 The Clerk. Mr. Weiner votes aye.
1046 Mr. Schiff?
1047 Mr. Schiff. Aye.
1048 The Clerk. Mr. Schiff votes aye.
1049 Mr. Davis?
1050 Mr. Davis. Aye.
1051 The Clerk. Mr. Davis votes aye.
1052 Ms. Wasserman Schultz?
1053 [No response.]
1054 Mr. Ellison?
1055 [No response.]
1056 Mr. Smith?
1057 Mr. Smith. A shaky aye.
1058 [Laughter.]
1059 The Clerk. Mr. Smith votes aye.
1060 Mr. Sensenbrenner?
1061 Mr. Sensenbrenner. No.
1062 The Clerk. Mr. Sensenbrenner votes no.
1063 Mr. Coble?
1064 Mr. Coble. No.
1065 The Clerk. Mr. Coble votes no.
1066 Mr. Gallegly?
1067 [No response.]
1068 Mr. Goodlatte?
1069 Mr. Goodlatte. No.

1070 The Clerk. Mr. Goodlatte votes no.
1071 Mr. Chabot?
1072 [No response.]
1073 Mr. Lungren?
1074 [No response.]
1075 Mr. Cannon?
1076 Mr. Cannon. Aye.
1077 The Clerk. Mr. Cannon votes aye.
1078 Mr. Keller?
1079 Mr. Keller. No.
1080 The Clerk. Mr. Keller votes no.
1081 Mr. Issa?
1082 [No response.]
1083 Mr. Pence?
1084 [No response.]
1085 Mr. Forbes?
1086 Mr. Forbes. No.
1087 The Clerk. Mr. Forbes votes no.
1088 Mr. King?
1089 Mr. King. No.
1090 The Clerk. Mr. King votes no.
1091 Mr. Feeney?
1092 Mr. Feeney. No.
1093 The Clerk. Mr. Feeney votes no.
1094 Mr. Franks?

1095 Mr. Franks. No.

1096 The Clerk. Mr. Franks votes no.

1097 Mr. Gohmert?

1098 Mr. Gohmert. Aye.

1099 The Clerk. Mr. Gohmert votes aye.

1100 Mr. Jordan?

1101 Mr. Jordan. No.

1102 The Clerk. Mr. Jordan votes no.

1103 Chairman Conyers. Are there any members that wish to
1104 vote or change their vote?

1105 The clerk will report.

1106 The Clerk. Mr. Chairman, 19 members voted aye, nine
1107 members voted no.

1108 Chairman Conyers. The H.R. 2575 is agreed to, and
1109 without objection the bill will be reported as a single
1110 amendment, and members will have 2 days to submit views.

1111 Pursuant to notice, I call up bill H.R. 5243, a bill for
1112 the relief of Kumi Iizuka-Barcena, for purposes of markup.

1113 Would the clerk please report the bill?

1114 The Clerk. H.R. 5243, a bill for the relief of Kumi
1115 Iizuka-Barcena.

1116 [The bill follows:]

1117 ***** INSERT *****

1118 Ms. Lofgren. Mr. Chairman?

1119 Chairman Conyers. Without objection, the bill is
1120 considered as read and open for amendment at any point.

1121 And I would invite the chair of Immigration Committee to
1122 make the opening statement.

1123 Ms. Lofgren. Thank you, Mr. Chairman. Kumi Iizuka was
1124 born on Japan on October 28th, 1965. She entered the United
1125 States on a student visa in 1992. She received a bachelor's
1126 degree from West Virginia Wesleyan College and a master's
1127 degree from the University of Hartford.

1128 In 1998 she obtained a work visa and began working in
1129 the United States. While in the United States, she met and
1130 fell in love with Andrew Barcena, a U.S. citizen.

1131 She married Andrew on July 29th, 2004 while he was
1132 training to be a police officer for the El Paso police
1133 department. A few weeks later, Andrew filed immigration
1134 petitions for Kumi based on their marriage.

1135 A little over 1 month later, just after graduating from
1136 the police academy, Andrew was shot and killed while
1137 attempting to subdue an aggressive spouse during a domestic
1138 disturbance call. He died before DHS could process and
1139 approve the immigration petitions that Andrew had filed on
1140 Kumi's behalf.

1141 Due to the circumstances, however, DHS granted Kumi
1142 deferred action status. Kumi continued to care for Andrew's

1143 father, who was diabetic and suffered a partial paralysis due
1144 to a stroke.

1145 And as if she had not experienced tragedy enough, less
1146 than 2 years after Andrew's death, Kumi was diagnosed with
1147 breast cancer for which she required two rounds of surgery as
1148 well as chemo and radiation therapy.

1149 Her only opportunity to remain in the United States is
1150 this private bill. We have received a report from the
1151 department indicating no adverse information about her, and
1152 the bill was passed by the subcommittee by voice vote in
1153 July.

1154 I urge my colleagues to support the bill today.

1155 Chairman Conyers. Lamar Smith?

1156 Mr. Smith. Thank you, Mr. Chairman.

1157 I do support passage of this private bill. The bill
1158 would grant permanent residence to Kumi Iizuka-Barcena. Her
1159 U.S. citizen spouse was an El Paso police officer who was
1160 killed in the line of duty before her petition for permanent
1161 residence had been approved.

1162 The committee should not approve private immigration
1163 bills unless they fit within the private bill precedent of
1164 the modern era or represent unique situations. There is
1165 ample precedent for this private bill.

1166 Congress has often looked favorably on private bills
1167 where the immigrant spouse of an American citizen lost their

1168 right to immigrate because of the death of the American
1169 citizen spouse before the approval of a petition for
1170 conditional permanent residence for the immigrant.

1171 Congress has also passed private bills where the
1172 beneficiary was the spouse of a U.S. citizen or a legal
1173 immigrant who died while in the service of the United States
1174 such as in the military or the State Department.

1175 I urge my colleagues to support the bill and yield the
1176 balance of my time to the ranking member of the Immigration
1177 Subcommittee, the gentleman from Iowa, Mr. King.

1178 Mr. King. Thank you, Mr. Smith. I appreciate your
1179 yielding and your work and cooperation on these as well as
1180 the chair.

1181 In the spirit of Rodney King, I want to agree that we
1182 should get along on this bill, and I support this private
1183 bill granting permanent residence to Kumi Iizuka-Barcena.

1184 Kumi was born in Japan in 1965. She entered the United
1185 States on a student visa in 1992 and received a bachelor's
1186 degree from West Virginia Wesleyan College and a master's
1187 degree from the University of Hartford.

1188 In 1998, Kumi began working for L-com on an H1B, and in
1189 2004 she married Andrew Barcena, a U.S. citizen, and he filed
1190 a petition for permanent residence for Kumi.

1191 And this is the tragic part—Andrew was—after he had
1192 graduated from El Paso police academy, was shot and killed

1193 while attempting to subdue an aggressive spouse during a
1194 domestic disturbance call.

1195 Andrew died before DHS could process and approve Kumi's
1196 immigration petition. Upon his death, the petition expired.
1197 However, DHS granted Kumi deferred action status along with
1198 employment authorization so that she could continue to care
1199 for Andrew's father, who is a diabetic and suffers partial
1200 paralysis due to a stroke.

1201 In 2006 Kumi was diagnosed with breast cancer. As Mr.
1202 Smith has stated, there is ample modern era precedent for
1203 this private bill. It is a narrow set of definitions, and it
1204 is a compelling individual case.

1205 And as the DHS report on Kumi contained no derogatory
1206 information, my presumption is that the balance of our
1207 information is consistent with the individual that she is,
1208 and I would urge my colleagues to support this private bill,
1209 and I would yield back the balance of my time.

1210 Chairman Conyers. Do you yield back?

1211 Mr. Smith. Yeah, I yield back as well, Mr. Chairman.

1212 Chairman Conyers. I thank you.

1213 Other members' statements will be included in the
1214 record, without objection.

1215 Are there any amendments?

1216 If not, a quorum being present, the question is on
1217 reporting the bill favorably to the House. Those in favor,

1218 say "aye."

1219 [A chorus of ayes.]

1220 Those opposed, say "no."

1221 [No response.]

1222 The ayes have it, and the bill is ordered reported
1223 favorably.

1224 Members will have 2 days to submit additional views.

1225 Pursuant to notice, I now call up the bill H.R. 6577,
1226 the Great Lakes-St. Lawrence River Basin Water Resources
1227 Compact, for purposes of markup and invite the clerk to
1228 report the bill.

1229 The Clerk. H.R. 6577, a bill to express the consent and
1230 approval of Congress to an interstate compact regarding water
1231 resources in the Great Lakes-St. Lawrence River Basin.

1232 [The bill follows:]

1233 ***** INSERT *****

1234 Chairman Conyers. Without objection, the bill is
1235 considered as read and open for amendment at any point.

1236 Members of the committee, over the course of our history
1237 in this country, the states and federal government have
1238 supported interstate compacts to address water supply, water
1239 quality and flood control issues within the hydrological
1240 context of watersheds and basins.

1241 Bill 6577 would grant congressional approval of the
1242 Great Lakes-St. Lawrence River Basin Water Resources Compact.
1243 Eight states have agreed to this compact—Michigan, Illinois,
1244 Indiana, Minnesota, New York, Ohio, Pennsylvania and
1245 Wisconsin.

1246 Developed over 5 years in a transparent process with
1247 input from industry, conservationists, environmentalists,
1248 municipal governments and residents of the region, the
1249 compact will provide unprecedented protections for the Great
1250 Lakes as well as improve the health of the local lake
1251 ecosystem.

1252 The compact will protect the current quality and water
1253 levels of the Great Lakes by banning new diversions of water
1254 from the basin while strictly regulating exceptions.

1255 It will require states to use a consistent standard to
1256 review proposed uses of water from the basin, set regional
1257 goals and objectives for water conservation and efficiency to
1258 be reviewed every 5 years, require each state to develop and

1259 implement a water conservation and efficiency program, and
1260 balance economic development with sustainable water use to
1261 ensure Great Lakes waters are managed responsibly.

1262 The compact enjoys bipartisan support from over 30
1263 members of Congress, 16 members of the other body, and the
1264 bipartisan chairs of the Congressional Great Lakes Task
1265 Force.

1266 Our economy, particularly in Michigan, depend (sic) on
1267 the Great Lakes for industrial and recreational uses,
1268 hydroelectric power, maritime commerce and drinking water.
1269 The compact will ensure that our Great Lakes will remain
1270 stable and viable for generations to come.

1271 I want to acknowledge in particular the gentlelady from
1272 Ohio, Betty Sutton, for her continued leadership in moving
1273 this legislation forward, as well as that of the Commercial
1274 and Administrative Law chair, Linda Sanchez.

1275 I urge support of the bill and yield to Lamar Smith.

1276 Mr. Smith. Thank you, Mr. Chairman. I agree with your
1277 comments. I support the bill and yield to the gentleman from
1278 Wisconsin, Mr. Sensenbrenner.

1279 Mr. Sensenbrenner. Thank you very much, Mr. Chairman.

1280 It isn't often that this committee gets to vote on the
1281 ratification of an interstate compact, which is required by
1282 the Constitution before any compact may become effective.

1283 Let me say that this compact that is before us today is

1284 the result of extensive negotiations amongst all eight of the
1285 states that have ratified the compact, stakeholders which
1286 include industry, municipalities, local governments and
1287 conservation groups.

1288 And when it came before the legislatures of the eight
1289 states, there were over 1,300 legislators, or over 95 percent
1290 of the legislators, that voted to ratify the compact on
1291 behalf of the states.

1292 This compact is very important because it will provide
1293 an outline for the management of water in the Great Lakes,
1294 which is an incredible natural resource, and regulates
1295 diversions, particularly those where drinking water is needed
1296 immediately outside the Great Lakes basin where the water has
1297 been subject to high radium levels or other problems.

1298 And it is flexible enough so that the parties to the
1299 compact, which are all of the governors of the Great Lakes
1300 states, will review and make whatever modifications they deem
1301 necessary at least once every 5 years.

1302 I think this is a situation where everybody is a winner
1303 and nobody is a loser, and the sooner this compact can be
1304 ratified by the Congress, the sooner it will become effective
1305 and greater protection will be given to the largest body of
1306 fresh water in the world, which is the Great Lakes.

1307 I thank the gentleman from Texas and yield back.

1308 Mr. Smith. Mr. Chairman, I will yield back.

1309 Ms. Sutton. Mr. Chairman?

1310 Chairman Conyers. I thank both gentlemen and recognize

1311 Ms. Betty Sutton.

1312 Ms. Sutton. Thank you, Chairman Conyers, for your

1313 leadership and for scheduling a quick markup for the Great

1314 Lakes-St. Lawrence River Basin Water Resources Compact.

1315 The Great Lakes are among our greatest natural

1316 resources. They are the largest fresh water source in the

1317 world and must be protected.

1318 The compact will allow local communities, including

1319 those that I represent, to utilize their resources for

1320 generations to come. It is essential that the water from the

1321 Great Lakes basin not be carelessly diverted.

1322 Lake Erie and our other Great Lakes not only provide

1323 fresh water and recreation but they are essential for our

1324 economy. In my congressional district, we utilize the lake

1325 to move steel and other goods in and out of Lorain Harbor.

1326 In fact, Lorain Harbor ranks 23rd among Great Lakes

1327 ports and 93rd in the U.S. for commercial activity.

1328 This compact will ensure the sustainable use of the

1329 Great Lakes water while we continue our efforts to clean up

1330 and protect the Great Lakes from invasive species.

1331 I would like to congratulate the eight Great Lakes

1332 states for ratifying this historic agreement, and a special

1333 thanks to the chairman and to Governor Ted Strickland from my

1334 home state of Ohio for his leadership and dedication to the
1335 Great Lakes.

1336 I yield back.

1337 Ms. Sanchez. Will the gentlelady yield? Over here.

1338 Ms. Sutton. I will.

1339 Ms. Sanchez. Thank you. I just very briefly wanted to
1340 say that I support H.R. 6577, which will express the consent
1341 and approval of Congress to the interstate compact regarding
1342 the Great Lakes-St. Lawrence River Basin.

1343 The Commercial and Administrative Law Subcommittee
1344 generally has jurisdiction over interstate compacts, and
1345 because there are so few days left in this Congress, it
1346 motivated me to allow the bill to be marked up in full
1347 committee, bypassing the subcommittee.

1348 And I would encourage members to quickly pass this and
1349 support H.R. 6577.

1350 And with that, I yield back.

1351 Chairman Conyers. We thank the gentlelady's—the
1352 chairwoman's expedition of the matter to the full committee.

1353 Are there any amendments? If not, a reporting quorum is
1354 present. The question is on reporting the bill favorably to
1355 the House. Those in favor of, say "aye."

1356 [A chorus of ayes.]

1357 Those opposed, say "no."

1358 [No response.]

1359 The noes have it—the ayes have it, and the bill is
1360 ordered reported favorably, and members, as usual, will have
1361 2 days to submit additional views.

1362 Pursuant to notice, I now call up the bill H.R. 6126,
1363 the Fairness in Nursing Home Arbitration Act, for purposes of
1364 markup and invite the clerk to report the bill.

1365 The Clerk. H.R. 6126, a bill to amend Chapter 1 of
1366 Title 9 of United States Code with respect to arbitration.

1367 [The bill follows:]

1368 ***** INSERT *****

1369 Chairman Conyers. Without objection, the bill is
1370 considered as read and open for amendment at any point.

1371 And I invite the chair of Commercial and Administrative
1372 Law, Linda Sanchez, to make the opening statement.

1373 Ms. Sanchez. Thank you, Mr. Chairman. I appreciate
1374 that.

1375 I rise in strong support of H.R. 6126, the Fairness in
1376 Nursing Home Arbitration Act of 2008. Earlier this year, my
1377 father was placed into a nursing home, and the experience
1378 proved to be both exhausting and distressing at times.

1379 My family had searched for facilities close to home with
1380 reasonable pricing structures and which offered an array of
1381 services. But most importantly, we sought out a place where
1382 our father would be safe and where we thought he would
1383 receive appropriate care.

1384 My family's experience in placing my father in a home is
1385 similar to what other families experience across this nation
1386 every day. The process often can be very emotional.

1387 Families placing a parent or other loved one in a
1388 nursing home or assisted living facility rarely have the time
1389 or wherewithal to fully and thoughtfully consider the
1390 potential loss of their constitutional rights.

1391 Unfortunately, many long-term care facility admission
1392 agreements strip residents of their right to a jury trial
1393 through the inclusion of pre-dispute mandatory binding

1394 arbitration clauses.

1395 Many consumers may be so unfamiliar with the concept of
1396 arbitration that they don't even understand the meaning of
1397 this phrase, much less the clause, and many times they don't
1398 have the time and the inclination to figure out what it
1399 means. They are looking for a place to care for their loved
1400 one.

1401 What is most important is that at the time of the
1402 admission they are not thinking about future potential
1403 disputes but rather the proper care and safety of their loved
1404 one.

1405 For desperate families who are unable to provide
1406 adequate care at home, the need for an immediate and
1407 appropriate placement of their loved one makes the take-it-
1408 or-leave-it choice of an arbitration clause no choice at all.

1409 The Commercial and Administrative Law Subcommittee has
1410 held several hearings this term on arbitration issues. As we
1411 have learned from these hearings, mandatory binding
1412 arbitration clauses may limit pretrial discovery, require a
1413 family who wishes to bring a claim to travel hundreds of
1414 miles to arbitrate the dispute, or even discourage claims by
1415 imposing exorbitant filing costs.

1416 But arguably, the most serious consequence of pre-
1417 dispute mandatory binding arbitration clauses in long-term
1418 care contracts is the secretive setting of arbitration, in

1419 which no public records are produced.

1420 The secrecy of arbitration may keep important
1421 information such as a pattern of abuse and egregious neglect
1422 of residents unknown to families who want to consider a
1423 facility based on past safety record and the care of its
1424 current residents.

1425 Prospective residents of long-term care facilities and
1426 their families would benefit from more transparency. Sadly,
1427 pre-dispute mandatory binding arbitration agreements leave
1428 other residents and the general public in the dark.

1429 Knowing how these types of arbitration clauses can hide
1430 abuse and neglect of residents, I introduced H.R. 6126, the
1431 Fairness in Nursing Home Arbitration Act of 2008, to make
1432 pre-dispute mandatory binding arbitration clauses in long-
1433 term care contracts unenforceable.

1434 It will restore to residents and their families the
1435 choice of whether to arbitrate a dispute. H.R. 6126 will
1436 allow families and residents to maintain their peace of mind
1437 as they look for that perfect long-term care facility.

1438 The subcommittee held a legislative hearing on H.R. 6126
1439 on June 10th of this year. At that hearing, we heard from
1440 several witnesses who testified that mandatory arbitration
1441 clauses hidden within admission agreements prevent families
1442 from obtaining a full measure of justice and force facilities
1443 to value lower cost over increased quality of long-term care.

1444 Even the witness representing the American Healthcare
1445 Association and the National Center for Assisted Living
1446 stated that while those organizations provided their members
1447 with a model arbitration agreement, which was purported to be
1448 fairer to residents, he could not assure the subcommittee
1449 that its members would even follow their suggested agreement.

1450 A letter sent at 8:50 p.m. to the Judiciary Committee by
1451 the secretary of health and human services, Michael Leavitt,
1452 stated that the administration "cannot support this bill,
1453 which would deprive patients and providers of this
1454 opportunity to agree voluntarily to resolve their disputes
1455 through arbitration."

1456 The letter goes on to say, "This bill deprives potential
1457 nursing home residents of an important option and threatens
1458 to increase the cost of long-term care for all patients as
1459 well as for the Medicare and Medicaid programs."

1460 Clearly, this is a misunderstanding and a misstatement
1461 of the legislation. This bill does not ban arbitration,
1462 which can have a valuable and important place in our justice
1463 system.

1464 What this bill does is it does not threaten nursing home
1465 patients' ability to consent to arbitration, nor does it
1466 threaten the Medicare or Medicaid program. This legislation
1467 is simply about creating a level playing field.

1468 It is about allowing both parties, the family and the

1469 nursing home, the option to choose arbitration after a
1470 dispute arises. Giving them a choice allows them to weigh
1471 the costs and benefits of arbitration against the costs and
1472 benefits of pursuing a claim in a traditional court setting.

1473 And if, as the detractors of this bill state,
1474 arbitration is such a wonderful system for the wronged party,
1475 then they would have the opportunity to choose it if it
1476 proves to be so.

1477 H.R. 6126, the Fairness in Nursing Home Arbitration Act
1478 of 2008, will protect residents by ensuring that they and
1479 their families have more opportunities to learn about the
1480 safety records of nursing homes and assisted living
1481 facilities.

1482 It will encourage nursing homes to improve the quality
1483 of care and services that they provide. And it will restore
1484 fairness to resolving disputes between long-term care
1485 facilities and their residents.

1486 I urge my colleagues to join me in supporting our loved
1487 ones in nursing homes by voting for H.R. 6126.

1488 And I yield back.

1489 Chairman Conyers. Lamar Smith?

1490 Mr. Smith. Thank you, Mr. Chairman.

1491 Arbitration in the nursing home and assisted living
1492 sector arose out of the need to find some way to control
1493 escalating costs in the 1990s. Those costs were imposed by

1494 abusive runaway lawsuits and jury awards.

1495 They threatened to shut down facilities or to drive up
1496 the prices paid by residents and their families for services.

1497 Arbitration, coupled with tort reform, helped control
1498 this spiral of runaway costs and reintroduced predictability
1499 into the facilities' cost structures. This saved facilities
1500 from failure and in the end kept costs down for seniors.

1501 In addition, arbitration provides practical, quick and
1502 low-cost remedies to residents and families with small claims
1503 against facilities. Without arbitration, millions of
1504 Americans with small claims would go without justice, since
1505 lawyers do not find many of these claims lucrative enough to
1506 take on.

1507 By ignoring the record that arbitration tames cost, the
1508 bill sets us on a repeat course of the 1990s. The bill also
1509 ignores the industry's implementation of a model arbitration
1510 clause that is imminently fair to all parties.

1511 Clients do not have to agree to mandatory arbitration to
1512 be admitted to facilities. Clients have 30 days after
1513 signing an arbitration agreement to opt back out without
1514 losing any of their contract rights. And clients preserve
1515 all of their substantive state law rights and remedies. What
1516 could be fairer than that?

1517 But that is what the bill aims to wipe out. Why?
1518 Apparently so trial lawyers can claim more litigation fees.

1519 And why rush to legislate before we can investigate the
1520 ongoing class action corruption scandal? Recent convictions
1521 at Milberg Weiss partners and other class action plaintiffs'
1522 lawyers has cast a dark cloud over the plaintiffs' class
1523 action industry.

1524 Convicted class action lawyers tell us that kickbacks
1525 for perjured plaintiffs' testimony are "standard industry
1526 practice." This corrupt practice corrodes our justice system
1527 and destroys good companies, all in the name of huge
1528 judgments and fees.

1529 Mr. Chairman, let's investigate these practices before
1530 we pass a bill that will increase costs for seniors.

1531 Mr. Chairman, if I may ask unanimous consent to make a
1532 part of the record a letter we received from the
1533 administration opposing the bill.

1534 Chairman Conyers. Without objection, so ordered.

1535 [The information follows:]

1536 ***** INSERT *****

1537 Chairman Conyers. The chair recognizes the gentleman
1538 from Georgia, a former magistrate, Hank Johnson.

1539 Mr. Johnson. Thank you, Mr. Chairman.

1540 Mr. Chairman, I rise in support of H.R. 6126, the
1541 Fairness in Nursing Home Arbitration Act. What it does is to
1542 restore the right of a citizen aggrieved by the negligence or
1543 intentional misconduct of a nursing home—it restores the
1544 right of that individual, that victim, to have a day in
1545 court, a day in a court of law, and a trial in front of a
1546 jury of their peers.

1547 And this is such a bedrock issue that even the founders
1548 of our great Constitution, in the Seventh Amendment to the
1549 United States Constitution, recognized the fundamental right
1550 to a jury trial in cases where the controversy was in excess
1551 of \$20.

1552 And so what we have done is we have corroded this
1553 fundamental right to a jury trial as time has moved on. The
1554 word in the nursing home industry is to embed a mandatory
1555 arbitration clause in the bowels of your 30-page nursing home
1556 agreement, and you will be able to avoid being held
1557 accountable when you injure or harm someone, one of your
1558 patients.

1559 And it happens pretty frequently in nursing homes where
1560 someone is left and not tended to, and they end up with
1561 horrific bedsores, or they starve to death. Some patients

1562 have been beaten. Others have been raped.

1563 And if their relatives who signed them in signed the
1564 agreement and it has got a mandatory arbitration clause in
1565 there, then you are not going to be able to take that to a
1566 court of law in front of the public in a public proceeding.

1567 You would be steered into a private, for-profit justice-
1568 so-called justice system where the nursing home operators
1569 select the arbitrator, pay the arbitrator, and the arbitrator
1570 usually rules in favor of the nursing home.

1571 And so what H.R. 6126 would do would be to restore the
1572 rights of citizens of nursing homes to be treated fairly in a
1573 court of law, where you have rules of procedure, you have
1574 rules of evidence, you have a meaningful right to appeal, and
1575 you have an opportunity to be treated fairly.

1576 And so I support H.R. 6126. That is the reason why I
1577 filed H.R. 3010, which now has 102 co-sponsors. H.R. 3010
1578 would render unenforceable these mandatory predispute binding
1579 arbitration clauses in all consumer agreements, in employment
1580 agreements, and also in franchise-franchiser agreements.

1581 The reason why is because these kinds of agreements are
1582 becoming ubiquitous. They leave the consumer with no choice.
1583 It is a take-it-or-leave-it type of proposition.

1584 And pretty soon, if we continue to follow this trend,
1585 then we will not have any—we will not have jury trials for
1586 civil cases. All civil cases will be decided in an

1587 arbitration process.

1588 And this is a corruption of our system of deciding
1589 disputes among people, and it is anti—it is anti-consumer,
1590 and it is not a conservative—it is not a conservative
1591 philosophy. It is a liberal philosophy that radically
1592 changes what the framers of our Constitution intended.

1593 And last but not least, I will say that we have had a
1594 lot of tort control or tort reform, as it is called, that has
1595 passed in many state legislatures and even in this—in the
1596 federal system, in the federal legislature, which would
1597 hamper or put limits on the ability of class action lawsuits
1598 to proceed, also damage limitations.

1599 And so while the ability of people to seek fairness and
1600 redress in the court system has been under attack in terms of
1601 the mandatory arbitration, we have also been doing it in
1602 terms of limiting damages and limiting class action lawsuits.

1603 And so together we are just corrupting our entire
1604 system, and it needs to stop, and that is why I support H.R.
1605 6126, and I would urge everyone to vote for it, and I would
1606 urge that we bring forward H.R. 3010, which would do the same
1607 thing but in a greater number of cases.

1608 And I thank the chairman, and I yield back.

1609 Chairman Conyers. The chair recognizes Tom Feeney of
1610 Florida to call up his amendment.

1611 Mr. Feeney. Thank you, Mr. Chairman.

1612 And I would ask if the clerk would read the amendment.

1613 The Clerk. Amendment to H.R. 6126, offered by Mr.

1614 Feeney. Page three, after line nine, insert the following:

1615 And make such technical and conforming changes—

1616 [The amendment by Mr. Feeney follows:]

1617 ***** INSERT *****

1618 Mr. Feeney. Mr. Chairman, I would ask that the
1619 amendment be considered read in full.

1620 Chairman Conyers. Without objection, and the gentleman
1621 is recognized in support of his amendment.

1622 Mr. Feeney. Thank you, Mr. Chairman.

1623 And as was pointed out in the subcommittee extensively
1624 and by the ranking member, Mr. Smith, the bill before us
1625 today is not really about helping seniors and their families.

1626 It is about delivering their disputes into the hands of
1627 trial lawyers. The bill's proponents do this by wiping out
1628 mandatory arbitration agreements throughout the nursing home
1629 and assisted living sectors, secure in the knowledge that
1630 voluntary arbitration doesn't work and that nothing has been
1631 tried to make it work.

1632 The bill's proponents also do this secure in the
1633 knowledge that trial lawyers don't take small cases, because
1634 small cases don't pay big. So they leave millions of
1635 vulnerable seniors with small claims and their families out
1636 in the cold.

1637 What is behind all this? This is being driven by big
1638 lawyers' fees—nothing more, nothing less. Although I suppose
1639 the term "nothing less than lawyers' fees" is somewhat of an
1640 oxymoron.

1641 What my amendment does, therefore, Mr. Chairman—goes
1642 straight at the heart of the problem, goes after lawyers'

1643 fees. And in doing so, it also tries to provide some
1644 incentive for our broken voluntary arbitration system to be
1645 brought back to life so consumers have some alternative to
1646 trial lawyers.

1647 First, my amendment preserves the right of residents and
1648 their families to enforce their arbitration agreements
1649 against facilities. It gives the patients and their loved
1650 ones and caretakers the choice.

1651 Second, it limits to a reasonable amount fees in any
1652 lawsuits that they do decide to bring. In no case are those
1653 fees to exceed more than \$1,000 per hour—an eye-popping rate,
1654 but one which apparently many of my colleagues want to refuse
1655 to cap the trial lawyers against the nursing homes and the
1656 industry.

1657 Further, in cases which trial lawyers fail to recover
1658 more for their clients than they would have had recovered in
1659 arbitration, the lawyers' fees are limited to the fees that
1660 the lawyer would have received for the arbitration itself.

1661 These should be hefty incentives for people to continue
1662 to arbitrate, keeping down costs and delivering fairer
1663 justice.

1664 Lastly, my amendment requires the GAO to study average
1665 hourly fees in class actions, which are the mother lode of
1666 all lawsuits for trial lawyers. This study will be due in a
1667 year, and it is to be updated every 3 years thereafter.

1668 What could be better reason of why these bills are being
1669 promoted? I think that our study would actually tell
1670 consumers and the public what would be in the best interest
1671 of nursing home patients and their loved ones.

1672 I urge my colleagues to support this amendment. Fees
1673 are what this bill is all about, not helping seniors.

1674 Just listening to the National Journal—according to the
1675 National Journal, when the trial lawyers' trade association
1676 ticked off the problems with arbitration, the first problem
1677 they mentioned was "Arbitration allows companies to avoid
1678 paying millions of dollars in legal bills."

1679 What America needs to do is to concentrate more
1680 resources dedicated to senior health care and nursing home
1681 care, not more money for wealthy trial lawyers.

1682 I yield back the balance of my time.

1683 Chairman Conyers. Linda Sanchez?

1684 Ms. Sanchez. Thank you, Mr. Chairman.

1685 I can't support this amendment. If you look at the goal
1686 of H.R. 6126, it is to provide more transparency and to
1687 protect residents, prospective residents and their families
1688 from an unscrupulous practice, which is to catch them at a
1689 very vulnerable moment and to get them to sign away their
1690 rights without really appreciating what that could mean down
1691 the line.

1692 The fact of the matter is H.R. 6126 doesn't eliminate

1693 the ability to arbitrate disputes. Opponents of this bill
1694 want to say that it gets rid of arbitration. The bill
1695 doesn't. It gives a choice to the resident and their family.

1696 If something were to occur in a long-term nursing
1697 facility where they believe that the standard of care was—was
1698 below that of what they were expecting, then at that point
1699 they can choose—if it is a minor matter, then they could
1700 choose to go to arbitration. That option is still available.

1701 And if, as opponents of this bill state, arbitration is
1702 such a far superior method for resolving disputes, then a
1703 resident can choose to do that if their reports are good that
1704 arbitration is less costly or—or less burdensome on them.

1705 But the fact of the matter is that increasingly,
1706 corporations own nursing and long-term care facilities, and
1707 they run them for profit instead of focusing on the quality
1708 of care for the residents.

1709 And I have information from the Center for Medicare and
1710 Medicaid Services which says that if they—if nursing
1711 facilities and long-term care facilities would focus more on
1712 patient care and less on issues of arbitration or litigation
1713 and profit, then there would—it would actually be less
1714 expensive to the long-term care or nursing facility.

1715 And I want to read a couple of statistics. Ninety
1716 percent is the percentage of U.S. nursing homes with staffing
1717 levels that are too low to provide adequate care.

1718 And I just want to further state, \$1.2 million is the
1719 amount that Veena Ahuja, the operator of a 314-bed facility
1720 in New York, paid herself in 2000. \$1 was the 2006 salary of
1721 Genesis HealthCare Corporation's CEO. And the median annual
1722 salary for a certified nurse assistant in 2008 was \$23,193.

1723 Increasingly, again, the profit for nursing home
1724 facility operators is what is the motivating factor and not
1725 the standard of care. So how do we address that issue? Give
1726 the consumers some transparency. Give them a choice. Let
1727 them choose if their—if a dispute arises, let them choose
1728 whether or not they want to arbitrate it or litigate it.

1729 And there has been all this talk about class action
1730 suits. We are talking simply about informing future
1731 residents or prospective residents of what their—of what
1732 their options are when they are faced with a very emotional
1733 decision of having to put a loved one in a long-term care or
1734 nursing home facility.

1735 So I cannot support this—this amendment that has been
1736 offered by my colleague, Mr. Feeney. Of course, they want to
1737 sort of distract attention from what the real issue is, and
1738 the real issue is there is no transparency in mandatory pre-
1739 dispute binding arbitration, which forces vulnerable—the
1740 oftentimes most vulnerable residents of our society into a
1741 take-it-or-leave-it situation where they end up waiving all
1742 their rights.

1743 And if arbitration is such a—a fabulous alternative to
1744 litigation, let the consumer choose whether they want to
1745 arbitrate it or not. But we shouldn't penalize people who
1746 want to protect their right to know if a nursing facility has
1747 had multiple past violations before they admit a loved one
1748 into that facility.

1749 And a public record of a court trial would do that.
1750 Private justice systems in mandatory pre-dispute binding
1751 arbitration does not do that.

1752 So I would encourage my colleagues to oppose the
1753 amendment.

1754 Chairman Conyers. Thank you.

1755 Chris Cannon of Utah?

1756 Mr. Cannon. Thank you, Mr. Chairman. Move to strike
1757 the requisite number of words.

1758 Chairman Conyers. Without objection, the gentleman is
1759 recognized.

1760 Mr. Cannon. This is one of the really difficult issues
1761 that we have, and it is more personal, I think, than most of
1762 the other issues that come before this committee.

1763 The gentlelady from California has talked about her
1764 father going into a nursing home, and how difficult that was,
1765 and she comes from a very sophisticated family that has got a
1766 background to deal with these issues.

1767 And this is actually an area where I think there is much

1768 good that can be done. But in my view, the majority bringing
1769 this bill out today is doing it for a very narrow purpose,
1770 and that purpose is to assist—not to assist nursing home and
1771 assisted living residents.

1772 It is not to help the sons and daughters who place their
1773 loved ones in those facilities, and it is not to foster
1774 justice in the disputes between residents, families and those
1775 facilities.

1776 It is to drive a wedge for the plaintiffs' bar into the
1777 arbitration system that drives down their fees—that is, the
1778 arbitration system drives down the trial bar's fees.

1779 If we allow that wedge to be driven, then I can assure
1780 you that we will see other bills that will aim to split that
1781 arbitration system entirely into pieces. Mr. Davis has
1782 already spoken about his bill.

1783 Mandatory arbitration arose in the nursing home sector
1784 in response to one thing—the abuses of the plaintiffs' trial
1785 lawyers. Those abuses led to runaway judgments and fees
1786 wrung out of state court systems across the country.

1787 In Florida, in Texas and in other states, the
1788 skyrocketing costs that abusive lawsuits heaped upon nursing
1789 homes in the 1990s threatened to shut down facilities. It
1790 led companies to consider divesting facilities.

1791 None of this promised to help either the availability or
1792 the quality of care for our nation's elderly, and soon to be

1793 us as our nation's elderly, population.

1794 On the contrary, it promised to doom them. Two things
1795 saved the situation—mandatory binding arbitration and tort
1796 reform. Together, they brought rational results back into
1797 the system and they kept facilities alive and growing, and
1798 they need to grow to accommodate us as we grow older.

1799 They also brought swifter justice to families who don't
1800 have much time to obtain it. Arbitration practices in the
1801 sector today are remarkably fair. Just look at the model
1802 arbitration clause the industry follows. What more does a
1803 family need to make a fair and informed decision?

1804 Admission is not contingent on agreeing to mandatory
1805 arbitration. Agreement to mandatory arbitration can be
1806 withdrawn for 30 days. That is ample time to consider the
1807 matter. It removes the decision point far from the stressful
1808 midnight emergency room scenario that can often confront
1809 families.

1810 Arbitration finally preserves all substantive state
1811 rights and remedies. It just takes them out of the courts
1812 and into the arbitration system where elderly patients with
1813 tight budgets and ticking clocks get justice much more
1814 quickly and more cheaply.

1815 And if they have a small claim, they actually might get
1816 some help, as opposed to being dependent upon the kindness of
1817 a trial lawyer who wants big fees from big cases.

1818 So what is wrong with this picture? Nothing. What is
1819 wrong with the bill? Everything. The bill would wipe out
1820 mandatory binding arbitration for no good reason. It would,
1821 moreover, leave nothing in its place but litigation. And it
1822 would impose no tort reforms to keep that litigation in
1823 check.

1824 That is a recipe for the 1990s all over again, and it is
1825 all and only to benefit trial lawyers and—the only ones who
1826 can—who benefitted then and the only ones who will benefit
1827 now.

1828 The horror stories of our experience with class action
1829 plaintiffs' lawyers has provided us with the knowledge to see
1830 what will occur with our action today.

1831 Look at the famous Ford Explorer exploding tire and
1832 rollover suit. What did the plaintiffs get? \$500
1833 certificates toward purchases of new Ford Explorers or \$300
1834 certificates toward the purchase of other Ford, Mercury or
1835 Lincoln vehicles, and both certificates were good for just 12
1836 months.

1837 What did the trial lawyers get? \$25 million. Does
1838 anyone doubt that the trial bar which did that with that kind
1839 of suit will do anything less with the suits of vulnerable
1840 nursing home residents and their stress-laden children?

1841 If you harbor any doubt, let me remind you of the
1842 stories of William Lerach and Melvin Weiss. Until recently,

1843 Melvin Lerach was one of the most successful trial lawyers in
1844 the country. And what is he now? A disgraced felon.

1845 Why? Because he was a corrosive and corrupting
1846 influence on our justice system paying illegal kickbacks to
1847 people recruited to file class action lawsuits. What is
1848 worse, Mr. Lerach told the Wall Street Journal straight out
1849 that these kinds of kickbacks are standard practice—standard
1850 operating procedure in our country's class action lawsuits.

1851 And who is Melvin Weiss? Melvin Weiss was one of the—of
1852 Mr. Lerach's high-flying fellow travelers. He engineered a
1853 \$250 million criminal scheme to pay people to sue companies
1854 and lied about it in court. He, too, is now in a federal
1855 prison.

1856 The markup of this legislation will drive our elderly
1857 citizens into the hands of class action trial lawyers before
1858 we have investigated the class action lawsuit scandals that
1859 are staring us in the face.

1860 At a time when our population is aging rapidly and
1861 Medicare costs will incur—we incur are skyrocketing with
1862 them, arbitration is one tool that helps keep entitlement
1863 costs down and keep them down fairly.

1864 But what is the result of this bill? By wiping out
1865 arbitration, this bill guarantees that we will wipe out
1866 another portion of our children's financial future by driving
1867 up Medicare entitlement costs.

1868 As I said before, what is wrong with this bill?

1869 Everything.

1870 Now, Mr. Chairman, just by way of information, I think
1871 we have—I have three amendments and I think Mr. Jordan has
1872 one, and that is all that I know of in the way of amendments.

1873 And with that, I yield back the remainder of my time.

1874 Chairman Conyers. I hope you can combine some of them
1875 along the way.

1876 The chair is pleased to recognize the distinguished
1877 gentleman from California, Brad Sherman.

1878 Mr. Sherman. Thank you.

1879 This is an amendment that seems reasonable until you
1880 look at how it will affect the situation.

1881 The fee limit at \$1,000 an hour—who could argue with
1882 that, if you start with the idea that we should prohibit
1883 plaintiffs from bringing lawsuits unless they are virtually
1884 certain to win?

1885 I believe that those who have, say, a one in 10 chance
1886 of winning also have the right to their day in court.
1887 Fortunately, there are lawyers who agree with me on that.

1888 And so a lawyer might take 10 cases and win only one.
1889 As to the other nine, that lawyer loses not only all of his
1890 or her time, but also pays out a lot of costs for which there
1891 is no reimbursement. So if we have a \$1,000-an-hour fee
1892 limit, you are basically barring justice for anyone who

1893 doesn't have a slam-dunk case.

1894 Mr. Johnson. Will the gentleman yield?

1895 Mr. Sherman. I cannot yield at this time. Oh, who is
1896 asking me to yield?

1897 Mr. Johnson. Me.

1898 Mr. Sherman. Oh. I yield to—

1899 [Laughter.]

1900 Mr. Sherman. Thank you. I knew it was coming from my
1901 left. I just didn't know how far to my left.

1902 Mr. Johnson. With all due respect, I would point out
1903 that having been a lawyer myself for 27 years and having
1904 handled cases on a contingent-fee basis, as most lawyers do
1905 with cases like this, it behooves you to be very careful in
1906 your selection of cases.

1907 And most lawyers are. Most lawyers don't take—I think
1908 my colleagues on the other side would admit most lawyers are
1909 not going to take a case that is either so small that they
1910 won't be able to get a reasonable contingent fee out of or if
1911 the chances are that the case is—is not going to prevail, you
1912 are not going to prevail on—in terms of establishing
1913 liability, then most lawyers are very guarded in taking those
1914 kinds of cases, because they don't want to spend money and
1915 throw money down a dark hole.

1916 Mr. Sherman. Reclaiming my time, yes, there are a lot
1917 of lawyers that won't take a case unless they think they have

1918 got a 60 percent, 70 percent chance of winning.

1919 Fortunately, there are some lawyers who will take a
1920 chance if they think they have a one-third chance of winning
1921 and a substantial fee and a substantial recovery for the
1922 plaintiff.

1923 Mr. Cannon. Would the gentleman yield?

1924 Mr. Sherman. I have yielded only once, and I have
1925 limited time—because I have some other points to make.

1926 Limiting the fee to what would have been the appropriate
1927 fee had they gone to arbitration, again, penalizes those
1928 lawyers who, in consultation with their clients, decide to go
1929 to trial.

1930 When you go to trial, you may get more than you would
1931 have at arbitration. You may not. If we penalize a lawyer
1932 every time they don't recover more, we are, in effect,
1933 barring the court system except on those circumstances when
1934 the outcome is certain.

1935 Finally, let us remember that most cases are not going
1936 to be decided, no matter what we do, by either trial or by
1937 arbitration. Most cases are going to be settled.

1938 But if we tell the defendants that there is zero percent
1939 chance that a jury is going to hear the case, then defendants
1940 can stonewall. Defendants can refuse to settle or refuse to
1941 settle on reasonable terms.

1942 What this amendment does is it would put the plaintiff

1943 in a much weaker bargaining position and mean much less
1944 recovery in the overwhelming number of cases that are decided
1945 by settlement and ought to be settled fairly.

1946 If I have remaining time, I will yield to whoever is
1947 asking me to.

1948 Mr. Cannon. Thank you, Mr. Sherman.

1949 I just wanted to follow up with Mr. Davis, who just made
1950 the point that—

1951 Mr. Johnson. Do you mean Mr. Johnson?

1952 Mr. Cannon. Did I say—

1953 Mr. Johnson. You said—

1954 Mr. Cannon. Mr. Davis said such nice things earlier
1955 about me that I mixed it up. I am sorry, Mr. Johnson.

1956 Mr. Johnson. My wife's name is Mereda Davis Johnson,
1957 and they used to call me Henry Davis Johnson.

1958 Mr. Cannon. The gentleman related to—

1959 Mr. Johnson. —my last name.

1960 Mr. Cannon. The gentleman, Mr. Johnson, just pointed
1961 out that as a trial lawyer he doesn't take small cases.

1962 I would just like to ask him if, if you would yield to
1963 him, what do we do about these cases that are too small for
1964 lawyers to take, where arbitration would be—would make sense?

1965 Mr. Sherman. I will yield to the gentlelady from
1966 California, the chairman of the relevant subcommittee.

1967 Mr. Johnson. And thereafter, if you could yield—

1968 Ms. Sanchez. Thank you.

1969 Mr. Johnson. -to me, I would appreciate it.

1970 Mr. Sherman. And then I will yield to Mr. Johnson as
1971 well.

1972 Ms. Sanchez. Thank you.

1973 I would point out that this bill offers the best of both
1974 worlds. If there is a small case with something that isn't-
1975 isn't a significant injury or-or gross negligence or-or
1976 doesn't involve a super-serious health matter, the resident
1977 can choose to go to arbitration.

1978 This doesn't preclude their choice to go to arbitration.
1979 If it is a small case, and if arbitration is a superior
1980 method, then the resident or the resident's family-they can
1981 choose to pursue that in arbitration.

1982 Nothing prohibits them from doing that. This bill just
1983 gives them a choice. So for those cases that perhaps aren't
1984 big cases that, you know, you want to litigate, there is the
1985 option that they can choose to go to arbitration.

1986 And that is as it should be, because then you have
1987 small, not huge serious cases going to arbitration, where
1988 maybe the outcome for the plaintiff will-will be that the
1989 arbitration is quicker and it is less costly.

1990 But if there is something serious, like death or gross
1991 negligence, dehydration, open bedsores, broken bones-those
1992 type-the resident can choose whether or not to arbitrate

1993 those claims as well, or whether or not to litigate them.

1994 Chairman Conyers. The time has expired.

1995 Ms. Sanchez. I thank the gentleman and I yield.

1996 Chairman Conyers. And the chair will—we are going to
1997 call a vote on this. Everyone that supports—

1998 Mr. Smith. Mr. Chairman, I would—I would like to speak
1999 on the amendment.

2000 Chairman Conyers. So would Ms. Sutton.

2001 Mr. Smith. Okay.

2002 Chairman Conyers. Yeah. Okay. Let's split 5 minutes
2003 between the both of you.

2004 Two and a half.

2005 Mr. Smith. Mr. Chairman, I also intend to yield to the
2006 gentleman from Utah, so it will be split—

2007 Chairman Conyers. All right.

2008 Mr. Smith. I will hurry.

2009 Chairman Conyers. Okay.

2010 Mr. Smith. Thank you, Mr. Chairman, for recognizing me.

2011 And I wanted to thank the gentleman from Florida, Mr.
2012 Feeney, for offering such a common-sense amendment. A recent
2013 report on liability in the nursing home industry concluded
2014 that "55 percent—55 percent—of the total amount of claims
2015 cost paid for general liability and professional liability
2016 claims in the long-term care industry is going directly to
2017 attorneys."

2018 This means that less than half of the dollars spent on
2019 liability is actually going to the patients and their
2020 families. There is no dodging the fact that the lawyers get
2021 more than the patients.

2022 Mr. Feeney's amendment addresses this problem. It will
2023 ensure that a larger share of any money awarded will go to
2024 the patient or resident of the nursing home and not to their
2025 attorney.

2026 So let's put the best interest of the nursing home
2027 patients ahead of the lawyers.

2028 Mr. Chairman, I will yield to the gentleman from Utah,
2029 Mr. Cannon.

2030 Mr. Cannon. Thank you. I thank the ranking member.

2031 And, Mr. Chairman, I am keenly aware of the time here.
2032 This is a very important issue, and I think we are really
2033 dealing with the core concept right here that the gentlelady
2034 from California responded to my earlier question about the
2035 cost of lawsuits and lawyers taking only small contingency
2036 cases—or large contingency cases with a high likelihood of
2037 success.

2038 And while the gentlelady says that the—the patient or
2039 the patient's family has choice, what happens if we pass this
2040 bill and a—there is a relatively minor, few-thousand-dollar
2041 claim, and—not worthy of the time of a trial lawyer, and the
2042 plaintiff—or the—the family goes to the nursing home and

2043 says, "We would like to arbitrate this," and the nursing home
2044 says, "Sue me?"

2045 By definition, that removes the choice. In other words,
2046 this is not just a bill that benefits nursing homes. It is a
2047 bill that has, in fact, historically been of great benefit to
2048 both nursing homes and patients.

2049 It has raised the quality and raised the availability of
2050 services, and this bill, while on the one hand would help
2051 those people, perhaps, that have a large claim that they
2052 could litigate before a kindly disposed jury, on the other
2053 hand, many, many, many plaintiffs would be left without
2054 recourse because it is below the dignity, or the interest or
2055 the financial interest of the trial bar.

2056 And that leaves these people stranded because the—the
2057 nursing homes, who have much greater liability on the one
2058 hand, are going to use the system to protect themselves from
2059 the lesser liability on the other hand, and will require a
2060 lawsuit rather than a—than an arbitration to solve the
2061 problem and settle it.

2062 So I would ask the gentlelady, if that is not the case,
2063 if, in fact, it does not mean that nursing homes would have
2064 the opportunity to say, "Wait, you chose not to have binding
2065 arbitration. Now, if you want to settle the claims, sue us?"

2066 Doesn't that, in fact, have—or at least the possibility
2067 of significantly hurting those people who have smaller

2068 claims?

2069 And I would yield back to the gentleman, who may want to
2070 yield to the gentlelady from California again.

2071 Mr. Smith. Well, Mr. Chairman, I was going to yield
2072 first to the gentlewoman from Ohio, Ms. Sutton.

2073 Mr. Cannon. Mr. Smith, whoever you yield to—

2074 Mr. Smith. I am going to yield back the balance of my
2075 time. I understand that the chairman is going to yield to
2076 individuals who want time their own time.

2077 Mr. Cannon. Well, Mr. Smith, before you yield back, I
2078 hope that somebody on the other side will answer that
2079 question. What happens to the people who have claims that
2080 are below the dignity of the trial bar but who will not have
2081 the option of arbitration at that point?

2082 Mr. Smith. Okay.

2083 Mr. Chairman, I will yield to the gentleman from
2084 Virginia, Mr. Forbes.

2085 Mr. Forbes. Thank you, Mr. Chairman.

2086 And thank you, Mr. Smith, for yielding.

2087 And you know, when we started this debate, I was
2088 listening to Mr. Johnson, and he kind of had me, because—on
2089 his initial comments, because it is true, a lot of times when
2090 seniors go from—into a nursing home, they are being
2091 transferred from a hospital into that nursing home.

2092 They are going to where there are open beds. They don't

2093 have a fair discussion and a debate about what they are
2094 signing. But there are three parties we have been talking
2095 about today—one, the nursing homes; second, patients; and
2096 third, lawyers.

2097 And what just baffles me, when we talk about asking the
2098 real issue, is neither the nursing homes or the lawyers all
2099 have black hats or white hats, and we are trying to strike
2100 balances to protect them.

2101 And my big concern is when you really look at this
2102 amendment that kind of draws the line and says, "We are
2103 giving patients choices, and we are limiting them to \$1,000
2104 an hour," at what point do we say it is unreasonable for
2105 lawyers, who some time have the same kind of bargaining power
2106 when they come in to seniors, to say they are going to get
2107 more than \$1,000 an hour?

2108 Mr. Sherman's argument that they may take 10 cases and
2109 only win nine I think is an argument for arbitration, not
2110 against it, because if they are taking 10 and only winning
2111 one out of the—the 10, maybe they shouldn't be taking all
2112 those cases.

2113 And if we are concerned about the fact that we will not
2114 limit the—

2115 Mr. Sherman. If the gentleman will yield—

2116 Mr. Forbes. I don't have time to yield. My yellow
2117 light is on.

2118 If we are so concerned about penalizing lawyers—I
2119 thought the thrust of this bill was—we didn't want to
2120 penalize and hurt patients.

2121 And I just can't comprehend us rejecting an amendment
2122 that is going to limit lawyers that are representing these
2123 patients from getting \$1,000 an hour. That just seems
2124 unconscionable to me.

2125 And, Mr. Chairman, I yield back.

2126 Mr. Smith. I yield back.

2127 Chairman Conyers. Well, I have asked the gentlelady
2128 from Ohio and the gentleman from Georgia to share 5 minutes.

2129 Ms. Sutton. Thank you, Mr. Chairman.

2130 This bill is not about trial lawyers. It is about
2131 standing up for the elderly, their rights, and preventing
2132 negligence and harm to them. It is never frivolous to do
2133 that.

2134 The nursing home industry maintains that litigation is—
2135 this litigation is frivolous and often cites Florida, and it
2136 was cited here today as an example.

2137 Yet a state task force set up to study tort reform
2138 concluded that "Lawsuits are fundamentally about pressure
2139 sores, falls, dehydration and non-nutrition or weight loss,"
2140 and none of these conditions or incidents is a minor matter.

2141 According to a Harvard study, more than half of nursing
2142 home cases involved deaths. And meanwhile, nursing homes

2143 cost taxpayers thousands of dollars with administrative
2144 appeals of state sanctions that they know almost certainly
2145 they will lose.

2146 If you want to talk about driving up costs, a recent
2147 study by the Center for Medicare Advocacy found that appeals
2148 in the U.S. Department of Health and Human Services in 2007
2149 involved "serious failures in care, elopements, amputations
2150 of limbs, development of avoidable pressure sores, failure to
2151 give prescribed medications, overmedication and 13 deaths."

2152 And in 93 percent of these cases decided on the merits,
2153 the original finding was upheld, making a majority of these
2154 appeals an unwarranted waste of taxpayer money.

2155 Now, let's be clear. This amendment is an attempt to
2156 deflect the discussion away from the merits of this bill.
2157 You notice in this amendment—it deals with the plaintiffs'
2158 bar. It is an attempt to put the focus on trial lawyers.
2159 That is always a good bad guy to try and go after for some in
2160 this body.

2161 But it doesn't do anything to limit the amount that
2162 high-priced attorneys for the nursing home industry can get
2163 paid. So I just think it is important to point out what this
2164 is and what this isn't. It is never a frivolous thing to
2165 stand up for the rights of the elderly.

2166 And I yield to Mr. Johnson.

2167 Mr. Cannon. Would the gentlelady yield?

2168 Ms. Sutton. I have already yielded to Mr. Johnson.

2169 Mr. Johnson. Thank you, Ms. Sutton.

2170 I will respond also by saying that in the event it is
2171 found that a nursing home is charging all of its patients,
2172 say, and extra \$25 a month for some fee that amounts to
2173 fraud, perhaps an individual plaintiff who has suffered a
2174 loss of their money over, say, a year's time—that would not
2175 present a adequate claim to a lawyer looking to present that
2176 case into court.

2177 But now if we have the ability to file a class action
2178 lawsuit, then a number of parties similarly situated can take
2179 that same issue to court. Then you can impact the wrongdoer
2180 by getting in their pocket.

2181 And these large corporations—you can't influence them by
2182 being nice. You need a jury to get into their pocket. Send
2183 a message to them that their conduct is—is going to be
2184 remedied by a court of law, and that is how you are able to
2185 effectuate change in the industry, when they are—when they
2186 are failing to exercise due care or—or abusing plaintiffs in
2187 some other way.

2188 I will say that a court of law is a place where everyone
2189 is equal, and it is where you raise your hand and take an
2190 oath under penalty of perjury. In a arbitration process,
2191 there is no penalty of perjury. There is no equality.

2192 There are no limits on the actions of arbitrators who

2193 may have conflicts of interest or who may have some
2194 connection to the industry. They are not bound by any code
2195 of judicial conduct. They are not accountable. And the
2196 whole proceeding is taking place in private, in secrecy.

2197 And so that is why we need to support H.R. 6126, the
2198 Fairness in Nursing Home Arbitration Act.

2199 Mr. Cannon. Would the gentleman yield?

2200 Mr. Johnson. And I will yield—

2201 Mr. Cannon. I suppose it is Ms. Sutton's time.

2202 Ms. Sutton, would you yield the last few seconds?

2203 Ms. Sutton. Sure.

2204 Mr. Cannon. Thank you.

2205 I agree with the gentleman in many cases. This
2206 especially is one of those areas of arbitration that—where we
2207 could see some improvement.

2208 And trial lawyers are not black and white. When I speak
2209 ill of them, I am talking about some of the excesses. But in
2210 fact, on occasion, as Mr. Johnson just pointed out, trial
2211 lawyers effect change that is good.

2212 The question here that I need to hear from the other
2213 side is how do you deal with the small plaintiff after the—or
2214 after mandatory arbitration is gone and the small claim is
2215 not—doesn't reach the level where a lawyer will carry it, and
2216 the nursing home refuses to handle it?

2217 Mr. Johnson. The claimant can choose to go into

2218 arbitration, or they can choose mediation, or they can choose
2219 small claims court.

2220 Chairman Conyers. The time of the gentleman and
2221 gentlelady has expired.

2222 The vote turns on the Feeney amendment, and I would call
2223 for the vote now. All in favor of Feeney, indicate by saying
2224 "aye."

2225 [A chorus of ayes.]

2226 All those opposed, indicate by saying "no."

2227 [A chorus of noes.]

2228 The nos have it.

2229 Mr. Feeney. Mr. Chairman, I would respectfully call for
2230 a roll call vote.

2231 Chairman Conyers. The clerk will call the roll.

2232 The Clerk. Mr. Conyers?

2233 Chairman Conyers. No.

2234 The Clerk. Mr. Conyers votes no.

2235 Mr. Berman?

2236 [No response.]

2237 Mr. Boucher?

2238 [No response.]

2239 Mr. Nadler?

2240 [No response.]

2241 Mr. Scott?

2242 Mr. Scott. No.

2243 The Clerk. Mr. Scott votes no.
2244 Mr. Watt?
2245 Mr. Watt. No.
2246 The Clerk. Mr. Watt votes no.
2247 Ms. Lofgren?
2248 [No response.]
2249 Ms. Jackson Lee?
2250 [No response.]
2251 The Clerk. Ms. Waters?
2252 [No response.]
2253 Mr. Delahunt?
2254 [No response.]
2255 Mr. Wexler?
2256 [No response.]
2257 Ms. Sanchez?
2258 Ms. Sanchez. No.
2259 The Clerk. Ms. Sanchez votes no.
2260 Mr. Cohen?
2261 Mr. Cohen. No.
2262 The Clerk. Mr. Cohen votes no.
2263 Mr. Johnson?
2264 Mr. Johnson. No.
2265 The Clerk. Mr. Johnson votes no.
2266 Ms. Sutton?
2267 Ms. Sutton. No.

2268 The Clerk. Ms. Sutton votes no.
2269 Mr. Gutierrez?
2270 [No response.]
2271 Mr. Sherman?
2272 Mr. Sherman. No.
2273 The Clerk. Mr. Sherman votes no.
2274 Ms. Baldwin?
2275 Ms. Baldwin. No.
2276 The Clerk. Ms. Baldwin votes no.
2277 Mr. Weiner?
2278 Mr. Weiner. No.
2279 The Clerk. Mr. Weiner votes no.
2280 Mr. Schiff?
2281 Mr. Schiff. No.
2282 The Clerk. Mr. Schiff votes no.
2283 Mr. Davis?
2284 [No response.]
2285 Ms. Wasserman Schultz?
2286 Ms. Wasserman Schultz. No.
2287 The Clerk. Ms. Wasserman Schultz votes no.
2288 Mr. Ellison?
2289 Mr. Ellison. No.
2290 The Clerk. Mr. Ellison votes no.
2291 Mr. Smith?
2292 Mr. Smith. Aye.

2293 The Clerk. Mr. Smith votes aye.
2294 Mr. Sensenbrenner?
2295 [No response.]
2296 Mr. Coble?
2297 Aye.
2298 The Clerk. Mr. Coble votes aye.
2299 Mr. Gallegly?
2300 [No response.]
2301 Mr. Goodlatte?
2302 [No response.]
2303 Mr. Chabot?
2304 [No response.]
2305 Mr. Lungren?
2306 [No response.]
2307 The Clerk. Mr. Cannon?
2308 Mr. Cannon. Aye.
2309 The Clerk. Mr. Cannon votes aye.
2310 Mr. Keller?
2311 [No response.]
2312 Mr. Issa?
2313 Mr. Issa. Aye.
2314 The Clerk. Mr. Issa votes aye.
2315 Mr. Pence?
2316 [No response.]
2317 Mr. Forbes?

2318 Mr. Forbes. Aye.

2319 The Clerk. Mr. Forbes votes aye.

2320 Mr. King?

2321 Mr. King. Aye.

2322 The Clerk. Mr. King votes aye.

2323 Mr. Feeney?

2324 Mr. Feeney. Aye.

2325 The Clerk. Mr. Feeney votes aye.

2326 Mr. Franks?

2327 Mr. Franks. Aye.

2328 The Clerk. Mr. Franks votes aye.

2329 Mr. Gohmert?

2330 Mr. Gohmert. Aye.

2331 The Clerk. Mr. Gohmert votes aye.

2332 Mr. Jordan?

2333 Mr. Jordan. Aye.

2334 The Clerk. Mr. Jordan votes aye.

2335 Chairman Conyers. Are there any members that wish to

2336 vote?

2337 Mr. Wexler?

2338 Mr. Wexler. No.

2339 The Clerk. Mr. Wexler votes no.

2340 Chairman Conyers. Mr. Nadler?

2341 Mr. Nadler. No.

2342 The Clerk. Mr. Nadler votes no.

2343 Chairman Conyers. Mr. Gallegly?

2344 Mr. Gallegly. Aye.

2345 The Clerk. Mr. Gallegly votes aye.

2346 Chairman Conyers. The clerk will call--will give us the
2347 tally, please.

2348 The Clerk. Mr. Chairman, 11 members voted aye, 15
2349 members voted nay.

2350 Chairman Conyers. The amendment is not agreed to.

2351 Mr. Cannon. Mr. Chairman, could I just inquire about
2352 the chair's intention for breaking for lunch?

2353 Chairman Conyers. There will be no lunch--well we are
2354 going to be called to the floor for votes, Chris, pretty
2355 soon. The chair calls up--we want to get through--the chair
2356 will entertain a unanimous consent request from the
2357 gentlelady from Texas as to how she would have voted.

2358 Are there other--

2359 Mr. Jordan. Mr. Chairman?

2360 Chairman Conyers. Yes, Mr. Jordan?

2361 Mr. Jordan. Mr. Chairman, I have an amendment at the
2362 desk.

2363 Chairman Conyers. And the clerk will report the
2364 amendment.

2365 Mr. Jordan. I believe it is amendment number four.

2366 The Clerk. Amendment to H.R. 6126 offered by Mr.
2367 Jordan. Page four, strike lines--

2368 [The amendment by Mr. Jordan follows:]

2369 ***** INSERT *****

2370 Mr. Jordan. Mr. Chairman, I ask unanimous consent—

2371 Mr. Scott. Mr. Chairman? Mr. Chairman?

2372 Mr. Jordan. —that it be considered as read.

2373 Mr. Scott. Mr. Chairman, I reserve a point of order.

2374 Chairman Conyers. The gentleman from Virginia reserves
2375 a point of order.

2376 And without objection, the bill is considered as read.

2377 The gentleman is recognized in support of his amendment.

2378 Mr. Jordan. Thank you. Thank you, Mr. Chairman.

2379 My amendment delays the effective date of the bill until
2380 the Government Accountability Office concludes a study on the
2381 bill's impact on Medicare cost.

2382 We all know one thing. Soaring Medicare and other
2383 entitlement costs pose real concerns to our budget and to
2384 future economic growth.

2385 And I think this was highlighted—this point was
2386 highlighted and underscored yesterday with the announcement
2387 that this year's deficit is on—is projected to approach half
2388 a trillion—half a trillion dollars.

2389 This amendment makes sure that the undoing of the
2390 arbitration system and all the cost savings that are
2391 associated with it does not contribute to those exploding
2392 Medicare costs until we have information adequate to tell us
2393 that it will not drive up those costs.

2394 And as concerns the point of order, I would just make

2395 the point that, you know, the typical nursing home—less than
2396 20 percent of the patients are private pay. So our
2397 entitlement costs are directly associated with how we conduct
2398 business in our nation's nursing homes.

2399 And with that, Mr. Chairman, I would urge my colleagues
2400 to support this important amendment and would yield back the
2401 balance of my time. Thank you.

2402 Chairman Conyers. I thank the gentleman.

2403 Mr. Scott?

2404 Mr. Scott. Mr. Chairman, I insist on a point of order.
2405 The amendment is well beyond the provisions of the bill, and
2406 the Medicare program is not even within the jurisdiction of
2407 this committee.

2408 Chairman Conyers. Would you like to respond, Mr.

2409 Jordan, or—

2410 Mr. Cannon. Mr. Chairman, I would like to respond.

2411 Mr. Jordan. Mr. Chairman, I disagree.

2412 [Laughter.]

2413 Chairman Conyers. Strenuously? Strenuously, okay.

2414 Chris Cannon?

2415 Mr. Cannon. Let me just say, this is not—this is not, I
2416 don't think, invading the jurisdiction of the Ways and Means
2417 Committee.

2418 The fact is we are doing something with this bill that
2419 will have a dramatic impact and we ought to understand what

2420 that impact is. I don't think it is beyond the scope of the
2421 appropriateness for this bill to include it.

2422 We have included many studies of this sort in many bills
2423 in the past. I don't see any reason there would be an
2424 objection to doing this.

2425 Chairman Conyers. Well, the chairman's ruling, for
2426 example, which is based on House Rule 16, clause seven, and
2427 is also with consultation of the parliamentarian.

2428 It is a different subject matter and purpose and would
2429 broaden the underlying bill beyond its current scope. And so
2430 Mr. Jordan was right. Mr. Scott was correct. But Mr. Jordan
2431 wasn't that far off, either.

2432 Mr. Issa. Mr. Chairman?

2433 Chairman Conyers. Yes.

2434 Mr. Issa. Point of parliamentary inquiry.

2435 Chairman Conyers. Yes, Mr. Issa?

2436 Mr. Issa. If Mr. Jordan had simply said that the
2437 enactment date would be suspended until a study was done, and
2438 not ordered a study, he would be germane, wouldn't he?

2439 Chairman Conyers. Well, that is a hypothetical that you
2440 and the parliamentarian will have to take up.

2441 Mr. Issa. Well, you know—

2442 Chairman Conyers. That is not the circumstance—

2443 Mr. Issa. No, I understand, Mr. Chairman. I wanted to
2444 understand it, because perhaps that would be the next

2445 amendment, and rather than take up the valuable time of the
2446 committee—

2447 Chairman Conyers. I will give you the fairest ruling
2448 you have ever gotten, Darrell Issa, if that comes up that
2449 way.

2450 Mr. Issa. Thank you, Mr. Chairman.

2451 Chairman Conyers. Are there any other amendments to the
2452 measure?

2453 If not—

2454 Mr. Cannon. Mr. Chairman, I have three amendments at
2455 the desk. I would like to take up amendment number 011—

2456 Chairman Conyers. The clerk will report the amendment.

2457 Mr. Cannon. —the model arbitration clause exclusion.

2458 The Clerk. Amendment to H.R. 6126 offered by Mr.

2459 Cannon. Page three, line nine, strike the period and insert

2460 the following: but excludes an agreement that—(A) does not

2461 condition admission to a long-term care facility on

2462 acceptance of such agreement; (B) provides at least a 30-day

2463 post-agreement period in which the party who accepts such an

2464 agreement can opt-out of such an agreement without prejudice

2465 to any other contract rights formed at the time such

2466 agreement is accepted; and (C) preserves all substantive

2467 State law rights and remedies applicable—

2468 [The amendment by Mr. Cannon follows:]

2469 ***** INSERT *****

2470 Chairman Conyers. I ask unanimous consent that the
2471 amendment be considered as read and recognize the gentleman
2472 in support of his amendment.

2473 Mr. Cannon. Thank you, Mr. Chairman.

2474 This bill, as I have said earlier, is an important bill.
2475 It is not one that is—the underlying issue is not
2476 particularly a partisan issue.

2477 Ms. Sutton has pointed out that—that we have attacked
2478 the issue because it benefits the trial bar, and I believe it
2479 actually does benefit the trial bar, and that is my primary
2480 concern.

2481 And in the course of benefitting the trial bar, it does
2482 what I think is actually a really wrong thing, and that is
2483 that it leaves plaintiffs with small claims without much
2484 recourse.

2485 And Mr. Johnson is—has responded to that by listing the
2486 kinds of recourse that a—an injured person from a nursing
2487 home has—that is, to go to small claims court, or perhaps to
2488 arbitration, or other kinds of things.

2489 Small claims court tends to be a very small claim,
2490 leaving a vast number of claims in the middle that aren't
2491 touched on the one hand, and on the other hand limiting them
2492 to a very small amount of money if they decide to go with
2493 small claims court.

2494 So in fact, I believe that this bill—the purpose of this

2495 bill is largely to benefit trial lawyers, and it is largely
2496 at the expense of the many, many problems that tend to be
2497 below the interest of the trial bar.

2498 And so on the other hand, if someone has a claim and
2499 wants to arbitrate, as I pointed out before—and I think this
2500 is conclusive, or at least we haven't had a response from
2501 those who propose this bill—there is no incentive on the part
2502 of the nursing home to go into arbitration in a small matter
2503 because they—all they can do is lose as opposed to having the
2504 person that has been injured go to a small claims court,
2505 which will be beneath their cost of defense on the one hand,
2506 and limited in the recovery on the other.

2507 So it seems to me that what we are doing in this bill is
2508 fundamentally disadvantageous to the bulk of people who have
2509 claims that could otherwise be dealt with.

2510 This amendment would remedy that. We have had several
2511 hearings on this, and we have had large agreement that this
2512 system could be improved.

2513 And in fact, we do have a standard model arbitration
2514 clause which, if we include in this process, does most of the
2515 things that we would like to do in this bill. It gives
2516 people 30 days to opt out of signing the agreement.

2517 They don't lose any of their other contractual rights.
2518 It preserves all substantive state rights and remedies. It
2519 respects the freedom of contract. It keeps costs down. And

2520 rather than wiping out agreements that follow it, we would
2521 uphold it as a model for other sectors to follow.

2522 So I believe that this amendment actually significantly
2523 improves the underlying nature of the bill. It does not give
2524 the trial bar what they want, particularly, but it does do
2525 what most people think would be in the best interest of
2526 plaintiffs or people that have claims.

2527 Let me just add to that, in the moments that I have
2528 remaining, I would ask unanimous consent to submit for the
2529 record a letter from Peter B. Rutledge to the chairman and
2530 ranking member of the full committee responding to criticisms
2531 by the group Public Citizen.

2532 In this case, there are—you know, there are—
2533 Chairman Conyers. Without objection, so ordered.

2534 [The information follows:]

2535 ***** INSERT *****

2536 Mr. Cannon. Thank you, Mr. Chairman.

2537 There are facts. These facts have been obscured and
2538 made difficult to access, but in the end we have—we do have
2539 facts. We can see what they are.

2540 And I would hope this committee would look at this
2541 letter and consider the financial and other effects that this
2542 legislation is going to have on perhaps our parents and
2543 perhaps, in the very near future, on us, because we are
2544 creating a system that we are going to enjoy or hate in the
2545 relatively near future.

2546 So with that, Mr. Chairman, I suggest that this
2547 amendment is actually a really good amendment that people on
2548 both sides should be supportive of, and I yield back the
2549 balance of the time.

2550 Chairman Conyers. Thank you.

2551 Chairwoman Linda Sanchez?

2552 Ms. Sanchez. Thank you.

2553 Although I appreciate Mr. Cannon's effort in drafting
2554 this amendment, I can't support it for a number of reasons.

2555 The Section A of the amendment would say that it
2556 excludes an agreement that does not condition admission to a
2557 long-term care facility on acceptance of such an agreement.

2558 It is the case that there are certain long-term
2559 facilities that have as a condition of admission you have to
2560 sign away your rights by agreeing to mandatory pre-dispute

2561 binding arbitration.

2562 But in many cases, that is not a condition of admission,
2563 but it is within the packet of—you know, multiple packet of
2564 papers that they give you when your loved one is coming in.
2565 And in an emotional time, when people are, you know, scared
2566 about the future of their loved one, they want to get them
2567 into a facility because they are being told there is an open
2568 bed, and if you don't get them in, you know, then you may
2569 have to wait months or possibly years.

2570 I don't think that this is going to help the situation
2571 where you have consumers that are in a frame of mind that
2572 even though it may not be a condition upon admission, they
2573 may sign away their rights by agreeing to mandatory pre-
2574 dispute binding arbitration, because they simply don't have
2575 the time to study all of the paperwork before they get their
2576 loved one in a facility.

2577 Even more troubling is the 30-day post-agreement period,
2578 basically saying that 30 days after signing such an
2579 agreement, you could maybe opt out of that.

2580 The fact of the matter is most people don't discover
2581 that they have signed these mandatory pre-dispute binding
2582 arbitration agreements until some kind of problem arises, and
2583 that can be 6 months down the line, or 2 years down the line.

2584 And so the 30-day opt-out provision really isn't
2585 providing relief for those people that only discover much

2586 later that they have actually signed away their rights to a
2587 jury trial.

2588 And for those reasons, I can't support this amendment.

2589 I would urge my colleagues to oppose the amendment.

2590 Mr. Cannon. Would the gentlelady yield?

2591 Ms. Sanchez. I will yield back my time.

2592 Chairman Conyers. The chair is prepared to call for a
2593 vote on the Cannon amendment. All in favor, say "aye."

2594 [A chorus of ayes.]

2595 All oppose, say "no."

2596 [A chorus of noes.]

2597 The noes have it, and the amendment failed.

2598 Does Mr. Cannon have another amendment?

2599 You want a roll call?

2600 The clerk will call the roll.

2601 The Clerk. Mr. Conyers?

2602 Chairman Conyers. No.

2603 The Clerk. Mr. Conyers votes no.

2604 Mr. Berman?

2605 [No response.]

2606 Mr. Boucher?

2607 [No response.]

2608 Mr. Nadler?

2609 Mr. Nadler. No.

2610 The Clerk. Mr. Nadler votes no.

2611 Mr. Scott?

2612 Mr. Scott. No.

2613 The Clerk. Mr. Scott votes no.

2614 Mr. Watt?

2615 [No response.]

2616 Ms. Lofgren?

2617 [No response.]

2618 Ms. Jackson Lee?

2619 Ms. Jackson Lee. No.

2620 The Clerk. Ms. Jackson Lee votes no.

2621 Ms. Waters?

2622 [No response.]

2623 Mr. Delahunt?

2624 [No response.]

2625 Mr. Wexler?

2626 [No response.]

2627 Ms. Sanchez?

2628 Ms. Sanchez. No.

2629 The Clerk. Ms. Sanchez votes no.

2630 Mr. Cohen?

2631 [No response.]

2632 Mr. Johnson?

2633 Mr. Johnson. No.

2634 The Clerk. Mr. Johnson votes no.

2635 Ms. Sutton?

2636 Ms. Sutton. No.

2637 The Clerk. Ms. Sutton votes no.

2638 Mr. Gutierrez?

2639 [No response.]

2640 Mr. Sherman?

2641 Mr. Sherman. No.

2642 The Clerk. Mr. Sherman votes no.

2643 Ms. Baldwin?

2644 Ms. Baldwin. No.

2645 The Clerk. Ms. Baldwin votes no.

2646 Mr. Weiner?

2647 Mr. Weiner. No.

2648 The Clerk. Mr. Weiner votes no.

2649 Mr. Schiff?

2650 Mr. Schiff. No.

2651 The Clerk. Mr. Schiff votes no.

2652 Mr. Davis?

2653 [No response.]

2654 Ms. Wasserman Schultz?

2655 Ms. Wasserman Schultz. No.

2656 The Clerk. Ms. Wasserman Schultz votes no.

2657 Mr. Ellison?

2658 [No response.]

2659 Mr. Smith?

2660 Mr. Smith. Aye.

2661 The Clerk. Mr. Smith votes aye.
2662 Mr. Sensenbrenner?
2663 [No response.]
2664 Mr. Coble?
2665 Mr. Coble. Aye.
2666 The Clerk. Mr. Coble votes aye.
2667 Mr. Gallegly?
2668 Mr. Gallegly. Aye.
2669 The Clerk. Mr. Gallegly votes aye.
2670 Mr. Goodlatte?
2671 [No response.]
2672 Mr. Chabot?
2673 [No response.]
2674 Mr. Lungren?
2675 [No response.]
2676 Mr. Cannon?
2677 Mr. Cannon. Aye.
2678 The Clerk. Mr. Cannon votes aye.
2679 Mr. Keller?
2680 [No response.]
2681 Mr. Issa?
2682 [No response.]
2683 Mr. Pence?
2684 [No response.]
2685 Mr. Forbes?

2686 Mr. Forbes. Aye.

2687 The Clerk. Mr. Forbes votes aye.

2688 Mr. King?

2689 Mr. King. Aye.

2690 The Clerk. Mr. King votes aye.

2691 Mr. Feeney?

2692 Mr. Feeney. Aye.

2693 The Clerk. Mr. Feeney votes aye.

2694 Mr. Franks?

2695 [No response.]

2696 Mr. Gohmert?

2697 Mr. Gohmert. Aye.

2698 The Clerk. Mr. Gohmert votes aye.

2699 Mr. Jordan?

2700 Mr. Jordan. Aye.

2701 The Clerk. Mr. Jordan votes aye.

2702 Chairman Conyers. Mr. Watt?

2703 Mr. Watt. No.

2704 The Clerk. Mr. Watt votes no.

2705 Chairman Conyers. Mr. Wexler?

2706 Mr. Wexler. No.

2707 The Clerk. Mr. Wexler votes no.

2708 Chairman Conyers. Are there any others who wish to vote

2709 or change their vote?

2710 The clerk will call the--will report.

2711 The Clerk. Mr. Chairman, nine members voted aye, 14
2712 members voted no.

2713 Chairman Conyers. The amendment fails.

2714 Now, Mr. Cannon is recognized for another amendment.

2715 Mr. Cannon. Thank you, Mr. Chairman.

2716 I am deeply disappointed in that last vote. This area
2717 of law is troubled. I think we all agree—the chair of the
2718 subcommittee and I both agree that we ought to be doing
2719 something in this area, and I believe—

2720 Chairman Conyers. My friend will report his amendment.

2721 Mr. Cannon. Oh, I am sorry.

2722 This is amendment number 001.

2723 Chairman Conyers. The clerk will report.

2724 The Clerk. Amendment to H.R. 6126 offered by Mr.
2725 Cannon. Page 3, line 9, insert the following before the
2726 period at the end: but excludes any such agreement that
2727 covers services provided by a doctor, physician assistant—

2728 [The amendment by Mr. Cannon follows:]

2729 ***** INSERT *****

2730 Chairman Conyers. Without objection, the amendment will
2731 be considered as read.

2732 The gentleman will be recognized in support of his
2733 amendment.

2734 Mr. Cannon. Thank you again, Mr. Chairman.

2735 This is an area, as I was saying, where we actually
2736 could improve the law significantly without doing great
2737 damage.

2738 And with all the discussion back and forth, I have not
2739 yet heard a compelling reason about—or comparing—compelling
2740 rationale about what we do about those people who have
2741 relatively small claims—that is, small relative to a lawyer's
2742 interest in taking the claim—and yet claims that may be
2743 larger than small claims court.

2744 That is the defect that we face here. And while big
2745 claims may punish and—nursing homes, that won't improve
2746 quality.

2747 Lawsuits may affect the processes used in nursing homes,
2748 and that may improve quality, and that is—I think Mr. Johnson
2749 made that point earlier, and that is a valid point.

2750 So in a complicated environment, what we need to do here
2751 is something that makes sense. That last amendment I think
2752 made a great deal of sense.

2753 And as I make this new amendment, let me just point out
2754 that we have a different market today than we had before.

2755 There is no question but that when you take your father
2756 into—or mother into a nursing home, as Ms. Sanchez, the chair
2757 of the committee, has pointed out, it is a trying,
2758 disturbing, difficult period of time.

2759 And your parent probably doesn't have the ability to do
2760 a lot of evaluation and due diligence on his or her own. And
2761 so what do you do? Well, if you have to sign away your life
2762 at that point, that is not good.

2763 But if you have 30 days in which to get your loved one
2764 settled and then step back and take a look at it, and you can
2765 now go to the Internet, and you have massive amounts of
2766 information available, consumers can make choices that are
2767 reasonable.

2768 And given the choice, I suspect many of them would opt
2769 for an arbitration or opt to stay into the arbitration
2770 agreement that they had entered. And if they decide not to,
2771 they can look for other nursing homes that offer the quality
2772 of care at a price that makes sense to them.

2773 I suspect that without the arbitration agreement, the
2774 cost of nursing homes would go up, and that is something that
2775 the consumer should choose rather than we here in Congress.

2776 Now, as to the current amendment that I am proposing, it
2777 is one thing to take institutions that run nursing homes and
2778 force them to not have the ability to do arbitration.

2779 It is another thing to take the care providers who are

2780 going to be working in association with or in those nursing
2781 homes and subject them to lawsuits. As a practical matter,
2782 in some cases maybe the doctor has a deep pocket but the
2783 nurse practitioner is not likely to be a deep pocket.

2784 The pharmacist is less likely to be a deep pocket in
2785 many ways. A physician's assistant is likely to not be a
2786 deep pocket. And yet by submitting all these people—
2787 subjecting them to an environment where they can be sued, you
2788 raise the cost of that good or service that would be
2789 provided.

2790 So the purpose of this amendment is to limit the scope
2791 of this bill and allow doctors, nurse practitioners,
2792 physician assistants, pharmacists and others associated with
2793 the process to be able to enter into binding arbitration
2794 agreements that would allow them to continue their service
2795 with the ongoing oversight of the institution, which is now
2796 not going to have the opportunity to have binding arbitration
2797 but which has—and therefore which has the incentive to create
2798 systems that will work well, but allow the individuals who
2799 have to go home at night and feed their families and change
2800 diapers, perhaps, or perhaps take care of an older loved one,
2801 a lot of those people have a life beyond their service and
2802 their—and their work.

2803 So I would hope that as we look at this amendment that
2804 members of the panel recognize that we are now talking about

2805 a very different thing.

2806 We are talking about the limitation of the ability to
2807 enter into binding arbitration as to nursing homes and allow
2808 others—nurse practitioners, doctors, physician's assistants,
2809 pharmacists and others—as part of the—their agreement to work
2810 in a nursing home, to have a limitation with the patient on a
2811 binding arbitration opportunity with the patient so that
2812 their services would be more available at a lower cost.

2813 This is an eminently reasonable thing to do. It is a
2814 humane thing to do. And it is a good thing to do for the
2815 quality of care that our parents and perhaps soon us will be
2816 subjected to in the near future.

2817 And so I would encourage my colleagues to support this
2818 amendment and would yield back the balance of the time.

2819 Chairman Conyers. I thank the gentleman and recognize
2820 Chair Linda Sanchez.

2821 Ms. Sanchez. Thank you, Mr. Chairman.

2822 This actually was an amendment that came up in the
2823 subcommittee markup, and I think we dealt with that fairly.

2824 I am not persuaded by Mr. Cannon's arguments, because if
2825 you are a nursing home, and you employ nurses or nurse
2826 practitioners, and their care for the residents, which is
2827 what they are paid to do, falls below a professional standard
2828 and causes injury to somebody, then I think it is appropriate
2829 that we hold them accountable for their actions.

2830 What this basically does is puts different categories of
2831 workers into a binding arbitration system and, in many cases,
2832 insulates them from the consequences of their actions.

2833 Again, one of the problems with binding arbitration is
2834 that arbitration is conducted without public record, and so
2835 you don't know if a particular nurse or doctor has an ongoing
2836 pattern or practice of negligent care or of gross negligence.

2837 And so why you would want to allow those people to,
2838 again, be insulated in the secrecy of arbitration makes no
2839 sense to me.

2840 Everything that we have received via testimony in the
2841 numerous hearings that we had on arbitration says that when
2842 you hold people accountable for their actions, when they--
2843 their care falls below a standard, it often saves money in
2844 the long term to hold those people accountable, because then
2845 the behavior changes and they don't continue to go on to
2846 commit the same lapses in professional care.

2847 I don't think that this helps the bill. In fact, I
2848 think it actually would end up hurting, again, the consumer.
2849 And so I can't support the amendment, and I would urge my
2850 colleagues to oppose the amendment as well.

2851 And I yield back the balance of my time.

2852 Chairman Conyers. I thank the chairwoman.

2853 If there is no further discussion, all those in support
2854 of the Cannon amendment, his third, will say "aye."

2855 [A chorus of ayes.]

2856 And those opposed will say "no."

2857 [A chorus of noes.]

2858 The noes have it, and the noes have it, and so ordered.

2859 Mr. Cannon. On that, Mr. Chairman, could I ask a

2860 recorded vote?

2861 Chairman Conyers. Of course.

2862 The clerk will call the roll.

2863 The Clerk. Mr. Conyers?

2864 Chairman Conyers. No.

2865 The Clerk. Mr. Conyers votes no.

2866 Mr. Berman?

2867 [No response.]

2868 Mr. Boucher?

2869 [No response.]

2870 The Clerk. Mr. Nadler?

2871 Mr. Nadler. No.

2872 The Clerk. Mr. Nadler votes no.

2873 Mr. Scott?

2874 Mr. Scott. No.

2875 The Clerk. Mr. Scott votes no.

2876 Mr. Watt?

2877 [No response.]

2878 Ms. Lofgren?

2879 [No response.]

2880 Ms. Jackson Lee?
2881 [No response.]
2882 Ms. Waters?
2883 [No response.]
2884 Mr. Delahunt?
2885 [No response.]
2886 Mr. Wexler?
2887 [No response.]
2888 Ms. Sanchez?
2889 Ms. Sanchez. No.
2890 The Clerk. Ms. Sanchez votes no.
2891 Mr. Cohen?
2892 Mr. Cohen. No.
2893 The Clerk. Mr. Cohen votes no.
2894 Mr. Johnson?
2895 Mr. Johnson. No.
2896 The Clerk. Mr. Johnson votes no.
2897 Ms. Sutton?
2898 Ms. Sutton. No.
2899 The Clerk. Ms. Sutton votes no.
2900 Mr. Gutierrez?
2901 [No response.]
2902 Mr. Sherman?
2903 Mr. Sherman. No.
2904 The Clerk. Mr. Sherman votes no.

2905 Ms. Baldwin?
2906 Ms. Baldwin. No.
2907 The Clerk. Ms. Baldwin votes no.
2908 Mr. Weiner?
2909 Mr. Weiner. No.
2910 The Clerk. Mr. Weiner votes no.
2911 Mr. Schiff?
2912 Mr. Schiff. No.
2913 The Clerk. Mr. Schiff votes no.
2914 Mr. Davis?
2915 [No response.]
2916 Ms. Wasserman Schultz?
2917 Ms. Wasserman Schultz. No.
2918 The Clerk. Ms. Wasserman Schultz votes no.
2919 Mr. Ellison?
2920 [No response.]
2921 Mr. Smith?
2922 Mr. Smith. Aye.
2923 The Clerk. Mr. Smith votes aye.
2924 Mr. Sensenbrenner?
2925 [No response.]
2926 Mr. Coble?
2927 Mr. Coble. Aye.
2928 The Clerk. Mr. Coble votes aye.
2929 Mr. Gallegly?

2930 Mr. Gallegly. Aye.

2931 The Clerk. Mr. Gallegly votes aye.

2932 Mr. Goodlatte?

2933 [No response.]

2934 Mr. Chabot?

2935 Mr. Chabot. Aye.

2936 The Clerk. Mr. Chabot votes aye.

2937 Mr. Lungren?

2938 [No response.]

2939 Mr. Cannon?

2940 Mr. Cannon. Aye.

2941 The Clerk. Mr. Cannon votes aye.

2942 Mr. Keller?

2943 [No response.]

2944 Mr. Issa?

2945 [No response.]

2946 Mr. Pence?

2947 [No response.]

2948 Mr. Forbes?

2949 Mr. Forbes. Aye.

2950 The Clerk. Mr. Forbes votes aye.

2951 Mr. King?

2952 Mr. King. Aye.

2953 The Clerk. Mr. King votes aye.

2954 Mr. Feeney?

2955 Mr. Feeney. Aye.

2956 The Clerk. Mr. Feeney votes aye.

2957 Mr. Franks?

2958 [No response.]

2959 Mr. Gohmert?

2960 Mr. Gohmert. Aye.

2961 The Clerk. Mr. Gohmert votes aye.

2962 Mr. Jordan?

2963 Mr. Jordan. Aye.

2964 The Clerk. Mr. Jordan votes aye.

2965 Chairman Conyers. Are there other members—Mr. Berman?

2966 Mr. Berman. No.

2967 The Clerk. Mr. Berman votes no.

2968 Chairman Conyers. Mr. Watt?

2969 Mr. Watt. No.

2970 The Clerk. Mr. Watt votes no.

2971 Chairman Conyers. The clerk will report if there are no

2972 others to vote or change their vote.

2973 The Clerk. Mr. Chairman, 10 members voted aye, 14

2974 members voted no.

2975 Chairman Conyers. The amendment fails.

2976 We have three votes, and then lunch. We come back at 2

2977 o'clock, everybody except Mr. Cannon, who will have to at

2978 least give up dessert.

2979 The committee stands in recess.

2980 Mr. Nadler. [Presiding.] The Judiciary Committee will
2981 come back to order.

2982 In the temporary absence of the chairman, I will
2983 temporary chair the committee.

2984 Are there any other amendments? Are there any other
2985 amendments to the pending bill?

2986 Mr. Cannon. There is, Mr. Chairman.

2987 Mr. Nadler. The gentleman from Utah.

2988 Mr. Cannon. It is amendment designated 014.

2989 Mr. Nadler. The clerk will report the amendment.

2990 The Clerk. "Amendment to H.R. 6126, offered by Mr.
2991 Cannon. Page 3, after line 9, insert the following and make
2992 such technical and conforming changes as may be appropriate:
2993 'No. 3, Solicited Party. The term 'solicited party' means a
2994 contracting party asked to agree to a pre-dispute
2995 arbitration. Agreement'"—

2996 [The bill follows:]

2997 ***** INSERT *****

2998 Mr. Nadler. The gentleman from Virginia?

2999 Mr. Scott. Mr. Chairman, I reserve point of order.

3000 Mr. Nadler. The gentleman has reserved a point of
3001 order.

3002 Without objection, the amendment is considered as read,
3003 and the gentleman from Utah is recognized for 5 minutes.

3004 Mr. Cannon. Thank you, Mr. Chairman.

3005 I have already highlighted many of the problems with
3006 this bill and with the plaintiffs trial bar, and these
3007 problems should trouble, I think, everyone here.

3008 Under prior law, it wasn't enough for trial lawyers to
3009 get outrageous fees like the \$1.1 million awarded in a class
3010 action against Sears, when members got just \$6.50 each.

3011 No. The trial lawyers had to go further and purchase
3012 fabricated evidence from two willing plaintiffs to bring case
3013 after unconscionable case. These were not isolated cases.

3014 One of the most famous of the trial lawyers we have
3015 mentioned already is William Lerach, and he confirms that it
3016 was industry practice to buy such evidence. He is now a
3017 convicted criminal.

3018 My amendment takes a stab at this problem. It provides
3019 a simple solution. If a court finds that a case before it is
3020 based, in whole or in part, on purchased and fabricated
3021 evidence, it can assess three times the amount of the
3022 defendant's fees and expenses against the plaintiff's

3023 attorneys and that attorney's law firm and, when it does, the
3024 attorney and the law firm will be jointly and severally
3025 liable.

3026 What if the court has already rendered judgment for
3027 plaintiffs? In that case, the attorney and his law firm are
3028 jointly and severally liable to make restitution of the
3029 judgment to the defendants three times over.

3030 My amendment also leaves to residents and their families
3031 the decision whether they want to opt out of or enforce
3032 arbitration causes against facilities, and my amendment
3033 requires the GAO to study average hourly fees in class
3034 actions, the venue in which fake evidence is bought and sold.

3035 I urge my colleagues to support this amendment. And I
3036 am happy to yield back the balance of my time.

3037 Mr. Nadler. Does the gentleman insist on his point of
3038 order?

3039 Mr. Scott. Yes, Mr. Chairman, I do.

3040 This has studies outside the scope of the underlying
3041 bill and, therefore, is not in order.

3042 Mr. Nadler. Does anyone else wish to be heard on the
3043 point of order?

3044 Mr. Cannon. Yes, Mr. Chairman.

3045 Mr. Nadler. The gentleman from Utah?

3046 Mr. Cannon. Is the gentleman saying that the study that
3047 we are asking for is outside the scope of the original bill?

3048 Mr. Scott. Yes. You have class actions, fee award,
3049 sanctions, which are not part of the underlying bill, hourly
3050 fees.

3051 Mr. Cannon. Well, reclaiming my time. We have a regime
3052 for dispute resolution, which is now arbitration. That
3053 resulted from the fact that we had trials and problems. We
3054 resolved that and now we are going back to the earlier
3055 situation through this bill.

3056 I can't understand how it would be outside the scope of
3057 this bill to recognize the problems that this bill is causing
3058 and, therefore, not be appropriate for this bill.

3059 I yield back, Mr. Chairman.

3060 Mr. Nadler. The chair is prepared to rule on the point
3061 of order.

3062 The amendment deals with a different subject matter and
3063 purpose and would broaden the law beyond its current scope.

3064 Therefore, pursuant to House Rule 16, Clause 7 and
3065 related precedence and after consultation with the
3066 parliamentarian, the chair rules the amendment to be not
3067 germane to the bill and, therefore, out of order.

3068 Are there any further amendments?

3069 If there are no further amendments, a reporting quorum
3070 being present—

3071 Mr. Smith. Point of order.

3072 Mr. Nadler. The ranking member is recognized.

3073 Mr. Smith. Point of order, Mr. Chairman, in the sense
3074 that we don't have a reporting quorum here. And I had
3075 mentioned to the chairman last week, we let one bill go by,
3076 but he agreed that, in the future, we would have the physical
3077 presence of the requisite number, which I believe is 21, in
3078 the room.

3079 I don't think it will take us a minute to get it, but I
3080 think it would be not a good precedent to start reporting
3081 bills when we don't have a reporting quorum.

3082 Mr. Nadler. Well, we do have a reporting quorum and we
3083 will have a roll call vote, which will show that we have a
3084 reporting quorum.

3085 A reporting quorum being present, the question is on
3086 reporting the bill favorably to the House.

3087 All right. Well, we won't have the customary voice vote
3088 before the roll call vote.

3089 The clerk will call the roll.

3090 The Clerk. Mr. Conyers?

3091 [No response.]

3092 Mr. Berman?

3093 [No response.]

3094 Mr. Boucher?

3095 [No response.]

3096 Mr. Nadler?

3097 Mr. Nadler. Aye.

3098 The Clerk. Mr. Nadler votes aye.
3099 Mr. Scott?
3100 Mr. Scott. Aye.
3101 The Clerk. Mr. Scott votes aye.
3102 Mr. Watt?
3103 [No response.]
3104 Ms. Lofgren?
3105 [No response.]
3106 Ms. Jackson Lee?
3107 [No response.]
3108 Ms. Waters?
3109 Ms. Waters. Aye.
3110 The Clerk. Ms. Waters votes aye.
3111 Mr. Delahunt?
3112 [No response.]
3113 Mr. Wexler?
3114 Mr. Wexler. Aye.
3115 The Clerk. Mr. Wexler votes aye.
3116 Ms. Sanchez?
3117 Ms. Sanchez. Aye.
3118 The Clerk. Ms. Sanchez votes aye.
3119 Mr. Cohen?
3120 [No response.]
3121 Mr. Johnson?
3122 [No response.]

3123 Ms. Sutton?

3124 Ms. Sutton. Aye.

3125 The Clerk. Ms. Sutton votes aye.

3126 Mr. Guitierrez?

3127 [No response.]

3128 Mr. Sherman?

3129 [No response.]

3130 Ms. Baldwin?

3131 Ms. Baldwin. Aye.

3132 The Clerk. Ms. Baldwin votes aye.

3133 Mr. Weiner?

3134 Mr. Weiner. Aye.

3135 The Clerk. Mr. Weiner votes aye.

3136 Mr. Schiff?

3137 Mr. Schiff. Aye.

3138 The Clerk. Mr. Schiff votes aye.

3139 Mr. Davis?

3140 [No response.]

3141 Ms. Wasserman Schultz?

3142 Ms. Wasserman Schultz. Aye.

3143 The Clerk. Ms. Wasserman Schultz votes aye.

3144 Mr. Ellison?

3145 Mr. Ellison. Aye.

3146 The Clerk. Mr. Ellison votes aye.

3147 Mr. Smith?

3148 Mr. Smith. No.

3149 The Clerk. Mr. Smith votes on.

3150 Mr. Sensenbrenner?

3151 Mr. Sensenbrenner. No.

3152 The Clerk. Mr. Sensenbrenner votes no.

3153 Mr. Coble?

3154 Mr. Coble. No.

3155 The Clerk. Mr. Coble votes no.

3156 Mr. Gallegly?

3157 [No response.]

3158 Mr. Goodlatte?

3159 [No response.]

3160 Mr. Chabot?

3161 [No response.]

3162 Mr. Lungren?

3163 [No response.]

3164 Mr. Cannon?

3165 [No response.]

3166 Mr. Keller?

3167 Mr. Keller. No.

3168 The Clerk. Mr. Keller votes no.

3169 Mr. Issa?

3170 [No response.]

3171 Mr. Pence?

3172 [No response.]

3173 Mr. Forbes?
3174 [No response.]
3175 Mr. King?
3176 [No response.]
3177 Mr. Feeney?
3178 [No response.]
3179 Mr. Franks?
3180 [No response.]
3181 Mr. Gohmert?
3182 [No response.]
3183 Mr. Jordan?
3184 [No response.]
3185 Mr. Nadler. Are there other members who haven't been
3186 recorded?
3187 Mr. Sherman?
3188 Mr. Sherman. Aye.
3189 The Clerk. Mr. Sherman votes aye.
3190 Mr. Nadler. Mr. Watt?
3191 Mr. Watt. Aye.
3192 The Clerk. Mr. Watt votes aye.
3193 Mr. Nadler. Ms. Lofgren?
3194 Ms. Lofgren. Aye.
3195 The Clerk. Ms. Lofgren votes aye.
3196 Mr. Nadler. Mr. Conyers?
3197 Chairman Conyers. Aye.

3198 The Clerk. Mr. Conyers votes aye.

3199 Mr. Nadler. Mr. Boucher?

3200 Mr. Boucher. Votes aye.

3201 The Clerk. Mr. Boucher votes aye.

3202 Mr. Nadler. Ms. Jackson Lee?

3203 Ms. Jackson Lee. Aye.

3204 The Clerk. Ms. Jackson Lee votes aye.

3205 Mr. Nadler. Is there anyone else who has not yet been

3206 recorded?

3207 Mr. Weiner?

3208 Mr. Weiner. How am I recorded?

3209 The Clerk. Mr. Weiner is recorded as voting aye.

3210 Mr. Nadler. How is Mr. Schiff recorded?

3211 The Clerk. Mr. Schiff is recorded as voting aye.

3212 Mr. Nadler. The gentleman is recorded as voting aye.

3213 The gentlelady from California?

3214 Ms. Waters. How am I recorded, Mr. Chairman?

3215 The Clerk. Ms. Waters is recorded as voting aye.

3216 Mr. Nadler. Are there any other members who haven't yet

3217 voted?

3218 [No response.]

3219 The clerk will report.

3220 The Clerk. Mr. Chairman, 17 members voted aye, four

3221 members voted no.

3222 Mr. Nadler. The bill is passed then. The bill is

3223 approved.

3224 Without objection, the bill will be reported as a single
3225 amendment in the nature of a substitute, incorporating
3226 amendments adopted, and staff is authorized to make technical
3227 and conforming changes. Members will have 2 days to submit
3228 any additional views.

3229 Mr. Lungren. Parliamentary inquiry, Mr. Chairman.
3230 Parliamentary inquiry, Mr. Chairman.

3231 Mr. Nadler. The gentleman will state his parliamentary
3232 inquiry.

3233 Mr. Lungren. Mr. Chairman, it is my understanding that
3234 under the rules of the House of Representatives and prior
3235 precedent, when calling for a quorum, the presiding officer
3236 may not count the people that are not present in the room, in
3237 that case, on the floor, may not count people in the cloak
3238 rooms.

3239 Similarly, for the rules of the House to prevail in a
3240 committee, it is my understanding that when there has been a
3241 point of order made that a quorum is not present, that
3242 actions under that that require that quorum cannot go forward
3243 and must be immediately suspended.

3244 And I ask this question in the form of a parliamentary
3245 inquiry, because it is my understanding that the last vote
3246 began with the chairman of the committee, then presiding,
3247 beginning the vote when there was not a quorum present, after

3248 a point of order had been made.

3249 Mr. Nadler. The answer to the gentleman's parliamentary
3250 inquiry is as follows. As the gentleman noted, the procedure
3251 is the same as on the House floor.

3252 You start a recorded vote. There may be two people
3253 present on the House floor when the recorded vote is started.
3254 The question is how many people are present for the vote.

3255 Mr. Lungren. No. That's not the question.

3256 Mr. Nadler. It is always in order for a member to ask
3257 for a quorum vote to point out the absence of a quorum. No
3258 one did. Had someone done so, we would have called for a
3259 vote on a quorum, which would have shown a quorum present,
3260 as, indeed, the vote on the bill showed a quorum present.

3261 Mr. Lungren. Well, further parliamentary inquiry. It
3262 is my understanding that the ranking—

3263 Mr. Nadler. The gentleman is recognized.

3264 Mr. Lungren. —that the ranking member made a point of
3265 order that a quorum was not present and I believe I was
3266 informed that the chair mentioned that there was sufficient
3267 number in the room, in the back room, for the Democrats and,
3268 therefore, a quorum was present.

3269 If that is the case—

3270 Mr. Nadler. Well, the gentleman is not correct. I did
3271 not hear a point of order.

3272 I did not hear a point of order on the grounds that a

3273 quorum was not present.

3274 The ranking member said to me he didn't think a quorum
3275 was present. I said I believed a quorum was present,
3276 including people in the back room, and that is why—and I said
3277 I would do this and the ranking member gave his assent—I said
3278 that is why we go straight to a vote and the vote would tell
3279 us whether a quorum was present.

3280 That is why, sir, we did not ask for a voice vote. We
3281 went straight to a recorded vote.

3282 Mr. Sensenbrenner. Well, further parliamentary inquiry.

3283 Mr. Nadler. The gentleman is recognized.

3284 Mr. Sensenbrenner. Is it not true that the rules of the
3285 House call—

3286 Mr. Nadler. Sorry, I didn't hear you.

3287 Mr. Sensenbrenner. Is it not true that the rules of the
3288 House call for a voice vote upon which any member can object
3289 to the vote on the grounds that a quorum is not present?

3290 Mr. Nadler. And that is what I did, which is why went
3291 straight to a recorded vote.

3292 Mr. Sensenbrenner. Well, further parliamentary inquiry.
3293 And maybe the reporter can check the record. I believe that
3294 the chair decided not to call for a voice vote, where a
3295 quorum could have been objected to, and directed the clerk to
3296 call the roll immediately.

3297 The chair made an error in not calling for a voice vote

3298 at that time.

3299 Is that not correct?

3300 Mr. Nadler. The House parliamentarian, I am informed,
3301 confirms that as long as there were 21 members present,
3302 everything was in order.

3303 And the way you determine whether 21 members are present
3304 is to have a vote. Well, we had the recorded vote. We had
3305 that vote.

3306 There were, in fact—if someone wants to raise a point of
3307 order, I will rule that there was, in fact, a reporting
3308 quorum present, as evidenced by the vote that occurred.

3309 Mr. Sensenbrenner. A further parliamentary inquiry.
3310 Did the chair omit the voice vote upon which an objection for
3311 no quorum could have been made?

3312 Mr. Weiner. May I be heard on the point of order, Mr.
3313 Chairman?

3314 Mr. Sensenbrenner. I have not made a point of order. I
3315 have made a parliamentary inquiry.

3316 Mr. Weiner. May I be heard on the parliamentary
3317 inquiry, Mr. Chairman?

3318 Mr. Nadler. One at a time.

3319 Yes, and I did so with the assent of the ranking member,
3320 because I said we would go straight to a vote, which would
3321 discern whether a quorum is present, and he said fine.

3322 Mr. Sensenbrenner. Further parliamentary inquiry.

3323 If the rules of the committee are silent, do not the
3324 rules of the House prevail on the process to be used in—

3325 Mr. Nadler. The rules of the House provide that you
3326 ascertain the presence of a quorum by a vote.

3327 Mr. Weiner. Mr. Chairman, parliamentary inquiry.

3328 Mr. Nadler. The gentleman from New York?

3329 Mr. Weiner. Is it not true that simply raising a point
3330 of order does not trigger an automatic vote? Someone can
3331 assist upon a point of order. They have many ways to pursue
3332 it, including requesting a recorded vote at that present.

3333 Is that not the case, Mr. Chairman?

3334 Mr. Nadler. That is the case.

3335 Mr. Weiner. Thank you, Mr. Chairman.

3336 Mr. Sensenbrenner. Mr. Chairman, parliamentary inquiry.

3337 Mr. Nadler. Yes.

3338 Mr. Sensenbrenner. May I ask that the reporter read
3339 back that part of the transcript immediately prior to the
3340 chair directing that the roll be called to indicate whether
3341 the chair asked for a voice vote, upon which a point of no
3342 quorum could be made?

3343 Mr. Nadler. I have already said I did not ask for a
3344 voice vote, with the assent of the ranking member. We agreed
3345 to go to a recorded vote immediately.

3346 Mr. Sensenbrenner. Further parliamentary inquiry.

3347 Can the rules of the House be waived without unanimous

3348 consent simply by the chair and the ranking member?

3349 Mr. Nadler. Objection wasn't heard.

3350 Mr. Weiner. Mr. Chairman, point of parliamentary
3351 inquiry.

3352 Mr. Nadler. The gentleman will state his inquiry.

3353 Mr. Weiner. Is there not a process to ascertain whether
3354 or not a quorum is present and is there not a process that
3355 can be pursued by the minority or the majority to enforce
3356 that point?

3357 And is there not also a process to challenge the
3358 decision of the chair if they make a mistake in the
3359 interpretation of the rules? And haven't all of those
3360 windows opened and closed at this point?

3361 We have established that a quorum is present by virtue
3362 of the vote. We frequently have votes without doing quorum
3363 calls before them.

3364 Is that not the case?

3365 Mr. Nadler. That is certainly the case. The gentleman
3366 is quite correct.

3367 I would also point out that if someone wished, at that
3368 time, to object, they could have raised the point of order.
3369 A point of order was not heard.

3370 A point of order would not be in order at this point.

3371 The vote was a legal vote and there was a quorum present.

3372 There was a recording quorum present, as is evident from the

3373 vote, and the vote occurred.

3374 Mr. Scott. Parliamentary inquiry, Mr. Chairman.

3375 Mr. Nadler. The gentleman from Virginia?

3376 Mr. Scott. Mr. Chairman, is there any pending objection
3377 or challenge to the vote that was just taken?

3378 Mr. Nadler. I am not aware of any.

3379 Mr. Forbes. Parliamentary inquiry, Mr. Chairman.

3380 Mr. Nadler. The gentleman—

3381 Mr. Forbes. Yes, sir. Can the chair just clarify for
3382 me whether or not the chair ascertained and ruled that a
3383 quorum was present at the time he called for the vote or if
3384 he is ruling that a vote can be called so long as members
3385 ultimately come into the room to constitute a quorum?

3386 Mr. Nadler. Well, first, I asked for the vote in order
3387 to do, at the same time, to ascertain the quorum, with the
3388 assent of the ranking member.

3389 Now, no one raised a point of order.

3390 Mr. Forbes. Further parliamentary inquiry, Mr.

3391 Chairman.

3392 Mr. Nadler. And I would also point out, in answer to
3393 your implied question or the implication of your question, I
3394 should say, that whether you call a quorum vote or a vote,
3395 the issue is not whether a quorum—the issue is we call—we
3396 call votes on the House floor when there are 10 people
3397 present the vote is legal as long as there is a quorum by the

3398 end of the vote.

3399 Mr. Forbes. Further parliamentary inquiry.

3400 Mr. Nadler. The gentleman will state his parliamentary
3401 inquiry.

3402 Mr. Forbes. Is the chair suggesting then that a vote
3403 can be called at any time, regardless of how many members are
3404 in the chairs, so long as ultimately a quorum comes in to
3405 vote?

3406 Mr. Nadler. Yes, if the purpose of the vote is to
3407 ascertain whether a quorum is present and, also, if no one
3408 raises a point of order, as no one did.

3409 Mr. Cannon. Parliamentary inquiry, Mr. Chairman.

3410 Mr. Nadler. The gentleman will state his parliamentary
3411 inquiry and will inform the chair whether there is any
3412 purpose to it beyond delay for no apparent purpose.

3413 Mr. Cannon. Yes, Mr. Chairman. It is not a matter of
3414 delay. It is a matter of order.

3415 I sat here and heard the ranking member make a point of
3416 order that a quorum was not present.

3417 The effect of that is to, I believe, under the rules, to
3418 call for a quorum call and a vote to ascertain whether a
3419 quorum is present.

3420 So my part of the discussion with the ranking member
3421 doesn't resolve the problem, because I, as a member of this
3422 committee, have a right to know if a quorum is present.

3423 Mr. Nadler. We had a vote to determine—

3424 Mr. Cannon. Pardon me.

3425 Mr. Nadler. The way you determine, in answer to your
3426 question, sir, the way you determine whether a quorum is
3427 present is to have a vote.

3428 We had a vote, which determined that quorum was present.

3429 Mr. Cannon. Just for clarification, Mr. Chairman, we
3430 did have a vote. But wasn't the proper vote to respond to
3431 the ranking member's point of order by having a quorum call?

3432 Ms. Waters. Mr. Chairman?

3433 Mr. Nadler. There is no rule that says—first of all, no
3434 one raised a point of order and no one can now raise a point
3435 of order.

3436 Mr. Cannon. But did the ranking member not make a point
3437 of order that a quorum wasn't present? Because I think if we
3438 re-read the record, that is what we will find.

3439 Ms. Waters. Mr. Chairman?

3440 Mr. Cannon. Pardon me. Let us just finish this point
3441 before we go on.

3442 In other words, the—

3443 Mr. Nadler. All right. To be specific about what
3444 happened, the ranking member made a point of order about a
3445 quorum not being present and then agreed that we would
3446 ascertain whether a quorum was being present by having a roll
3447 call vote on the bill rather than presume it and having two

3448 votes.

3449 Mr. Cannon. Mr. Chairman, if I—

3450 Ms. Waters. Mr. Chairman? Mr. Chairman?

3451 Mr. Nadler. Which, number one, is permissible under the
3452 rules and, number two, I took to mean that he was withdrawing
3453 his point of order, because not to withdraw the point of
3454 order would have meant that he was not agreeing, which he
3455 was, that he was not agreeing to hold the vote on the bill to
3456 ascertain the presence of a quorum.

3457 Mr. Cannon. Mr. Chairman, continuing the point of
3458 order.

3459 Mr. Nadler. Point of order or parliamentary inquiry?

3460 Mr. Cannon. Was the ranking member's statement—

3461 Mr. Nadler. Excuse me.

3462 Mr. Cannon. —part of the record?

3463 Mr. Nadler. Excuse me. The gentleman will suspend.

3464 The gentleman was recognized for the purpose of a
3465 parliamentary inquiry.

3466 Does the gentleman wish to continue the parliamentary
3467 inquiry—

3468 Mr. Cannon. Yes.

3469 Mr. Nadler. —or does the gentleman wish to be recognized
3470 for a point of order?

3471 Mr. Cannon. Thank you, Mr. Chairman.

3472 As a matter of parliamentary inquiry, if the ranking

3473 member—no. Actually, this is probably a point of order.

3474 Mr. Nadler. In which case, the gentleman is recognized
3475 for a point of order.

3476 The gentleman will state his point of order.

3477 Mr. Cannon. Was the ranking member's—

3478 Mr. Scott. Ask a question, Mr. Chairman?

3479 Mr. Cannon. —statement—I am recognized.

3480 Ms. Waters. Regular order.

3481 Mr. Nadler. The gentleman will state his point of
3482 order.

3483 Ms. Waters. He doesn't have one.

3484 Mr. Nadler. Well, let's find out.

3485 The gentleman will state his point of order.

3486 Mr. Cannon. I believe that is subject to the rules of
3487 parliamentary speech.

3488 Mr. Nadler. The gentleman will state his point of
3489 order.

3490 Mr. Cannon. Did the ranking member's comment that a
3491 roll call vote on the underlying bill would be adequate as
3492 part of the record?

3493 Mr. Nadler. That is not a point of order.

3494 Mr. Cannon. It is, too.

3495 Mr. Nadler. That is not a point of order.

3496 Mr. Cannon. It is a point of order, because if that was
3497 part of the record, I don't have a right or then I would have

3498 had the responsibility to make a point of order myself that a
3499 quorum wasn't present.

3500 Mr. Nadler. So as not to insist on the technical point
3501 that that is not a point of order, I will take that as a
3502 point of order, objecting to holding the vote on the bill as
3503 ascertaining a quorum.

3504 I am told by the parliamentarian that is within the
3505 rules and that is what happened.

3506 Mr. Scott. Mr. Chairman?

3507 Mr. Nadler. The gentleman from Virginia is recognized.

3508 Mr. Scott. Mr. Chairman, I ask unanimous consent that
3509 we vitiate the vote and take the vote and take the vote over
3510 again.

3511 Mr. Nadler. Without objection. That will make somebody
3512 happy.

3513 The clerk will call the roll.

3514 Wait a minute.

3515 Mr. Scott. Well, wait. You have to ask for—

3516 Mr. Nadler. Before the clerk calls the roll, the
3517 reporting quorum is deemed present.

3518 The question is on reporting the bill, as amended,
3519 favorably to the House.

3520 Those in favor, say "aye."

3521 [A chorus of ayes.]

3522 Those opposed, "no."

3523 [A chorus of noes.]

3524 The ayes clearly have it and the bill, as amended—

3525 Mr. Cannon. Mr. Chairman, on that, I ask for a roll

3526 call vote.

3527 Mr. Nadler. —and the bill, as amended, is ordered

3528 reported favorably.

3529 For what purpose does the gentleman from Utah seek

3530 recognition?

3531 Mr. Cannon. I would ask for a recorded vote on that.

3532 Mr. Nadler. A recorded vote is requested. The clerk

3533 will call the roll.

3534 The Clerk. Mr. Conyers?

3535 [No response.]

3536 Mr. Berman?

3537 [No response.]

3538 Mr. Boucher?

3539 [No response.]

3540 Mr. Nadler?

3541 Mr. Nadler. Aye.

3542 The Clerk. Mr. Nadler votes aye.

3543 Mr. Scott?

3544 Mr. Scott. Aye.

3545 The Clerk. Mr. Scott votes aye.

3546 Mr. Watt?

3547 [No response.]

3548 Ms. Lofgren?
3549 Ms. Lofgren. Pass.
3550 The Clerk. Ms. Lofgren passes.
3551 Ms. Jackson Lee?
3552 Ms. Jackson Lee. Aye.
3553 The Clerk. Ms. Jackson Lee votes aye.
3554 Ms. Waters?
3555 Ms. Waters. Aye.
3556 The Clerk. Ms. Waters votes aye.
3557 Mr. Delahunt?
3558 [No response.]
3559 Mr. Wexler?
3560 [No response.]
3561 Ms. Sanchez?
3562 Ms. Sanchez. Aye.
3563 The Clerk. Ms. Sanchez votes aye.
3564 Mr. Cohen?
3565 [No response.]
3566 Mr. Johnson?
3567 [No response.]
3568 Ms. Sutton?
3569 Ms. Sutton. Aye.
3570 The Clerk. Ms. Sutton votes aye.
3571 Mr. Gutierrez?
3572 [No response.]

3573 Mr. Sherman?

3574 [No response.]

3575 Ms. Baldwin?

3576 Ms. Baldwin. Aye.

3577 The Clerk. Ms. Baldwin votes aye.

3578 Mr. Weiner?

3579 Mr. Weiner. Pass.

3580 The Clerk. Mr. Weiner passes.

3581 Mr. Schiff?

3582 Mr. Schiff. Aye.

3583 The Clerk. Mr. Schiff votes aye.

3584 Mr. Davis?

3585 [No response.]

3586 Ms. Wasserman Schultz?

3587 Ms. Wasserman Schultz. Pass.

3588 The Clerk. Ms. Wasserman Schultz passes.

3589 Mr. Ellison?

3590 Mr. Ellison. Aye.

3591 The Clerk. Mr. Ellison votes aye.

3592 Mr. Smith?

3593 Mr. Smith. No.

3594 The Clerk. Mr. Smith votes no.

3595 Mr. Sensenbrenner?

3596 Mr. Sensenbrenner. No.

3597 The Clerk. Mr. Sensenbrenner votes no.

3598 Mr. Coble?
3599 Mr. Coble. Mr. Coble votes no.
3600 Mr. Gallegly?
3601 [No response.]
3602 Mr. Goodlatte?
3603 Mr. Goodlatte. No.
3604 The Clerk. Mr. Goodlatte votes no.
3605 Mr. Chabot?
3606 [No response.]
3607 Mr. Lungren?
3608 Mr. Lungren. No.
3609 The Clerk. Mr. Lungren votes no.
3610 Mr. Cannon?
3611 [No response.]
3612 Mr. Keller?
3613 Mr. Keller. No.
3614 The Clerk. Mr. Keller votes no.
3615 Mr. Issa?
3616 [No response.]
3617 Mr. Pence?
3618 [No response.]
3619 Mr. Forbes?
3620 Mr. Forbes. No.
3621 The Clerk. Mr. Forbes votes no.
3622 Mr. King?

3623 Mr. King. No.

3624 The Clerk. Mr. King votes no.

3625 Mr. Feeney?

3626 Mr. Feeney. No.

3627 The Clerk. Mr. Feeney votes no.

3628 Mr. Franks?

3629 [No response.]

3630 Mr. Gohmert?

3631 [No response.]

3632 Mr. Jordan?

3633 Mr. Jordan. No.

3634 The Clerk. Mr. Jordan votes no.

3635 Mr. Nadler. Are there others members who haven't been

3636 recorded?

3637 Mr. Chairman?

3638 Chairman Conyers. Aye.

3639 The Clerk. Mr. Conyers votes aye.

3640 Mr. Nadler. Mr. Wexler?

3641 Mr. Wexler. Aye.

3642 The Clerk. Mr. Wexler votes aye.

3643 Mr. Nadler. Mr. Sherman?

3644 Mr. Sherman. Aye.

3645 The Clerk. Mr. Sherman votes aye.

3646 Mr. Nadler. Mr. Delahunt?

3647 Mr. Delahunt. Aye.

3648 The Clerk. Mr. Delahunt votes aye.

3649 Mr. Nadler. Ms. Wasserman Schultz?

3650 Ms. Wasserman Schultz. Aye.

3651 The Clerk. Ms. Wasserman Schultz votes aye.

3652 Mr. Nadler. Ms. Lofgren?

3653 The Clerk. Ms. Lofgren passed.

3654 Ms. Lofgren. Aye.

3655 The Clerk. Ms. Lofgren votes aye.

3656 Mr. Nadler. Are there any other members who wish to be
3657 recorded?

3658 Mr. Weiner?

3659 Mr. Weiner. Mr. Chairman, how am I recorded?

3660 The Clerk. Mr. Weiner passed.

3661 Mr. Nadler. The gentleman from New York?

3662 Mr. Weiner. Aye.

3663 The Clerk. Mr. Weiner votes aye.

3664 Mr. Nadler. Madam Clerk, how am I reported?

3665 The Clerk. Mr. Nadler votes aye.

3666 Mr. Nadler. Are there any other members—Ms. Sutton?

3667 Ms. Sutton. Mr. Chairman, how am I recorded?

3668 The Clerk. Ms. Sutton voted aye.

3669 Mr. Nadler. Are there any other members that wish—Mr.
3670 Johnson?

3671 Mr. Johnson. Aye.

3672 The Clerk. Mr. Johnson votes aye.

3673 Mr. Nadler. Are there any other members who wish to be
3674 recorded?

3675 [No response.]

3676 The clerk will report.

3677 The Clerk. Mr. Chairman, 17 members voted aye, 10
3678 members voted nay.

3679 Mr. Nadler. The bill reported. It was approved.

3680 Without objection, the bill will be reported as a single
3681 amendment in the nature of a substitute, incorporating
3682 amendments adopted, and staff is authorized to make technical
3683 and conforming changes. Members will have 2 days to submit
3684 additional views.

3685 Mr. Issa. Mr. Chairman, I would ask unanimous consent
3686 to be recorded as no, if I could, please.

3687 Mr. Nadler. I object.

3688 Mr. Issa. Thank you, Mr. Chairman.

3689 Mr. Scott. Mr. Chairman? Mr. Chairman? Mr. Chairman?

3690 Mr. Nadler. All right. He didn't do that. I will
3691 withdraw the objection. I said I withdraw the objection.

3692 Mr. Issa. Thank you, Mr. Chairman.

3693 Mr. Nadler. Without objection.

3694 The clerk will report again with Mr. Issa's additional
3695 vote. The clerk will report the total.

3696 I don't think we can have the vote, though. I am sorry.

3697 The clerk will not report again.

3698 With unanimous consent, the record will reflect how the
3699 gentleman would have voted, as it will Mr. Issa. But the
3700 vote was closed. And I am sorry, I thought the request was
3701 to reopen the vote. That is why I objected.

3702 Mr. Smith. Thank you, Mr. Chairman. I appreciate the
3703 indulgence.

3704 Mr. Scott. Mr. Chairman, parliamentary inquiry.

3705 Mr. Nadler. The gentleman will state his parliamentary
3706 inquiry.

3707 Mr. Scott. We have frequently allowed the votes to be
3708 cast in normal fashion by unanimous consent, so long as the
3709 result didn't change. You just add the vote, so long as it
3710 doesn't change the result.

3711 Mr. Nadler. I am told by staff that that has not been
3712 the practice.

3713 Only a member who voted on the winning side can do that,
3714 and I don't think that that is the precedent we would want to
3715 start.

3716 Pursuant to notice, I now call up the bill H.R. 5167,
3717 the Justice for Victims of Torture and Terrorism Act, for
3718 purposes of markup.

3719 The clerk will report the bill.

3720 The Clerk. "H.R. 5167, a bill to amend the National
3721 Defense Authorization Act for fiscal year 2008 to remove the
3722 authority of the president to waive certain provisions."

3723 [The bill follows:]

3724 ***** INSERT *****

3725 Mr. Nadler. Without objection, the bill is considered
3726 as read and is open for amendment at any point.

3727 The chair recognizes myself for an opening statement.

3728 During the Persian Gulf War, American pilots captured by
3729 the Iraqi government were brutalized in horrendous ways.
3730 They were starved, exposed to extreme temperatures, and
3731 severely beaten.

3732 They were threatened with castration and dismemberment
3733 and subjected to mock executions. Because the Iraqis
3734 believed these pilots had more sensitive information, they
3735 were tortured more severely than other American POWs.

3736 These brave soldiers, consequently, sustained long
3737 lasting physical and emotional injury. American civilians
3738 who had the misfortune of being in Iraq at the time it
3739 invaded Kuwait also suffered at the hands of the Iraqi
3740 government. They were held as human shields, used as
3741 leverage to prevent the U.S. and its allies from attacking
3742 Iraq and liberating Kuwait.

3743 These individuals were held in cruel and degrading
3744 conditions, forced to live in constant fear.

3745 The effort to pursue justice for these two groups of
3746 Americans has been buffeted by a number of developments over
3747 the years, including the State Department sensitivities that
3748 were allowed to overshadow the fundamental issues of fair
3749 redress for these grievances.

3750 In amending the Foreign Sovereignities Immunities Act in
3751 1996, we intended to create a federal statutory cause of
3752 action for American victims of terrorism to hold foreign
3753 states that commit or provide material support for terrorist
3754 acts accountable in American courts.

3755 We reaffirmed that intent last December in the National
3756 Defense Authorization Act. Unfortunately, we were prevailed
3757 upon to add a waiver authority for Iraq, which has once again
3758 placed relief out of reach for these two groups of victims.

3759 In its introduced form, the bill before us would simply
3760 rescind that waver authority. But we will shortly consider
3761 two amendments that will take a somewhat different approach,
3762 one that will hopefully avoid the need to directly confront
3763 the rescission issue.

3764 I will first offer the substitute amendment, which has
3765 previously been circulated to all of you. On behalf of Mr.
3766 Conyers, I will offer that amendment, that is.

3767 The substitute, developed with the assistance of the
3768 sponsors of the bill, Bruce Braley of Iowa and Joe Sestak of
3769 Pennsylvania, one of the principal cosponsors, and others,
3770 would give the Iraqi government until 90 days after enactment
3771 to satisfactorily settle the claims of this individuals
3772 before the rescission would be triggered.

3773 The amendment also provides specific limits on the sizes
3774 of the damage award to remove any uncertainty about

3775 potentially open-ended liability.

3776 The specified amounts are a fraction of the outstanding
3777 judgment award and pending claim amount.

3778 The second amendment, to be offered by Mr. Issa, has
3779 been worked out in consultation with Bruce Braley, Joe
3780 Sestak, Mr. Conyers and other supporters of the bill. It
3781 will trigger the start of the 90-day period not on enactment
3782 of the bill, but on the certification by the president
3783 regarding whether the Iraqi government has settled similar
3784 claims of foreign nationals or has settled commercial claims
3785 by foreign corporations or is actively negotiating in good
3786 faith with the American victims.

3787 I believe holding Iraq accountable is an essential
3788 element in its full rehabilitation in the community of
3789 nations. This holds true to well settled international law,
3790 as well as to the Geneva Conventions.

3791 I hope my colleagues will join me in helping innocent
3792 American POWs and civilians finally attain justice by
3793 supporting the bill with these two amendments.

3794 I now recognize our ranking member, Lamar Smith of
3795 Texas, for an opening statement.

3796 Mr. Smith. Thank you, Mr. Chairman.

3797 Let me state, at the outset, that I hope to see justice
3798 done for all Americans who have been subject to abuse.

3799 However, I do not believe the approach of the bill before us

3800 now is the right one, especially since an agreement just
3801 recently has been reached between Libya and the State
3802 Department that settles terrorism-related claims against that
3803 country.

3804 That agreement shows that state-to-state negotiations
3805 can work and they should be allowed to do so.

3806 Presidents of both political parties have long objected
3807 to proposals such as H.R. 5167, the Justice for Victims of
3808 Torture and Terrorism Act. It would allow court judgments to
3809 trump the president's foreign policy power to enter into
3810 international negotiations.

3811 Earlier in this Congress, language was carefully
3812 negotiated with the administration that seeks justice for
3813 Americans who have been subject to abuse and, also, does not
3814 threaten progress in Iraq.

3815 Congress passed H.R. 4986 by an overwhelmingly
3816 bipartisan margin. That bill authorizes the president to
3817 waive any provisions in Section 1083 of the legislation that
3818 allow lawsuits against Iraq if the president determines that,
3819 A, the waiver is in the national security interest of the
3820 United States; B, the waiver will promote the reconstruction
3821 of the consolidation of democracy and in the relations of the
3822 United States with Iraq; and, C, Iraq continues to be a
3823 reliable ally of the United States and partner in combating
3824 acts of international terrorism.

3825 On the day the president signed that provision into law,
3826 he signed a waiver and issued a statement justifying the
3827 exercise of the waiver authority.

3828 The statement issued by the White House stated, in part,
3829 "Absent a waiver, Section 1083 would have a potentially
3830 devastating impact on Iraq's ability to use Iraqi funds to
3831 expand and equip the Iraqi security forces, which would have
3832 serious implications for U.S. troops in the field acting as
3833 part of the Multinational Force Iraq and would harm any
3834 terrorism and counterinsurgency efforts."

3835 Application of Section 1083 to Iraq or any agency or
3836 instrumentality thereof will hurt the interests of the United
3837 States by unacceptably interfering with political and
3838 economic progress in Iraq that is critically important to
3839 bringing U.S. troops home.

3840 If applied to Iraq or any agency or instrumentality
3841 thereof, the provisions of Section 1083 would redirect
3842 financial resources from the continued reconstruction of Iraq
3843 and would harm Iraq's stability, contrary to the interests of
3844 the United States.

3845 H.R. 5167 would override the carefully crafted
3846 legislation Congress already has passed, which already
3847 included a sense of Congress that the president, acting
3848 through the secretary of state, should work with the
3849 government of Iraq on a state-to-state basis to ensure

3850 compensation for any meritorious claims based on terrorist
3851 acts committed by the Saddam Hussein regime against
3852 individuals who were United States nationals or members of
3853 the United State armed forces at the time of those terrorist
3854 acts and whose claims cannot be addressed in courts in the
3855 United States due to the exercise of the waiver authority.

3856 H.R. 5167 would impose an artificial deadline for the
3857 conclusion of a process that should be allowed to continue in
3858 order to reach a fair resolution for all involved, without
3859 harming our national interests.

3860 While I don't support this legislation for the reasons I
3861 have mentioned, I intend to support an improving amendment I
3862 understand will be offered by Mr. Issa of California.

3863 That amendment will make it clear--well, I think we may
3864 have two amendments by Mr. Issa and Mr. King, both of which I
3865 support. And if, as I expect, both amendments pass, then I
3866 will support the underlying legislation. And if those
3867 amendments are retained in the legislation, I expect to
3868 support the legislation when it reaches the House floor,
3869 unless there is a veto threat against it.

3870 Mr. Chairman, I will yield back the balance of my time.

3871 Mr. Nadler. Thank you.

3872 Without objection, other members' statement will be
3873 included in the record.

3874 We will now turn to amendments and I ask the clerk to

3875 report the manager's substitute amendment that is at the
3876 desk, which I described a moment ago, which I offer on behalf
3877 of Mr. Conyers.

3878 The Clerk. "Amendment in the nature of a substitute to
3879 H.R. 5167, offered by Mr. Nadler. Strike all after"—

3880 [The amendment by Mr. Nadler follows:]

3881 ***** COMMITTEE INSERT *****

3882 Mr. Nadler. Without objection, the amendment is
3883 considered as read.

3884 As I indicated a minute ago, this amendment is designed
3885 to encourage the Iraqi government to reach agreement with the
3886 two groups of victims whose claims for torture remain
3887 unredressed.

3888 Iraq would have 90 days after enactment to reach
3889 agreement and pay the agreed amount, with an additional 30
3890 days if payment is to come through a depository institution
3891 in the United States.

3892 As I indicated a moment ago, the additional amendment by
3893 Mr. Issa and Mr. Conyers will make further refinements to
3894 this approach.

3895 Is there further discussion on the manager's substitute?

3896 Mr. Smith. Mr. Chairman?

3897 Mr. Nadler. The gentleman is recognized.

3898 Mr. Smith. Just very briefly, I oppose this manager's
3899 amendment for the same reason that I oppose the underlying
3900 bill and, as I say, I expect improving amendments to be
3901 offered shortly and to be approved, as well.

3902 Mr. Nadler. Thank you.

3903 Mr. Issa. Mr. Chairman?

3904 Mr. Nadler. Who seeks recognition?

3905 Mr. Issa. Mr. Chairman?

3906 Mr. Nadler. Mr. Issa?

3907 Mr. Issa. Mr. Chairman, I have an amendment at the
3908 desk.

3909 Mr. Nadler. This is an amendment to the manager's
3910 substitute.

3911 Mr. Issa. It is an amendment to, yes, the manager's
3912 substitute.

3913 Mr. Nadler. The clerk will report Mr. Issa's amendment.

3914 The Clerk. Amendment to the amendment in the nature of
3915 a substitute to H.R. 5167, offered by Mr. Issa of California.

3916 Page 6, line 16, strike: Unless the president—

3917 [The amendment by Mr. Issa follows:]

3918 ***** INSERT *****

3919 Mr. Nadler. Without objection, the amendment is
3920 considered as read.

3921 And the gentleman is recognized.

3922 Mr. Issa. Thank you, Mr. Chairman. And I appreciate
3923 the bipartisan nature in which we have been pursuing a
3924 mutually acceptable bill.

3925 As many people on the committee know, one of the victims
3926 of this torture is a retired colonel living in my district.
3927 But even if it wasn't for a constituent contact, 8 years ago,
3928 when I entered the Congress, I became aware that victims of
3929 Japanese atrocities in World War II had not yet been
3930 compensated, in many cases.

3931 That was because the nature of the U.S. was to say "We
3932 are not going to hold the old Japanese government
3933 accountable, but we will the new, because they are gone."

3934 I have no problems with that. But when I learned that
3935 many nations, including our allies in World War II, were
3936 receiving from Japan compensation for various war crimes,
3937 including the British, the Australians and others, I realized
3938 that there was an inherent inequity that, at some point, I
3939 would have an opportunity to address.

3940 This gives us this opportunity. Other countries are
3941 receiving—their citizens are receiving compensation for
3942 wrongful acts, and I believe that it legitimately triggers
3943 the best efforts of this administration to negotiate an

3944 acceptable settlement for these victims that are U.S.
3945 citizens or U.S. soldiers.

3946 So for that reason, I have crafted an amendment that
3947 does two things. It allows the president to have 180 days
3948 each time he can certify, if he could, that—because I believe
3949 this is a good model for other legislation—if he can certify
3950 that, in fact, the government is not making payments to other
3951 similar individuals.

3952 But most importantly and one that I believe the
3953 administration should embrace, it also allows the president,
3954 on a 180-day-at-a-time basis, to certify that they, their
3955 state department or their negotiators, are, in fact, in
3956 negotiations, in good faith, with a partner in Iraq, in good
3957 faith, to reach an amicable settlement.

3958 It is clear that no matter what we do here, the
3959 collection from a foreign sovereign can be difficult. So it
3960 would be in both their best interest and our best interest if
3961 it was negotiated and a sum was transferred and delivered.

3962 So for that reason, I believe that the certification by
3963 the president, and we are very clearly talking the next
3964 president, that these negotiations are underway will be
3965 effective if used to tell an administration that every 180
3966 days, they are going to have to come back and give us a
3967 status report and continue those negotiations until there is
3968 a successful conclusion.

3969 In a nutshell, that is the only basis under which I
3970 believe we, as Congressmen, can, in good faith, tell these
3971 victims that they should wait because it is in their best
3972 interest.

3973 Anything less and I could not support the bill.

3974 And with that, I would yield back and urge support for
3975 the amendment. And, obviously, as the ranking member said,
3976 we believe that this will make it something we can support on
3977 a bipartisan basis.

3978 Mr. Nadler. I thank the gentleman.

3979 This is a good amendment and I appreciate Mr. Issa's
3980 leadership in developing it and working with us to reach a
3981 wider consensus.

3982 It takes a very reasonable approach to triggering the
3983 obligations—that Iraq make good on its obligation to the
3984 victims we have been concerned about getting justice for.

3985 If Iraq is able to pay foreign nationals the similar
3986 claims of torture or abuse or to pay commercial claims of
3987 foreign corporations, then it is certainly in a position to
3988 do justice by these American victims.

3989 So I hope we will all support Mr. Issa's amendment.

3990 Is there further discussion on the amendment?

3991 Mr. Smith. Mr. Chairman?

3992 Mr. Nadler. The ranking member is recognized.

3993 Mr. Smith. Thank you, Mr. Chairman.

3994 I, too, want to compliment the gentleman from
3995 California, Mr. Issa, for coming up with a creative solution
3996 to the dilemma that we face and appreciate his taking
3997 initiative and coming up with a compromise that is bipartisan
3998 and that will allow us to support this bill today.

3999 The amendment very reasonably requires the president to
4000 periodically update Congress regarding the status of
4001 negotiations between the administration and Iraq regarding
4002 the fair compensation of injured parties.

4003 Under this amendment, if those status reports are
4004 favorable, in the estimation of Congress, the negotiations
4005 will be allowed to continue. If they are unfavorable, in the
4006 estimation of Congress, private lawsuits can be allowed to
4007 proceed.

4008 The State Department and Libya have come to an agreement
4009 on the fair settlement of claims against that country for its
4010 terrorist actions.

4011 Chairman Conyers and I are cosponsoring a legislative
4012 codification of that agreement literally this afternoon.

4013 We need to give the same process a chance to work in the
4014 case of those with claims against the old Iraq regime of
4015 Saddam Hussein. This compromise amendment allows that, while
4016 also allowing Congress the opportunity to periodically assess
4017 the prospects for State Department negotiations.

4018 Mr. Chairman, again, I want to thank the gentleman from

4019 California.

4020 And I will yield back.

4021 Mr. Nadler. I thank the gentleman.

4022 The gentleman from Massachusetts is recognized.

4023 Mr. Delahunt. Yes, Mr. Chairman.

4024 I, too, want to join you and the ranking member in
4025 supporting the amendment.

4026 I think it is really important to note that the United
4027 States has forgiven the loans that were made during the 1980s
4028 to the regime of Saddam Hussein. Those moneys and those
4029 credits amounted to somewhere in the neighborhood of \$5
4030 billion or \$6 billion.

4031 I think it is important to note for the record that
4032 during the 1980s, in the course of the Iraq-Iran war, we were
4033 supporting Saddam Hussein and extended a variety of credits,
4034 mostly agricultural; but money being fungible, it really was
4035 an aid program to the Saddam Hussein regime.

4036 I think we all can regret that particular action.

4037 But I think it is also important to note for the record
4038 that despite the language put forth by the White House that
4039 it would be devastating to the Iraqi security forces, we have
4040 to underscore that while predictions for the deficit that
4041 will be facing the American taxpayer has doubled in terms of
4042 the February estimate, the Iraqi government is now enjoying a
4043 surplus, a surplus that, because of the increased price of

4044 oil, I understand, is in the neighborhood of \$25 billion to
4045 \$30 billion.

4046 Let me repeat that—a surplus of \$25 billion to \$30
4047 billion.

4048 So I just want to state for the record that I would
4049 consider the language coming from the White House to be kind
4050 hyperbole and I think that the compromise that has been
4051 generated on a bipartisan basis is a sensible, thoughtful
4052 approach and I would encourage the White House to refrain
4053 from excessive language.

4054 And with that, I yield back.

4055 Mr. Nadler. Is there any further discussion on the
4056 amendment?

4057 Ms. Jackson Lee. Mr. Chairman?

4058 Mr. Nadler. The gentlelady from Texas?

4059 Ms. Jackson Lee. Mr. Chairman, I rise to support the
4060 underlying bill and to support any improvement that will
4061 strengthen the responsibility of the Iraq government to
4062 address the compensation needs of those who have been
4063 offended.

4064 Someone who opposed the Iraq war in the first place, it
4065 certainly gives me pause to note that individuals who warrant
4066 compensation are, in essence, needing a framework to push the
4067 Iraq government to do the right thing.

4068 So I hope this amendment does not hinder the speed in

4069 which I think individuals who have experienced a grieved
4070 situation, whether it be their family member or loss of
4071 property, be further delayed.

4072 I do think it is important--this is the Judiciary
4073 Committee--that a new Iraq should adhere to the rule of law
4074 and one of the very important concepts of the United States
4075 is that we can go into a civil court of law, if you are a
4076 grieved person, and you can petition the court.

4077 There is certainly a very positive chance that you would
4078 be compensated through a civil proceeding.

4079 The Iraq government needs to understand that in order to
4080 be part of the world family and the international family and
4081 various international conventions, that they have to do that
4082 to people who have been offended, who have been tortured, who
4083 have been victimized.

4084 And so I think as fast as we can move this legislation
4085 along, the better off the Iraq government will be, because it
4086 will come into the world family of acknowledging that it is
4087 important to respond to the many families, the many lost
4088 property rights, the tortured persons, the frightened
4089 persons.

4090 This legislation will help to do that and I rise to
4091 support it. And I would, frankly, hope that it would move
4092 quickly to the floor of the House, quickly through the
4093 Senate, and signed by the president.

4094 We have to have an Iraq government that adheres to the
4095 rule of law. I think this is legislation that will help us do
4096 that.

4097 And with that, I yield back.

4098 Mr. Nadler. I thank the gentlelady.

4099 The gentleman from Virginia is recognized.

4100 Mr. Scott. Mr. Chairman, just very briefly.

4101 I rise in support of the bill, because I think the
4102 litigants should be compensated. But we need to consider the
4103 international precedence we create or establish by the bill
4104 and should consider how that precedence would work if other
4105 countries applied that precedence endorsed by the bill
4106 against the United States.

4107 I yield back.

4108 Mr. Nadler. I thank the gentleman.

4109 The question is on the amendment to the substitute.

4110 All those in favor will say "aye."

4111 [A chorus of ayes.]

4112 Those opposed, "no?"

4113 [No response.]

4114 Mr. Nadler. In the opinion of the chair, the ayes have
4115 it and the amendment is agreed to.

4116 Are there any other amendments to the substitute?

4117 Mr. King. Mr. Chairman?

4118 Mr. Nadler. The gentleman from Iowa is recognized.

4119 Mr. King. Thank you, Mr. Chairman.

4120 I have an amendment to the amendment in the nature of a
4121 substitute at the desk.

4122 Mr. Nadler. The clerk will report.

4123 The Clerk. "Amendment to the amendment in the nature of
4124 a substitute to H.R. 5167, offered by Mr. King of Iowa. Add
4125 at the end of the following: Section 4, Limitation of—

4126 [The amendment by Mr. King follows:]

4127 ***** INSERT *****

4128 Mr. King. Mr. Chairman, I ask unanimous consent the
4129 amendment be considered as read.

4130 Mr. Nadler. Without objection. The gentleman is
4131 recognized.

4132 Mr. King. Thank you, Mr. Chairman.

4133 The amendment that I am offering to the amendment in the
4134 nature of a substitute simply establishes that no funds of
4135 the United States government may be used to pay any claims
4136 that might be achieved under this act.

4137 And so then we have statements made by proponents of the
4138 underlying bill at our hearing on these issues that indicated
4139 that it is not the intent of the legislation supporters that
4140 U.S. taxpayer funds may be used to pay for damages caused by
4141 terrorists.

4142 My amendment would simply make that clear in the
4143 legislation. For example, as a witness, Ambassador John
4144 Norton Moore, co-counsel in the case of the case of *Acree v.*
4145 *Republic of Iraq*, said at the hearing that "The intent of the
4146 *Braley-Sestak* bill is not to, in any way, shape or form, have
4147 any liability for the United States taxpayer. If that is an
4148 issue we certainly have no problem at all in changing that."

4149 And I didn't catch any rebuttal to that in the
4150 discussion and I think it is consistent with our intent that
4151 U.S. taxpayers not be inadvertently held liable under this
4152 act.

4153 Mr. Nadler. If the gentleman would yield.

4154 Mr. King. I would be happy to yield.

4155 Mr. Nadler. We are prepared to accept that amendment.

4156 Mr. King. I would thank the chairman for that and urge
4157 its adoption, and yield back the balance of my time.

4158 Mr. Nadler. I thank the gentleman.

4159 Is there any further discussion on the amendment?

4160 [No response.]

4161 If there is no further discussion on the amendment, the
4162 question occurs on the amendment.

4163 All those in favor will say "aye."

4164 [A chorus of ayes.]

4165 Those opposed, "no?"

4166 [No response.]

4167 In the opinion of the chair, the ayes have it. The
4168 amendment is agreed to.

4169 Are there any other amendments to the substitute?

4170 [No response.]

4171 Hearing none, the question is on the manager's
4172 substitute, as amended.

4173 Those in favor, say "aye."

4174 [A chorus of ayes.]

4175 Those opposed, "no."

4176 [No response.]

4177 The ayes have it, and the manager's substitute is agreed

4178 to, as amended.

4179 The vote on reporting H.R. 5167 will be postponed for a
4180 bit.

4181 And we will now turn to H.R. 6064, the National Silver
4182 Alert Act.

4183 We will now go to H.R. 6064, and I will hand over the
4184 chair to the gentleman from Virginia.

4185 Mr. Scott. [Presiding.] Pursuant to notice, I call up
4186 the bill H.R. 6064, the National Silver Alert bill, for the
4187 purpose of markup.

4188 And the clerk will report the bill.

4189 The Clerk. "H.R. 6064, a bill to encourage, enhance and
4190 integrate Silver Alert plans throughout the United States."

4191 [The bill follows:]

4192 ***** INSERT *****

4193 Mr. Scott. Without objection, the bill is considered as
4194 read and open for amendment at any point.

4195 And I recognize myself for an opening statement.

4196 The National Silver Alert Act is an important step in
4197 our efforts to protect seniors. We recently passed the Elder
4198 Justice Act and the Elder Abuse Victims Act out of the
4199 Judiciary Committee, and it is my hope that we can pass 6064
4200 out of committee today.

4201 Thousands of vulnerable older adults go missing each
4202 year as a result of dementia, diminished capacity, foul play,
4203 or other unusual circumstances.

4204 The Alzheimer's Foundation of America estimates that
4205 over 5 million Americans suffer from Alzheimer's disease.
4206 Sixty percent of this are likely to wander from their homes.
4207 Many will be unable to find their way back home because of
4208 disorientation or confusion.

4209 Their safe return home often depends on their being
4210 quickly found. If not found within 24 hours, it is estimated
4211 that 50 percent will risk serious illness, injury or death.

4212 We currently have no comprehensive federal approach to
4213 this problem. A handful of states, including Texas and
4214 Virginia, along with several nonprofit organizations, have
4215 developed programs to address various aspects of the problem
4216 of missing adults, but we need a coordinated national
4217 approach and need federal funding for the continuation of

4218 these programs and the development of new local and state
4219 programs.

4220 The National Silver Alert Act sets forth a national
4221 program to address this problem. It is patterned after the
4222 successful Amber Alert program for children and creates a
4223 national Silver Alert coordinator.

4224 The coordinator will act as a nationwide point of
4225 contact and will be responsible for developing voluntary
4226 guidelines, standards and protocols for states to consider in
4227 creation of their local Silver Alert plans.

4228 The bill will also authorize the grants of fiscal year
4229 2009.

4230 In closing, I would like to thank several members, many
4231 members for their cooperation. I will have a manager's
4232 amendment in due course.

4233 And I recognize the acting ranking member, my colleague
4234 from Virginia, for his statement.

4235 Mr. Goodlatte. Thank you, Mr. Chairman.

4236 H.R. 6064, the National Silver Alert Act, is designed to
4237 help notify the public when an adult is missing. Citizens
4238 may then be able to aid law enforcement officials in finding
4239 the missing person.

4240 The Silver Alert program is similar to the Amber Alert
4241 program which is used in all 50 states. This bill would aid
4242 the implementation of the Silver Alert program nationwide.

4243 It is currently active in only 11 states.

4244 In the ranking member, Mr. Smith's home state of Texas,
4245 which implemented the program in September of 2007, 30 alerts
4246 have been issued. Of those, 27 adults were found.

4247 I urge my colleagues to support this bill.

4248 And I would yield the balance of my time to the ranking
4249 member of the Crime Subcommittee, Mr. Gohmert. However, I
4250 note that he is not with us.

4251 So I would ask unanimous consent that his statement be
4252 made a part of the record when he submits it.

4253 Mr. Scott. Thank you.

4254 I have an amendment at the desk.

4255 Without objection, other opening statements will be made
4256 part of the record at this point.

4257 I have an amendment at the desk. The clerk will report.

4258 The Clerk. "Amendment in the nature of a substitute to
4259 H.R. 6064, offered by Mr. Scott of Virginia. Strike all
4260 after enactment clause"--

4261 [The amendment by Mr. Scott follows:]

4262 ***** INSERT *****

4263 Mr. Scott. I ask unanimous consent that the amendment
4264 be considered as read. Without objection.

4265 The amendment is in the nature of a substitute to H.R.
4266 6064. The amendment merges 6064 with two other bills that
4267 also address the problem of missing seniors, H.R. 5898, the
4268 Silver Alert grant program, sponsored by the gentleman from
4269 Florida, Mr. Bilirakis, and H.R. 423, the Kristen's Act
4270 Reauthorization of 2007, sponsored by the gentlelady from
4271 North Carolina, Ms. Myrick.

4272 The problem of seniors going missing is serious and is
4273 one that is expected to grow in the future.

4274 In recognition of the problem, three members of
4275 Congress, Mr. Doggett, Ms. Myrick and Mr. Bilirakis,
4276 introduced separate bills.

4277 Each bill approaches the problem in a slightly different
4278 way, some slightly conflicting and some overlapping, and they
4279 agreed to work together to form one bill and the manager's
4280 amendment is a result of those bipartisan efforts.

4281 The manager's amendment includes virtually all of H.R.
4282 6064. It includes the grant portion of 5898 and also
4283 incorporates most of 423, Kristen's Act Reauthorization of
4284 2007, which complements the two previous bills and provides
4285 for competitive grants to both public agencies and nonprofit
4286 organizations.

4287 Money will be used to maintain a national resource

4288 center, information clearinghouse, and database for tracking
4289 missing adults. The money will also be used to provide for
4290 training and assistance to law enforcement and families of
4291 missing adults.

4292 I would like to thank Mr. Doggett, Mr. Bilirakis and Ms.
4293 Myrick for their hard work on the important bill, and I hope
4294 that we will adopt the amendment and pass the bill.

4295 I yield to the gentleman from Virginia.

4296 Mr. Goodlatte. Thank you, Mr. Chairman.

4297 This substitute incorporates the Silver Alert provisions
4298 of H.R. 6064 and H.R. 5898, sponsored by Mr. Bilirakis of
4299 Florida. The substitute also includes H.R. 423, a bill to
4300 reauthorize Kristen's Act, introduced by my colleague,
4301 Representative Sue Myrick.

4302 Kristen's Act established a national database in October
4303 2000 to search for missing adults as a result of foul play.
4304 I am pleased that the sponsors of these bills have joined
4305 together to draft one comprehensive and bipartisan approach
4306 to this problem, and I urge my colleagues to support the
4307 bill.

4308 Mr. Scott. The gentleman yields back.

4309 The gentleman from California is recognized for 5
4310 minutes to strike the last word.

4311 Mr. Sherman. Thank you, Mr. Chairman. I would like to
4312 strike the last word.

4313 And I would like to use my 5 minutes to go back to the
4314 Iraq bill for just a second to put some things on the record.

4315 I had to be offering another amendment at the exact
4316 time, and I will be brief.

4317 I am not sure that the Maliki government should pay
4318 punitive damages for the wrongs of Saddam Hussein. But I
4319 want to indicate that the bill before us, I am told the
4320 intent is not to provide for punitive damages.

4321 A fair reading of the text shows that it is not designed
4322 to provide punitive damages. And just to make absolutely
4323 certain, I have a letter here from the author indicating that
4324 it is not the intent of this bill to provide for punitive
4325 damages.

4326 I would like unanimous consent to make it part of the
4327 record.

4328 Mr. Scott. We will ask unanimous consent that the
4329 statement be made part of the record in the preceding bill.

4330 [The information follows:]

4331 ***** INSERT *****

4332 Mr. Sherman. That would be an even better request, I
4333 think.

4334 Mr. Scott. Is there further discussion on the bill
4335 before us?

4336 Ms. Jackson Lee, for what purpose does the gentlelady
4337 seek recognition?

4338 Ms. Jackson Lee. Mr. Chairman, I will yield. I have an
4339 amendment after this manager's amendment, sir.

4340 And I rise to support the manager's amendment. I yield
4341 back.

4342 Mr. Scott. The manager's amendment is a substitute. Is
4343 your amendment drawn to the substitute?

4344 Ms. Jackson Lee. I have an amendment to offer.

4345 Mr. Scott. The clerk will report the amendment.

4346 The Clerk. "Amendment to the amendment in the nature of
4347 a substitute to H.R. 6064, offered by Ms. Jackson Lee of
4348 Texas. At the end of Title 1 of the amendment, insert the
4349 following new section"—

4350 [The amendment by Ms. Jackson Lee follows:]

4351 ***** INSERT *****

4352 Mr. Scott. I ask unanimous consent that the amendment
4353 will be considered as read, and recognize the gentlelady for
4354 5 minutes to discuss her amendment.

4355 Ms. Jackson Lee. Thank you very much, Mr. Chairman.

4356 And I want to correct the procedural record to be
4357 assured that I am now amending the manager's amendment. I
4358 thank the chairman for his indulgence and for yielding to me.

4359 I thank the ranking member, as well.

4360 I am grateful for a series of legislation through the
4361 Judiciary Committee that recognizes an important component of
4362 our society. Those are senior citizens who have worked hard.

4363 My amendment is very straightforward and simple. It
4364 would authorize a voluntary electronic monitoring program to
4365 be used to assist in the location of elderly persons.

4366 Specifically, my amendment would require the attorney
4367 general, after consultation with the secretary of health and
4368 human services, to award grants to states and units of local
4369 government to carry out programs to provide for voluntary
4370 electronic monitoring services for elderly individuals to
4371 assist in the location of such individuals in the event that
4372 such persons are reported missing.

4373 My amendment authorizes \$2 million to be appropriated
4374 for each of the fiscal years 2009 to 2014.

4375 It is a good amendment and it has the support by the
4376 Alzheimer's Foundation.

4377 When I consider the necessity of this amendment, I am
4378 reminded about the time when I was personally called upon by
4379 a constituent in the 18th congressional district in Texas.

4380 A few years back, the family of Mr. Sammy Kirk enlisted
4381 by help in searching for Mr. Kirk. Mr. Kirk was an elderly
4382 man suffering from Alzheimer's and he had wandered away from
4383 his family in Houston.

4384 He was lost. His family called me to help search for
4385 him. Albeit Houston does not get very cold, but it was
4386 during a season that it was. I, along with his family,
4387 searched many hours and many days in total.

4388 We searched for 3 days for Mr. Kirk, went to his
4389 family's home, worked with Texas EquuSearch, an outstanding
4390 organization. Finally, Mr. Sam Kirk was found, but he was
4391 found dead. He wandered many miles away from his family and
4392 was found dead along the bayou.

4393 If we had just gotten there a few days earlier, a few
4394 hours earlier, a few minutes earlier, we might have been able
4395 to save Mr. Kirk's life.

4396 It would have been so much easier and his life, as I
4397 said, could have been spared if there was an electronic
4398 monitoring service that could have been used to help keep Mr.
4399 Kirk close to his family.

4400 By the way, he went out of the home during the evening
4401 time, when his family thought that he was resting and, in

4402 essence, put to bed.

4403 And so the electronic device would have been helpful
4404 because he was not someone who was abandoned by his family.
4405 His family was very watchful and very loving and would have
4406 been able to follow him immediately, and it would have
4407 certainly aided in our search for Mr. Kirk as a collective
4408 family of searchers.

4409 An innocent, yet vulnerable life could have been saved.

4410 This amendment is necessary and I encourage my
4411 colleagues to support it. And in the name of Sammy Kirk, I
4412 would like to call the amendment, in particular, Mr. Sammy
4413 Kirk or the Sammy Kirk amendment, to honor him and to
4414 recognize that he represents so many others whose lives can
4415 be saved.

4416 I would ask, again, my colleagues to support this
4417 amendment.

4418 And with that, I yield the balance of my time.

4419 Mr. Scott. Is there any further comment on the
4420 amendment?

4421 [No response.]

4422 The question is on the amendment to the substitute.

4423 All those in favor will say "aye."

4424 [A chorus of ayes.]

4425 All opposed, say "no."

4426 [No response.]

4427 In the opinion of the chair, the ayes have it. The ayes
4428 have it. The amendment is agreed to.

4429 Ms. Jackson Lee. Thank you, Mr. Chairman.

4430 Mr. Scott. Are there any other amendments to the
4431 substitute?

4432 [No response.]

4433 If not, the question is on the substitute.

4434 All those who favor the substitute will say "aye."

4435 [A chorus of ayes.]

4436 All opposed, say "no."

4437 [No response.]

4438 The ayes have it. The manager's amendment is agreed to.

4439 A reporting quorum not being present at this time, the
4440 vote will be postponed for a bit.

4441 And we will turn to the next bill, H.R. 6503.

4442 Ms. Waters. Mr. Chairman, that is my bill.

4443 Mr. Scott. Yes. Pursuant to notice, I call up the bill

4444 H.R. 6503, the Missing Alzheimer's Disease Patient Alert

4445 Program Reauthorization of 2008, for the purposes of markup.

4446 The clerk will report the bill.

4447 The Clerk. "H.R. 6503, a bill to amend the Violent
4448 Crime Control and Law Enforcement Act of 1994, to reauthorize
4449 the Missing Alzheimer's Disease Patient Alert Program."

4450 [The bill follows:]

4451 ***** INSERT *****

4452 Mr. Scott. The chair recognizes himself for an opening
4453 statement.

4454 H.R. 6503 reauthorizes an important existing program,
4455 the missing Alzheimer's disease patient alert program. We
4456 have already heard about the serious problem of seniors who
4457 go missing each year as a result of dementia and there is no
4458 need for me to repeat those statistics again.

4459 The reauthorization of the missing Alzheimer's patient
4460 alert program expired 10 years ago, but because of the
4461 success of the program, Congress has continued to appropriate
4462 moneys for it.

4463 This is the only current federal program that provides
4464 grant funding to help locate vulnerable elderly individuals
4465 who go missing. Grant money is used for the development of
4466 locally based proactive programs to protect and locate
4467 missing patients with Alzheimer's disease and related
4468 dementia.

4469 H.R. 6503 will authorize continued funding for the
4470 program through 2015 and make the grant program competitive.

4471 In closing, I want to thank the chief sponsor of the
4472 bill, the gentlelady from California, Ms. Waters, for
4473 recognizing the success of the program and for the need for
4474 this legislation and for her hard work on this bill, and
4475 encourage my colleagues to support it.

4476 I yield now to the gentleman from Virginia for his

4477 opening statement.

4478 Mr. Goodlatte. Thank you, Mr. Chairman.

4479 H.R. 6503, the Missing Alzheimer's Disease Patient Alert
4480 Program, reauthorizes funds for grants awarded to nonprofit
4481 organizations by the attorney general.

4482 The grants help these nonprofit organizations assist
4483 with the cost of establishing and operating programs to
4484 protect and locate missing patients with Alzheimer's disease.

4485 It is estimated that as many as 5 million Americans
4486 suffer from Alzheimer's disease or dementia. Of these,
4487 nearly 3 million or 60 percent will become lost. If not
4488 found within 24 hours, up to half will become seriously injured
4489 or die.

4490 This bill will increase the chances of locating missing
4491 persons suffering from dementia within the critical first 24
4492 hours.

4493 I urge my colleagues to support this bill, and yield the
4494 balance of my time to the ranking member of the Crime
4495 Subcommittee, Mr. Gohmert.

4496 Mr. Gohmert. Thank my friend, Mr. Goodlatte.

4497 I join you and my colleagues on this committee in
4498 support of 6503, the Missing Alzheimer's Disease Patient
4499 Alert Program Reauthorization of 2008.

4500 As the baby-boomer generation begins to retire,
4501 Americans over the age of 65 are now the fastest growing

4502 segment of our population. Each year, thousands more
4503 Americans are being diagnosed with Alzheimer's disease and
4504 other forms of dementia.

4505 It is not uncommon for these individuals to wander away
4506 from home or become lost. Because police departments are now
4507 being called upon to locate and rescue missing elderly, it
4508 makes this bill even more timely.

4509 Oftentimes, it is information and tips from family,
4510 neighbors and people in the community that lead to the
4511 whereabouts of any missing person, including the elderly.

4512 This legislation provides assistance to local community
4513 organizations that assist law enforcement with locating
4514 missing Alzheimer's or dementia patients.

4515 The committee approved this provision as an amendment to
4516 the Elder Justice Act earlier this year, and I urge my
4517 colleagues to approve it again today.

4518 And I yield back the balance of my time.

4519 Mr. Scott. The gentleman yields back.

4520 The gentlelady from California is recognized for a
4521 statement on her bill. The gentlelady is recognized for 5
4522 minutes.

4523 Ms. Waters. The Missing Alzheimer's Disease Patient
4524 Alert Program is a Department of Justice program that helps
4525 local communities and law enforcement officials quickly
4526 identify persons with Alzheimer's disease who wander or who

4527 are missing and reunite them with their families.

4528 Since its inception, I think it was mentioned, more than
4529 10 years ago, this program has funded a national registry of
4530 more than 172,000 individuals at risk of wandering and has
4531 united over 12,000 wanderers with their families.

4532 It is a highly successful program, whereby 88 percent of
4533 registrants who wander are found within the first 4 hours of
4534 being reported missing. A total of 1,288 wandering incidents
4535 were reported to the program in 2007.

4536 The program has a 98 percent success rate in recovering
4537 enrollees who are reported missing.

4538 Congress originally authorized \$900,000 in
4539 appropriations for the Missing Alzheimer's Patient Alert
4540 Program for 3 years, that was 1996 through 1998, but never
4541 reauthorized or updated the program.

4542 Since then, the program has continued to receive funding
4543 on a year-to-year basis, but funding has remained virtually
4544 flat since its inception.

4545 In June of 2006, I offered a floor amendment to the
4546 Commerce-Justice State Appropriations bill to increase the
4547 funding to \$1 million in fiscal year 2007. I was joined by
4548 Representatives Frank Wolf, Jim Ramstad, and Adam Schiff.

4549 Our amendment passed by voice vote and the program had
4550 received the same amount in fiscal year 2008. Earlier this
4551 year, I sent a letter to leaders of the Appropriations

4552 Committee, requesting \$2 million in funding for the missing
4553 patients program in fiscal year 2009 and recommending that
4554 the program be expanded to allow funding for technology-based
4555 options in addition to the national registry.

4556 My letter was supported by the Alzheimer's Association
4557 and the Alzheimer's Foundation of America. It was signed by
4558 a bipartisan group of 32 members of Congress.

4559 H.R. 6503 reauthorizes, updates and expands the Missing
4560 Alzheimer's Disease Patient Alert Program. The bill
4561 authorizes up to \$5 million per year in appropriations for
4562 fiscal years 2009 through 2015.

4563 The bill expands the program so as to allow the
4564 Department of Justice to award multiple competitive grants to
4565 nonprofit organizations. And finally, the bill specifies that
4566 the program be operated under the Department of Justice's
4567 Bureau of Justice Assistance.

4568 H.R. 6503 has 20 bipartisan cosponsors, including the
4569 co-chairs of the Congressional Alzheimer's Task Force,
4570 Congressmen Edward Markey and Christopher Smith.

4571 The bill is also supported, again, by the Alzheimer's
4572 Foundation of America and Project Lifesaver.

4573 This program, the Missing Alzheimer's Disease Patient
4574 Alert Program, is a critical resource for first responders.
4575 It saves law enforcement officials valuable time, allowing
4576 them to focus on other national and local security concerns.

4577 It is critical that we reauthorize and expand this
4578 small, but effective program.

4579 I would urge my colleagues to support H.R. 6503. And I
4580 would like to commend the subcommittee on the attention that
4581 it is paying to this very critical issue and I am very
4582 appreciative that there has been bipartisan support for all
4583 of the bills relating to Alzheimer's and missing persons here
4584 today.

4585 I think this bill is extremely important to carry out
4586 the concerns and wishes of this committee and it's especially
4587 important because it reauthorizes.

4588 And I would yield back the balance of my time.

4589 Mr. Scott. Thank you.

4590 Do any other members wish to speak on the bill? Are
4591 there any amendments? Are there any amendments?

4592 [No response.]

4593 If there are no amendments, the next order of business
4594 would be passage of the bill. But in light of the apparent
4595 lack of a quorum, we will postpone the vote for a later time.

4596 I think we have one other bill that we can take up.

4597 Pursuant to notice, I call up the bill H.R. 4779, to
4598 enact certain laws related to public contracts as Title 41
4599 U.S. Code, public contracts, for the purposes of the markup.

4600 The clerk will report the bill.

4601 The Clerk. "H.R. 4779, a bill to enact certain laws

4602 relating to public contracts as Title 41 United States Code,
4603 public contracts."

4604 [The bill follows:]

4605 ***** INSERT *****

4606 Mr. Scott. Without objection, the bill will be
4607 considered as read and open for amendment at any point.

4608 I recognize myself for an opening statement.

4609 H.R. 4779 will codify into positive law the Title 41
4610 United States Code, certain general and permanent laws
4611 related to public contracts.

4612 This bill was prepared by the office of the Law Revision
4613 Counsel as part of its function under 2 U.S.C. 285b, which it
4614 performs in coordination with our committee.

4615 This legislation is not intended to make any substantive
4616 changes in the law. As is typical with the codification
4617 process, a number of non-substantive revisions are made,
4618 including the reorganization sections, into a more coherent
4619 overall structure, but these changes are not intended to have
4620 any substantive effect.

4621 A similar bill was introduced in the 109th Congress and
4622 was favorably reported by the Committee on the Judiciary, but
4623 no further action was taken.

4624 This is updated to incorporate enactment that took place
4625 after the earlier bill was prepared.

4626 We have a waiting period after introduction so that the
4627 bill could be reviewed by the relevant federal agencies,
4628 congressional committees and practitioners, and so that any
4629 comments could be considered and incorporated into the draft,
4630 as appropriate.

4631 So I urge my colleagues to support the legislation, and
4632 recognize my colleague from Virginia for his opening
4633 statement.

4634 Mr. Goodlatte. Mr. Chairman, H.R. 4779 is a bill
4635 proposed by the office of Law Revision Counsel to update and
4636 improve the codification of Title 41 of the U.S. Code.

4637 Our committee has jurisdiction over law revision bills
4638 and this particular bill deals with the title addressing
4639 public contracts.

4640 The Judiciary Committee considered and approved a
4641 similar bill last Congress, but it was ultimately not taken
4642 up by the House before the end of the Congress.

4643 H.R. 4779 and similar law revision bills are important
4644 because they ensure that the U.S. Code is up-to-date,
4645 accurate and usable, and I am glad to support this
4646 legislation today.

4647 And I yield back.

4648 Mr. Scott. Thank you. The gentleman yields back.

4649 Are there any further comments on the bill?

4650 [No response.]

4651 If not, the question is on the reporting of the bill.
4652 And with an apparent lack of a quorum, we will take the vote
4653 up at a later time.

4654 We have four measures pending which were finished the
4655 amending process, but were not ordered reported because it

4656 was unclear whether or not we had a reporting quorum.

4657 In order to ascertain whether we have a reporting quorum
4658 or not, I hereby ask for a quorum call.

4659 And the clerk will call the roll.

4660 The Clerk. Mr. Conyers?

4661 [No response.]

4662 Mr. Berman?

4663 Mr. Berman. Yes.

4664 The Clerk. Mr. Berman is present.

4665 Mr. Boucher?

4666 [No response.]

4667 Mr. Nadler?

4668 Mr. Scott?

4669 Mr. Scott. Present.

4670 The Clerk. Mr. Scott is present.

4671 Mr. Watt?

4672 Mr. Watt. Present.

4673 The Clerk. Mr. Watt, present.

4674 Ms. Lofgren?

4675 Ms. Lofgren. Present.

4676 The Clerk. Ms. Lofgren, present.

4677 Ms. Jackson Lee?

4678 Ms. Jackson Lee. Present.

4679 The Clerk. Ms. Jackson Lee, present.

4680 Ms. Waters?

4681 Ms. Waters. Present.

4682 The Clerk. Ms. Waters, present.

4683 The Clerk. Mr. Delahunt?

4684 [No response.]

4685 Mr. Wexler?

4686 [No response.]

4687 Ms. Sanchez?

4688 Ms. Sanchez. Present.

4689 The Clerk. Ms. Sanchez, present.

4690 Mr. Cohen?

4691 Mr. Cohen. Aye.

4692 The Clerk. Mr. Cohen, present.

4693 Mr. Johnson?

4694 Mr. Johnson. Present.

4695 The Clerk. Mr. Johnson, present.

4696 Ms. Sutton?

4697 [No response.]

4698 Mr. Gutierrez?

4699 [No response.]

4700 Mr. Sherman?

4701 Mr. Sherman. Present.

4702 The Clerk. Mr. Sherman, present.

4703 Ms. Baldwin?

4704 [No response.]

4705 Mr. Weiner?

4706 [No response.]

4707 Mr. Schiff?

4708 Mr. Schiff. Present.

4709 The Clerk. Mr. Schiff, present.

4710 Mr. Davis?

4711 [No response.]

4712 Ms. Wasserman Schultz?

4713 [No response.]

4714 Mr. Ellison?

4715 Mr. Ellison. Present.

4716 The Clerk. Mr. Ellison, present.

4717 Mr. Smith?

4718 [No response.]

4719 Mr. Sensenbrenner?

4720 [No response.]

4721 Mr. Coble?

4722 [No response.]

4723 Mr. Gallegly?

4724 [No response.]

4725 Mr. Goodlatte?

4726 Mr. Goodlatte. Here.

4727 The Clerk. Mr. Goodlatte, present.

4728 Mr. Chabot?

4729 Mr. Chabot. Present.

4730 The Clerk. Mr. Chabot, present.

4731 Mr. Lungren?
4732 Mr. Lungren. Present.
4733 The Clerk. Mr. Lungren, present.
4734 Mr. Cannon?
4735 [No response.]
4736 Mr. Keller?
4737 Mr. Keller. Present.
4738 The Clerk. Mr. Keller, present.
4739 Mr. Issa?
4740 Mr. Issa. Present.
4741 The Clerk. Mr. Issa, present.
4742 Mr. Pence?
4743 [No response.]
4744 Mr. Forbes?
4745 Mr. Forbes. Mr. Forbes, present.
4746 Mr. King?
4747 [No response.]
4748 Mr. Feeney?
4749 [No response.]
4750 Mr. Franks?
4751 [No response.]
4752 Mr. Gohmert?
4753 Mr. Gohmert. Present.
4754 The Clerk. Mr. Gohmert present.
4755 Mr. Jordan?

4756 [No response.]

4757 Mr. Scott. The gentleman from Iowa, Mr. King, how is he
4758 recorded?

4759 The Clerk. Mr. King is not recorded.

4760 Mr. King, present.

4761 Mr. Nadler. Mr. Chairman?

4762 Mr. Scott. The gentleman from New York?

4763 Mr. Nadler. Mr. Chairman, how am I recorded?

4764 The Clerk. Mr. Nadler is not recorded.

4765 Mr. Nadler. I would like to be recorded as present,
4766 please.

4767 The Clerk. Mr. Nadler, present.

4768 Mr. Scott. The gentleman from Michigan, chairman of the
4769 committee?

4770 Chairman Conyers. Present.

4771 The Clerk. Mr. Conyers, present.

4772 Mr. Scott. Are there any other members who have not
4773 been recorded?

4774 [No response.]

4775 The Clerk will report.

4776 The Clerk. Mr. Chairman, 22 members are present.

4777 Mr. Scott. A reporting quorum being present, the
4778 question on H.R. 5167, a reporting quorum being present, the
4779 question is on reporting the bill, as amended, favorably to
4780 the House.

4781 Those in favor, say "aye."

4782 [A chorus of ayes.]

4783 All opposed, say "no."

4784 [No response.]

4785 The ayes appear to have it. The ayes have it, and the
4786 bill, as amended, is reported favorably.

4787 Without objection, the bill will be reported as a single
4788 amendment in the nature of a substitute, incorporating
4789 amendments adopted, and staff is authorized to make technical
4790 and conforming changes.

4791 Members will have 2 days to submit additional views.

4792 The question is now on the reporting of H.R. 6064. A
4793 reporting quorum being present, the question is on reporting
4794 the bill, as amended, favorably to the House.

4795 Those in favor will say "aye."

4796 [A chorus of ayes.]

4797 Ms. Jackson Lee. Mr. Chairman?

4798 Mr. Scott. The gentlelady from Texas?

4799 Ms. Jackson Lee. Parliamentary inquiry. I am just
4800 wanting to make sure, Mr. Chairman, that all bills that are
4801 being passed, technical and conforming changes can be made on
4802 those bills as they move to the floor.

4803 Mr. Scott. Staff will be authorized to make technical
4804 and conforming changes.

4805 Ms. Jackson Lee. I thank the chairman.

4806 Mr. Scott. The question is on reporting the bill H.R.
4807 6064, as amended.

4808 Those in favor will say "aye."

4809 [A chorus of ayes.]

4810 Those opposed, say "no."

4811 [No response.]

4812 The ayes appear to have it. The ayes have it, and the
4813 bill, as amended, is ordered reported favorably.

4814 Without objection, the bill will be reported as a single
4815 amendment in the nature of a substitute, incorporating
4816 amendments adopted. And staff is authorized to make
4817 technical and conforming changes. Members will have 2 days
4818 to submit additional views.

4819 The next bill is H.R. 6503. A reporting quorum being
4820 present, the question is on reporting the bill favorably to
4821 the House.

4822 Those in favor will say "aye."

4823 [A chorus of ayes.]

4824 All opposed, say "no."

4825 [No response.]

4826 The ayes appear to have it. The ayes have it. The bill
4827 is ordered reported favorably. The members will have 2 days
4828 to submit additional views.

4829 The last bill before us is H.R. 4779. A reporting
4830 quorum being present, the question is on reporting the bill

4831 favorably to the House.

4832 Those in favor will say "aye."

4833 [A chorus of ayes.]

4834 All opposed, say "no."

4835 [No response.]

4836 The ayes appear to have it. The ayes have it. The bill
4837 is ordered reported favorably and members will have 2 days to
4838 submit additional views.

4839 There being no further business before the committee,
4840 the committee will stand adjourned.

4841 [Whereupon, at 4:39 p.m., the committee was adjourned.]