

## COMMUNITY RECLAMATION PARTNERSHIPS ACT

APRIL 25, 2022.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GRIJALVA, from the Committee on Natural Resources,  
submitted the following

### R E P O R T

[To accompany H.R. 1146]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1146) to amend the Surface Mining Control and Reclamation Act of 1977 to authorize partnerships between States and nongovernmental entities for the purpose of reclaiming and restoring land and water resources adversely affected by coal mining activities before August 3, 1977, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE OF THE BILL

The purpose of H.R. 1146 is to amend the Surface Mining Control and Reclamation Act of 1977 to authorize partnerships between states and nongovernmental entities for the purpose of reclaiming and restoring land and water resources adversely affected by coal mining activities before August 3, 1977.

#### BACKGROUND AND NEED FOR LEGISLATION

The Surface Mining Control and Reclamation Act of 1977<sup>1</sup> (SMCRA) established a system for reclaiming Abandoned Mine Lands (AML) using fees paid by current coal mining companies.<sup>2</sup> The Office of Surface Mining Reclamation and Enforcement

<sup>1</sup> Pub. L. No. 95-87, 91 Stat. 445 (1977), <https://uscode.house.gov/statviewer.htm?volume=91&page=445> (codified as amended at various, see [http://uscode.house.gov/table3/95\\_87.htm](http://uscode.house.gov/table3/95_87.htm)) (statutory compilation as amended through P.L. 117-58 at <https://www.govinfo.gov/content/pkg/COMPS1574/pdf/COMPS1574.pdf>).

<sup>2</sup> Pub. L. No. 95-87, tit. IV, 91 Stat. at 456-67 (codified as amended at 30 U.S.C. §§ 1231-45).

(OSMRE) within the Department of the Interior manages the AML Reclamation Program.<sup>3</sup>

To qualify as an AML, a site must have been affected by coal mining activities and abandoned prior to August 3, 1977, and there must be no party responsible for the reclamation of the land under state or federal laws. OSMRE, states, and tribes become responsible for reclaiming these abandoned coal mines, which, until properly reclaimed, often present serious risks to public health and safety and serve as environmental and economic burdens for states and communities.

Despite significant progress on AML cleanup since the passage of SMCRA, OSMRE estimates that there are still more than \$11.3 billion in unfunded cleanup costs. This figure is likely a significant underestimate due to inflation and the continued discovery of new AML hazards.

H.R. 3684, the Infrastructure Investment and Jobs Act<sup>4</sup> (sometimes called the Bipartisan Infrastructure Framework or “BIF” or the Bipartisan Infrastructure Law or “BIL”), signed into law on November 15, 2021, reauthorized the AML program for 13 years, lowered the AML fees by twenty percent, and appropriated an additional \$11.3 billion for abandoned coal mine land cleanup activities.<sup>5</sup>

Still, third parties, such as environmental or wildlife organizations, have expressed a willingness to spend their own money to supplement AML funding and more quickly clean up streams and watersheds affected by abandoned coal mine sites. These groups are often referred to as “Good Samaritans” or, in the context of H.R. 1146, “Community Reclaimers,” and they successfully speed up environmental restoration efforts in certain circumstances.

Due to potential liability under the Clean Water Act (CWA), third parties often hesitate to engage in water cleanup projects for two main reasons. First, they rarely have the funds to cover the perpetual bonding and liability costs required for water treatment and CWA permit compliance. Second, it is nearly impossible for them to obtain permits since they are unlikely to be able to treat mine wastewater to levels compliant with CWA standards. As a result, private funds that could be used to improve the environment are being left on the sidelines.

H.R. 1146 would amend SMCRA to allow states with approved coal AML programs to partner with third parties and provide a liability shield to those who wish to fund all or part of the cost of addressing existing sites on a state’s AML inventory. States would enter a Memorandum of Understanding with the Environmental Protection Agency (EPA) to set up a Community Reclaimers program. Projects carried out under that program that meet the requirements laid out in H.R. 1146 would be partially shielded from liability under environmental laws.

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<sup>3</sup> Additional information available at *Abandoned Mine Land Reclamation Program*, U.S. DEPT OF THE INTERIOR NAT. RES. REVENUE DATA, <https://revenue.data.doi.gov/how-it-works/aml-reclamation-program/#abandoned-mine-land-areas> (last visited Apr. 7, 2022).

<sup>4</sup> Pub. L. No. 117–58, 135 Stat. 429 (2021), <https://uscode.house.gov/statviewer.htm?volume=135&page=429>.

<sup>5</sup> Pub. L. No. 117–58, div. D, tit. VII, 135 Stat. at 1091–94, <https://uscode.house.gov/statviewer.htm?volume=135&page=1091>.

## COMMITTEE ACTION

H.R. 1146 was introduced on February 18, 2021, by Representative Darin LaHood (R-IL). The bill was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee on Energy and Mineral Resources. On March 18, 2021, the Subcommittee held a hearing on the bill. On May 26, 2021, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. No amendments were offered, and the bill was adopted and ordered favorably reported to the House of Representatives by unanimous consent.

## HEARINGS

For the purposes of clause 3(c)(6) of House Rule XIII, the following hearing was used to develop or consider this measure: hearing by the Subcommittee on Energy and Mineral Resources held on March 18, 2021.

## SECTION-BY-SECTION ANALYSIS

*Sec. 1. Short title*

Section 1 provides the short title of the bill: the “Community Reclamation Partnerships Act.”

*Sec. 2. Reference*

Section 2 clarifies that all references in the bill are to be made to SMCRA unless otherwise noted.

*Sec. 3. State Memoranda of Understanding for certain remediation*

Section 3 amends SMCRA by adding subsections (m) and (n) to section 405 of that Act. Subsection (m), “State Memoranda of Understanding for Remediation of Mine Drainage,” clarifies that states may enter a Memorandum of Understanding agreements with relevant federal or state agencies to remediate mine drainage on abandoned mine lands.

These agreements must include specific procedures for ensuring that activities carried out under the agreement will result in improved water quality, monitoring of water quality to ensure that it has been improved, and the operation and maintenance of water treatment systems.

States are required to give the public an opportunity to comment on any proposed agreement and must hold at least one public meeting concerning the agreement with at least 15 days’ notice. Agreements must be approved by the Secretary of the Interior and the Administrator of the Environmental Protection Agency. Once approved, the agreement becomes part of the state’s approved AML reclamation plan under SMCRA.

Subsection (n), “Community Reclaimer Partnerships,” describes the Community Reclaimer project submission and approval process, as well as the definition of a Community Reclaimer.

This subsection provides for the establishment of Community Reclaimer Partnerships that allow eligible Community Reclaimers to participate in AML cleanup projects. This subsection also provides partial liability shielding to Community Reclaimers by enabling

states to formally assume liability on their behalf under the existing SMCRA liability model.

Subsection (n) authorizes the Secretary of the Interior to approve a Community Reclaimer Partnership if: (1) the proposed project will be conducted by eligible Community Reclaimers and/or approved contractors; (2) any abandoned mine drainage remediation involved will be consistent with the state's approved agreement under SMCRA Section 405(m); (3) the project will reclaim a Priority 1, 2, or 3 abandoned mine site; (4) the project meets all of the submission criteria required for the project applications; (5) the state has assumed responsibility for the project on behalf of the Community Reclaimer and the landowner except in cases of gross negligence or intentional misconduct; (6) the state has the necessary legal authority and financial resources to ensure completion of the project; and (7) the project would not require a coal mining permit under title V of SMCRA.

Paragraph (2) of subsection (n) lists what must be submitted to the Secretary for a project to be approved. Paragraph (3) defines "Community Reclaimer" as an entity that seeks to voluntarily assist a state with a reclamation project, has not cause any lands to become eligible for reclamation under Section 404 of SMCRA, is not a past or current owner of abandoned mine sites or another site with ongoing reclamation obligations, and does not have any outstanding violations under SMCRA.

#### *Sec. 4. Clarifying State liability for mine drainage projects*

Section 4 recognizes approved agreements as appropriate standards at acid mine drainage (AMD) treatment sites in lieu of CWA requirements, if a state has an approved agreement in place under SMCRA section 405(m) that will ensure the improvement of water quality at impacted sites.

#### *Sec. 5. Conforming amendments*

Section 5 requires states to include a list of proposed Community Reclaimer Partnership projects in their annual applications to the Secretary requesting support for their respective State Reclamation Programs.

### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

### COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, March 2, 2022.

Hon. RÁUL M. GRIJALVA,  
Chairman, Committee on Natural Resources,  
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1146, the Community Reclamation Partnerships Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Janani Shankaran.

Sincerely,

PHILLIP L. SWAGEL,  
Director.

Enclosure.

<b>H.R. 1146, Community Reclamation Partnerships Act</b>			
As ordered reported by the House Committee on Natural Resources on May 26, 2021			
By Fiscal Year, Millions of Dollars	2022	2022-2026	2022-2031
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	1	not estimated
Statutory pay-as-you-go procedures apply?	No	<b>Mandate Effects</b>	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

H.R. 1146 would authorize states with abandoned mine reclamation plans approved by the Office of Surface Mining Reclamation and Enforcement to enter into agreements with the federal government aimed at reducing water pollution caused by abandoned mines. The bill also would allow individuals or groups to participate in abandoned mine cleanup projects if states assume liability on behalf of those entities. Under the bill, states and other parties conducting water treatments under those agreements would not be required to meet water quality standards under the Clean Water Act.

For this estimate, CBO assumes that the legislation will be enacted late in fiscal year 2022. Based on the costs of similar activities, CBO expects that the federal government would need two additional employees at an average annual cost of \$140,000 each to manage the agreements and approve projects. On that basis, CBO estimates that implementing H.R. 1146 would cost about \$1 million over the 2022–2026 period; such spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Janani Shankaran. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill are to amend the Surface Mining Control and Reclamation Act of 1977 to authorize partnerships between states and nongovernmental entities for the purpose of reclaiming and restoring land and water resources adversely affected by coal mining activities before August 3, 1977.

#### EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

#### UNFUNDED MANDATES REFORM ACT STATEMENT

According to CBO, this bill contains no unfunded mandates as defined by the Unfunded Mandates Reform Act.

#### EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

#### PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

### **SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977**

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#### **TITLE IV—ABANDONED MINE RECLAMATION**

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## STATE RECLAMATION PROGRAMS

SEC. 405. (a) Not later than the end of the one hundred and eighty-day period immediately following the date of enactment of this Act, the Secretary shall promulgate and publish in the Federal Register regulations covering implementation of an abandoned mine reclamation program incorporating the provisions of title IV and establishing procedures and requirements for preparation, submission, and approval of State programs consisting of the plan and annual submissions of projects.

(b) Each State having within its borders coal mined lands eligible for reclamation under this title, may submit to the Secretary a State Reclamation Plan and annual projects to carry out the purposes of this title.

(c) The Secretary shall not approve, fund, or continue to fund a State abandoned mine reclamation program unless that State has an approved State regulatory program pursuant to section 503 of this Act.

(d) If the Secretary determines that State has developed and submitted a program for reclamation of abandoned mines and has the ability and necessary State legislation to implement the provisions of this title, sections 402 and 410 excepted, the Secretary shall approve such State program and shall grant to the State exclusive responsibility and authority to implement the provisions of the approved program: *Provided*, That the Secretary shall withdraw such approval and authorization if he determines upon the basis of information provided under this section that the State program is not in compliance with the procedures, guidelines, and requirements established under subsection 405(a).

(e) Each State Reclamation Plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and the legal authority and programmatic capability to perform such work in conformance with the provisions of this title.

(f) On an annual basis, each State having an approved State Reclamation Plan may submit to the Secretary an application for the support of the State program and implementation of specific reclamation projects. Such annual requests shall include such information as may be requested by the Secretary including:

- (1) a general description of each proposed project;
- (2) a priority evaluation of each proposed project;
- (3) a statement of the estimated benefits in such terms as: number of acres restored, miles of stream improved, acres of surface lands protected from subsidence, population protected from subsidence, air pollution, hazards of mine and coal refuse disposal area fires;
- (4) an estimate of the cost for each proposed project;
- (5) in the case of proposed research and demonstration projects, a description of the specific techniques to be evaluated or objective to be attained;
- (6) an identification of lands or interest therein to be acquired and the estimated cost; **[and]**

(7) in each year after the first in which a plan is filed under this title, an inventory of each project funded under the previous year's grant: which inventory shall include details of financial expenditures on such project together with a brief description of each such project, including project locations, landowner's name, acreage, type of reclamation performed[.]; and  
 (8) a list of projects proposed under subsection (n).

(g) The costs for each proposed project under this section shall include; actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction inspection costs, and other necessary administrative expenses.

(h) Upon approval of State Reclamation Plan by the Secretary and of the surface mine regulatory program pursuant to section 503, the Secretary shall grant, on an annual basis, funds to be expended in such State pursuant to subsection 402(g) and which are necessary to implement the State reclamation program as approved by the Secretary.

(i) The Secretary, through his designated agents, will monitor the progress and quality of the program. The States shall not be required at the start of any project to submit complete copies of plans and specifications.

(j) The Secretary shall require annual and other reports as may be necessary to be submitted by each State administering the approved State reclamation program with funds provided under this title. Such reports shall include that information which the Secretary deems necessary to fulfill his responsibilities under this title.

(k) Indian tribes having within their jurisdiction eligible lands pursuant to section 404 or from which coal is produced, shall be considered as a "State" for the purposes of this title except for purposes of subsection (c) of this section with respect to the Navajo, Hopi and Crow Indian Tribes

(l) No State shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out a State abandoned mine reclamation plan approved under this section. This subsection shall not preclude liability for cost or damages as a result of gross negligence or intentional misconduct by the State. For purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(m) *STATE MEMORANDA OF UNDERSTANDING FOR REMEDIATION OF MINE DRAINAGE.*—

(1) *IN GENERAL.*—A State with a State program approved under subsection (d) may enter into a memorandum of understanding with relevant Federal or State agencies (or both) to remediate mine drainage on abandoned mine land and water impacted by abandoned mines within the State. The memorandum may be updated as necessary and resubmitted for approval under this subsection.

(2) *MEMORANDA REQUIREMENTS.*—Such memorandum shall establish a strategy satisfactory to the State and Federal agencies that are parties to the memorandum, to address water pollution resulting from mine drainage at sites eligible for rec-

lamation and mine drainage abatement expenditures under section 404, including specific procedures for—

(A) ensuring that activities carried out to address mine drainage will result in improved water quality;

(B) monitoring, sampling, and the reporting of collected information as necessary to achieve the condition required under subparagraph (A);

(C) operation and maintenance of treatment systems as necessary to achieve the condition required under subparagraph (A); and

(D) other purposes, as considered necessary by the State or Federal agencies, to achieve the condition required under subparagraph (A).

(3) **PUBLIC REVIEW AND COMMENT.**—

(A) **IN GENERAL.**—Before submitting a memorandum to the Secretary and the Administrator for approval, a State shall—

(i) invite interested members of the public to comment on the memorandum; and

(ii) hold at least one public meeting concerning the memorandum in a location or locations reasonably accessible to persons who may be affected by implementation of the memorandum.

(B) **NOTICE OF MEETING.**—The State shall publish notice of each meeting not less than 15 days before the date of the meeting, in local newspapers of general circulation, on the Internet, and by any other means considered necessary or desirable by the Secretary and the Administrator.

(4) **SUBMISSION AND APPROVAL.**—The State shall submit the memorandum to the Secretary and the Administrator of the Environmental Protection Agency for approval. The Secretary and the Administrator shall approve or disapprove the memorandum within 120 days after the date of its submission if the Secretary and Administrator find that the memorandum will facilitate additional activities under the State Reclamation Plan under subsection (e) that improve water quality.

(5) **TREATMENT AS PART OF STATE PLAN.**—A memorandum of a State that is approved by the Secretary and the Administrator under this subsection shall be considered part of the approved abandoned mine reclamation plan of the State.

(n) **COMMUNITY RECLAIMER PARTNERSHIPS.**—

(1) **PROJECT APPROVAL.**—Within 120 days after receiving such a submission, the Secretary shall approve a Community Reclaimer project to remediate abandoned mine lands if the Secretary finds that—

(A) the proposed project will be conducted by a Community Reclaimer as defined in this subsection or approved subcontractors of the Community Reclaimer;

(B) for any proposed project that remediates mine drainage, the proposed project is consistent with an approved State memorandum of understanding under subsection (m);

(C) the proposed project will be conducted on a site or sites inventoried under section 403(c);

(D) the proposed project meets all submission criteria under paragraph (2);

(E) the relevant State has entered into an agreement with the Community Reclaimer under which the State shall assume all responsibility with respect to the project for any costs or damages resulting from any action or inaction on the part of the Community Reclaimer in carrying out the project, except for costs or damages resulting from gross negligence or intentional misconduct by the Community Reclaimer, on behalf of—

(i) the Community Reclaimer; and

(ii) the owner of the proposed project site, if such Community Reclaimer or owner, respectively, did not participate in any way in the creation of site conditions at the proposed project site or activities that caused any lands or waters to become eligible for reclamation or drainage abatement expenditures under section 404;

(F) the State has the necessary legal authority to conduct the project and will obtain all legally required authorizations, permits, licenses, and other approvals to ensure completion of the project;

(G) the State has sufficient financial resources to ensure completion of the project, including any necessary operation and maintenance costs (including costs associated with emergency actions covered by a contingency plan under paragraph (2)(K)); and

(H) the proposed project is not in a category of projects that would require a permit under title V.

(2) PROJECT SUBMISSION.—The State shall submit a request for approval to the Secretary that shall include—

(A) a description of the proposed project, including any engineering plans that must bear the seal of a professional engineer;

(B) a description of the proposed project site or sites, including, if relevant, the nature and extent of pollution resulting from mine drainage;

(C) identification of the past and current owners and operators of the proposed project site;

(D) the agreement or contract between the relevant State and the Community Reclaimer to carry out the project;

(E) a determination that the project will facilitate the activities of the State reclamation plan under subsection (e);

(F) sufficient information to determine whether the Community Reclaimer has the technical capability and expertise to successfully conduct the proposed project;

(G) a cost estimate for the project and evidence that the Community Reclaimer has sufficient financial resources to ensure the successful completion of the proposed project (including any operation or maintenance costs);

(H) a schedule for completion of the project;

(I) an agreement between the Community Reclaimer and the current owner of the site governing access to the site;

(J) sufficient information to ensure that the Community Reclaimer meets the definition under paragraph (3);

(K) a contingency plan designed to be used in response to unplanned adverse events that includes emergency actions, response, and notifications; and

(L) a requirement that the State provide notice to adjacent and downstream landowners and the public and hold a public meeting near the proposed project site before the project is initiated.

(3) COMMUNITY RECLAIMER DEFINED.—For purposes of this section, the term “Community Reclaimer” means any person who—

(A) seeks to voluntarily assist a State with a reclamation project under this section;

(B) did not participate in any way in the creation of site conditions at the proposed project site or activities that caused any lands or waters to become eligible for reclamation or drainage abatement expenditures under section 404;

(C) is not a past or current owner or operator of any site with ongoing reclamation obligations; and

(D) is not subject to outstanding violations listed pursuant to section 510(c).

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MISCELLANEOUS POWERS

SEC. 413. (a) The Secretary or the State pursuant to an approved State program, shall have the power and authority, if not granted it otherwise, to engage in any work and to do all things necessary or expedient, including promulgation of rules and regulations, to implement and administer the provisions of this title.

(b) The Secretary or the State pursuant to an approved State program, shall have the power and authority to engage in cooperative projects under this title with any other agency of the United States of America, any State and their governmental agencies.

(c) The Secretary or the State pursuant to an approved State program, may request the Attorney General, who is hereby authorized to initiate, in addition to any other remedies provided for in this title, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in this title.

(d) The Secretary or the State pursuant to an approved State program, shall have the power and authority to construct and operate a plant or plants for the control and treatment of water pollution resulting from mine drainage. The extent of this control and treatment may be dependent upon the ultimate use of the water: *Provided*, That the above provisions of this paragraph shall not be deemed in any way to repeal or supersede any portion of the Federal Water Pollution Control Act (33 U.S.C.A. 1151, et seq. as amended) and no control or treatment under this subsection shall in any way be less than that required under the Federal Water Pollution Control Act *unless such control or treatment will be conducted in accordance with a State memorandum of understanding approved under section 405(m) of this Act*. The construction of a plant or plants may include major interceptors and other facilities appurtenant to the plant.

(e) The Secretary may transfer funds to other appropriate Federal agencies, in order to carry out the reclamation activities authorized by this title.

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SUPPLEMENTAL, MINORITY, ADDITIONAL, OR DISSENTING VIEWS  
None.

