I want to again thank Chairman DINGELL and Mr. BARTON, the ranking member of the committee. I remember 2 weeks ago when we moved this through our committee, it was a very important piece of legislation. Ms. BEAN is the author of this. I know Mary Bono on our side helped immensely in getting it through the subcommittee. We all rise in support of H.R. 3461, Safeguarding America's Families by Enhancing and Reorganizing New and Efficient Technologies Act of 2007.

This bill directs the FTC, the Federal Trade Commission, to carry out a nationwide public awareness campaign about Internet safety, provides a 1-year authorization of $5 million to carry out that campaign, and directs the FTC to report annually to the Congress on its activities to promote Internet safety. I look forward to those reports as the ranking member of the Telecommunications and Internet Subcommittee.

The FTC has been very active in the area, and its current computer security education campaign is built around an innovative multimedia Web site, www.OnguardOnline.gov, with special tips and features for children, teens and their parents. H.R. 3461 expands these underway. Moreover, the Internet defines Internet safety to include threats to juveniles, including cyber predators and material that is inappropriate for minors, criminal activity beyond the FTC's authority and scope. And to fulfill that directive, the FTC would then partner with the FBI and the U.S. Postal Service and with prominent nongovernmental organizations such as the National Center for Missing and Exploited Children.

Mr. Speaker, I visit a school almost every week, actually more than once a week, and often when I speak to an elementary school, I will ask those third or fourth graders, ''How many of you have seen something inappropriate on the Internet?'' It didn't used to be. It used to be that my question was, ''How many of you have a computer at home?'' Now practically everyone has a computer at home. But now when I ask that question, ''Have you seen something inappropriate?'' every hand goes up, including mine.

Mr. Speaker, I hosted an event in our district two Mondays ago on Internet safety in our intermediate school district in Berrien County, was attended by hundreds of people. We had votes that night so I couldn't be there. But it is a concern. Parents have to know what is going on. And that is why this new Web site, OnGuardOnline.gov is very important so that the word can get out, because the Internet is a double-edged sword. Yes, it helps our lives in so many different ways, but we have to look out for the nightmare that could come into that home from someone who we would not want in as a decent parent.

So this is good legislation. It is going to have a positive impact. There is a reason that it passed by unanimous vote among Republicans and Democrats. I hope that the Senate can move along quickly. We will be willing to give them a kick if they don't do that.

I don't have any other speakers requesting time, and I yield back my time.

Mr. BUTTERFIELD. Mr. Speaker, I don't have any further speakers on this side. I am ready to close this out and to yield back my time. Before doing so, I again want to thank Ms. BEAN for this legislation and thank Mr. UPTON for his advocacy and his passion for this issue. These legislators work very hard to bring this issue to the forefront, and they have done a magnificent job in doing this today.

Ms. BEAN. Mr. Speaker, I rise today in strong support of my bill, H.R. 3461, The Safeguarding America's Families by Enhancing and Reorganizing New and Efficient Technologies Act or SAFER NET. I want to thank Chairman DINGELL and Chairman RUSH for their help in bringing this bill to the floor today. I also to thank Congressman BARON HILL, the lead cosponsor of this bill, and Congresswoman MARY BONO for her contributions to this legislation.

The Internet is a wonderful resource for our children. Over 90 percent of school age children use the Internet on a regular basis. They use it to expand their knowledge beyond what they can learn in the classroom and use it to stay connected with their friends when not at school.

The Internet has increased productivity and opened new opportunities to our children, but while doing so, it has created new threats. These threats whether it be unwanted online solicitations, Internet scams, or cyber-bullying are dangerous and real.

In order for our children to be protected from the dangers of the Internet, we must work together to raise awareness and educate them about Internet safety. As noted in a study conducted by the National Assessment Center:

41 percent of middle and high school students do not share with their parents what they do on the Internet.

61 percent of students admit to using the Internet unsafely or inappropriately.

And of most concern, 20 percent of middle school and high school students have met face-to-face with someone they first met online.

In recent studies conducted by the Department of Justice in conjunction with the National Center for Missing and Exploited Children, one in seven children between the ages of 10 and 17 received a sexual solicitation online.

And one in 25 or one per classroom receives an aggressive sexual solicitation when a predator calls them on the phone, sends them gifts, or requests a meeting.

Informing parents is just as important to keep our kids safe online. Unfortunately, approximately half of parents surveyed admit that they do not properly monitor their children's Internet activity and do not use filter, blocking, or monitoring software on their home computers.

Parents need to be engaged and ask their children what they are doing online. Unfortunately, nearly half of parents surveyed do not believe that they are able to properly monitor their children's actions online.

As a parent, you wouldn't let your son or daughter play with a friend without knowing who was in charge and where they would be playing. The same should be the case with the Internet. The Internet is a large virtual playground and just like on the playground at the park, kids need to be supervised.

Fortunately, our schools, non-profits, local, state, and federal governments, and concerned corporate citizens have been actively engaging children on Internet safety. Programs vary but all emphasize the importance of protecting personal information, keeping parents informed of Internet actions, and being careful who you talk to online.

Although these resources are great, not enough kids and parents are aware of them. Internet safety is an issue of national importance that deserves a national response.

That is why passing The SAFER NET Act today is so important.

The SAFER NET Act would authorize $5 million for the Federal Trade Commission to conduct a national public awareness campaign to promote Internet Safety.

In addition, the bill will direct the Federal Trade Commission to build on the efforts of its Onguard Online website so it can better serve as a virtual clearinghouse of Internet safety information.

Finally the SAFER NET Act would establish a working group through the National Telecommunications and Information Administration (NTIA) to review and evaluate industry efforts to promote online safety and protect children from inappropriate material online.

In closing, I want to thank the staff on the Energy & Commerce Committee, J.D. Grom on my staff, and Nathan Fenstermacher who previously served in my office and helped draft the original SAFER NET Act last Congress for their assistance.

I urge my colleagues to support H.R. 3461.

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

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from North Carolina (Mr. BUTTERFIELD) that the House suspend the rules and pass the bill, H.R. 3461, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

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

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

ATTORNEY-CLIENT PRIVILEGE PROTECTION ACT OF 2007

Mr. SCOTT of Virginia. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3013) to provide appropriate protection to attorney-client privileged communications and attorney work product, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 3013

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Attorney-Client Privilege Protection Act of 2007''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Justice is served when all parties to litigation are represented by experienced diligent counsel.

(2) Protecting attorney-client privileged communications from compelled disclosure fosters voluntary compliance with the law.

(3) To serve the purpose of the attorney-client privilege, attorneys and clients must have a degree of confidence that they will not be required to disclose privileged communications.

(4) The ability of an organization to have effective compliance programs and to conduct comprehensive internal investigations is enhanced when there is clarity and consistency regarding the attorney-client privilege.

(5) Prosecutors, investigators, enforcement officials, and other officers or employees of Government agencies have been able to, and can continue to, conduct their work while respecting attorney-client and work product protections and the rights of individuals, including seeking and discovering facts crucial to the investigation and prosecution of organizations.

(6) Despite the existence of these legitimate tools, the Department of Justice and other agencies have increasingly employed tactics that undermine the adversarial system of justice, such as encouraging organizations to waive attorney-client privilege and work product protections to avoid indictment or other sanctions.

(7) An indictment can have devastating consequences on an organization, potentially eliminating the ability of the organization to survive post-indictment or to dispute the charges against it at trial.

(8) Waiver demands and other tactics of Government agencies are encroaching on the constitutional rights and other legal protections of employees.

(9) The attorney-client privilege, work product doctrine, and payment of counsel fees shall not be used as devices to conceal wrongdoing or to cloak advice on evading the law.

(b) PURPOSE.—It is the purpose of this Act to place on each agency clear and practical limits designed to preserve the attorney-client privilege and work product protections available to an organization and preserve the constitutional rights and other legal protections available to employees of such an organization.

SEC. 3. DISCLOSURE OF ATTORNEY-CLIENT PRIVILEGE OR ADVANCEMENT OF COUNSEL FEES AS ELEMENTS OF COOPERATION.

(a) IN GENERAL.—Chapter 201 of title 18, United States Code, is amended by inserting after section 3013 the following:

''§ 3014. Preservation of fundamental legal protections and rights in the context of investigations and enforcement matters regarding organizations

''(a) DEFINITIONS.—In this section:

''(1) ATTORNEY-CLIENT PRIVILEGE.—The term 'attorney-client privilege' means the attorney-client privilege as governed by the principles of the common law, as they may be interpreted by the courts of the United States in the light of reason and experience, and the principles of article V of the Federal Rules of Evidence.

''(2) ATTORNEY WORK PRODUCT.—The term 'attorney work product' means materials prepared by or at the direction of an attorney in anticipation of litigation, particularly any such materials that contain a mental impression, conclusion, opinion, or legal theory of that attorney.

''(b) IN GENERAL.—In any Federal investigation or criminal or civil enforcement matter, an agent or attorney of the United States shall not—

''(1) demand, request, or condition treatment on the disclosure by an organization, or person affiliated with that organization, of any communication protected by the attorney-client privilege or any attorney work product;

''(2) condition a civil or criminal charging decision relating to a organization, or person affiliated with that organization, on, or use as a factor in determining whether an organization, or person affiliated with that organization, is cooperating with the Government—

''(A) any valid assertion of the attorney-client privilege or privilege for attorney work product;

''(B) the provision of counsel to, or contribution to the legal defense fees or expenses of, an employee of that organization;

''(C) the entry into a joint defense, information sharing, or common interest agreement with an employee of that organization if the organization determines it has a common interest in defending against the investigation or enforcement matter;

''(D) the sharing of information relevant to the investigation or enforcement matter with an employee of that organization; or

''(E) a failure to terminate the employment of or otherwise sanction any employee of that organization because of the decision by that employee to exercise the constitutional rights or other legal protections of that employee in response to a Government request; or

''(3) demand or request that an organization, or person affiliated with that organization, not take any action described in paragraph (2).

''(c) INAPPLICABILITY.—Nothing in this Act shall prohibit an agent or attorney of the United States from requesting or seeking any communication or material that such agent or attorney reasonably believes is not entitled to protection under the attorney-client privilege or attorney work product doctrine.

''(d) VOLUNTARY DISCLOSURES.—Nothing in this Act is intended to prohibit an organization from making, or an agent or attorney of the United States from accepting, a voluntary and unsolicited offer to share the internal investigation materials of such organization.

''(e) NOT TO AFFECT EXAMINATION OR INSPECTION ACCESS OTHERWISE PERMITTED.—This Act does not affect any other federal statute that may authorize, in the course of an examination or inspection, an agent or attorney of the United States to require or compel the production of attorney-client privileged material or attorney work product.

''(f) CHARGING DECISIONS NOT TO INCLUDE DECISIONS TO CHARGE UNDER INDEPENDENT PROHIBITIONS.—It is not conditioning a charging decision under subsection (b)(2) of this section to charge an organization or person affiliated with that organization for conduct described in subparagraphs (B), (C), or (D) of that subsection under a federal law which makes that conduct in itself an offense.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 201 of title 18, United States Code, is amended by adding at the end the following:

''3014. Preservation of fundamental legal protections and rights in the context of investigations and enforcement matters regarding organizations.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Virginia (Mr. SCOTT) and the gentleman from Virginia (Mr. GOODLATTE) each will control 20 minutes.

The Chair recognizes the gentleman from Virginia (Mr. SCOTT).

GENERAL LEAVE

Mr. SCOTT of Virginia. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extraneous materials on the bill under consideration.

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

There was no objection.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I introduced H.R. 3013, the Attorney-Client Privilege Protection Act of 2007 on July 12 of this year. At the time, I was joined by eight original bipartisan cosponsors, including the chairman of the Judiciary Committee, Mr. CONYERS; ranking member of the full committee, Mr. SMITH; Crime Subcommittee ranking member, Mr. FORBES; and other members, Mr. COBLE, Mr. DAVIS of Alabama, Mr. LUNGREN, Mr. FEENEY and Mr. ROSKAM. I would like to take a moment to personally thank each of them for their support.

The purpose of H.R. 3013 is fairly simple and straightforward. It is designed to prevent a practice that has regrettably become too common in many of Federal Government's recent investigations into corporate wrongdoing. I am specifically referring to the government's use of what are called ''coercive waivers'' to gain access to privileged communications that otherwise would remain private and protected under the constitutional doctrine of attorney-client privilege.

□ 1515

Coercing waivers of corporate attorney-client privilege has not always been the practice among Federal prosecutors. Formerly, a company could produce evidence of its ''cooperation'' with prosecutors by providing insight into relevant corporate information, as well as by providing general access to the company's workplace and its employees. Unfortunately, since that time, memoranda issued by the Department of Justice suggest that the policy has changed to one which now exposes corporations to an increased risk of prosecution if they claim this constitutionally protected privilege.

One of the first such memoranda was issued in 1999. The Holder memorandum was designed to provide prosecutors with factors to be considered when determining whether to charge a corporation with criminal activity, and specifically allowed prosecutors, in gauging the extent of a corporation's cooperation, to consider the corporation's willingness to waive attorney-client privilege and work-product privilege.

This memorandum was superceded in 2003 by the Thompson memorandum. This memorandum contained the same language regarding the waiver of attorney-client privilege and work-product privileges and also addressed the adverse weight that might be given to a corporation's participation in a joint defense agreement with its officers or employees and its agreement to pay legal fees.

Today, the current Department policies relating to corporate attorney-client privilege and work-product privileges are embodied in the McNulty memorandum, issued in December of last year. While this new memorandum does state that the waiver requests should be the exception rather than the rule, it continues to threaten the viability of attorney-client privilege in business organizations by allowing prosecutors to request a waiver of privilege upon the finding of so-called ''legitimate need.''

I fully recognize the Department may face hurdles when undertaking investigations and prosecutions of corporate malfeasance. We look at the victims of Enron's collapse, the nearly 10,000 individuals who lost their jobs and pensions, their plans for their future, and know how vital it is for Federal prosecutors to have the tools necessary to prosecute these crimes and hold accountable wrongdoers who profit at the expense of ordinary working men and women. However, I also believe that facilitating and even encouraging such investigations should not come at the expense of vital constitutionally protected rights.

H.R. 3013 therefore prohibits the demanding of constitutionally protected materials as a necessary condition of receiving favorable consideration in decisions relating to prosecution and sentencing. This bill is supported by diverse groups such as the American Bar Association, the Chamber of Commerce, the American Civil Liberties Union, and the Heritage Foundation. That said, Mr. Speaker, I would like to once again thank the bipartisan members of the committee who have joined me in supporting this measure.

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

Mr. GOODLATTE. Mr. Speaker, I yield myself such time as I may consume, and I rise in support of H.R. 3013, the Attorney-Client Privilege Protection Act of 2007. H.R. 3013 bars Federal prosecutors from requiring corporations and individuals to waive their attorney-client privilege as a condition of cooperation or for avoiding criminal charges. H.R. 3013 would not prohibit a corporation from voluntarily waiving the attorney-client privilege.

This bill is designed to remedy overreaching by Federal prosecutors. It protects the attorney-client privilege, which is deeply rooted in our jurisprudence and the legal profession. The attorney-client privilege encourages frank and open communication between clients and their attorneys so that clients can receive effective advice and counsel.

In the corporate context, as we saw in the case of Arthur Andersen, the life of a corporation can turn on a prosecutor's discretionary decision to charge a corporation. That decision can have profound consequences on our economy, the employees and the community; and it should not turn on whether or not a company waives its attorney-client privilege.

Cooperation in the criminal justice system is an important engine of truth. However, prosecutors should not require privileged waivers as a routine matter.

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

Mr. SCOTT of Virginia. Mr. Speaker, I enter into the RECORD a letter from the American Bar Association outlining their support for this legislation.

Mr. Speaker, I would hope that the House would adopt the bill.

AMERICAN BAR ASSOCIATION,
Chicago, IL, November 8, 2007.

Re H.R. 3013, the ''Attorney-Client Privilege Protection Act of 2007.''

DEAR REPRESENTATIVE: On behalf of the American Bar Association (''ABA'') and its more than 415,000 members, I write to express our strong support for H.R. 3013, the ''Attorney-Client Privilege Protection Act of 2007.'' This bipartisan bill, sponsored by Representatives Bobby Scott, John Conyers, Lamar Smith, Randy Forbes, and eight other Members of Congress from both parties, was approved unanimously by the House Judiciary Committee on August 1 and will be considered by the full House next week under suspension of the rules. We urge you to vote in favor of this important legislation.

H.R. 3013 is a comprehensive reform measure designed to roll back a number of harmful federal agency policies that are seriously eroding the attorney-client privilege, the work product doctrine and the constitutional rights of employees. Although all of these federal policies raise concerns, the most problematic is the Department of Justice's policy—set forth in the 2003 ''Thompson Memorandum'' and 2006 ''McNulty Memorandum''—that pressures companies and other organizations to waive their privileges as a condition for receiving cooperation credit, and hence leniency, during investigations. In addition, these federal policies contain separate provisions that violate employees' Sixth Amendment right to counsel and Fifth Amendment right against self-incrimination by pressuring companies to not pay their employees' legal fees during investigations, to fire the employees for not waiving their rights, or to take other punitive actions against them long before any guilt has been established.

Despite the serious concerns raised by congressional leaders, former Justice Department officials, and the legal and business communities, the Department of Justice and other federal agencies have refused to reverse or fundamentally change their harmful privilege waiver or employee rights policies. Although the Department reluctantly issued new cooperation guidelines on December 12, 2006 as part of the McNulty Memorandum, the new policy falls far short of what is needed to prevent further erosion of fundamental attorney-client privilege, work product, and employee legal protections.

As demonstrated by the report that former Delaware Chief Justice Norman Veasey recently sent to congressional leaders, the McNulty Memorandum has not significantly reduced the incidence of government coerced waiver, and federal prosecutors continue to routinely demand waiver of the privilege during investigations despite the new policy. (The Veasey Report is available at *http://www.abanetorg/poladv/priorities/privilegewaiver/cjveaseyletter.pdf.*) As a result, the Department's new policy continues to seriously weaken the confidential attorney-client relationship between companies and their lawyers, which, in turn, impedes the lawyers' ability to conduct thorough internal investigations and effectively counsel compliance with the law. This harms companies, employees and the investing public as well.

In addition, while the McNulty Memorandum bars prosecutors from requiring companies to not pay their employees' legal fees in some cases, it continues to allow the practice in many instances. The new Department policy and other similar federal policies also continue to deny cooperation credit to companies that assist employees with their legal defenses or decline to fire them for exercising their Fifth Amendment rights. By forcing companies to punish employees long before any guilt has been shown, these federal policies weaken the constitutional presumption of innocence and undermine principles of sound corporate governance.

H.R. 3013 would reverse these harmful policies by prohibiting federal agencies from pressuring companies or other organizations to waive their privileges or take certain unfair punitive actions against their employees as conditions for receiving cooperation credit during investigations. At the same time, however, the bill specifically preserves the ability of prosecutors and other federal officials to obtain the important, non-privileged factual material they need to punish wrongdoers and enforce the law. In our view, H.R. 3013 would strike the proper balance between effective law enforcement and the preservation of essential attorney-client privilege, work product and employee legal protections, and we urge you to support the bill during next week's floor vote.

Thank you for considering the views of the American Bar Association on this subject, which is of such vital importance to our system of justice. If you have any questions regarding the ABA's views or need more information, please ask your staff to contact Larson Frisby of the ABA Governmental Affairs Office at (202) 662–1098.

Sincerely,

WILLIAM H. NEUKOM,
President.

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

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. SCOTT) that the House suspend the rules and pass the bill, H.R. 3013, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

SECOND CHANCE ACT OF 2007

Mr. CONYERS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1593) to reauthorize the grant program for reentry of offenders into the community in the Omnibus Crime Control and Safe Streets Act of 1968, to