OFFSHORE OIL AND GAS WORKER WHISTLEBLOWER PROTECTION ACT OF 2010

Mr. GEORGE MILLER of California. Mr. Speaker, pursuant to House Resolution 1574, I call up the bill (H.R. 5851) to provide whistleblower protections to certain workers in the offshore oil and gas industry, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 5851

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 ''Offshore Oil and Gas Worker Whistleblower Protection Act of 2010''.

SEC. 2. WHISTLEBLOWER PROTECTIONS; EMPLOYEE PROTECTION FROM OTHER RETALIATION.

(a) PROHIBITION AGAINST RETALIATION.—

(1) IN GENERAL.—No employer may discharge or otherwise discriminate against a covered employee because the covered employee, whether at the covered employee's initiative or in the ordinary course of the covered employee's duties—

(A) provided, caused to be provided, or is about to provide or cause to be provided to the employer or to a Federal or State Government official, information relating to any violation of, or any act or omission the covered employee reasonably believes to be a violation of, any provision of the Outer Continental Shelf Lands Act (43 U.S.C. 1301 et seq.), or any order, rule, regulation, standard, or prohibition under that Act, or exercised any rights provided to employees under that Act;

(B) testified or is about to testify in a proceeding concerning such violation;

(C) assisted or participated or is about to assist or participate in such a proceeding;

(D) testified or is about to testify before Congress on any matter covered by such Act;

(E) objected to, or refused to participate in any activity, policy, practice, or assigned task that the covered employee reasonably believed to be in violation of any provision of such Act, or any order, rule, regulation, standard, or ban under such Act;

(F) reported to the employer or a State or Federal Government official any of the following related to the employer's activities described in section 3(1): an illness, injury, unsafe condition, or information regarding the adequacy of any oil spill response plan required by law; or

(G) refused to perform the covered employee's duties, or exercised top work authority, related to the employer's activities described in section 3(1) if the covered employee had a good faith belief that performing such duties could result in injury to or impairment of the health of the covered employee or other employees, or cause an oil spill to the environment.

(2) GOOD FAITH BELIEF.—For purposes of paragraph (1)(E), the circumstances causing the covered employee's good faith belief that performing such duties would pose a health and safety hazard shall be of such a nature that a reasonable person under circumstances confronting the covered employee would conclude there is such a hazard.

(b) PROCESS.—

(1) IN GENERAL.—A covered employee who believes that he or she has been discharged or otherwise discriminated against (hereafter referred to as the ''complainant'') by any employer in violation of subsection (a)(1) may, not later than 180 days after the date on which such alleged violation occurs or the date on which the covered employee knows or should reasonably have known that such alleged violation occurred, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor (referred to in this section as the ''Secretary'') alleging such discharge or discrimination and identifying employer or employers responsible for such act. Upon receipt of such a complaint, the Secretary shall notify, in writing, the employer or employers named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

(2) INVESTIGATION.—

(A) IN GENERAL.—Not later than 90 days after the date of receipt of a complaint filed under paragraph (1) the Secretary shall initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the employer or employers alleged to have committed a violation of subsection (a)(1) of the Secretary's findings. The Secretary shall, during such investigation afford the complainant and the employer or employers named in the complaint an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses. The complainant shall be provided with an opportunity to review the information and evidence provided by employer or employers to the Secretary, and to review any response or rebuttal by such the complaint, as part of such investigation.

(B) REASONABLE CAUSE FOUND; PRELIMINARY ORDER.—If the Secretary concludes that there is reasonable cause to believe that a violation of subsection (a)(1) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, the employer or employers alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record before an administrative law judge of the Department of Labor. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review. The Secretary of Labor is authorized to enforce preliminary reinstatement orders in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia.

(C) DISMISSAL OF COMPLAINT.—

(i) STANDARD FOR COMPLAINANT.—The Secretary shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in subparagraphs (A) through (F) of subsection (a)(1) was a contributing factor in the adverse action alleged in the complaint.

(ii) STANDARD FOR EMPLOYER.—Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same adverse action in the absence of that behavior.

(iii) VIOLATION STANDARD.—The Secretary may determine that a violation of subsection (a)(1) has occurred only if the complainant demonstrates that any behavior described in subparagraphs (A) through (F) of such subsection was a contributing factor in the adverse action alleged in the complaint.

(iv) RELIEF STANDARD.—Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same adverse action in the absence of that behavior.

(3) ORDERS.—

(A) IN GENERAL.—Not later than 90 days after the receipt of a request for a hearing under subsection (b)(2)(B), the administrative law judge shall issue findings of fact and order the relief provided under this paragraph or deny the complaint. At any time before issuance of an order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary, the complainant, and the person alleged to have committed the violation. Such a settlement may not be agreed by such parties if it contains conditions which conflict with rights protected under this Act, are contrary to public policy, or include a restriction on a complainant's right to future employment with employers other than the specific employers named in the complaint.

(B) CONTENT OF ORDER.—If, in response to a complaint filed under paragraph (1), the administrative law judge determines that a violation of subsection (a)(1) has occurred, the administrative law judge shall order the employer or employers who committed such violation—

(i) to take affirmative action to abate the violation;

(ii) to reinstate the complainant to his or her former position together with compensation (including back pay and prejudgment interest) and restore the terms, conditions, and privileges associated with his or her employment; and

(iii) to provide compensatory and consequential damages, and, as appropriate, exemplary damages to the complainant.

(C) ATTORNEY FEES.—If such an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the employer or employers a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued at the conclusion of any stage of the proceeding.

(D) BAD FAITH CLAIM.—If the Secretary finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer reasonable attorneys' fees, not exceeding $1,000, to be paid by the complainant.

(E) ADMINISTRATIVE APPEAL.—Not later than 30 days after the receipt of findings of fact or an order under subparagraph (B), the employer or employers alleged to have committed the violation or the complainant may file, with objections, an administrative appeal with the Secretary, who may designate such appeal to a review board. In reviewing a decision and order of the administrative law judge, the Secretary shall affirm the decision and order if it is determined that the factual findings set forth therein are supported by substantial evidence and the decision and order are made in accordance with applicable law. The Secretary shall issue a final decision and order affirming, or reversing, in whole or in part, the decision under

review within 90 days after receipt of the administrative appeal under this subparagraph. If it is determined that a violation of subsection (a)(1) has occurred, the Secretary shall order relief provided under subparagraphs (B) and (C). Such decision shall constitute a final agency action with respect to the matter appealed.

(4) ACTION IN COURT.—

(A) IN GENERAL.—If the Secretary has not issued a final decision within 300 days after the filing of the complaint, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States, which action shall, at the request of either party to such action, be tried by the court with a jury. The proceedings shall be governed by the same legal burdens of proof specified in paragraph (2)(C).

(B) RELIEF.—The court may award all appropriate relief including injunctive relief, compensatory and consequential damages, including—

(i) reinstatement with the same seniority status that the covered employee would have had, but for the discharge or discrimination;

(ii) the amount of back pay sufficient to make the covered employee whole, with prejudgment interest;

(iii) exemplary damages, as appropriate; and

(iv) litigation costs, including reasonable attorney fees and expert witness fees.

(5) REVIEW.—

(A) IN GENERAL.—Any person aggrieved by a final order issued under paragraph (3) or a judgment or order under paragraph (4) may obtain review of the order in the appropriate United States Court of Appeals. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary. Review shall be accordance with chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) NO OTHER JUDICIAL REVIEW.—An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any other proceeding.

(6) FAILURE TO COMPLY WITH ORDER.—Whenever any employer has failed to comply with an order issued under paragraph (3), the Secretary may obtain in a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

(7) CIVIL ACTION TO REQUIRE COMPLIANCE.—

(A) IN GENERAL.—Whenever an employer has failed to comply with an order issued under paragraph (3), the complainant on whose behalf the order was issued may obtain in a civil action in an appropriate United States district court against the employer to whom the order was issued, all appropriate relief.

(B) AWARD.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorneys' and expert witness fees) to any party whenever the court determines such award is appropriate.

(c) CONSTRUCTION.—

(1) EFFECT ON OTHER LAWS.—Nothing in this section preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.

(2) RIGHTS OF EMPLOYEES.—Nothing in this section shall be construed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

(d) ENFORCEMENT OF NONDISCRETIONARY DUTIES.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(e) POSTING OF NOTICE AND TRAINING.—All employers shall post a notice which has been approved as to form and content by the Secretary of Labor in a conspicuous location in the place of employment where covered employees frequent which explains employee rights and remedies under this section. Each employer shall provide training to covered employees of their rights under this section within 30 days of employment, and at not less than once every 12 months thereafter, and provide covered employees with a card which contains a toll free telephone number at the Department of Labor which covered employees can call to get information or file a complaint under this section.

(f) DESIGNATION BY THE SECRETARY.—The Secretary of Labor shall, within 30 days of the date of enactment of this Act, designate by order the appropriate agency officials to receive, investigate, and adjudicate complaints of violations of subsection (a)(1).

SEC. 3. DEFINITIONS.

As used in this Act the following definitions apply:

(1) The term ''covered employee''—

(A) means an individual performing services on behalf of an employer that is engaged in activities on or in waters above the Outer Continental Shelf related to—

(i) supporting, or carrying out exploration, development, production, processing, or transportation of oil or gas; or

(ii) oil spill cleanup, emergency response, environmental surveillance, protection, or restoration, or other oil spill activities related to occupational safety and health; and

(B) includes an applicant for such employment.

(2) The term ''employer'' means one or more individuals, partnerships, associations, corporations, trusts, unincorporated organizations, nongovernmental organizations, or trustees, and includes any agent, contractor, subcontractor, grantee or consultant of such employer.

(3) The term ''Outer Continental Shelf'' has the meaning that the term ''outer Continental Shelf'' has in the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.).

The SPEAKER pro tempore. Pursuant to House Resolution 1574, the amendment printed in part C of House Report 111–582 is adopted, and the bill, as amended, is considered read.

The gentleman from California (Mr. GEORGE MILLER) and the gentleman from Minnesota (Mr. KLINE) each will control 30 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. GEORGE MILLER of California. Mr. Speaker, I ask unanimous consent that Members have 5 legislative days in which to revise and extend their remarks and submit extraneous material for the RECORD.

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

There was no objection.

Mr. GEORGE MILLER of California. Mr. Speaker, the legislation before the House today closes a loophole in current law regarding the rights of workers to blow the whistle over unsafe conditions on offshore oil rigs.

As the Obama administration told Congress, individuals working on the Outer Continental Shelf, like on the Deepwater Horizon, shockingly have zero whistleblower protections. This is unconscionable. There is no good policy reason for treating onshore and offshore workers differently. This is because the whistleblower may be the only thing that's standing between a safe workplace and a catastrophe.

H.R. 5851, the Offshore Oil and Gas Worker Whistleblower Protection Act, will fix this glaring omission. Whether it is refineries, underground coal mines, or oil drilling rigs, our enforcement agencies cannot be at all workplaces at all times. That's why it's up to workers to be the eyes and the ears when these agencies can't.

While the precise cause of the British Petroleum Deepwater Horizon tragedy is still under investigation, two things are clear from the media reports and from the congressional hearings. First, workers on the rig had safety concerns prior to the tragedy. And second, workers believed that they would lose their job if they raised these safety concerns with management.

Not long before the Deepwater Horizon explosion, rig worker Jason Anderson told his wife that working conditions on the rig were not safe. He talked to her about getting his will and getting his affairs in order. But he wouldn't talk about his safety concerns when he was on the rig. He once told his wife he couldn't talk about the safety concerns because ''the walls are too thin.'' Jason did not survive the explosion. He perished, along with 10 others. He left behind a wife and two young children.

No worker should ever have to choose between his or her life and their livelihood, but that's a decision these workers face. As Deepwater Horizon worker Daniel Barron said, safety is only convenient for employers when they needed it. There was a lot of rhetoric that everybody had the right to call a timeout for safety, but when push comes to shove, if you called that timeout, Daniel Barron said, you're going to get fired.

Mr. Speaker, this bill is narrowly tailored and will protect offshore workers who call for a timeout for safety. It simply extends the whistleblower protections to workers engaged in oil and gas exploration, drilling, production, and oil spill cleanup on the Outer Continental Shelf. It mirrors other recently enacted whistleblower laws contained in the Consumer Product Safety Improvement Act and the Federal Railroad Safety Act.

Specifically, H.R. 5851 will prohibit discrimination against employees who report violations of the Outer Continental Shelf Lands Act. It protects workers who report injuries or unsafe conditions to an employer or the government, and protects workers who

refuse to perform on the assigned task when there is a reasonable belief of injury or spill. The bill will also require employers to post notice and provide training that explains these rights.

Finally, like other modern whistleblowing statutes, the bill provides for a fair process for resolving whistleblower complaints at the Department of Labor or through the courts if necessary. The Education and Labor Committee recently approved strong mine safety and OSHA reform bills that include nearly identical whistleblower protections.

I want to thank my colleague, Congressman MARKEY, and his staff for their work on this legislation, and Mr. CONYERS and the Judiciary Committee for their constructive advice and suggestions.

I again want to thank Mr. MARKEY. He offered very similar whistleblower language in the Energy and Commerce Committee, and they reported that language out as part of a larger oil spill response bill 48–0.

□ 1230

I urge my colleagues to support the closing of this dangerous loophole and provide the protections for these workers. Workers in the oil and gas industry deserve a voice on safety issues regardless of whether or not they work onshore or offshore.

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, DC, July 29, 2010.

Hon. GEORGE MILLER,
Chairman, Committee on Education and Labor, U.S. House of Representatives, Washington, DC.

DEAR CHAIRMAN MILLER: This is to advise you that, as a result of your having consulted with us on provisions in H.R. 5851, the Offshore Oil and Gas Worker Whistleblower Protection Act of 2010, that fall within the rule X jurisdiction of the Committee on the Judiciary, we are able to agree to waive seeking a formal referral of the bill, in order that it may proceed without delay to the House floor for consideration.

The Judiciary Committee takes this action with our mutual understanding that by foregoing consideration of H.R. 5851 at this time, we do not waive any jurisdiction over subject matter contained in this or similar legislation, and that our Committee will be appropriately consulted and involved as the bill or similar legislation moves forward, so that we may address any remaining issues in our jurisdiction. Our Committee also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this or similar legislation, and requests your support for any such request.

I would appreciate your including this letter in the CONGRESSIONAL RECORD during consideration of the bill on the House floor. Thank you for your attention to this request, and for the cooperative relationship between our two committees.

Sincerely,

JOHN CONYERS, Jr.
Chairman.

COMMITTEE ON EDUCATION & LABOR,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC, July 29, 2010.

Hon. JOHN CONYERS,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Washington, DC.

DEAR CHAIRMAN CONYERS: I am writing in response to your letter of July 29, 2010, concerning the Committee on the Judiciary's jurisdictional interest in H.R. 5851, the Offshore Oil and Gas Worker Whistleblower Protection Act of 2010.

Acknowledging your jurisdictional interest in matters being considered in H.R. 5851, we have consulted with your Committee on several provisions and appreciate the contributions you have made in crafting the legislation. Thank you for your willingness to allow the bill to proceed to the floor expeditiously by waiving any referral.

We will continue to appropriately consult and involve your Committee as the bill moves forward and will support your request to have Judiciary conferees appointed during any House-Senate conference. I will submit a copy of your July 29, 2010, letter and this response to the CONGRESSIONAL RECORD during floor consideration.

Thank you for your cooperation in this matter.

Sincerely,

GEORGE MILLER,
Chairman.

I reserve the balance of my time.

Mr. KLINE of Minnesota. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, whistleblower protections are a longstanding part of our Federal safety and health laws. Simply put, they protect workers' ability to speak freely about dangers in the workplace. They allow working men and women to protect themselves and their coworkers. The ultimate goals of our worker safety laws should be that no worker ever needs to blow the whistle. We need a culture of safety in our workplaces, a system in which employers have the information and resources they need to comply with the law and avoid unnecessary risks to workers' health and safety.

But in those rare instances where employers are not following the law and workers' safety is at risk, we offer protections to those individuals who speak up. These protections are widely available to workers and enforced by the Whistleblower Protection Program at the Occupational Safety and Health Administration.

However, we recently became aware that a gap may exist in those protections. Safety on offshore oil rigs is overseen by the Coast Guard and the Bureau of Ocean Energy Management, unlike most workplaces where safety is overseen by OSHA. As a result, it is not clear whether these workers are covered by the OSH Act's whistleblower protections or any of the 17 other statutes enforced by OSHA's Whistleblower Protection Program. Some might argue oil rig workers are covered by the Maritime Transportation and Security Act, while others point to a 1983 agreement in which OSHA retained whistleblower authority for these workers.

In the few days since this legislation was introduced, we have found confusion and conflicting information. This confusion was illustrated in recent news accounts detailing the experiences of workers on the Deepwater Horizon who were concerned about safety practices on the rig but were afraid to voice those concerns. If workers themselves believe they can be fired or otherwise retaliated against for identifying safety concerns, we must create or restate those protections. It is as simple as that. Yet the bill before us is not so simple.

H.R. 5851 creates a brand-new whistleblower framework for any individual directly or indirectly involved with a company that drills on the Outer Continental Shelf. We all agree on the need to clarify protections for workers on the rigs, but what about other workers, those who are already covered by other law?

H.R. 5851 adds a new layer of legal processes, deadlines, and remedies for workers who are already covered. It creates legal confusion, particularly for those workers who would now be covered by parallel and possibly conflicting statutes.

I'm also troubled by the differences between these new whistleblower protections and those existing under current law. This bill seems to prioritize resolution by the Federal courts, adding costs and delaying results for workers who simply want to remain on the job.

These are the types of questions normally addressed through hearings and committee votes. Members weigh the opinions of Federal regulatory officials, legal experts, industry personnel, and workers themselves. We evaluate which agency would be best suited to enforce protections and remedies under the law, and we prevent duplication and confusion by clearly defining which workers are covered.

Unfortunately, we did not use that process for H.R. 5851. It was never given a committee hearing. It was never given a committee vote. Last month, the committee held a hearing to examine broad jurisdictional questions about which Federal agency is ultimately responsible for worker safety on offshore oil rigs. We heard from the Coast Guard, the National Institute for Occupational Safety and Health, OSHA, and the Bureau of Ocean Energy Management. Those agencies told us they did not know which Federal whistleblower laws, if any, applied to workers on oil rigs on the Outer Continental Shelf. There was confusion.

Since that time, the committee has heard no further testimony, received no further information, and considered no legislation. Yet, on Monday of this week, the majority introduced H.R. 5851 and promptly announced Members of the full House would be asked to cast a vote on whether these are the best protections for workers on oil rigs. And, as has become all too common, we are here under a closed rule with no amendments being considered.

Mr. Speaker, this is a serious issue and it deserves a serious process, one it has not been given.

I reserve the balance of my time.

Mr. GEORGE MILLER of California. I yield 4 minutes to the gentlewoman from California (Ms. WOOLSEY), the subcommittee chair on the Education and Labor Committee.

Ms. WOOLSEY. Mr. Speaker, I rise in strong support of H.R. 5851, the Offshore Oil and Gas Worker Whistleblower Protection Act of 2010.

Chairman MILLER, I want to thank you and commend you for the commitment to the health and safety of American workers. And Ranking Member KLINE, thank you very much for outlining exactly the confusion that we are faced with regarding employee safety, particularly on our oil rigs.

Now, following the Gulf of Mexico disaster, it is clearer than ever that providing strong protections to offshore oil and gas workers would be a positive step in encouraging workers to speak out about work safety and health issues at the worksite. Obviously, inspectors cannot be at all workplaces at all times, and so the system relies on willingness of employees to come forward, because these employees, these workers, know their worksite better than anyone else. Yet too many workers fear doing so because they fear repercussions. They don't fear imagined repercussions; they fear real ones.

We heard this from the families of the 29 miners who were killed at the Upper Big Branch Mine in West Virginia and from the families of those miners who died at the Crandall Canyon, Darby, Sago, and Aracoma mines. We've heard this in the wake of other workplace disasters as well.

And now we have discovered that before the BP disaster in the gulf which took the lives of 11 workers, workers did not come forward about safety hazards because they were afraid they would lose their jobs. Sadly, their fears were well-founded. Those brave souls who blow the whistle often do lose their jobs and suffer other indignities such as harassment, intimidation, and blacklisting. In this situation of the BP disaster, they lost their lives.

In May of 2007, my Subcommittee on Workforce Protections held a hearing on the adequacy of whistleblower protections. The now famous whistleblower Jeffrey Wigand, who ''blew the whistle'' on Big Tobacco, testified at that hearing. He was not protected by any antiretaliation law when he lost his job. He was not protected when he was threatened, harassed, and intimidated for his actions.

Like Mr. Wigand, offshore gas and oil workers have no whistleblower protections. This is absolutely unacceptable, and we know it.

In crafting H.R. 5851, we ensure workers are actually encouraged to come forward to report unsafe conditions by providing a meaningful process to adjudicate complaints that also comports with due process, and by providing sufficient remedies to whistleblowers, including temporary reinstatement, backpay, and other damages.

H.R. 5851's provisions are similar to the whistleblower provisions in the Protecting America's Workers Act, which brings the Occupational Safety and Health Act into the 21st century. H.R. 5851 also emulates other modern whistleblower statutes, such as the Consumer Product Safety Improvement Act.

I'm proud to be an original cosponsor of the Offshore Oil and Gas Worker Whistleblower Protection Act, and I urge my colleagues to vote to protect all vulnerable workers.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Members are reminded to not traffic the well when other Members are under recognition.

Mr. KLINE of Minnesota. Mr. Speaker, I am pleased to yield such time as he may consume to the ranking member on the Health Subcommittee, the gentleman from Georgia, Dr. PRICE.

Mr. PRICE of Georgia. Mr. Speaker, I thank my friend, Colonel Kline, for the wonderful leadership that he has provided on our committee and the focus that he's given to this issue.

Mr. Speaker, never let a crisis go to waste. It's the defining principle of how this administration and how this Congress govern.

□ 1240

We're facing a devastating crisis right now, an oil spill which has ravaged the Gulf of Mexico both economically and environmentally. Out of this crisis there have been reports raising the issue of worker safety on oil rigs. Now, such reports raise very serious questions, which should be dealt with in a very serious manner, matters that require probing and oversight by Congress so that workers are adequately protected and free to report safety concerns.

However, what we've gotten from this majority is an unserious response, a political response more interested in taking advantage of the latest crisis. Remember, never let a crisis go to waste.

The bill before us today was introduced just this week. There's been no hearing on it, no committee consideration, no input from members of the committee, certainly on our side. Another rush to the floor, don't read the bill, don't read the bill, don't worry about it. Remember, never let a crisis go to waste.

And so what's the result? Confusion. With little time to review, we don't know what if any existing Federal whistleblower laws already apply to workers on offshore oil rigs and other employees in these companies. We don't know which agency is best equipped to enforce these new whistleblower protections. These are things that would normally, Mr. Speaker, in the course of activity come out during a committee hearing, during a normal open committee process. But no committee hearing, no committee hearing here. Remember, never let a crisis go to waste.

With this Congress, all the serious policy issues are secondary to the politics. Instead, what we get is a bill that establishes a whole new bureaucracy, a whole new whistleblower framework for a specific class of workers. It's an expansive set of protections that applies to health and safety and environmental and any other standards under the OCS Land Act; and yet it's untested, without an explicit description of which agency would even enforce the program.

Digging into the language a little deeper, it appears to favor resolution of complaints in Federal court, adding costs and inviting litigation. Remember, never let a crisis go to waste.

The Department of Labor only had 300 days to issue a final decision on a complaint or it gets kicked to the U.S. district court. Perhaps this wouldn't be a problem but there's an incentive to stretch out cases. Why, Mr. Speaker? Because bad-faith claims are not deterred. Employers can only recoup $1,000 total in attorneys' fees, which for some law firms—I know this won't come as any surprise to the Speaker—for some law firms less than a day's work; and even if the Department of Labor decides on a complaint before that deadline and defines it to be nonmeritorious, the case could still move on to court, creating a Federal right to sue. Remember, never let a crisis go to waste.

Now, later, Mr. Speaker, Republicans are going to offer a motion to recommit which is a better solution. Our positive solution gets to the heart of the issue, ensuring that workers are adequately protected and free to report safety concerns. It's not simply taking advantage of the latest crisis or rewarding plaintiff's trial lawyers for their support of the Democrat Party.

So, Mr. Speaker, I urge my colleagues to support the positive appropriate solution, the Republican motion to recommit, and defeat the partisan bill now before us.

Mr. GEORGE MILLER of California. I yield 6 minutes to the gentleman from Massachusetts (Mr. MARKEY), a coauthor of this legislation and the author of the whistleblower protection provisions of the Energy and Commerce bill.

Mr. MARKEY of Massachusetts. I thank the gentleman, and I thank GEORGE MILLER for his decades of work in ensuring that whistleblower protections are built into the laws of our country in order to ensure that workers are not living in terror, that they stand up for safety.

During the last 3 months, Congress has conducted a vigorous investigation into the causes and response of the BP Deepwater Horizon disaster. What we've found was that BP was woefully unprepared for this kind of a spill. From the beginning, BP has been making it up as they go along. BP said the rig could not sink. It did. They said they could handle an Exxon Valdez size spill every day. They couldn't.

Early on in the disaster, BP was talking about using a junk shot where they shoot golf balls into the well. Well, when we heard that they were

bringing in the best minds and that they were working on this problem, we thought they meant MIT, not the PGA.

BP also talked in the first 3 weeks about deploying nylons and hair to soak up the oil. The American people expected a response on the par with the Apollo Project, not ''Project Runway.''

And from the start, BP has been more interested in protecting its own liability than preserving the livability of the Gulf of Mexico. BP started by saying this spill was 1,000 barrels a day. It wasn't. They knew it. They said it was 5,000 barrels per day; they knew that it was not. And by now, we know it was much, much larger, upwards of 60,000 barrels a day.

Our investigation uncovered that no major oil company would have been able to respond to this type of spill any better than BP. In fact, the Gulf of Mexico oil spill response plans from Exxon Mobil, Chevron, ConocoPhillips and Shell were 90 percent identical to BP's. They were such dead ringers for each other that they listed the phone number for the same long-deceased expert as the person to call. The response plans also included plans to evacuate walruses from the Gulf of Mexico, even though walruses haven't called the Gulf of Mexico home for 3 million years. It seems that the only spill response technology that the oil industry had invested in is a Xerox machine. No oil company took this responsibility seriously.

The legislation that we will vote on today will ensure that there will be accountability, stronger regulations, and a requirement that before oil companies drill ultra-deep that they have the technology necessary to make it ultra-safe and can respond to a spill ultra-fast.

We need whistleblowers to make sure that we never again see what has happened in the Gulf of Mexico, and that is the important piece of legislation that we are debating right now: whistleblower protection. In this legislation, we are putting into place state-of-the-art protections for oil and gas workers who are retaliated against because they report safety concerns or they report a failure on the part of their employer to have a good blowout response plan.

We know from our investigation both into this disaster and another BP rig operating in the gulf, the Atlantis rig, that BP has cut corners on safety, even if it meant risking workers' lives and environmental calamity. For example, an employee working on the BP Atlantis rig warned in 2009 that BP was failing to meet its requirement to maintain accurate engineering drawings aboard the rig which would enable an effective response to an accident. The whistleblower was fired after making his disclosure. BP continues to deny this problem on the Atlantis rig exists, even though former Federal district court judge Stanley Sporkin who was hired by BP to serve as an independent ombudsman has confirmed that the whistleblower's allegations are true.

And on the BP Deepwater Horizon, workers were also fearful of the extent of the problems aboard the Deepwater Horizon. Jason Anderson told his wife that he couldn't discuss his concerns because, quote, the walls are too thin. Mr. Anderson died in the April explosion.

This bill will ensure that all workers who report safety or blowout response plan concerns who are then fired, demoted or otherwise retaliated against by their employers will be protected. These workers will be entitled to due process at the Department of Labor; and if the Department of Labor fails to act, they will be entitled to a jury trial. They will also be entitled to receive appropriate damages to ensure that they are made whole.

□ 1250

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. GEORGE MILLER of California. I yield the gentleman 2 additional minutes.

Mr. MARKEY of Massachusetts. I thank the gentleman.

In the wake of the Deepwater Horizon catastrophe, we have heard that the workers aboard the rig had safety concerns. But in the end, they were powerless to stop the cascading string of bad decisions by BP that led to the disaster. They clearly feared for the loss of their jobs and of their livelihoods.

Our legislation will protect these brave Paul Reveres in the oil industry who sound alarms in the future. I thank Chairman MILLER for his historic work on this legislation. I thank all of the Members who are focusing on this issue, so that people who stand up to protect the safety of workers do not have to lose their jobs.

Mr. GEORGE MILLER of California. Will the gentleman yield?

Mr. MARKEY of Massachusetts. I yield to the gentleman from California.

Mr. GEORGE MILLER of California. I know how hard you worked to try to get the accurate figures of what the blowout meant in terms of volume of oil going into the gulf.

I just wonder, if we had had whistleblower protections and one of the employees at BP who knew what the real volume was as opposed to what the executives were telling the American people and the rest of the world, we might have had information sooner which would have allowed us to respond in a different fashion than we did when we had bad information because of the concealment of the accuracy of which we found when you finally got the cameras turned on.

Mr. MARKEY of Massachusetts. The gentleman put his finger right on it. There would be a completely different response if the spill were not 1,000 barrels or 5,000 barrels per day but, rather, 30,000 to 60,000 barrels per day. It delayed the response. Much more harm has been done to the people in the Gulf of Mexico. There was a greater delay in bringing in all of the skimmers, all of the new technologies to be able to deal with this spill. If a whistleblower knew that it was not 1,000, knew that it was not 5,000, they should not have to fear that they would lose their job if they wanted to protect the oceans of America and the workers in the Gulf of Mexico rather than being afraid that they would lose their own job and their own family's livelihood. That is why this legislation is so important.

Mr. GEORGE MILLER of California. I thank the gentleman.

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

Mr. GEORGE MILLER of California. I yield 3 minutes to the gentleman from New York (Mr. ENGEL).

Mr. ENGEL. I thank the chairman for yielding to me, and I rise in strong support of H.R. 5851.

A couple of speakers before me, the gentleman from Georgia on the other side of the aisle kept repeating the mantra of ''never let a crisis go to waste,'' and he was deriding this side because apparently he thinks that we should always forget a crisis and we should not take into account what we've learned because of the crisis.

You know, it is because of this crisis that we really need to redouble our efforts to protect people who live all around the Gulf of Mexico, to protect the workers, to protect the public from companies that really couldn't care less about them; and this Whistleblower Protection Act is going to do exactly that.

Now I'm on the Energy and Commerce Committee. I sat through every hearing that we had with oil officials and with the BP officials. And I'll tell you the truth; it was insulting the way Mr. Hayward came and wouldn't tell us anything because he was obviously told by his lawyers not to tell us, and the arrogance dripping from his mouth where he just seemed to not care at all about the havoc that BP had put forward in the gulf and even with the people who were killed.

So today we are passing this Whistleblower Protection Act which will protect, as the gentleman from Massachusetts (Mr. MARKEY) said, people who come forward and say, ''Hey, you know what? What's going on isn't right, and it needs to stop, and I don't want my job to be in jeopardy because I'm telling the truth.''

We're also going to vote on the CLEAR Act as well. And I want to remind my colleagues that we desperately also need comprehensive clean energy and climate legislation after this. The BP explosion in the gulf has been disastrous. It has led to 11 deaths, devastated the gulf economy, and just polluted the environment.

We heard testimony in the Energy and Commerce Committee from Tony Hayward. We asked him serious questions, and he refused to answer our questions. BP has not been truthful at

all about what has been happening in the gulf from the very beginning. They've used and abused the system, and we cannot allow that. We have to work to ensure that oil companies like BP are not permitted to treat the environment as their own private playground, or put at risk the livelihoods of thousands upon thousands of hardworking Americans.

I want to be perfectly clear here—this is BP's spill and BP should pay for it. There should be no taxpayer money spent on cleanup. But BP had the gall to announce this week that they're looking to cut their losses at the expense of the American people by claiming tax benefits for costs associated with this oil spill. That is shameful, and that's wrong, and it ought to be stopped.

That is why today I am introducing the Denial of Tax Benefits to Offending Oil Polluters Act of 2010. This legislation would prohibit oil polluters from receiving tax benefits for costs associated with an oil spill.

I look forward to passing this legislation today, H.R. 5851, and debating my bill in the future to be sure that we hold bad actors like BP accountable for their irresponsible decisions and their devastating actions.

I thank the chairman for his strong leadership in this regard.

Mr. GEORGE MILLER of California. I thank the gentleman.

Mr. KLINE of Minnesota. I continue to reserve.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 3 minutes to the gentlewoman from Texas (Ms. JACKSON LEE).

Ms. JACKSON LEE of Texas. I thank the distinguished chairman and I thank you for your constant forward thinking on the workers of America.

Coming from the gulf region, I don't know if any of you have ever seen an oil rig, particularly one as large as Deepwater Horizon. It is the home of the workers. It is their home away from home. They eat there, they sleep there, they work very hard there, and they recreate there. They're there 24 hours a day. Some may be a cook. Someone may be a sophisticated engineer. Some may be a seaman and that is their profession. But they're working there; and, therefore, they are looking to ensure that their home away from home is safe.

As I've listened to administration officials who are now all about the gulf, I can tell you that the workers who love their industry and love their jobs are excited about the call for transparency and protection and increased safety for this industry. They're excited about what is going on as it relates to those who would engage in telling the truth. If you look at the facts in some of the hearings that we've been in, you will know that there have been a lot of conversations with subordinates trying to talk to supervisors. Something was awry, but no one listened. We may have even heard that some companies left the rig early on because they were disturbed. Or as my colleague mentioned, the young man by the name of Jason who even told his wife, ''Prepare my will.'' And so it is important today that we stand up for the workers.

This is a concise, articulate, whistleblower language and legislation, prohibiting an employer from discharging or otherwise discriminating against anyone who talks to State or Federal officials or anyone else; telling the truth, saving lives. As well, it protects them if they prepare or testify in front of any governmental entity talking about unsafe conditions. Imagine how many lives that could save in any other industry as well.

The bill establishes a process for an employee to appeal, giving them the justice of the Constitution that does not deny you benefits without due process. Is that a problem? They live there. This is their home. It makes an aggrieved employee eligible for reinstatement and back pay. Some of these jobs are the only jobs these men or women can secure to protect and provide for their family. We live in the gulf. We're shrimpers and fishermen and oystermen; and yes, we work in this industry. It requires employers to post a notice that explains employee rights and remedies under the act.

I look forward to working with the chairman as we look at other ways of helping these employees who are under stress, providing mental health services and counseling after this terrible devastation. It may have to continue even after BP finishes their work. But this is the right direction to go. This speaks well of this Congress who will stand alongside of workers and make a difference in their lives and the lives of their families.

I ask you to vote for this legislation.

Today, I rise in support of H.R. 5851—the Offshore Oil and Gas Worker Whistleblower Protection Act. We are all well aware of the disaster that occurred when the Deepwater Horizon rig exploded, but it might have been prevented if we had listened to voices expressing concern. The men and woman who bravely come out and expose the injustices and violations that take place at their place of work are the eyes and ears for the American public. These people should be able to speak out freely with no fear of unfair repercussion.

In the aftermath of the disaster, it became clear that workers on the Deepwater Horizon rig harbored safety concerns prior to the explosion, but chose not to vocalize them over fear of retribution. Take, for example, Jason Anderson, who told both his wife and father that working conditions were not safe on the Deepwater Horizon. According to his wife Shelley's testimony before the Senate's Commerce, Science and Transportation committee, Jason was reluctant to talk about these concerns while on the rig and told her: ''I can't talk about it now. The walls are too thin.'' Another worker, Dewey Revette, reportedly had concerns with BPs plans to begin shutting down the well on the day it exploded. He continued to work despite his reluctance and lost his life hours later.

Workers on oil rigs, like the Deepwater Horizon, risk losing their jobs if they report dangerous workplace conditions. The workers performing clean-up activities on the Outer Continental Shelf similarly have no protections against employer retaliation for raising health and safety concerns. It is essential that workers be protected when they raise concerns about unsafe working conditions, and they must have the right to stop working if they fear they could be injured or killed. All workers, especially those in dangerous jobs, are in the best position to discover safety hazards. You can't have inspectors at all facilities at all times—these workers are enforcement agencies' eyes and ears when it comes to safety compliance.

Currently, there is no Federal law that protects offshore workers for blowing the whistle on workplace health and safety problems. This bill extends whistleblower protections to workers regarding Outer Continental Shelf oil and gas exploration, drilling, production, or cleanup, whose employers are engaged in those activities.

Federal whistleblowers have attempted to expose government actions that violate the law or harm the environment for decades. Their disclosures have helped the Federal Government improve environmental protection, nuclear safety, and national security, and their claims have helped safeguard the welfare of American citizens. Whistleblowers have gained credibility in recent years thanks in great part to organizations like the National Whistleblower Center (NWC), the Liberty Coalition, and the Government Accountability Project. The NWC is a non-profit, tax exempt educational and advocacy organization dedicated to helping whistleblowers make their case to lawmakers and other government leaders—a modern day safe haven for those who are willing to put their careers on the line to improve their government.

The bill is modeled after other modern whistleblower statutes and would prohibit an employer from discharging or otherwise discriminating against an employee who reports to the employer, or a Federal or State Government official that he or she reasonably believes the employer is violating the Outer Continental Shelf Lands Act (OCSLA). The legislation would also protect covered employees who prepare and/or testify about the alleged violation, report injuries or unsafe conditions related to the offshore work, refuse to work based on a good faith belief that the offshore work could cause injury or impairment or a spill, or refuse to perform in a manner that they believe violates the OCSLA.

Mr. Speaker, it is essential to protect workers with the courage to speak out when they see life-threatening safety-hazards or shortcuts. If we do not, we risk dire consequences. Whistleblowers are often forced to choose between remaining silent about a dangerous or illegal situation and risking their careers by telling the truth. We must reverse this unacceptable and unsustainable choice by passing this legislation.

□ 1300

Mr. KLINE of Minnesota. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the best way to keep our workers and our workplaces safe is through compliance. We write workplace safety laws for a reason, and we

expect employers to follow those laws. This is true for factories and family-run businesses, and it is true for offshore oil rigs.

We never want to see a workplace where laws are not followed and worker safety and health is put at risk. But if that happens, workers must be able to report those risks without fear of being discriminated against or losing their job. This is where whistleblower protections come.

The Occupational Safety and Health Administration enforces 18 separate Federal whistleblower statutes for workers who report violations of worker safety, airline, commercial motor carrier, consumer product, environmental, health care reform, nuclear energy, pipeline, public transportation agency, railroad and securities laws.

Yet somehow, in this maze of whistleblower protections, it seems that workers on offshore oil rigs may not be fully protected. When we asked the agencies responsible for overseeing rigs on the Outer Continental Shelf, they told us they did not know which statute might apply. This is unacceptable.

I fully support the effort to ensure workers on offshore oil rigs have access to whistleblower protections. But I have concerns and questions about how H.R. 5851 approaches this goal, and I have serious objections to the manner in which this legislation was brought floor.

There has been no hearing, no mark-up, no committee report. There has, quite simply, been no legislative process, and it's no way to treat the oil rig workers we are supposed to be protecting.

I yield back the balance of my time.

Mr. GEORGE MILLER of California. Mr. Speaker and Members of the House, I hope that all of our colleagues on both sides of the aisle will support this Whistleblower Protection Act.

I hope that they understand that many, many thousands, millions of American workers work in work sites where every day they pose an inherent danger to those workers. The question of whether or not those workers will be safe or not very often is decided by the employer, who decides how they will structure the work site, what the work rules will be, and how the work and the process will proceed.

But very often those employers sometimes shortchange safety. They choose to pick production over the safety of their workers. They choose to pick cost cutting over safety of their workers.

They choose to pick hurrying up the job over the safety of their workers. They choose to pick getting certain parts of the job done and get them offsite over the safety of their workers.

In today's economy, and in every economy, for many of these workers, it's a terrible choice to think about if I raise my hand on behalf of safety, will I lose my job? If I raise a question about the process that we are about to engage in here and how dangerous it is, will I lose my job?

I represent a district where people work in these industries, in the chemical industry and the refining industry. You know what? We lose workers in those jobs all too often, and all too often we find out the mistakes that were made and we wonder. And even those workers, who are covered by whistleblower protection, know the trade-off.

Because, don't forget, all whistleblower protection does is give you a right to try to proceed to get your job back. Many times that's delayed and workers go months and months without pay because they had the courage to invoke their rights.

This Whistleblower Protection Act is consistent with the other Federal protections for workers throughout this country, but these workers today on the Outer Continental Shelf have no protection at all with respect to their personal safety, and we are simply filling that gap and making sure that they will have that right.

Now, many companies—and I have talked to the CEOs of some of these companies—say, you know, we give you the right at any time to pull the switch, to shut down the job, to stop it, if you think it's unsafe. One company gives out a card. You get a card and you put the card down. It's sort of like in the World Cup—you get a time-out.

Do you know what the supervisors tell the employees that card is? A get-fired card. Play that card, get fired. So the company says play this card any time you want, but the supervisors make it clear what the pressure is.

That's why we need this whistleblower protection for the workers on the Outer Continental Shelf. I have to believe, given the concerns that are documented in the hearings of this Congress, that had these workers had that kind of protection, there would have been a far greater chance that they would have said, wait a minute, because they had concerns about the procedure as they started to withdraw from this drill site. They had concerns about the condition of the rig. They had concerns about the overriding of safety alarms. Yet we saw the explosion and the tragedy and the loss of life of these workers.

Let's do something in their memory that will protect their colleagues on the Outer Continental Shelf. Let's pass this bill with large bipartisan support.

In the name of these workers, these workers who fell into a gap in the protection laws of this Nation, let's fill that gap. Let's provide them the protection, and let's make their death not be in vain with respect to their coworkers.

I ask for support of this legislation.

I yield back the balance of my time.

The SPEAKER pro tempore (Mr. JACKSON of Illinois). All time for debate has expired.

Pursuant to House Resolution 1574, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. Pursuant to clause 1(c) of rule XIX, further consideration of H.R. 5851 is postponed.

□ 1310

GENERAL LEAVE

Mr. RAHALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous material on H.R. 3534.

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

There was no objection.

POINT OF ORDER

Mr. HASTINGS of Washington. Mr. Speaker, I raise a point of order.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. HASTINGS of Washington. Mr. Speaker, I raise a point of order against consideration of H.R. 3534 because it does not comply with clause 9(a) of rule XXI, because the committee report to accompany the measure does not contain a statement that this bill contains no congressional earmarks, limited tax benefits, or limited tariff benefits.

I would point the Speaker to page 125 of the accompanying report. The report contains a statement that H.R. 3435 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits. That is not the proposition that we are considering today. Today we are considering H.R. 3534, the Consolidated Land, Energy, and Aquatic Resources Act of 2009. However, the proposition identified in the committee report is H.R. 3435, a bill making supplemental appropriations for fiscal year 2009 for the Consumer Assistance to Recycle and Save program. As it happens, that measure was signed into law on August 7, 2009, and is Public Law 111–47. So it cannot be the proposition that we are considering today.

Clause 9(a) of rule XXI prohibits the consideration of ''a bill or joint resolution reported by a committee unless the report includes a statement that the proposition contains no congressional earmarks, limited tax benefits, or limited tariff benefits.'' The rule specifies ''the'' proposition, not ''a'' proposition. Thus the statement in the committee report fails to meet the test because it describes a proposition rather than the one which is the subject of the report.

Normally, clause 9(d) would preclude the Chair from even entertaining this point of order. However, it also specifies ''the'' proposition and not ''a'' proposition and thus is inapplicable in this case.

I would also note that the rule providing for consideration of H.R. 3534 specifically exempts clause 9 of rule