

fentanyl was present in 18 percent of opioid-related deaths in Massachusetts; but by 2016, fentanyl was present in a staggering 69 percent of the State's opioid-related deaths, resulting in 1,400 fentanyl-related deaths in the Commonwealth, a staggering number.

Although pharmaceutical fentanyl can be misused, most fentanyl deaths are linked to illicitly manufactured fentanyl and illicit versions of chemically similar compounds. The primary source of fentanyl is outside of the United States, in Mexico or China. The drug is smuggled in across the U.S. border or delivered via mail or express consignment couriers.

The INTERDICT Act will provide U.S. Customs and Border Protection with the latest in chemical screening devices to deploy across the United States to better detect and intercept fentanyl and other synthetic opioids.

Furthermore, this legislation will ensure that Customs and Border Protection has the resources, personnel, and facilities—including scientists available during all operational hours—to interpret screening test results from the field.

These high-tech devices will also protect law enforcement officers and their four-legged counterparts on the front lines from exposure to the deadly narcotic, which is so powerful that coming into contact with just a few grains can be fatal.

I would like to thank the chairman and ranking member of the Homeland Security Committee for their support, and I also want to thank Mr. FITZPATRICK for his partnership on this legislation, as well as our colleagues in the Senate, Senators MARKEY, RUBIO, BROWN, and CAPITO, for their bipartisan work on the Senate counterpart legislation.

□ 1715

The Federal Government must do its part to ensure our first responders have the tools they need in this greatest of public health fights. The INTERDICT Act provides important and powerful resources in this endeavor, and I urge its adoption.

Mr. FITZPATRICK. Mr. Speaker, I have no other speakers. If the gentleman from California has no other speakers, I am prepared to close.

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

Ms. BARRAGÁN. Mr. Speaker, I am prepared to close. Mr. Speaker, H.R. 2142 is an important piece of legislation that has strong bipartisan support. Passage of this bill will go a long way in our fight against opiates. As such, I encourage my colleagues to support H.R. 2142.

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

Mr. FITZPATRICK. Mr. Speaker, I once again urge my colleagues to support H.R. 2142, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by

the gentleman from Pennsylvania (Mr. FITZPATRICK) that the House suspend the rules and pass the bill, H.R. 2142, 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. FITZPATRICK. 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, further proceedings on this motion will be postponed.

CONGRESSIONAL SUBPOENA COMPLIANCE AND ENFORCEMENT ACT OF 2017

Mr. ISSA. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4010) to amend the Revised Statutes of the United States and title 28, United States Code, to enhance compliance with requests for information pursuant to legislative power under Article I of the Constitution, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 4010

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 “Congressional Subpoena Compliance and Enforcement Act of 2017”.

SEC. 2. ENFORCEMENT OF CONGRESSIONAL SUBPOENAS.

(a) IN GENERAL.—Chapter 85 of title 28, United States Code, is amended by inserting after section 1365 the following:

“§ 1365a. Congressional actions against subpoena recipients

“(a) SPECIAL RULES.—In any civil action brought by the United States House of Representatives, the United States Senate, or a committee or subcommittee thereof, against the recipient of a subpoena to secure declaratory, injunctive, or other relief as may be appropriate concerning the failure to comply with a subpoena issued by a congressional committee or subcommittee, the following rules shall apply:

“(1) The action shall be filed in a United States district court of competent jurisdiction.

“(2) It shall be the duty of the United States district courts, the United States courts of appeal, and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any such action and appeal.

“(3) If a three-judge court is expressly requested by the plaintiff in the initial pleading, the action shall be heard by a three-judge court convened pursuant to section 2284 of title 28, United States Code, and shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, of the entry of the final decision.

“(b) MONETARY PENALTIES IN CASES INVOLVING GOVERNMENT AGENCIES.—

“(1) The court may impose monetary penalties directly against the head of a Government agency or a component thereof held to

have willfully failed to comply with any part of a congressional subpoena.

“(2) No appropriated funds, funds provided from any accounts in the Treasury, funds derived from the collection of fees, or other Government funds shall be used to pay any monetary penalty imposed by the court pursuant to this section.

“(c) WAIVER OF PRIVILEGE.—Any assertion of a privilege or other ground for noncompliance (whether statutory, common law, or otherwise) asserted by the recipient of a congressional subpoena may be determined to have been waived as to any particular record withheld from production if the court finds that the recipient failed in a timely manner to comply with the requirement of section 105 of the Revised Statutes of the United States that it produce a privilege log with respect to such record.

“(d) DEFINITION.—For purposes of this section, the term ‘Government agency’ means an executive department listed in section 101 of title 5, United States Code, an independent establishment, commission, board, bureau, division, or office in the executive branch, or other agency of the Federal Government, including wholly or partly owned Government corporations.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 85 of title 28, United States Code, is amended by inserting after the item relating to section 1365 the following:

“1365a. Congressional actions against subpoena recipients.”.

SEC. 3. COMPLIANCE WITH CONGRESSIONAL SUBPOENAS.

(a) IN GENERAL.—Chapter seven of title II of the Revised Statutes of the United States (2 U.S.C. 191 et seq.) is amended by adding at the end the following:

“SEC. 105. RESPONSE TO CONGRESSIONAL SUBPOENAS.

“(a) SUBPOENA BY CONGRESSIONAL COMMITTEE.—Any recipient of any subpoena from a congressional committee or subcommittee shall appear and testify or produce records in a manner consistent with the subpoena and this section.

“(b) CONGRESSIONAL SUBPOENAS FOR RECORDS.—

“(1) IDENTIFICATION OF RECORDS WITHHELD.—In the case of a record that is withheld, in whole or in part, by the subpoena recipient, the subpoena recipient shall provide a log containing the following information concerning such record:

“(A) An express assertion and description of the legal basis asserted for withholding the record.

“(B) The type of record.

“(C) The general subject matter.

“(D) The date, author, and addressee.

“(E) The relationship of the author and addressee to each other.

“(F) The custodian of the record.

“(G) Any other descriptive information that may be produced or disclosed regarding the record that will enable the congressional committee or subcommittee issuing the subpoena to assess the legal basis asserted for withholding the record.

“(2) MISSING RECORDS.—In the case of any record responsive to the subpoena submitted under paragraph (1) that was, but no longer is, in the possession, custody, or control of the subpoena recipient, the subpoena recipient shall identify the record (including the date, author, subject, and each recipient of the record) and explain the circumstances under which the record ceased to be in the possession, custody, or control of the subpoena recipient.

“(3) ELECTRONIC RECORDS.—Electronic records shall be produced pursuant to this subsection in their native or original file format. Electronic records shall be delivered on

a storage device (such as compact disk, memory stick, or thumb drive) and, to the extent feasible, shall be organized, identified, and indexed electronically and shall include an index describing the contents of the production.

“(c) DEFINITIONS.—For purposes of this section the term ‘record’ includes any books, papers, documents, data, or other objects requested in a subpoena issued by a congressional committee or subcommittee.”.

(b) CLERICAL AMENDMENT.—The table of contents for chapter 7 of title II of the Revised Statutes of the United States is amended by adding at the end the following: “105. Response to congressional subpoenas.”.

SEC. 4. RULE OF CONSTRUCTION.

Nothing in this Act shall be interpreted to diminish Congress’ inherent authority or previously established methods and practices for enforcing compliance with congressional subpoenas, nor shall anything in this Act be interpreted to establish Congress’ acceptance of any asserted privilege or other legal basis for noncompliance with a congressional subpoena.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. ISSA) and the gentleman from New York (Mr. NADLER) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. ISSA. 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. 4010, currently under consideration.

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

There was no objection.

Mr. ISSA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill comes to you, having been unanimously voted on a recorded vote out of committee, but it has been a long time in coming and it has a long history of its need. Both under Chairman CONYERS, during the last years of the Bush administration, and under my chairmanship on the Oversight and Government Reform Committee, we discovered a flaw in Congress’ subpoena power.

Congress has, and has always had, and has been supported all the way by the Supreme Court, the need to do oversight. With that, we issued subpoenas. The enforcement of those subpoenas has come into conflict over the last several years, both during Mr. CONYERS’ chairmanship when he subpoenaed Harriet Miers to appear, and during my time when I subpoenaed records by the Department of Justice. In both cases, the administrations decided that it was appropriate to question the standing and to delay.

Those delays were unfair to the body and unfair to the American people because it denied them in any reasonable period of time the effect of factfinding. This is not a partisan issue. It is, in fact, an issue that has already been decided for the American people. Under the Freedom of Information Act, if you do not receive documents within a rea-

sonable period of time, you have the right to go to court. You have standing as a private citizen or an interest group, and the court will decide what documents are appropriate for you to receive.

Yet this very question that was not once, but twice, defended by two different administrations of two different parties calls into question the ability in a timely fashion for Congress, the House or the Senate, to receive the information or the appearance of a witness it needs. We do not seek any new power under this legislation. We only seek an expeditious review by a Federal judge of a claim, either for the appearance of an individual or for documents appropriate to our oversight.

For that reason, I am pleased that both Republicans and Democrats within the committee saw fit to unanimously support this legislation. We believe that it is measured and it is also time.

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

Mr. NADLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 4010, the Congressional Subpoena Compliance and Enforcement Act of 2017. My support of this legislation is tied to my view of our committee’s responsibility to conduct oversight of the executive branch.

Nearly a century ago in *McGrain v. Daugherty*, the United States Supreme Court framed that responsibility this way: “A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who possess it.”

In other words, it is our responsibility to ask for the information we require to do our jobs effectively, and the Constitution empowers us to enforce those requests if we are at first denied. We should be very clear on this point. Congress does not require a statute in order to enforce its subpoenas in Federal court.

We know this, of course, because in 2008, the House Judiciary Committee went to court to defend that authority. Ruling in favor of the committee, the court held that the Bush administration’s claim of absolute immunity from our process “is entirely unsupported by existing case law.”

In effect, both government officials and private individuals have a legal obligation to comply with the duly issued congressional subpoena whether or not the bill before us today is enacted into law, still this legislation is useful as a means to codify certain practices and to expedite enforcement of subpoenas in Federal court.

It also puts the House on equal footing with the Senate, which has had a statute in place since 1978, allowing that body to enforce at least some of its subpoenas in Federal court.

Mr. Speaker, I thank Chairman GOODLATTE for working with us to make sure that we strike the right balance. This bill both protects our existing authority and mitigates many concerns about abusive subpoena power by a runaway committee. I also want to thank the gentleman from California (Mr. ISSA) for his leadership on this issue.

We often disagree about the issues we should prioritize for oversight, but I suspect that we stand together on the importance of oversight, both to our committee and to the Congress as a whole.

Mr. Speaker, I ask that my colleagues support the measure, and I reserve the balance of my time.

Mr. ISSA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to further echo the gentleman from New York’s comments. Mr. NADLER is right. We will often, almost unanimously, find a way to disagree on what to look into at various times as a body. But whether it is a Democratic chairman or Republican chairman looking into something, whether it is a Republican administration or a Democratic administration, it is clear that we must, in fact, if a subpoena is issued, be able to enforce it in a timely fashion.

Under this legislation, it has a number of safeguards, but the most important one is the three-judge panel that will review these, followed by an expedited process at the U.S. Supreme Court.

I might note, the interesting history of the two cases Mr. NADLER and I are talking about is one in which a Democratic chairman enforced a subpoena, but had to go to a recently appointed Republican judge, who, in a fairly reasonable period of time, reached the conclusion that: one, the committee had standing, and the House had standing and; two, that it was really without merit for the administration—then the Bush administration—to claim this immunity, this newfound immunity.

Similarly, in a slightly longer period of time, but coincidentally, a Republican chairman went before a freshly minted appointee of the very President who was refusing to comply, and she reached the decision that the documents were unfairly withheld and ordered them released.

So I think the interesting thing to all of us is the independence of the judiciary has worked not once but twice. We only want to codify it in a way that would cause the judiciary to have that opportunity in a timely fashion, and for the people’s right to know to be recognized in that same expeditious fashion.

As Mr. NADLER said, the Senate has, for a long time, had a portion of what we are doing here today. It is an oddity that two coequals have not had the same ability during those many years since the late 1970s.

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

Mr. NADLER. Mr. Speaker, I yield myself such time as I may consume.

I want to share one last thought before closing. In our markup of this bill, the gentleman from California (Mr. SWALWELL) had this to say about a recent experience in the Intelligence Committee:

"We had interviewed a witness just 2 weeks ago with respect to our Russia interference investigation. . . .

"After the interview, he gave a public statement . . . and said that he had withheld information from the committee because he was not under subpoena.

"And he also stated that he felt like he had certain privileges to assert that allowed him to withhold this information.

"And so I saw right there . . . that even under a subpoena, individuals believe—some individuals believe—that without necessarily having a judicial or legal basis for privilege that they could just assert it.

"And I believe that is because the public is starting to perceive that our subpoena power does not have the weight that it should."

Wherever the Intelligence Committee's investigation lands, Mr. Speaker, we have a great deal of work to do. Given some of our current challenges, it is more important than ever for the House to conduct substantive oversight of the executive branch. This bill contributes to that effort, and I urge my colleagues to support it.

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

Mr. ISSA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I, too, urge the House to pass this bill, move it to the Senate in a timely fashion, and create an equal standing between the House and the Senate as to enforcement of its subpoenas.

I join with my colleague, the gentleman from California (Mr. SWALWELL), in the frustration that individuals often feel that they have privileges in a vague sense that are not to be asserted, but simply not to occur.

In the last administration, we have even had individuals claim that they basically lied as little as they needed to, to protect some question of a classified nature. These kinds of claims, in addition to the law enforcement sensitive, confidential, and other security clearance claims, which are not codified in statute, yet often are the reason for delay or outright refusal to deliver documents, flies in the face of the ability—sometimes behind closed doors, sometimes in public—for Congress' ability to conduct oversight. I look forward to this legislation becoming law, and I think I will close with just one more item.

Mr. NADLER and I have served together as chairman and ranking member for a number of years. We share something which is the many years that we have been here in Congress, we have seen the frustration of both par-

ties trying to do their job against another branch that often takes advantage of the natural rivalry between two different parties.

This legislation is designed to reduce that, to reduce the ability for the executive branch or other outside groups to, if you will, take advantage of the natural division between the two of us. After so many years of being here, the one thing I have learned is that to diminish the House's and the Senate's ability to represent the American people is to diminish our Republic.

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

Mr. GOODLATTE. Mr. Speaker, although the power of Congress to investigate is not set forth in any particular clause in the Constitution, congressional investigations trace their roots back to the earliest days of our Republic. In fact, what is thought to be the first congressional investigation occurred in 1792, when the House appointed a select committee to investigate the massacre of American troops under the command of Major General Arthur St. Clair. The resolution authorizing that investigation stated that the committee shall "be empowered to call for such persons, papers, and records, as may be necessary to assist their inquiries."

Upon learning of the investigation, President Washington assembled his cabinet to seek their counsel. His cabinet, which included Thomas Jefferson and Alexander Hamilton, unanimously concluded that the House had every right to conduct its inquiry and request papers from the President. President Washington directed that the relevant papers be provided to the House and the War and Treasury Departments provided voluminous records to the committee.

Unfortunately, not all congressional investigations are met with the cooperation the first investigation received. Rather, sometimes Congress and its committees must rely on another inherent power derived from the Constitution to investigate effectively—the congressional subpoena power.

As the Supreme Court has observed, although "there is no [constitutional] provision expressly investing either house with the power to make investigations and exact testimony . . . the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function. . . . Experience has taught that mere requests for information often are unavailing . . . so some means of compulsion are essential to obtain what is needed."

That means of compulsion is often a subpoena issued by a congressional committee backstopped by a civil action filed in federal district court. In recent years, the House and its committees have pursued two such civil actions, including one filed by this Committee, to enforce compliance with congressional subpoenas.

The legislation we are considering today, the Congressional Subpoena Compliance and Enforcement Act, codifies and strengthens the existing civil enforcement mechanisms thereby reinforcing the powers granted Congress in Article I of the Constitution. This legislation creates a statutory framework for compliance with and enforcement of congressional subpoenas through a few targeted changes to federal law.

First, the bill puts in place a statutory requirement that recipients comply with congressional subpoenas. Second, the bill statutorily requires subpoena recipients to provide a congressional committee with a privilege log if they assert a legal privilege as a reason for withholding subpoenaed materials. Finally, the bill provides that congressional subpoena enforcement cases are to receive expedited review in the federal courts and that a congressional committee may request that a subpoena enforcement case be heard by a three-judge panel of the district court, with direct appeal to the Supreme Court.

While it is true that some of what is addressed by the bill is currently covered through negotiation with subpoena recipients and is recognized in the precedents of courts in the D.C. Circuit, the current statutory requirements related to compliance with and enforcement of a committee subpoena are limited. Indeed, the existing civil subpoena enforcement statute only covers the Senate and does not apply to Senate subpoenas issued to the Executive Branch. It is time that we put in place a statutorily created, expedited civil enforcement mechanism for congressional subpoenas. Relying on the existing framework to enforce congressional subpoenas has proved to be an inadequate means of protecting congressional prerogatives.

I thank Mr. ISSA for introducing this legislation and urge my colleagues on both sides of the aisle to support it. This bill is a necessary step to strengthen Congress's ability to exercise its Article I legislative powers.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. ISSA) that the House suspend the rules and pass the bill, H.R. 4010, 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.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until approximately 6:30 p.m. today.

Accordingly (at 5 o'clock and 29 minutes p.m.), the House stood in recess.

□ 1830

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. DONOVAN) at 6 o'clock and 30 minutes p.m.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on questions previously postponed.

Votes will be taken in the following order:

The motion to suspend the rules and pass H.R. 3551;