

Mr. SCOTT of Virginia: 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.

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This memorandum was superseded in 2003 by the Thompson memorandum.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.