



The Daily Whip

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THURSDAY, OCTOBER 27, 2005

House Meets At...	Last Vote Predicted At...
10:00 a.m.: Legislative Business Ten "One Minutes" Per Side	5:00 p.m.

FLOOR SCHEDULE AND BILL SUMMARY

H.Res. 508 - Rule providing for consideration of H.R. 420 - Lawsuit Abuse Reduction Act of 2005 (Rep. Gingrey – Rules). The Rules Committee has recommended a restrictive rule that provides one hour of general debate, provides one motion to recommit with or without instructions, and makes in order two amendments: a Sensenbrenner manager's amendment and an amendment in the nature of a substitute to be offered by Reps. Schiff and Kind.

Motion to go to Conference on H.R. 3057 - Department of State, Foreign Operations, and Related Programs Appropriations Act for FY06. Democratic Motion to Instruct.

H.J.Res. 65 – Disapproving recommendations of the Defense Base Closure & Realignment Commission (Rep. LaHood – Armed Services) (Privileged Resolution – Two Hours of Debate). The Joint Resolution's resolved clause states that "Congress disapproves the recommendations of the Defense Base Closure and Realignment Commission as submitted by the President on September 15, 2005." HJRes65 was adversely reported by the Armed Services Committee (43-14 vote) on September 29th.

H.R. 420 - Lawsuit Reduction Act (Rep. Smith (TX) - Judiciary) (Subject to a Rule). This bill imposes mandatory sanctions on improper pleadings and motions under Rule 11 of the Federal Rules of Civil Procedure, extends Rule 11's application to state court cases, and restricts the judicial fora in which consumers can file personal injury claims. HR420 requires a mandatory sanctions regime that would apply to civil rights cases and will have a significant, adverse impact on the ability of civil rights plaintiffs to seek recourse in our courts. In addition, this bill only permits suits to be brought where the defendant's principal place of business is located, which will benefit foreign corporate defendants at the expense of their domestic counterparts, and will skew the playing field against injured victims. This bill is similar to HR4571, which was adopted by the House last year despite overwhelming Democratic opposition (only 16 Democrats votes yes). HR420 was reported out of the Judiciary Committee on a party-line vote (19-11) on June 14th.

The restrictive rule makes in order the following two amendments:

- **Sensenbrenner Manager's Amendment (10 minutes).** To include provisions imposing sanctions for the destruction of relevant documents in a pending Federal court proceeding; provisions for setting standards for a court's determination that certain court records should be sealed; and provisions providing for a presumption of a Rule 11 violation when the same issue is repeatedly relitigated. It also clarifies that, in the anti-forum shopping provisions, if there is no State court in the county in which the injury occurred, the case can be brought in the nearest county where a court of general jurisdiction is located. The manager's amendment also makes clear that it does not affect personal injury claims that Federal bankruptcy law requires be heard in a Federal bankruptcy court.
- **Schiff/Kind Democratic Substitute (40 minutes).** The substitute is an effective solution to the frivolous lawsuit problem:

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- **Democrats would impose “Three Strikes and You’re Out” for frivolous pleadings** (1st violation - required payment of costs and attorneys fees; 2nd violation - add that attorney held in contempt and monetary fine; 3rd violation - add referral to state bar for disciplinary proceedings, including disbarment). Advantages over Republican Bill: tougher overall regime than the Republican bill; applies to any court, not just the federal district court in which the Rule 11 violation occurred; allows for disbarment; clear and specific civil rights carve out to prevent a chilling effect on these actions.
- **Democrats impose mandatory “Three Strikes and You’re Out” sanctions on discovery violations** (1st violation - required payment of costs and attorneys fees; 2nd violation - add that attorney held in contempt and monetary fine; 3rd violation - add referral to state bar for disciplinary proceedings, including disbarment). Advantages over Republican Bill: tougher overall regime than the Republican bill which only imposes mandatory payment of costs and fees.
- **Democrats would place ban on concealment of unlawful conduct** by requiring that court records may not be sealed unless the court first finds that such sealing is justified. This will help ensure that information on dangerous products and actions is made available to the public.
- **Democrats enhance sanctions for document destruction** by providing that parties who destroy documents in connection with civil proceedings shall be punished with mandatory civil sanctions, held in contempt of court, and referred to state bar for disciplinary proceedings.
- **Democrats ensure that corporate traitors and foreign corporations can be sued in the United States** by allowing suits in any federal court or state court in the state in which the corporation does business.

Democrats are urged to VOTE NO on Final Passage of HR420.

Postponed Suspension Votes (2 bills):

- 1) H.R. 3945** - Hurricane Katrina Financial Services Relief Act of 2005 (*Rep. Baker - Financial Services*)
- 2) H.Res. 368** - Congratulating the State of Israel on the election of Ambassador Dan Gillerman as Vice-President of the 60th United Nations General Assembly (*Rep. Schiff - International Relations*)

TOMORROW’S OUTLOOK

The GOP Leadership has announced the following schedule: on Friday, the House will meet at 9:00 a.m. for legislative business. The House is expected to consider: **Conference Report on H.R. 2744 – Agriculture Appropriations Bill for FY06**; and may consider the **Conference Report on H.R. 2419 - Energy and Water Development Appropriations Act for FY06**.

Daily Quote...

“If elections for the House of Representatives were held today, 47% of those polled say they would vote for a Democratic candidate, 33% say they would vote for a Republican candidate and 13% say they would vote for another or Independent candidate. Similarly, if elections for the Senate were held today, 47% would vote for the Democratic candidate, 34% would vote for the Republican candidate and 12% would vote for another.

- A story in the *Wall Street Journal* today regarding a new Harris Interactive poll