



**ILLINOIS STATE
BAR ASSOCIATION**

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July 19, 2007

The Honorable Luis V. Gutierrez
U.S. House of Representatives
Washington, D.C. 20515

In re: H.R. 3013, the "Attorney-Client Privilege Protection Act of 2007"

Dear Representative Gutierrez:

The Illinois State Bar Association respectfully requests that you support H.R. 3013, the "Attorney-Client Privilege Protection Act of 2007," which is scheduled for markup by the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security on July 24. It is our understanding that following the Subcommittee markup, the full House Judiciary Committee plans to mark-up the bill, possibly as soon as July 25.

H.R. 3013 is a bipartisan bill supported by a diverse coalition of business and legal groups, including the American Bar Association, U.S. Chamber of Commerce, ACLU, Business Roundtable, National Association of Criminal Defense Lawyers, National Association of Manufacturers, and others. Its sponsors include Representatives Scott, Forbes, Coble, Feeney, and Roskam.

H.R. 3013 overturns current DOJ policy that is fundamentally unfair, which is based on and known as the "McNulty Memorandum."

H.R. 3013 would prohibit the Department of Justice or any other federal agency from demanding that a corporation or any other entity waive its attorney-client privilege or work-product protections as a condition for receiving cooperation credit during an investigation. The bill also would prohibit any federal agency from pressuring companies to take certain punitive actions against their employees in return for cooperation credit, including not paying their attorney's fees or firing them for refusing to waive their Fifth Amendment rights in response to government demands for information.

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The government should not be allowed to force corporations to waive these privileges because it undermines the companies' internal-compliance programs.

Lawyers play a key role in helping companies and their employees comply with the law. To fulfill this role, a company's officers, directors, and employees must trust that they can provide the company's lawyers with all of the relevant information necessary to do this. By pressuring companies to waive these protections, it discourages company personnel from consulting with the company's lawyers, which impedes the lawyers' ability to thoroughly investigate allegations of wrongdoing and promote compliance with the law.

It also is unfair to allow the government to demand that companies take punitive action against their employees and violate their legal rights during an investigation. Allowing the government to force companies to punish employees long before any guilt has been adjudicated directly attacks the presumption of innocence guaranteed by the Constitution of the United States.

Nothing in this bill interferes with law enforcement's existing powers to investigate allegations of wrongdoing. Clear precedent exists for Congress to take this kind of corrective action to override improper DOJ policy. For example, the McDade-Murtha law was enacted in 1998 to require federal prosecutors to comply with the ethical rules imposed on all other lawyers by the supreme courts of each state.

We appreciate your courtesy in considering our views. For a detailed analysis of the McNulty Memorandum and H.R. 3013, please see the American Bar Association's March 8, 2007 statement to the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security, available online at http://www.abanet.org/poladv/letters/attyclient/2007mar08_privwaivh_t.pdf

Thank you.

Respectfully,



JIM COVINGTON