

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SCHIFF OF CALIFORNIA, OR HIS DESIGNEE, DEBATABLE FOR 40 MINUTES:

2

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
 TO H.R. 420, AS REPORTED
 OFFERED BY MR. SCHIFF OF CALIFORNIA AND
 MR. KIND OF WISCONSIN**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. "THREE STRIKES AND YOU'RE OUT" FOR AT-**
 2 **TORNEYS WHO FILE FRIVOLOUS LAWSUITS.**

3 (a) **SIGNATURE REQUIRED.**—Every pleading, written
 4 motion, and other paper in any action shall be signed by
 5 at least 1 attorney of record in the attorney's individual
 6 name, or, if the party is not represented by an attorney,
 7 shall be signed by the party. Each paper shall state the
 8 signer's address and telephone number, if any. An un-
 9 signed paper shall be stricken unless omission of the sig-
 10 nature is corrected promptly after being called to the at-
 11 tention of the attorney or party.

12 (b) **CERTIFICATE OF MERIT.**—By presenting to the
 13 court (whether by signing, filing, submitting, or later ad-
 14 vocating) a pleading, written motion, or other paper, an
 15 attorney or unrepresented party is certifying that to the
 16 best of the person's knowledge, information and belief,



1 formed after an inquiry reasonable under the
2 circumstances—

3 (1) it is not being presented for any improper
4 purpose, such as to harass or to cause unnecessary
5 delay or needless increase in the cost of litigation;

6 (2) the claims, defenses, and other legal conten-
7 tions therein are warranted by existing law or by a
8 non frivolous argument for the extension, modifica-
9 tion, or reversal of existing law or the establishment
10 of new law; and

11 (3) the allegations and other factual contentions
12 have evidentiary support or, if specifically so identi-
13 fied, are reasonable based on a lack of information
14 or belief.

15 (c) MANDATORY SANCTIONS.—

16 (1) FIRST VIOLATION.—If, after notice and a
17 reasonable opportunity to respond, a court, upon
18 motion or upon its own initiative, determines that
19 subsection (b) has been violated, the court shall find
20 each attorney or party in violation in contempt of
21 court and shall require the payment of costs and at-
22 torneys fees. The court may also impose additional
23 appropriate sanctions, such as striking the plead-
24 ings, dismissing the suit, and sanctions plus interest,
25 upon the person in violation, or upon both such per-



1 son and such person's attorney or client (as the case
2 may be).

3 (2) SECOND VIOLATION.—If, after notice and a
4 reasonable opportunity to respond, a court, upon
5 motion or upon its own initiative, determines that
6 subsection (b) has been violated and that the attor-
7 ney or party with respect to which the determination
8 was made has committed one previous violation of
9 subsection (b) before this or any other court, the
10 court shall find each such attorney or party in con-
11 tempt of court and shall require the payment of
12 costs and attorneys fees, and require such person in
13 violation (or both such person and such person's at-
14 torney or client (as the case may be)) to pay a mon-
15 etary fine. The court may also impose additional ap-
16 propriate sanctions, such as striking the pleadings,
17 dismissing the suit and sanctions plus interest, upon
18 such person in violation, or upon both such person
19 and such person's attorney or client (as the case
20 may be).

21 (3) THIRD AND SUBSEQUENT VIOLATIONS.—If,
22 after notice and a reasonable opportunity to re-
23 spond, a court, upon motion or upon its own initia-
24 tive, determines that subsection (b) has been vio-
25 lated and that the attorney or party with respect to



1 which the determination was made has committed
 2 more than one previous violation of subsection (b)
 3 before this or any other court, the court shall find
 4 each such attorney or party in contempt of court,
 5 refer each such attorney to one or more appropriate
 6 State bar associations for disciplinary proceedings
 7 (including suspension of that attorney from the
 8 practice of law for one year or disbarment), require
 9 the payment of costs and attorneys fees, and require
 10 such person in violation (or both such person and
 11 such person's attorney, or client (as the case may
 12 be)) to pay a monetary fine. The court may also im-
 13 pose additional appropriate sanctions, such as strik-
 14 ing the pleadings, dismissing the suit, and sanctions
 15 plus interest, upon such person in violation, or upon
 16 both such person and such person's attorney or cli-
 17 ent (as the case may be).

18 (4) APPEAL; STAY.—An attorney has the right
 19 to appeal a sanction under this subsection. While
 20 such an appeal is pending, the sanction shall be
 21 stayed.

22 (5) NOT APPLICABLE TO CIVIL RIGHTS
 23 CLAIMS.—Notwithstanding subsection (d), this sub-
 24 section does not apply to an action or claim arising
 25 out of Federal, State, or local civil rights law or any



1 other Federal, State, or local law providing protec-
2 tion from discrimination.

3 (d) APPLICABILITY.—Except as provided in sub-
4 section (c)(5), this section applies to any paper filed on
5 or after the date of the enactment of this Act in—

6 (1) any action in Federal court; and

7 (2) any action in State court, if the court, upon
8 motion or upon its own initiative, determines that
9 the action affects interstate commerce.

10 **SEC. 2. “THREE STRIKES AND YOU’RE OUT” FOR ATTOR-**
11 **NEYS WHO ENGAGE IN FRIVOLOUS CONDUCT**
12 **DURING DISCOVERY.**

13 (a) SIGNATURES REQUIRED ON DISCLOSURES.—

14 Every disclosure made pursuant to subdivision (a)(1) or
15 subdivision (a)(3) of Rule 26 of the Federal Rules of Civil
16 Procedure or any comparable State rule shall be signed
17 by at least one attorney of record in the attorney’s indi-
18 vidual name, whose address shall be stated. An unrepre-
19 sented party shall sign the disclosure and state the party’s
20 address. The signature of the attorney or party constitutes
21 a certification that to the best of the signer’s knowledge,
22 information, and belief, formed after a reasonable inquiry,
23 the disclosure is complete and correct as of the time it
24 is made.

25 (b) SIGNATURES REQUIRED ON DISCOVERY.—



1 (1) IN GENERAL.—Every discovery request, re-
2 sponse, or objection made by a party represented by
3 an attorney shall be signed by at least one attorney
4 of record in the attorney's individual name, whose
5 address shall be stated. An unrepresented party
6 shall sign the request, response, or objection and
7 state the party's address. The signature of the attor-
8 ney or party constitutes a certification that to the
9 best of the signer's knowledge, information, and be-
10 lief, formed after a reasonable inquiry, the request,
11 response, or objection is:

12 (A) consistent with the applicable rules of
13 civil procedure and warranted by existing law or
14 a good faith argument for the extension, modi-
15 fication, or reversal of existing law;

16 (B) not interposed for any improper pur-
17 pose, such as to harass or to cause unnecessary
18 delay or needless increase in the cost of litiga-
19 tion; and

20 (C) not unreasonable or unduly burden-
21 some or expensive, given the needs of the case,
22 the discovery already had in the case, the
23 amount in controversy, and the importance of
24 the issues at stake in the litigation.



1 (2) STRICKEN.—If a request, response, or ob-
2 jection is not signed, it shall be stricken unless it is
3 signed promptly after the omission is called to the
4 attention of the party making the request, response,
5 or objection, and a party shall not be obligated to
6 take any action with respect to it until it is signed.

7 (c) MANDATORY SANCTIONS.—

8 (1) FIRST VIOLATION.—If without substantial
9 justification a certification is made in violation of
10 this section, the court, upon motion or upon its own
11 initiative, shall find each attorney or party in con-
12 tempt of court and shall require the payment of
13 costs and attorneys fees. The court may also impose
14 additional sanctions, such as imposing sanctions plus
15 interest or imposing a fine upon the person in viola-
16 tion, or upon such person and such person's attor-
17 ney or client (as the case may be).

18 (2) SECOND VIOLATION.—If without substantial
19 justification a certification is made in violation of
20 this section and that the attorney or party with re-
21 spect to which the determination is made has com-
22 mitted one previous violation of this section before
23 this or any other court, the court, upon motion or
24 upon its own initiative, shall find each attorney or
25 party in contempt of court and shall require the pay-



1 ment of costs and attorneys fees, and require such
2 person in violation (or both such person and such
3 person's attorney or client (as the case may be)) to
4 pay a monetary fine. The court may also impose ad-
5 ditional sanctions upon such person in violation, or
6 upon both such person and such person's attorney or
7 client (as the case may be).

8 (3) THIRD AND SUBSEQUENT VIOLATIONS.—If
9 without substantial justification a certification is
10 made in violation of this section and that the attor-
11 ney or party with respect to which the determination
12 is made has committed more than one previous vio-
13 lation of this section before this or any other court,
14 the court, upon motion or upon its own initiative,
15 shall find each attorney or party in contempt of
16 court, shall require the payment of costs and attor-
17 neys fees, require such person in violation (or both
18 such person and such person's attorney or client (as
19 the case may be)) to pay a monetary fine, and refer
20 such attorney to one or more appropriate State bar
21 associations for disciplinary proceedings (including
22 the suspension of that attorney from the practice of
23 law for one year or disbarment). The court may also
24 impose additional sanctions upon such person in vio-



1 lation, or upon both such person and such person's
2 attorney or client (as the case may be).

3 (4) APPEAL; STAY.—An attorney has the right
4 to appeal a sanction under this subsection. While
5 such an appeal is pending, the sanction shall be
6 stayed.

7 (d) APPLICABILITY.—This section applies to any
8 paper filed on or after the date of the enactment of this
9 Act in—

10 (1) any action in Federal court; and

11 (2) any action in State court, if the court, upon
12 motion or upon its own initiative, determines that
13 the action affects interstate commerce.

14 **SEC. 3. BAN ON CONCEALMENT OF UNLAWFUL CONDUCT.**

15 (a) IN GENERAL.—In any Rule 11 of the Federal
16 Rules of Civil Procedure proceeding, a court may not order
17 that a court record not be disclosed unless the court makes
18 a finding of fact that identifies the interest that justifies
19 the order and determines that the interest outweighs any
20 interest in the public health and safety that the court de-
21 termines would be served by disclosing the court record.

22 (b) APPLICABILITY.—This section applies to any
23 record formally filed with the court, but shall not include
24 any records subject to—



1 (1) the attorney-client privilege or any other
2 privilege recognized under Federal or State law that
3 grants the right to prevent disclosure of certain in-
4 formation unless the privilege has been waived; or

5 (2) applicable State or Federal laws that pro-
6 tect the confidentiality of crime victims, including
7 victims of sexual abuse.

8 **SEC. 4. ENHANCED SANCTIONS FOR DOCUMENT DESTRUC-**
9 **TION.**

10 Whoever willfully and intentionally influences, ob-
11 structs, or impedes, or attempts to influence, or obstruct,
12 or impede, a pending Federal court proceeding through
13 the willful and intentional destruction of documents
14 sought pursuant to the rules of such Federal court pro-
15 ceeding and highly relevant to that proceeding—

16 (1) shall be punished with mandatory civil sanc-
17 tions of a degree commensurate with the civil sanc-
18 tions available under Rule 11 of the Federal Rules
19 of Civil Procedure, in addition to any other civil
20 sanctions that otherwise apply; and

21 (2) shall be held in contempt of court and, if
22 an attorney, referred to one or more appropriate
23 State bar associations for disciplinary proceedings.



1 **SEC. 5. ABILITY TO SUE CORPORATE FINANCIAL TRAITORS**
2 **AND FOREIGN CORPORATIONS.**

3 (a) **GENERAL RULE.**—In any civil action for injury
4 that was sustained in the United States and that relates
5 to the acts of a foreign business, the Federal court or
6 State court in which such action is brought shall have ju-
7 risdiction over the foreign business if—

8 (1) the business purposefully availed itself of
9 the privilege of doing business in the United States
10 or that State;

11 (2) the cause of action arises from the
12 business's activities in the United States or that
13 State; and

14 (3) the exercise of jurisdiction would be fair
15 and reasonable.

16 (b) **ADMISSION.**—If in any civil action a foreign busi-
17 ness involved in such action fails to furnish any testimony,
18 document, or other thing upon a duly issued discovery
19 order by the court in such action, such failure shall be
20 deemed an admission of any fact with respect to which
21 the discovery order relates.

22 (c) **PROCESS.**—Process in an action described in sub-
23 section (a) may be served wherever the foreign business
24 is located, has an agent, or transacts business.

25 (d) **DEFINITION.**—In this section, the term “foreign
26 business” means a business that has its principal place

1 of business, and substantial business operations, outside
2 the United States and its Territories.

3 **SEC. 6. PRESUMPTION OF RULE 11 VIOLATION FOR RE-**
4 **PEATEDLY RELITIGATING SAME ISSUE.**

5 (a) **IN GENERAL.**—Whenever a party presents to a
6 Federal court a pleading, written motion, or other paper,
7 that includes a claim or defense that the party has already
8 litigated and lost on the merits in any forum in final deci-
9 sions not subject to appeal on 3 consecutive occasions, and
10 the claim or defense involves the same plaintiff and the
11 same defendant, there shall be a rebuttable presumption
12 that the presentation of such paper is in violation of Rule
13 11 of the Federal Rules of Civil Procedure.

14 (b) **EXCEPTION.**—Subsection (a) does not apply to a
15 claim arising under the Constitution of the United States.

