EXTENSIONS OF REMARKS

A TRIBUTE TO HONOR THE LIFE OF JOSEPH ANTHONY STEWART

HON. JOHN A. BOEHNER

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 12, 2013

Mr. BOEHNER. Mr. Speaker, I rise today with my colleague from California, Ms. ESHOO, to honor the memory of Joseph A. Stewart, who passed away on December 6, 2013, after a full and enriching life looking out for others.

Joseph was born on January 20, 1941, in Newark, New Jersey. He attended Seton Hall University, earning a degree in classical languages. He received his MA and PhD in human relations and social policy planning from New York University.

His concern for the sick spurred a prolific career in health care that spanned more than 40 years, taking him everywhere from large academic medical centers to community nonprofit hospitals.

The first administrator of Cooperative Care at New York University Medical Center, Joseph went on to hold academic appointments at Carnegie Mellon University and the University of Southern California.

Joseph was also actively involved in his local parish, where he mentored new ministers.

Monsignor Scott Daugherty of St. Anne and Holy Cross Catholic Church in Porterville, California, said Joseph ''was a great man, greatly respected by many.''

Similarly, Deacon Jim Deiterle said, ''He was a great man and had a great outlook on life. . . . He was so committed, so enthused with what he was talking about.''

Porterville Unified School District Superintendent John Snavely said of Joseph, ''What I admired about him is how quickly and how completely he embraced the community.''

Indeed, Joseph Stewart was a man who shared and spread every one of his passions—be it faith, education, or health care. He didn't just do a kindness for someone; he connected with them. He moved people.

Joseph will be remembered as a friend, an educator, a mentor, and a leader. He will also be remembered as a brother to Michael, and a father to David, Brian, Charles, and Catherine.

David serves as Policy Director in the Office of the Speaker, and has been a trusted advisor of mine for the last five years. Charles worked for the Senate Commerce Committee before assuming his current position as Communications Director for Ms. Eshoo nearly two years ago.

Both of these gentlemen are held in high regard by colleagues and members of this body. Their outstanding service to this institution makes clear that Joseph's legacy is in the best of hands.

To David and Charles, and to all their loved ones, we offer our prayers and those of the entire House of Representatives.

Let us also offer our deep appreciation for the service of Joseph Anthony Stewart, and for all the good he did in a life of purpose and accomplishment.

INNOVATION ACT

SPEECH OF

HON. SUZANNE BONAMICI

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 12, 2013

The House in Committee of the Whole House on the state of the Union had under consideration the bill (H.R. 3309) to amend title 35, United States Code, and the Leahy-Smith America Invents Act to make improvements and technical corrections, and for other purposes:

Ms. BONAMICI. Mr. Chairman, I rise today to express my support for the Innovation Act, H.R. 3309, but also to note my concerns about provisions of the bill that could undermine patent holders or make it more difficult for them to assert their rights. I hope a conference committee or the Senate will address and resolve these issues before the bill reaches the President's desk.

Patent litigation reform is important and necessary. Over the last few decades we have seen the rise of entities that are created to make profits by extracting payments from small businesses through the assertion of vague allegations of patent infringement. These so-called ''patent trolls,'' also known as ''patent assertion entities'' (PAEs) buy patents on products they didn't invent and don't manufacture and then threaten and sue innovators who are actually contributing to our economy and creating jobs.

This scheme preys on the unwillingness or inability of small businesses to fight expensive lawsuits in court. PAEs know they can simply send a demand letter including a threat to sue, and regardless of the validity of the claim, a small business more often than not will pay the PAE to make the lawsuit or potential lawsuit go away. Often there is no examination of the validity of the patent or the claim. In fact, in many cases, the business never knows who is threatening or the nature of the alleged infringement. By some estimates this practice is costing American companies $29 billion each year. Something needs to be done.

This bill takes important steps to protect the rights of entrepreneurs and small businesses if litigation is filed or threatened. The Innovation Act introduces a heightened pleading standard that requires patent holders to identify specifically the patent claims they are asserting and the product or process they allege infringes upon it. They also must identify those who have financial interests in the asserted patent. Importantly, the bill also limits expensive discovery before the court determines the scope of a disputed patent claim. And where the claim is against an end user of the technology, the bill would stay those proceedings in most instances where there is an ongoing action against the customer's supplier. I am quite concerned, however, that other provisions of this bill have the potential to impede legitimate patent holders from enforcing their rights and expose nonprofit organizations and research universities to unnecessary risk.

First, the fee-shifting provisions make it significantly less likely that an individual inventor or a small business would be able to assert a legitimate patent against an infringer. Patent suits are expensive, and in our American system parties are responsible for their own costs. In recognition of this, attorneys often take cases on a contingency fee basis and get paid a portion of the recovery only if they win. If plaintiffs and their attorneys now have to factor in the risk that they may need to pay not only their own costs and fees but also the costs and fees of the other party, they will be much less likely to assert legitimate enforcement claims. This provision is purported to stop frivolous lawsuits, but it does more than that—it equates a loss with a lack of merit. There are many reasons why a party may have a genuine dispute regarding law and fact and still lose the case; that does not mean that the case was frivolous. This bill creates a presumption of fee shifting, limits judicial discretion, and sets litigation reform on the wrong path.

Second, the joinder provisions in the Innovation Act could allow nonprofit organizations and research universities to be forcibly joined into a case against a downstream user. The purpose of the joinder provision is laudable—to ensure that a troll that loses a patent case cannot hide behind shell companies or other complicated corporate structures to avoid paying a judgment. In such a case it would allow the prevailing party to join another entity that has an economic interest in the patent. But the provision is overbroad. Nonprofit organizations and research universities often spend a great deal of time and effort on research and development; as a result, they frequently hold patents and license them for commercial use. Under this bill, a research university like Oregon State or Portland State could be joined in a lawsuit and forced to pay the judgment of a losing party if that party can't or won't pay. That isn't fair and it could potentially nullify state law. This provision must be narrowed before it goes to the President's desk.

Finally, there are a handful of amendments that would make this bill stronger and I regret that the House has not adopted them. The automatic stay provisions would be stronger if limited to small businesses only, as the Jackson-Lee amendment would do. Likewise, the Watt amendment would mitigate some of the concerns with the fee-shifting provisions by allowing judges to consider whether a prevailing party acted in bad faith or unnecessarily delayed the proceedings when making a fee award. And the Conyers-Watt substitute amendment represents a far better path overall for reducing patent troll litigation without advancing reforms hostile to legitimate plaintiffs.

Mr. Chairman, patent trolls are a problem for small businesses and tech startups in my district and across the country. Their business model is to sue the job creators and