

**STATEMENT OF THE COALITION TO PRESERVE
THE ATTORNEY-CLIENT PRIVILEGE**

American Chemistry Council
American Civil Liberties Union
Association of Corporate Counsel
Business Civil Liberties, Inc.
Business Roundtable
The Financial Services Roundtable
Frontiers of Freedom
Lawyers for Civil Justice
National Association of Criminal Defense Lawyers
National Association of Manufacturers
Retail Industry Leaders Association
U.S. Chamber of Commerce

RE: H.R. 3013, “The Attorney-Client Privilege Protection Act of 2007”

November 13, 2007

To Members of the House of Representatives:

The Coalition to Preserve the Attorney-Client Privilege strongly endorses HR 3013, The Attorney-Client Privilege Protection Act of 2007 (introduced by Rep. Bobby Scott and cosponsored by Rep. Randy Forbes, Chairman John Conyers and Ranking Member Lamar Smith) and urges you to support its passage. H.R. 3013 is scheduled to be brought up on the suspension calendar the week of November 12th.

Current DOJ and enforcement agency policies and practices continue to erode the attorney-client privilege and place untenable pressure on companies and employees to waive basic constitutional rights guaranteed to every person targeted in government investigations. They allow prosecutors and enforcement professionals to assume the mantle of a role properly reserved for impartial courts and judges. In addition, these federal policies contain separate provisions that have been found to violate employees’ Sixth Amendment right to counsel and Fifth Amendment right against self-incrimination by pressuring companies to not pay their employees’ legal fees during investigations, to fire the employees for not waiving their rights, or to take other punitive actions against them long before any guilt has been established.

As a court-protected doctrine, the attorney-client privilege is the oldest of the evidentiary privileges and is a cornerstone of our justice system. The scope and application of this doctrine, as well as of attorney work-product protections and the application of employee defense rights, are well-settled law that existed long before these recent government policies creating this culture of waiver. To quote from the most recent letter to the House Judiciary Committee from a large number of former senior DOJ officials who are concerned with these practices and policies, “... it is our considered judgment that the time has arrived for Congress to restore the proper balance

between the tools that the government needs to fight corporate crime and the rights of both individual and corporate citizens. Indeed, the need for such balance lies at the heart of the separation of powers between the three branches of government.

H.R. 3013 simply and clearly prohibits U.S. government employees, directly or indirectly, from pressuring companies or other organizations to waive their attorney-client privilege or work product protections or to take actions that adversely affect the rights of their employees as an indicator of their cooperation in an investigation. The Attorney-Client Privilege Protection Act of 2007 is a carefully crafted and judicious tool that is designed solely to address prosecutorial and enforcement practices that have cropped up in the last decade and does not in any way amend the application of privilege rights or law, or impede government investigations into corporate wrongdoing. The Act does not redefine what is or is not considered privileged. It also does not hinder prosecutors and enforcement agents from deciding who to investigate, from gaining access to all the facts necessary to conduct an investigation, or from making their own decision whether to indict individuals or an organization accused of wrongdoing. It does not alter or remove any of the appropriate tools prosecutors have employed for decades in pursuing corporate crime and punishing corporate criminals. And it specifically provides that the Act does not in any way prevent a company that wishes to voluntarily waive its rights or privileges from doing so.

H.R. 3013 simply reverses DOJ and other agency's enforcement policies and practices adopted in the last few years that erode both the attorney-client privilege as defined by the courts and other fundamental defense rights of individual employees defined by the justice system and Constitution.

In addition to the organizations in the coalition listed above, H.R. 3013 has been endorsed by former Attorneys General Stuart Gerson, Dick Thornburgh and Ed Meese; former Deputy Attorneys General Carol Dinkins and Jamie Gorelick; and former Solicitors General Walter Dellinger, Ted Olson, Ken Starr and Seth Waxman.

Until H.R. 3013 is enacted, the government can and will continue to inappropriately abrogate attorney-client privilege and work product protections and individual defense rights that are undisputed by law. Left unchecked, these federal policies will continue to frustrate corporate compliance efforts by preventing counsel from conducting complete and effective investigations and/or implementing remedial measures in response to an allegation of wrongdoing. Further, these federal policies discourage employee cooperation with an investigation into an allegation, and negate individual employees' constitutional rights by preventing them from mounting a defense to allegations made against them in the corporate context should they become targets (or even witnesses) in the government's investigation.

Accordingly, we strongly encourage you vote for the Attorney-Client Privilege Protection Act of 2007, which would reverse the harmful provisions in the McNulty Memorandum and other similar federal policies.”