

DOWNWINDERS PARITY ACT OF 2021

DECEMBER 20, 2021.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NADLER, from the Committee on the Judiciary,  
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 612]

The Committee on the Judiciary, to whom was referred the bill (H.R. 612) to amend the Radiation Exposure Compensation Act to include certain communities, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all that follows after the enacting clause, and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Downwinders Parity Act of 2021”.

**SEC. 2. INCLUSION UNDER THE RADIATION EXPOSURE COMPENSATION ACT.**

Section 4(b)(1) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note; Public Law 101-426) is amended—

(1) in subparagraph (B)—

(A) by striking “that portion of”; and

(B) by striking “that consists of townships 13 through 16 at ranges 63 through 71”; and

(2) in subparagraph (C), by inserting “all acreage in any county all or part of which is located in” before “that part”.

**SEC. 3. REPORT.**

Within 60 days after the date of enactment of this Act, the Attorney General shall submit to the relevant committees of the House of Representatives and of the Senate a report that outlines efforts to educate and conduct outreach to persons made newly eligible for benefits under the amendments made by section 2 of this Act.

### **Purpose and Summary**

Introduced by Rep. Greg Stanton (D-AZ) on January 28, 2021, H.R. 612, the “Downwinders Parity Act of 2021,” would update the downwinder geographic eligibility area under the Radiation Exposure Compensation Act<sup>1</sup> (RECA) to include claimants from the southern portions of Clark County, Nevada and Mohave County, Arizona. Currently, only the northern parts of these counties are covered. Mohave County and Clark County are also the only counties that are partially covered under RECA.

Enacted in 1990, RECA established a claims program administered by the Department of Justice (DOJ) to provide partial restitution to certain individuals who were harmed by atmospheric testing of nuclear weapons by the United States government and by uranium mining that was done for the purpose of producing such weapons. Congress passed RECA to compensate bystanders who lived downwind from nuclear weapons tests (known as “downwinders”), onsite personnel, and certain categories of uranium mine workers who suffered from specific radiological illnesses.

### **Background and Need for the Legislation**

#### I. BACKGROUND

Starting in 1945 with the first atomic weapons test in Trinity, New Mexico, through the early 1960s, the U.S. government conducted atmospheric testing as part of its effort to develop nuclear weapons. During this period, the government conducted 1,054 nuclear weapons tests.<sup>2</sup> Of these tests, 928 occurred at the Nevada Test Site (NTS) located in Nye County, Nevada, 65 miles north of Las Vegas, with 828 tests conducted underground—though, in some instances, radioactive material escaped into the atmosphere through a process known as venting—and 100 tests conducted in the atmosphere above-ground.<sup>3</sup> While the government conducted 17 underground tests in other locations within the continental U.S., these 100 tests, in addition to the first atomic test at Trinity, were

<sup>1</sup>42 U.S.C. § 2210 note.

<sup>2</sup>Scott D. Szymendera, *The Radiation Exposure Compensation Act (RECA): Compensation Related to Exposure to Radiation from Atomic Weapons Testing and Uranium Mining*, Congressional Research Service, Jan. 13, 2021 at 1 [Hereinafter “CRS Report”].

<sup>3</sup>*Id.*

the only atmospheric tests conducted within the continental U.S.<sup>4</sup> The U.S. government also conducted 106 atomic tests in the Pacific Ocean area.<sup>5</sup> The atmospheric tests at the NTS occurred between January 1951 and October 1958 and again in July 1962.<sup>6</sup>

The U.S. government's development of nuclear weapons also required the mining and processing of large quantities of uranium, which was carried out by thousands of U.S. workers. Mining uranium is inherently hazardous to human health. Uranium ore naturally emits radon gas, which, in turn, decays into heavy isotopes referred to as "radon daughters" that emit carcinogenic radioactive particles.<sup>7</sup> Trapped underground, these radon gas isotopes form solid deposits that can be inhaled when exposed to air during the mining process.<sup>8</sup> These dangers were known during the 1940s and 1950s when pressure to develop nuclear weapons led to increased uranium mining—much of it on tribal lands.<sup>9</sup> Few miners at this time—many of whom were Native American—were warned of these dangers.<sup>10</sup>

The United States' last atmospheric test occurred on July 17, 1962. Following public pressure and eight years of negotiation, on August 5, 1963, the U.S., along with the United Kingdom and the Soviet Union, signed the Limited Nuclear Test Ban Treaty, prohibiting the signatories from conducting further atmospheric, underwater, and outer space nuclear weapons testing. In 1971, the federal government stopped purchasing uranium for atomic weapons.<sup>11</sup> Even before the U.S. government's actions, scientific evidence had begun to mount that the radioactive materials released by atmospheric testing and uranium mining had been hazardous to the environment and human health.

Plaintiffs began filing lawsuits under the Federal Tort Claims Act<sup>12</sup> (FTCA) against the federal government alleging that it had failed to warn them regarding the dangers of exposure to known radioactive hazards. In the 1980s, courts began to dismiss these claims, finding that the FTCA's discretionary function exception<sup>13</sup> to the government's waiver of sovereign immunity barred such claims.<sup>14</sup>

In 1985, Congress foreclosed plaintiffs' ability to sue federal contractors for their involvement in atomic testing at the NTS when it adopted the Warner Amendment as part of that year's Department of Defense Authorization Act. The Warner Amendment pro-

<sup>4</sup>*Id.* at 2.

<sup>5</sup>*Id.*

<sup>6</sup>*Id.*

<sup>7</sup>Robert Alvarez, A Brief History of Compensation for Radiation Injury and Disease in the United States, Aug. 5, 2002 (unpublished draft) (on file with the Subcommittee on the Constitution, Civil Rights, and Civil Liberties) at 17.

<sup>8</sup>*Id.*

<sup>9</sup>*Id.*

<sup>10</sup>*Id.*

<sup>11</sup>CRS Report at 13.

<sup>12</sup>28 U.S.C. §§ 1346(b), 2671–2680. Generally, the FTCA waives sovereign immunity to allow private parties to sue the federal government for injuries caused by federal employees acting within the scope of their official duties. The Act contains a number of exceptions.

<sup>13</sup>28 U.S.C. § 2680(a). This section provides that the FTCA's waiver of sovereign immunity "shall not apply to . . . [a]ny claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused".

<sup>14</sup>*See* CRS Report at n.26 (citing court decisions barring lawsuits against the federal government for damages related to atomic weapons testing based on discretionary function exception to FTCA).

vided that the FTCA was the sole remedy available to plaintiffs for alleged injuries arising out of atomic weapons testing, which effectively immunized federal contractors involved in atmospheric testing. Supporters of the amendment justified it on the grounds that such contractors should be immune because they were acting as instruments of the government. Because courts had begun to rule that the discretionary function exception barred such claims against the government under the FTCA, many plaintiffs were effectively left without any legal remedy for the harm caused to them. Prior to RECA, Congress had adopted compensation or benefits programs for Marshall Islanders and military veterans affected by atomic testing, and it had considered passing legislation to compensate or permit downwinders, onsite participants, and uranium miners to sue the federal government since the late 1970s. The Warner Amendment, and the courts' failure to provide plaintiffs a remedy under the FTCA, helped spur Congress into action in 1990.

RECA established an administrative program, administered by DOJ's Civil Division, for claims related to atmospheric testing of U.S. nuclear weapons and uranium mining. Ten years later, Congress passed the Radiation Exposure Compensation Act Amendments of 2000 which, among other provisions, expanded the downwinder eligibility area to its current extent and extended the life of the RECA Trust Fund to July 10, 2022.<sup>15</sup> Over the course of its more than 30-year existence, the RECA program has paid out \$2.5 billion in benefits to over 37,000 claimants.

Individuals eligible for compensation under RECA fall into three general populations: onsite participants, uranium mine workers, and downwinders. In addition to meeting the statutory requirements that define each population, to be eligible an individual must have contracted certain compensable diseases specified under the Act for that population. Additionally, specific survivors designated under the Act are entitled to collect the benefit if the claimant is deceased.<sup>16</sup> The following is a brief overview of the current eligibility requirements and compensation payments for each of these populations.

- **Onsite Participants.** Onsite participants are eligible to receive a lump sum payment of \$75,000. To be eligible for compensation as an onsite participant, an individual must have been "onsite" (which includes up to 6 months after the testing period had ended) engaged in certain specified duties within certain specified atmospheric test sites, or any location designated at a military base, naval shipyard, air base, or any other government installation where any vehicle or equipment was decontaminated after an atmospheric detonation of a nuclear device or any designated location used for monitoring fallout from an atmospheric test conducted specifically at the NTS. The atmospheric detonation of a nuclear device must have occurred before January 1, 1963.

<sup>15</sup>*Id.* at 11. Prior to the 2000 RECA Amendments, the downwinder eligibility area was originally limited to: in Arizona, the area north of the Grand Canyon and west of the Colorado River; in Nevada, the counties of Eureka, Lander, Lincoln, Nye, and White Pine and Clark County townships 13 through 16 at ranges 63 through 71; and in Utah, the counties of Beaver, Garfield, Iron, Kane, Millard, Piute, and Sevier.

<sup>16</sup>The survivors in order of precedence are a claimant's spouse (if the spouse was married to the claimant for at least one year before their death), children, parents, grandchildren, and grandparents (all in equal shares).

- **Uranium Mine Workers.** Uranium workers are eligible to receive a lump sum payment of \$100,000. To be eligible the individual must have been employed as a uranium miner, miller, or ore transporter in the uranium mining industry in certain designated states (Arizona, Colorado, Idaho, New Mexico, North Dakota, Oregon, South Dakota, Washington State, Wyoming, Texas, and Utah) and during the period covered in the Act (Jan. 1, 1942, through Dec. 31, 1971). Additionally, the individual must have worked at a covered uranium mine for at least a year or been exposed to the equivalent of 40 working level months of radiation while working at a covered mine. For individuals working in a covered uranium mill or as an ore transporter to be eligible they must have been employed for at least one year.

- **Downwinders.** Downwinders are eligible to receive a lump sum payment of \$50,000. To be eligible an individual must have been physically present for at least two years in a covered county downwind of the NTS between the period beginning on Jan. 21, 1951, and ending on Oct. 31, 1958, or have been physical present for the entire period beginning on June 30, 1962 and ending on July 31, 1962. All covered counties downwind of the NTS are in Arizona, Nevada, and Utah. In Arizona, the counties include Apache, Coconino, Gila, Navajo, Yavapai, and “that part of Arizona that is north of the Grand Canyon” i.e., the northern part of Mohave County.<sup>17</sup> In Nevada, the counties include Eureka, Lander, Lincoln, Nye, White Pine, and “that portion of Clark County that consists of townships 13 through 16 at ranges 63 through 71” i.e., the northern part of Clark County.<sup>18</sup> In Utah, the covered counties include Beaver, Garfield, Iron, Kane, Millard, Piute, San Juan, Sevier, Washington, and Wayne.

## II. NEED FOR THE LEGISLATION

Currently, only “that part of Arizona that is north of the Grand Canyon” i.e., the northern portion of Mohave County, and “that portion of Clark County that consists of townships 13 through 16 at ranges 63 through 71” are considered “affected areas” for the purposes of determining geographic eligibility as a downwinder under the RECA program. Mohave County and Clark County are the only counties to be partially, rather than fully, covered under RECA.

The legislative record is unclear as to the reason why Congress failed to include the entirety of Clark County and Mohave County from RECA’s geographic coverage both under the original Act or the 2000 Amendments, despite their geographic proximity to the NTS. Given this lack of clarity, Congress’s decision to exclude from the RECA program individuals suffering from compensable radiological illnesses who lived in the currently uncovered portions of those counties during the covered period and for the required duration of time appears particularly arbitrary. As such, H.R. 612 would update RECA’s geographic coverage area to include all Clark

<sup>17</sup> 42 U.S.C. § 2210 note.

<sup>18</sup> *Id.*

and Mohave County downwinders to remedy this apparent oversight.

During the Committee’s markup of this legislation, Ranking Member Jim Jordan (R–OH) contended that the bill’s proposed expansion of RECA eligibility should not be enacted because of a recommendation made by the National Research Council (NRC) Board on Radiation Effects Research<sup>19</sup> in a report issued in 2005, but this argument is unavailing. While the NRC report recommended against expanding RECA based on geography, the report also recommended that Congress base future expansions of RECA to additional downwinders on a “probability of causation” model. Reconstructing radiation exposure for downwinders as recommended by the NRC report, however, would require costly new administrative work, and, even then, the uncertainty of individual exposure due to the U.S. government’s neglect would remain.

Since its inception in 1990, RECA has been based on a “presumptive eligibility” model. If an individual meets the statutory criteria as a “downwinder” and contracted a compensable disease, that individual is eligible for compensation. There is no requirement for individuals to demonstrate a causal link between exposure and a compensable illness. Congress made this choice because the U.S. government neglected to collect sufficient data on radiation exposures from atmospheric testing.

The current eligibility model is appropriate and congruent with Congress’s purpose in providing “compassionate compensation” under RECA. The U.S. government’s neglect with regard to populations downwind from the NTS during the atmospheric testing period not only created the harm but made it difficult for individual claimants to later prove that harm once latent diseases associated with radiation exposure began to manifest. To question expanding eligibility under H.R. 612 on the grounds expressed in the NRC report is to question the very purpose of the RECA program itself. Furthermore, for Congress to persist in denying these individuals’ downwinder claims or potentially to subject such claims to evaluation based on a different standard would continue or exacerbate the arbitrary application of the current RECA program that H.R. 612 seeks to remedy.

### Hearings

For the purposes of clause 3(c)(6)(A) of House Rule XIII, the following hearing was used to consider H.R. 612: Hearing on “Examining the Need to Expand Eligibility Under the Radiation Exposure Compensation Act” held before the Subcommittee on the Constitution, Civil Rights, and Civil Liberties on March 24, 2021. The witnesses consisted of: Rep. Greg Stanton (D–AZ); Sen. Ben Ray Lujan (D–NM); Jonathan Nez, President of the Navajo Nation; Lilly Adams, Independent Consultant Specializing in Nuclear Weapons Issues; Tina Cordova, Tularosa Basin Downwinders Consortium; Jean Bishop, Supervisor District 4, Mohave County, Arizona; and Scott D. Szymendera, Congressional Research Service.

At the hearing, Rep. Stanton testified in support of H.R. 612 and all witnesses present but one expressed support for expanding eligi-

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<sup>19</sup> National Research Council, *Assessment of the Scientific Information for the Radiation Exposure Screening and Education Program*, 2005.

bility under RECA to include the entirety of Clark and Mohave Counties. Mr. Szymendera expressed neither opposition nor support for H.R. 612 or to expanding eligibility under RECA generally.

#### **Committee Consideration**

On November 17, 2021, the Committee met in open session and ordered the bill, H.R. 612, favorably reported as an amendment in the nature of a substitute, by a rollcall vote of 25 to 13, a quorum being present.

#### **Committee Votes**

In compliance with clause 3(b) of House Rule XIII, the following rollcall votes occurred during the Committee's consideration of H.R. 612:

1. H.R. 612, as amended, passed by a rollcall vote of 25 to 13. The vote was as follows:

Roll Call No. 4

Date: 11/17/21

## COMMITTEE ON THE JUDICIARY

House of Representatives

117<sup>th</sup> Congress

Final Passage on: HR 612

PASSED  
 FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	✓		
Zoe Lofgren (CA-19)	✓		
Sheila Jackson Lee (TX-18)	✓		
Steve Cohen (TN-09)	✓		
Hank Johnson (GA-04)	✓		
Ted Deutch (FL-22)	✓		
Karen Bass (CA-37)	✓		
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)	✓		
Eric Swalwell (CA-15)			
Ted Lieu (CA-33)	✓		
Jamie Raskin (MD-08)	✓		
Pramila Jayapal (WA-07)	✓		
Val Demings (FL-10)	✓		
Lou Correa (CA-46)	✓		
Mary Gay Scanlon (PA-05)	✓		
Sylvia Garcia (TX-29)	✓		
Joseph Neguse (CO-02)	✓		
Lucy McBath (GA-06)	✓		
Greg Stanton (AZ-09)	✓		
Madeleine Dean (PA-04)	✓		
Veronica Escobar (TX-16)	✓		
Mondaire Jones (NY-17)			
Deborah Ross (NC-02)	✓		
Cori Bush (MO-01)	✓		
	AYES	NOS	PRES.
Jim Jordan (OH-04)		✓	
Steve Chabot (OH-01)		✓	
Louie Gohmert (TX-01)	✓		
Darrell Issa (CA-50)		✓	
Ken Buck (CO-04)		✓	
Matt Gaetz (FL-01)		✓	
Mike Johnson (LA-04)			
Andy Biggs (AZ-05)	✓		
Tom McClintock (CA-04)		✓	
Greg Steube (FL-17)		✓	
Tom Tiffany (WI-07)		✓	
Thomas Massie (KY-04)		✓	
Chip Roy (TX-21)			
Dan Bishop (NC-09)		✓	
Michelle Fischbach (MN-07)		✓	
Victoria Spartz (IN-05)	✓		
Scott Fitzgerald (WI-05)			
Cliff Bentz (OR-02)		✓	
Burgess Owens (UT-04)		✓	
	AYES	NOS	PRES.
TOTAL	25	13	

### **Committee Oversight Findings**

In compliance with clause 3(c)(1) of House Rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of House Rule X, are incorporated in the descriptive portions of this report.

### **Committee Estimate of Budgetary Effects**

Pursuant to clause 3(d)(1) of House Rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

### **New Budget Authority and Tax Expenditures and Congressional Budget Office Cost Estimate**

With respect to the requirements of clause 3(c)(2) of House Rule XIII and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of House Rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received from the Director of Congressional Budget Office a budgetary analysis and a cost estimate of this bill.

### **Duplication of Federal Programs**

No provision of H.R. 612 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

### **Performance Goals and Objectives**

The Committee states that pursuant to clause 3(c)(4) of House Rule XIII, H.R. 612 would amend the Radiation Exposure Compensation Act of 1990 to include the entirety of Clark County, Nevada and Mohave County, Arizona under the statute's definition of "affected area," thereby extending the geographic coverage of the RECA compensation program.

### **Advisory on Earmarks**

In accordance with clause 9 of House Rule XXI, H.R. 612 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of House Rule XXI.

### **Section-by-Section Analysis**

The following discussion describes the bill as reported by the Committee.

*Section 1. Short Title.* This section sets forth the short title of the bill as the "Downwinders Parity Act of 2021."

*Section 2. Inclusion Under the Radiation Exposure Compensation Act.* This section amends 42 U.S.C. 2210 note to include all of

Clark County, Nevada and Mohave County, Arizona under the statute's definition of "affected area."

*Section 3. Report.* This section requires the Attorney General to submit a report to the relevant committees of the House of Representatives and the Senate outlining efforts to educate and conduct outreach to persons made newly eligible for benefits under the amendments made by Section 2 of the Act within 60 days of enactment.

**Changes in Existing Law Made by the Bill, as Reported**

In compliance with clause 3(e) of House Rule XIII, changes in existing law made by the bill, H.R. 612, as reported, are shown as follows:

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

**RADIATION EXPOSURE COMPENSATION ACT**

\* \* \* \* \*

**SEC. 4. CLAIMS RELATING TO ATMOSPHERIC NUCLEAR TESTING.**

(a) CLAIMS.—

(1) CLAIMS RELATING TO LEUKEMIA.—

(A) IN GENERAL.—An individual described in this subparagraph shall receive an amount specified in subparagraph (B) if the conditions described in subparagraph (C) are met. An individual referred to in the preceding sentence is an individual who—

(i)(I) was physically present in an affected area for a period of at least 1 year during the period beginning on January 21, 1951, and ending on October 31, 1958;

(II) was physically present in the affected area for the period beginning on June 30, 1962, and ending on July 31, 1962; or

(III) participated onsite in a test involving the atmospheric detonation of a nuclear device; and

(ii) submits written documentation that such individual developed leukemia—

(I) after the applicable period of physical presence described in subclause (I) or (II) of clause (i) or onsite participation described in clause (i)(III) (as the case may be); and

(II) more that 2 years after first exposure to fallout.

(B) AMOUNTS.—If the conditions described in subparagraph (C) are met, an individual—

(i) who is described in subclause (I) or (II) of subparagraph (A)(i) shall receive \$50,000; or

(ii) who is described in subclause (III) of subparagraph (A)(i) shall receive \$75,000.

(C) CONDITIONS.—The conditions described in this subparagraph are as follows:

(i) Initial exposure occurred prior to age 21.

(ii) The claim for a payment under subparagraph (B) is filed with the Attorney General by or on behalf of the individual.

(iii) The Attorney General determines, in accordance with section 6, that the claim meets the requirements of this Act.

(2) CLAIMS RELATING TO SPECIFIED DISEASES.—Any individual who—

(A) was physically present in the affected area for a period of at least 2 years during the period beginning on January 21, 1951, and ending on October 31, 1958,

(B) was physically present in the affected area for the period beginning on June 30, 1962, and ending on July 31, 1962, or

(C) participated onsite in a test involving the atmospheric detonation of a nuclear device, and who submits written medical documentation that he or she, after such period of physical presence or such participation (as the case may be), contracted a specified disease, shall receive \$50,000 (in the case of an individual described in subparagraph (A) or (B)) or \$75,000 (in the case of an individual described in subparagraph (C)), if—

(i) the claim for such payment is filed with the Attorney General by or on behalf of such individual, and

(ii) the Attorney General determines, in accordance with section 6, that the claim meets the requirements of this Act.

(3) CONFORMITY WITH SECTION 6.—Payments under this section may be made only in accordance with section 6.

(4) EXCLUSION.—No payment may be made under this section on any claim of the Government of the Marshall Islands, or of any citizen or national of the Marshall Islands, that is referred to in Article X, Section 1 of the Agreement Between the Government of the United States and the Government of the Marshall Islands for the Implementation of section 177 of the Compact of Free Association (as approved by the Compact of Free Association Act of 1985 (Public Law 99–239)).

(b) DEFINITIONS.—For purposes of this section, the term—

(1) “affected area” means—

(A) in the State of Utah, the counties of Washington, Iron, Kane, Garfield, Sevier, Beaver, Millard, Wayne, San Juan, and Piute;

(B) in the State of Nevada, the counties of White Pine, Nye, Lander, Lincoln, Eureka, and [that portion of] Clark County [that consists of townships 13 through 16 at ranges 63 through 71]; and

(C) in the State of Arizona, the counties of Coconino, Yavapai, Navajo, Apache, and Gila, and *all acreage in any*

*county all or part of which is located in that part of Arizona that is north of the Grand Canyon; and*

(2) "specified disease" means leukemia (other than chronic lymphocytic leukemia), provided that initial exposure occurred after the age of 20 and the onset of the disease was at least 2 years after first exposure, and the following diseases, provided onset was at least 5 years after first exposure: multiple myeloma, lymphomas (other than Hodgkin's disease), and primary cancer of the: thyroid, male or female breast, esophagus, stomach, pharynx, small intestine, pancreas, bile ducts, gall bladder, salivary gland, urinary bladder, brain, colon, ovary, liver (except if cirrhosis or hepatitis B is indicated), or lung.

\* \* \* \* \*

## Minority Views

In 1990, Congress passed the Radiation Exposure Compensation Act (RECA) to provide targeted and partial restitution to individuals who developed certain illnesses as a result of the U.S. atomic weapons program.<sup>1</sup> Congress's intent that RECA be targeted and provide partial compensation can be seen in the one-time nature of the payments and the specific geographic, time, and disease requirements for compensation. Congress last meaningfully amended RECA in 2000 when it expanded eligibility to the current program limits and extended the program sunset.<sup>2</sup>

In 2002, Congress directed the National Research Council (NRC) to conduct a study and issue a report with recommendations to Congress on whether the RECA downwinder area should be expanded.<sup>3</sup> The NRC report concluded that Congress should not expand RECA by adding additional geographic areas.<sup>4</sup> Specifically, the study concluded that "ionizing radiation is not a potent cancer-causing agent, and the risks for radiation-induced disease are generally low at the exposure levels of concerns in RECA populations."<sup>5</sup> The study further concluded that "the scientific evidence indicates that in most cases it is unlikely that exposure to radiation from fallout was a substantial contributing cause to developing cancer."<sup>6</sup>

Instead of expanding RECA based on geography, the NRC report recommended that Congress implement a probability model that considers a claimant's location, demographic characteristics, and behavioral factors to determine whether an individual's qualifying disease was likely to have been caused by radiation from atomic weapons tests.<sup>7</sup> The NRC made this recommendation because fallout from the Nevada Test Site (NTS) fell unevenly on the country and because individuals living closer to the test site were not necessarily exposed to higher levels of radiation than those living further away.<sup>8</sup> An individual's exposure to radioactive fallout also depended upon how much time he or she spent outside during periods of atmospheric testing and whether he or she consumed certain food products, such as milk, that research has shown to be more

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<sup>1</sup>See Radiation Exposure Compensation Act, 42 U.S.C. § 2210 note.

<sup>2</sup>See Radiation Exposure Compensation Act Amendments of 2000, Pub. L. 106-245, 114 Stat. 501 (2000).

<sup>3</sup>See SCOTT D. SZYMENDERA, CONG. RES. SERV., R43956, THE RADIATION EXPOSURE COMPENSATION ACT (RECA): COMPENSATION RELATED TO EXPOSURE TO RADIATION FROM ATOMIC WEAPONS TESTING AND URANIUM MINING 11 (2020).

<sup>4</sup>*Id.* at 12.

<sup>5</sup>NAT'L RES. COUNCIL, ASSESSMENT OF THE SCIENTIFIC INFORMATION FOR THE RADIATION EXPOSURE SCREENING AND EDUCATION PROGRAM 3 (2005).

<sup>6</sup>*Id.* at 4.

<sup>7</sup>*Id.* at 12.

<sup>8</sup>SZYMENDERA, *supra* note 3, at 12.

likely to have been contaminated by certain radioactive byproducts of the NTS tests.<sup>9</sup>

Despite research commissioned by Congress finding that expanding RECA based on geography would be unwarranted, H.R. 612 does just that. This bill ignores scientific information before the Committee in order to add portions of Arizona and Nevada to RECA. If the federal government recklessly took actions that led to Americans developing cancer, Congress has and should continue to provide appropriate remedies. However, this bill will result in taxpayer money being sent to claimants whose illnesses likely were not caused by the U.S. atomic weapons program.

JIM JORDAN,  
*Ranking Member.*



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<sup>9</sup>*Id.*