This is a preliminary transcript of a Committee Hearing. It has not yet been subject to a review process to ensure that the statements within are appropriately attributed to the witness or member of Congress who made them, to determine whether there are any inconsistencies between the statements within and what was actually said at the proceeding, or to make any other corrections to ensure the accuracy of the record.

RPTS THOMAS

DCMN HERZFELD

LEGISLATIVE HEARING ON H.R. 2309, CONSUMER CREDIT PROTECTION IMPROVEMENT ACT; AND H.R. 2190, MERCURY POLLUTION REDUCTION ACT

TUESDAY, MAY 12, 2009

House of Representatives,

Subcommittee on Commerce, Trade and Consumer Protection,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 2:05 p.m. , in Room 2322, Rayburn House Office Building, Hon. Bobby L. Rush [chairman of the subcommittee] presiding.

Present: Representatives Rush, Schakowsky, Sarbanes, Barrow, Matsui, Radanovich, Gingrey, Scalise and Barton (ex officio).

Staff Present: Christian Tanotsu Fjeld, Counsel; Anna Laitin, Professional Staff; Robin Appleberry, Counsel; Valerie

Baron, Legislative Clerk; Michelle Ash, Counsel; Shannon Weinberg, Minority Counsel; Brian McCullough, Minority Senior Professional Staff; Jerry Couri, Minority Professional Staff; Will Carty, Minority Professional Staff; and Sam Costello, Minority Legislative Analyst.

Mr. Rush. The subcommittee will come to order.

Today's hearing is a legislative hearing. It is on two bills, H.R. 2309 and H.R. 2190.

[The information follows:]

******** INSERT 1-1 ********

Mr. Rush. The Chair will recognize himself for 5 minutes for the purposes of opening statements.

Today, as I said before, the subcommittee is conducting yet another legislative hearing on two more bills, H.R. 2309, the Consumer Credit and Debt Protection Act, and H.R. 2190, the Mercury Pollution Reduction Act. This hearing continues our trend to hold legislative hearings with the intent of moving bills towards eventually becoming law.

H.R. 2390, the Mercury and Pollution Reduction Act, was introduced by the Vice Chair of the subcommittee, my friend and colleague from Chicago Ms. Schakowsky. The bill effectively bans the use of mercury in the production of chlorine and caustic soda and prohibits the export of mercury effective immediately.

Mercury is well known to cause neurological damage, especially to children. The toxin is also found in fish, and when people eat contaminated fish, they also consume the mercury. Pregnant women who ingest the mercury in fish pass the toxic effects along to their developing fetus, which can lead to long-term neurological harm.

Furthermore, studies indicate that unsafe mercury levels are more prominent in people of color and in poor communities, and this disparate impact along ethnic and racial lines is likely the result of fish and seafood consumption.

It is my understanding that only four manufacturing plants

still use mercury in the production of chlorine. It is also my understanding that the chlorine industry has made the transition away from mercury as a result of increased efficiency in alternative methods of manufacturing. As such, I am interested to know why Ms. Schakowsky's bill shouldn't become law as soon as possible due to the harmful effects of mercury and the cost savings associated with producing chlorine from other methods. I want to commend Ms. Schakowsky for her work on this bill.

I am the author of the second bill we are considering today. H.R. 2309, the Consumer Credit and Protection Act, is a result of two oversight hearings this subcommittee has held on consumer credit issues this year. The bill provides the Federal Trade Commission with normal rulemaking authority under the Administrative Procedures Act, for all consumer credit and debt-related issues as opposed to its current cumbersome rulemaking authority under the Magnuson-Moss Act. This authority will empower the Commission to nimbly respond to current and future abuses perpetrated on consumers.

My bill also directs the Commission to specifically address current abuses in the automobile and debt consolidation industries. It is my intent on, during an eventual markup, to also add a directive rulemaking on pending legislation as well.

I hope the witnesses will provide the information the subcommittee needs on how effectively H.R. 2309 would be in protecting consumers not only from the credit and debt scams of

today, but the scams of tomorrow, also.

It is important that the FTC have the requisite flexibility and authority to address numerous credit fraud that plagues consumers. Moreover, I believe it is extremely important that the Commission retain this aggressive posture of consumer credit and debt regardless of the political leadership at the top. Both Democrats and Republicans are guilty of being asleep at the switch, and difficulties in the financial and housing market have shown us that we can no longer afford this type of political negligence. It is vital that we revitalize the Federal Trade Commission's work on behalf of consumers in order to prevent the types of widespread abuses that weren't addressed in the past.

Today I hope to have an informative legislative hearing on these two bills and work with all of the affected stakeholders and my friends on the other side of the aisle. While we may end up disagreeing, but as always, I believe in disagreeing in a civil and politically honest manner.

With that, I yield back the balance of my time.

[The prepared statement of Mr. Rush follows:]

******** INSERT 1-2 ********

Mr. Rush. The Chair now recognizes the Ranking Member of the subcommittee Mr. Radanovich for 5 minutes for an opening statement.

Mr. Radanovich. Thank you very much.

Today we examine two pieces of legislation under the subcommittee's jurisdiction. The first bill is H.R. 2309, addressing credit and debt issues under the Federal Trade Commission's jurisdiction.

As I have stated previously, I support cracking down on anybody who breaks the law or takes unfair advantage of others for their own gain. Mortgage and foreclosure problems have revealed deception, lying and stealing at all levels of the homebuying process from consumers falsely stating their income to mortgage companies deceiving consumers about their loans. There should be no tolerance for these practices, practices that have devastated many consumers with foreclosures and have put all taxpayers on the hook for these bad actors' deeds.

Similarly, the economic downturn has caused many to find themselves over their heads with nonmortgage debt. I support the markets' creation of third-party entities who negotiate on these individuals' behalves, but I also see opportunities where abuse and fraud may arise. Therefore, I support the legislation's direction to the FTC to examine debt settlement practices and promulgate rules as necessary. However, my question within these

proposed rules are what is lacking in the current law? Is there a problem so widespread that it requires an industrywide solution; and, finally, will the proposed rule solve the problem?

My primary concern is that the examination be thorough and the evidence substantial before any rules are proposed. Industrywide rules impose costs on innocent, law-abiding citizens and, therefore, need to be thoroughly vetted to ensure they are justified and the best solution for the problem.

This leads me to a larger concern with the bill's authorization of the general APA rulemaking authority with credit and debt practices. Congress imposed the more rigorous Magnuson-Moss rulemaking procedures on the FTC for a reason. Providing a blank check for more rules is a change Congress should not contemplate lightly, particularly when the impact will be sweeping. The benefit must outweigh the costs.

The two provisions which I am concerned with are the grants of civil penalty authority in cases of implied knowledge, and the broad State attorneys general enforcement provision. The FTC may currently seek civil penalties only in a case where the defendant was on notice that their conduct was wrongful. This bill would make people liable without their knowledge that they are engaged in wrongful conduct.

My second concern is the breathtaking extent of the proposed State attorney general's enforcement power. It would apply to an FTC-enforced statute regulating consumer credit or debt without

transparency or checks and balances on that power. Additionally, because most suits prosecuting unfair, deceptive acts are not based on hard and fast rules, this authority will yield many inconsistent interpretations and outcomes.

The second bill we are examining today, H.R. 2190, would ban the use of mercury cell technology to produce chlorine and caustic soda. I think we need to look carefully not just at the bill itself, but also at the other legal and regulatory actions at the Federal level on this matter. This legislation only addresses four plants in the United States. We should neither be cavalier about the bill's impact because it affects four plants, nor should we fully ignore its effects on policy.

For starters, the last Congress took great care to overwhelmingly pass bipartisan legislation that banned export of elemental mercury beginning in 2013. This law represents a collaborative effort among diverse stakeholders and created an orderly transition for management and storage of mercury held by both public and private interests. I fear the provisions of this bill will unnecessarily undo our thoughtful work and make mercury repositories of chlorine factories for several years.

In addition, I am concerned that parts of the bill unnecessarily duplicate existing reporting requirements on these facilities. I have problems requiring reports for the sake of requiring them, and I hope that at least one of our witnesses can point out to me both the practical need for and the legal gap

being plugged by each of these mandates.

From a larger policy perspective, I am concerned that this bill continues the trend of selectively deciding which products, technologies, and substances are okay for the public to have, and, in my view, some of the proponents of this bill are inconsistently applying their concerns about mercury depending on the technology or the product.

Let me give you an example. H.R. 2190 states that the U.S. should develop policies that reduce exposure to mercury, particularly the exposure to child-bearing-aged women and young children. Yet in the last Congress, the Democrat, Majority insisted on legislation forcing daycare centers, hospitals, schools, and nursing homes to use mercury-laced compact fluorescent light bulbs. If we are serious about this issue, Congress cannot send mixed signals to the American public about these public health threats.

I want to thank today all of our witnesses for being here, and I want to thank you, Mr. Chairman, and know that I am eager to work in a bipartisan manner to address the concerns on both sides of the aisle on these issues.

Thank you very much.

Mr. Rush. The Chair thanks the gentleman.

[The information follows:]

******** COMMITTEE INSERT ********

Mr. Rush. The Chair now recognizes the sponsor of one of the bills that we are considering today, H.R. 2190. My friend from Chicago Ms. Schakowsky is recognized for 2 minutes.

Ms. Schakowsky. Thank you for holding this hearing today. I congratulate you on this legislation.

Right now I want to focus my remarks on H.R. 2190, the Mercury Pollution Reduction Act, a bill that protects the public health by ending the hazardous use of mercury cell technology at chlor-alkali plants in the United States.

Mr. Chairman, the dangers associated with exposure to mercury are well documented, and you mentioned some. According to the EPA, mercury pollution can do irreparable damage to cognitive functioning in adults and to an infant's developing nervous system. It is so dangerous that the Federal Government has warned pregnant women and those who may become pregnant not to eat fish with high levels of mercury, such as swordfish, and to severely limit their consumption of others, such as tuna.

While H.R. 2190 only addresses mercury pollution from four remaining chlor-alkali plants that use mercury, it must be emphasized that the impact these plants have on surrounding communities is severe, and, even worse, unnecessary. Unlike coal-fired power plants, there
are readily available alternatives that could and should be used. In fact, converting from mercury cell technology to membrane cell

has proven not only to be drastically better for the environment, but also wise business practice, saving companies millions of dollars in energy-efficiency costs.

I introduced this legislation because I believe that Congress has a responsibility to minimize the public's exposure to mercury pollution, especially when cleaner, safer alternatives exist.

And I want to thank Oceana, an environmental organization, for their tireless efforts, and to the committee staff for their diligent work on this bill.

I urge my colleagues to support its passage, and I yield back the balance of my time.

[The information follows:]

******** COMMITTEE INSERT ********

Mr. Rush. The Chair now recognizes the gentleman from Georgia for 2 minutes.

Dr. Gingrey. Mr. Chairman, thank you so much for calling this hearing today so we can hear testimony on H.R. 2309, the Mercury Pollution Reduction Act. It is my hope that moving forward on these two bills, including H.R. 2309, the Consumer Credit and Debt Protection Act, we can work in a bipartisan manner to accomplish our shared goal of increased and enhanced consumer protection.

H.R. 2309 would expand the role of the Federal Trade Commission by changing the rulemaking authority that relates to consumer credit and debt from the established and rigorous Magnuson-Moss procedures to the authority under the administrative procedures at APA.

Mr. Chairman, at a hearing on this topic on March the 24th, I urged my colleagues to take caution in making this change in rulemaking procedure. Magnuson-Moss was designed in the 1970s to be onerous so as to avoid whimsical changes in FTC regulations. While I think the end goal here is commendable, I still have concerns that a simple legislative change will open the door to future unraveling of the Magnuson-Moss procedures.

H.R. 2190 bans the manufacturer of chlorine using the mercury cell process, including the export of any mercury, within 2 years. As a physician for nearly 30 years, I believe it is critically

important that we take proactive steps to ensure the health and safety of our citizens.

During the 110th Congress, President Bush signed into law Senate bill 906, the Mercury Export Ban of 2008, that was introduced by then-Senator, now President, of course, Barack Obama. This legislation specifically outlawed the export of elemental mercury starting in 2013, similar, very much, to what is proposed in 2190. Therefore, given the duplicative nature of H.R. 2190 in regard to at least that section, I am concerned that we would be stretching our Federal resources too thinly on this important matter if the bill is enacted.

Mr. Chairman, on both bills before us today, I urge my colleagues to exercise due caution, to consider the possible unintended consequences that we always should.

I do look forward to hearing from our two panels today on these issues.

[The information follows:]

******** COMMITTEE INSERT ********

Mr. Rush. The Chair now recognizes the gentleman from Maryland Mr. Sarbanes for 2 minutes for the purposes of opening statement.

Mr. Sarbanes. Thank you, Mr. Chairman. I appreciate you calling a hearing on these two important bills.

I want to congratulate Ms. Schakowsky for her efforts with respect to the Mercury Pollution Reduction Act. It sounds like it is a pretty focused measure to address what is a kind of loophole right now in terms of a major source of mercury pollution, and I hope we can move quickly forward on this.

With respect to the Consumer Credit Debt and Protection Act, I participated in the hearing that you called previously. It was very eye-opening in viewing how this subprime culture that we addressed mostly in our discussions with respect to the housing sector has also infected auto financing and other sources of credit, and how these loopholes exist in a way that allow predators to enter that space. And so this proposes giving the FTC -- which, of course, comes with an exclusive focus on consumer protection -- a role in the designing of a new regulatory framework with respect to the financial services industry, and a very important role at that.

One of the anxieties many of us have is that as we design that new framework, it will not be done in a strategic way. We will end up with loopholes in it that people can take advantage

of. And I think having an agency at the table that has got this very keen focus on the consumer is part of making sure that that strategic framework is as robust as it can possibly be.

So I thank you for calling the hearing so we can hear these proposals discussed.

Mr. Rush. The Chair thanks the gentleman.

[The information follows:]

******** COMMITTEE INSERT ********

Mr. Rush. The Chair now recognizes my friend from Georgia Mr. Barrow for 2 minutes for the purposes of an opening statement.

Mr. Barrow. I thank the Chair.

I am going to limit my remarks to H.R. 2190, the Mercury Pollution Reduction Act.

I am in a tough spot today because while I recognize the environmental benefits of banning chlor-alkali mercury technology, I am one of the few Members of Congress who actually represents one of the facilities that still uses that technology. While I am willing to acknowledge it is a good thing there are only four of these plants left in the country, I have to be sensitive and ask my colleagues to be sensitive to the 150 jobs and the multimillion-dollar impact this plant brings to my district.

My colleagues have done a good job of highlighting environmental and health reasons to move this bill. I think they are obvious and compelling. I ask my colleagues to also be sensitive to the economic impacts, as I think those arguments are also obvious and compelling.

The question is, can we serve both purposes and find a productive solution for all involved? I think we can. I respectfully suggest the bill, as written -- and considering time and financial pressures, it is going to be very hard for the affected companies to comply with except to shut them down. It is not my goal to shut down an employer in my district. I won't

consider that a success.

The ideal solution, in my mind, would be the plant which I represent have the opportunity and the ability to transition to the new technology and preserve the jobs there for a long time into the future. I hope that is the intention of the committee, and I look forward to working to find a solution that secures the jobs and protects the environment.

[The information follows:]

******** COMMITTEE INSERT ********

Mr. Rush. The Chair now recognizes the gentlelady from California. Ms. Matsui is recognized for 2 minutes for the purposes of opening statement.

Ms. Matsui. I want to thank you very much for calling today's hearing. I would also like to thank our panelists for sharing their expertise with us.

In today's economic recession, many families in my home district of Sacramento are struggling to make ends meet. I have heard countless stories of people struggling to keep their homes, their jobs, and their way of life. Many of my constituents were victims of predatory lending and were steered into high-cost, bad loans. Now, many of these homeowners are seeking assistance in modifying their loans to more affordable terms, yet many of these individuals are now being tricked by scam artists posing as so-called "foreclosure consultants" to save their homes. These scams are costing thousands of dollars and represent false promises to struggling homeowners.

During last week's debate on the mortgage reform bill, I offered an amendment that was included in the final bill that directs the GAO to conduct a study of the government's current efforts to combat foreclosure rescue scams. It is clear that consumers are not being properly protected from these shameful practices.

It is also clear that we can do more to protect the American

people from harmful exposure to mercury. Mercury is a known toxin, and we should do all in our power to ensure that it stays out of our newborns' bodies.

I look forward to hearing from today's witnesses, particularly from Dr. Lynn Goldman, who is the principal investigator of the National Children's Study, and who is an expert on mercury exposure.

I thank you, Mr. Chairman, for holding this important hearing today. I yield back the balance of my time.

Mr. Rush. The Chair thanks the gentlelady.

[The information follows:]

******** COMMITTEE INSERT ********

Mr. Rush. Now it is my honor and privilege to recognize this panel of experts that have taken time out from their busy schedules to participate in this hearing. They come from well-established institutions, and they are, indeed, highly esteemed individuals in their line of work.

First of all, to my left is Ms. Eileen Harrington. Ms. Harrington has made a habit of coming before this committee, and you are always welcome. And she often appears before this subcommittee, and she is the Acting Director of the Bureau of Consumer Protection at the FTC.

Next to Ms. Harrington is Ms. Kathleen Keest. She is the senior policy counsel for the Center for Responsible Lending.

And our next witness and panelist is Mr. John Beisner. Mr. Beisner is the managing partner of the firm O'Meleveny & Myers. He is appearing on behalf of the U.S. Chamber of Commerce.

I want you to know, again, that you are welcome to this committee. And we are looking forward to your testimony. And you can please begin your testimony with 5 minutes of opening statements.

The Chair recognizes Ms. Harrington.

STATEMENTS OF EILEEN HARRINGTON, ACTING DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION; KATHLEEN KEEST, SENIOR POLICY COUNSEL, CENTER FOR RESPONSIBLE LENDING; AND JOHN BEISNER, MANAGING PARTNER, O'MELEVENY & MYERS, ON BEHALF OF THE U.S. CHAMBER OF COMMERCE

STATEMENT OF EILEEN HARRINGTON

Ms. Harrington. Thank you, Chairman Rush.

I am Eileen Harrington, the Director of the FTC's Bureau of Consumer Protection. I appreciate the opportunity to appear here today to discuss the Consumer Credit and Debt Protection Act and the FTC's role in protecting consumers of financial services. The Commission's views are set forth in the written testimony that we have submitted. My oral presentation and answers to your questions represent my own views.

As we know, the current economic crisis continues to have a devastating effect on many consumers. Many are struggling to pay their bills, keep their homes, deal with abusive debt collectors, and maintain their credit ratings. Two months ago you asked the FTC to tell you what it has been doing to help consumers through this difficult time. We told you about how we have been using our tools, law enforcement, consumer education policy and research, to help protect consumers in financial distress from being taken

advantage of by those who flout the law. When we came before you then, we recognized that we needed to do more, however, and we asked for your help.

Your response, the Consumer Credit and Debt Protection Act, is directly on point. In particular, this bill would build on the new authority we obtained under the 2009 Omnibus Appropriations Act by enabling us to issue rules targeting the practices that caused the most harm to consumers in the broader credit and debt marketplace.

Historically, the Commission has relied heavily on its law enforcement experience to inform its rulemakings undertaken under the Administrative Procedures Act with the express consent of Congress. This approach has served us well in the past, and will continue to do so here. Thus, in deciding which practices in the credit and debt market to target, we would rely on our casework to help identify any industrywide problems and pervasive consumer injury.

The Consumer Credit and Debt Protection Act also would allow us to seek civil penalties against those who violate any such rules that the Commission issues in this area. This is significant because civil penalties deter would-be violators. The FTC strongly supports the enactment of the this type of legislation.

As you know, we are already using our new authority under the 2009 Omnibus Appropriations Act to develop new consumer protection

regulations in the mortgage context. We expect these rules to address unfair and deceptive practices in mortgage lending, mortgage foreclosure rescue, mortgage loan modification, and mortgage servicing. The 2009 Omnibus Appropriations Act enhanced the Commission's ability to enforce these rules by allowing the FTC to obtain civil penalties against violators. Meanwhile, the Commission continues to vigorously enforce the FTC Act as well as other statutes and rules for which it has enforcement authority.

In response to the current economic crisis, the FTC has intensified its focus on protecting consumers of financial services and has targeted particular illegal practices in mortgage advertising, lending and servicing. Let me give you two examples. This past Friday the Commission announced an enforcement action against Golden Empire Mortgage and its individual owner for alleged violations of the Equal Credit Opportunity Act and Regulation B. The Commission alleged that the defendants charged Hispanic consumers higher prices for mortgage loans than non-Hispanic white consumers. The FTC alleged that the credit characteristics or underwriting risk of the company's customers could not explain the differences in the prices charged.

A second example. On April 6th, also since the last time we were here, the FTC joined with Treasury, HUD, the Department of Justice, and the Illinois attorney general to announce a coordinated crackdown on mortgage foreclosure rescue fraud. The Federal law enforcement component of that crackdown was done by

the FTC.

Although vigorous law enforcement is essential in providing more effective Federal oversight of the financial services sector, a broader legislative response may be appropriate here. Several bills have been introduced and proposals offered under which there would be some type of overall Federal regulator of financial services. There are differences in these bills and proposals to rationalize the oversight system, and there are numerous challenging issues that would have to be resolved to implement those concepts. Because of its unequaled comprehensive focus on consumer protection, its independence from providers of financial services, and its emphasis on vigorous law enforcement, we ask Congress to ensure that the FTC is considered as Congress moves forward in determining how to modify Federal consumer financial services. The Commission would be pleased to work with Congress and the subcommittee in developing and defining a new role for the FTC.

Thank you for inviting the Commission to testify at this hearing. I would be pleased to answer any of your questions.

Mr. Rush. Thank you.

[The prepared statement of Ms. Harrington follows:]

******** INSERT 1-3 ********

Mr. Rush. Our next witness is Ms. Keest.

Ms. Keest, you are recognized for 5 minutes for the purposes of opening statements.

STATEMENT OF KATHLEEN KEEST

Ms. Keest. Thank you, Mr. Chairman, and thank you very much for inviting me to testify. In my remarks today, I am only going to focus, I think, on a couple of points, primarily the Magnuson-Moss rulemaking, and I may add a couple of remarks about the Attorney General's enforcement authority, as I used to be in the Attorney General's office myself. And I would refer the committee to my written testimony for the specifics.

While we are not talking so much about mortgages today, I think since we are talking about consumer credit, we have an object lesson that we can learn from in what happened there. And the FTC's jurisdiction over consumer credit covers a lot of the same subject matter area that the Federal banking agencies did. And what we know is that from a regulatory perspective, that there are three tools that are needed to make sure that there are clear rules to the game, and that there is a referee on site to enforce those rules.

We know, now, that the banking agencies, much to our dismay, didn't use any of them. The FTC, by contrast, really, it

functionally only had one of those tools, and that was the tool that allows the referee to call a foul after it has already happened, and it is an important tool, but it is not sufficient.

What are those three tools? One of them is to set the rules of the game that everybody has to play. And I am a strong believer in the fact that that is as important for ethical and honest business competition as it is for consumers. I do not believe it is a zero-sum game, and I think that has been part of the problem of thinking of it in that way.

The second is the right to sort of keep an ongoing monitoring system where you can do prevention through monitoring. That is a tool that the banking industries have that the FTC doesn't, which leaves just the law enforcement, and that was the only tool the FTC had in practice. In theory, it had the rulemaking authority, but Magnuson-Moss, I understand -- I am sorry Congressman Gingrey isn't here -- I understand the purpose of it originally, but I can tell you that I have got gray hair now.

The first year, my first year in practice, was when the last time the Magnuson-Moss rule was used by the FTC. The credit practices rule was started in 1975 when I was a brand new lawyer. That process took 10 years. I testified at one of the hearings; I was part of that two-book record that it took to get that rule in place. It was 10 years later when that rule finally went into effect. The amount of credit out there went from something like $190 billion to almost $500 billion in that time, and the market

had already started to change.

Now, that rule was very important, and it did a lot of things, but we were so far behind the eight ball by the time it happened -- and in an agency that has got the breadth of jurisdiction this one does, devoting time and resources to a process that could take 10 years is a march down into a long, dark tunnel that they simply could not afford, and neither could consumers, because too much damage happens along that way.

By contrast, the Federal banking agencies, once they got on the dime, they proposed their credit card rules. The OTS, the Federal Reserve Board and the NCUA proposed their credit card rules. It was proposed, there was input, there was a lot of discussion, and it was promulgated within less than a year; and now there is a year-and-a-half lead time for the issuers who are affected by that rule to gear up and do it, but they know what those rules are going to be, and they have got that time to do it.

So I think the APA rulemaking is a critical, critical part of this.

And I would just like to make a pitch for -- Congressman, you mentioned sort of perhaps wanting to consider paydays along the way. In our testimony that we had suggested -- that is, this credit practices rule, the last one that the FTC used, this Magnuson-Moss provision that had a delivery period that would make an elephant weep, it was a really good rule that took care of some of the most egregious abuses that were in the consumer credit

market that day. It took care of the wage assignments that basically had people's paychecks going first to a creditor before it went to the groceries. It took care of the confession of judgment clauses that prevented people from raising a defense, which I can tell you as an old legal aid lawyer where a lot of people had them, and it took care of the in terrorem use of some of the tactics.

My first client -- the reason I spent 35 years doing this, it was my very first client who in my very first case, a loan company wanted to come in and clean out her house, the furniture in a 72-year-old widow's house, everything down to the two gray washtubs. And the credit practices rule got rid of that.

And we have some segments of the market today that use practices which are a modern-day electronic equivalent of that, holding checks or the key to somebody's bank account. And they can do everything that credit practices rule took care of by the abuses with that check hold. And so we have suggested that now that we are approaching the silver anniversary of that credit practices rule, that the FTC review that to see if, perhaps, we can update that and take care of some of those abuses again.

And if I still have a couple of minutes left.

Mr. Rush. No. Sorry.

[The prepared statement of Ms. Keest follows:]

******** INSERT 1-4 ********

Mr. Rush. The Chair now recognizes Mr. Beisner for 5 minutes for his opening statement.

STATEMENT OF JOHN BEISNER

Mr. Beisner. Good afternoon, Chairman Rush and Ranking Member Radanovich. I am John Beisner. I am a partner at O'Meleveny & Myers, and I am appearing on behalf of the Chamber of Commerce and the Chamber's Institute for Legal Reform.

My focus today is a narrow one. It is on section 4 of the Consumer Credit and Debt Protection Act, which would expand the authority of the States attorneys general to enforce Federal credit laws. Under section 4, as I understand it, States would be empowered to bring civil lawsuits whenever they believe their residents are harmed by a violation of a regulation promulgated under the bill or any FTC regulation related to consumer credit or debt. This legislation is part of a recent trend to expand State AG authority to enforce Federal laws.

Obviously, protecting consumers from unfair trade practices is an important legislative goal, but giving State AGs broader authority to bring civil lawsuits can create some potential for litigation abuse. The problem is that when State AGs are authorized to bring lawsuits, the State officials and their staffs may not be the ones who actually handle the litigation. Some

officials like to hire private attorneys to handle such cases. Having private attorneys enforce Federal law can create some problems.

First, when State AGs hire private attorneys, they frequently do so on a contingency fee basis. In other words, even though they are working for the States, the private lawyers are promised a percentage of whatever they win in court. That makes these contracts very attractive. The private attorneys get to go into court as a representative of the State, which gives them instant credibility with the courts; and if they win, they get to keep a substantial portion of the money. This is where things get troubling.

Private attorneys are not bound by the same ethical rules as Federal enforcement officials. As a result, people make political contributions in the hopes of landing lucrative legal contracts with the States.

Federal officials are subject to ethics rules that ensure that decisions to hire private attorneys are not based on political contributions. Federal officials must also follow Executive Order 13433, which limits the Federal Government's ability to hire private attorneys under contingent fee arrangements. But these laws do not apply when State AGs contract with private attorneys. The safeguards that protect the integrity of the Federal enforcement efforts presently do not apply to the State AGs, even though they may be enforcing Federal law.

Now, I want to be very clear that the vast majority of State attorneys general exercise enforcement powers very responsibly, but there have been some troubling media reports of State officials handing over large cases to private lawyers who contributed to their campaigns.

In Mississippi, Attorney General James Hood has been criticized for hiring friends and contributors on a contingency fee basis. In Pennsylvania, Governor Rendell faced criticism for hiring a campaign contributor to sue on behalf of the State; and Rhode Island State officials have been criticized for hiring a prominent contributor to State officials to lead the State's litigation against lead paint companies.

A second problem with contingency fee arrangements is they can create an incentive for lawyers to pursue cases most likely to bring them the most money. But when it comes to enforcing public laws, the most lucrative cases may not be the most important. Public prosecutors must use their discretion every day to decide which cases they should pursue in the public interest, but when attorneys with their own financial interests are making that decision or participating in those decisions, public interest considerations may be ignored.

A third problem with contingency fee arrangements in enforcement actions is that they can shortchange taxpayers. When government lawyers prevail in litigation, the State gets all the money. In the contingency fee arrangement, the private attorneys

get a significant percentage, reducing the amount going to taxpayers.

For these reasons, the Chamber respectfully suggests that in any legislation expanding State AG authority to enforce Federal laws, you should consider including safeguards to protect the public interests and guard against abuses. The first suggestion would be to require disclosure of private attorney retention agreements. When State officials hire private attorneys to enforce Federal law, they should disclose the arrangements to the U.S. Attorney General for publication in the Federal Register. Such transparency will help ensure that Federal laws are implemented consistently and fairly.

Secondly, it is suggested that State officials be barred from rewarding large campaign contributors with potentially lucrative contracts to enforce Federal laws.

Finally, it is suggested that the applicability of Executive Order 13433 be expanded. That order puts limitations on Federal officials from hiring private lawyers on a contingency fee basis. The same standard should apply to State officials enforcing Federal law. These safeguards would help ensure the transparent, proper use of authority to enforce Federal law in a manner wholly consistent with the goals of this legislation.

I thank you for the opportunity to testify today, and I look forward to answering any questions you may have.

[The prepared statement of Mr. Beisner follows:]

******** INSERT 1-5 ********

Mr. Rush. The Chair thanks the gentleman and all of the witnesses.

The Chair recognizes himself for 5 minutes for the purposes of asking questions of these witnesses.

In the subcommittee's last hearing on consumer credit issues, I asked the FTC Chairman, John Leibovitz, about the Commission's record in protecting consumers from unfair and deceptive practices in the past several years. I noted that the FTC arguably didn't do enough to stop the mortgage lending practices during the housing era or housing boom, I might add. The Chairman argued that the FTC argued that the FTC is "hamstrung" by the burdensome rulemaking process under Magnuson-Moss, and he assured me that if Congress gave the FTC the authority to issue rules under the Standard Administrative Procedures Act, the FTC would indeed be more effective in this particular area. Today we are considering legislation that would give to FTC this authority that Chairman Leibovitz requested at one of our hearings.

My question to Ms. Keest -- and I would also like to get a response from Ms. Harrington -- Ms. Keest, Congress has duly given the FTC streamlined rulemaking authority on a case-by-case basis. We have taken another approach in this bill. The Chairman has requested we give the FTC broad APA authority to issue rulings on anything involving consumer credit or debt.

My question is should we trust the FTC's discretion to

essentially use this authority, or will we be better off sticking with direct rulemaking?

Ms. Keest. I think it is extremely important to give them discretion for the simple reason that the velocity at which the market changes is far too fast to have to come back and make a record every single time.

For example, the last time before Congress passed the H.R. -- the predecessor of H.R. 72, 1728, last week, it had been 15 years before Congress acted on consumer mortgage issues. And there is a lot that goes on, and there is a lot that the FTC has on its plate. There is a lot that Congress has on its plate. And in the meantime, the markets develop and move, and I don't really think it is feasible to wait for specific direction as every problem comes up one by one.

Mr. Rush. Ms. Harrington, do you want to comment briefly on this?

Ms. Harrington. You can trust us.

And let me just tell you, let me give you some examples of how we used the Administrative Procedures Act rulemaking that the Congress has given us on a case-by-case basis.

In the area of telemarketing, the Commission issued the rules that the statute required, and then it went back several years later and did the "do not call" amendment. It took us less than a year to do that, and I was managing that project. And at the same time I was managing that project, I was managing amendments to the

FTC's franchise rule, a very important rule that protects investors in franchises by requiring that they be given itemized disclosure statements.

It took us 8 years to do that amendment. It took us less than a year to create "do not call." And that is the way that we have used our discretionary authority under the Administrative Procedures Act rulemaking that we have been given on a case-by-case basis.

Mr. Rush. I know that payday loans play a necessary role in the economy. Payday loans are available to poor people when no one else will lend to them. This is especially true of the type of short-term loans that poor consumers need to get by in emergencies. And I don't like the fact that people have to take out payday loans, but it is the reality of where I come from. I also recognize that there are some extreme and multiple abuses in the industry, and reform is needed. And I have been a long-time champion in the Congress of cracking down on this abusive payday lending.

My question is, how do we regulate the payday loan industry without destroying it?

Ms. Keest. I think that is one of the areas that we can take an incremental approach on. There is a lot of controversy, and there is a lot of experimentation going on with States that have regulated by different means, ranging from do whatever you want to prohibition and everything in between. And as time comes in, we

will have a better sense of what works and what doesn't work.

And in the meantime, I think that the proposal or that the recommendation that we have made to look at one tactic which I think is kind of the -- it is sort of one of the tools that really makes things not work so well for consumers is the check-hold system. So I would very much welcome -- and we did, in fact, recommend that that be one thing that the FTC look at. And if we could start incrementally there, then we can kind of work and see what is happening and see what is working out in the States.

Mr. Rush. The Chair now recognizes the Ranking Member Mr. Radanovich for 5 minutes.

Mr. Radanovich. Mr. Chairman, I did want to have a discussion on the States and the attorney generals on the enforcement of this.

Ms. Harrington, welcome to the committee.

Does the Commission take a position on the State attorney general enforcement of these laws?

Ms. Harrington. The Commission has favored the scheme under which Congress has enacted statutes giving the FTC rulemaking authority and providing the States with enforcement authority in Federal courts of the rules that are promulgated by the FTC. We are very supportive of that arrangement.

Mr. Radanovich. Do you worry about inconsistencies and confusion concerning a broad array of industries if the rulemaking authorities are given the authority for the attorney generals to

weigh in?

Ms. Harrington. The protection that the Congress has put into the statutes to make sure that we can guard against that is the provision that the States notify the FTC before filing so that we have an opportunity to talk with them and to take a look at complaints before they are filed. And the FTC also has the authority, under the statutory provisions that have been used, to intervene in actions in the event that there is some concerns about inconsistency.

So I think that the Congress has fairly anticipated that. And what we have seen now in probably a half a dozen or more instances in which the Congress has given the FTC specific APA rulemaking authority is an absence of that kind of inconsistency. This has worked very well.

Mr. Radanovich. Now, in your opinion, if this bill does include giving State AGs the enforcement authority, can you define how it might be given, as narrowly as possible?

Ms. Harrington. If the States are given the authority to enforce rules issued by the FTC under the statute, then that would be their authority. It would be very much like telemarketing, 900 numbers, certain other credit rules that the States are able to enforce.

Mr. Radanovich. The legislation contains a provision for any State AG to notify the Commission 60 days in advance of filing an action, if feasible. Otherwise, it can proceed without notifying

the Commission. Is that a concern for you?

Ms. Harrington. What I would be concerned about is 60 days is probably way too soon. We do these cases, the States do these cases. Sometimes it takes fewer than 60 days to work up the whole case, work up the complaint and be ready to file. So I think that 60 days is probably unreasonable. And several of the other statutes provide for notice if feasible, or there is some term like that.

We haven't had a problem. We work very closely with the States in consumer protection. We have different working groups on different subject areas: telemarketing, payment systems, whatever, their monthly phone calls. Everybody knows what everybody is doing here. There aren't many surprises in this area because there is an awful lot of work to do in consumer protection, and there aren't that many resources at the Federal and the State level to do it with. So we need to work closely together, and the left hand needs to know what the right hand is doing.

Mr. Radanovich. Thank you.

Mr. Beisner, welcome to the committee. I do have a question regarding the State AGs as well.

Were there no rules promulgated, we could have 52 interpretations of what is fair and deceptive, and that, of course, would be by 51 attorneys general and the FTC. What is the likelihood of inconsistent interpretation of the FTC's standard

that it would create confusion and concern in a broad array of industries, and how could this impact industry at large?

Mr. Beisner. I should make clear at the outset of responding to the question that the Chamber has no position on the delegation of authority to the AGs to enforce.

But I think there is some possibility of inconsistency just in the decisionmaking about where to enforce the priorities that would be given to certain areas, enforcement by certain State attorneys general. So I think there is some possibility of inconsistency on that just in the enforcement decisions that would be made when you have got that many people making decisions about where the enforcement resources should be devoted.

Mr. Radanovich. How do we make sure that the primacy of FTC's interpretations of the standard? How do we ensure that the FTC has primacy?

Mr. Beisner. I think that a methodology for doing that is through the agency itself making clear its interpretations of what rules it wishes to enforce on that, and to ensure that the notice provisions in here and so on are such that the agency does have the opportunity to participate in making decisions about enforcement.

Mr. Radanovich. Thank you, Mr. Chairman.

Mr. Rush. The Chair now recognizes the gentlelady from California, the wonderful coast of California, Ms. Matsui for 5 minutes.

Ms. Matsui. Thank you, Mr. Chairman.

As you know, a government effort has been initiated by the Treasury Department, HUD, Justice Department, and the FTC to combat mortgage foreclosure rescue scams and loan modification fraud. As I mentioned in my opening statement, during debate on mortgage reform on the Anti-Predatory Lending Act, I offered an amendment that was included in the final bill to direct the GAO to evaluate ongoing government actions to combat foreclosure rescue fraud and to educate consumers about the risk of these scams.

In addition, I want to thank Chairman Rush for joining me in sending a letter today to the GAO Comptroller General to urge him to begin reviewing the administration's efforts to combat foreclosure rescue scams.

Mr. Chairman, I ask unanimous consent to enter this letter into the record.

Mr. Rush. Hearing no objection, so ordered.

[The information follows:]

******** INSERT 1-6 ********

Ms. Matsui. Ms. Keest, your organization prides itself on preventing mortgage fraud and providing consumer protection for the consumer in the marketplace. How big a threat are these foreclosure scams to the American homeowner today?

Ms. Keest. They are a huge threat.

First, I want to thank you, Congresswoman Matsui, for your leadership on the issue of foreclosures.

It is a chronic problem. And every time the foreclosure rates rise, they come out of the woodwork. And the best way to get rid of them is to bring the foreclosure rates down. So hopefully we can do that. But that being said, they are going to be a presence.

And so I think it is one of the things that the State AGs and the States and the FTC I know have all taken to heart and put it at the top of the priority list, because right now that is the biggest equity-skimming scam out in there. And so it is number one right now, I would say.

Ms. Matsui. How would the U.S. actually assess the current efforts of the government to educate and to get the word out to the homeowners of these scams?

Ms. Keest. I will say that every time I go on a government Web site, I see it on its front page, so I recognize that they are really trying to do things. I don't know how many homeowners look to the Web pages of government agencies first when they are faced

with that, so I am not sure what the outcomes would be. I would hope that one of the things that GAO would do would be to look at and evaluate those kinds of efforts.

Ms. Matsui. Is there a particular area that you believe that the government or FTC should focus on to combat these scams during its rulemaking process?

Ms. Keest. I think I would have to say part of the -- one of the things that they need to do is to make sure that there is some substantive practices that are prohibited as opposed to dealing with disclosures, because the disclosures pretty much can always be worked around. So I would hope they would take stock of what some of the most common techniques are, the deed theft issues, that sort of thing, and consider substantively declaring them to be unfair, which is going to take care of the inconsistent enforcement problems and level the playing field for everybody.

Ms. Matsui. That said, I would like to hear more on the government's efforts to prevent foreclosure rescue and loan modification scams.

What specific role, Ms. Harrington, does the FTC play in joining with other government agencies in combating foreclosure rescue scams?

Ms. Harrington. Multiple roles.

First of all, the FTC operates the Consumer Complaint Center. It is Consumer Response Center and Consumer Sentinel, which is the complaint database. So we are the place where people complain to.

And if you go to the Treasury Web site, makinghomeaffordable.gov, and need to make a complaint, that will come over to the FTC. So we collect the complaints, number one.

Number two, we do law enforcement work. In the last year, we have brought 11 cases against mortgage foreclosure rescue scams, and we have more in our pipeline.

Number three, we do consumer education. We do it in our Web site, but also there are a lot of other ways. In the initiative that we announced on April 6th, we announced that we had recruited and enlisted some of the largest mortgage servicers, including Chase, and, I think, Bank of America, and Wells Fargo and others, to put right in the delinquency notices that go out to homeowners when they are first behind on their mortgage payment a warning sheet from us about mortgage foreclosure rescue scams and how to spot them.

We also made audio recordings, and we gave them to all of the mortgage-servicing companies to play when people call them and are put on hold. We have really -- and they are good. They are not like -- they are interesting. But they warn people about what to watch out for.

So we are doing education. We are trying to reach consumers who are most at risk right at the point of where they are at risk.

And we continue to work. For example, FinCEN, which is the Department of Treasury data center where banks and financial institutions make suspicious activity reports to, the FinCEN

people are working with us. They have created a special team of analysts to analyze suspicious activity reports concerning entities that we are watching as possible parties to mortgage foreclosure fraud. So there is a lot of criminal/civil/cross-government cooperation on this issue, better than I have ever seen.

Ms. Matsui. Thank you very much.

Mr. Rush. The Chair now recognizes the Ranking Member of the full committee Mr. Barton of Texas for 5 minutes -- or for 2 minutes.

Mr. Barton. I won't take the 5 minutes.

I have looked -- of course, this panel is talking about the Consumer Credit and Debt Protection Act. The next panel will talk about the mercury bill. I think it is a good thing to have these legislative hearings.

I can tell you, Mr. Chairman, that the Republicans on the subcommittee are on board on moving these bills, but we certainly think we should take a look at them.

My only question on the Consumer Credit and Debt Protection Act would be to Mr. Beisner. Your testimony talks about the potential abuse of giving the attorneys general the authority to enforce a Federal statute. Is there anything you would care to elaborate about that?

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Mr. Beisner. I think fundamentally the view that we are trying to express is that when Federal enforcement officials go about enforcing a law they are subject to a series of ethical requirements in the way they go about doing that; and what is being suggested here is that if that authority to enforce Federal law is being given to State Attorneys General there ought to be a similar set of safeguards with respect to enforcement of that law. Not interfering at all with whatever decisions may be made about enforcing State laws, but the Federal principles ought to be the same so that there can be good efforts made to ensure the integrity of that law enforcement process. And it is just to ensure that that integrity will be there.

I don't mean, as I said earlier, to suggest that there is any suggestion that the vast majority of the State Attorneys General are going off on the wrong track with these enforcement decisions. But when you give, as some of them do -- certainly not all of them, but some of them do give that enforcement authority to private attorneys. There is a special need to ensure that ethical considerations are being observed in that circumstance. Because they are not government officials, and they are not subject to the same requirements as a Federal office of enforcing the law is.

Mr. Barton. Mr. Chairman, that is my only question. We certainly don't oppose the intent of H.R. 2309. If staff and

members could work on some of the concerns that have just been raised, I think we could probably reach an accommodation.

But, with that, I yield back.

Mr. Rush. The Chair thanks the Ranking Member, and the Chair would like to emphasize it is the Chair's intention to work with the Republicans so that we can come up with a bipartisan bill. So I think there is a lot of -- if we all say --

The Chair now recognizes the gentlelady from Illinois, Ms. Schakowsky, for 5 minutes -- or 2 minutes, rather -- 5 minutes, 5 minutes for purposes of questioning the witnesses.

Ms. Schakowsky. Thank you, Mr. Chairman.

I am wondering -- and maybe you said this already. I am sorry. I had to leave. If you could walk us through how a single rulemaking under Magnuson-Moss procedures could take 10 years and how the new procedures then would make the agency more effective in protecting consumers.

Ms. Harrington. Certainly. There are a variety of mandatory provisions in Magnuson-Moss rulemaking that aren't found in Administrative Procedures Act rulemaking. For a Magnuson-Moss rulemaking, there must be an advance notice of proposed rulemaking. Under APA 553 rulemaking, that is not required. The NPR not only must be issued but it must address certain matters, and it must be submitted to Congress in advance so that the Congress -- and the Congress can essentially veto the rulemaking. That is not true with Administrative Procedures Act rulemaking.

At the notice of proposed rulemaking stage there are also very significant differences. Under Magnuson-Moss --

Ms. Schakowsky. Excuse me. Did you already do this for the committee?

Ms. Harrington. No.

The proposed rule must be based on a Commission determination that the practice is to be deemed unfair and deceptive are prevalent. That is, if cease and desist has been issued against an act or practice or other information indicates a widespread pattern. There is a requirement of a showing of prevalence before the notice of proposed rulemaking can go or has to be included with a notice of proposed rulemaking. There are no findings of that type required under the Administrative Procedures Act before an NPR may be issued.

There is also a requirement that the Notice of Proposed Rulemaking be submitted to Congress 30 days before it is published in the Federal Register. There is no similar requirement under the Administrative Procedures Act.

There is a requirement under Magnuson-Moss for a public comment period. That is not always required under APA rulemaking. Generally, it is not a public comment period under an APA rulemaking when there is some sort of emergency rule that an agency is issuing.

There are express ex parte restrictions under Magnuson-Moss rulemaking. There aren't under the Administrative Procedures Act.

Although I can tell you as a matter of practice at the FTC when we do APA rulemaking in the notice, we include ex parte restrictions. So that is pretty much the same.

Okay, here is where it really gets bogged down. Under Magnuson-Moss, there has to be an opportunity for a public oral hearing. And if a hearing is requested by anyone -- anyone can request a hearing in a Magnuson-Moss rulemaking -- then there has to be a presiding officer appointed. And there has to be a supplementary NPR published before any hearing that outlines the hearing issues which may lead to addition or deletion of issues based on public comment to the notice of the hearing.

Then there is a process that is required for the identification of interested parties and their representatives to attend this hearing. Interested parties have to be given the opportunity to do direct and cross examination of other interested parties. So in some of the rulemakings, for example, the one that Ms. Keest mentioned that went on for 10 years, interests that did not want this rule to be issued engaged in perpetual rounds of examination and cross examination.

Then there is a requirement that all of this be prescribed -- transcribed verbatim. And just getting the stenographer to transcribe, you know, days and weeks and months of Kathleen cross examining Eileen and Eileen cross examining Kathleen, this is what is required, that takes time.

Then the staff has to issue a staff report at the end of all

of these hearings, and the presiding officer has to issue a recommendation or a decision. And then there is a public comment period required on all of this. That is just at the NPR stage.

Under the Administrative Procedures Act, generally comments are submitted in writing. There is no requirement for a public hearing. At the FTC when we do APA rulemaking, we always do public workshops. We want to be very transparent. But it doesn't take very long.

And then at the final rule stage for a Magnuson-Moss rule there has to be a statement of basis and purpose issued to accompany the rule; and it must state the prevalence of acts or practices that are treated by the rule, the manner and context in which they are unfair or deceptive and the economic effect of the rule, taking into account small businesses and consumers.

And specifically on the economic analysis there has to be a cost-benefit analysis of each of the rules provisions. The statement of basis and purpose needs to address all of the comments and explain why the Commission did not adopt any particular -- I see you looking at this and I am going on and on. And this is just describing it. You know, living it and doing it takes 10 years.

The Administrative Procedures Act, at the conclusion of the comment period, a rule can be issued. It needs to contain a concise and general statement of basis and purpose, not this really detailed.

And then, finally, the standard for judicial review is different.

Ms. Schakowsky. I know the chairman is giving me extra time, but the time is up. I see even just by how long it takes to explain it how it is. But I am really encouraged by the notion that we can reach some agreement here, Mr. Chairman; and I really appreciate that explanation. Thank you.

Mr. Rush. The Chair thanks the gentlelady.

The Chair really thanks these witnesses. You have been extraordinary in your sharing with the members of the subcommittee your thoughts, and they are really going to be taken into much great consideration as we proceed. I just again want to thank you for taking the time off of your schedule, and you will be contacted for further input as we proceed.

Let me just ask, if you would, we will keep the record open for 72 hours, and so within the 72-hour period you may or may not be getting written questions from members of the subcommittee, those who are present and those who are not present. And if you would be really timely in your responses that certainly would be a benefit to the subcommittee.

Thank you very much, and we will dismiss the first panel. Thank you so much. It was good. In a respectful manner. Thank you so much.

Mr. Radanovich. Mr. Chairman.

Mr. Rush. The Chair recognizes Mr. Radanovich.

Mr. Radanovich. Thank you, Mr. Chairman.

I request unanimous consent that three items be included in the record. That would be a statement of the American Financial Services Association, the National Automobile Dealers Association, and the Florida Attorney General Bill McCollum.

Mr. Rush. Hearing no objection so ordered.

Mr. Radanovich. Thank you, Mr. Chairman.

[The information follows:]

******** INSERT 2-1 ********

Mr. Rush. The Chair now calls the second panel, panel number II.

The Chair wants to welcome this distinguished panel of experts who are here to provide input and testify on the bill, H.R. 2190, the Mercury Pollution Reduction Act; and I will introduce the panel starting from my left to my right.

First of all, I want to make sure that everybody recognizes Ms. Catherine O'Neill. She is an Associate Professor of Law in the Seattle University School of Law.

Next to Ms. O'Neill is Ms. Lynn Goldman, who is a medical doctor.

Dr. Goldman is a Professor at the Johns Hopkins School of Public Health.

And seated next to Ms. Goldman is Mr. Richard Jackson. He is the Executive Vice President of Operations for ASHTA, A-S-H-T-A, Chemicals.

Again, I want to welcome the witnesses. I want to thank you for taking the time off of your busy schedules to share with the subcommittee today.

STATEMENTS OF CATHERINE O'NEILL, ASSOCIATE PROFESSOR OF LAW, SEATTLE UNIVERSITY SCHOOL OF LAW, MEMBER SCHOLAR, CENTER FOR PROGRESSIVE REFORM; LYNN GOLDMAN, M.D., M.P.H., PROFESSOR, JOHNS HOPKINS SCHOOL OF PUBLIC HEALTH, PRINCIPAL INVESTIGATOR, JOHNS HOPKINS NATIONAL CHILDREN'S STUDY (FORMER EPA ASSISTANT ADMINISTRATOR FOR PREVENTION, PESTICIDES, AND TOXIC SUBSTANCES, ADMINISTRATION OF PRESIDENT WILLIAM JEFFERSON CLINTON); AND RICHARD JACKSON, EXECUTIVE VICE PRESIDENT OF OPERATIONS, ASHTA CHEMICALS INC.

Mr. Rush. We will begin by testimony from Ms. O'Neill.

Ms. O'Neill, we ask that you pull the mike close to you, that you turn it on, and that you restrict your comments, please, to 5 minutes. Thank you and welcome.

STATEMENT OF CATHERINE O'NEILL

Ms. O'Neill. Thank you, Mr. Chairman and members of the subcommittee.

My testimony makes four points today. First, mercury contamination poses a grave threat to the neurological health of children in the United States. The danger for mercury pollution is particularly acute for groups that rely heavily on fish as a food source and so raises environmental justice concerns.

Second, the chlor-alkali industry presents an easy case for eliminating this toxic pollutant. One simply doesn't need mercury to produce chlorine and caustic soda. In fact, alternative technologies that don't use any mercury at all have been used by the industry for 30 years. Yet four plants in the U.S. still refuse to update the processes.

Third, the cost of delaying action on these outmoded plants are large in economic terms and unconscionable in human terms. For each year of delay, another cohort of children will be born with neurological damage due to mercury contamination. This damage is irreversible. While chlor-alkali plants contribute only a portion of the mercury releases, it is a portion that is entirely preventible.

Fourth, H.R. 2190 ensures the long-term viability of the chlor-alkali plants in the communities they support. Facilities that convert to the newer, more efficient mercury free technology are likely to remain competitive and provide jobs for years to come.

We have long known that mercury is a potent neurotoxin threatening those exposed in utero and during childhood to even very small amounts of methylmercury. We have also come to appreciate that the harms of mercury contamination aren't distributed equally. Rather, they are borne disproportionately by groups that rely heavily on fish, including Native Americans, African Americans, other communities of color and low-income

fishers.

It is not acceptable simply to tell women and children to stop eating fish for several decades of their lives, yet that is basically the regulatory strategy we are using. Tennessee, for example, has recently issued such an advisory for the stretch of the Hiwassee River adjacent to the Olin chlor-alkali plant there, warning women and children to eat no fish from the river due to mercury.

The good news is that mercury releases from the chlor-alkali industry at least are entirely unnecessary. The industry developed alternative mercury free technologies years ago.

The phaseout called for by H.R. 2190 very sensibly capitalizes on this opportunity to eliminate thousands of pounds of mercury releases each year, while leaving intact the industry's ability to bring its products to market. Even if, as the industry suggests, the plants that currently use mercury can reduce some fraction of their emissions, the point remains that no mercury releases are necessary for this industry. Given mercury's potency, even a tiny amount can be harmful. An oft-quoted illustration is that it takes just a teaspoon of mercury to contaminate a 25-acre lake. We should therefore be looking for every opportunity to eliminate mercury releases.

An additional advantage of the newer mercury free technologies is that they are as much as 37 percent more energy efficient. While it might seem tempting simply to wait for the

chlor-alkali industry to convert to these more efficient processes of its own accord, that would be a mistake.

The cost of delaying action on these outmoded plants are not trivial. For each year of delay, another cohort of children will be born with neurological damage. Researchers have estimated that, in fact, as many as 630,000 children are born each year with neurological damage caused by anthropogenic sources of mercury. This damage will affect the intelligence and life prospects of these children for their entire lives. It is unacceptable to stand by for even a few years and permit this harm to more children for what amounts to the chlor-alkali industry's convenience.

Finally, H.R. 2190 takes a long-term perspective on the viability of the chlor-alkali facilities in the communities they support. Evidence suggests that plants that use mercury cell technology merely be able to sustain operations for a few more years. Plants that have controverted to the more efficient membrane health technology, by contrast, are likely to be remain competitive and provide jobs for decades.

In addition, H.R. 2190 functions to stimulate the new jobs required for the conversion. Recent chlor-alkali plant conversions have created some 250 such jobs for architects, designers, plumbers, electricians, and mechanics.

In sum, H.R. 2190 overcomes our current myopia to ensure the environmental health and economic well-being for all those

affected for the long haul.

Thank you, and I welcome any questions.

Mr. Rush. The Chair thanks Ms. O'Neill.

[The prepared statement of Ms. O'Neill follows:]

******** INSERT 2-2 ********

Mr. Rush. The Chair recognizes Ms. Goldman for 5 minutes.

STATEMENT OF LYNN GOLDMAN, M.D., M.P.H.

Dr. Goldman. Thank you very much Mr. Rush, and also thank you to Mr. Radanovich for the opportunity to testify before you today about H.R. 2190.

My name is Lynn Goldman, and I am a pediatrician and environmental health scientist and a professor at the Johns Hopkins School of Public Health who formerly served at the U.S. EPA as Assistant Administrator for the Office of Prevention Pesticides and Toxic Substances. And I have done research on mercury and its health effects on children. These comments that I have represent my point of view and not any point of view of Hopkins or any other organization I have ever been associated with.

As you know very well, mercury is a toxic metal; and it exerts its toxicity on children through formation of methylmercury in water. And this transportation is almost inevitable. When there is release of mercury into the environment, unfortunately, that mercury then contaminates fish.

There has been a lot of research that has demonstrated the toxic effects of mercury on the health of children, especially with in utero exposure; and, in fact, in the year 2000 the

National Academies of Sciences released a report called Toxicological Effects of Methylmercury that not only documented these effects but also recommended a limit on exposure, that is, only 0.1 microgram per kilogram of body weight per day. Or if you had a 22-pound child we are talking about only 35 billionths of an ounce each day that is allowable. So you can understand why even what might appear to be small releases of mercury can amount to quite a bit when it comes to toxicity.

As has already been mentioned, EPA has estimated that 630,000 children every year are born with mercury levels in their blood that are above this. And in fact in my own research at Hopkins we can validate this with children in Baltimore. They are born with too much mercury in their blood.

In the past, there used to be controversy about this. There was a time when we thought, well, some studies showed the effects of mercury and others did not. But even studies that in the past appeared to be negative have now shown to be positive. Because what happened is that the benefits from eating fish can blur the effects of mercury.

So very, very tedious and careful methods have been needed in order to show that, despite the benefits of fish eating, that mercury itself is hazardous. In fact, over the last few years after the publication of the National Academy study, we have three new studies -- one in Oswego, New York; one in New York City after the World Trade Center; and one in Boston -- that all show these

effects. I don't think that the effects are at all disputable in terms of the neurotoxicity of mercury on babies.

So what do we do? To manage the risk, we tell women of childbearing age to eat less fish, even though we know that there are actually benefits of eating fish. Well, then we can say, only eat the fish that have lower levels of mercury. But to do that we need to keep the mercury out of the environment. Because we have the threat of not having fish that women will find safe to eat if we keep polluting the environment with mercury. This is a very important issue. It must be addressed.

We know that the "mercury cell" chlor-alkali manufacturing process is not an essential use of mercury. We know that Japan has phased this out. We know that Europe has phased this out. We know that we have almost succeeded through voluntary means of phasing this out in the United States. But, unfortunately, minus a mandate, we are not going to get to zero with this issue. We have found that there continue to be a handful of companies that use the mercury cell process and even though their production is less than 5 percent of the total production of chlorine and of caustic soda production that it continues.

What is the problem with that?

Well, first, it creates the demand for mercury, which means that there is continued upstream pollution of mercury from mining, from manufacturing of the mercury.

Second, there are then continued releases of mercury so that

there are downstream releases either through fugitive emissions from these plants and perhaps in the bodies of the workers in these plants, certainly demonstrated around the environment of these plants, and even in the product that is coming from these plants there are minute amounts of mercury.

So, in conclusion, elimination of mercury cell manufacture for chlorine and caustic soda will reduce the U.S. submissions of mercury. It also will contribute to our efforts to reduce mercury pollution globally. And in my experience with this issue we have too long taken positions that would say, on the one hand, let's not take care of this problem in the U.S. until they take care of it globally and then, on the other hand, for the current administration walking into global negotiations and saying we are not going to take care of it globally because it is basically a domestic problem.

We need to attack this problem on both fronts, and I do urge support of H.R. 2190. It is in the best interest of our children. Thank you.

Mr. Rush. Thank you very much, Dr. Goldman.

[The prepared statement of Dr. Goldman follows:]

******** INSERT 2-3 ********

Mr. Rush. Our final witness is Mr. Jackson.

Mr. Jackson, you are recognized for 5 minutes.

STATEMENT OF RICHARD JACKSON

Mr. Jackson. Good afternoon, Mr. Chairman and members of the subcommittee. Thank you for the opportunity to testify before you today concerning H.R. 2190, the Mercury Pollution Reduction Act of 2009.

My name is Richard Jackson. I am the Vice President of Operations at ASHTA Chemicals in Ashtabula, Ohio. My testimony is on behalf of ASHTA and is intended to address the impact that this bill may have on our company and on the environment. While others in the chlor-alkali industry may be impacted by this proposed legislation, we do not intend to speak for them.

ASHTA is a privately held company with offices and its only production facility in Ashtabula County, Ohio. Our plant has been in operation since 1964. We currently employ nearly 100 people, with an annual payroll of approximately $7 million in an economically depressed part of northeast Ohio. We support local businesses and contractors with close to $2 million in annual capital investments and over $3 million in annual expenditures on maintenance, operating supplies, and contracted services.

While domestic mercury cell production may represent less

than 5 percent of all chlorine caustic soda in the United States, production of chlorine and potassium hydroxide, or KOH, using the same mercury cell process represents about 50 percent of the total production in the United States; and it represents 100 percent of our production. KOH is used as the principal source of alkalinity in many critical operations, including cleaning and disinfecting water treatment, liquid fertilizers, alkaline batteries, photo processing, herbicides, and runway de-icers, to name just a few. In many of these applications, there is simply no substitute for KOH.

In our process, mercury is contained in closed electrolytic cells where it serves as a flowing cathode to extract potassium from potassium chloride. Strict safety procedures and process controls are followed to prevent workplace exposure and to minimize mercury emissions. Today, less than 1/10th of 1 percent of total global mercury emissions comes from the U.S. chlor-alkali industry; and less than 1/10,000th of 1 percent comes from ASHTA, as illustrated in Exhibit 1 of our testimony.

ASHTA does not propose to challenge the bill's findings regarding the effects of mercury on human health in the environment. However, ASHTA strongly disagrees with the findings that mercury cell production is obsolete and, most importantly, that the elimination of mercury cell production by ASHTA will materially impact the presence of mercury in the environment.

ASHTA has an excellent environmental health and safety record

and a long history of working in cooperation with regulatory agencies such as the United States EPA and the Ohio EPA. We are and have consistently operated within our permits and in compliance with the regulations that govern our site.

ASHTA has also aggressively improved our environmental performance by making substantial financial investments to minimize mercury in water, air, and waste. We have eliminated the release of storm water and process water from our process areas in support of the Great Lakes Water Quality Initiative, and we achieved early compliance with the Maximum Achievable Control Technology, or MACT, under the mercury cell chlor-alkali NESHAP regulations.

ASHTA has also completed additional environmental projects to minimize fugitive emissions from our chlor-alkali process and work areas. This resulted in a significant reduction in our air emissions of mercury to less than 1/10th of one gram per day, which is less than 1/10th of one pound per year.

With the substantial reductions in mercury emissions achieved by ASHTA we believe that there are no human health or environmental issues that justify mandating this phaseout of mercury cell technology. Forced conversion or closure of ASHTA's facility will have no measurable effect on the global or local mercury emissions, human health, or the environment of the United States, the State of Ohio, or the city of Ashtabula, where most of our employees live and work. It would, however, have a

substantial adverse effect on the KOH supply in the United States in those businesses which rely on it.

It could also result in the closure of ASHTA's only production facility and the loss of nearly 100 high-paying jobs. This in turn would negatively impact many of our customers and would also result in a large increase in the number of railcar shipments of chlorine across our Nation's mainline railroads in order to serve the needs of our adjacent customer who buys 100 percent of the chlorine we produce.

ASHTA has repeatedly evaluated the economics of converting our plant to membrane cell technology, and each time we have concluded that the economic risk to our company did not justify conversion. Particularly considering our long-standing record of environmental compliance and at a time when our country and local community are in the worst economic condition since the Great Depression, requiring us to make further significant and financial investment to convert to membrane technology is unwarranted, it is confiscatory, and it is bad public policy. Therefore, we urge you to consider the broader impact the adoption of this bill would have; and we urge you to defeat the proposed legislation.

Mr. Chairman and members of the subcommittee, thank you for your valuable time; and I will gladly answer questions at the appropriate time.

[The prepared statement of Mr. Jackson follows:]

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Mr. Rush. The Chair thanks all of the witnesses, and the Chair recognizes himself for 5 minutes for the purpose of questioning the witnesses.

According to the EPA, concentrations of mercury in blood and hair are higher in African Americans than other ethnic groups. In 2004, a study found in its survey samples that African American and Mexican American children have higher mercury hair concentrations than White children; and this study further linked higher mercury levels with the consumption of fish.

In her written testimony, Professor O'Neill cites a study that found that 27.4 percent of women who are Native Americans, Asian Americans or from the Pacific or Caribbean Islands have mercury levels that pose a risk to developing fetuses. This is nearly three times the national average.

My question to both Dr. Goldman and Professor O'Neill, can you explain the disparate impact on mercury on people of color and on poor communities?

Dr. Goldman. I can tell you what we know, and that is -- and our research, by the way, shows the same thing -- with higher levels in African American babies at birth and also Asian babies have higher levels. And what we know is that people who are poor, in immigrant communities as well are more likely to fish for subsistence, to go and to get fish in places that have mercury pollution and where the fish are accumulating that pollution.

And that is also why -- one of the other statistics that you cited about Native Americans, that is also why often those populations have more exposure. And we think that that is the most important reason.

Mr. Rush. Would you care to add some additional comments, Ms. O'Neill?

Ms. O'Neill. Yes, thank you.

This finding is backed up by the National Environmental Justice Advisory Council, who in 2002 found the issue of exposure via fish consumption -- because this is the primary route of exposure to mercury and a number of other pollutants -- to warrant a full-blown study on just this issue. So this study -- and I served as a member of the work group that drafted it -- made just these findings.

And the studies show -- and these studies were conducted in Detroit, Michigan, studies in the south, studies in the northeast and really all around the country and certainly in the Pacific Northwest -- that when we are talking about these communities of color, whether we are talking Asian American communities, African American communities, certainly Native American communities, that the place of fish, whether both culturally and economically in their diets and in their lives is such that they are going to be the ones who are most exposed and the most harmed by contamination.

Mr. Rush. Thank you.

Mr. Jackson, in your testimony I believe I heard you say that your company did not alter its production methods because of the economic impact on your company, that there were alternatives but you chose not to use alternatives because it would have an adverse economic impact on your company. Is that correct?

Mr. Jackson. Had we gone and done some of the conversions and so forth and put ourselves at financial risk through the financing of these, it would have put us at way too great a risk from any reasonable business operation. Basically, we would have had to choose to put ourselves at such a risk that we could not effectively compete. And through the markets that we have been through, effectively it would have been the same result as what this bill as currently written. It would take us out of business.

Mr. Rush. So you are saying that you could not afford the transition from your current method to --

Mr. Jackson. No, we were able to meet and beyond any of the regulations, all of the current regulations and previous regulations, regarding environmental compliance. Investment in those regulations, to meet those regulations, as laid out by the United States EPA and other regulatory bodies, we complied with every one and went beyond each one, as I noted in my testimony; and we saw no reason to take it beyond that level, because, clearly, we were meeting the objective of the environmental regulators at that time.

Mr. Rush. Thank you.

The Chair's time has ended. The Chair now recognizes the Ranking Member for 5 minutes.

Mr. Radanovich. Thank you, Mr. Chairman.

Mr. Jackson, in the world of mercury, whatever you do is such a small part of that, it seems like. Of the four industries that this bill affects, it seems to be a small fraction of the number in the mercury world. Isn't there other places to look for substantially more reductions than your industry?

Mr. Jackson. Well, there is still a number of places and sources of mercury. Europe continues to use more mercury cell technology than we do for the same process.

Gold mining is one of the most horrific uses of mercury, especially artisanal miners in the Malaysian area as well as Brazil and so forth, rain forest areas, unfortunately. These areas have significant impact on the mercury in the environment, as well as the power industry through their continued additional Chinese power plants that go in and put high-level mercury that is deposited throughout the world, not just close to the stacks of the Chinese power industry but throughout the world and effectively hitting every water body in the world. That is really the source of the mercury.

Mr. Radanovich. Dr. Goldman, I want to ask you a question.

It seems to me the trend right now -- and people for energy purposes are encouraging compact fluorescent light bulbs which contain mercury. They are going into homes all over the country.

It seems to me that that would be a bigger thing to go after than it would be something as small as this. What is your thought on that?

Dr. Goldman. First, to the chlor-alkali mercury cell technology, Europe is phasing them out by 2020. So they have a clear deadline for taking them out of production. Globally, it is a major source; and it is hard for us to tell developing countries not to do something that we continue to do. I think you understand that.

But in terms of the compact fluorescents, there are lower mercury bulbs that have been developed; and I think that the market -- EPA should be pushing the market toward those, as well as the new LED light bulbs and to move to LED technology that is a nonmercury technology, which at this point it is not quite at a place where you can replace light bulbs in your home but needs to be done.

Because it is a problem, and it is beginning to contribute quite a bit to not only the potential for breakage in the home and having to deal with all of that but also that -- just another set of items that we are disposing of that we have to segregate and so forth, and it is just kind of better to not create that.

As a mom, for me it is just one more thing that I have to think about segregating and disposing of some special way; and I would really rather not have to deal with that.

Mr. Radanovich. Isn't it -- I think this might be a case

again that we experienced on lead poisoning, a hearing we did where it is either all or nothing. It seems like any presence of any mercury anywhere -- say, for example, lead is used on a part of a handlebar on a bicycle, apparently where it needs some of that malleability to force the handlebars to stay on straight. And yet the probability of that getting into a child is -- you know, I suppose there is a probability but very, very small. Isn't this the case that we are seeing here with this, that nothing is good unless it is all gone?

Dr. Goldman. The thing about lead that is slightly easier than mercury is it is easier to immobilize. And the thing that is hard to understand about mercury is that when you see that little liquid stuff jiggling around that there is vapor coming off of it, unlike lead which does not vaporize at room temperature.

Lead can also be a major problem. Kids have gotten lead poisoning from all kinds of weird things. I have seen a kid get lead poisoning from sucking on their baby monitor, which who would let their kid suck on a baby monitor, you know. But there is all kinds of weird things that can happen. But at least lead in waste, you can kind of immobilize it.

It is very difficult to immobilize mercury. That is the major issue. Until it is converted to methylmercury, and then it doesn't vaporize anymore, but then you have the toxic compound that is right there in the environment. So it is a very different kind of a metal.

Even though you are right, in some ways, there are molecules of mercury that we could chase around forever and never be able to deal with. And I think you are right to be pointing to that because you aren't going to be able to get rid of every molecule in mercury.

Mr. Radanovich. Thank you.

Mr. Jackson, do you think by your company's following the EPA rules that you follow right now, is that sufficient in your mind to control the release of mercury?

Mr. Jackson. We believe they are. We think that the EPA rules have been great guidance as far as our industry. We have seen much more stringent regulations in the last NESHAP through the maximum tubal control technology, which basically took our industry -- and the Chlorine Institute has kept records of this over the last 11 years -- has basically taken our industry and reduced the amount of mercury released from our industry by 94 percent.

ASHTA itself has already taken more than that, down to 98 to 99 percent. We believe fully that the little bit of mercury that we continue to put out in waste, it is well managed, it is controlled, it goes into restricted waste landfills, it is completely immobilized. The mercury in the water -- we don't release any water from our site, but there is no vapor pressure on the mercury from our product or water. So the idea of a child breathing mercury or being exposed to it through any of our

products directly is just not really practical.

Mr. Radanovich. Thank you, Mr. Jackson.

I appreciate all the witnesses, and I yield back.

Mr. Rush. The Chair now recognizes the gentlelady from Illinois, Ms. Schakowsky, for 5 minutes.

Ms. Schakowsky. Mr. Jackson, can you explain to me why the EPA issued a health advisory in March of this year warning residents that fish caught in the Ashtabula River were contaminated with mercury?

Mr. Jackson. I think if you look at fish advisories throughout the United States the location next to chlor-alkali industries has very little to do with where fish advisories are created. The fact is that the areas of which the fish advisory are I believe are well apart from any outfall that we have ever had. We currently do not release water at all from our facility, so we don't feel like we would have impacted a fish advisory at all.

The Midwest is a large burner of coal, and in coal fires that are in the releases from coal production energy is put into the upper atmosphere. It travels west to east. And as you can look at the Northeast corridor that is where your largest deposition of mercury has occurred.

Ms. Schakowsky. So you think your plant has nothing to do with it? I only have 5 minutes. So you are saying you don't think you have anything to do with it. Aside from no water

emissions, are you saying there is zero air emissions?

Mr. Jackson. No, we are not saying there is zero air emissions. Less than 1 -- .1 grams per day is what we have measured from our facility. Much -- probably 10 times less than the EPA recommended standard.

Ms. Schakowsky. Now, you cited an EPA 1997 report. That is where you got your numbers. About less than 1/10th of 1 percent of mercury emissions in the world. Are you aware of the United Nations Environmental Program study of December, 2008?

Mr. Jackson. I have been looking for that report. I have not seen the data from it yet.

Ms. Schakowsky. Well, what it says is that, actually, the chlor-alkali industry is responsible for a significantly higher proportion of global mercury emissions, 2.43 percent. So given -- and maybe we can get more information from Dr. Goldman, Ms. O'Neill -- but, given those figures, do you still believe that eliminating the use of mercury and chlor-alkali production won't make an impact on the presence of mercury in the environment?

Mr. Jackson. It will not make a measurable impact. You could take away --

Ms. Schakowsky. Even if it were two point --

Mr. Jackson. Even if you took all the chlor-alkali industry, mercury cell chlor-alkali industry I would say out of the world, clearly out of the United States, the impact on the lakes and rivers and streams and the amount of mercury in the fish would

have virtually no impact.

Ms. Schakowsky. Let me get a response to that from either one of you, or both.

Dr. Goldman. I think certainly that it would have an impact, and it would have an impact in the immediate time period just with the current existing production of these materials and also the associated mining and smelting that needs to be done in order to produce the mercury that is purchased.

But, also, if you look for it into the future and with the rapid pace of economic development globally, which will increase the demand for these products of chlorine and alkali, that if the world continues using this method there will be even more increase in mercury production, more releases of mercury. And this is a cumulative, persistent problem.

Ms. Schakowsky. Thank you.

Ms. O'Neill.

Ms. O'Neill. Thank you.

I think it is certainly the case of the natural sources of mercury that we are not going to be able to control. But the fact is, and I think Dr. Goldman said it, that when there are nonessential uses, human made contributions that we can prevent, we should do so. The impact will be material from this industry.

Mr. Jackson quoted the emissions of ASHTA, but, of course, we have to remember that H.R. 2190 would phase out the use from the entire mercury cell process within the chlor-alkali industry. And

the Chlorine Institute's numbers show releases from this group on the order of four tons, if you include releases to the environment and to end products that might end up in human food, as we have seen from the recent report in the Washington Post. And potentially as much as eight tons if you account for the unaccounted for mercury and the fugitive emissions which EPA still suggests are on the order of potentially to about half ton per source. So these are not needed for the processes. We can still bring all these products to market without the mercury, and as a nonessential source of mercury it is one that we can eliminate.

Ms. Schakowsky. Thank you.

I would like, Mr. Chairman, to submit for the record a letter from 43 environmental groups in support of H.R. 2190.

Mr. Rush. Hearing no objection, so ordered.

Ms. Schakowsky. Thank you.

[The information follows:]

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Mr. Rush. The Chair thanks the gentlelady.

The Chair now recognizes Mr. Scalise from Louisiana for 5 minutes.

Mr. Scalise. Thank you, Mr. Chairman.

First, a question for Dr. O'Neill.

Your testimony refers to allegations about mercury and high fructose corn syrup via caustic soda. Dr. Robert Stopford, a renowned expert on the health effects of mercury who graduated from Harvard Medical School and directs the toxicology program at Duke University Medical Center, has conducted research in this area, but he found that no quantifiable mercury was found in any of the sampled surveys, and high fructose corn syrup does not appear to be a measurable contributor in mercury food. Have you looked at Dr. Stopford's research findings, and if you can just comment on what he reported.

Ms. O'Neill. And perhaps Dr. Goldman can speak to this as well.

I am not familiar with that study; and the studies to which I am referring are the ones recently published in the Environmental Health Perspectives, where they found that 50 percent of the samples showed measurable quantities of mercury.

My point is not that this is the primary route of contamination. In fact, we know that fish is the primary route of human exposure to mercury; and that is the graver source of

concern, particularly given fish's health benefits that we have to forego if they are contaminated with mercury.

My point is to recognize that if we are using mercury by this process it ends up somewhere. We have to buy it. It ends up in the river. It ends up going out the stacks. It goes out as fugitive emissions into the environment and ends up in the water and ends up in product as a contaminant. And I think EPA and the industry and the textbook discussions of the process recognize that this is necessarily the case when you are using mercury cell technology.

Mr. Scalise. Dr. Goldman.

Dr. Goldman. I guess I should start by congratulating you, looking at the sticker on your jacket.

Mr. Scalise. Thank you. I am operating on 3 hours of sleep, so I apologize.

Dr. Goldman. No, I understand. I have been there.

I have read, actually, that study; and I think that it probably is true, that they can measure very minute amounts of mercury and the HFCS. And I also did not think that it was enough to be concerned about toxicologically. I mean, from the standpoint of whether you eat that or not, I would be more concerned for my child to be eating too much high fructose corn syrup just because it is not the best diet. It is basically the diet most kids want to eat, and we want them to eat vitamins and protein and other things.

But I think it is indicative of just kind of the problem that we generally have probably contamination of mercury in the environment that is not only through emissions and from plants and fugitive emissions but possibly in a little bit that goes out in the product. But I would not want people to be worried about eating this product on that basis.

Mr. Scalise. A recent U.S. geological survey report found that methylmercury emissions from around the world, primarily in Asia, end up in the North Pacific, contaminating 40 percent of tuna as well as other seafood. Considering the vast expansion of coal-fired power plants in China and India, how much do you think that is contributing to some of the things that you are looking at?

Dr. Goldman. I think it is a major concern. I think there is pretty good evidence that a large fraction of the mercury that we are exposed to is local, and another large fraction is from global emissions, and then there is a lot of it that is just from reentrainment. Some of the mercury is just deposited and then reentrains and comes back. So there is recirculation of mercury that has already been released.

So all of those have to be addressed on different fronts, and the global emissions I think need to be addressed through the UNEP and actions to try to get everybody in the world to take action to reduce mercury emissions. And the fact that there are many new coal-fired power plants being built in China every week is a great

concern and not just from the standpoint of mercury but also from the standpoint of global warming that things need to be done in order to turn that around. You were talking about 6 billion people in the world, all of whom want to live just like we do; and we have got to take action to make sure that the things that seem to be little things --

Mr. Scalise. A lot of them criticize --

Dr. Goldman. -- things that seem to be little, but if we multiply it times 6 billion, it is not a little, it is a lot.

Mr. Scalise. Let me ask Mr. Jackson, because it looks like on the solid waste reporting requirements in Subsection C of the bill that relate to nonhazard waste -- I don't know if you have looked at that. Would there be any value in your company actually having to report on its lunchroom trash contents?

Mr. Jackson. We don't see this as any benefit whatsoever. We see it as onerous upon us. We have no -- the idea of our office waste or food waste from employees, we don't even know how to manifest it or send it off.

The other thing I think the committee should recognize is that all even nonhazardous waste landfills are regulated so that the waste that goes in there, hazardous or nonhazardous, is basically treated the same as if it were hazardous. So the release of any potential mercury that could have slipped into the trash can with an office paper, which is just totally impractical --

Mr. Scalise. I see I am out of time. I yield back. Thanks.

Mr. Rush. The Chair thanks the gentleman.

This concludes this portion of this hearing. And, again, the Chair thanks all the participants for your involvement, for the sacrifice of your very important time. We really appreciate your contribution to the deliberation of this subcommittee on these very important issues. Thank you so very much and safe travels. Thank you. God bless.

Mr. Radanovich. Mr. Chairman.

Mr. Rush. The Chair recognizes the Ranking Member for a unanimous consent request.

Mr. Radanovich. Thank you, Mr. Chairman.

I ask unanimous consent that the following documents be included in the printed record: a letter to you and I from Arthur Dungan of the Chlorine Institute dated May 11, 2009; a report titled the Assessment of Test Results for Mercury in High Fructose Corn Syrup by Dr. Woodhall Stopford; a report titled Normal Mercury Levels in Food and Beverages by Dr. Woodhall Stopford; a statement from the Corn Refiners Association dated February 3, 2009; a news release from the Corn Refiners Association dated March 18, 2009; and a news release from ChemRisk dated January 30, 2009.

Mr. Rush. Hearing no objection, so ordered.

Mr. Radanovich. Thank you, Mr. Chairman.

[The information follows:]

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Mr. Rush. The subcommittee now stands adjourned.

[Whereupon, at 4:07 p.m., the subcommittee was adjourned.]