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2 HIF154.170

3 MARKUP ON

4 H.R. 2221, THE DATA ACCOUNTABILITY AND TRUST ACT;

5 H.R. 2309, THE CONSUMER CREDIT AND DEBT PROTECTION ACT;

6 H.R. 1706, THE PROTECTING CONSUMER ACCESS TO GENERIC DRUGS

7 ACT; AND

8 H.R. 2190, THE MERCURY POLLUTION REDUCTION ACT

9 WEDNESDAY, JUNE 3, 2009

10 House of Representatives,

11 Subcommittee on Commerce, Trade and Consumer Protection

12 Committee on Energy and Commerce

13 Washington, D.C.

14 The subcommittee met, pursuant to call, at 10:00 a.m.,

15 in Room 2322 of the Rayburn House Office Building, Hon.

16 Bobby L. Rush (chairman) presiding.

17 Members present: Representatives Rush, Schakowsky,

18 Sarbanes, Sutton, Pallone, Gordon, Stupak, Green, Gonzalez,

19 Weiner, Matheson, Butterfield, Barrow, Matsui, Castor, Space,  
20 Braley, DeGette, Waxman (ex officio), Radanovich, Stearns,  
21 Whitfield, Pitts, Bono Mack, Terry, Murphy, Gingrey, Scalise,  
22 and Barton (ex officio).

23           Staff present: Kristin Amerling, Chief Counsel;  
24 Michelle Ash, Chief Counsel; Christian T. Fjeld, CTCP Policy  
25 Coordinator; Valerie Baron, Special Assistant CTCP;  
26 Marc Groman, FTC Counsel; Anna Laitin, Professional Staff  
27 Member; Robin Appleberry, Professional Staff Member; Tim  
28 Robinson, Counsel to Subcommittee Chair; Sharon Davis, Chief  
29 Legislative Clerk; Jennifer Berenholz, Deputy Clerk; Caitlin  
30 Haberman, Assistant Clerk; Mitch Smiley, Assistant Clerk;  
31 Brady Young, Legislative Counsel; Miriam Edelman, Special  
32 Assistant; Lindsey Vidal, Press Assistant; Sam Costello,  
33 Legislative Analyst; Jerry Couri, Professional Staff Member;  
34 Shannon Weinberg, Counsel; Will Carty, Professional Staff  
35 Member; Brian McCullough, Professional Staff Member; Amanda  
36 McGrevey, Legislative Intern.

|

37           Mr. {Rush.} The subcommittee will come to order. Today  
38 the subcommittee is meeting to consider H.R. 2221, the Data  
39 Accountability and Trust Act, H.R. 2309, the Consumer Credit  
40 and Debt Protection Act, H.R. 1706, the Protecting Consumer  
41 Access to Generic Drugs Act and H.R. 2190, the Mercury  
42 Pollution Reduction Act. Pursuant to Rule 9, the chairman  
43 and ranking member will each have 5 minutes for opening  
44 statements and any other committee member who wishes to make  
45 an opening statement will have 3 minutes.

46           I now yield to myself for 5 minutes for the purposes of  
47 an opening statement.

48           We are going to consider four bills today. This  
49 subcommittee has held legislative hearings on all four bills  
50 and today's markup represents another step forward towards  
51 these bills eventually becoming law. At the outset, I want  
52 to emphasize that all four bills remain works in progress. I  
53 will be introducing the Manager's Amendment on three of the  
54 four bills and I fully expect that all four bills will  
55 undergo further changes from subcommittee to full committee.  
56 While I cannot guarantee that we will all ultimately agree on  
57 the final legislative products, I can assure my friends on  
58 the other side of the aisle and all of stakeholders that we  
59 will continue to work in a cooperative and deliberative

60 manner. My intent is to produce legislation that is strong  
61 and adequately protects consumers but at the same time is  
62 careful and thoughtful.

63 The first bill we will be introducing today or  
64 considering today is H.R. 2221, the Data Accountability and  
65 Trust Act. This bill was originally introduced in the 109th  
66 Congress by then Subcommittee Chairman Stearns and eventually  
67 passed the full committee by a unanimous vote. This  
68 bipartisan bill addresses the problem of data breaches and  
69 the harm those breaches impose on consumers. H.R. 2221  
70 requires companies that hold data or personal information to  
71 develop reasonable security measures for that data and  
72 notification protocols in case of a breach. I will be  
73 introducing a bipartisan Manager's Amendment that makes  
74 several changes to the underlying bill.

75 The second bill we will be considering today is H.R.  
76 2309, the Consumer Credit and Debt Protection Act. I am the  
77 principal author of the bill and the subcommittee has had  
78 numerous hearings on consumer credit matters in this  
79 Congress. H.R. 2309 provides the Federal Trade Commission  
80 with much needed standard rule making authority under the  
81 Administrative Procedures Act in order to address consumer  
82 protection in the credit market. Currently the commission is  
83 burdened with rule making authority other the so-called

84 Magnuson Moss Act which can take years to craft important  
85 rules. I will be introducing a Manager's Amendment to this  
86 bill as well.

87 Thirdly, the subcommittee will take up H.R. 1706, the  
88 Protecting Consumer Access to Generic Drug Act which was  
89 introduced by Chairman Waxman and myself. H.R. 1706  
90 prohibits the practice of the so-called paying for delaying  
91 drug patent settlements when by the brand name drug companies  
92 pay the generic drug companies to stay off the market.  
93 During the time when we were deliberating on universal  
94 healthcare and we can cut down costs, this bill will save  
95 taxpayers and consumer millions of dollars from increased  
96 generic competition in the marketplace.

97 Lastly, the subcommittee will consider H.R. 2190, the  
98 Mercury Pollution Reduction Act introduced by my friend, the  
99 vice chair of this subcommittee, Ms. Schakowsky. H.R. 2190  
100 prohibits the use of mercury in the manufacturing of chlorine  
101 in the United States two years after enactment. The bill  
102 further prohibits the use of mercury from these plants  
103 effective immediately. There are only four facilities in the  
104 U.S. that still use mercury in the production of chlorine and  
105 I believe this bill will move those plants towards production  
106 methods that are not only healthier for the environment and  
107 the public but more efficient and cost effective in the long

108 run. I will have a Manager's Amendment for this bill, as  
109 well.

110 I want to thank all the subcommittee members and their  
111 staff for their hard work on all of these bills. We are  
112 going through regular order in order to provide all of the  
113 members of this subcommittee an ability to make their mark.  
114 As I stated earlier, this is only the beginning of the  
115 process and I look forward to working with all of the members  
116 of this subcommittee, Democrats and Republicans alike as we  
117 move forward through the full committee.

118 [The prepared statement of Mr. Rush follows:]

119 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
120           Mr. {Rush.} With that, I yield back the balance of my  
121 time and I recognize now the Ranking Member of the  
122 subcommittee for the purposes of opening statements, Mr.  
123 Radanovich.

124           Mr. {Radanovich.} Thank you, Mr. Chairman.

125           Today we will consider several bills and I intend to  
126 support one of them, H.R. 2221, the Data Accountability and  
127 Trust Act. This legislation establishes two important  
128 requirements Congress recognized in 2005. First, it sets a  
129 federal standard for business to protect sensitive personal  
130 information and second, requires notification to customers  
131 when their data has been breached.

132           We will consider an amendment that you will offer, Mr.  
133 Chairman, that has been worked on in a bipartisan manner. It  
134 makes changes based on comments we have received from  
135 stakeholders. I intend to support your amendment because it  
136 makes sensible improvements that are consistent with the  
137 goals of the legislation and will relieve duplicative  
138 requirements for businesses that have substantially similar  
139 requirements under existing Federal Law.

140           Unfortunately, I will not be able to support the other  
141 three bills for a variety of reasons. For H.R. 2309, the  
142 Consumer Credit and Debt Protection Act, I commend you for

143 your intent to ensure consumers are protected and that the  
144 bad actors are prosecuted when they deal in credit and debt  
145 issues. I support the directed rule making for debt  
146 settlement services and the commission's examination of motor  
147 vehicle financing practices to determine whether the rules  
148 should be considered for what is often the second largest  
149 purchase for any individual or family.

150         Were it only these two issues you would have my full  
151 support but the legislation also provides blanket new federal  
152 rule making authority under the Administrative Procedures Act  
153 rather than the congressionally mandated Magnuson Moss  
154 Procedures on any issue of consumer credit and debt. It is  
155 not clear how wide a net that will cast or what business  
156 practices will be captured. With the new rule making  
157 authority, civil penalties will apply to any violation of the  
158 new rule the commission issues for consumer credit or debt  
159 but the legislation also provides the authority to levy civil  
160 penalties for any violation of a deceptive act or practice  
161 related to credit or debt without it being a violation of the  
162 rule. I believe this is unnecessary if the commission will  
163 be promulgating new rules defining what are unfair and  
164 deceptive practices. Changing the standard will effectively  
165 require every business that extends credit to predict the  
166 future and guess what the commission will determine is an

167 unfair or deceptive practice or else be subject to a civil  
168 fine.

169 I appreciate your willingness to look at our suggestion  
170 to bring transparency to the State Attorney General  
171 Enforcement Provision when they use the private attorneys but  
172 that was not accepted. In the interest of good government, I  
173 would like to see us continue to work together to make sure  
174 that the legal system is as open and transparent as possible  
175 whenever the Federal Government delegates enforcement  
176 authority to the States.

177 Similarly, I have expressed my concerns with H.R. 1706,  
178 Protecting Consumers Access to Generic Drugs Act which bans  
179 patent litigation settlements between pharmaceutical  
180 companies involving exchanges of value. Congress enacted  
181 Hatch Waxman as a way to facilitate generic entry into the  
182 market and the resulting agreements now concern the FTC who  
183 has challenged a number of these agreements in court. The  
184 FTC has prevailed in one court challenge but lost a number of  
185 others. I am concerned that the proposed legislative  
186 solution will not benefit the consumers because of its likely  
187 fewer patents that will be challenged and we will be back  
188 here proposing another solution in a very short time.

189 The FTC received all the details of the settlements,  
190 reviewing them and has the authority to challenge them in

191 court. No one can say for certain what the effect will be if  
192 we change the process and take away the right of parties to  
193 settle their litigation before a court decision. It would be  
194 a perverse but not unthinkable result of our actions to  
195 decrease the availability of lower cost generic drugs.

196 Finally, while I strongly believe that we should be  
197 protecting mothers and children, pre- and post-born children  
198 from the risk posed by mercury, H.R. 2190, the Mercury  
199 Pollution Prevention Act is the wrong prescription for this  
200 illness. In 2005, prior to a new federal regulation and  
201 mandate, upgraded technology to further reduce emissions,  
202 chlor-alkali facilities were the sixth leading emitter of  
203 mercury. This measure though holds those other emitters  
204 harmless and takes the unprecedented step of banning a  
205 manufacturing process. Let me repeat that. This bill  
206 suggests that regulations have failed and congressionally  
207 mandates the closure of four plants.

208 In addition, this legislation creates overlapping and  
209 conflicting requirements that are certain to guarantee  
210 lawsuits for years to come. Aside from my own concerns that  
211 this bill may be a partial taking under the Fifth Amendment  
212 to the United States Constitution, I have many concerns about  
213 the way this bill operates. If we could quantify the actual  
214 benefit to the environment for taking such a drastic action

215 under H.R. 2190 that would be one thing but we can't. My  
216 members and I have numerous amendments, some of which we will  
217 offer today and others that will be reserved until the full  
218 committee acts.

219         Again, Mr. Chairman, I want to thank you for holding  
220 this markup and I look forward to finding common ground with  
221 you on the bills before us to achieve a better legislative  
222 product and I yield back. Thank you, Mr. Chairman.

223         [The prepared statement of Mr. Radanovich follows:]

224         \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
225           Mr. {Rush.} The chair thanks the gentleman. The chair  
226 now recognizes the author of one of the bills that we are  
227 considering today, my colleague from Illinois, Congresswoman  
228 Jan Schakowsky for the purposes of opening statements for 3  
229 minutes.

230           Ms. {Schakowsky.} Thank you, Mr. Chairman.

231           I really appreciate the bills that are before us today  
232 and I think really represent the breadth of this committee  
233 and the good work that we can do for consumers in so many  
234 different aspects. And while all the bills before us are  
235 extremely important, I want to discuss H.R. 2190, the Mercury  
236 Pollution Reduction Act, a bill I introduced that goes a long  
237 way toward protecting public health and the environment by  
238 forbidding the hazardous use of mercury cell technology at  
239 chlor-alkali plants in the United States. I want to thank  
240 the members on our side of the aisle whose districts, whose  
241 States are affected by this for understanding the importance  
242 of passing this legislation and for working with me to craft  
243 it in a way that they find that they will be able to support.

244           The dangers associated with exposure to mercury are  
245 well-documented. According to the Environmental Protection  
246 Agency, mercury pollution can do irreparable damage to  
247 cognitive functioning in adults and an infant's developing

248 nervous system. It is so dangerous that the Federal  
249 Government has warned pregnant women and those who may become  
250 pregnant not to eat fish with high levels of mercury at all,  
251 such as swordfish and to severely limit their consumption of  
252 others, such as tuna.

253         A study done by the Centers for Disease Control and  
254 Prevention found that eight percent of women aged 16 to 49  
255 had blood mercury levels above the safe level established by  
256 the USCPA. Researches followed up with a report which  
257 indicated that unsafe levels of mercury in American women of  
258 childbearing age put 630,000 American children born each year  
259 at high risk of mental retardation and permanent IQ loss.

260         While only four chlor-alkali plants in the United States  
261 continue to use the mercury, the impact it has on surrounding  
262 communities is severe and even worse, senseless. Unlike coal  
263 fire power plants, there are readily available alternatives  
264 that these companies can and should be using. In fact,  
265 converting from mercury cell technology, the membrane cell  
266 has proven not only to be drastically better for the  
267 environment but also a wise business practice, saving  
268 companies millions of dollars in energy efficiency savings.

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

272 alternatives exist. I urge my colleagues to support its  
273 passage. I pledge to continue to work with my colleagues on  
274 this legislation and yield back the balance of my time.

275 [The prepared statement of Ms. Schakowsky follows:]

276 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
277           Mr. {Rush.} The chair thanks the gentlelady. The chair  
278 now recognizes the gentleman from Florida, Mr. Stearns, for 3  
279 minutes for the purposes of opening statements.

280           Mr. {Stearns.} Good morning and thank you, Mr.  
281 Chairman. I am pleased here also for this markup of the four  
282 bills. In the interest of time, I will only briefly address  
283 the Data Accountability and Trust Act which is H.R. 2221 and  
284 H.R. 1706, the Protecting Consumer Access to Generic Drugs  
285 Act.

286           To begin with, I am pleased that the Data Accountability  
287 and Trust Act is progressing through this subcommittee in a  
288 bipartisan fashion as you mentioned. And I want to thank  
289 you, Mr. Chairman, and also the Ranking Member, Mr.  
290 Radanovich, the gentleman from California for working on the  
291 Manager's Amendment that is going to be offered shortly.  
292 Congress never wants to legislate in a way that is  
293 unnecessarily duplicative of other laws or in a way that  
294 could undermine the good intent of a bill and so I think, Mr.  
295 Chairman, the Manager's Amendment makes important  
296 clarifications and changes for those entities that operate  
297 fraud databases.

298           We will also be considering a slightly more  
299 controversial bill in my opinion this morning, the Protecting

300 Consumer Access to Generic Drugs Act that is H.R. 1706.  
301 Although this bill is well-intentioned and many of my  
302 colleagues and I remain concerned that passage of this bill  
303 as it is currently written would hinder not help consumers'  
304 access to generic pharmaceuticals.

305 Now, the availability of generic drugs has helped  
306 millions of people live healthier lives and has reduced the  
307 price of healthcare. But interfering with private litigants'  
308 ability to settle outside of court which would be achieved  
309 through this bill via a prohibition on reverse settlement  
310 payment is a concern of mine and others. I think these  
311 concerns merit more debate and I ask my colleagues to  
312 consider whether a congressional intervention is advisable  
313 given that the Hatch Waxman Act as currently written today  
314 has been demonstratively successful in getting generic drugs  
315 into the hands of consumers while leaving intact financial  
316 incentives for research and development of these new drugs.

317 So, Mr. Chairman, I commend you for the markup of these  
318 bills. We might not agree on several of them but I think it  
319 is important for the subcommittee to take action on some of  
320 these bills that were in previous Congress and so I look  
321 forward to the markup.

322 [The prepared statement of Mr. Stearns follows:]

323 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
324           Mr. {Rush.} The chair thanks the gentleman. The chair  
325 now recognizes the gentlelady from Ohio, Ms. Sutton, for 3  
326 minutes for the purposes of opening statements.

327           Ms. {Sutton.} Thank you, Chairman Rush, for holding  
328 today's markup.

329           From the series of hearings this subcommittee has held,  
330 we have had firsthand testimony about the need to address the  
331 important issues before us today. For instance, at the  
332 legislative hearing for H.R. 1706, the Protecting Consumer  
333 Access to Generic Drugs Act, we heard from Commissioner  
334 J. Thomas Rosch about the Federal Trade Commission's strong  
335 support for this bill. And yesterday I spoke with FTC  
336 Chairman Lebowitz about this bill, exclusion payments and the  
337 pay for delay payments. Chairman Lebowitz mentioned that  
338 this is a top priority for the FTC and will lead to  
339 considerable savings for consumers. In addition, all of the  
340 current FTC commissioners support this bill.

341           We have a responsibility to ensure that settlements  
342 between pharmaceutical companies are not anti-competitive.  
343 Prescription drug prices are rising faster than inflation and  
344 generics sometimes by as much as 80 percent. More and more  
345 people throughout my district and across this country are  
346 struggling during these difficult economic times. Many are

347 faced with the choice between putting food on the table or  
348 purchasing prescription drugs and it shouldn't be this way.  
349 Through competition and a healthy brand name and generic  
350 pharmaceutical industry, consumers should have access to  
351 medication they need at a price that they can afford.

352         The FTC needs the tools provided by this legislation to  
353 close loopholes and in relation to the Consumer Credit and  
354 Debt Protection Act, Chairman Lebowitz also testified before  
355 this committee at an earlier hearing about the need for  
356 standard rule making procedures under the Administrative  
357 Procedures Act. Consumers trust that the FTC is protecting  
358 them from unfair or deceptive acts or practices. When they  
359 see ads for debt settlement services, they trust that they  
360 will not be deceived or treated unfairly, however time and  
361 time again we have learned that people are being hurt. They  
362 need our help and it is our responsibility to provide the FTC  
363 with the tools to aggressively protect the American people.  
364 Granting APA rule making authority will arm the FTC and  
365 restore consumers' confidence and I am supportive of the  
366 Manager's Amendment to the Consumer Credit and Debt  
367 Protection Act of which I am a cosponsor. This substitute  
368 amendment adds payday lending and mortgage foreclosure rescue  
369 and loan modification services to the bill. Both of these  
370 issues are extremely important to my constituents and I

371 appreciate the Chairman including payday lending as an area  
372 the FTC should examine.

373           During the March 24 hearing I raised the issue of payday  
374 lending and how Ohio voters overwhelmingly approved a  
375 referendum on payday lenders to end predatory loans. Over  
376 the weekend an op-ed ran in newspapers throughout Ohio  
377 highlighting that these lenders continue to exploit  
378 loopholes. We need the FTC to examine these practices to  
379 protect consumers and restore their confidence.

380           Thank you and I yield back.

381           [The prepared statement of Ms. Sutton follows:]

382 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
383           Mr. {Rush.} The chair thanks the gentlelady. The chair  
384 now recognizes the gentleman from Pennsylvania, Mr. Pitts,  
385 for 3 minutes for the purposes of opening statements.

386           Mr. {Pitts.} Thank you, Mr. Chairman. Thank you for  
387 holding this markup.

388           Although we are considering four bills today, I want to  
389 focus on H.R. 1706, Protecting Consumer Access to Generic  
390 Drugs Act. I think we all agree that our goal should be to  
391 make generic drugs available to consumers who need them.  
392 That is why I do not understand why this subcommittee would  
393 push a bill that will have a chilling effect on patent  
394 challenges by generic drug companies resulting in longer  
395 waiting periods for generic drugs for consumers who depend on  
396 them. This bill would place a total ban on all patent  
397 settlements in which the company that holds the patent on the  
398 brand name drug gives anything of value to the generic  
399 company challenging the patent except for an early entry date  
400 into the market. What will the results be? With no  
401 incentive to settle, cases will be litigated to the very end  
402 as brand drug companies fight to hold onto their authorized  
403 monopoly on a drug, the only way they have to recoup the  
404 millions of dollars they have put into developing and testing  
405 new drugs. With millions of dollars of legal fees on the

406 line, generic companies will only challenge a patent if they  
407 are virtually assured of a successful outcome. This goes  
408 completely against the incentives for generics to challenge  
409 patents that are built into existing law.

410 Finally, since 2003, Congress has required that  
411 litigants notify federal antitrust authorities of their  
412 pharmaceutical patent settlements. DOJ and FTC are already  
413 notified of all patent settlements and they can sue if they  
414 believe the outcome of a case is anticompetitive. FTC has  
415 filed suit in a number of cases and in the vast majority the  
416 courts have found these settlements acceptable and refused to  
417 strike them down. Mr. Chairman, the system is working.  
418 These settlements should be reviewed on a case by case basis.  
419 To ban these settlements will only keep generics off the  
420 market for a longer period of time, hardly a pro-consumer  
421 outcome.

422 I yield back.

423 [The prepared statement of Mr. Pitts follows:]

424 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
425           Mr. {Rush.} The chair thanks the gentleman. The chair  
426 now recognizes the gentleman from Texas, Mr. Green, for 3  
427 minutes for the purposes of opening statements.

428           Mr. {Green.} Thank you, Mr. Chairman, and I know we  
429 have two competing hearings going on. I was just down at the  
430 FDA hearing and I appreciate arriving back just in time. I  
431 am pleased we are holding a markup to consider these four  
432 pieces of legislation. I want to commend you for your work  
433 on these four bills and for your efforts in improving them  
434 through the legislative hearings over the last couple of  
435 months and I look forward to supporting each of the bills and  
436 sending them to the full committee.

437           I am particularly pleased to see we are taking up the  
438 Data Accountability and Trust Act. We have increasingly seen  
439 high-profile data breaches occurring over the recent years  
440 from the Choice Point breach to the theft of the VA laptop.  
441 It has become clear that due diligence by consumers is not  
442 sufficient to protect their personal information. I think  
443 the steps the Data Accountability and Protection Act will  
444 require brokers that possess consumer information to  
445 implement both with regard to protecting data from being  
446 accessed illegally in the first place and to require proper  
447 notification if there is a breach are much needed steps to

448 protect individuals from potentially devastating effects of  
449 identity theft. I want to thank the chair for his work on  
450 this bill over the past Congresses and I hope the momentum  
451 will continue and that we will see this bill move through the  
452 Congress in the 111th.

453       Exposure to mercury during fetal development can be  
454 irreversibly impair children's brain functions as they grow.  
455 According to the EPA scientists, one in ten women of  
456 childbearing age have enough mercury in her body to pose risk  
457 to her unborn baby. While there has been much focus on  
458 reducing mercury pollution from coal burning power plants,  
459 chlorine and caustic soda production continues. The  
460 remaining four chlor-alkali factories that use mercury in  
461 chlorine production are located in Ohio, West Virginia,  
462 Tennessee and Georgia and are major sources of mercury  
463 pollution in their respective States. As one way to cutback  
464 on mercury pollution, we should pass the Mercury Pollution  
465 Reduction Act which will phase out the use of mercury in  
466 chlor-alkali production within two years and require  
467 facilities to conduct a mercury inventory within a year of  
468 eliminating mercury in their process. Again, I strongly  
469 support the bill and I urge my colleagues to join me in  
470 supporting it.

471       In 1984, the Hatch Waxman Amendments were enacted to

472 reward ingenuity and encourage competition in the development  
473 of pharmaceuticals while still allowing for the timely  
474 introduction of generic drugs. This balanced approach aims  
475 to make lifesaving medicines available to the American public  
476 at reasonable prices. It intended to help brand name drug  
477 manufacturers recoup the cost of their investment while also  
478 allowing generic manufacturers to challenge weak patents and  
479 in turn create competition in the marketplace by providing  
480 incentives for generics to enter the market with an  
481 exclusivity period. Unfortunately, in some instances the  
482 incentives have shifted due to loopholes and the legislation  
483 has been exploited by some pharmaceutical companies and  
484 generic drug companies. These loopholes allow them to delay  
485 introduction of comparable generic drugs costing American  
486 public billions of dollars each year. The void of affordable  
487 generic drugs presents a serious financial hardship for many  
488 Americans. Brand name drug manufacturers should be able to  
489 profit from research and developing new drugs but I am also  
490 concerned at the growing trend we are seeing in exclusion  
491 payment settlements since 2005 when several federal courts  
492 invalidated the FTC's effort to prohibit such exclusionary  
493 payments. There is such a direct correlation between the  
494 cost of healthcare and the cost of prescription drugs that we  
495 should do all we can to promote competition in the market

496 without taking away the incentives for innovation. I am  
497 pleased we are taking action to correct it by moving forward  
498 H.R. 1706 and I look forward to supporting the bill.

499         Mr. Chairman, I also support H.R. 2309, the Consumer  
500 Credit and Debt Protection Act. This is a good piece of  
501 legislation. It will give the FTC authority more quickly to  
502 address unfair and deceptive acts and practice in the  
503 marketplace and protect the public with regard to consumer  
504 credit and debt.

505         These are good pieces of legislation. I urge my  
506 colleagues to join me in supporting them and I thank the  
507 chairman for moving forward with the bills. I yield back my  
508 time.

509         [The prepared statement of Mr. Green follows:]

510         \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
511           Mr. {Rush.} The chair thanks the gentleman. The chair  
512 now recognizes the gentleman from Nebraska, Mr. Terry, for 5  
513 minutes for the purposes of opening statements.

514           Mr. {Terry.} Thank you, Mr. Chairman, and I want to  
515 thank you for holding this important markup.

516           And I want to talk about one particular bill. As the  
517 payor of pharmaceutical drugs through the Part D program, the  
518 U.S. Government I think has a responsibility to taxpayers to  
519 examine potential anticompetitive behavior which delays  
520 market entry of generic drugs. I am troubled by some of the  
521 settlements I have seen between brand names and generic  
522 manufacturers. The Sixth Circuit ruled that an agreement  
523 between HMR and Andrx Pharmaceuticals to delay market entry  
524 of a hypertension drug in exchange for \$40 million was per se  
525 illegal under antitrust laws and this kind of behavior is  
526 clearly anti-consumer.

527           However, while I am deeply concerned about allegation of  
528 collusion between brand and generic manufacturers to delay  
529 the market entry of beneficial drugs, I am concerned about  
530 H.R. 1706 in its present form. I have reservations with the  
531 unintended consequences of blanket prohibition of drug patent  
532 settlements where there is a payment in exchange for an  
533 agreement not to develop, market or sell a generic drug for a

534 period of time. Rather than allowing Congress to place  
535 restrictions on private litigants' ability to resolve  
536 disputes, legitimate disputes, I would urge the federal  
537 courts to adopt a truncated rule of reason in evaluating  
538 whether the use of a reverse settlement in a drug patent suit  
539 rises to the level of anticompetitive behavior. With this  
540 type of rule courts would examine whether a settlement  
541 between a competitor and a potential competitor was  
542 inherently suspect and if so it could shift the burden of  
543 proof for the brand name manufacturer, the competitor to make  
544 the case for a plausible pro-competitive justification for a  
545 reverse settlement.

546         There may be circumstances when a brand and generic  
547 manufacturer enter into a legitimate settlement and the  
548 federal law should not preclude that from occurring. Courts  
549 are the appropriate forum for scrutinizing the legality of a  
550 settlement.

551         Mr. Chairman, I appreciate you drawing attention to this  
552 important matter in your efforts thus far. I yield back.

553         [The prepared statement of Mr. Terry follows:]

554 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
555           Mr. {Rush.} The chair thanks the gentleman. The chair  
556 now recognizes the gentleman from Georgia, Mr. Gingrey, for 3  
557 minutes for the purposes of an opening statement.

558           Mr. {Gingrey.} Mr. Chairman, I want to thank you for  
559 calling the markup today on four bills that demonstrate the  
560 broad and important jurisdiction and work of this  
561 subcommittee. Furthermore, I want to commend you, Mr.  
562 Chairman, for moving these bills in regular order and by  
563 allowing each of them to have hearings at the subcommittee  
564 level. It is my ultimate hope that through the amendment  
565 process all of these bills will be moved in a bipartisan  
566 fashion. Mr. Chairman, even though I do appreciate the  
567 manner in which these bills are being considered, the timing  
568 for today's markup makes it feel like we are simply rushing  
569 legislation through the subcommittee on issues of importance  
570 to the American people and I believe that this has been  
571 evidenced by the way in which today's markup was made known  
572 to the members.

573           One bill under consideration today, H.R. 2221 has been  
574 drafted in a fully bipartisan way and I look forward to  
575 reporting that bill to the full committee. However, I  
576 believe that there will be fundamental difference of opinion  
577 between the majority and the minority on the other three

578 pieces of legislation, H.R. 1706, H.R. 2190, H.R. 2309 being  
579 considered today.

580         Mr. Chairman, H.R. 1706, the Protecting Consumer Access  
581 to Drugs Act will prohibit the financial settlements that  
582 occur on patent disputes between pharmaceutical and generic  
583 drug companies. This prohibition, in my opinion, will delay  
584 the ability to reduce the cost of drugs for consumers in the  
585 long run.

586         H.R. 2190, the Mercury Pollution Reduction Act bans the  
587 manufacturing of chlorine using the mercury cell process as  
588 well as the export of any mercury immediately and banning the  
589 process within two years. Yes, there are only four  
590 manufacturing facilities in the United States that would be  
591 affected by this legislation but one of which is in my home  
592 State of Georgia. In fact, indeed my hometown of Augusta,  
593 Georgia and it has the potential to jeopardize American jobs  
594 during this time of economic distress. You are talking about  
595 these four States, West Virginia, Ohio, Georgia and the  
596 other. I don't know how many jobs we are talking about but a  
597 thousand is certainly too many. I do not think that this  
598 subcommittee should pass legislation that would spur further  
599 job losses in the manufacturing industry, especially as I say  
600 during these challenging times unless the amount of mercury  
601 released from these plants is at a dangerous level as

602 determined by the Toxic Substance Control Act. Indeed, if  
603 they are over-polluting, then stop them.

604 Mr. Chairman, H.R. 2309 the Consumer Credit and Debt  
605 Protection Act would change the basis by which the FTC  
606 promulgates its rules, leaving it vulnerable to more  
607 whimsical change through the Administrative Procedures Act,  
608 APA authority. Furthermore, I have concerns that the broad  
609 enforcement power given to the State attorney generals under  
610 H.R. 2309 could yield numerous and in many cases frivolous-  
611 type lawsuits.

612 Mr. Chairman, I have significant concerns about three of  
613 the bills under consideration today as I mentioned although I  
614 wish we would have had more notice for the markup so as not  
615 to rush through the legislation. I do look forward to a  
616 spirited debate on these important issues and I yield back my  
617 time.

618 [The prepared statement of Mr. Gingrey follows:]

619 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
620 H.R. 2221  
621 Mr. {Rush.} The chair thanks the gentleman for his  
622 remarks. Now, the chair opens for consideration H.R. 2221,  
623 the Data Accountability and Trust Act. Without objections,  
624 the first reading of the bill will be dispensed with.  
625 [H.R. 2221 follows:]

626 \*\*\*\*\* INSERT 1 \*\*\*\*\*

|  
627           Mr. {Rush.} And the chair will now recess the  
628 subcommittee before we begin consideration of amendments to  
629 H.R. 2221. Without objection, the subcommittee will stand in  
630 recess until 1:00 p.m. The subcommittee now stands in  
631 recess.

632           [Recess.]

633           Mr. {Rush.} The subcommittee is now reconvened. The  
634 pending business is H.R. 2221 now considered as read and the  
635 clerk will designate Section 1.

636           The {Clerk.} I am sorry, Mr. Chairman.

637           Mr. {Rush.} It is all right.

638           The {Clerk.} H.R. 2221, a bill to protect consumers by  
639 requiring reasonable security policies and procedures to  
640 protect computerized data containing personal information and  
641 to provide for a nationwide notice of the event of a security  
642 breach.

643           Mr. {Rush.} I offer an Amendment in the Nature of a  
644 Substitute to H.R. 2221. This substitute was--this amendment  
645 rather was distributed to all the members yesterday and the  
646 clerk will report the amendment.

647           The {Clerk.} Amendment in the Nature of a Substitute to  
648 H.R. 2221.

649           [The amendment follows:]

650 \*\*\*\*\* INSERT 2 \*\*\*\*\*

|  
651           Mr. {Rush.} Without objection, the amendment will be  
652 considered as read in the original text for purposes of  
653 amendment. The chair will recognize himself for 5 minutes  
654 for the purposes of a statement on the Manager's Amendment.

655           The Manager's Amendment I am introducing is the product  
656 or careful negotiations with our friends on the other side of  
657 the aisle. A Democratic and Republican committee have  
658 consulted with all its stakeholders in attempting to address  
659 each and every concern that has been raised. I want to  
660 emphasize that the bill is still a work in progress and  
661 further changes to the bill are in order. I pledge to  
662 continue to work with interested stakeholders and with all  
663 members of the subcommittee to ensure that the Data  
664 Protection bill is as tight and as effective as possible.  
665 There are numerous changes in this amendment but I will limit  
666 my remarks to briefly highlight only the biggest revisions in  
667 the underlying bill.

668           First, the Manager's Amendment ensures that other  
669 Federal Laws are applicable to companies and their data  
670 products where appropriate. Stakeholders raise concerns that  
671 such laws as the Gramm-Leach-Bliley Act and the Fair Credit  
672 Reporting Act were being subverted by this bill. The  
673 Manager's Amendment erases any room for overlapping newer

674 regulations on these entities that are already complying on  
675 the GLB and FCRA and other applicable Federal Laws.

676         Second, the Amendment makes numerous changes to the  
677 Nader section by narrowing the applicability of those  
678 provisions. It also creates a noticed exception for  
679 instances where law enforcement or national security is  
680 implicated.

681         Third, for purposes of the security requirements of the  
682 underlying bill, the Manager's Amendment expands the  
683 applicability of those requirements to paper records and  
684 authorizes the FTC to expand the definition of ``personal  
685 information.'' In doing so the commission must determine  
686 that an expanded definition does not unreasonably impede  
687 interstate commerce.

688         There are other changes in the amendment but these are  
689 the large ones, the big ones. I want to thank Mr. Barton,  
690 Mr. Radanovich and the minority committee staff for working  
691 with me and the majority committee staff in this bipartisan,  
692 collaborative effort. I know that if we continue to work  
693 together in this fashion, we will ultimately craft a final  
694 bill that we can all enthusiastically support. With that I  
695 yield back the balance of my time.

696         I recognize now the report from the ranking member  
697 seeking recognition.

698 Mr. {Radanovich.} Thank you, Mr. Chairman. I just want  
699 to thank you and your staff for the great work on the changes  
700 proposed by the Manager's Amendment.

701 This amendment ensures that the bill will not lead to  
702 duplicative regulation, nor will it harm the use of important  
703 antifraud tools. The addition of the breach notification  
704 delay for law enforcement or national security purposes is  
705 essential, as well. This subcommittee markup is an important  
706 step and I want to continue to work with my Democrat  
707 colleagues, the FTC and the stakeholders as we move forward  
708 toward the full committee. There remain a few technical  
709 issues to work out including the application to consumer  
710 access provisions in the information broker section. Once we  
711 create a new route to information, identity thieves will  
712 waste no time in trying to exploit it and we want to make  
713 sure that we don't open a big window when we close a door to  
714 fraudsters.

715 Thanks again, Mr. Chairman. I urge all members to  
716 support the Manager's Amendment and support moving the bill  
717 forward to the full committee and I yield back.

718 Mr. {Rush.} The chair thanks the ranking member. Does  
719 any other member seek recognition to speak on the Amendment  
720 in the Nature or the Substitute? Yes, the chair recognizes  
721 Mr. Stearns for 5 minutes.

722 Mr. {Stearns.} Thank you, Mr. Chairman. I am just  
723 going to sort of lightly expand on what you mentioned in your  
724 opening statement on the Manager's Amendment, namely talking  
725 about Section 2. It allows information brokers to include  
726 intentionally false information in a database if that  
727 information is used for fraud detection purposes and the  
728 information is identified as inaccurate. So it requires the  
729 FTC to deem compliance with the Fair Credit Reporting Act or  
730 the Gramm-Leach-Bliley Act to be in compliance with this Act.  
731 So we aren't being duplicative which is good and these are  
732 issues that we can talk more about but I think this idea of  
733 allowing this intentionally false information to be part of  
734 the database is good because I think lots of times that  
735 probably be the sole source of detecting whether somebody has  
736 taken this information and you can tell it through fraud  
737 detection. So I appreciate, Mr. Chairman, the changes you  
738 made in the Manager's Amendment and I look forward to the  
739 markup.

740 Mr. {Rush.} Does any other member seek recognition?  
741 Does any member seek to offer an amendment to the Amendment  
742 in the Nature of a Substitute?

743 Mr. {Butterfield.} Mr. Chairman, I have one for Section  
744 3. Are you going to take it section by section?

745 Mr. {Rush.} Yes, it is open to amendment at any point.

746 Mr. {Butterfield.} All right.

747 Mr. {Rush.} All right, Mr. Butterfield.

748 Mr. {Butterfield.} Mr. Chairman, I have an amendment at  
749 the desk.

750 Mr. {Rush.} The clerk will report the amendment.

751 The {Clerk.} Amendment to the Amendment in the Nature  
752 of a Substitute to H.R. 2221 offered by Mr. Butterfield.  
753 Page 22, line 16 insert and the individual.

754 [The amendment follows:]

755 \*\*\*\*\* INSERT 3 \*\*\*\*\*

|  
756 Mr. {Rush.} Without objection, the amendment will be  
757 considered as read.

758 Mr. {Butterfield.} I ask to be recognized, Mr.  
759 Chairman.

760 Mr. {Rush.} The chair recognizes Mr. Butterfield for 5  
761 minutes.

762 Mr. {Butterfield.} Thank you very much, Mr. Chairman.  
763 Thank you for the opportunity to offer this amendment this  
764 afternoon but I intend, Mr. Chairman, to offer and withdraw  
765 the amendment but I hope that we can work together to ensure  
766 this amendment's inclusion in the bill at full committee  
767 markup.

768 Mr. Chairman, this amendment is quite simple. It amends  
769 Section 3, Subsection E of H.R. 2221 to require that a  
770 consumer's credit score, a copy of their credit report they  
771 are able to request if their personal data is compromised as  
772 part of a data breach. I am pleased to see that the credit  
773 report provision in 2221 and I believe it is part of a  
774 monitoring and safeguarding personal information following a  
775 data breach. However, just viewing the credit report alone  
776 is simply not enough. In order to get a full credit picture  
777 and to have an adequate information about an effective  
778 consumer's credit history, having free access to one's credit

779 score is also important. As we all know, credit scores and  
780 underlying credit history are some of the most vital parts of  
781 anyone's financial life. An individual's credit score  
782 follows them forever and it will play a huge role in many  
783 major financial situations throughout one's life. Many  
784 people think that a credit score only matters when it comes  
785 to being approved for a loan or a credit card but it goes  
786 beyond that. A credit score is taken into account when  
787 computing insurance premiums, renting a house and even when  
788 applying for a job. For victims of personal data theft,  
789 having access to their credit score will help them better  
790 manage, track and monitor credit activity. It offers the  
791 affected consumer a point of reference for future credit  
792 activity.

793 And so, Mr. Chairman, thank you for the opportunity for  
794 me to in these two and a half minutes to discuss this  
795 amendment. I look forward to working with you and both my  
796 Democratic and Republican colleagues on the committee to see  
797 that the inclusion of this amendment is included in the final  
798 bill that is reported out.

799 At this time, Mr. Chairman, I seek a unanimous consent  
800 to withdraw the amendment.

801 Mr. {Rush.} So ordered. Is there any other member who  
802 seeks recognition? I want to thank the gentleman from North

803 Carolina for his amendment. I applaud the intention of your  
804 amendment to help consumers whose information has been  
805 compromised. I need more time to understand how your  
806 amendment will work within the framework of the bill and the  
807 role that credit scores can have in helping consumers after a  
808 breach. I promise to work with the gentleman on this as this  
809 bill moves forward.

810 Mr. {Butterfield.} Thank you, Mr. Chairman, you are  
811 very kind and your staff has been very helpful. I yield back  
812 the balance of my time.

813 Mr. {Rush.} Any other members seek recognition? The  
814 question now is on the Amendment in the Nature of a  
815 Substitute. All members in favor of the amendment to signify  
816 by saying aye, all those opposed, signify by saying no. Let  
817 me say that again. All members in favor of the amendment,  
818 signify by saying aye. All opposed, signify by saying no.  
819 The ayes have it and the ayes have it and the ayes have it.

820 I now move that the subcommittee report H.R. 2221 as  
821 amended to the Committee on Energy and Commerce with the  
822 recommendation that the bill passed. The question is all in  
823 favor of the reporting of H.R. 2221 as the amendment to the  
824 full committee. All those in favor, signify by saying aye.  
825 All those opposed, saying no. In the opinion of the chair  
826 the ayes have it and the motion is agreed to in H.R. 2221 is

827 recorded as amended. I ask unanimous consent that the staff  
828 be authorized to make conforming correction. Without  
829 objection, so ordered.

|  
830 H.R. 2309

831 Mr. {Rush.} I now move for consideration of H.R. 2309,  
832 the Consumer Credit and Debt Protection Act. Without  
833 objection, the first reading of the bill will be dispensed  
834 with. H.R. 2309 will now be considered as read. The clerk  
835 will designate Section 1.

836 The {Clerk.} H.R. 2309, a bill to provide authority to  
837 the Federal Trade Commission to expedite rule making  
838 concerning consumer credit or debt and to direct the  
839 commission to examine and promulgate rules with regard to  
840 debt settlement and automobile sales and for other purposes.

841 [H.R. 2309 follows:]

842 \*\*\*\*\* INSERT 4 \*\*\*\*\*

|

843           Mr. {Rush.} I offer an Amendment in the Nature of a  
844 Substitute to 2309. The clerk will report the amendment.

845           The {Clerk.} Amendment in the Nature of a Substitute to  
846 H.R. 2309 offered by Mr. Rush. Strike all after the enacting  
847 clause and insert the following. ``Section 1, Short Title.``

848           [The amendment follows:]

849 \*\*\*\*\* INSERT 5 \*\*\*\*\*

|  
850           Mr. {Rush.} Without objection, the amendment will be  
851 considered as read in the original text for purposes of  
852 amendment. The chairman recognizes himself for 5 minutes for  
853 a statement on the Manager's Amendment.

854           The Manager's Amendment makes a number of substantive  
855 and technical changes to H.R. 2309 and the amendment adds two  
856 new directed rule changes and directs the FTC to examine the  
857 payday lending industry and determine if rules are needed to  
858 prevent unfair and deceptive acts and practices. I want to  
859 thank my colleague from Ohio, Ms. Sutton, for working with me  
860 to include this language.

861           The amendment also includes directions to the FTC to  
862 issue rules regarding mortgage foreclose rescue and loan  
863 modification scams. This has been a focus of my friend from  
864 California, Ms. Matsui, and I am pleased to include her  
865 language in the amendment.

866           The Manager's Amendment also revises the directed rule  
867 making on debt settlement and auto finance to clarify the FTC  
868 must issue rules only if it finds rules to be necessary to  
869 prevent unfair and deceptive practices. It also makes  
870 several technical changes to each of these rule makings. The  
871 amendment also clarifies that rules issued under this section  
872 should be treated as any other rules issued by the FTC under

873 its authority in the FTC Act.

874         Lastly, the Manager's Amendment revises the section on  
875 enforcement by States Attorney Generals in two critical ways.  
876 First, it clarifies in this provision gives States the  
877 authority to enforce rules issued by the FTC and does not  
878 give them the authority to enforce the entire FTC Act.  
879 Second, it modifies the notice provision. Under the  
880 amendment, States must provide FTC 30 days prior notice to  
881 filing a complain in federal court and may only file earlier  
882 with the consent of the commission. This change was made at  
883 the request of our Republican colleagues. I made the change  
884 with the understanding that ``commission consent'' can be  
885 granted by staff and would not require a vote of the  
886 commissioners to allow a State to move forward.

887         This Manager's Amendment was drafted after consultation  
888 with our Republican colleagues and the FTC, consumer groups  
889 and industry stakeholders. I am confident that the process  
890 has been fair and I would like to commend both the majority  
891 and the minority committee staff for their very hard work.  
892 As I stated earlier, the bill continues to be a work in  
893 progress and I pledge to continue to work with all members as  
894 we move towards full committee. I urge my colleagues on the  
895 subcommittee to support this Manager's Amendment and I yield  
896 back.

897 Does any member seek recognition to speak on the  
898 Amendment in the Nature of a Substitute? The gentleman from  
899 Louisiana is recognized for 5 minutes.

900 Mr. {Scalise.} Thank you, Mr. Chairman.

901 I appreciate your interest in looking into and making  
902 sure that we do everything we can to go after deceptive  
903 practices. I think that what concerns me is we just got this  
904 substitute. I am not sure if it looks like we may be  
905 throwing the baby out with the bath water in some areas where  
906 the people that lend responsibly might actually get penalized  
907 in this by giving attorney generals civil fine authority.  
908 And then I am not sure we have had enough hearings on the  
909 ramifications for the people that play by the rules and  
910 actually provide capital at a time where many people  
911 throughout the country are having a very difficult time  
912 getting access to capital. I am concerned that this bill may  
913 actually penalize those people that lend responsibly at the  
914 expense of those people that are not playing by the rules, as  
915 opposed to just narrowly addressing the problems. I think  
916 this looks like this Amendment by Nature of Substitute may  
917 actually be painting a much broader brush and penalizing some  
918 of those people that aren't deceptive but in fact will then  
919 limit the ability to make capital available to people out  
920 there across this country, some of our consumers and

921 taxpayers who need that capital made available to them at a  
922 time when it is becoming more difficult in the country. So I  
923 am not sure if the Financial Services Committee is also going  
924 to be getting this and maybe the chairman can address that.  
925 Is this something that is also going to go through Financial  
926 Services or is this just an issue that your intention it  
927 would only go through Energy and Commerce without broader  
928 hearings? And I yield back.

929       Mr. {Rush.} The chair wants to address some of your  
930 concerns. I want to first to answer your question. There is  
931 no referral of this within the bill to the Financial Service  
932 Committee. It has not been referred to the Financial Service  
933 Committee and I know the gentleman from Louisiana is very  
934 active in engaging members of the subcommittee and I just  
935 want to remind him, his attention to the fact that we have  
936 had three hearings on this particular matter. One hearing on  
937 all and then one hearing on credit issues in general and I  
938 think that we have exhausted the number of hearings that we  
939 should have had on this particular bill and I know that your  
940 concerns are important but I think that we have resolved that  
941 as we have gone forward.

942       Mr. {Scalise.} Then I will just say that because we  
943 just got this Amendment in the Nature of a Substitute so I am  
944 not sure how that fits in with the original intent of the

945 bill that we had those other hearings on but I will yield  
946 back.

947 Mr. {Rush.} The gentleman yields back. Is there any  
948 other member seek recognition to speak on the Amendment in  
949 the Nature of a Substitute? The gentleman from Florida, Mr.  
950 Stearns.

951 Mr. {Stearns.} Thank you, Mr. Chairman.

952 Mr. {Rush.} I am sorry, Mr. Stearns. Ms. Sutton, the  
953 gentlelady from Ohio is recognized for 5 minutes.

954 Ms. {Sutton.} Thank you very much and I won't use all  
955 that time. I want to thank you, Mr. Chairman, for your work  
956 on this bill and I want to thank you for including payday  
957 lending as an area that the FTC should examine and let me  
958 tell you why. Ohio has tried to tackle this issue by a ratio  
959 of nearly two to one, Ohioans voted yes this past November to  
960 rein in payday lenders but only 19 of the more than 1,000  
961 storefronts statewide has licensed themselves under our new  
962 State Law. Payday lenders are finding loopholes with our new  
963 Laws and are being very creative. They have started issuing  
964 loans in the form of a check and then charging the customer  
965 to cash the check. Payday lenders have started charging  
966 origination fees as often as every week and these origination  
967 fees are in addition to interest and other fees. These add-  
968 on fees send interest rates through the roof and deceptively

969 trap consumer in debt. It is estimated that more than two-  
970 thirds or roughly 300,000 payday borrowers in Ohio are  
971 trapped each year and pay \$318 million in interest and fees.  
972 Payday lending preys on consumers who need to borrow money by  
973 promising easy, fast cash. Borrowers don't choose to return.  
974 They do so often because they are trapped. We need the FTC  
975 to look at the practices of providers of payday lending  
976 services to determine the need to issue rules preventing  
977 unfair or deceptive practices. And we need the FTC to  
978 consider issuing rules to prohibit or restrict these  
979 practices that trap consumers in debt. Consumers in Ohio  
980 have demanded action and they demanded change last November  
981 and consumers all across the country will benefit by the FTC  
982 examining the practices of payday lending, debt settlement  
983 services, mortgage foreclosure rescue and loan modification  
984 services and auto financing.

985         And, Mr. Chairman, again I thank you and I yield back  
986 the balance of my time.

987         Mr. {Rush.} The chair thanks the gentlelady. The chair  
988 recognizes the gentleman from Florida for 5 minutes.

989         Mr. {Stearns.} Thank you, Mr. Chairman.

990         I hear the gentlelady's comments and obviously I guess  
991 the State of Ohio did not promulgate legislation that worked  
992 effectively, efficiently or that would have taken care of it.

993 I would think the State could have implemented that.

994         The two things I see of concern, Mr. Chairman, with the  
995 bill, in the recent bill we passed, the Data Security bill we  
996 have in Section 6 we have preemption of State Information  
997 Security Law. So we have a preemption and back when we  
998 marked up bills, when we were the majority in both the, I  
999 think the toy bill as well as the data security bill we had  
1000 federal preemption and you don't have it in here. Would the  
1001 chairman consider having federal preemption so that a vendor,  
1002 a financial institution would not have to be sued in 50  
1003 States and that we could work out the same language that we  
1004 had in the toy bill and we had in the data security bill and  
1005 it is just a suggestion that I would have.

1006         The other thing is that as much as all of us deplore  
1007 these companies like Payday and others that exploit the  
1008 credit unworthy people, people that are having trouble with  
1009 credit and need cash. There are some legitimate concerns the  
1010 people that are helping out that under this bill there would  
1011 be a rule making without not the deliberative process that  
1012 has been inherent all these years. In the rule making in the  
1013 Magnuson Moss Act which allows that company to see in advance  
1014 what the rule is going to be and I think our concern on this  
1015 or my concern I should say, is that if the rule was made by  
1016 the Federal Trade Commission as an edict preemptively then

1017 these folks will get huge civil fines and possibly be sued in  
1018 50 States when they didn't even know what they were doing was  
1019 irregular or against the Law. So I think in those two areas,  
1020 those are two of my concerns which perhaps as we move this  
1021 bill along the line you will address but for that reason and  
1022 without those changes, I perhaps don't think I could support  
1023 the bill.

1024         And I yield to the chairman for any comments he might  
1025 have.

1026         Mr. {Rush.} I really studied some graphs and can fully  
1027 understand this particular concern that the gentleman has  
1028 expressed. This is a very difficult issue as you well know  
1029 and at this point the chair is not willing to commit to  
1030 entertaining this particular concern right now but the chair  
1031 will before this bill gets to the full committee, the chair  
1032 and the staff will seek to further clarify what the concerns  
1033 of the member is at this point in time.

1034         I yield back.

1035         Mr. {Stearns.} I yield back.

1036         Mr. {Rush.} Is there any other member who seeks  
1037 recognition? Does the gentleman to seek to offer an  
1038 amendment to the Amendment in the Nature of a Substitute?

1039         Mr. {Radanovich.} Mr. Chairman, I have an amendment but  
1040 not in the nature of a substitute but an amendment to the

1041 substitute.

1042           Mr. {Rush.} The chair recognizes the ranking member of  
1043 the subcommittee, Mr. Radanovich, for 5 minutes.

1044           Mr. {Radanovich.} And the amendment is number one at  
1045 the desk, I believe.

1046           Thank you, Mr. Chairman.

1047           Section 2 removes the Magnuson Moss rule making  
1048 requirements the commission has been subject to since 1980  
1049 and those rule making procedures were instituted by Congress  
1050 to ensure the commissions' rules had been thoroughly  
1051 considered given the number of a broad range of industries  
1052 subject to the commission's authority. Under the  
1053 Administration Procedures Act, the commission will be allowed  
1054 to forego the analysis and evidentiary procedures required  
1055 under Magnuson Moss and be free to issue specific rules  
1056 defining unfair and deceptive practices for consumer credit  
1057 and debt-related issues.

1058           I have sympathy for the argument that existing  
1059 procedures are burdensome but given that breadth of the  
1060 entities subject to the FTC's jurisdiction, I can understand  
1061 why our predecessors wanted to ensure thoughtful rules were  
1062 promulgated taking into account the various intricacies of  
1063 each industry. That is even more relevant today with more  
1064 industries spanning the gamut of small, independent

1065 proprietorships to large companies that only operate in the  
1066 online space. They are different and one-size-fits-all rules  
1067 rarely work.

1068 My amendment is a simple amendment that does not undo  
1069 the premise of an easier rule making requirement for the  
1070 commission. It is clear that we have a difference of opinion  
1071 on what should be required and I do not have the votes to  
1072 change that, however my amendment does require the commission  
1073 to use a regulatory analysis on its rule but only in the case  
1074 where it does issue a final rule proposal. The amendment  
1075 simply requires the commission to perform an additional  
1076 analysis that the final rule they are issuing has been  
1077 weighed and the benefits and adverse economic effects are  
1078 considered. If we are going to make the rule making  
1079 authority more permissive, I believe it is good public policy  
1080 that the commission take this small step to alleviate any  
1081 concerns that have not been considered on the effects of  
1082 rules thoroughly.

1083 And I urge support of the amendment and yield back, Mr.  
1084 Chairman.

1085 [The amendment follows:]

1086 \*\*\*\*\* INSERT 6 \*\*\*\*\*

|  
1087           Mr. {Rush.} The chair recognizes himself for 5 minutes  
1088 in opposition to the amendment offered by the gentleman from  
1089 California.

1090           In three hearings the subcommittee has heard about  
1091 systemic burdens facing the FTC to prevent it from becoming a  
1092 nimble, proactive consumer protection agency. In order for  
1093 the FTC to be able to respond to changing market conditions  
1094 and give direction to the market about what practices are  
1095 unfair and deceptive, it must have the same rule making  
1096 authority that other federal agencies use. And the ATA  
1097 provides a clear framework for notice and comment rule making  
1098 but it also requires the agency to consider also their views.  
1099 The members before the subcommittee will place new and  
1100 different burdens on the FTC as it issues rules. It is time  
1101 that we allow the FTC to operate like other federal agencies  
1102 and issue rules without additional burdens.

1103           Congress has given the FTC, ATA rule making authority  
1104 many times in the past and the FTC has a proven track record  
1105 of careful deliberation. The obligations laid out in this  
1106 amendment are unnecessary and I urge my colleagues to oppose  
1107 this amendment.

1108           Do other members seek recognition on the amendment? For  
1109 what purpose?

1110 Mr. {Stearns.} To strike the requisite number of words.  
1111 I think what the ranking member from California is  
1112 trying to do is just try to put in place some specified rule  
1113 making procedures which we are hearing from letters that come  
1114 to us about this so that in effect this expediting rule  
1115 making authority which you have in this bill is not a rush to  
1116 judgment. And that we have the sort of steps that Mr.  
1117 Radanovich mentioned that provides a little bit slower but at  
1118 the same time more thorough and when these rules are  
1119 promulgated, they are not based upon subjective notions of  
1120 unfairness or perhaps incomplete understanding of what the  
1121 industry is doing. So I don't think his amendment is really  
1122 something that is that radical. It is rather probably  
1123 simple, straightforward. I just urge it's adoption because  
1124 it is saying to everybody the process by the Federal Trade  
1125 Commission can still go forward but we want to make sure that  
1126 before civil penalties are issued that these steps are taken  
1127 and during those steps that the companies themselves will  
1128 have an opportunity to follow it and see the rules are  
1129 promulgated and they can react. So I think it is not a  
1130 radical change to the bill but just perhaps a very, shall we  
1131 say affirmative and a positive support for the bill.

1132 I yield back.

1133 Mr. {Rush.} Is there other members who seek

1134 recognition? The gentlelady from Ohio.

1135 Ms. {Sutton.} Thank you, Mr. Chairman. I move to  
1136 strike the last word.

1137 Mr. {Rush.} The gentlelady from Ohio is recognized for  
1138 5 minutes.

1139 Ms. {Sutton.} As this bill addresses, there are those  
1140 in the business of exploiting those in need and all the  
1141 comments that have been made here today reflect that that is  
1142 understood on both sides of the aisle. But what hasn't been  
1143 quite as broadly reflected in some of the comments is just  
1144 simply the craftiness and the ability, the agility of some to  
1145 quickly adjust and continue to exploit. So those crafty  
1146 exploiters out there do what crafty exploiters do and that is  
1147 respond quickly.

1148 Now, in order to address emerging consumer protection  
1149 issues, the FTC has to be able to act quickly to issue rules  
1150 defining unfair and deceptive acts and practices. And I  
1151 agree with the chair that the FTC should have the APA rule  
1152 making authority. It has demonstrated it can use it well.  
1153 When Congress has seen a need for the FTC to act in this  
1154 manner we have granted it the authority to issue rules  
1155 through the Administrative Procedures Act. For example,  
1156 using authority granted through the omnibus FTC is issuing  
1157 rules relating to mortgages and mortgage foreclosure rescue.

1158 And in the 1990s Congress directed FTC to issue rules  
1159 governing telemarketing. So they have demonstrated that they  
1160 can use the APA rule making process to issue strong rules  
1161 that rely on public comment and clear evidence of unfair and  
1162 deceptive acts and practices. And as has been pointed out  
1163 here, other agencies have this authority and the FTC, I don't  
1164 think, should be singled out to have additional burdensome  
1165 reporting requirements. By way of example, the banking  
1166 agencies issue rules using the authority granted them under  
1167 the FTC Act. They can use the Administrative Procedures Act.  
1168 So there just simply is no reason to saddle the FTC with  
1169 additional procedural hurdles when other agencies do not have  
1170 to follow the same and when there is such need to protect our  
1171 consumers and I yield back.

1172 Mr. {Rush.} The gentlelady yields back. Is there any  
1173 other members who seek recognition on this amendment? The  
1174 question is now on the amendment to the Amendment in the  
1175 Nature of a Substitute. All members in favor of the  
1176 amendment, signify by saying aye. All those opposed, signify  
1177 by saying no. In the opinion of the chair the no's have it  
1178 and the amendment is defeated. Does any other members seek  
1179 recognition?

1180 Mr. {Radanovich.} Mr. Chairman.

1181 Mr. {Rush.} For what purpose does the gentleman?

1182 Mr. {Radanovich.} Mr. Chairman, I have an amendment at  
1183 the desk, number two, amendment number two.

1184 The {Clerk.} There are two amendments here that are  
1185 identified as something.

1186 Mr. {Radanovich.} There were a total of three  
1187 amendments identified as one, two and three. This is  
1188 amendment number two. This has civil penalties, amendment to  
1189 strike Section 3. Amendment number two, civil penalties,  
1190 strike Section 3.

1191 The {Clerk.} Amendment to the Amendment in the Nature  
1192 of a Substitute to H.R. 2309.

1193 [The amendment follows:]

1194 \*\*\*\*\* INSERT 7 \*\*\*\*\*

|  
1195           Mr. {Rush.} Without objection, the amendment will be  
1196 considered as read. And I recognize the ranking member, Mr.  
1197 Radanovich, for 5 minutes to explain his amendment.

1198           Mr. {Radanovich.} Thank you very much, Mr. Chairman.

1199           Section 3 breaks new ground as it expands the  
1200 commission's authority to seek civil penalties for a  
1201 violation of an unfair or deceptive practice related to  
1202 consumer debt or credit. To date, the commission has only  
1203 been able to seek civil penalties for violations of a rule.  
1204 Expanding civil penalty authority to any unfair or deceptive  
1205 practice related to consumer credit or debt will require  
1206 every business subject to the commission's jurisdiction to be  
1207 familiar with and understand the commission's thinking on  
1208 what constitutes an unfair and deceptive practice. This  
1209 means every business that extends credit from local mini-  
1210 marts to florists, electronics or appliance stores will be  
1211 subject to a civil penalty for a violation if they don't  
1212 violate a rule but are deemed to engage in an unfair or  
1213 deceptive practice. This is a change in policy.

1214           Some have suggested that the commission needed civil  
1215 penalty authority for violations of the broad unfair and  
1216 deceptive practices because of the lack of any rules on  
1217 specific conduct due to their inability to promulgate rules

1218 under the more thorough Magnuson Moss rule making procedures  
1219 which has been cited as an impediment to the rule making  
1220 authority.

1221 Section 2 of the legislation now grants the commission  
1222 the authority to issue rules under the Administrative  
1223 Procedures Act and the commission is free to promulgate all  
1224 the rules it desires under relatively easy procedures.  
1225 Violations of the rules will automatically carry civil  
1226 penalty authority so the need to have the additional penalty  
1227 authority appears to be overkill. And while I think it is  
1228 appropriate to have civil penalty authority for violations of  
1229 a rule the perpetrator knew was a violation, I have serious  
1230 reservations to the requirement this provision will have on  
1231 businesses to predetermine whether a business practice they  
1232 may have historically engaged in or which had been an  
1233 accepted industry practice is suddenly deemed an unfair or  
1234 deceptive practice subject to fines.

1235 To summarize, the commission's new rule making authority  
1236 will mitigate the need for the additional civil penalty  
1237 authority of Section 3. The commission will be issuing rules  
1238 more easily and more frequently under this Act and will be  
1239 able to seek civil penalties for violations of those rules.  
1240 That is a far fair standard than seeking a penalty for  
1241 anything the commission deems unfair or deceptive where

1242 injunctive relief is more appropriate. If the commission  
1243 believes a practice is deceptive, they may now engage in a  
1244 rule making to address this concern.

1245 I don't have any votes on my side but I suggest that we  
1246 also reexamine the ability of the State AGs to obtain civil  
1247 penalties as the legislation moves forward and I urge support  
1248 for the amendment and yield back, Mr. Chairman.

1249 Mr. {Rush.} The chair recognizes himself for 5 minutes  
1250 in opposition to the amendment.

1251 The civil penalties provision of this bill provides the  
1252 FTC with important authority that should become Law. Under  
1253 current Law, FTC can only seek civil penalties and  
1254 enforcement action against a violation of rules. The bill  
1255 would give the FTC the authority to seek such penalties  
1256 whenever it pursues enforcement action against unfair or  
1257 deceptive practices relating to consumer credit or debt.  
1258 This authority will enable the FTC to define the truly bad-  
1259 acting who are defrauding the public and to create a  
1260 deterrent in cases where restitution for consumers is not  
1261 enough. I urge my colleagues to oppose this amendment and  
1262 strike the civil penalties section from the bill.

1263 I yield back the balance of my time. Do other members  
1264 seek recognition on this amendment? Hearing none, the  
1265 question is now on the amendment to the Amendment in the

1266 Nature of a Substitute. All members in favor of the  
1267 amendment signify by saying aye. All those oppose signify by  
1268 saying no. In the opinion of the chair, the no's have it and  
1269 the amendment is defeated.

1270 Mr. {Radanovich.} Mr. Chairman.

1271 Mr. {Rush.} The chair now recognizes the gentleman, for  
1272 what purpose?

1273 Mr. {Green.} We request a roll call vote on that.

1274 Mr. {Rush.} A roll call vote has been requested and the  
1275 clerk will call the roll.

1276 The {Clerk.} Mr. Rush?

1277 Mr. {Rush.} No.

1278 The {Clerk.} Mr. Rush votes no. Ms. Schakowsky?

1279 Ms. {Schakowsky.} No.

1280 The {Clerk.} Ms. Schakowsky votes no. Mr. Sarbanes?

1281 Mr. {Sarbanes.} No.

1282 The {Clerk.} Mr. Sarbanes votes no. Ms. Sutton?

1283 Ms. {Sutton.} No.

1284 The {Clerk.} Ms. Sutton votes no. Mr. Pallone?

1285 [No response.]

1286 The {Clerk.} Mr. Gordon?

1287 [No response.]

1288 The {Clerk.} Mr. Stupak?

1289 Mr. {Stupak.} No.

1290 The {Clerk.} Mr. Stupak votes no. Mr. Green?  
1291 [No response.]  
1292 The {Clerk.} Mr. Gonzalez?  
1293 [No response.]  
1294 The {Clerk.} Mr. Weiner?  
1295 [No response.]  
1296 The {Clerk.} Mr. Matheson?  
1297 [No response.]  
1298 The {Clerk.} Mr. Butterfield?  
1299 Mr. {Butterfield.} No.  
1300 The {Clerk.} Mr. Butterfield votes no. Mr. Barrow?  
1301 Mr. {Barrow.} No.  
1302 The {Clerk.} Mr. Barrow votes no. Ms. Matsui?  
1303 Ms. {Matsui.} No.  
1304 The {Clerk.} Ms. Matsui votes no. Ms. Castor?  
1305 Ms. {Castor.} No.  
1306 The {Clerk.} Ms. Castor votes no. Mr. Space?  
1307 Mr. {Space.} No.  
1308 The {Clerk.} Mr. Space votes no. Mr. Braley?  
1309 [No response.]  
1310 The {Clerk.} Ms. DeGette?  
1311 [No response.]  
1312 The {Clerk.} Mr. Waxman?  
1313 [No response.]

1314 The {Clerk.} Mr. Radanovich?  
1315 Mr. {Radanovich.} Aye.  
1316 The {Clerk.} Mr. Radanovich votes aye. Mr. Stearns?  
1317 Mr. {Stearns.} Aye.  
1318 The {Clerk.} Mr. Stearns votes aye. Mr. Whitfield?  
1319 Mr. {Whitfield.} Aye.  
1320 The {Clerk.} Mr. Whitfield votes aye. Mr. Pitts?  
1321 Mr. {Pitts.} Aye.  
1322 The {Clerk.} Mr. Pitts votes aye. Ms. Bono Mack?  
1323 [No response.]  
1324 Mr. {Rush.} How is the gentleman from New York  
1325 recorded?  
1326 The {Clerk.} Not recorded, Mr. Chairman. Mr. Weiner  
1327 votes no. Mr. Terry?  
1328 Mr. {Terry.} Yes.  
1329 The {Clerk.} Mr. Terry votes yes. Mrs. Myrick?  
1330 [No response.]  
1331 The {Clerk.} Mr. Sullivan?  
1332 [No response.]  
1333 The {Clerk.} Mr. Murphy of Pennsylvania?  
1334 Mr. {Murphy.} Aye.  
1335 The {Clerk.} Mr. Murphy votes aye. Mr. Gingrey?  
1336 Mr. {Gingrey.} Aye.  
1337 The {Clerk.} Mr. Gingrey votes aye. Mr. Scalise?

1338 Mr. {Scalise.} Aye.

1339 The {Clerk.} Mr. Scalise votes aye. Mr. Barton?

1340 Mr. {Barton.} Aye.

1341 The {Clerk.} Mr. Barton votes aye. Mr. Braley?

1342 Mr. {Braley.} No.

1343 The {Clerk.} Mr. Braley votes no. Mr. Gonzalez?

1344 Mr. {Gonzalez.} No.

1345 The {Clerk.} Mr. Gonzalez votes no. Mr. Matheson?

1346 Mr. {Matheson.} Aye.

1347 The {Clerk.} Mr. Matheson votes aye. Mr. Green?

1348 Mr. {Green.} No.

1349 The {Clerk.} Mr. Green votes no.

1350 Mr. {Rush.} Will the clerk record the tally, please?

1351 The {Clerk.} On that vote, Mr. Chairman, the ayes were

1352 10 and the nays were 14.

1353 Mr. {Rush.} The amendment fails for lack of votes. Are

1354 there any other members right now who seek recognition?

1355 Mr. {Radanovich.} Mr. Chairman?

1356 Mr. {Rush.} The chair recognizes the gentleman from

1357 California.

1358 Mr. {Radanovich.} Mr. Chairman, I have an amendment at

1359 the desk. It is number three. It is the States Attorney

1360 General.

1361 Mr. {Rush.} The clerk will record the amendment.

1362           The {Clerk.} Amendment to the Amendment in the Nature  
1363 of a Substitute to H.R. 2309 offered by Mr. Radanovich. At  
1364 the end of Section 4 insert the following new subsection H,  
1365 disclosure relating to the use of private attorneys.

1366           [The amendment follows:]

1367 \*\*\*\*\* INSERT 8 \*\*\*\*\*

|  
1368           Mr. {Rush.} The amendment has been distributed and  
1369 without objection the amendment will be considered as read.  
1370 I recognize myself. No, I am sorry. I recognize the ranking  
1371 member for 5 minutes to speak on his bill before I close it.

1372           Mr. {Radanovich.} Thank you, Mr. Chairman.

1373           This amendment is meant to bring transparency to the  
1374 practice of State Attorney Generals hiring private attorneys  
1375 involved in legislating. The enforcement of Federal Laws  
1376 should be the product of independent even-handed decision-  
1377 making, free from bias or political interference. Federal  
1378 and State enforcement officials must abide by numerous  
1379 statutory provisions to ensure this affect. Delegation of  
1380 the enforcement responsibility without those safeguards can  
1381 lead to inefficient and haphazard prosecution efforts and can  
1382 create opportunities for public corruption.

1383           The amendment I am offering today would ensure that  
1384 whenever authority to enforce Federal Laws is placed on non-  
1385 federal hands for this Act that power is accompanied by the  
1386 appropriate safeguards. This should be the standard for all  
1387 federal delegations of authority. This amendment would  
1388 require a public disclosure of information concerning State  
1389 and local officials, retention of private attorneys,  
1390 fostering public awareness of these arrangements and

1391 increasing accountability for the relevant government  
1392 officials. If the State is going to hire private attorneys,  
1393 their citizens have the right to know who is being hired and  
1394 under what terms. With access to this information the public  
1395 can be more confident that their State and local officials  
1396 are acting in the public interest without dealings that may  
1397 benefit private attorneys instead of the general public.

1398         This language will in no way hamper the State and local  
1399 governments as they will still possess full discretion in  
1400 every case to make independent objective judgments about how  
1401 best to pursue enforcement of Federal Law, including  
1402 decisions about whether to retain private attorneys to assist  
1403 them. This amendment will help ensure the Federal Law is  
1404 enforced in an open principal and an impartial manner  
1405 regardless of who exercises the enforcement authority.

1406         Former Congressman and now Florida Attorney General  
1407 Bill McCollum wrote us a letter in support of the greater  
1408 transparency at the State level. This is an easy amendment  
1409 to accept and I urge my colleagues to support it.

1410         I yield back, Mr. Chairman.

1411         Mr. {Rush.} The gentleman yields back. The chair  
1412 recognizes himself for 5 minutes in opposition to the  
1413 amendment.

1414         This amendment requires that States submit to the FTC a

1415 wide range of information about private attorneys who  
1416 contract with the State to assist in prosecutions. While I  
1417 understand my colleagues interest in openness and disclosure,  
1418 this amendment is misdirected. The FTC is a very busy agency  
1419 with a staff that is often overworked. It is not clear in  
1420 the purpose of the submission or what the sponsor of the  
1421 amendment would like the FTC to do with the information  
1422 provided. State Attorneys General provide an essential  
1423 consumer protection function. They were the ones who were  
1424 out in front on some prime mortgage scams and they have led  
1425 the way in enforcing against unfair practices among auto  
1426 dealers, debt settlement companies and many, many others.  
1427 Congress should not be in the business of making their jobs  
1428 more difficult. I urge my colleagues to oppose this  
1429 amendment.

1430 Are there any other members who seek recognition on this  
1431 amendment?

1432 Mr. {Stearns.} Mr. Chairman?

1433 Mr. {Rush.} The gentleman from--for what purpose does  
1434 the gentleman from Florida?

1435 Mr. {Stearns.} To strike the last word.

1436 Mr. {Rush.} The gentleman is recognized for 5 minutes.

1437 Mr. {Stearns.} My colleagues, this is a very simple  
1438 amendment. You know, Bill McCollum served on the banking

1439 committee for about 24 years. He is now the attorney general  
1440 for the State of Florida. Mr. Radanovich put his letter into  
1441 the record which outlines the reason why I think this is so  
1442 important. So he is intimately aware of all these scams that  
1443 the chairman talked about.

1444       You know, obviously the subprime mortgage scam was  
1445 successful but I think what the gentleman from California is  
1446 doing is very simple. He is just saying look at the FTC  
1447 which, Mr. Chairman, you indicated is very busy and they  
1448 needed some assistance with their prosecution, well by golly,  
1449 okay. If they are going to subcontract prosecution out, why  
1450 don't we find out that there is no conflict of interest with  
1451 these private prosecutors? There has been so much conflict  
1452 of interest today in the financial meltdown, I would think at  
1453 the very least we want to have some of kind of records on who  
1454 these private attorneys are that the FTC is hiring. And the  
1455 information that the gentleman from California is asking for  
1456 is pretty simple. It is transparent so I wouldn't think  
1457 anybody in this committee would be against giving records on  
1458 these private attorneys, hired by the Federal Trade  
1459 Commission to prosecute United States citizens. So in fact,  
1460 the judge when he gets the case also has this information.  
1461 So I think the amendment is really straightforward and I just  
1462 urge my colleagues to support it, especially in light of the

1463 fact that the Federal Trade Commission is so busy and they  
1464 are hiring private prosecutors. And I think anybody in the  
1465 audience or anyone in this room or listening would want to  
1466 know everything about that private individual so that he or  
1467 she would feel that they are getting a fair shake and that  
1468 this is not something that is stacked against them. So I  
1469 urge strong support for the amendment and I yield back.

1470 Mr. {Rush.} The gentleman yields back. Are there other  
1471 members who seek recognition? And the question is now on the  
1472 amendment by Mr. Radanovich to the Amendment in the Nature of  
1473 a Substitute. All members in favor of the amendment signify  
1474 by saying aye. All opposed signify by saying no. In the  
1475 opinion of the chair, the no's have it and the amendment is--

1476 Mr. {Stearns.} I request a roll call vote.

1477 Mr. {Rush.} The gentleman requests a roll call vote.  
1478 The roll call poll will be taken.

1479 The {Clerk.} Mr. Rush?

1480 Mr. {Rush.} No.

1481 The {Clerk.} Mr. Rush votes no. Ms. Schakowsky?

1482 Ms. {Schakowsky.} No.

1483 The {Clerk.} Ms. Schakowsky votes no. Mr. Sarbanes?

1484 Mr. {Sarbanes.} No.

1485 The {Clerk.} Mr. Sarbanes, no. Ms. Sutton?

1486 [No response.]

1487 The {Clerk.} Mr. Pallone?  
1488 [No response.]  
1489 The {Clerk.} Mr. Gordon?  
1490 [No response.]  
1491 The {Clerk.} Mr. Stupak?  
1492 Mr. {Stupak.} No.  
1493 The {Clerk.} Mr. Stupak votes no. Mr. Green?  
1494 Mr. {Green.} No.  
1495 The {Clerk.} Mr. Green votes no. Mr. Gonzalez?  
1496 [No response.]  
1497 The {Clerk.} Mr. Weiner?  
1498 [No response.]  
1499 The {Clerk.} Mr. Matheson?  
1500 Mr. {Matheson.} Aye.  
1501 The {Clerk.} Mr. Matheson votes aye. Mr. Butterfield?  
1502 Mr. {Butterfield.} No.  
1503 The {Clerk.} Mr. Butterfield votes no. Mr. Barrow?  
1504 Mr. {Barrow.} No.  
1505 The {Clerk.} Mr. Barrow votes no. Ms. Matsui?  
1506 Ms. {Matsui.} No.  
1507 The {Clerk.} Ms. Matsui, no. Ms. Castor?  
1508 Ms. {Castor.} No.  
1509 The {Clerk.} Ms. Castor votes no. Mr. Space?  
1510 [No response.]

1511 The {Clerk.} Mr. Gordon?

1512 Mr. {Gordon.} No.

1513 The {Clerk.} Mr. Gordon votes no. Mr. Braley?

1514 Mr. {Braley.} No.

1515 The {Clerk.} Mr. Braley votes no. Ms. DeGette?

1516 [No response.]

1517 The {Clerk.} Mr. Waxman?

1518 Mr. {Waxman.} No.

1519 The {Clerk.} Mr. Waxman votes no. Mr. Radanovich?

1520 Mr. {Radanovich.} Aye.

1521 The {Clerk.} Mr. Radanovich votes aye. Mr. Stearns?

1522 Mr. {Stearns.} Aye.

1523 The {Clerk.} Mr. Stearns, aye. Mr. Whitfield?

1524 Mr. {Whitfield.} Aye.

1525 The {Clerk.} Mr. Whitfield votes aye. Mr. Pitts?

1526 Mr. {Pitts.} Aye.

1527 The {Clerk.} Mr. Pitts, aye. Ms. Bono Mack?

1528 [No response.]

1529 The {Clerk.} Mr. Terry?

1530 Mr. {Terry.} Aye.

1531 The {Clerk.} Mr. Terry votes aye. Ms. Myrick?

1532 [No response.]

1533 The {Clerk.} Mr. Sullivan?

1534 [No response.]

1535 The {Clerk.} Mr. Murphy of Pennsylvania?  
1536 Mr. {Murphy.} Aye.  
1537 The {Clerk.} Mr. Murphy votes aye. Mr. Gingrey?  
1538 Mr. {Gingrey.} Aye.  
1539 The {Clerk.} Mr. Gingrey, aye. Mr. Scalise?  
1540 Mr. {Scalise.} Aye.  
1541 The {Clerk.} Mr. Scalise, aye. Mr. Barton?  
1542 [No response.]  
1543 The {Clerk.} Mr. Gonzalez?  
1544 Mr. {Gonzalez.} No.  
1545 The {Clerk.} Mr. Gonzalez votes no. Not recorded, Mr.  
1546 Chairman. Mr. Weiner?  
1547 Mr. {Weiner.} No.  
1548 The {Clerk.} Mr. Weiner votes no.  
1549 Mr. {Rush.} Anyone else who seeks to be recorded? The  
1550 clerk will report the tally.  
1551 The {Clerk.} On that vote, Mr. Chairman, the ayes, I am  
1552 sorry. Not recorded, Mr. Chairman, not recorded.  
1553 Mr. {Rush.} Did the clerk call Mr. Barton's name?  
1554 The {Clerk.} I apologize. Mr. Barton?  
1555 [No response.]  
1556 The {Clerk.} I did call him but I didn't get a  
1557 response.  
1558 Mr. {Rush.} Okay. All right. Would the clerk record

1559 the vote, please?

1560 The {Clerk.} On that vote, Mr. Chairman, the ayes were  
1561 9 and the nays were 14.

1562 Mr. {Rush.} The bill fails for lack of the proper  
1563 votes. Does any other members seek recognition? If not,  
1564 there being no further discussion then the question is on the  
1565 chairman's Amendment in the Nature of a Substitute. All  
1566 those in favor signify by saying aye. All those opposed say  
1567 no. In the opinion of the chair, the ayes have it and the  
1568 amendment is agreed to.

1569 I now move that the subcommittee report H.R. 2309  
1570 amended to the full committee with a recommendation that the  
1571 bill pass. The question in favor of recording 2309 as  
1572 amendment to the full committee, all those in favor signify  
1573 by saying aye. All those opposed say no. In the opinion of  
1574 the chair the ayes have it. The amendment is agreed to and  
1575 H.R. 2309 is recorded as an amendment.

1576 Mr. {Radanovich.} Mr. Chair, I now request a recorded  
1577 vote.

1578 Mr. {Rush.} A recorded vote has been requested. The  
1579 clerk will take the role.

1580 The {Clerk.} Mr. Rush.

1581 Mr. {Rush.} Aye.

1582 The {Clerk.} Mr. Rush votes aye. Ms. Schakowsky?

1583 Ms. {Schakowsky.} Aye.

1584 The {Clerk.} Ms. Schakowsky, aye. Mr. Sarbanes?

1585 Mr. {Sarbanes.} Aye.

1586 The {Clerk.} Mr. Sarbanes votes aye. Ms. Sutton?

1587 [No response.]

1588 The {Clerk.} Mr. Pallone?

1589 [No response.]

1590 The {Clerk.} Mr. Gordon?

1591 [No response.]

1592 The {Clerk.} Mr. Stupak?

1593 Mr. {Stupak.} Yes.

1594 The {Clerk.} Mr. Stupak votes aye. Mr. Green?

1595 Mr. {Green.} Aye.

1596 The {Clerk.} Mr. Green votes aye. Mr. Gonzalez?

1597 [No response.]

1598 The {Clerk.} Mr. Weiner?

1599 Mr. {Weiner.} Aye.

1600 The {Clerk.} Mr. Weiner, aye. Mr. Matheson?

1601 Mr. {Matheson.} Aye.

1602 The {Clerk.} Mr. Matheson votes aye. Mr. Butterfield?

1603 Mr. {Butterfield.} Aye.

1604 The {Clerk.} Mr. Butterfield, aye. Mr. Barrow?

1605 Mr. {Barrow.} Aye.

1606 The {Clerk.} Mr. Barrow votes aye. Ms. Matsui?

1607 Ms. {Matsui.} Aye.

1608 The {Clerk.} Ms. Matsui, aye. Ms. Castor?

1609 Ms. {Castor.} Aye.

1610 The {Clerk.} Ms. Castor votes aye. Mr. Space?

1611 Mr. {Space.} Aye.

1612 The {Clerk.} Mr. Space, aye. Mr. Braley?

1613 Mr. {Braley.} Aye.

1614 The {Clerk.} Mr. Braley votes aye. Ms. DeGette?

1615 Ms. {DeGette.} Aye.

1616 The {Clerk.} Ms. DeGette votes aye. Mr. Waxman?

1617 [No response.]

1618 The {Clerk.} Mr. Radanovich?

1619 Mr. {Radanovich.} No.

1620 The {Clerk.} Mr. Radanovich votes no. Mr. Stearns?

1621 Mr. {Stearns.} No.

1622 The {Clerk.} Mr. Stearns, no. Mr. Whitfield?

1623 [No response.]

1624 The {Clerk.} Mr. Pitts?

1625 Mr. {Pitts.} No.

1626 The {Clerk.} Mr. Pitts votes no. Ms. Bono Mack?

1627 [No response.]

1628 The {Clerk.} Mr. Terry?

1629 Mr. {Terry.} No.

1630 The {Clerk.} Mr. Terry votes no. Mrs. Myrick?

1631 [No response.]

1632 The {Clerk.} Mr. Sullivan?

1633 [No response.]

1634 The {Clerk.} Mr. Murphy of Pennsylvania?

1635 Mr. {Murphy.} No.

1636 The {Clerk.} Mr. Murphy votes no. Mr. Gingrey?

1637 Mr. {Gingrey.} No.

1638 The {Clerk.} Mr. Gingrey votes no. Mr. Scalise?

1639 Mr. {Scalise.} No.

1640 The {Clerk.} Mr. Scalise votes no. Mr. Barton?

1641 Mr. {Barton.} No.

1642 The {Clerk.} Mr. Barton votes no.

1643 Ms. {Sutton.} Ask the chairman? Mr. Chairman, how am I

1644 recorded?

1645 The {Clerk.} Not recorded, Mr. Chairman. Ms. Sutton?

1646 Ms. {Sutton.} Yes.

1647 The {Clerk.} Ms. Sutton votes aye. Mr. Gonzalez?

1648 Mr. {Gonzalez.} Aye.

1649 The {Clerk.} Mr. Gonzalez votes aye. Ms. Bono Mack?

1650 Ms. {Bono Mack.} No.

1651 The {Clerk.} Ms. Bono Mack votes no. On that vote, Mr.

1652 Chairman, the ayes were 16 and the nays were 9.

1653 Mr. {Rush.} The bill passes.

|

1654 H.R. 1706

1655 Mr. {Rush.} And now for consideration the bill H.R.

1656 1706, the Protecting Consumers Access to Generic Drugs Act.

1657 Without objection, the bill will be considered as read and

1658 open to amendments at any points.

1659 [H.R. 1706 follows:]

1660 \*\*\*\*\* INSERT 9 \*\*\*\*\*

|

1661           Mr. {Rush.} The chair recognizes himself for 5 minutes.  
1662           This is not a partisan issue. All four current  
1663 commissioners, both the Republican and the Democrat, and the  
1664 Independents support the bill. The past Republican chairman  
1665 of the FTC has supported this bill. This bill has been  
1666 estimated by the FTC to save taxpayers and consumers billions  
1667 of dollars. The bill does not prohibit settlements in drug  
1668 patent issues. It only prohibits a specific type where the  
1669 brand company pays the generic company to stay off the market  
1670 and we will not see these types of settlements in any other  
1671 commercial sector. They are completely unique to the drug  
1672 industry. The regulatory framework of Hatch Waxman is what  
1673 gives rise to these unique settlements.

1674           History shows that drug companies were able to sell  
1675 their patents with or without reverse payment provision and I  
1676 would ask that all members support this bill. With that, I  
1677 yield back the balance of my time and does any member seek to  
1678 offer an amendment to this bill?

1679           Mr. {Radanovich.} Mr. Chairman, I have an amendment at  
1680 the desk.

1681           Mr. {Rush.} The gentleman has an amendment and the  
1682 clerk will report the amendment.

1683           Mr. {Radanovich.} It is amendment One GAO Study.

1684           The {Clerk.} Amendment to H.R.--

1685           [The amendment follows:]

1686   \*\*\*\*\* INSERT 10 \*\*\*\*\*

|  
1687           Mr. {Rush.} The amendment has been distributed and  
1688 without objection the amendment will be considered as read.  
1689 I recognize the gentleman from California for 5 minutes to  
1690 explain his amendment.

1691           Mr. {Radanovich.} Thank you, Mr. Chairman.

1692           Hatch Waxman encourages generics to challenge brand drug  
1693 patents, not only because of the increased reward for  
1694 litigation success it offers but also because of the broad  
1695 spectrum of possible positive outcomes available to them as  
1696 the result of their improved bargaining position granted to  
1697 them by the Act. Unless the FTC promulgates rules otherwise,  
1698 this legislation would essentially the second benefit of  
1699 Hatch Waxman, leaving expensive high-stakes litigation as the  
1700 only remaining viable course. H.R. 1706 would make  
1701 essentially all types of pharmaceutical patent settlements  
1702 unlawful when they involve anything other than an immediate  
1703 launch of a generic such as agreements in which the generic  
1704 drug company receives anything of value in exchange for  
1705 agreeing not to research, develop, manufacture, market or  
1706 sell their generic drug for a period of time.

1707           I am concerned that this fundamental shift away from the  
1708 current Hatch Waxman structure towards a more costly high-  
1709 stakes, winner takes all litigation. The companies have

1710 stated their decision analysis will necessarily have an  
1711 adverse effect on generic companies incentives to challenge  
1712 patents. Fewer challenges will mean fewer affordable  
1713 lifesaving drugs.

1714 This amendment would direct the GAO to study the impact  
1715 of these agreements on the number of generic drug applicants,  
1716 the number of patent challenges filed and how many of those  
1717 drugs are litigated to the bitter end rather than being  
1718 settled before or after passage of the bill. Additionally,  
1719 GAO will analyze the number of generic drugs brought to  
1720 market before and under this new regime. GAO will begin to  
1721 study two years after enactment and then update it yearly  
1722 thereafter for four years.

1723 This study will provide us with the information needed  
1724 to determine whether this Act accomplishes the goal of saving  
1725 consumers more money by bringing more generics to market  
1726 sooner. If it doesn't, we know we will have to go back to  
1727 the drawing board. I am confident in that the GAO in its  
1728 strong culture of independent, objective analysis to carryout  
1729 this task as an agency without a vested interest in the  
1730 implementation and enforcement of this Act's provisions, I am  
1731 sure that the GAO will be able to provide Congress with  
1732 clear, unbiased analysis of this Act's impact on consumer  
1733 access to generic drugs. This is the purpose of the GAO

1734 study, to provide a non-partisan, unbiased analysis.

1735 I understand that you are supportive of this idea, Mr.  
1736 Chairman, but may have a few suggestions. I look forward to  
1737 working with you between now and the full committee markup to  
1738 improve this study. The more data we gather, the better  
1739 picture we will have. I urge my colleagues to support this  
1740 amendment and help ensure that substantial changes in the  
1741 pharmaceutical drug system are accompanied by responsibly  
1742 oversight.

1743 Thank you, Mr. Chairman.

1744 Mr. {Rush.} Will the gentleman yield?

1745 Mr. {Radanovich.} I certainly will.

1746 Mr. {Rush.} The chair supports this amendment as the  
1747 gentleman indicated and will urge all members to also support  
1748 this particular amendment.

1749 Mr. {Radanovich.} Thank you, Mr. Chairman.

1750 Mr. {Rush.} Is there any other member who seeks  
1751 recognition?

1752 The question is now on the amendment by Mr. Radanovich  
1753 to H.R. 1706. All in favor of the amendment signify by  
1754 saying aye. All opposed signify by saying no. In the  
1755 opinion of the chair, the ayes have it and the amendment is  
1756 adopted.

1757 Does any other member seek recognition?

1758 Mr. {Radanovich.} Mr. Chairman.

1759 Mr. {Rush.} The gentleman from California is  
1760 recognized.

1761 Mr. {Radanovich.} Mr. Chairman, I have an amendment at  
1762 the desk. It is number two, the FTC Review Factors and  
1763 Expedited Judicial Review.

1764 Mr. {Rush.} The clerk will record the amendment.

1765 The {Clerk.} Amendment to H.R. 1706 offered by Mr.  
1766 Radanovich. Strike Subsection A through C of Section 2 and  
1767 insert the following. A. Enforcement actions relating to  
1768 settlement.

1769 [The amendment follows:]

1770 \*\*\*\*\* INSERT 11 \*\*\*\*\*

|  
1771           Mr. {Rush.} Without objection, the amendment is  
1772 considered as read. I recognize the gentleman from  
1773 California for 5 minutes to explain his amendment.

1774           Mr. {Radanovich.} Thank you, Mr. Chairman.

1775           Generic drug companies need strong encouragement to  
1776 undertake the financial burden of patent challenge  
1777 litigation. Patent challenge litigation is lengthy, lasting  
1778 years and expensive which costing millions of dollars for  
1779 both sides. It is an impossible financial burden for a drug  
1780 company unless it can recoup its investment upon a successful  
1781 challenge. Hatch Waxman created the strong incentive, a 180  
1782 day exclusivity period during which the challenger will be  
1783 the only generic drug provider on the market.

1784           H.R. 1706 will erase current incentives for generic drug  
1785 companies to challenge patents, forcing every patent  
1786 challenge through the full course of litigation because a  
1787 brand drug company does not have any incentive to bargain  
1788 away its authorized monopoly on patented drugs, while a  
1789 generic drug company has no incentive to settle for anything  
1790 less than an immediate launch date. Just because money or  
1791 other compensation is involved does not make the deal anti-  
1792 consumer. Patent litigation is expensive. The outcomes are  
1793 often uncertain and the odds of success or failure are about

1794 even when you consider whether a generic drug launch results.

1795 H.R. 1706 will achieve the opposite of the intent.

1796 Consumers will wait longer for more affordable drugs.

1797 Consumers will wait an average of five to nine years for

1798 access to cheaper drugs because generic drug companies will

1799 wait until drug patents expire before bringing their generic

1800 product to the market, unwilling to bring a patent challenge

1801 because of the lack of a mechanism to recoup their investment

1802 in legal fees. Reverse payment settlements do not keep

1803 generic companies off the market all together but sometimes

1804 lead to generic drugs coming to market years before they

1805 otherwise would have.

1806 Congress should not limit the ability of private

1807 litigants to settle. Placing restrictions on private

1808 litigants' ability to settle disputes is without precedent.

1809 In no area of the Law has Congress stepped into prevent,

1810 restrict or define private litigants' ability to settle legal

1811 disputes out of court. Congress has already balanced the

1812 marketplace interests with consumers' best interests. Both

1813 the FTC and the DOJ have tools to challenge suspect

1814 settlements in court. That the courts have reviewed so many

1815 settlements and have refused to throw out so many

1816 settlements, sends a clear signal that we should not look at

1817 drug patent settlements as anti-competitive on their face.

1818 My amendment would preserve the ad hoc fact specific  
1819 review while addressing the FTC's concerns that courts don't  
1820 act quickly enough in this arena to protect consumers'  
1821 interests. Instead of banning all the settlements that  
1822 include consideration other than the date of the entry, my  
1823 amendment will codify those factors the courts have said are  
1824 key in determining whether pharmaceutical settlements are  
1825 anti-competitive, remaining patent time fair market value of  
1826 consideration, ability of the generic to enter the market  
1827 early and court orders. Where the FTC determines the  
1828 settlement is anti-consumer, my amendment provides for  
1829 expedited judicial review of an FTC challenge.

1830 I support this amendment and yield back, Mr. Chairman.

1831 Mr. {Rush.} The gentleman yields back. The chair  
1832 recognizes himself in opposition to this amendment.

1833 This amendment is arguably worse than the status quo  
1834 that we currently operate under because it burdens the FTC  
1835 with a complicated analysis of all drug patent settlements.  
1836 The amendment will require the FTC to look at patents that it  
1837 has already considered. This defeats the purpose of the  
1838 bill. The point of the bill is to overrule those courts that  
1839 have ruled against the FTC, not to codify those decisions  
1840 into Law.

1841 H.R. 1706 is right in line prohibition or reverse

1842 payments is much better than a case by case analysis because  
1843 it establishes certainty and does not allow companies to  
1844 ``gain'' the system the public interest language of the  
1845 amendment to potentially allow any agreement to be legal. As  
1846 H.R. 1706 is written, the FTC already has discretion to  
1847 exempt other reverse consideration provisions if they are  
1848 pro-competitive and serve consumer interests.

1849 With that, I yield back the balance of my time. Are  
1850 there any other members who seek recognition?

1851 Mr. {Stearns.} Mr. Chairman?

1852 Mr. {Rush.} Who will seek recognition? The gentleman  
1853 from Florida for what purposes do you seek recognition?

1854 Mr. {Stearns.} To strike the last word.

1855 Mr. {Rush.} The gentleman is recognized for 5 minutes.

1856 Mr. {Stearns.} Let me just say that this is a good  
1857 amendment. You say worse than makes the bill worse. I don't  
1858 see how that could possibly be, Mr. Chairman. It is actually  
1859 as the gentleman from California said, it determines  
1860 settlement in such a way that it expedites judicial review  
1861 and all of us if you look at the record, the FTC has lost a  
1862 lot of these cases and think if you are going to court with  
1863 the FTC and this goes on and on and on. It is just huge  
1864 legal fees for you and since the record has shown the FTC has  
1865 lost. His amendment simply steps forward and says when this

1866 amendment will provide for this expedited judicial review. I  
1867 don't think anybody could be against providing expedited  
1868 review. It is good for the FTC where you want to get this  
1869 over and move on. Just because money or other compensation  
1870 is involved does not make the deal anti-consumer. Patent  
1871 litigation is expensive and we all know that. Oftentimes the  
1872 outcomes are uncertain. They go on for years and the odds of  
1873 success or failure we just don't know when you consider a  
1874 generic drug launch. So anything in this bill that will  
1875 expedite judicial review I think is positive so I urge my  
1876 colleagues to support it and I yield back.

1877 Mr. {Rush.} The gentleman yields back. Is there any  
1878 other member who seeks recognition?

1879 The question is now on the amendment by the gentleman  
1880 from California to H.R. 1706. All members in favor of the  
1881 amendment signify by saying aye. All those oppose signify by  
1882 saying no. In the opinion of the chair, the no's have it and  
1883 the amendment is defeated.

1884 Mr. {Radanovich.} Mr. Chairman, I request a recorded  
1885 vote.

1886 Mr. {Rush.} A recorded vote has been requested. The  
1887 clerk will record the vote.

1888 The {Clerk.} Mr. Rush?

1889 Mr. {Rush.} No.

1890 The {Clerk.} Mr. Rush votes no. Ms. Schakowsky?  
1891 [No response.]  
1892 The {Clerk.} Mr. Sarbanes?  
1893 Mr. {Sarbanes.} No.  
1894 The {Clerk.} Mr. Sarbanes votes no. Ms. Sutton?  
1895 Ms. {Sutton.} No.  
1896 The {Clerk.} Ms. Sutton votes no. Mr. Pallone?  
1897 [No response.]  
1898 The {Clerk.} Mr. Gordon?  
1899 [No response.]  
1900 The {Clerk.} Mr. Stupak?  
1901 Mr. {Stupak.} No.  
1902 The {Clerk.} Mr. Stupak votes no. Mr. Green?  
1903 [No response.]  
1904 The {Clerk.} Mr. Gonzalez?  
1905 [No response.]  
1906 The {Clerk.} Mr. Weiner  
1907 [No response.]  
1908 The {Clerk.} Ms. Schakowsky?  
1909 Ms. {Schakowsky.} No.  
1910 The {Clerk.} Ms. Schakowsky votes no. Mr. Matheson?  
1911 [No response.]  
1912 The {Clerk.} Mr. Butterfield?  
1913 Mr. {Butterfield.} No.

1914 The {Clerk.} Mr. Butterfield votes no. Mr. Weiner?  
1915 Mr. {Weiner.} No.  
1916 The {Clerk.} Mr. Weiner votes no. Mr. Barrow?  
1917 Mr. {Barrow.} No.  
1918 The {Clerk.} Mr. Barrow votes no. Ms. Matsui?  
1919 Ms. {Matsui.} No.  
1920 The {Clerk.} Ms. Matsui votes no. Ms. Castor?  
1921 Ms. {Castor.} No.  
1922 The {Clerk.} Ms. Castor votes no. Mr. Space?  
1923 Mr. {Space.} No.  
1924 The {Clerk.} Mr. Space votes no. Mr. Braley?  
1925 Mr. {Braley.} No.  
1926 The {Clerk.} Mr. Braley votes no. Ms. DeGette?  
1927 Ms. {DeGette.} No.  
1928 The {Clerk.} Ms. DeGette votes no. Mr. Waxman?  
1929 [No response.]  
1930 The {Clerk.} Mr. Radanovich?  
1931 Mr. {Radanovich.} Aye.  
1932 The {Clerk.} Mr. Radanovich votes aye. Mr. Stearns?  
1933 Mr. {Stearns.} Aye.  
1934 The {Clerk.} Mr. Stearns votes aye. Mr. Whitfield.  
1935 Mr. {Whitfield.} Aye.  
1936 The {Clerk.} Mr. Whitfield votes aye. Mr. Pitts?  
1937 Mr. {Pitts.} Aye.

1938 The {Clerk.} Mr. Pitts votes aye. Ms. Bono Mack?  
1939 Ms. {Bono Mack.} Aye.  
1940 The {Clerk.} Ms. Bono Mack votes aye. Mr. Terry?  
1941 Mr. {Terry.} Aye.  
1942 The {Clerk.} Mr. Terry, aye. Mrs. Myrick?  
1943 [No response.]  
1944 The {Clerk.} Mr. Sullivan?  
1945 [No response.]  
1946 The {Clerk.} Mr. Murphy of Pennsylvania?  
1947 Mr. {Murphy.} Aye.  
1948 The {Clerk.} Mr. Murphy votes aye. Mr. Gingrey?  
1949 Mr. {Gingrey.} Aye.  
1950 The {Clerk.} Mr. Gingrey votes aye. Mr. Scalise?  
1951 Mr. {Scalise.} Aye.  
1952 The {Clerk.} Mr. Scalise, aye. Mr. Barton?  
1953 [No response.]  
1954 The {Clerk.} Mr. Pallone?  
1955 Mr. {Pallone.} No.  
1956 The {Clerk.} Mr. Pallone votes no. Mr. Gordon?  
1957 Mr. {Gordon.} No.  
1958 The {Clerk.} Mr. Gordon votes no. Mr. Green?  
1959 Mr. {Green.} No.  
1960 The {Clerk.} Mr. Green votes no.  
1961 Mr. {Rush.} Have all the votes been recorded? The

1962 clerk will read the results.

1963           The {Clerk.} Mr. Chairman, on that vote the ayes were 9  
1964 and the nays were 16.

1965           Mr. {Rush.} The amendment is defeated.

1966           Does any other member seek to offer an amendment?

1967           Mr. {Stearns.} Mr. Chairman, I have an amendment at the  
1968 desk.

1969           Mr. {Rush.} The clerk will report the amendment.

1970           The {Clerk.} Amendment to H.R. 1706 offered by Mr.  
1971 Stearns. At the end of the bill insert the following.

1972 Section 7, Sunset. This Act and the amendments made by this  
1973 Act shall cease to have effect on the date that is six years  
1974 after the date of enactment of this Act unless 1. the  
1975 comptroller general finds pursuant to the study required  
1976 under Section 6 that the Act has benefited.

1977           [The amendment follows:]

1978 \*\*\*\*\* INSERT 12 \*\*\*\*\*

|  
1979           Mr. {Rush.} The amendment has been distributed and  
1980 without objection, the amendment will be considered as read.

1981           I recognize the gentleman from Florida for 5 minutes to  
1982 explain his amendment.

1983           Mr. {Stearns.} Thank you, Mr. Chairman. Let me first  
1984 of all compliment you and thank you for accepting the first  
1985 amendment from Mr. Radanovich which sets up a GAO audit and I  
1986 think it is bipartisan. We want to see the results of this  
1987 legislation and I think the gentleman from California best  
1988 does this with this study. So my amendment follows-up with  
1989 the GAO study and it is rarely, my colleagues, that you have  
1990 an opportunity when you vote to sunset a government program  
1991 and here is a unique opportunity for you.

1992           In this particular case we are dealing with three  
1993 competing interests, generic drug makes, consumers and  
1994 innovative drug makers. My amendment would make certain that  
1995 first and foremost the consumers' access to safe and  
1996 affordable generic drugs is protected by this legislation.  
1997 In testimony before this committee, the majority of witnesses  
1998 themselves contended that by repealing reverse payment  
1999 settlements the consumer would benefit by the quicker  
2000 introduction of generic drugs through the patent challenge  
2001 process.

2002           But then, unfortunately, none of the witnesses, I repeat  
2003 that, none of the witnesses could offer evidence that this  
2004 would in fact be true. The only evidence that they did agree  
2005 upon was that since the Hatch Waxman Act the generic drug  
2006 market has increase its market share from around 20 percent  
2007 to 80 percent utilizing reverse payment settlements. So in a  
2008 nutshell, the witnesses confirmed that the Hatch Waxman Act  
2009 worked and generic drugs were offered from 20 percent to 80  
2010 percent.

2011           So my amendment simply works off the gentleman from  
2012 California, Mr. Radanovich's amendment. We simply say that  
2013 after six years, not one, two, three, four, five but after  
2014 six years, six long years we will simply sunset this  
2015 legislation after the date of its enactment unless the GAO  
2016 determines that this bill has actually increased consumer's  
2017 access to generic drugs as it is intended to do. So, in  
2018 effect, if all of you believe in this bill and you are going  
2019 to support this bill, you support the GAO audit then this  
2020 gives perhaps a final resort to terminate this if it is not  
2021 working.

2022           So why would we want to keep legislation that is not  
2023 working? If the GAO shows it is not working, it is  
2024 conclusive then would you want to continue this bill? No, so  
2025 I think by you supporting my bill you are saying okay, if the

2026 GAO comes out and says it is not working, we see very  
2027 incremental amount then by golly, then the program should  
2028 sunset. So I believe this can be a bipartisan amendment, Mr.  
2029 Chairman, like the one that Mr. Radanovich offered to set up  
2030 the GAO study. In the end, we will protect consumers. If  
2031 the GAO is correct, the legislation is not needed and so it  
2032 gives proof to the pudding and as I say, my colleagues, this  
2033 gives you an opportunity to sunset a piece of legislation  
2034 that is not working. And I think in the end we are all for  
2035 affordable prescription drugs for people but we want to make  
2036 the legislation we pass works and this pretty much puts in  
2037 place, I think, remedies if it is not working.

2038 So with that, I yield back.

2039 Mr. {Rush.} The chair now recognizes himself for 5  
2040 minutes in opposition to the gentleman's amendment.

2041 The gentleman is correct, I do support the Radanovich  
2042 amendment regarding the GAO but I just cannot support this  
2043 amendment. The amendment changes the presumption of the bill  
2044 and assumes that the bill will not work. The assumption  
2045 should be that the bill will do exactly as advertised and  
2046 save taxpayers and consumers money.

2047 Sunsets are rarely good. They put an unfair burden on  
2048 Congress to act. The burden should be reversed. Sunset  
2049 provisions only make sense when there is a reasonable belief

2050 that the problem will be resolved in the future. There is  
2051 absolutely no reason to presume that drug companies won't  
2052 engage in uncompetitive exclusion payment settlements in six  
2053 years.

2054 I submit the GAO study if the report finds that there  
2055 hasn't been savings then Congress can always pass legislation  
2056 based on the findings of the GAO report. The amendment makes  
2057 an exception if the GAO finds that the underlying bill has  
2058 ``consumers'' and increased their availability of generic  
2059 drugs. GAO rarely if ever makes these types of  
2060 recommendations.

2061 With that, I yield back the balance of my time.

2062 Mr. {Stearns.} Will the gentleman yield part of his  
2063 time? Reluctantly, okay. You know, we are not saying the  
2064 presumption is this bill will fail. We are not necessarily  
2065 going to support it but by this amendment we are not saying  
2066 your bill is going to fail. We are going to say let us give  
2067 it a chance. Let us let the GAO audit that you have agreed  
2068 to have and if it comes out that generic drugs are not  
2069 increasing. It is not working and the whole intent of the  
2070 legislation is bogus then why let the bill sunset and then  
2071 see what happens from there? But your statement that the  
2072 presumption is that the bill will fail is not part of this  
2073 amendment. And the other last thing I would say is that you

2074 have the feeling that Congress should not be forced to act if  
2075 they fail here but I am sure that Mr. Waxman and yourself if  
2076 it turns out the GAO audit shows that it is not working, the  
2077 bill is going to continue going on anyway. You know, you can  
2078 actually go back and stop the bill but you and I both know it  
2079 is harder to stop a government program once it starts then to  
2080 let it sunset.

2081 Mr. {Rush.} The chairman reclaims his time.

2082 Mr. {Stearns.} Thank you, Mr. Chairman.

2083 Mr. {Rush.} Again, the Congress can always pass  
2084 legislation based on the findings of the GAO report. We  
2085 always have that responsibility and that requirement and so  
2086 we can always do that.

2087 All right. Is there any other member who seeks  
2088 recognition?

2089 The question is now on the amendment by the gentleman  
2090 from Florida to H.R. 1706. All the members in favor of the  
2091 amendment signify by saying aye. All those opposed by saying  
2092 no. In the opinion of the chair--a recorded vote has been  
2093 requested. The clerk will call the roll.

2094 The {Clerk.} Mr. Rush?

2095 Mr. {Rush.} No.

2096 The {Clerk.} Mr. Rush votes no. Ms. Schakowsky?

2097 Ms. {Schakowsky.} No.

2098 The {Clerk.} Ms. Schakowsky votes no. Mr. Sarbanes?  
2099 Mr. {Sarbanes.} No.  
2100 The {Clerk.} Mr. Sarbanes, no. Ms. Sutter? I am  
2101 sorry. Ms. Sutton?  
2102 [No response.]  
2103 The {Clerk.} Mr. Pallone?  
2104 [No response.]  
2105 The {Clerk.} Mr. Gordon?  
2106 [No response.]  
2107 The {Clerk.} Mr. Stupak?  
2108 Mr. {Stupak.} No.  
2109 The {Clerk.} Mr. Stupak votes no. Mr. Green?  
2110 Mr. {Green.} No.  
2111 The {Clerk.} Mr. Green votes no. Mr. Gonzalez?  
2112 [No response.]  
2113 The {Clerk.} Mr. Weiner?  
2114 Mr. {Weiner.} Mr. Chairman, how were you recorded?  
2115 Mr. {Rush.} The Chairman recorded voted no.  
2116 Mr. {Weiner.} No.  
2117 The {Clerk.} Mr. Weiner votes no. Mr. Matheson?  
2118 [No response.]  
2119 The {Clerk.} Mr. Butterfield?  
2120 Mr. {Butterfield.} No.  
2121 The {Clerk.} Mr. Butterfield votes no. Mr. Barrow?

2122 Mr. {Barrow.} No.

2123 The {Clerk.} Mr. Barrow votes no. Ms. Matsui?

2124 Ms. {Matsui.} No.

2125 The {Clerk.} Ms. Matsui, no. Ms. Castor?

2126 Ms. {Castor.} No.

2127 The {Clerk.} Ms. Castor votes no. Mr. Space?

2128 Mr. {Space.} No.

2129 The {Clerk.} Mr. Space votes no. Mr. Braley?

2130 Mr. {Braley.} No.

2131 The {Clerk.} Mr. Braley, no. Ms. DeGette?

2132 Ms. {DeGette.} No.

2133 The {Clerk.} Ms. DeGette votes no. Mr. Waxman?

2134 [No response.]

2135 The {Clerk.} Mr. Radanovich?

2136 Mr. {Radanovich.} Aye.

2137 The {Clerk.} Mr. Radanovich, aye. Mr. Stearns?

2138 Mr. {Stearns.} Aye.

2139 The {Clerk.} Mr. Stearns, aye. Mr. Whitfield.

2140 Mr. {Whitfield.} Aye.

2141 The {Clerk.} Mr. Whitfield votes aye. Mr. Pitts?

2142 Mr. {Pitts.} Aye.

2143 The {Clerk.} Mr. Pitts, aye. Ms. Bono Mack?

2144 Ms. {Bono Mack.} Aye.

2145 The {Clerk.} Ms. Bono Mack votes aye. Mr. Terry?

2146 Mr. {Terry.} Aye.

2147 The {Clerk.} Mr. Terry votes aye. Ms. Myrick?

2148 [No response.]

2149 The {Clerk.} Mr. Sullivan?

2150 [No response.]

2151 The {Clerk.} Mr. Murphy of Pennsylvania?

2152 Mr. {Murphy.} Aye.

2153 The {Clerk.} Mr. Murphy votes aye. Mr. Gingrey?

2154 Mr. {Gingrey.} Aye.

2155 The {Clerk.} Mr. Gingrey votes aye. Mr. Scalise?

2156 Mr. {Scalise.} Aye.

2157 The {Clerk.} Mr. Scalise, aye. Mr. Barton?

2158 Mr. {Barton.} Aye.

2159 The {Clerk.} Mr. Barton votes aye. Ms. Sutton?

2160 Ms. {Sutton.} No.

2161 The {Clerk.} Ms. Sutton votes no. Mr. Pallone?

2162 Mr. {Pallone.} No.

2163 The {Clerk.} Mr. Pallone votes no.

2164 Mr. {Rush.} Have all members been recorded? The clerk

2165 will report the results.

2166 The {Clerk.} On that vote, Mr. Chairman, there were 10

2167 ayes and 15 no's.

2168 Mr. {Rush.} In the opinion of the chair, the ayes have

2169 it.

2170           The {Clerk.} I am sorry, Mr. Chairman, the ayes are 10  
2171 and the nays were 15.

2172           Mr. {Rush.} Thank you for the correction and in my  
2173 opinion it will be a bill that is defeated. The amendment is  
2174 defeated for lack of votes.

2175           Mr. {Radanovich.} Mr. Chairman.

2176           Mr. {Rush.} For what purpose does the gentleman from  
2177 California?

2178           Mr. {Radanovich.} Mr. Chairman, I move to strike the  
2179 last word.

2180           Mr. {Rush.} The gentleman is recognized for 5 minutes.

2181           Mr. {Radanovich.} Thank you, Mr. Chairman.

2182           The failure to market forfeiture provision identifies  
2183 that a limited set of circumstances in which a first generic  
2184 filer is forced to launch its product or lose its 180 day  
2185 exclusivity period even if it is in the midst of litigation  
2186 over the patent. This means the generic company has to  
2187 choose between launching its product at risk or forfeiting  
2188 its exclusivity. That is not much of an incentive to risk  
2189 the amount of money it takes to mount a strong patent  
2190 challenge. The proposed legislation would force the first  
2191 generic filer to launch or lose if anyone for any reason has  
2192 a declaratory judgment action dismissed for want of subject  
2193 matter jurisdiction. Since its dismissal for want of

2194 jurisdiction is not a judgment on its merits, this means that  
2195 the first applicant would be forced to launch or lose even in  
2196 circumstances where no one has been judicially cleared to  
2197 launch a product.

2198         For example, if a first applicant who has been enjoined  
2199 from launching its product pending an upcoming trial on the  
2200 merits, would see its exclusivity evaporate simply because  
2201 someone has filed a lawsuit that is found for any reason not  
2202 to satisfy the minimum standards for justice ability set  
2203 forth in Article 3 of the Constitution. This greatly  
2204 diminishes the value of the first applicant's exclusivity and  
2205 is both arbitrary and unfair. If cash or non-cash  
2206 compensation agreements are prohibited, the generic drug  
2207 company has no incentive to settle for anything less than an  
2208 immediate launch date for their product or recoup their  
2209 investment in legal fees. A brand drug company however has  
2210 no incentive to permit an immediate launch of a generic  
2211 product and would force the litigation to conclusion. As a  
2212 result, a generic company will only undertake the financial  
2213 burden if it is assured of the litigation's success or near  
2214 impossibility, particularly in patent litigation.

2215         H.R. 1706 will achieve the opposite of the intent.  
2216 Consumers will wait longer for more affordable drugs and  
2217 consumers will wait an average of five to nine years for

2218 access to cheaper drugs because generic drug companies will  
2219 wait until drug patents expire before bringing their generic  
2220 product to the market, unwilling to bring a patent challenge  
2221 because of the lack of a mechanism to recoup their investment  
2222 or legal fees.

2223 Mr. Chairman, I know that you have expressed an interest  
2224 in this issue and also an interest in your willingness to  
2225 work on this issue before the full markup. And I yield back  
2226 the time and look forward to working with you on a resolution  
2227 of this matter.

2228 Mr. {Rush.} The gentleman yields back.

2229 The chair now does have an interest and will commit to  
2230 working with the gentleman.

2231 Is there any other member seeking recognition?

2232 Mr. {Barton.} Mr. Chairman, parliamentary inquiry. We  
2233 have a series of votes on the floor. What is the chairman's  
2234 wish about voting on any other amendments or passage before  
2235 we go to the floor?

2236 Mr. {Rush.} The chair would like to get H.R. 1706 voted  
2237 on before we go and then when we recess the subcommittee and  
2238 then we will reconvene at the conclusion of the four votes on  
2239 the floor. And we will conclude after the last vote and we  
2240 will consider H.R. 2190.

2241 All right. With that the chair now moves that the

2242 subcommittee report H.R. 1706 as amended to the Committee on  
2243 Energy and Commerce with a recommendation that the bill pass.  
2244 And the question is on favorably reporting H.R. 1706 to the  
2245 committee. All those in favor signify by saying aye. All  
2246 those opposed say no. In the opinion of the chair, the ayes  
2247 have it and the motion is agreed to and H.R. 1706.

2248 Mr. {Radanovich.} Mr. Chairman, I request a recorded  
2249 vote?

2250 Mr. {Rush.} A recorded vote has been requested. The  
2251 clerk will call the roll.

2252 The {Clerk.} Mr. Rush?

2253 Mr. {Rush.} Aye.

2254 The {Clerk.} Mr. Rush votes aye. Ms. Schakowsky?

2255 Ms. {Schakowsky.} Aye.

2256 The {Clerk.} Ms. Schakowsky, aye. Mr. Sarbanes?

2257 Mr. {Sarbanes.} Aye.

2258 The {Clerk.} Mr. Sarbanes, aye. Ms. Sutton?

2259 Ms. {Sutton.} Aye.

2260 The {Clerk.} Ms. Sutton votes aye. Mr. Pallone?

2261 [No response.]

2262 The {Clerk.} Mr. Gordon?

2263 [No response.]

2264 The {Clerk.} Mr. Stupak?

2265 Mr. {Stupak.} Aye.

2266 The {Clerk.} Mr. Stupak votes aye. Mr. Green?  
2267 Mr. {Green.} Aye.  
2268 The {Clerk.} Mr. Green votes aye. Mr. Gonzalez?  
2269 Mr. {Gonzalez.} Aye.  
2270 The {Clerk.} Mr. Gonzalez votes aye. Mr. Weiner?  
2271 Mr. {Weiner.} Aye.  
2272 The {Clerk.} Mr. Weiner votes aye. Mr. Matheson?  
2273 [No response.]  
2274 The {Clerk.} Mr. Butterfield?  
2275 Mr. {Butterfield.} Aye.  
2276 The {Clerk.} Mr. Butterfield votes aye. Mr. Barrow?  
2277 Mr. {Barrow.} Aye.  
2278 The {Clerk.} Mr. Barrow votes aye. Ms. Matsui?  
2279 Ms. {Matsui.} Aye.  
2280 The {Clerk.} Ms. Matsui, aye. Ms. Castor?  
2281 Ms. {Castor.} Aye.  
2282 The {Clerk.} Ms. Castor votes aye. Mr. Space?  
2283 Mr. {Space.} Aye.  
2284 The {Clerk.} Mr. Space votes aye. Mr. Braley?  
2285 Mr. {Braley.} Aye.  
2286 The {Clerk.} Mr. Braley votes aye. Ms. DeGette?  
2287 Ms. {DeGette.} Aye.  
2288 The {Clerk.} Ms. DeGette votes aye. Mr. Waxman?  
2289 [No response.]

2290 The {Clerk.} Mr. Radanovich?  
2291 Mr. {Radanovich.} No.  
2292 The {Clerk.} Mr. Radanovich, no. Mr. Stearns?  
2293 Mr. {Stearns.} No.  
2294 The {Clerk.} Mr. Stearns, no. Mr. Whitfield?  
2295 Mr. {Whitfield.} No.  
2296 The {Clerk.} Mr. Whitfield, no. Mr. Pitts?  
2297 Mr. {Pitts.} No.  
2298 The {Clerk.} Mr. Pitts votes no. Ms. Bono Mack?  
2299 Ms. {Bono Mack.} No.  
2300 The {Clerk.} Ms. Bono Mack, no. Mr. Terry?  
2301 Mr. {Terry.} No.  
2302 The {Clerk.} Mr. Terry, no. Mrs. Myrick?  
2303 [No response.]  
2304 The {Clerk.} Mr. Sullivan?  
2305 [No response.]  
2306 The {Clerk.} Mr. Murphy of Pennsylvania?  
2307 Mr. {Murphy.} No.  
2308 The {Clerk.} Mr. Murphy, no. Mr. Gingrey?  
2309 Mr. {Gingrey.} No.  
2310 The {Clerk.} Mr. Gingrey, no. Mr. Scalise?  
2311 Mr. {Scalise.} No.  
2312 The {Clerk.} Mr. Scalise, no. Mr. Barton?  
2313 Mr. {Barton.} No.

2314           The {Clerk.} Mr. Barton, no. Mr. Pallone?

2315           Mr. {Pallone.} Yes.

2316           The {Clerk.} Mr. Pallone, aye.

2317           Mr. {Rush.} Have all members been recorded which need  
2318 to be recorded? The clerk will report the tally?

2319           The {Clerk.} On that vote, Mr. Chairman, there were 16  
2320 ayes and 10 no's.

2321           Mr. {Rush.} The amendment passes. The bill passes  
2322 rather. The bill passes and I ask a unanimous consent that  
2323 the staff be authorized to make technical and conforming  
2324 corrections. Without objection, so ordered.

2325           The committee will stand in recess now until the  
2326 conclusion of the vote on the floor.

2327           [Recess.]

|  
2328 H.R. 2190

2329 Mr. {Rush.} The subcommittee will again be called to  
2330 order for the purpose of reconvening.

2331 Now, I open up for consideration the bill H.R. 2190 but  
2332 before we enter the discussion of the 2190 and consider that,  
2333 we still have some unfinished business on the data bill that  
2334 we need to complete. I would like to enter into a colloquy  
2335 with my good friend, Mr. Radanovich.

2336 I have some concerns about the scope of the exemption  
2337 for a certain company in Section 2C. I believe the intent of  
2338 this provision is to ensure that if an entity is really  
2339 providing the transmission capability for information it  
2340 would be exempt from complying with the data security  
2341 requirements that are billed. That is the right policy  
2342 because this legislation is about the person who owns or  
2343 possesses personal information. Therefore, is the whole  
2344 entity liable who merely provides the ``pipes'' to transmit  
2345 that data is not consistent with the intent of the bill. It  
2346 may be the entity that is moving along the data may not know  
2347 that the data includes personal information as defined by  
2348 this Act.

2349 With that intent in mind, I feel concern that the  
2350 exemption as drafted may be overbroad and include entities

2351 that are acting as the owner of the information and should be  
2352 required to safeguard that data.

2353 We intend to work with our colleagues on the  
2354 Subcommittee on Communication, Technology and the Internet as  
2355 well as all interested stakeholders to address these  
2356 concerns. We hope to draft a more narrowly tailored  
2357 exemption to assure that we cover those entities that should  
2358 be covered and include those entities that should be exempt.  
2359 And this is and will continue to be a bipartisan effort.

2360 All right. I yield now to my friend and the ranking  
2361 member, Mr. Radanovich.

2362 Mr. {Radanovich.} Thank you, Mr. Rush.

2363 I agree we need to get this language right and I look  
2364 forward to working in a bipartisan way with you, the CT and I  
2365 subcommittee, industry and consumer groups. The intent of  
2366 this provision is to ensure that a provider acting as a  
2367 conduit for information is not subject to the requirements of  
2368 H.R. 2221. We need to be sure that we accomplish that goal.  
2369 At the same time, we do not intend to expand the FTC's  
2370 jurisdiction to include entities which they don't currently  
2371 regulate. It is important that we carefully review the  
2372 language in the exemption and take the time to get this right  
2373 before full committee markup.

2374 I agree with you that we would like to proceed in a

2375 thoughtful way and have a robust discussion with stakeholders  
2376 to ensure that the appropriate parties are required to  
2377 safeguard personal information under this Act. And while  
2378 those entities are simply providing the pipes for  
2379 transmission are exempt.

2380 Thank you very much, Mr. Chairman.

2381 Mr. {Rush.} With that in mind, I thank the gentleman  
2382 from California.

2383 And now the bill H.R. 2190 and the Mercury Pollution  
2384 Reduction Act is now will be called up and without objection,  
2385 the person reading the bill would be dispensed with. H.R.  
2386 2190 now considered as read, the clerk will designate Section  
2387 1.

2388 The {Clerk.} H.R. 2190, a bill to amend the Toxic  
2389 Substances Control Act to phase out the use of mercury in the  
2390 manufacture and chlorine and caustic soda for other purposes.

2391 [H.R. 2190 follows:]

2392 \*\*\*\*\* INSERT 13 \*\*\*\*\*

|  
2393           Mr. {Rush.} I offer the amendment, well H.R. 2190 I  
2394 offer an Amendment in the Nature of a Substitute to H.R.  
2395 2190. The clerk will report the amendment.

2396           The {Clerk.} The Amendment in the Nature of a  
2397 Substitute offered by Mr. Rush. Strike all after the  
2398 enacting clause and insert Section 1, Short Title. This Act  
2399 may be cited as the Mercury Pollution Reduction Act. Section  
2400 2 Findings.

2401           [The amendment follows:]

2402           \*\*\*\*\* INSERT 14 \*\*\*\*\*

|  
2403           Mr. {Rush.} Without objection, the amendment will be  
2404 considered as read and for original intents and purposes of  
2405 amendment and will be open to amendment at any other point.

2406           I would like to engage in a colloquy now with Ms.  
2407 Sutton.

2408           Ms. {Sutton.} Thank you, Chairman Rush, and I want to  
2409 thank Representative Schakowsky for your work on this  
2410 measure.

2411           And one of the four chlorine plants still using mercury  
2412 to produce chlorine is run by Ashta Chemicals in Ashtabula,  
2413 Ohio where they are headquartered. Ashta is a smaller,  
2414 privately-held company and serves customers from six  
2415 production sites, 19 liquid terminals and five warehouses  
2416 located in the U.S. and Canada. Ashta has expressed concerns  
2417 about the availability of financing to convert their process,  
2418 especially in our current economic climate and their ability  
2419 to pay back borrowed money. As this bill moves forward, Mr.  
2420 Chairman, I think it is important that we consider this issue  
2421 as we reach the goal of ending the use of mercury while  
2422 growing and creating more jobs. I want to work with the  
2423 chairman and my good friend from Illinois, Ms. Schakowsky, to  
2424 examine the financial concerns as we move ahead.

2425           Mr. {Rush.} I want to thank the gentlelady and I want

2426 her to know that I am sympathetic to the concerns that you  
2427 have raised about making this type of an investment during  
2428 the current economic climate. I share the gentlelady's  
2429 commitment to ensure that more jobs are created in our  
2430 country and look forward to working with you on this issue.

2431 Ms. {Sutton.} Thank you.

2432 Mr. {Rush.} Thank you. Mr. Space.

2433 Mr. {Space.} Thank you, Mr. Chairman.

2434 I wish to echo the sentiments of my colleague from Ohio,  
2435 Congresswoman Sutton, on this matter. I believe there are  
2436 some improvements that can be made to this bill to provide  
2437 workability to companies subject to the mandates of the  
2438 legislation. In particular, I am concerned about the Ashta  
2439 facility that Ms. Sutton referred to which is in Ohio as well  
2440 as that of the PPG facility in West Virginia which is not far  
2441 from my congressional district in southeastern Ohio. A  
2442 number of my constituents cross the State line and the Ohio  
2443 River and go to work at that plant everyday. It is my  
2444 understanding that Ashta in particular, has significant  
2445 concerns regarding the financing required to upgrade their  
2446 equipment and I would like to discuss that particular issue  
2447 further as we move forward.

2448 I am looking forward to working with you, Mr. Chairman,  
2449 and Congresswoman Schakowsky who I in this statement praise

2450 for her hard work on this very worthwhile bill as the rest of  
2451 our colleagues continue to improve this bill at the full  
2452 committee level.

2453 I yield back.

2454 Mr. {Rush.} The chair thanks the gentleman.

2455 The chair now recognizes himself for the purposes of 5  
2456 minutes on behalf of the Amendment in the Nature of a  
2457 Substitute.

2458 This amendment is the result of the thoughtful  
2459 deliberation following verbal and written input in the form  
2460 of comments from stakeholders. The Manager's Amendment makes  
2461 the following minimal changes to the bill.

2462 First, the amendment makes clear that chlorine  
2463 production facilities can legally store mercury onsite at  
2464 facilities already permitted for storage under existing law.  
2465 This ensures that such companies will have a storage option  
2466 during and after conversion and until a long term storage  
2467 facility designated by the Department of Energy becomes  
2468 available in 2013. This change was made in response to input  
2469 from committee members and from affected companies that have  
2470 stated an explicit commitment to allow short term storage was  
2471 needed.

2472 Second, this amendment cites all new reporting and  
2473 inventory requirements from the bill. This change was made

2474 in response to input from our friends on the other side of  
2475 the aisle and from affected companies that said that these  
2476 requirements might prove to be burdensome and duplicative.

2477 I would like to emphasize that these and all changes  
2478 result from careful consideration of the comments of energy  
2479 stakeholders and majority and minority staff. Allow me  
2480 please to commend the committee staffs for their  
2481 attentiveness and hard work on these important and  
2482 environmental matters. I would urge my colleagues on the  
2483 subcommittee to support this Manager's Amendment.

2484 Does any members seek--I yield back the balance of my  
2485 time.

2486 Does any members seek recognition to speak on Amendment  
2487 in Nature of a Substitute?

2488 Mr. {Radanovich.} Mr. Chairman.

2489 Mr. {Rush.} The chair recognizes Mr. Radanovich for 5  
2490 minutes.

2491 Mr. {Radanovich.} Thank you so much, Mr. Chairman.

2492 I support protecting Americans from harmful exposures to  
2493 mercury and while the Amendment in the Nature of a Substitute  
2494 is a dramatic over the underlying bill, the direction and the  
2495 policy it calls out is troublesome. The legislation takes  
2496 the unprecedented step of statutorily banning a manufacturing  
2497 process for an industry that is already highly regulated

2498 under several Federal and State Laws. In fact, based on 2005  
2499 data from the EPA, mercury cell chlorine plants were the  
2500 sixth highest mercury emitter in the United States. Yet even  
2501 though the domestic chlorine makers that employ mercury cells  
2502 have seriously reduced their emissions under both voluntary  
2503 and mandatory actions, this bill does nothing to address  
2504 those industries with higher mercury emissions.

2505         The bill supporters argue that these mercury cell plants  
2506 are expensive and it easy to quickly convert to another  
2507 manufacturing process be it asbestos diaphragm or membrane  
2508 cell but that the cost effectiveness of implementing  
2509 alternative production technologies must be measured on site  
2510 specific basis.

2511         Industries informed us that the chlor-alkali plants are  
2512 extremely capital intensive and costly to build. The cost  
2513 for such conversion at an individual site is likely in excess  
2514 of \$100 million and maybe significantly greater for a large  
2515 site. In many cases, plants will not be rebuilt with  
2516 implications for local markets and loss of jobs in the local  
2517 communities.

2518         The bill supporters want fish without mercury and claim  
2519 that this bill is the ticket. But we should be careful to  
2520 ensure that it will measurably decrease the global mercury.  
2521 A recently released United States geological survey

2522 investigation found that increases in the methylmercury are  
2523 the most potent form of mercury in seafood and the Pacific  
2524 Ocean is tied directly to activity in Asia and that there is  
2525 an expected increase there over the next 40 years. In  
2526 addition, the European Union considered by many of the bills  
2527 supporters as a pantheon of environmental oversight, has many  
2528 more mercury cell chlorine plants in operation than the  
2529 United States but is pursuing a voluntary phase-out by the  
2530 year 2020 rather than a quick ban.

2531 We should not cavalierly surrender U.S. jobs if an  
2532 entity that big with a record of precautionary actions sees  
2533 no need to do the same and will ramp up production to meet  
2534 needs in the United States. In addition to the larger policy  
2535 question, the bill and its amendment renegotiate a mercury  
2536 export ban that is barely eight months old and enjoyed  
2537 substantial bipartisan and stakeholder support. Before we  
2538 take such a drastic step to overturn a full record and flank  
2539 our parties in support of the approach we should have clear  
2540 examples of where the law is lacking. The export ban law was  
2541 a thoughtful approach that covered several industries and I  
2542 do not know of a reason to arbitrarily change it.

2543 Thank you, Mr. Chairman.

2544 Mr. {Rush.} And does the gentleman yield back his time?

2545 Mr. {Radanovich.} I do yield back. Thank you very

2546 much.

2547 Mr. {Rush.} Okay. The gentleman yields back his time.

2548 Does any member seek to offer an amendment?

2549 Ms. {Schakowsky.} Mr. Chairman, may I?

2550 Mr. {Rush.} Oh, I am sorry. The chair now recognizes

2551 the--for what purpose does the gentlelady from Illinois

2552 recognize?

2553 Ms. {Schakowsky.} To strike the requisite number of

2554 words.

2555 Mr. {Rush.} All right. The chair recognizes the

2556 gentlelady from Illinois for 5 minutes.

2557 Ms. {Schakowsky.} Thank you, Mr. Chairman.

2558 I won't take 5 minutes. I think that the Manager's

2559 Amendment reflects a real desire to reach a consensus on this

2560 piece of legislation both recognizing the pretty drastic

2561 threat that mercury is to not just the environment but can

2562 cause serious and permanent damage particularly to children,

2563 but also to recognize the problems of the economy and the

2564 problems of jobs. And I know that what I heard from the

2565 colloquies that you had and certainly in coming up with this

2566 substitute, all of the stakeholders have been participating

2567 and will continue to participate as we move this bill

2568 forward. So my hope is that we can get broad support in the

2569 committee today and continue to work together to perfect this

2570 legislation that both protects people and the environment and  
2571 also considers the jobs and the manufacturers.

2572 I yield back.

2573 Mr. {Rush.} The chair recognizes the ranking member of  
2574 the full committee, Mr. Barton, for 5 minutes.

2575 Mr. {Barton.} Thank you, Mr. Chairman, and I don't  
2576 think I will take 5 minutes.

2577 I think it is a measure of respect that the minority has  
2578 for yourself and Mrs. Schakowsky that we are being as  
2579 cooperative as we are being on this particular bill. It is  
2580 amazing to me and I have let Mr. Radanovich as our ranking  
2581 member do most of the work with several other members on this  
2582 particular bill of the subcommittee but we are in the process  
2583 of banning a process. Banning a process which I can't recall  
2584 in 25 years I have been in Congress and the 23 on this  
2585 committee, we have ever done before. We have four plants in  
2586 this country that use this process. It is unclear exactly  
2587 how many people work in those plants but it is somewhere  
2588 between 400 and 1,000 and if this bill were to become law,  
2589 those jobs just go away in two years. They just go away and  
2590 the underlying bill goes and eviscerates a bill that we  
2591 supported in the last Congress that is a much broader,  
2592 comprehensive bill for no apparent reason.

2593 Again, you know, we are going to vote against the bill

2594 and work at the full committee with the author and the  
2595 subcommittee chairman and the full committee chairman but I  
2596 don't see what public good we are doing unless there is a  
2597 decision that we just want to unilaterally surrender economic  
2598 competitiveness in U.S. jobs because we can and we are the  
2599 U.S. Congress.

2600           So I was hopeful in discussions with staff and Mr.  
2601 Radanovich that there might something that could actually be  
2602 worked out on this bill. And I think Mr. Radanovich is going  
2603 to offer an amendment to phase this thing out to 2020 which  
2604 is when the Europeans do but I would sincerely hope that some  
2605 members of the majority might consider voting with us in the  
2606 minority to prevent this bill going forward. And if we  
2607 really need to do something on this particular process, let  
2608 us try to do it in a bipartisan way but as the bill stands, I  
2609 mean it is just a death nail for how many ever the workers  
2610 are in these four plants, plain and simple. And we aren't  
2611 banning mercury so you don't get the health benefit. You  
2612 just penalize these four plants that use this particular  
2613 process because we can.

2614           So with that, Mr. Chairman, I would yield back.

2615           Mr. {Rush.} All right. Does any other member seek  
2616 recognition?

2617           Mr. {Barrow.} Mr. Chairman, on this side.

2618 Mr. {Rush.} All right. On this side, we are coming to  
2619 you next. Mr. Barrow, you are recognized for 5 minutes.

2620 Mr. {Barrow.} I thank the chair.

2621 I want to echo some of the sentiments that were  
2622 expressed earlier. Unlike Mr. Space and Ms Sutton whose  
2623 districts are real close by and touching concerns of the  
2624 operations of some of these plants. I actually have one of  
2625 the four remaining in this country in my district but only  
2626 four are left in the country, I think, three owners, four  
2627 plants. And I can put a personal spin on this, 150 people  
2628 work at the plant in my district. That is 150 families that  
2629 are depending on the breadwinners who work there. It is a  
2630 multi-million dollar economic payroll in the town and they  
2631 support a lot of businesses in the area which will have to  
2632 get their chlorine from much farther distances at greater  
2633 cost if the businesses are shut down.

2634 As it is written, this bill puts me in the tough spot of  
2635 having to choose between the jobs in my district and the  
2636 quality of the environment and the folks in my district live  
2637 in. And I have been working with folks on this. You can't  
2638 serve both purposes at the same time. See if we can't  
2639 incentivize the folks to switch over, change the process,  
2640 keep the jobs but get rid of the processes that are  
2641 contributing so much to the problem. If we want to encourage

2642 these facilities to switch, it seems to me we got to be  
2643 reasonable in the time span we allow them to do it but not so  
2644 reasonable that we end up forfeiting the principle of trying  
2645 to get folks off a dirty process and onto a clean one. But  
2646 one of the sticking points here is that folks like the people  
2647 in my district have to decide at some point whether they are  
2648 going to switch or whether they are going to continue to run  
2649 out the clock as we set the clock and run as long as they can  
2650 with the technology they have got in place. That decision is  
2651 made a whole lot more complicated by the current economic  
2652 climate.

2653 I have been working with the constituents in my  
2654 district, the stakeholders in my district with the author of  
2655 the bill, with the committee staff to try and find a solution  
2656 that works out a reasonable pathway for us to see if we can't  
2657 continue the jobs that are represented by this employer but  
2658 convert the process and get them off the dirty process and on  
2659 something that is clean. And I want to continue to work on  
2660 that with the other folks but I do want to express my support  
2661 to the author of the bill and to the chair for the leadership  
2662 in this issue. It is something that needs to be addressed.  
2663 I think there is a reason for us to address the process. If  
2664 it is the product that offends, address the product. If it  
2665 is the process that offends, we have to address the process.

2666 The product is good. We need the product in as many places  
2667 as we can get it reasonably and safely and the closer to the  
2668 customer, the better for all concerned. So I think there is  
2669 a reason for us to focus on the process. I just want to do  
2670 it in a way that allows us to try and incentivize folks to  
2671 convert rather than just to shut down.

2672 With that, Mr. Chairman, I yield back.

2673 Mr. {Rush.} Does any other member seek recognition?

2674 Dr. Gingrey for 5 minutes.

2675 Mr. {Gingrey.} Mr. Chairman, thank you so much and I

2676 really want to just echo my colleague from Georgia, Mr.

2677 Barrow, in regard to the issue here.

2678 I am from Augusta, Georgia. That is my hometown and the

2679 plant that my colleague was talking about, Olin Plant in a

2680 section of Augusta we always refer to, John, as the miracle

2681 mile and there are a lot of jobs there. The 150 jobs

2682 Representative Barrow talks about and it is hugely important

2683 that we don't just come in with an axe handle and slash all

2684 these jobs. In my opinion, Mr. Chairman, we ought to look

2685 very closely at an opportunity to do something to incentivize

2686 them to switch over and not just shut down.

2687 I am going to have an amendment, Mr. Chairman, in a few

2688 minutes in regard to that but I think you heard from Ms.

2689 Sutton. You heard from Mr. Space and how you heard from Mr.

2690 Barrow and myself and these are hardworking, salt of the  
2691 earth Americans who, you know, whether it is 150 jobs in  
2692 Augusta, Georgia or a total of 1,000 or 1,200 across the  
2693 country, we ought to work with the author of this bill who I  
2694 have great respect for as we go forward and try to work out  
2695 some compromise.

2696 Mr. Chairman, at the outset you said that you would work  
2697 very closely with the members that expressed concern on both  
2698 sides of the aisle. I know you will do that. You are an  
2699 honorable chairman but we just can't feel their pain. We  
2700 have truly got to do something for them and I feel very  
2701 strongly about this. I think Mr. Barrow is absolutely right  
2702 on target.

2703 And with that, I will yield back.

2704 Mr. {Rush.} Is there any other member who seeks to  
2705 speak on the amendment, on the bill rather? All right. Does  
2706 any member seek to offer an amendment to the Amendment in the  
2707 Nature of a Substitute?

2708 Mr. {Radanovich.} Mr. Chairman, I have an amendment at  
2709 the desk.

2710 Mr. {Rush.} The clerk will read--well, I recognize Mr.  
2711 Radanovich for the purposes of offering an amendment.

2712 Mr. {Radanovich.} Thank you, Mr. Chairman.

2713 I don't think I have a number but it is the Move the

2714 Band-Aid to 2020. Thank you.

2715           The {Clerk.} Amendment to the Amendment in the Nature  
2716 of a Substitute offered by Mr. Radanovich, page four  
2717 beginning on line 22, strike the date 24 months after the  
2718 date of enactment of this section and insert January 1, 2020.

2719           [The amendment follows:]

2720 \*\*\*\*\* INSERT 15 \*\*\*\*\*

|  
2721 Mr. {Rush.} The amendment has been distributed and  
2722 without objection, the amendment will be considered as read.

2723 Mr. Radanovich will be recognized for 5 minutes to  
2724 explain your amendment.

2725 Mr. {Radanovich.} All right. Thank you very much, Mr.  
2726 Chairman.

2727 The companies affected by this bill have testified that  
2728 forcing them to close and convert in two years as both the  
2729 underlying bill and the Amendment in the Nature of the  
2730 Substitute do is impossible and amounts to a death sentence  
2731 for their employees' jobs. Specifically, two years provide  
2732 no real opportunity for any existing facility to meaningfully  
2733 or even remotely transition. To seriously transition, a  
2734 company needs to design, engineer, finance especially in the  
2735 current market, permit, contract, construct and begin  
2736 operation of their facility. This process is guaranteed to  
2737 take a decade depending on how smoothly things go.

2738 In the meantime, the Europeans have had many more  
2739 mercury chlor-alkali plants than the United States but  
2740 instead of a two year timeline before the ban, the EU has  
2741 decided to phase out mercury cell chlorine manufacturer by  
2742 2020. That EU date is not a hard deadline with enforceable  
2743 legal provisions and we all know how well the EU does in

2744 meeting self-imposing environmental deadlines and targets.

2745           By forcing our plants to close at least 10 years before  
2746 the Europeans under this bill, we give these foreign plants  
2747 and their employees competitive advantages over our domestic  
2748 manufacturers and incentivize foreign plants to stay open  
2749 longer since they will not have competition from our workers.  
2750 In addition to the simple 10-year advantage this bill  
2751 provides EU companies and workers on the chlorine side, it  
2752 also significantly advantages EU chlor-alkali plants that  
2753 make potassium hydroxide. Among other things, potassium  
2754 hydroxide is used to make soap, disinfect water and deice  
2755 airplanes. Fifty percent of potassium hydroxide used in the  
2756 United States, a byproduct of chlorine made with a mercury  
2757 cell is made in the United States. This bill would make us  
2758 dependent on foreign sources from the EU and enrich those  
2759 companies that use mercury.

2760           My amendment synchronizes the U.S. ban in H.R. 2190 with  
2761 the target ban in Europe thereby leveling the playing field  
2762 both from a trade balance perspective as well as gives the  
2763 existing four domestic facilities a fighting chance to  
2764 meaningfully make investments, obtain permits, save jobs  
2765 without a mercury cell process. We should not voluntarily  
2766 wave the white flag when it comes to American jobs. If you  
2767 want parity in trade, sanity in planning and equity for

2768 workers, you should support the Radanovich amendment to  
2769 extend the deadline for phase-out to the year 2020.

2770 Thank you, Mr. Chairman. I yield back.

2771 Mr. {Rush.} Does any other member seek recognition?

2772 For what purpose does the gentlelady from Illinois seek  
2773 recognition?

2774 Ms. {Schakowsky.} To speak against the amendment, if I  
2775 could.

2776 Mr. {Rush.} The gentlelady is recognized for 5 minutes.

2777 Ms. {Schakowsky.} If this were just a discussion about  
2778 jobs, this would be very simple but we are talking about  
2779 mercury. One of the most toxic substances that is known to  
2780 man and this isn't about parody with Europe and the United  
2781 States. We are talking about the release if the bill is the  
2782 deadline is extended to 2020, the release of about 9,000  
2783 pounds of additional mercury. This mercury isn't going to  
2784 Europe. It is going in the communities where these plants are  
2785 located and the result of that is that women who are pregnant  
2786 get these high levels of mercury in their blood and about  
2787 630,000 American children are born each year at high risk of  
2788 mental retardation and permanent IQ loss. That is why we are  
2789 trying to find the right balance here and 2020 allows for  
2790 this toxic chemical to keep accumulating and being released  
2791 in the communities around these plants.

2792           Now, you know, we can make all kinds of arguments about  
2793 how all these other plants except for these four have made  
2794 the conversion, about the higher energy cost it takes to run  
2795 a plant that uses this process, all of those things are true  
2796 but I think what we have to consider is what is the bottom  
2797 line? What is the tradeoff here and how do we best resolve  
2798 it? You know, we are willing to talk about extensions but  
2799 certainly not to 2020 because of the critical nature of the  
2800 emissions at this plant. So what I am asking for is a defeat  
2801 of this amendment and offering a commitment that we look at  
2802 an extension, but certainly not that long.

2803           With that, I yield back, Mr. Chairman.

2804           Mr. {Rush.} The ranking member, Mr. Barton.

2805           Mr. {Barton.} Mr. Chairman, I want to ask the counsel  
2806 or the author the four plants in question, are these plants  
2807 out of compliance with their permits right now for emissions?  
2808 Ms. Schakowsky just talked about the amount of mercury and  
2809 the dangers to pregnant women and there is no question that  
2810 mercury is a danger but my understanding is that these plants  
2811 operate within compliance of both State and Federal Laws in  
2812 terms of emissions. Is that true or not true?

2813           Ms. {Schakowsky.} My understanding is that that is true  
2814 as they are regulated under the Clean Air Act that they are  
2815 in compliance with the regulations that apply in that

2816 context.

2817           Mr. {Barton.} So if that is true and apparently it is  
2818 true there is no State or Federal regulatory agency who would  
2819 let these plants operate if they emitted at a level that was  
2820 dangerous for the public health in their community. Again,  
2821 we are outlawing a process. Now, if Mrs. Schakowsky wants to  
2822 just do an outright immediate ban on mercury, let us  
2823 introduce that bill and have that debate. What Mr.  
2824 Radanovich is saying is let us give the communities and the  
2825 companies that have this process time to transition, save  
2826 those jobs in the community, go into compliance with what the  
2827 Europeans are doing and since we are not violating existing  
2828 emission at the State or Federal level for mercury that would  
2829 seem to me to make a win-win situation. Now, if on the other  
2830 hand we have a health situation locally at these four plants  
2831 that they need to be closed because of an immediate health  
2832 threat, that is a different issue. But apparently that is  
2833 not the reason that we are stated for moving this bill.

2834           Ms. {Schakowsky.} Would the gentleman yield?

2835           Mr. {Barton.} I would be happy to yield.

2836           Ms. {Schakowsky.} Thank you.

2837           The enforcement mechanism at the Environmental  
2838 Protection Agency and the standards, the Toxic Substance  
2839 Control Act is that we aren't even able to really control

2840 asbestos right now. And because we are dealing now with just  
2841 a handful of plants that emit this toxic substance, mercury,  
2842 which is as everyone will agree is highly toxic that for us  
2843 to say that dealing with the specifics, that dealing with  
2844 these four plants will increase the health of the people in  
2845 those communities and will remove a serious danger.

2846 Now, you know, there may be other times when we want to  
2847 go back and look at the Environmental Protection Agency and  
2848 how it does with all these various toxic substances but in  
2849 order to get what is a pretty immediate problem, although we  
2850 are willing to talk about different timelines, I think that  
2851 this is the best way to go to protect those communities.

2852 Mr. {Barton.} Reclaiming my time and I respect the  
2853 gentlelady from Illinois and don't doubt her sincerity but  
2854 with all due respect under existing law, the Environmental  
2855 Protection Agency if he or she thinks that there is a threat  
2856 to public health, they have authority to set a standard for  
2857 mercury right now, a bright line standard regardless of cost,  
2858 regardless of anything if they believe it is an imminent  
2859 danger to health. And I mean I understand the sensitivity to  
2860 mercury. What I don't understand is to outlaw a process  
2861 apparently because only four plants still use it. It is just  
2862 like this is some sort of a trophy that to put on the wall to  
2863 show that we are getting tough but you are getting tough on

2864 the constituents of Mr. Barrow and Mr. Space and other  
2865 members of the committee. I mean the Radanovich amendment  
2866 simply says let us give these companies and there workers  
2867 time to develop a new technology or to transition, 2020 is  
2868 not that far away.

2869 And again, if there is a public health threat that is  
2870 immediate, there is existing law that we can deal with that  
2871 ASAP and if we need to shut these plants down for that  
2872 reason, let us have that debate and do it but don't do this  
2873 kind of a surreptitious way that this bill would cause to  
2874 occur if it were to become law.

2875 I yield back, Mr. Chairman. Support the Radanovich  
2876 amendment.

2877 Mr. {Rush.} The gentleman stands has expired. Does the  
2878 gentlady seek additional time?

2879 Ms. {Schakowsky.} If I could have just one more minute,  
2880 Mr. Chairman.

2881 Mr. {Rush.} The chair recognizes moves to strike the  
2882 last word and recognizes himself for 5 minutes and to  
2883 recognize the subcommittee vice-chairman for 1 minute to  
2884 determine herself a minute.

2885 Ms. {Schakowsky.} Okay. Thank you.

2886 I just wanted to say that actually the Toxic Substance  
2887 Control Act prevents the notion of kind of lickety-split

2888 dealing with a problem in the community. It is very  
2889 burdensome and we may need to go look at how we can change  
2890 that so we can remove these toxins from the environment. So  
2891 there really is not right now a mechanism for us to deal with  
2892 relative dispatch with this known toxin and when you say  
2893 burdensome to the people in the community, there are those in  
2894 the community who would argue that the continued emission of  
2895 this mercury is far more burdensome to them. That 9,000  
2896 pounds between now and 2020, a lot of children could really  
2897 suffer in those communities. So we are trying to weigh that  
2898 carefully.

2899 Mr. {Rush.} The chairman reclaims his time. For what  
2900 purpose is the gentleman, Dr. Gingrey?

2901 Mr. {Gingrey.} Mr. Chairman, move to strike the last  
2902 word.

2903 Mr. {Rush.} Dr. Gingrey is recognized for 5 minutes.

2904 Mr. {Gingrey.} Mr. Chairman, thank you.

2905 And I am encouraged by the remarks made just a few  
2906 minutes ago by the author of the bill, my good friend, Jan  
2907 Schakowsky in regard to having an open mind regarding the  
2908 date of enactment. I know she is opposed to the 2020 which  
2909 the European Union has essentially adopted as Mr. Radanovich  
2910 pointed out in his amendment. I am very much in favor of his  
2911 amendment but I am encouraged to know that the author of the

2912 bill is open to consideration. I think that suggests, Mr.  
2913 Chairman, that both she and yourself have listened to the  
2914 concerns expressed by the gentlelady from Ohio, the gentleman  
2915 from Ohio, the gentleman from Georgia, the ranking member of  
2916 the overall committee and myself that we don't want to enact  
2917 such a stringent requirement that you literally force these  
2918 four companies to shut down, to shutter because there is no  
2919 way that they can meet these requirements within two years  
2920 and switch over.

2921 Now, I want to say one thing and then I will yield back,  
2922 Mr. Chairman. I am a physician member. I know where the  
2923 gentlelady's heart is in regard to this bill in concern for  
2924 children and mercury, and mercury poisoning and things that  
2925 can occur neurologically if they get too much mercury in  
2926 their system. But little amounts of mercury, trace amounts  
2927 of mercury are not harmful at all and I don't know.

2928 Mr. {Butterfield.} Will the gentleman yield for a  
2929 question, just a brief question?

2930 Mr. {Gingrey.} I would be glad to yield to the  
2931 gentleman from North Carolina.

2932 Mr. {Butterfield.} These emissions that we are talking  
2933 about are they into the atmosphere or into the ground?

2934 Mr. {Gingrey.} Well, these emissions are into the  
2935 atmosphere. They could be into the ground. They do dissolve

2936 in water. They get into the water and of course the fish get  
2937 this mercury and the consumption of fish that are heavily  
2938 laden with mercury is where most of this problem is.

2939 Mr. {Butterfield.} Thank you.

2940 Mr. {Gingrey.} Reclaiming my time.

2941 But I would like to, maybe counsel knows the answer to  
2942 this question, 9,000 pounds of additional mercury output into  
2943 the environment over a what, a 10 or 11 year period when we  
2944 get to 2020. What is the denominator? If 9,000 is the  
2945 numerator, what is the denominator in regard to the total  
2946 amount of mercury that is released by all of the sources that  
2947 we are not dealing with here in this particular piece of  
2948 legislation? Can someone answer that question for me or  
2949 general counsel or the author?

2950 {Counsel.} To get to what I think is the nub of the  
2951 problem, these plants are estimated to release about 700  
2952 pounds of mercury each year and since it takes only a  
2953 teaspoon of mercury to contaminate an entire 20-acre lake,  
2954 these amount pose a serious risk to human health and the  
2955 environment. So in fact it really is very small amounts and  
2956 actually we misspoke before. The plant in West Virginia,  
2957 PPG, actually is out of compliance. The State just sued them  
2958 for mercury violations of a water permit so it is not true  
2959 that they are all in compliance and it is true that a tiny

2960 amount can be very toxic and a risk to human health.

2961 Mr. {Gingrey.} Well, reclaiming my time.

2962 I have been told by our side that it is one-tenth of one  
2963 percent of all global production or release of mercury in the  
2964 environment. That is what we are talking about here, one-  
2965 tenth of one percent and the gentlelady was just talking  
2966 about how much release. I mean if you released all 9,000  
2967 pounds and it all went into a half-acre lake that maybe the  
2968 local fished in and the children happened to get that in  
2969 their diet, sure it could cause a problem but I mean I think  
2970 you have to look at the overall picture here and put things  
2971 in perspective.

2972 So I will yield back and just say I fully support the  
2973 amendment and I hope the gentlelady will follow through if  
2974 the amendment fails and as we work through in the full  
2975 committee maybe reach a compromise in regard to the date  
2976 certain because two years is impossible for these companies  
2977 to stay in business.

2978 I yield back, Mr. Chairman.

2979 Mr. {Rush.} Is there any other member who seeks  
2980 recognition?

2981 The question now is on the amendment by Mr. Radanovich.  
2982 All members in favor of the amendment signify by saying aye.  
2983 All members opposed signify by saying no. In the opinion of

2984 the chair, the no's have it and the amendment is defeated.

2985 Mr. {Radanovich.} Mr. Chairman, I am going to ask for a  
2986 recorded vote.

2987 Mr. {Rush.} The request for a recorded vote, the clerk  
2988 can call the roll.

2989 The {Clerk.} Mr. Rush?

2990 Mr. {Rush.} No.

2991 The {Clerk.} Mr. Rush votes no. Ms. Schakowsky?

2992 Ms. {Schakowsky.} No.

2993 The {Clerk.} Ms. Schakowsky votes no. Mr. Sarbanes?

2994 Mr. {Sarbanes.} No.

2995 The {Clerk.} Mr. Sarbanes, no. Ms. Sutton?

2996 Ms. {Sutton.} No.

2997 The {Clerk.} Ms. Sutton, no. Mr. Pallone.

2998 [No response.]

2999 The {Clerk.} Mr. Gordon?

3000 [No response.]

3001 The {Clerk.} Mr. Stupak?

3002 Mr. {Stupak.} Yes.

3003 The {Clerk.} Mr. Stupak, aye. Mr. Green?

3004 [No response.]

3005 The {Clerk.} Mr. Gonzalez?

3006 Mr. {Gonzalez.} No.

3007 The {Clerk.} Mr. Gonzalez, votes no. Mr. Weiner?

3008 [No response.]

3009 The {Clerk.} Mr. Matheson?

3010 [No response.]

3011 The {Clerk.} Mr. Butterfield?

3012 Mr. {Butterfield.} No.

3013 The {Clerk.} Mr. Butterfield votes no. Mr. Barrow?

3014 Mr. {Barrow.} Aye.

3015 The {Clerk.} Mr. Barrow votes aye. Ms. Matsui?

3016 Ms. {Matsui.} No.

3017 The {Clerk.} Ms. Matsui votes no. Ms. Castor?

3018 Ms. {Castor.} No.

3019 The {Clerk.} Ms. Castor votes no. Mr. Space?

3020 [No response.]

3021 The {Clerk.} Mr. Braley?

3022 Mr. {Braley.} Mr. Braley votes no.

3023 The {Clerk.} Ms. DeGette?

3024 Ms. {DeGette.} No.

3025 The {Clerk.} Ms. DeGette votes no. Mr. Waxman?

3026 [No response.]

3027 The {Clerk.} Mr. Radanovich?

3028 Mr. {Radanovich.} Aye.

3029 The {Clerk.} Mr. Radanovich votes aye. Mr. Stearns?

3030 [No response.]

3031 The {Clerk.} Mr. Whitfield?

3032 [No response.]

3033 The {Clerk.} Mr. Pitts?

3034 Mr. {Pitts.} Aye.

3035 The {Clerk.} Mr. Pitts votes aye. Ms. Bono Mack?

3036 Ms. {Bono Mack.} Aye.

3037 The {Clerk.} Ms. Bono Mack votes aye. Mr. Terry?

3038 Mr. {Terry.} Aye.

3039 The {Clerk.} Mr. Terry votes aye. Ms. Myrick?

3040 [No response.]

3041 The {Clerk.} Mr. Sullivan?

3042 [No response.]

3043 The {Clerk.} Mr. Murphy of Pennsylvania?

3044 Mr. {Murphy.} Aye.

3045 The {Clerk.} Mr. Murphy votes aye. Mr. Gingrey?

3046 Mr. {Gingrey.} Aye.

3047 The {Clerk.} Mr. Gingrey, aye. Mr. Scalise?

3048 Mr. {Scalise.} Aye.

3049 The {Clerk.} Mr. Scalise, aye. Mr. Barton?

3050 Mr. {Barton.} Aye.

3051 The {Clerk.} Mr. Barton, aye. Mr. Matheson?

3052 Mr. {Matheson.} No.

3053 The {Clerk.} Mr. Matheson votes no. Mr. Stearns?

3054 Mr. {Stearns.} Aye.

3055 The {Clerk.} Mr. Stearns votes aye.

3056 Mr. {Rush.} Have all the members been recorded?

3057 The {Clerk.} Sorry. I apologize. Mr. Weiner?

3058 Mr. {Weiner.} No.

3059 The {Clerk.} Mr. Weiner votes no. Mr. Pallone?

3060 Mr. {Pallone.} No.

3061 The {Clerk.} Mr. Pallone votes no. Mr. Space?

3062 Mr. {Space.} No.

3063 The {Clerk.} Mr. Space votes no.

3064 Mr. {Rush.} Have all the members been recorded? Ms.

3065 Davis will give us the result.

3066 The {Clerk.} On that vote, Mr. Chairman, the ayes were

3067 11 and the nays were 13. I am sorry, 14. I can't read my

3068 writing. Yes, 11 ayes, 14 no's.

3069 Mr. {Rush.} In the opinion of the chair, the amendment

3070 is defeated.

3071 Does any other member seek to offer an amendment to the

3072 Amendment in the Nature of a Substitute? Dr. Gingrey.

3073 Mr. {Gingrey.} Mr. Chairman, I have an amendment at the

3074 desk.

3075 Mr. {Rush.} The clerk will report the amendment.

3076 The {Clerk.} Amendment to the Amendment in the Nature

3077 of a Substitute offered by Mr. Gingrey, page 4, strike line

3078 24 and all that follows down through line 9 on page 5.

3079 [The amendment follows:]

3080 \*\*\*\*\* INSERT 16 \*\*\*\*\*

3081 Mr. {Rush.} The amendment has been disseminated.

3082 Without objection, the amendment will be considered as read.

3083 I recognize for 5 minutes, Dr. Gingrey to explain his  
3084 amendment.

3085 Mr. {Gingrey.} Mr. Chairman, thank you.

3086 And I would ask unanimous consent to submit my remarks  
3087 for the record and I will try to paraphrase the amendment.

3088 Mr. Chairman, during the 110th Congress, President Bush  
3089 signed into law the Mercury Export Ban Act of 2008 that was  
3090 introduced by then Senator Barack Obama, now President Obama,  
3091 of course. And it received the overwhelming support of this  
3092 committee. This bipartisan legislation specifically banned  
3093 the export of elemental mercury from any company starting in  
3094 the year 2013.

3095 Mr. Chairman, this Law, the Mercury Export Ban Act of  
3096 2008, eight months ago I think it was signed into Law. It  
3097 bans the export of elemental mercury from all sources, not  
3098 just these chlor-alkali. Bans it by January 1, 2013 and  
3099 additionally requires the Department of Energy to have a  
3100 facility in place by the same date to provide long term  
3101 management and storage for the mercury that may no longer be  
3102 exported.

3103 In the other amendment, Mr. Chairman, my colleagues as

3104 we talked about what could happen to a company and what is  
3105 likely to happen to these four companies that in no way are  
3106 going to be able to switch over to an entirely difference  
3107 manufacturing process, engineering equipment, license and et  
3108 cetera. It is going to take them several years and it is  
3109 most likely that these companies will just simply fold up  
3110 their tent. And if they do go bankrupt, we will have  
3111 neighborhoods with what, unguarded and abandoned mercury  
3112 onsite because immediately they would be prohibited from  
3113 shipping any mercury, from exporting any mercury. And I  
3114 think that is not exactly what we want to have. It is hardly  
3115 a good public health outcome especially of children who are  
3116 going to jumping the fence and playing in these facilities,  
3117 vandals mishandling the mercury.

3118         So my amendment basically says this. It would simply  
3119 line up the export ban on elemental mercury with existing Law  
3120 that was put forward by then Senator Obama and signed into  
3121 Law by President Bush during the 110th Congress. It would  
3122 just simply allow these companies, if they do shutter as  
3123 likely they will, then at least we don't have a toxic waste  
3124 site that we have got to deal with. That they can export  
3125 this mercury and certainly they can export it in situations  
3126 where there should be an exemption where there is no other  
3127 source and a foreign source needs that mercury.

3128           So basically this is what the amendment says, it just  
3129 puts us in alignment with current Law. The legislation that  
3130 was introduced by President Obama just eight months ago and  
3131 signed into Law.

3132           I hope that all of my colleagues on both sides of the  
3133 aisle could support this commonsense amendment. I would be  
3134 glad to answer any questions but at this point, Mr. Chairman,  
3135 I will yield back my time.

3136           Mr. {Rush.} For what purpose does the gentlelady from  
3137 Illinois seek recognition?

3138           Ms. {Schakowsky.} I would like to speak against the  
3139 amendment.

3140           Mr. {Rush.} The gentlelady is recognized for 5 minutes.

3141           Ms. {Schakowsky.} Thank you, Mr. Chairman.

3142           The overall legislation is looking to set a date where  
3143 this mercury is no longer produced. We are concerned that  
3144 upon enactment of this bill now that these companies are  
3145 likely to dump their mercury stockpiles on the international  
3146 market where there is little if any regulation of the way  
3147 that the toxin is handled.

3148           And it seems to me that what we want to do is set a date  
3149 where sooner than 2013 where this product cannot be  
3150 manufactured anymore. It can't be used anymore and we want  
3151 to discourage the spread of mercury around the world.

3152           So what we have said is that yes until the product is  
3153 banned that it can be stored on-site but we do not want the  
3154 United States of America to be exporters of mercury. They  
3155 will have a greater incentive than anyone to now dump their  
3156 stockpiles on the market. We don't want to be in the  
3157 business of encouraging that.

3158           I yield back.

3159           Mr. {Rush.} The gentlelady yields back the balance of  
3160 her time.

3161           Is there any other member who seeks recognition?

3162           Mr. {Stearns.} Just a question for counsel.

3163           Mr. {Rush.} The gentleman from Florida is recognized.

3164           Mr. {Stearns.} Just a question.

3165           As I understand it, the Department of Energy is building  
3166 a facility to store this, is that true?

3167           {Counsel.} The Department of Energy is in the process  
3168 of designating a facility for long term storage that would  
3169 have to be in affect and available for use by 2013.

3170           Mr. {Stearns.} Okay. So then if that is true then what  
3171 Ms. Schakowsky said that there is no place for it after 2013.  
3172 Okay. I misunderstand because after 2013 they could store it  
3173 all there, couldn't they?

3174           {Counsel.} Certainly after 2013 the Department of  
3175 Energy designated facility should be available for storage of

3176 mercury, yes.

3177 Mr. {Stearns.} Okay. So why would you be against this  
3178 again?

3179 I yield my time.

3180 Ms. {Schakowsky.} What we are saying is we are going to  
3181 set a deadline beyond which the mercury is not going to be  
3182 accumulating and so we don't want to create an incentive now.  
3183 In the meantime, they could stockpile it onsite, change their  
3184 manufacturing process and then after 2013 they could store it  
3185 in this permanent facility. We don't want to create an  
3186 incentive right now for them to be dumping their stockpiles  
3187 on the market. We want to encourage the storage until the  
3188 final date and to stop the manufacture of additional.

3189 Mr. {Stearns.} So what you are saying, reclaiming my  
3190 time, you are worried about between now and 2013 that they  
3191 will sell this overseas or use it because the stockpiling  
3192 facility is not available, that these people will  
3193 unilaterally start to get rid of it illegally and that is  
3194 what you are concerned about rather than continuing. I mean  
3195 I would think most of these suppliers, knowing that this  
3196 stockpile is going to be ready in 2013 would hold it all in  
3197 reserves and turn it into there. And so I don't think there  
3198 would be any reason for them to do what you are saying which  
3199 would be selling it overseas or selling it illegally.

3200           So, you know, I support the gentleman's amendment and I  
3201 think it is reasonable in fact that our President, former  
3202 Senator offered this and supported it. I think it is  
3203 reasonable that we should support it too and I am surprised  
3204 that the chairman hasn't accepted this amendment.

3205           Ms. {Schakowsky.} And would the gentleman yield?

3206           Mr. {Stearns.} Sure.

3207           Ms. {Schakowsky.} If these companies close and leave  
3208 the mercury behind and that would be in fact illegal under  
3209 current Law. They are permitted now to store the mercury  
3210 legally at existing permanent storage facilities which they  
3211 could do safely and securely.

3212           If the minority thinks that more storage options are  
3213 necessary we could certainly discuss that as we move forward.

3214           Mr. {Stearns.} Well, just in closing. You know, there  
3215 are abandoned super sites all around this country so, you  
3216 know, I don't know if that is, I mean your exception is not  
3217 necessarily going to make the rule. We've got super sites  
3218 everywhere abandoned but my point is that I think that most  
3219 of the people understand we will have this super site in  
3220 place by 2013, and I think the gentleman's amendment in light  
3221 of what is passed by unanimous consent in the past, I think  
3222 you folks should consider this amendment.

3223           Thank you, Mr. Chairman. I yield back.

3224 Mr. {Rush.} Does any other member seek recognition?

3225 Mr. {Terry.} Mr. Chair?

3226 Mr. {Rush.} Mr. Terry, for what purpose?

3227 Mr. {Terry.} Thank you, Mr. Chairman.

3228 Just an observation because I have seen this in Omaha.

3229 If they close down or close down the operations, what they do

3230 is keep a security guard there and then there's no movement

3231 of the toxic materials. They may await awhile until they

3232 have a facility to move it but they will keep that security

3233 guard and technically keep it open. They just won't operate

3234 it and that is how they do it. That is what ASARCO did to

3235 Omaha for about 10 years.

3236 At this time, I will yield my time to the good doctor

3237 from Georgia, Gingrey.

3238 Mr. {Gingrey.} I thank the gentleman for yielding and I

3239 will use some of that time to ask counsel a question. Under

3240 the Toxic Substance Control Act, Section 12(c)(4), it allows

3241 an exemption for ``essential uses'' of elemental mercury

3242 based on several factors.

3243 Does the Amendment in the Nature of a Substitute still

3244 allow these plants help meet essential mercury needs in other

3245 parts of the world or would they be prohibited from doing

3246 that by virtue of this bill?

3247 {Counsel.} Those exemptions contained in Section 12 of

3248 TSCA do not apply to the export ban contained in this bill,  
3249 no.

3250 Mr. {Gingrey.} Let me make sure I understand your  
3251 response. So if we do not adopt this amendment and the  
3252 Amendment in the Nature of a Substitute is a final passage  
3253 then these four plants would not be able immediately upon  
3254 passage of this bill they would not be able export mercury  
3255 and nor would they be able to export it if there was an  
3256 essential use. All provisions met for an essential use, they  
3257 would be prohibited still from doing that?

3258 {Counsel.} Essentially, that is correct. The essential  
3259 use exemption does not apply.

3260 Mr. {Gingrey.} Yeah, reclaiming my time and that is the  
3261 whole point of my concern here that as Mr. Terry was talking  
3262 about, you know, if these plants are going to continue to  
3263 remain in operation, if they are given enough time, they  
3264 would. And hopefully Ms. Schakowsky will reconsider the  
3265 Radanovich amendment as we get to the full committee. They  
3266 would have a 24/7 operation. It would be probably a safe  
3267 thing to do for it to have onsite storage but once these  
3268 plants close down and shutter and they will, you might have  
3269 one guard there particularly on the midnight to 7:00 a.m.  
3270 shift, but you are talking about an essential likely  
3271 superfund site and a very dangerous situation so here again

3272 to stop these companies from exporting their mercury  
3273 offshore, I think it is. I can understand the gentle woman's  
3274 intent but I think the result of that is going to be just the  
3275 opposite of what she wants.

3276 Mr. {Weiner.} Will the gentleman yield on that point?

3277 Yeah, I think we can all stipulate because you refer to  
3278 the legislature we passed, we could all stipulate it is  
3279 dangerous stuff. We don't want it to be exported. What the  
3280 date is, is the subject of your amendment. We don't want it  
3281 to be exported. I think what the gentlelady is trying to  
3282 argue here is that we don't want to create a dynamic that has  
3283 them shunt the problem to someone else. We already in the  
3284 Congress have spoken loudly. We don't want this to be  
3285 shipped overseas so the only question then is how quickly you  
3286 stop that and we don't want to create an incentive with this  
3287 legislation to us sending this somewhere else.

3288 Mr. {Gingrey.} Well, reclaiming my time, Mr. Weiner,  
3289 and actually it is not my time. It was my colleague's time  
3290 from Nebraska.

3291 But the fact that again you are in to say that you can't  
3292 ship it even if there is an essential use, an essential need  
3293 that meets all the provisions of current Law. It just makes  
3294 no sense and so I think that this amendment is a very  
3295 commonsense compromise and I would hope that all my

3296 colleagues could support this and then the Amendment in the  
3297 Nature of a Substitute as amended could go forward to the  
3298 full committee.

3299 Ms. {Schakowsky.} Would the gentleman yield?

3300 Mr. {Gingrey.} I yield back my time to Mr. Terry.

3301 Ms. {Schakowsky.} Just to know that the majority talked  
3302 to the minority about extending that what do we call it, the  
3303 essential use exemption and that was turned down. Just to  
3304 know.

3305 Mr. {Rush.} The gentleman's time is concluded and about  
3306 5 seconds to go.

3307 Mr. {Terry.} I yield back my time.

3308 Mr. {Rush.} Thank the gentleman.

3309 Does any other member seek recognition?

3310 The question is now on the amendment by Dr. Gingrey to  
3311 the Amendment in the Nature of a Substitute. All members in  
3312 favor of the amendment signify by saying aye. All opposed  
3313 signify by saying no. In the opinion of the chair, the no's  
3314 have it and the amendment is defeated.

3315 Mr. {Radanovich.} Mr. Chairman, I ask for a recorded  
3316 vote.

3317 Mr. {Rush.} The clerk will call the roll

3318 The {Clerk.} Mr. Rush?

3319 Mr. {Rush.} No.

3320 The {Clerk.} Mr. Rush votes no. Ms. Schakowsky?  
3321 Ms. {Schakowsky.} No.  
3322 The {Clerk.} Ms. Schakowsky votes no. Mr. Sarbanes?  
3323 Mr. {Sarbanes.} No.  
3324 The {Clerk.} Mr. Sarbanes, no. Ms. Sutton?  
3325 Ms. {Sutton.} No.  
3326 The {Clerk.} Ms. Sutton, no. Mr. Pallone?  
3327 Mr. {Pallone.} No.  
3328 The {Clerk.} Mr. Pallone votes no. Mr. Gordon?  
3329 [No response.]  
3330 The {Clerk.} Mr. Stupak?  
3331 Mr. {Stupak.} No.  
3332 The {Clerk.} Mr. Stupak, no. Mr. Green?  
3333 [No response.]  
3334 The {Clerk.} Mr. Gonzalez?  
3335 Mr. {Gonzalez.} No.  
3336 The {Clerk.} Mr. Gonzalez votes no. Mr. Weiner?  
3337 Mr. {Weiner.} No.  
3338 The {Clerk.} Mr. Weiner votes no. Mr. Matheson?  
3339 [No response.]  
3340 The {Clerk.} Mr. Butterfield?  
3341 Mr. {Butterfield.} No.  
3342 The {Clerk.} Mr. Butterfield, no. Mr. Barrow?  
3343 Mr. {Barrow.} No.

3344 The {Clerk.} Mr. Barrow votes no. Ms. Matsui?  
3345 Ms. {Matsui.} No.  
3346 The {Clerk.} Ms. Matsui, no. Ms. Castor?  
3347 Ms. {Castor.} No.  
3348 The {Clerk.} Ms. Castor votes no. Mr. Space?  
3349 Mr. {Space.} No.  
3350 The {Clerk.} Mr. Space votes no. Mr. Braley?  
3351 Mr. {Braley.} No.  
3352 The {Clerk.} Mr. Braley votes no. Ms. DeGette?  
3353 Ms. {DeGette.} No.  
3354 The {Clerk.} Ms. DeGette votes no. Mr. Waxman?  
3355 [No response.]  
3356 The {Clerk.} Mr. Radanovich?  
3357 Mr. {Radanovich.} Aye.  
3358 The {Clerk.} Mr. Radanovich votes aye. Mr. Stearns?  
3359 Mr. {Stearns.} Aye.  
3360 The {Clerk.} Mr. Stearns, aye. Mr. Whitfield?  
3361 Mr. {Whitfield.} Aye.  
3362 The {Clerk.} Mr. Whitfield, aye. Mr. Pitts?  
3363 Mr. {Pitts.} Aye.  
3364 The {Clerk.} Mr. Pitts votes aye. Ms. Bono Mack?  
3365 Ms. {Bono Mack.} Aye.  
3366 The {Clerk.} Ms. Bono Mack, aye. Mr. Terry?  
3367 Mr. {Terry.} Aye.

3368 The {Clerk.} Mr. Terry, aye. Mrs. Myrick?  
3369 [No response.]  
3370 The {Clerk.} Mr. Sullivan?  
3371 [No response.]  
3372 The {Clerk.} Mr. Murphy of Pennsylvania?  
3373 Mr. {Murphy.} Aye.  
3374 The {Clerk.} Mr. Murphy votes aye. Mr. Gingrey?  
3375 Mr. {Gingrey.} Aye.  
3376 The {Clerk.} Mr. Gingrey, aye. Mr. Scalise?  
3377 Mr. {Scalise.} Aye.  
3378 The {Clerk.} Mr. Scalise votes aye. Mr. Barton?  
3379 Mr. {Barton.} Aye.  
3380 The {Clerk.} Mr. Barton, aye.  
3381 Mr. {Rush.} Mr. Matheson?  
3382 The {Clerk.} Not recorded, Mr. Chairman. Oh I am  
3383 sorry. Mr. Matheson is not recorded. Okay. Mr. Matheson  
3384 votes no.  
3385 Mr. {Rush.} Will the clerk announce the tally?  
3386 The {Clerk.} Yes, sir. On that vote, Mr. Chairman,  
3387 there were 10 ayes and 16 no's.  
3388 Mr. {Rush.} The no's have it. The amendment is  
3389 defeated.  
3390 Does any other member seek to offer an amendment to the  
3391 Amendment? Mr. Murphy of Pennsylvania is recognized.

3392 Mr. {Murphy.} Thank you, Mr. Chairman.

3393 I have an amendment at the desk.

3394 Mr. {Rush.} The clerk will report the amendment.

3395 The {Clerk.} Amendment to the Amendment in the Nature

3396 of a Substitute offered by Mr. Murphy of Pennsylvania. A.

3397 Renumber subsection.

3398 [The amendment follows:]

3399 \*\*\*\*\* INSERT 17 \*\*\*\*\*

|  
3400 Mr. {Murphy.} I am going to ask that the amendment be  
3401 considered read.

3402 Mr. {Rush.} Without an objection, the amendment will be  
3403 considered as read.

3404 Mr. Murphy, I recognize you for 5 minutes to explain  
3405 your amendment.

3406 Mr. {Murphy.} Thank you, Mr. Chairman.

3407 This amendment allows for some companies to transition  
3408 under this ban and that is that recognizing it will take them  
3409 several years to rebuild a plant. Estimates are it could  
3410 take \$100 million to put in the investments to change over  
3411 for a mercury process. This would allow plants to ask for an  
3412 extension if necessary of five years and then if they run  
3413 into some other bureaucratic problems along the way, they  
3414 could ask for a waiver in extension of up to four more years.

3415 Along these lines I would like to mention a letter I  
3416 received from PPG Industries, a Pittsburg Company, and they  
3417 noted that the chlor-alkali industry provides critical  
3418 benefits to society and is essential to the U.S. economy.  
3419 According to the key building block, in thousands of products  
3420 including pharmaceuticals, plastic, computer and vehicular  
3421 components, fiber optic cable, energy-efficient building  
3422 materials, renewable energy resources like solar panels as

3423 well as fire-resistant materials for law enforcement,  
3424 emergency response and military applications. And of course  
3425 we know that chlorine is used to disinfect drinking water and  
3426 it is actually a requirement in drinking water systems.  
3427 Chlor-alkali industry directly contributes over \$7 billion to  
3428 North American economy.

3429         In 2007 and 2008, the chlor-alkali industry played an  
3430 active role in publicly advocating for legislation that bans  
3431 the export of mercury by January, 2013, and established a  
3432 government facility to permanently store surplus mercury in  
3433 an environmentally sound manner. That of course was worked  
3434 out through several organizations of stakeholders.

3435         The chlor-alkali industry notes that the ban  
3436 discriminates against mercury as used in our industry even  
3437 though the mercury is identical to mercury from other  
3438 sources. They go on to state that they are concerned that it  
3439 will take much longer than two years to construct any people  
3440 or process that would require a change in this. The cost of  
3441 such a conversion in an individual site is likely in excess  
3442 of \$100 million and may be significantly greater for a large  
3443 site.

3444         We know that there are four sites in the United States  
3445 right now, Tennessee, Ohio, West Virginia and Georgia and the  
3446 concern is that these plants it will be virtually impossible

3447 for them to meet the standards set forth in this Act. And  
3448 therefore although we are all concerned about making sure we  
3449 reduce mercury and eliminate where we can, given that Europe  
3450 is also seeing a 30 to 50 percent drop in their chemical  
3451 industries. And Asia, particularly China is investing  
3452 massive amounts of money to build their plants to do this, I  
3453 think inevitably what would come up is that these factories  
3454 would send these jobs offshore to China and not necessarily  
3455 make any change in our mercury in our planet and we would  
3456 have lost a lot of jobs and not had an advance.

3457 So that is the basis of this amendment, Mr. Chairman and  
3458 with that, I yield back.

3459 Mr. {Rush.} The chair recognizes himself for 5 minutes.

3460 Mr. Murphy, I appreciate your concerns about the  
3461 feasibility of the time tables in the bill and the financing  
3462 for these plants. Both Ms. Schakowsky and myself are  
3463 sympathetic to these concerns and we would like to work with  
3464 you to find a reasonable solution to these issues. And we  
3465 look forward to working with you and other members of the  
3466 committee between now and the full committee. And it is my  
3467 understanding that you were a member.

3468 Mr. {Murphy.} Yes, Mr. Chairman. I do appreciate the  
3469 opportunity. I know a number of members on both sides of the  
3470 aisle are deeply concerned with how to resolve this issue and

3471 I am sure I speak for all of us that we look forward to that  
3472 opportunity to work with you and the ranking member on  
3473 resolving this issue.

3474 Mr. {Rush.} Thank you very much. You withdraw your  
3475 amendment?

3476 Mr. {Murphy.} And with that I will ask unanimous  
3477 consent to withdraw my amendment.

3478 Mr. {Rush.} So ordered.

3479 Does any other member seek recognition?

3480 Mr. {Radanovich.} Mr. Chairman, I seek recognition to  
3481 offer and withdraw an amendment.

3482 Mr. {Rush.} The ranking member, Mr. Radanovich, is  
3483 recognized for 5 minutes.

3484 Mr. {Radanovich.} Thank you, Mr. Chairman.

3485 It is described as Radanovich 2 I think at the desk and  
3486 in light of the discussion we have had in this markup, I  
3487 wanted to bring to people's attention that this is just a  
3488 partial list of all the restrictions, regulations that  
3489 control.

3490 Mr. {Rush.} The clerk will report the amendment.

3491 The {Clerk.} Amendment to the Amendment in the Nature  
3492 of a Substitute offered by Mr. Radanovich. Page 4, strike  
3493 line 20 to 23 and insert.

3494 [The amendment follows:]

3495 \*\*\*\*\* INSERT 18 \*\*\*\*\*

|  
3496 Mr. {Rush.} The amendment has been disseminated.

3497 Without objection, the amendment will be considered as read.

3498 Mr. Radanovich is recognized for 5 minutes to explain  
3499 his amendment.

3500 Mr. {Radanovich.} Again, thank you, Mr. Chairman.

3501 And as I was mentioning earlier, this is just a partial  
3502 list of the regulations that affect the chlor-alkali  
3503 industry. It is a long list and given that and also current  
3504 information that was released by the U.S. Geological Survey,  
3505 I am sorry, the Department of Interior and the EPA, that is a  
3506 landmark geological survey study demonstrating how  
3507 methylmercury which is known to contaminate seafood which is  
3508 where most of the mercury poisoning originates from. This  
3509 methylmercury by and large originates in the oceans and these  
3510 two points plus this third point that the underlying bill  
3511 essentially eliminates a manufacturing process that emits a  
3512 smaller amount of mercury in producing chlorine and caustic  
3513 soda when compared to other industries. In fact, in 2005 the  
3514 EPA ranked this industry sixth on the list of industries that  
3515 use mercury.

3516 What has happened to those numbers between one and five?  
3517 These industries, well power plant emissions for example  
3518 release 52.6 tons of annual emissions. Hazardous

3519 incinerators release 16.4 tons of annual emissions. Electric  
3520 arc furnaces release 7.4 tons annually of mercury emissions.  
3521 Gold mining, 2.4 tons in annual emissions, municipal solid  
3522 waste combustion which are incinerators release 2.4 tons of  
3523 annual emissions. And the chlor-alkali or mercury cell  
3524 chlorine facilities release 1.1 tons of annual emissions.

3525         If this is about protecting health and we are going to  
3526 go out of our way to eliminate an entire manufacturing  
3527 process that only ranks sixth on a list of mercury producers,  
3528 perhaps this committee should look at the rest of the  
3529 industries. And my amendment says that any manufacturing,  
3530 processing, distribution, use or disposal that involves some  
3531 form of elemental mercury shall be prohibited if it presents  
3532 an unreasonable risk of injury to health or the environment.

3533         And I would like to ask the author of the bill whom I  
3534 have great respect for, why are we only focusing on this one  
3535 industry, the sixth worst emitter when there are five other  
3536 industries that emit far more mercury, the coal industry  
3537 being the worst.

3538         Mr. {Rush.} Does the gentleman want to yield?

3539         Mr. {Radanovich.} And I yield to the gentlelady for an  
3540 answer.

3541         Ms. {Schakowsky.} Well, essentially what you are saying  
3542 is that you just send this to the environmental, this whole

3543 area to the Environmental Protection Agency where we know  
3544 that the Toxic Substances Control Act has a very long,  
3545 cumbersome process that is unlikely actually to address this  
3546 issue.

3547         We have in our hands right now an opportunity and some  
3548 of the numbers that were quoted before about the amount of  
3549 emissions were old numbers to make a significant reduction.  
3550 That is not to say that we shouldn't at some other time  
3551 address other sources and other ways that mercury can get  
3552 into the environment but this is an opportunity right now to  
3553 address this. What is it about 2.5 percent of the mercury  
3554 emissions which is significant given what a toxic substance  
3555 it is.

3556         Your suggestion kicks it down the road and I see that  
3557 really as not an effort to move on this issue but rather at  
3558 this point to delay on it. But, you know, having said that I  
3559 want to say that going forward I hope that we can continue to  
3560 work together. Despite the back and forth today I think at  
3561 the end of the day the product that comes out of this  
3562 subcommittee will be one that we have worked through jointly  
3563 with you and with the all of the stakeholders and I look  
3564 forward to doing that.

3565         Mr. {Radanovich.} Thank you. I thank the gentlelady  
3566 from Illinois and I want to say, you know, that this is I

3567 think that when you are looking at the risk and loss of  
3568 American jobs, I think that you need to put the risk in  
3569 perspective. And that is what I am trying to do with this  
3570 piece of legislation when over if I can tally up quickly it  
3571 looks like 70 tons annually of mercury emissions in the air  
3572 are happening every year and we are only looking at a bill  
3573 that deals with 1.1 and it takes that unprecedented step of  
3574 outlying a process and killing American jobs when the  
3575 evidence shows that most of the mercury poisoning originate  
3576 in the oceans. I think we need to keep it all in perspective  
3577 especially when we are looking at the difference of outlying  
3578 a process immediately or extending up to meet to be equal  
3579 with EU standards for the year 2020. And that is the purpose  
3580 of my amendment is to try to put all of this in risk. I am  
3581 trying to save American jobs. We want to do that. This is a  
3582 job killer for the United States and we need to be aware that  
3583 it may not have any bearing or effect for the purpose for  
3584 which the bill was generated.

3585         So having made that point, Mr. Chairman, I yield back  
3586 and withdraw my amendment.

3587         Mr. {Rush.} Does any other member seek recognition?

3588         Mr. {Weiner.} Mr. Chairman, I won't take 5 minutes. I  
3589 just strike the last word just to say, you know, we in fact  
3590 for all the talk about unprecedented this is, we do this type

3591 of thing all the time. We discover that a common practice is  
3592 harmful and we move to ban it. We did a similar thing with  
3593 asbestos. We discovered that the way we were protecting  
3594 children in movie theaters from fires was to weaving into  
3595 garments, weaving into curtains, we weaves asbestos. We  
3596 found out that it was harmful. We said we could stop it at  
3597 some point and in fact what the Federal Government did is it  
3598 kept secret a lot of the information that we had. It went on  
3599 for a better part of a half-generation. We were installing  
3600 it in ships and boats and a lot of people died because of it  
3601 and I think that what the gentlelady is trying to do is  
3602 trying to be mindful of the notion that there is a livelihood  
3603 at stake here but there is a higher imperative sometimes and  
3604 I think that you could always say well you know what? We  
3605 have got people working in these factories that are producing  
3606 this dangerous thing but whether it is 2 percent or 22  
3607 percent, it is not uncommon for the Energy and Commerce  
3608 Committee to come across something that is going on in the  
3609 world of interstate commerce and say that is dangerous. We  
3610 are going to try to undo it so I think that I would share the  
3611 gentlelady's desire that we work on this in a bipartisan way  
3612 and I think that my Republican friends just as much want to  
3613 prevent people from being harmed by products as we do and it  
3614 is just a matter of trying to get as expeditiously as

3615 possible a dangerous product out of the bloodstream of the  
3616 nation's economy.

3617           And I yield the balance of my time to the gentlelady  
3618 from Illinois.

3619           Ms. {Schakowsky.} And I just wanted to say that my hope  
3620 is that again at the end of the day if we work out the time  
3621 period that we are not talking about inevitable job loss  
3622 here. That we are talking about a phasing out that as other  
3623 manufacturing plants have done and hopefully we will not see  
3624 the inevitable loss of those jobs.

3625           Mr. {Barton.} Mr. Chairman.

3626           Mr. {Rush.} For what purpose does the ranking member of  
3627 the full committee?

3628           Mr. {Barton.} Strike the requisite number of words.

3629           Mr. {Rush.} The gentleman is recognized for 5 minutes.

3630           Mr. {Barton.} First, Mr. Chairman, I think we are about  
3631 to finish the markup so before I say some somewhat  
3632 uncomplimentary things, let me say some complimentary things.  
3633 The fact that we are having a markup at subcommittee is  
3634 commendable for you and Ms. Schakowsky and the other authors  
3635 of the bills. It is better to markup at subcommittee. You  
3636 get more issues on the table. Even if the amendments are  
3637 disagreed with, we at least flesh out what the inflection  
3638 points are and so the end result at full committee will be a

3639 better product because of you working with Mr. Radanovich and  
3640 other members on our side with members on your side so I do  
3641 want to sincerely compliment you and Mr. Radanovich for  
3642 putting this markup together and I mean that sincerely.

3643         Now, let me say some things about the base bill that is  
3644 under consideration with regard to asbestos because several  
3645 members on the majority have talked about asbestos. I could  
3646 take you to an empty factory in Congressman Chet Edwards  
3647 district outside of Hillsboro, Texas that when I was a young  
3648 congressman was in my Congressional district and employed 350  
3649 people. They were the highest paid workers in the county.  
3650 Hill County had a population of about 25,000. This plant had  
3651 been there for approximately 20 years. It made concrete pipe  
3652 that was primarily exported overseas to Africa for water  
3653 project and it used asbestos as an insulator and a  
3654 strengthener in the pipe. Okay. There was never, ever  
3655 recorded an incident where the asbestos in that pipe caused  
3656 harm. There were numerous projects in Africa that brought  
3657 clean water to rural Africa that saved lives, that cleaned up  
3658 areas that were susceptible to malaria but when the U.S.  
3659 Congress and the U.S. Government outlawed asbestos because  
3660 there in the manufacturing the asbestosis in the  
3661 manufacturing could get into the lungs and did and was a very  
3662 dangerous substance. But instead of trying to do something

3663 to make it safer we just ban that product. That plant closed  
3664 down. It is vacant to this day. How many tens of thousands  
3665 or hundreds of thousands of people have died because of  
3666 drought or malnutrition or malaria because they didn't have  
3667 the economical pipe that could bring fresh, clean water to  
3668 their communities? Who know? What happened to those workers  
3669 in Hillsboro, Texas? Who knows? But that plant is gone.  
3670 That plant is gone and we are here today to mark a bill up  
3671 that if it becomes law is a death sentence to somewhere  
3672 between 400 and 1,000 people in terms of their jobs, not to  
3673 themselves personally obviously but for their jobs.

3674 Now, that is not a lot of jobs. You know the climate  
3675 bill is probably going to cost three million jobs a year when  
3676 it is implemented for the first year but a thousand jobs if  
3677 they are in your district if that is your job, it is real.  
3678 And the only reason why I can see we picked on these four  
3679 plants is because they just aren't that many people. It is  
3680 not the biggest mercury producer as Mr. Radanovich has  
3681 pointed out and no matter how you cut it is not percentage.  
3682 It is not the top of the percentage. It is not the top of  
3683 the noncompliance. It is just 400 to 800 jobs and we can do  
3684 it and we are going to do it.

3685 Now, Mrs. Schakowsky has said that she is going to work  
3686 between now and full committee with Mr. Radanovich and Mr.

3687 Gingrey and Mr. Murphy and others to perfect the bill and  
3688 extend the time and I hope she does. But it is not a good  
3689 precedent for us to just begin to cavalierly decide that, you  
3690 know, if there is some politically incorrect industry out  
3691 there that we can just go after them and put them out of  
3692 business because there might be some potential down the road  
3693 negative impact.

3694 Mr. {Weiner.} Will the gentleman yield?

3695 Mr. {Barton.} I will be happy to yield.

3696 Mr. {Weiner.} I imagine I am not interpreting it right  
3697 but I don't think that there is any doubt that asbestos and  
3698 banning the use of asbestos was a wise thing from a public  
3699 health perspective. And I hope that you are right that was  
3700 the rare factory and the rare plant where cases of asbestos-  
3701 related diseases did not emerge. I say I hope because  
3702 neither you or I know because as you know the gestation  
3703 period can be 10, 20 or 30 years like it was for my  
3704 grandfather who worked for years in the Navy yards being told  
3705 that there was really no safety problem here and it wasn't  
3706 until after he died that we found out that in fact he was  
3707 day-by-day, year-by-year breathing a substance that we knew  
3708 was unsafe and we allowed it to keep happening.

3709 Mr. {Barton.} Look you are claiming my time which has  
3710 expired.

3711 Mr. {Weiner.} And I think I understand your point but I  
3712 don't think that anyone should leave on the record the notion  
3713 that banning asbestos was somehow a mistake or it was a  
3714 politically correct thing to do. It was a thing to save  
3715 people's lives and unfortunately we did it too late.

3716 Mr. {Barton.} You are claiming my time which has  
3717 expired. Let me simply say I never have denied that  
3718 asbestosis and asbestos and gets into the body and gets into  
3719 the lung is a serious health problem. I will say in the  
3720 instance of this plant, there was never an instance at that  
3721 plant of a worker coming down with asbestosis. There was  
3722 never an instance of the product that was produced at that  
3723 plant being linked to any claims of asbestosis in the areas  
3724 that that product was used and I do think that had we not had  
3725 a complete ban there could have been alternatives developed  
3726 that allowed asbestos to be used in certain conditions and in  
3727 a manufacturing process that would not have developed the  
3728 problem that your grandfather had.

3729 So my time has expired, Mr. Chairman. You have been  
3730 very gracious. I just hope that this subcommittee as we go  
3731 to full committee will take some of these issues under  
3732 advisement. But again thank you for holding the markup. It  
3733 has been productive.

3734 Mr. {Rush.} Does any other member seek recognition?

3735           If not, there being no further discussion the question  
3736 is on the chairman's Amendment in the Nature of a Substitute.  
3737 All those in favor signify by saying aye. All those opposed  
3738 say no. In the opinion of the chair, the ayes have it and  
3739 the amendment is agreed to. I now move that the subcommittee  
3740 report H.R. 2190 as amendment to the full committee with a  
3741 recommendation that the bill pass. The question is on  
3742 reporting H.R. 2190 to the Committee on Energy and Commerce.  
3743 All those in favor signify by saying aye. All those opposed  
3744 say no. In the opinion of the chair, the ayes have it and  
3745 the motion is agreed to and H.R. 2190 is ordered.

3746           Mr. {Radanovich.} Mr. Chairman, I do ask for a recorded  
3747 vote as well.

3748           Mr. {Rush.} The ranking member has asked for a recorded  
3749 vote. The clerk will please call the roll.

3750           The {Clerk.} Mr. Rush?

3751           Mr. {Rush.} Aye.

3752           The {Clerk.} Mr. Rush votes aye. Ms. Schakowsky?

3753           Ms. {Schakowsky.} Aye.

3754           The {Clerk.} Ms. Schakowsky votes aye. Mr. Sarbanes?

3755           Mr. {Sarbanes.} Aye.

3756           The {Clerk.} Mr. Sarbanes, aye. Ms. Sutton?

3757           Ms. {Sutton.} Aye.

3758           The {Clerk.} Ms. Sutton, aye. Mr. Pallone?

3759 Mr. {Pallone.} Aye.

3760 The {Clerk.} Mr. Pallone, aye. Mr. Gordon?

3761 [No response.]

3762 The {Clerk.} Mr. Stupak?

3763 Mr. {Stupak.} Aye.

3764 The {Clerk.} Mr. Stupak votes aye. Mr. Green?

3765 [No response.]

3766 The {Clerk.} Mr. Gonzalez?

3767 Mr. {Gonzalez.} Aye.

3768 The {Clerk.} Mr. Gonzalez, aye. Mr. Weiner?

3769 Mr. {Weiner.} Aye.

3770 The {Clerk.} Mr. Weiner, aye. Mr. Matheson?

3771 Mr. {Matheson.} Aye.

3772 The {Clerk.} Mr. Matheson, aye. Mr. Butterfield?

3773 Mr. {Butterfield.} Aye.

3774 The {Clerk.} Mr. Butterfield, aye. Mr. Barrow?

3775 Mr. {Barrow.} Aye.

3776 The {Clerk.} Mr. Barrow votes aye. Ms. Matsui?

3777 Ms. {Matsui.} Aye.

3778 The {Clerk.} Ms. Matsui votes aye. Ms. Castor?

3779 Ms. {Castor.} Aye.

3780 The {Clerk.} Ms. Castor votes aye. Mr. Space?

3781 Mr. {Space.} Aye.

3782 The {Clerk.} Mr. Space vote aye. Mr. Braley?

3783 Mr. {Braley.} Aye.

3784 The {Clerk.} Mr. Braley, aye. Ms. DeGette?

3785 Ms. {DeGette.} Aye.

3786 The {Clerk.} Ms. DeGette votes aye. Mr. Waxman?

3787 [No response.]

3788 Mr. {Radanovich.} No.

3789 The {Clerk.} Mr. Radanovich votes no. Mr. Stearns?

3790 Mr. {Stearns.} No.

3791 The {Clerk.} Mr. Stearns votes no. Mr. Whitfield?

3792 Mr. {Whitfield.} No.

3793 The {Clerk.} Mr. Whitfield, no. Mr. Pitts?

3794 Mr. {Pitts.} No.

3795 The {Clerk.} Mr. Pitts votes no. Ms. Bono Mack?

3796 Ms. {Bono Mack.} No.

3797 The {Clerk.} Ms. Bono Mack, no. Mr. Terry?

3798 Mr. {Terry.} No.

3799 The {Clerk.} Mr. Terry, no. Mrs. Myrick?

3800 [No response.]

3801 The {Clerk.} Mr. Sullivan?

3802 [No response.]

3803 The {Clerk.} Mr. Murphy of Pennsylvania?

3804 Mr. {Murphy.} No.

3805 The {Clerk.} Mr. Murphy votes no. Mr. Gingrey?

3806 Mr. {Gingrey.} No.

3807           The {Clerk.} Mr. Gingrey, no. Mr. Scalise?

3808           Mr. {Scalise.} No.

3809           The {Clerk.} Mr. Scalise, no. Mr. Barton?

3810           Mr. {Barton.} No.

3811           The {Clerk.} Mr. Barton votes no.

3812           Mr. {Rush.} Have all members voted who desire to vote?

3813 Will the clerk please record the result?

3814           The {Clerk.} On that vote, Mr. Chairman, there were 16

3815 ayes and 10 no's.

3816           Mr. {Rush.} The ayes have it and the bill has passed

3817 and recorded to the full committee for passage.

3818           I ask unanimous consent that Ms. Schakowsky also asked

3819 to make technical and conforming corrections. Without

3820 objection, so ordered.

3821           The subcommittee markup is now adjourned. I want to

3822 thank the staff for its excellent work and hard work. Thank

3823 you so very much. And the subcommittee now stands adjourned.

3824           [Whereupon, at 6:15 p.m., the subcommittee was

3825 adjourned.]