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3 MARKUP ON H.R. 910, THE ENERGY TAX PREVENTION ACT OF 2011

4 THURSDAY, MARCH 10, 2011

5 House of Representatives,

6 Subcommittee on Energy and Power

7 Committee on Energy and Commerce

8 Washington, D.C.

9 The subcommittee met, pursuant to call, at 9:15 a.m., in
10 Room 2123 of the Rayburn House Office Building, Hon. Ed
11 Whitfield [Chairman of the Subcommittee] presiding.

12 Members present: Representatives Whitfield, Sullivan,
13 Shimkus, Walden, Terry, Bilbray, Scalise, Olson, McKinley,
14 Pompeo, Barton, Upton (ex officio), Rush, Inslee, Matheson,
15 Dingell, Markey, Engel, Green, Capps, Doyle and Waxman (ex
16 officio).

17 Staff present: Jim Barnette, General Counsel; Michael
18 Beckerman, Deputy Staff Director; Mike Bloomquist, Deputy

19 General Counsel; Maryam Brown, Chief Counsel, Energy and
20 Power; Allison Busbee, Legislative Clerk; Julie Goon, Health
21 Policy Advisor; Cory Hicks, Policy Coordinator, Energy and
22 Power; Peter Kielty, Senior Legislative Analyst; Jeff
23 Mortier, Professional Staff Member; Gib Mullan, Chief
24 Counsel, CMT; Mary Neumayr, Counsel, Oversight/Energy; and
25 Peter Spencer, Professional Staff Member, Oversight.

|
26 Mr. {Whitfield.} The committee will come to order. And
27 I might say Mr. Rush is on his way, and we have discussed it
28 with various members, so we are going to go on and start our
29 opening statements. And the chair recognizes himself for an
30 opening statement.

31 Today we meet to mark up H.R. 910, the Energy Tax
32 Prevention Act. Today we take the first step to reassert
33 legislative authority over EPA and to stop EPA's effort to
34 issue global warming regulations that would increase our
35 electricity cost, our gasoline prices, send more jobs to
36 China, and make America less competitive in the global
37 marketplace.

38 Congress, on three separate occasions, has clearly
39 stated methane, water vapor, carbon dioxide, and other gases
40 should not be regulated by EPA. The last time the clean air
41 amendments were amended, 1990, an effort was made to regulate
42 greenhouse gases. In 1998 the Senate, by vote of 97 to 0,
43 sent a petition to President Clinton asking him not to send
44 the Kyoto Protocol to the Senate for ratification. And then
45 in 2009 the U.S. Senate refused to take up the Cap-and-Trade
46 Bill. Rather than accept this undeniably clear directive,
47 the Obama administration has decided to move forward with EPA
48 regulations that would not only cost jobs but will increase

49 electricity cost, gasoline prices, and make America less
50 competitive in the global marketplace.

51 In the hearings before the subcommittee we heard from
52 witnesses representing manufacturing, energy producers, small
53 businesses, farmers, coalminers, and others. All expressed
54 their concern about EPA regulations forcing them to either
55 close businesses or, at a minimum, lay off workers. The
56 administration seeks to curtail coal production in the U.S.
57 and make it more difficult to produce electricity from coal.
58 This is unacceptable because we simply, in America, cannot
59 meet our demand for electricity or anticipated demand without
60 coal. One economic expert estimated the job losses
61 potentially would reach 1.4 million people under the
62 regulatory scheme of EPA. Even more will be lost--and we
63 recognize this very clearly--if the tailoring rule is found
64 to be deficient.

65 The widespread opposition to EPA's regulations is
66 reflected in the support for H.R. 910 from organizations
67 representing millions of jobs. These include the National
68 Association of Manufacturers, the U.S. Chamber of Commerce,
69 American Farm Bureau, National Mining Association, National
70 Cattlemen's Association, National Association of Realtors,
71 and National Petrochemical and Refiners Association, and
72 others.

73 A third hearing that we had a few days ago made it
74 abundantly clear that the proposed EPA regulations would not
75 solve the problem. Even when Administrator Jackson appeared
76 before our subcommittee, she said that the regulations would
77 not be successful if America acted unilaterally without other
78 countries being involved.

79 So my question is why should we act unilaterally and
80 place our employers and our businesses in America in an
81 unfair disadvantage to manufacturers in China and India? And
82 I might also say, as our distinguished colleague John Dingell
83 noted on more than one occasion, regulating greenhouse gases
84 under the Clean Air Act would be a glorious mess. Many of us
85 agree with him wholeheartedly on that assessment.

86 So today I would ask please join us and let us stop EPA
87 from raising electricity prices, gas prices, making American
88 businesses less competitive in the global marketplace, and
89 let us stop sending jobs to China. Let us pass H.R. 910.

90 [The prepared statement of Mr. Whitfield follows:]

91 ***** COMMITTEE INSERT *****

|
92 Mr. {Whitfield.} And at this time I recognize the
93 gentleman from Illinois for 5 minutes for his opening
94 statement.

95 Mr. {Rush.} The bill that we are marking up today is an
96 extreme and excessive piece of legislation. This bill will
97 eliminate EPA's authority to require common sense and cause
98 efficiency standards for the highest-polluting facilities in
99 the Nation. I oppose this radical bill that would gut the
100 Clean Air Act and roll back EPA's authority to protect public
101 health and environment from carbon pollution.

102 This legislation will also roll back EPA issue and
103 industry-supported standards to reduce carbon pollution from
104 automobiles and trucks. These same standards will save 1.8
105 billion barrels of oil while saving America money at the
106 pump. But the Upton-Inhofe bill will prevent additional
107 reductions in the future.

108 Mr. Chairman, on several occasions I have asked you to
109 work with me on crafting legislation that will actually move
110 our Nation forward and help wean us from our dependence on
111 foreign oil by working together on a clean energy standard.
112 Even today, as we begin the process of marking up this
113 uncompromising piece of legislation that will leave many
114 American families unprotected from hazardous air pollution

115 while allowing energy to operate unfettered and unregulated,
116 I maintain hope that we may continue to work together and
117 work on legislation that will provide solutions for American
118 families and the U.S. economy.

119 While countries such as China make significant
120 investments in clean energy technology, which is one of the
121 key emergent sectors of the 21st century, this bill will only
122 provide American companies with even more uncertainties about
123 the future unless guidance on how best to move forward and a
124 false sense of complacency due to present dynamics on
125 Washington politics. The fact of the matter is that America,
126 as well as the world around us, is moving toward cleaner,
127 more efficient, and more renewable energy sources. Policy-
128 makers understand this fact, as does energy leaders here and
129 abroad.

130 The question, Mr. Chairman, is whether we will remain
131 the global leader in creating and manufacturing these clean
132 energy technologies, or will we cede our leadership on these
133 emerging industries to China and to other nations? And this
134 is an extremely important and telling question that we must
135 ask ourselves because the country that leads the world in
136 creating new energy technologies of the future indeed will be
137 the Nation that leads the world in the 21st century.

138 Mr. Chairman, I sadly state that this bill does not move

139 America forward in any sense, but rather attempts to gut
140 EPA's ability to protect our citizens. It rolls back common
141 sense efficiency standards and it prevents successful
142 standards from being strengthened and replicated in future
143 years. Nothing, absolutely nothing about this bill advances
144 America's interests. Our citizens are left unprotected and
145 the Agency designed to safeguard our air quality will be left
146 without the authority to do so. Instead of encouraging our
147 energy companies to plan and invest and become more
148 competitive with the trends and realities of the future, this
149 bill encourages companies to stand pat and to keep doing
150 business the same old way that they have been doing it for
151 the last 50 or 100 years. If they are continuing to do the
152 same old things, then how can we expect that they will come
153 with a different solution?

154 Mr. Chairman, we are all concerned about my Republican
155 colleagues that have the votes here today, they will ram this
156 bill through the subcommittee and to push it through the full
157 committee and even to get it through the Congress. But after
158 that, what? Instead of working in a bipartisan manner to
159 construct the bill such as a clean energy standard that truly
160 moves our Nation forward, protects our citizens, and provides
161 guidelines that allow energy to plan for the future, we are
162 here marking up a radical regressive bill that I believe will

163 only end up as a sad and curious footnote in the history of
164 this committee.

165 After this committee has completed our business on this
166 bill, I sincerely hope that you and I and other members of
167 both sides of the aisle may begin to work on legislation that
168 helps us plan and invest for the future. My only fear is
169 that by the time my Republican colleagues come around to
170 where the future is heading, we might have lost too much time
171 and given China and the rest of the world too much of a head
172 start.

173 With that, Mr. Chairman, I yield back the balance of my
174 time.

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

176 ***** COMMITTEE INSERT *****

|
177 Mr. {Whitfield.} Thank you, Mr. Rush. And at this time
178 I recognize the chairman of the full committee, Mr. Upton,
179 for 3 minutes for his opening statement.

180 The {Chairman.} Well, thank you, Mr. Chairman.

181 At a time when the American people are concerned about
182 rising gas prices and high unemployment, I cannot think of an
183 easier decision than supporting this bill, H.R. 910, the
184 Energy Tax Prevention Act of 2011. The bill blocks EPA's
185 costly global warming regulatory agenda. The issues here are
186 not new, as Congress grappled with similar legislation in
187 2009. And at the end of that debate I concluded that cap-
188 and-trade energy taxes on the fuels that provide 85 percent
189 of America's energy would, in fact, impose far more economic
190 pain than environmental gain. And I did not support the
191 legislation.

192 Like all of you, I support a cleaner environment. Yes,
193 I do. But let us be honest. Neither a cap-and-trade energy
194 tax nor EPA regs of greenhouse gases achieve that goal. For
195 me the decision is even clearer when it comes to EPA's
196 attempt to impose the regulatory equivalent of the failed
197 cap-and-trade legislation. No less than authority than the
198 EPA Administrator Lisa Jackson herself conceded that regs
199 would be costlier and less effective than the legislation,

200 which was bad enough. Lisa Jackson herself noted that the
201 staggering energy cost increases of Waxman-Markey would be
202 the floor with EPA regs costing American families even more
203 at the pump, at the grocery store, and certainly on their
204 home heating bill.

205 Energy and Power Subcommittee has held 3 hearings on
206 this bill. The first addressed the economic impact of EPA's
207 regulatory agenda. We heard from a broad cross section of
208 job-creating industries, including domestic manufacturers
209 like chemical producer FMC and steel-maker Nucor. EPA's regs
210 unilaterally raise energy and operating cost on American
211 manufacturers. Those that can beat in global markets stated
212 that they are losing jobs to nations like China that have no
213 intention of burdening their industry with similar
214 restrictions. And once those jobs are gone, they are gone.
215 Refinery Lion Oil testified that these regs will increase the
216 cost of turning oil into gasoline, which will add future pain
217 at the pump.

218 This committee is working hard to ease the economic
219 pains of rising gas prices. This bill is the first step.
220 With this legislation we will block EPA-imposed gas price
221 increases. And next, we will work on policies to bring those
222 prices down.

223 Representatives of the energy sector also testified,

224 such as Santee Cooper in the Ohio Coal Association. They
225 warn of lower supplies and higher prices for domestic energy
226 should EPA's global warming regs be allowed to move forward.
227 EPA's regs are a backdoor attempt by unelected bureaucrats to
228 implement the highly unpopular cap-and-trade legislation that
229 was rejected just last year. They are about as out of touch
230 with the American people with what they want is anything
231 moving forward in Washington.

232 This committee and others will soon turn our attention
233 to removing other Obama administration roadblocks to domestic
234 energy production. But our first order of business is to
235 stop EPA's gas price, global warming regulations. These hurt
236 not only households but they burden small businesses and
237 farmers. H.R. 910 is carefully crafted, so careful, in fact,
238 that critics have had to concoct misrepresentations of what
239 this bill actually does. It is not about climate science.
240 It is about the merits of EPA's regulations.

241 Mr. Chairman, I would ask that the rest of my statement
242 be put into the record and yield back the balance of my time.

243 [The prepared statement of Mr. Upton follows:]

244 ***** COMMITTEE INSERT *****

|
245 Mr. {Whitfield.} Thank you, Mr. Upton. At this time I
246 recognize the ranking member from California, Mr. Waxman, for
247 3 minutes.

248 Mr. {Waxman.} Mr. Chairman, today the subcommittee
249 considers legislation that codifies science denial. Just 2
250 days ago we heard from some of the world's leading climate
251 scientists. They told us the climate change is real, that it
252 is caused by humans, and that the impacts could be
253 devastating. Their scientific conclusions are the same as
254 those reached by the National Academy of Sciences and the
255 premier scientific organizations of all the world's major
256 economies. Not a single scientist agreed with Senator Inhofe
257 and Republicans on this committee that climate change is a
258 hoax. Yet today this subcommittee considers legislation
259 premised on Senator Inhofe's belief.

260 H.R. 910 would roll back the Clean Air Act and block the
261 EPA from regulating dangerous carbon emissions from power
262 plants, oil refineries, and other large polluters. This
263 legislation overturns EPA's scientific finding that carbon
264 pollution endangers health and welfare. It repeals the
265 greenhouse gas reporting rule, and it removes EPA's authority
266 to require energy efficiency at power plants and refineries.
267 It also has a host of other effects, and I would like to ask

268 unanimous consent to put in the record an analysis of this
269 legislation by our Democratic Senate.

270 Mr. {Whitfield.} Without objection.

271 [The information follows:]

272 ***** COMMITTEE INSERT *****

|
273 Mr. {Waxman.} In short, it is anti-science, a no-
274 nothing, do-nothing approach to the most challenging
275 environmental problem of our time. This bill will not stop
276 carbon pollution from building up in the atmosphere. It will
277 not address the public health threat facing American
278 families. It will not stop the droughts and floods that
279 threaten agriculture and displace families from their homes.
280 It will not protect the air quality of our cities. And it
281 will not stop the strange weather patterns that afflicted
282 most of the Nation.

283 Some Republicans on the committee will argue today that
284 this bill is not a rejection of science, but if they believed
285 in the serious threat posed by climate change, they would
286 have accepted our offer to work together without
287 preconditions to develop a responsible plan for promoting
288 clean energy and reducing carbon emissions. Instead, they
289 have rebuffed the offer by myself and Representative Rush in
290 our moving this extreme bill through out committee. It is
291 hard to find common ground when one side does not accept that
292 there is a problem. It is hard to know how to respond when
293 the other side calls H.R. 910 the Energy Tax Prevention Act
294 but EPA has no authority to levy taxes, nor does the Agency
295 propose to do so. They claim that EPA is establishing a cap-

296 and-trade program, but the Agency has not proposed such a
297 program and clearly stated they will not establish such a
298 program.

299 And yesterday Speaker Boehner and today Chairman Upton
300 argue this legislation will stop gasoline prices from
301 increasing. But it is laughable to assert that requiring new
302 power plants and refineries to meet minimum efficiency
303 standards is affecting pricing at the pump. History will not
304 judge this committee kindly if we become the last bastion of
305 the polluter and science-denier. When carbon emissions rise
306 to record levels and our weather system goes haywire, the
307 American people will ask why we acted so irresponsibly.

308 [The prepared statement of Mr. Waxman follows:]

309 ***** COMMITTEE INSERT *****

|
310 Mr. {Whitfield.} Thank you, Mr. Waxman. I would remind
311 all Members that opening statements will certainly be made
312 part of the record, but if anyone wants to make an opening
313 statement, we will recognize you for 1 minute. And are there
314 any Members--Mr. Sullivan, you are recognized for 1 minute.

315 Mr. {Sullivan.} Chairman Whitfield, thank you for
316 holding this subcommittee markup on H.R. 910, the Energy Tax
317 Prevention Act of 2011. This important legislation will help
318 protect American jobs and businesses of all kinds from the
319 regulatory onslaught of EPA's pending job-destroying
320 greenhouse gas regulations.

321 Mr. Chairman, gas prices are on the rise. Many
322 economists predict that the price at the pump could reach 4
323 to \$5 per gallon by this summer. Instead of working to lower
324 the price we pay for energy, the Obama administration is
325 actually supporting policies that will drive gas prices and
326 utility rates even higher by pushing for this backdoor
327 national energy tax on every single American family and small
328 business.

329 The simple fact is that the cap-and-trade legislation
330 that moved through Congress last session would increase the
331 price of gasoline by 19 cents in 2015 and 95 cents by 2050.
332 Imposing the same policy through EPA regulations on

333 greenhouse gas will make gasoline even more expensive as even
334 the EPA Administrator Lisa Jackson acknowledged. This markup
335 is our opening salvo to show the American people we mean
336 business when it comes to growing our economy, removing job-
337 destroying regulations, and protecting the American consumer
338 at the pump.

339 And I yield back.

340 [The prepared statement of Mr. Sullivan follows:]

341 ***** COMMITTEE INSERT *****

|
342 Mr. {Whitfield.} Thank you, Mr. Sullivan. Mr. Doyle,
343 you raised your hand first. You will be recognized for 1
344 minute for opening statement.

345 Mr. {Doyle.} Thank you, Mr. Chairman. I just want to
346 take a minute to say a few words on the bill before us today,
347 the so-called Energy Tax Prevention Act. Along with other
348 Members in this committee, I spent a great deal of time
349 during the 111th Congress working on a plan to reign in
350 greenhouse gas emissions utilizing a balanced approach that
351 could take into consideration the effects on consumers,
352 manufacturers, utilities, agriculture, and many other sectors
353 of the economy. But as you all know, that bill never made it
354 through the Senate and did not become law.

355 So without a legislative approach to regulate greenhouse
356 gases in this economy, the EPA was left to act. And so they
357 have begun with issuing a timeline for greenhouse gas
358 permitting for large power plants and oil refineries. Now, I
359 am not going to sit here and say administrative rulemakings
360 and regulations are the perfect tool. I think that it is
361 clear that I would have preferred a legislative solution.
362 But I am not going to sit here and say that the EPA should be
363 given carte blanche to regulate greenhouse gases without
364 consideration of its effect on our economy. But I am also

365 not willing to say these regulations will send our jobs and
366 industry to China. And I am not going to say that the EPA
367 regulations will send America's gas prices soaring. But
368 these are some of the arguments our friends on the other side
369 of the aisle have been using in recent weeks. And I think it
370 is time to call their bluff.

371 Manufacturing jobs are not going to China or anywhere
372 else because of these regulations. Manufacturers do not even
373 have to apply for these permits unless they drastically
374 expand or build a new plant. We heard that from Republican
375 witnesses before this subcommittee. And just because it is
376 politically convenient to invoke people's fear over rising
377 gasoline prices does not mean it is responsible to pull out a
378 study from over 2 years ago on an entirely different proposal
379 and apply it to these regulations. Scaring the American
380 people into supporting this bill is as irresponsible as it is
381 untruthful. And I think as lawmakers, we can do better than
382 that.

383 So, as I have said many times before, I am willing to
384 work on a reasonable compromise that protects our
385 manufacturers and our economy while combating the very real
386 problem that global climate change is for our health and
387 environment. But I hope we can all start telling the truth
388 about what these regulations really do, and maybe more

389 importantly, what they do not do.

390 I will yield back.

391 [The prepared statement of Mr. Doyle follows:]

392 ***** COMMITTEE INSERT *****

|
393 Mr. {Whitfield.} Thank you. Who seeks recognition on
394 our side? Mr. Shimkus is recognized for 1 minute.

395 Mr. {Shimkus.} Thank you, Mr. Chairman. I appreciate
396 following my friend from Pennsylvania because greenhouse gas
397 regulation is a job-destroyer. And we talked about this
398 numerous times and, you know, I talk about the coalminers who
399 lost their job in the last time and they will lose their job
400 again in this cycle. I cite the coal-powered power plant
401 that would have to have a \$2 billion plant expansion just to
402 have the equipment to capture greenhouse gases, not including
403 the 30 percent of electricity that will no longer go on the
404 grid because it has to fund the capital expansion and that is
405 the energy that is needed, not to include the pipeline that
406 has to be built that you have to get all of the right-of-
407 ways. This is a 10-year, at least, project and we are going
408 to have the EPA rule by executive fiat versus the legislative
409 branch because we legislators said no last Congress and we
410 are fixing the problem with this bill.

411 I thank you and I yield back my time.

412 [The prepared statement of Mr. Shimkus follows:]

413 ***** COMMITTEE INSERT *****

|
414 Mr. {Whitfield.} The gentleman from Washington is
415 recognized for 1 minute.

416 Mr. {Inslee.} Thank you. There are some bad allergies
417 out there. There is an allergy to peanuts, there are
418 allergies to pollen, but the single most dangerous allergy in
419 America today is the Republican allergy to science. Because
420 when you have an allergy to science, you don't just get the
421 hives, you get the Republican dirty air act. And that is
422 what this is. Because that is what we are going to get
423 because of this bill is dirty air. Marie Antoinette said let
424 them eat cake. The Republicans are telling our kids with
425 asthma let them eat your inhalers. Because that is what they
426 are saying to kids with asthma today.

427 We have unalloyed, uncontested, consensus science that
428 says if we allow these gases to continue to pollute our
429 atmosphere, our kids are going to get more asthma. And that
430 is uncontested. Nobody the Republicans could not produce in
431 American would say that is not true. So since when was it
432 American policy to crawl under your beds and ignore a
433 problem? This bill leaves our kids naked to health problems.
434 And since when is it the right thing to do to tell the
435 Federal Government it can't protect its citizens?

436 I hear a lot of Republicans griping about waste, fraud,

437 and abuse. This is the most abusive thing I have seen
438 because it is telling the American public that their
439 officials cannot enforce the law in the Clean Air Act.
440 Reject this dirty air act.

441 [The prepared statement of Mr. Inslee follows:]

442 ***** COMMITTEE INSERT *****

|
443 Mr. {Whitfield.} Mr. Scalise, you are recognized for 1
444 minute.

445 Mr. {Scalise.} Thank you, Mr. Chairman. I rise in
446 support of the Energy Tax Prevention Act. And we have heard
447 from the EPA administrator, EPA is trying to impose an energy
448 tax through de facto radical regulations. This Congress over
449 in the Senate defeated cap-and-trade, which was an energy tax
450 that the President himself bragged would actually lead to
451 skyrocketing electricity rates under cap-and-trade.

452 Now, the EPA administrator went further to brag that her
453 regulations would actually be worse than cap-and-trade in
454 terms of increasing energy prices. And so if you look, the
455 President is bragging that he is going to raise electricity
456 prices with cap-and-trade, the EPA administrator herself
457 bragged that if you don't pass cap-and-trade, her regulations
458 would be even worse to consumers in terms of higher gas
459 prices, higher energy prices.

460 I think people get it. This is a jobs bill. We need to
461 make sure that the EPA does not get away with these radical
462 regulations that will run millions more jobs out of our
463 country, will lead to even higher gas prices by their own
464 admission. And I think it is time we do something in this
465 Congress to help start creating jobs and creating an

466 atmosphere where the science is not settled, as we heard from
467 the scientists. But we do know from everybody that has
468 testified that gas prices would go up if EPA gets away with
469 this radical regulation. We need to create good jobs. We
470 need to pass the Energy Tax Prevention Act.

471 I am going to yield back.

472 [The prepared statement of Mr. Scalise follows:]

473 ***** COMMITTEE INSERT *****

|
474 Mr. {Whitfield.} Mr. Matheson, you are recognized for
475 1 minute.

476 Mr. {Matheson.} Thank you, Mr. Chairman. Just during
477 my one minute I would like to offer a couple of thoughts. I
478 filed two amendments. I am actually not going to call them
479 up today, but I want to get these amendments out there to get
480 some discussion going on two points of view.

481 The first, I think we need to take a look at whether or
482 not it makes sense to really be repealing the greenhouse gas
483 reporting rule. I think that data is good to collect. A lot
484 of utilities are already collecting it. I understand some of
485 the concerns within the Agriculture Committee and some
486 smaller manufacturers. I am certainly open to adjustments to
487 the amendment that I filed, but I question the wisdom of us
488 withdrawing the reporting rule when I don't think it is a
489 cost burden. I think having that data would be helpful for
490 all of us to see.

491 Second amendment I filed has to do actually not with
492 greenhouse gas emissions but all the other rulemaking that is
493 going on at EPA right now. And I feel every one of those
494 processes is being done in its own silo. And my amendment
495 calls for EPA to harmonize that whole process, analyze how
496 all those rules are going to fit together, the timing in

497 which they are all going to come out, and do a cost/benefit
498 analysis or cost analysis of the impact of all of those
499 different rules coming through. These are the rules that
500 collectively some call the train wreck that is approaching.
501 And as much as we are talking today about greenhouse gases, I
502 think we are going to talk about EPA and Clean Air Act
503 regulations, I think again it would be very informative for
504 all of us to have an analysis of how all those different
505 processes will fit together.

506 I yield back.

507 [The prepared statement of Mr. Matheson follows:]

508 ***** COMMITTEE INSERT *****

|
509 Mr. {Whitfield.} Thank you, Mr. Matheson. And we look
510 forward to exploring that with you. I would note that this
511 legislation does not repeal the 1990 reporting requirement of
512 the utilities, but we look forward to discussing that with
513 you. Any further? The gentleman from Kansas for 1 minute.

514 Mr. {Pompeo.} Thank you, Mr. Chairman. I have a couple
515 letters of support from the National Association of Realtors,
516 the American Farm Bureau, and the National Association of
517 Manufacturers. I would like to enter it into the record.

518 Mr. {Whitfield.} Without objection.

519 [The information follows:]

520 ***** COMMITTEE INSERT *****

|
521 Mr. {Pompeo.} Thank you. You know, until 67 days ago I
522 was out there running a small business. I left that to come
523 be part of a Congress that was going to allow small business
524 to continue to succeed and grow jobs, and I am happy that
525 this morning this committee is marking up a bill that will do
526 just that.

527 Just yesterday I had a chance to talk with some folks
528 from CVR Energy who operates a refinery in my district. I
529 hold before you the reporting rule that was created for
530 greenhouse gases. When I hear others talk about it being
531 simple and modest, I would ask anybody out there to read this
532 and ask if they think this is either modest or certainly not
533 simple. I think this is an enormous set board.

534 This week, EPA announced that the March 31 deadline for
535 implementing this registry has now been moved back because
536 they have enormous challenges with it. I think this is a
537 great step forward in making sure that gas prices in Kansas
538 City--which CVR Energy provides 30 percent of the gasoline
539 for--would go up enormously if we don't take this action.
540 And I look forward to the markup today. Thank you, Mr.
541 Chairman.

542 [The prepared statement of Mr. Pompeo follows:]

543 ***** COMMITTEE INSERT *****

|
544 Mr. {Whitfield.} Thank you. Who seeks--the gentle lady
545 from California, Mrs. Capps, 1 minute.

546 Mrs. {Capps.} Thank you, Mr. Chairman. And may I ask
547 unanimous consent, please, to have two letters entered into
548 the record?

549 Mr. {Whitfield.} Without objection.

550 [The information follows:]

551 ***** COMMITTEE INSERT *****

|
552 Mrs. {Capps.} Thank you. One is from the American Lung
553 Association and the other, the American Public Health
554 Association, both strongly opposed to H.R. 910.

555 The public wants us focused on job-creation, Mr.
556 Chairman, but apparently the leadership of the House and this
557 committee is not listening. They are focused on pushing a
558 dangerous bill that would block the EPA from doing its job,
559 which is to protect our health. It is not surprising that
560 our Nation's biggest polluters have asked for this bill. It
561 lets them keep polluting our air.

562 But what is surprising is that with this bill, Mr.
563 Chairman, you have rejected the scientific consensus agreed
564 to even by George W. Bush's EPA, that carbon pollution
565 threatens our national security, our economy, and our
566 environment. H.R. 910 will not create one job. It will not
567 foster a single economic advancement for our Nation.
568 Instead, it would increase the pollution that triggers asthma
569 attacks, respiratory illnesses, and pretty much your deaths.
570 It would hobble American efforts to compete in the global
571 energy marketplace. Peeling away public health protections
572 would make life easier for polluters but much harder for
573 everyday Americans.

574 Now is the time to preserve the Clean Air Act, protect

575 our families from these deadly toxins and our addiction to
576 oil and lower gas prices, save our economy billions of
577 dollars every year. It is a long time that we address this
578 serious issue, Mr. Chairman, so I urge my colleagues to
579 abandon this divisive effort, turn back its focus to the
580 issue of job creation.

581 I yield back.

582 [The prepared statement of Mrs. Capps follows:]

583 ***** COMMITTEE INSERT *****

|
584 Mr. {Whitfield.} Thank you very much. I will now
585 recognize the gentleman from Texas for his opening statement.

586 Mr. {Barton.} Thank you. And it is 1 minute? Is that
587 right?

588 Mr. {Whitfield.} One minute, yes.

589 Mr. {Barton.} Okay. First, thank you, Mr. Chairman,
590 for introducing this legislation. I am proud to be a
591 cosponsor. Glad to see our witnesses. They look strangely
592 like committee staff but I guess that is because it is a
593 markup.

594 H.R. 910 is a logical response to an environmental
595 overkill. We all know that CO2 is a naturally occurring
596 compound. We all know that it is necessary to life. And the
597 majority of us know that is it not a pollutant in any normal
598 definition of the sense and that the EPA has been on a
599 mission of political correctness and is trying to regulate
600 something that shouldn't be regulated.

601 The Clean Air Act was never intended to be relevant to
602 something like CO2, and this bill is simply stating that the
603 Clean Air Act does not apply to CO2, and it also says that
604 the endangerment finding is without merit and shouldn't be
605 enforced. I think it is a good piece of legislation and I am
606 very glad to be an original cosponsor.

607 With that I yield back, Mr. Chairman.

608 [The prepared statement of Mr. Barton follows:]

609 ***** COMMITTEE INSERT *****

|
610 Mr. {Whitfield.} Thank you. Who seeks recognition?

611 The gentleman from New York, 1 minute.

612 Mr. {Engel.} Thank you. Thank you, Mr. Chairman. The
613 majority claims that today's markup is designed to stop the
614 EPA from--in their own words--driving up gasoline and energy
615 prices and harming job creation. That statement ignores the
616 science, ignores the facts, ignores the cost of inaction.
617 What this legislation really does is bow down to the Nation's
618 largest polluters at great expense to our public health,
619 energy security, and longtime economic prosperity. If indeed
620 it hurts jobs--and I don't believe it does--what we should be
621 doing is trying to find a balance but not throwing the baby
622 out with the bath water.

623 This is an extreme piece of legislation. Scientists
624 from across the globe have stated in the strongest possible
625 terms that the climate is changing and that human activity is
626 to blame. And instead of acknowledging and addressing this
627 reality, my colleagues attack the EPA and the Clean Air Act
628 as job-killing villains. The facts betray them.

629 Since its adoption, the Clean Air Act has reduced key
630 air pollutants by 60 percent, while at the same time the
631 economy has grown by over 200 percent. The benefits are real
632 and they are measurable. The legislation before us today

633 will quite simply block the EPA from doing its job to the
634 grave detriment of ordinary Americans. I urge a ``no'' vote.

635 [The prepared statement of Mr. Engel follows:]

636 ***** COMMITTEE INSERT *****

|
637 Mr. {Whitfield.} Thank you, Mr. Engel. At this time
638 the chair recognizes the gentleman from California for 1
639 minute.

640 Mr. {Bilbray.} Mr. Chairman, as somebody that worked 10
641 years on the Air Board, 6 years on the Air Resources Board,
642 are we talking about the same bill? This is not talking
643 about killing the Clean Air Act. It is about the Clean Air
644 Act being hijacked for another agenda that the Clean Air Act
645 was never meant to address. We are not talking about toxic
646 emission and we are not talking about just the cost of doing
647 it. But I am asking as an air regulator from history what
648 are we getting for the cost of the economy? There is no one
649 in the EPA that can look us in the face and say, if we are
650 allowed to implement everything we are proposing, we will
651 avoid climate change. Nobody is saying that.

652 So the question is we know the cost. We know the price
653 tag. But where is the benefit that is being promised here?
654 I challenge anybody to be able to stand up and say, if EPA
655 implements what they are implementing, within the decade
656 climate change will be addressed. We won't have to worry
657 about mitigation. That is not able to be said and you know
658 we are all saying it.

659 What has happened is we are actually taking CO2 and

660 trying to say that it is a major toxic pollution or a
661 pollution. That is a precursor for ozone and that is
662 miniscule compared to a lot of other precursors. Why aren't
663 we going after methane and a lot of other precursors to
664 ozone? Because there is an agenda here that is now trying to
665 use the Clean Air Act to move an agenda that they are not
666 willing to admit. We need to address as a separate item, not
667 by trying to hijack a bill that was specifically designed in
668 protecting the healthcare in certain areas, not the world
669 climate. Thank you.

670 [The prepared statement of Mr. Bilbray follows:]

671 ***** COMMITTEE INSERT *****

|
672 Mr. {Whitfield.} Thank you, Mr. Bilbray. The gentleman
673 from Texas recognized for 1 minute.

674 Mr. {Green.} Thank you, Mr. Chairman. I'm opposed to
675 the EPA moving forward with the greenhouse gas regulations on
676 large utilities and refineries in our country because I
677 believe it is Congress that should be making the decision on
678 carbon control issues. We cannot simply discount the Supreme
679 Court decision and say climate change is an issue and move on
680 with it. What happens when last year's cap-and-trade bill--
681 the Senate sat on this legislation for a year and then
682 decided they do not have the vote to pass it. What happens
683 when the President vetoes this legislation and the votes
684 don't exist in either chamber to override the veto? Well, I
685 can tell you what will happen. Industry across the country
686 will still not have the regulatory certainty they need to
687 invest and plan for the future.

688 So I ask my colleagues on the other side to provide
689 leadership. Let us address carbon so we don't have to worry
690 about what the EPA is doing and whether they will be sued by
691 outside groups to regulate the industries or move ahead with
692 announcing dates of rulemaking. I believe a solution can be
693 found for controlling carbon emissions by using more nuclear
694 and natural gas to generate electricity. Nuclear power and

695 natural gas are two sources that enjoy a lot of support
696 within the majority, and I look forward--after this bill does
697 not move anywhere--to begin addressing carbon by going over
698 long-term nuclear expansion, but also short-term natural gas
699 expansion.

700 And I yield back my time.

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

702 ***** COMMITTEE INSERT *****

|
703 Mr. {Whitfield.} Thank you. At this time I recognize
704 the gentleman from West Virginia for 1 minute.

705 Mr. {McKinley.} Thank you, Mr. Chairman. This
706 legislation is critically important to my home State of West
707 Virginia where the EPA continues their relentless and ill-
708 conceived war on coal. Our State not only has a 10.3 percent
709 unemployment rate, but the average price of gasoline is now
710 \$3.56 and climbing due in large part to the EPA's excessive
711 regulations. West Virginia is now down to 50,000
712 manufacturing jobs when it used to have hundreds of
713 thousands. Our steel industry once was robust but is now
714 desecrated. And now the EPA is ideologically motivated to
715 crush the steel industry, raise energy prices, and the cost
716 is as many as 1.4 million jobs in America.

717 This legislation is not a partisan issue in West
718 Virginia but simply standing up for what is right. The
719 entire delegation, both Democrats and Republicans are
720 standing alike, shoulder to shoulder, supporting legislation
721 to stop the EPA's catastrophic assault on America through the
722 greenhouse gas regulations.

723 Mr. Chairman, I yield back my time. Thank you.

724 [The prepared statement of Mr. McKinley follows:]

725 ***** COMMITTEE INSERT *****

|
726 Mr. {Whitfield.} Thank you. At this time, I recognize
727 the gentleman from Massachusetts for 1 minute.

728 Mr. {Markey.} Thank you, Mr. Chairman. I rise in
729 opposition to a bill that repeals the scientific finding that
730 pollution is harming our people and our planet. However, I
731 won't rise physically because I am worried that the
732 Republicans will overturn the law of gravity, sending us
733 floating around the room. I won't call for the sunlight of
734 additional hearings for fear that Republicans might
735 excommunicate the finding that the earth revolves around the
736 sun. Instead, we will embody Newton's third law of motion
737 and be an equal and opposing force against this attack on
738 science and on laws that will reduce America's importation of
739 foreign oil.

740 This bill will live in the House while simultaneously
741 being dead in the Senate. It will be a legislative
742 Schrodinger's cat, killed by the quantum mechanics of the
743 legislative process. Arbitrary rejection of scientific fact
744 will not cause us to rise from our seats today, but with this
745 bill, pollution levels will rise, oil imports will rise,
746 temperatures will rise.

747 And with that I yield back the balance of my time. That
748 is unless a rejection of Einstein's special theory of

749 relativity is somewhere in the chair's amendment pile.

750 [The prepared statement of Mr. Markey follows:]

751 ***** COMMITTEE INSERT *****

|
752 Mr. {Whitfield.} Thank you, Mr. Markey. The gentleman
753 from Texas for 1 minute.

754 Mr. {Olson.} Mr. Chairman, thank you for scheduling
755 this markup today. This legislation will omit oppressive
756 government regulations and create American jobs. Regulation
757 of greenhouse gases is a de facto tax on energy.

758 As our country nears record gas prices, up 22 cents the
759 past week, the largest increase since Hurricane Katrina, the
760 EPA's greenhouse gas regulations only serve to increase the
761 price at the pump for every American. The bill we are
762 considering today repeals the actions that the EPA has
763 already taken to usurp State authority in my home State of
764 Texas. America needs a comprehensive energy plan, all of the
765 above, that provides affordable, reliable energy for our
766 Nation.

767 This legislation will provide the certainty desperately
768 needed by the private sector to grow jobs and get our economy
769 back on track. I thank the chairman and look forward to
770 moving this legislation.

771 [The prepared statement of Mr. Olson follows:]

772 ***** COMMITTEE INSERT *****

|

773 H.R. 910

774 Mr. {Whitfield.} Thank you very much. Anyone else on
775 our side of the aisle would like to make an opening
776 statement? Well, I think we have completed all of the
777 opening statements. And the chair at this time will call up
778 H.R. 910 and ask the clerk to report.

779 The {Clerk.} H.R. 910.

780 Mr. {Whitfield.} Without objection.

781 [H.R. 910 follows:]

782 ***** INSERT 1 *****

|
783 Mr. {Whitfield.} I would ask that the first reading be
784 dispensed with and at this time the bill would be open for
785 amendment at any point. Does anyone seek--gentleman from
786 California is recognized for 5 minutes.

787 Mr. {Waxman.} I have two points I want to make. First
788 of all, I want for the record to put in an article entitled
789 ``EPA Likely to Declare CO2 a Dangerous Pollutant.'' And my
790 Republican friends have been quoting Lisa Jackson as saying
791 this rule will be the most expensive way to accomplish the
792 goals that she seeks to achieve. And that was a number of
793 years ago and it was not timely considering that the rule
794 that she is proposing is a tailoring rule, which would be a
795 lot less expensive, just for the record.

796 Mr. {Whitfield.} Without objection.

797 [The information follows:]

798 ***** COMMITTEE INSERT *****

|

799 Mr. {Waxman.} Now, I want to make a legal observation,
800 because if you look at the bill, the bill is drafted in a way
801 that says administration may not promulgate any regulations
802 concerning or take action relating to or take into
803 consideration the emission of greenhouse gas to address
804 climate change. That is the first premise. But then there
805 is an exception. The exception says that notwithstanding
806 that provision, which I just read, this won't affect light-
807 duty greenhouse gas emission standards and corporate average
808 fuel economy standards. So the argument is that we are not
809 going to overturn the vehicle rules that are now in effect.
810 But I would suggest that that is not an accurate reading of
811 the law because the law ignores what is already in the Clean
812 Air Act, Section 202A, which premises any standards
813 applicable to the emissions of any air pollutant from any
814 class or classes of new motor vehicles must reasonably be
815 anticipated to endanger public health or welfare. So the law
816 says you can't adopt a motor vehicle standard unless there is
817 an endangerment finding. But the bill repeals the
818 endangerment finding. So we say that EPA cannot act to do
819 anything in this area except for motor vehicles. But saying
820 we accept motor vehicles means nothing because the underlying
821 law requires an endangerment finding.

822 Now, why is this important? In 2009 the Obama
823 administration brokered an agreement to provide the auto
824 industry with one national program for fuel economy and
825 greenhouse gas emissions. Under that agreement, the DOT, the
826 EPA committed to promulgate 2012 to 2016 model year fuel
827 economy and greenhouse gas standards that aligned with one
828 another. And my State of California agreed that all
829 manufacturers that complied with the EPA greenhouse gas rule
830 during this period would be deemed to be in compliance with
831 the standards adopted by California. This was a provision
832 adopted and supported by the auto industry, the States, and
833 the environmental advocacy groups. It means that over the
834 lifetime of the vehicles sold during 2012 to 2016 this
835 national program is projected to save 1.8 billion barrels of
836 oil. EPA and DOT estimate that the standard yields average
837 net savings to consumers of roughly \$3,000 over the life of
838 the vehicle.

839 This is a widely heralded provision. It has made us
840 less dependent on oil. The projections are that we are going
841 to have less need for foreign oil because we are going to be
842 using less oil because oil is primarily used for motor
843 vehicles. And that is why the drafters of this bill have
844 tried to make us believe that they are not going to change
845 this. But, in fact, they do change it because when they

846 repeal the endangerment finding, it in effect takes away the
847 ability to deal in this area. The exception doesn't address
848 the issue of whether those standards can survive legal
849 challenge without the endangerment finding. And I would
850 submit that what we are going is going to endanger not the
851 EPA, but endanger the ability of the EPA to continue with
852 this consensus standard that reducing our dependence on
853 foreign oil and reducing carbon pollution from cars would be
854 accomplished, as was agreed by everybody involved except for,
855 I suppose, the oil companies who don't want to lose out on
856 their market share of oil they could sell for vehicles that
857 would use more miles per gallon.

858 This is an extreme bill. It takes us exactly in the
859 wrong direction. I wanted to make this point. I wanted to
860 underscore it. And I think anybody who would read this
861 carefully will see the argument that I am making. In fact,
862 Mr. Chairman, in the submission that we made part of the
863 record from our staff, it outlines more clearly than I might
864 have in this oral presentation why this bill goes far beyond
865 what we have been told it does.

866 Mr. {Whitfield.} Well, I want to thank the gentleman
867 for bringing that to our attention. I will say that we went
868 to great lengths to set out various exceptions in this bill,
869 including protecting the light-duty vehicle greenhouse gas

870 emission standard, as well as the renewable fuel standard, as
871 well as any studies that are underway in the Federal
872 Government relating to greenhouse gases, as well as
873 protecting the Montreal Protocol, as well as protecting
874 reporting requirements as required in the 1990 amendments
875 relating utility emissions. And I would ask our general
876 counsel if she would want to address the point that Mr.
877 Waxman made.

878 Mr. {Waxman.} Mr. Chairman, could we run the clock, and
879 then I want you to yield to me to follow up with questions of
880 the counsel on that point.

881 Mr. {Whitfield.} I am sorry. What was your point
882 again?

883 Mr. {Waxman.} I just wanted to be sure that if you are
884 using your time now to rebut that we keep track of that time,
885 and then at some point I am going to ask--

886 Mr. {Whitfield.} Sure. Yes, I recognize myself for 5
887 minutes, and now, Ms. Brown, if you would like to respond.

888 Ms. {Brown.} On the specific question of whether or not
889 the auto rule is preserved, it is the position of the authors
890 of this bill that it is preserved for 2 reasons. First of
891 all, the NHTSA authority with respect to fuel economy does
892 not rely on the endangerment finding. So fuel efficiency
893 requirements of NHTSA remain. And so notwithstanding your

894 argument, then, there would still be that regulation for fuel
895 efficiency. But as a second matter, because of that clause
896 that says notwithstanding the fact that the endangerment
897 finding is repealed and then the auto rule is preserved is
898 almost as though it has the effect of Congress codifying the
899 auto rule, that their prerequisite for Agency action, which
900 is that initial endangerment finding, is no longer needed
901 because Congress itself is setting that as the rule that the
902 auto rule is the law of the land.

903 Mr. {Whitfield.} And that certainly was our intent, to
904 protect that light-duty vehicle greenhouse gas emission
905 standard that was agreed to.

906 Mr. {Waxman.} Mr. Chairman, will you yield to me?

907 Mr. {Whitfield.} I will yield to the gentleman.

908 Mr. {Waxman.} Well, I appreciate what you're saying
909 because there are two organizations that have to do with the
910 fuel efficiency standards. One is NHTSA and the other is
911 EPA. Without this EPA rule, which you seem to suggest in
912 your answer, would not apply because of the underlying code,
913 certainly that I submit would not. That would mean we would
914 get 30 percent less reductions than NHTSA can accomplish. We
915 may want to deny the science. We may want to deny the
916 wording of the statute. But I would submit, despite your
917 good intentions, you don't accomplish what you say you are

918 accomplishing. And I put that out there and anybody who
919 wants to look at the statute and follow our argument, they
920 can see the case that we are making, which I think is a
921 strong case. And if it is not strong enough to convince you,
922 it may well be strong enough to convince a court.

923 Mr. {Whitfield.} Ms. Brown, did you want to make
924 another comment on this?

925 Ms. {Brown.} No, sir.

926 Mr. {Whitfield.} Okay. I will yield to the gentleman
927 from--Mr. Terry.

928 Mr. {Terry.} Mr. Chairman, in due respect to the
929 gentleman from California, now, what has happened here
930 chronologically is Congress passed in '07 a CAFE bill that
931 the President then, with the cooperation of the EPA, altered
932 without congressional approval. This bill is actually
933 legitimizing in statute what the President did. I would
934 submit, Mr. Waxman, that this gives the EPA its legal basis
935 from any outside suits now. So I say the opposite is true in
936 my legal analysis. I yield back.

937 Mr. {Whitfield.} And I yield back my time. And for
938 what purpose does the gentleman from Washington seek
939 recognition?

940 Mr. {Inslee.} Move to strike the last word.

941 Mr. {Whitfield.} The gentleman is recognized for 5

942 minutes.

943 Mr. {Inslee.} I just want to point out that I think
944 that this law will fail for three reasons because there are
945 three laws that the Congress cannot repeal. The Congress
946 cannot repeal, despite the Republicans' efforts, the first
947 law of thermodynamics. You cannot repeal the physical law,
948 the conservation of energy. And we have uncontested evidence
949 that right now, because of these pollutions, we are changing
950 the climate and endangering our children's health. And
951 despite the Republicans' best effort, you can't pull down
952 some sort of veil of scientific ignorance and repeal the
953 first law of thermodynamics. You can't do it. So this bill
954 essentially asks America to crawl under our bed and ignore
955 this looming threat to our health and our climate. And I
956 just think this country is greater than that. I think this
957 country can do what it is doing right now in Detroit and
958 across this country, which is designing new ways for us to
959 get around in cars that burn a lot less oil or don't use oil.

960 And that brings me to the second point. Neither
961 Republicans nor the Congress nor a bipartisan effort can
962 repeal the law of supply and demand. And if you read an
963 interesting book--and I would commend it to everyone here--
964 called ``Your World is About to Get a Whole Lot Smaller.''
965 It is by an energy economist named Jeff Rubin. And he points

966 out that there are two immutable facts, that even if we drill
967 on the Capitol Mall and in Yellowstone National Park, we
968 don't have enough oil to have an appreciable impact on the
969 price of oil because oil production in the world has
970 plateaued. It is not going to go up and it is probably going
971 to go down.

972 But another thing is happening. Demand is skyrocketing
973 because of the burgeoning economies in China and India and
974 the rest of the world. Now, as this book will point out, and
975 I think you will find it of interest, the law of supply and
976 demand means that as long as the United States is addicted to
977 oil in our transportation fleet, we are exposed to these
978 price increases that our constituents are justifiably now
979 very concerned about. And I heard a lot of my Republican
980 colleagues talking about concern about oil. But there is one
981 immutable law you can't repeal. The law of supply and demand
982 says as long as that is what we are burning, we are going to
983 exposed to these price hikes.

984 Now, I would hope that at some point we get together on
985 a bipartisan basis to help the businesspeople that are now
986 helping us break that addiction. The businesspeople like
987 General Motors, who have done the General Motors Volt, which
988 is a great car that goes 40 miles on pure electricity. And
989 if you want to go further, you use gasoline. We ought to be

990 working on a bipartisan basis to find ways to help businesses
991 move forward, that kind of innovation. And I am afraid that
992 my Republican colleagues can't get over their fear that we
993 can't innovate our way out of this problem. And if you will
994 talk to businesses around the country, you'll see people all
995 around the country innovating their way out of this problem.
996 And when we try to repeal the first law of thermodynamics and
997 the law of supply and demand, we don't help those businesses
998 move forward.

999 Mr. {Walden.} Gentleman yield?

1000 Mr. {Inslee.} Sure.

1001 Mr. {Walden.} I would just point out to the gentleman
1002 that in prior energy bills that were passed in a bipartisan
1003 manner, we actually invested in hydrogen fuel cell
1004 development. We invested in battery development. And we are
1005 for that. But the supply and demand curve also says you have
1006 to do something about supply as we move to these new
1007 technologies.

1008 Mr. {Inslee.} And I agree with that wholeheartedly.
1009 The point I want to make is if we are going to reduce the
1010 impact of this straight jacket we are in, we are going to
1011 have to develop whole new systems of energy above and beyond
1012 petrochemicals. You know, I am for increasing supplies of
1013 petrochemicals as well. My concern about this approach,

1014 however, is that it takes our foot off the gas pedal of
1015 innovation. Because when you repeal the ability of the
1016 Federal Government to protect Americans of asthma, you
1017 simultaneously reduce the incentives to make investments in
1018 these additional new technologies to provide us a way out of
1019 this addiction.

1020 And this is why I believe this is a pro-China
1021 development bill that we have here today. The Chinese are
1022 not sleeping. They are developing these technologies. The
1023 Germans are not sleeping. They are developing these
1024 technologies. But when we do this today, we are reducing the
1025 incentive to make investments in these clean energy
1026 technologies. That is why I think it is a job-killer over
1027 the long run for us, and it is one of the reasons I am not
1028 supporting the bill. And I just hope that some day we will
1029 get together and find a way to help these businesses move
1030 forward.

1031 Thank you. I yield back.

1032 Mr. {Whitfield.} I would remind the Members also that
1033 we are open now for amendments. Does any Member have an
1034 amendment to this bill? All right. If we have no further
1035 amendments, the question now occurs on favorability--yes,
1036 ma'am. For what purpose does the lady from California seek
1037 recognition?

1038 Mrs. {Capps.} Move to strike the last word.

1039 Mr. {Whitfield.} The gentlelady is recognized for 5
1040 minutes.

1041 Mrs. {Capps.} When you asked for more amendments, I
1042 don't have an amendment, but I do have a couple of questions
1043 for counsel if you don't mind.

1044 Mr. {Whitfield.} The gentlelady is recognized for 5
1045 minutes.

1046 Mrs. {Capps.} The Upton-Inhofe bill changes the manner
1047 in which motor vehicles have been regulated in the United
1048 States for over 40 years. The Clean Air Act has authorized 2
1049 sets of standards to control tailpipe pollution from motor
1050 vehicles, federal standards and the standards established by
1051 California, which can also be and have been adopted by other
1052 states. And this is my question for counsel. The Upton-
1053 Inhofe bill would terminate both Federal and State authority
1054 to establish tailpipe standards for greenhouse gas emissions
1055 after vehicle model year 2016. Is that correct?

1056 {Counsel.} Yes, it is correct.

1057 Mrs. {Capps.} Okay. And let me just state for the
1058 record that Section 209B of the Clean Air Act requires EPA to
1059 waive federal preemption for California motor vehicle
1060 standards if the Agency determines that California standards
1061 in the aggregate will be at least as protective of public

1062 health and welfare as federal standards. It also provides
1063 that other States have the option of electing to apply
1064 California standards. In practice, this has allowed
1065 California to set vehicle standards that are more protective
1066 of public health than the federal standards and it allows
1067 other States to follow California's example if they choose.
1068 Then, my question to repeat, Counsel, Section 3 of the Upton-
1069 Inhofe bill strips the EPA of this authority to waive federal
1070 preemption, thereby blocking any State tailpipe standards for
1071 greenhouse gases for model year 2017 or later, does it not?

1072 {Counsel.} Yes, that is correct.

1073 Mrs. {Capps.} Counsel, do you know where California's
1074 special authority to set its own motor vehicle standards
1075 originated? Well, this authority was part of the Air Quality
1076 Act of 1967 and was retained when Congress adopted the
1077 original 1970 Clean Air Act. This authority was expanded in
1078 the 1977 amendments with Congress recognizing that the
1079 underlying intent of Section 209 is to afford California the
1080 broadest possible discretion in selecting the best means to
1081 protect the health of its citizens and the public welfare.

1082 For over 40 years this authority has served the Nation
1083 well. It has allowed States to drive improvements in the
1084 federal standards. Without this State authority cars would
1085 emit more pollution, use more oil, and cost more to fill up

1086 at the pump. Republicans talk about the need to reduce
1087 gasoline prices, but this bill would have the opposite
1088 effect. It would increase demand for gasoline, increase our
1089 dependence upon foreign oil, and increase gasoline prices.
1090 It is exactly the wrong approach. I yield back the balance
1091 of my time.

1092 Mr. {Whitfield.} Thank you. And I might say that on
1093 that point it is true that this bill takes away that waiver,
1094 but what historically has happened is that California has
1095 been setting these very, very high standards and automobiles
1096 are sold in interstate commerce, so they are requiring other
1097 States to abide by those same laws. And we feel like it is
1098 not right that California should be dictating standards for
1099 the rest of the--

1100 Mr. {Waxman.} Will the Chairman yield to me?

1101 Mr. {Whitfield.} I would--

1102 Mr. {Waxman.} California wishes to speak on this point.

1103 Mr. {Whitfield.} I am not going to yield at this time
1104 because there are other Members that want to speak, but I
1105 would remind everyone they have the right to seek recognition
1106 and strike the last word.

1107 Mr. {Bilbray.} Mr. Chairman, I--

1108 Mr. {Whitfield.} For what purpose does the gentleman--

1109 Mr. {Bilbray.} Move to strike the last word.

1110 Mr. {Whitfield.} The gentleman is recognized 5 minutes.

1111 Mr. {Bilbray.} Mr. Chairman, a little quick history on
1112 this and I am sure that the gentleman from the great
1113 community of Los Angeles and Santa Monica will point this
1114 out. The reason why California had exceptions is that the
1115 federal standards could not bring us to attainment in our
1116 non-attainment areas. California's problem was so bad that
1117 we needed to use extraordinary efforts and be given the
1118 authority to make those efforts to lower the emissions down
1119 to the safe standards that were required under the act. So
1120 we needed more tools to accomplish the goal in California
1121 than other places did.

1122 Let me clarify something. The one thing that is not
1123 being talked about now is that there is no need for
1124 California to reduce its emissions of CO2 anymore than
1125 anywhere else in the country or the world if we are going to
1126 reach a certain standard, unless the assumption is that you
1127 expect California to basically make up for the fact that
1128 China and Third World countries and a lot of places are not
1129 going to emit at all. But the reason why we were given the
1130 waiver is we could not fulfill the standards for our air
1131 basins without doing more than what the country was doing.
1132 And it was specifically based on protecting the health within
1133 those air basins where the air quality was documented to be a

1134 public threat and was documented to be more severe than other
1135 air basins. Thus, the latitude or the regulations had to go
1136 beyond what the State standards were. And that is why we
1137 were given the regulation, because the Federal Government, if
1138 you require us to come to this standard, then you have got to
1139 allow us to use other tools than what the country is using.
1140 I yield back.

1141 Mr. {Waxman.} The gentleman yield to me?

1142 Mr. {Whitfield.} He yielded back his time.

1143 Mr. {Waxman.} Well, the gentleman still has 3 minutes
1144 and I wonder if the gentleman from California would yield to
1145 me because--

1146 Mr. {Whitfield.} He yielded back his time but--

1147 Mr. {Waxman.} No, he is trying to yield to me, Mr.
1148 Chairman.

1149 Mr. {Whitfield.} The gentleman yielded his time--

1150 Mr. {Waxman.} Mr. Chairman--

1151 Mr. {Whitfield.} For what purpose does the gentleman
1152 seek recognition?

1153 Mr. {Rush.} Move to strike the last word.

1154 Mr. {Whitfield.} The gentleman is recognized for 5
1155 minutes.

1156 Mr. {Rush.} I yield to the ranking member.

1157 Mr. {Waxman.} I thank you for yielding to me and I am

1158 sort of taken aback by the lack of consideration to clarify
1159 this point. The gentleman from California from the great
1160 County of San Diego is absolutely right. California was
1161 always able, since 1970 when the Clean Air Act was adopted,
1162 to set its own standard for automobiles. California is 10
1163 percent of the market in the country. California, in setting
1164 its own standards, drove the automobile industry to recognize
1165 that it could meet those standards. These were for the
1166 criterion pollutants and it certainly affected whether we
1167 could come into attainment.

1168 But California has a very aggressive law on CO₂, not
1169 just on autos but in other areas as well. And the chairman
1170 said he doesn't see why California ought to have this
1171 ability. Well, we in California think we ought to have this
1172 ability. And I say we, I am speaking for myself, the
1173 legislature, and our former Governor Schwarzenegger, who
1174 supported the legislation in California to be more aggressive
1175 than the rest of the country. I just wanted to point this
1176 out. I know that maybe the chairman didn't want me to point
1177 this out. I don't know why. It is I think a legitimate part
1178 of the debate. But this bill repeals California's ability to
1179 set tighter standards in the future. In fact, it even
1180 repeals EPA's ability to set tighter automobile standards
1181 under the terms of the bill itself where they thought in

1182 drafting it they were exempting the existing national
1183 standard for automobiles. I don't think they did but they
1184 say that the EPA cannot set a tighter standard than the
1185 existing standard.

1186 Talk about, Mr. Chairman, the view that I hear over and
1187 over again from the other side of the aisle that we ought to
1188 let local governments make decision. They are closer to the
1189 people. Everything should be resolved, I hear, in
1190 Washington, that we don't have all the wisdom in the world.
1191 I just think the people ought to understand that this is what
1192 is happening under this--

1193 Mr. {Bilbray.} Could the gentleman yield?

1194 Mr. {Waxman.} Yes, certainly.

1195 Mr. {Bilbray.} Look, I understand that but I am sure
1196 the gentleman will point out the big difference we have was
1197 the fact that we got a waiver from the interstate commerce
1198 because the Federal Government was putting a mandate on
1199 California that California could not fulfill under the
1200 federal program. And thus, we got a waiver from that because
1201 they were unique. You had to reduce emissions much more than
1202 the rest of the country to be able to reach those standards.
1203 When it comes to CO2 and climate change, I am sure you all
1204 understand that is not the reality there. California should
1205 be reducing--

1206 Mr. {Waxman.} You seem to be wasting my time. It is
1207 the reality in California. We have suffered from very severe
1208 weather conditions. We have a unique problem not just to
1209 smog but to CO2 emissions. And in the State of California,
1210 the legislature decided they wanted to deal with this
1211 problem. And now the Washingtonians here supported by the
1212 Republican side of the aisle want to tell California they
1213 can't deal with their own problems.

1214 I yield back the balance of my time.

1215 Mr. {Whitfield.} I recognize myself for 5 minutes. I
1216 might say, first of all, that I certainly do not--

1217 Mr. {Waxman.} Point of order, Mr. Chairman.

1218 Mr. {Whitfield.} Yes.

1219 Mr. {Waxman.} How many times can we recognize you?

1220 Mr. {Shimkus.} Mr. Chairman, I move to strike the last
1221 word.

1222 Mr. {Whitfield.} The gentleman from Illinois is
1223 recognized for 5 minutes.

1224 Mr. {Shimkus.} I yield my time to the chairman.

1225 Mr. {Whitfield.} Thank you. I was simply going to say
1226 that we don't want to stifle any debate here. There are a
1227 lot of people that have not stricken the last word and they
1228 can always yield their time. I would make one other comment
1229 on the California issue, that this waiver relates only to the

1230 greenhouse gas issue and no others. And so I would yield
1231 back to--

1232 Mr. {Bilbray.} Would the gentleman yield?

1233 Mr. {Whitfield.} I will yield to my colleague from
1234 California.

1235 Mr. {Bilbray.} I want the committee to know, too, as a
1236 Californian, I am ashamed that a State that claims to be
1237 leading the charge on CO2 emissions still has an abolition
1238 against nuclear power when anyone who is looking at this
1239 understands what an irresponsible action that is when you get
1240 into it. I have not introduced an amendment to specifically
1241 address that issue in this bill, but I think it is one that
1242 if we are really going to seriously talk about it--and let me
1243 remind you, the U.N. Counsel on Climate Change, who got the
1244 Nobel Peace Prize with Al Gore, specifically identified
1245 nuclear as an essential part of the strategy. And for our
1246 State, who has always been a leader on this, to still be
1247 locked into a 1970's model when there is science that has
1248 told us not only that there is a climate issue but also that
1249 nuclear is an essential part of that. That was something
1250 that we need to address.

1251 But that is the kind of things that we need to be moving
1252 forward to, and I think that we still come back to this
1253 issue. California's responsibility to reduce climate change

1254 is the same as everyone else in the world. And California
1255 reducing 1 percent more than anybody else is not going to
1256 change this issue. And that is totally different than what
1257 happened when we were talking about ozone, when we were
1258 talking toxic emissions, when we were talking bring our air
1259 basins into compliance. It was totally different than what
1260 we are talking about when we talk about climate change.

1261 And I yield back to the gentleman.

1262 Mr. {Shimkus.} We are going to disagree on this.
1263 Republicans believe that greenhouse gases are not a criteria
1264 pollutant, the EPA should not regulate it, and if they do, in
1265 doing so, they will raise energy costs, which will hurt jobs.
1266 The other side wants to regulate greenhouse gases, wants to
1267 increase energy costs, which will attack jobs. I mean, that
1268 is the debate and we will say it a lot of different ways, but
1269 when you boil it down to, that is the issue.

1270 We will eventually move and have a vote in this
1271 committee. It will go to the full committee. It will go to
1272 the floor. I guarantee it. It will pass on the floor. And
1273 as much as my colleagues want to say what the Senate will or
1274 will not do and what the President will or will not do, we
1275 want to give them the opportunity to weigh in on this
1276 decision.

1277 I yield back my time.

1278 Mr. {Whitfield.} For what purpose does the gentleman
1279 from New York seek recognition?

1280 Mr. {Engel.} I move to strike the last word.

1281 Mr. {Whitfield.} The gentleman is recognized for 5
1282 minutes.

1283 Mr. {Engel.} Thank you, Mr. Chairman. And thank you
1284 for being so fair. I appreciate it.

1285 I would like to ask the counsel something, if I might.
1286 Protecting public health and preventing climate change should
1287 not be a partisan issue. In fact, it was the Bush
1288 administration that began laying the foundation for EPA's
1289 reasonable carbon pollution requirements. So I would like to
1290 ask the counsel, on May 14, 2007, President Bush signed an
1291 executive order making it the policy of the United States for
1292 the Department of Transportation and EPA to exercise in a
1293 coordinated fashion their statutory authorities to protect
1294 the environment from greenhouse gas emissions for motor
1295 vehicles. Isn't that correct?

1296 Ms. {Brown.} 2007 executive order?

1297 Mr. {Engel.} I'm sorry?

1298 Mrs. {Brown.} Can you repeat the date of the executive
1299 order?

1300 Mr. {Engel.} May 14, 2007. It was making it the policy
1301 of the U.S. for EPA to exercise in a coordinated fashion,

1302 along with the DOT, the statutory authorities to protect the
1303 environment from greenhouse gas emissions from motor
1304 vehicles.

1305 Mr. {Whitfield.} Mr. Engel, may we have a copy of the
1306 executive order?

1307 Mr. {Engel.} Yes.

1308 Mr. {Whitfield.} Would one of you come up and get that?

1309 Mr. {Engel.} Certainly. I am happy to submit it for
1310 the record. I have it right here, and I am happy to admit
1311 it.

1312 Mr. {Whitfield.} Without objection.

1313 [The information follows:]

1314 ***** COMMITTEE INSERT *****

|
1315 Mr. {Engel.} I would like to also ask the counsel on
1316 July 11, 2008, the Bush administration EPA issued an advanced
1317 notice of proposed rulemaking that sought public comment on
1318 whether an endangerment finding should be issued and how
1319 greenhouse gases should be regulated under the Clean Air Act.
1320 Is that correct?

1321 Ms. {Brown.} Could you repeat the question?

1322 Mr. {Engel.} On July 11, 2008, the Bush administration
1323 EPA issued an advanced notice of proposed rulemaking that
1324 sought public comment on whether an endangerment finding
1325 should be issued and how greenhouse gases should be regulated
1326 under the Clean Air Act.

1327 Ms. {Brown.} That is correct.

1328 Mr. {Engel.} Okay. Thank you. Admittedly, this was a
1329 timid response to the Supreme Court's decision in
1330 Massachusetts v. EPA, that greenhouse gases are air
1331 pollutants under the Clean Air Act. But the Bush
1332 administration EPA actually believed that an endangerment
1333 finding was required by the science.

1334 In January 2008, Stephen Johnson, the former EPA
1335 administrator, sent a private letter to President Bush.
1336 Administrator John wrote, ``The latest science of climate
1337 change requires the agency to create a positive endangerment

1338 finding. It does not permit a credible finding that we need
1339 to wait for more research.'" And he said that the Bush
1340 cabinet agreed with this position. Now, the science hasn't
1341 changed in the last 2 years. In fact, it has only gotten
1342 stronger. And let me also quote from Administrator Johnson.
1343 He wrote to President Bush, ``A robust interagency policy
1344 process involving principle meetings over the past 8 months
1345 has enabled me to formulate a plan that is prudent and
1346 cautious, yet forward-thinking. It creates a framework for
1347 responsible, cost-effective, and practical actions.'" He
1348 added that actions to reduce carbon emissions, ``should spur
1349 both private sector and investment in developing new, cost-
1350 effective technologies and private sector deployment of these
1351 technologies at a large scale.'"

1352 So the steps that EPA Administrator Lisa Jackson is
1353 proposing under the Clean Air Act are moderate and
1354 appropriate. They are also remarkably similar to the
1355 measures that former Administrator Johnson recommended to
1356 President Bush. As Administrator Johnson's letter makes
1357 clear, EPA, under both Republican and Democratic
1358 administrations, has had the same view of the science.
1359 Carbon emissions are definitely a serious threat to our
1360 Nation's welfare.

1361 I would like to also say that on December 15, 2009, EPA

1362 Administrator Jackson issued a scientific determination that
1363 greenhouse gases threaten public health and welfare. This is
1364 commonly referred to as the endangerment finding.

1365 Counsel, I would like to ask you is there any Energy and
1366 Commerce Committee precedent for legislatively repealing an
1367 agency's scientific determination?

1368 Ms. {Brown.} Well, there is certainly precedent for
1369 repealing rulemakings, but there is no precedent for EPA
1370 doing an endangerment finding as a standalone that we were
1371 able to find. So EPA's action to unilaterally move an
1372 endangerment finding without it being attached to a
1373 rulemaking was unprecedented and it would be unprecedented
1374 for Congress to overturn that.

1375 Mr. {Engel.} Well, I thank you because I am not aware
1376 of such a precedent either. I believe this will be the first
1377 time that our committee will substitute its scientific views
1378 for those of an expert agency. And I think it would be an
1379 act of striking arrogance for a group of politicians to
1380 overturn a scientific determination made by an agency based
1381 on the work of thousands of expert scientists.

1382 And I yield back.

1383 Mr. {Whitfield.} The gentleman's time is expired. I
1384 might make a comment that after Mr. Johnson wrote that memo,
1385 he did, in fact, say that he did not believe that the Clean

1386 Air Act was the appropriate vehicle to regulate greenhouse
1387 gases. Does anyone else seek recognition? For what purpose
1388 does the gentleman from Massachusetts seek recognition?

1389 Mr. {Markey.} To strike the last word, Mr. Chairman.

1390 Mr. {Whitfield.} The gentleman is recognized for 5
1391 minutes.

1392 Mr. {Markey.} A quick question for counsel. Could you
1393 confirm for me that the underlying legislation removes EPA's
1394 authority to move forward with any future regulations that
1395 will have the effect of curbing oil use from cars or trucks?

1396 Ms. {Brown.} It prohibits any future rulemakings for
1397 addressing greenhouse gases with respect to climate change
1398 so--

1399 Mr. {Markey.} And that will have the effect of curbing
1400 future regulations to reduce oil use from cars or trucks, is
1401 that correct?

1402 Ms. {Brown.} EPA has a consulting role with respect to
1403 CAFE standards with NHTSA so they would continue to have a
1404 role with respect to fuel efficiency as that relates to fuel
1405 consumption and oil consumption.

1406 Mr. {Markey.} Well, some have maintained that it is
1407 fine to do away with that authority because the Department of
1408 Transportation can continue to set fuel economy standards.
1409 But according to both EPA and the Department of

1410 Transportation, there is a 30 percent greater reduction in
1411 oil consumption using EPA's greenhouse gas tailpipe standards
1412 than the Department of Transportation's fuel economy
1413 standards, is that correct? Because the EPA can require
1414 improvements in air conditioning efficiency and flex fuel of
1415 vehicle credits and NHTSA cannot do that, is that correct?

1416 {Counsel.} It is but notice that that is no longer oil
1417 and your question, I thought, was about oil.

1418 Mr. {Markey.} Well, it is about oil because air
1419 conditioning, obviously causes the vehicle to have to consume
1420 more oil in order to maintain both, you know, the capacity to
1421 drive and to stay cool at the same time. Is that not
1422 correct?

1423 {Counsel.} It is correct that there is a relationship
1424 between air conditioning fluids and fuel

1425 Mr. {Markey.} Thank you. Thank you. I appreciate
1426 that. And the EPA standards save 30 percent more oil than
1427 DOT's because EPA can look at air conditioning, look at flex
1428 fuel issues, as well which the Department of Transportation
1429 does not. Now, EPA has announced plans for the next set of
1430 standards for cars and trucks and right now the EPA, as this
1431 legislation passes, it would result in 700,000 fewer barrels
1432 per day less oil than we otherwise would have consumed.

1433 Let us move on to other uses of oil. Airplanes use

1434 about 1.2 million barrels of oil per day. Large boats use
1435 about 580,000 barrels of oil per day. Trains use about
1436 277,000 barrels of oil per day. Can you confirm for me that
1437 the underlying legislation removes EPA's authority to move
1438 forward with regulations to curb greenhouse gas emissions
1439 from oil use in airplanes, large boats, trains, and other
1440 large transportation sources like construction vehicles?

1441 Ms. {Brown.} Yes, for greenhouse gases to address
1442 climate change through the Clean Air Act. Yes.

1443 Mr. {Markey.} Thank you. So they won't have the
1444 authority to reduce the amount of oil that is consumed in
1445 those modes of transportation. Does the Department of
1446 Transportation have the authority to reduce oil use from any
1447 of those sources?

1448 Ms. {Brown.} I am sorry?

1449 Mr. {Markey.} Does the Department of Transportation
1450 have any authority to reduce oil consumption in any of those
1451 areas?

1452 Ms. {Brown.} Not that I am aware of.

1453 Mr. {Markey.} No. The answer is no, they do not.
1454 Industrial and commercial facilities use almost 4.5 million
1455 barrels of oil per day, almost 25 percent of our daily use.
1456 Even if you assume that the EPA could only reduce demand for
1457 20 percent of that oil by 2030, we are still talking about

1458 900,000 barrels per day. Can you confirm for me that the
1459 underlying legislation removes EPA's authority to move
1460 forward with regulations to curb greenhouse gas emissions
1461 from oil used by any of those facilities?

1462 Ms. {Brown.} It would take away the authority for
1463 greenhouse gas emissions for the purposes of addressing
1464 climate change.

1465 Mr. {Markey.} It would remove the authority to reduce
1466 oil consumption from any of those areas. Thank you so much,
1467 Counsel. Now, does the Department of Transportation have the
1468 authority to reduce oil from any of those sources?

1469 Ms. {Brown.} Department of Transportation is
1470 transportation source. It is not stationary--

1471 Mr. {Markey.} They do not have the authority. That is
1472 correct. So the Republicans are saying that the repeal is
1473 going to reduce gas prices. Well, let me tell you, ladies
1474 and gentlemen, because of that bill, we will have to import
1475 upwards of 3.2 million barrels per day at \$100 per barrel
1476 than we otherwise would have if the EPA was able to maintain
1477 this authority and to promulgate regulations. And I think at
1478 this time, as we watch Libya and we watch Tunisia and we
1479 watch Egypt, we see Saudi Arabia and Bahrain trying to bribe
1480 their people not to overturn their governments, to engage in
1481 this kind of activity goes right at the heart of our national

1482 security. And I do not believe that we should be casting
1483 this vote at this particular point in time. It sends the
1484 wrong signal to our Nation. The terrorists are the oil
1485 cartel. Okay. The hearing that they are having in Homeland
1486 Security right now is not nearly as much of a threat to our
1487 country as what this oil threat does in supplying the funding
1488 for the terrorists around the world. This is just not the
1489 right time or place. This bill is an historic--

1490 Mr. {Whitfield.} The gentleman's time has expired.
1491 Anyone else seek recognition at this time? For what purpose
1492 does the gentleman from Michigan seek recognition? The
1493 gentleman is recognized for 5 minutes.

1494 Mr. {Dingell.} Mr. Chairman, I thank you. When I saw
1495 the legislation before us today, I was very much impressed.
1496 I thought my sly friend Mr. Upton has expanded the
1497 jurisdiction of this committee again. By golly, he is doing
1498 much better than I ever did.

1499 The {Chairman.} We are trying our best.

1500 Mr. {Dingell.} I thought well, I better get down there.
1501 I have to commend him for this. But then I started looking
1502 around in Black's Law Dictionary and I had to see what a tax
1503 is. And that says this: ``A monetary charge imposed by the
1504 government on persons, entities, transactions, or properties
1505 to yield a public revenue.'' In other words, it is a charge

1506 that produces revenues to fund the government. So I started
1507 looking around in the legislation and I thought, by golly,
1508 there must be a tax in here. Where is it? So, Counsel, I
1509 couldn't find one. Can you tell me where there is a tax in
1510 this bill? Either a tax that is there or a tax that is
1511 repealed.

1512 Ms. {Brown.} It is not a direct tax. It is a tax
1513 through regulation.

1514 Mr. {Dingell.} Okay. So there is no tax there. Now,
1515 the bill overturns EPA's scientific determination that
1516 greenhouse gases endanger public health and welfare. Does
1517 that endangerment finding generate revenue for the taxpayers?

1518 Ms. {Brown.} No, the endangerment finding triggers--

1519 Mr. {Dingell.} Thank you.

1520 Ms. {Brown.} --the regulations that cause the
1521 taxpayers--

1522 Mr. {Dingell.} Now, Counsel, I need some more help
1523 here, and I only have 5 minutes. The bill expressly repeals
1524 EPA's 2009 greenhouse gas reporting rule, thus giving us
1525 valuable information ensuring that Congress can make informed
1526 decisions. Has that rule raised funds for the government.

1527 Ms. {Brown.} No, I think it is the position of the--

1528 Mr. {Dingell.} Now, Counsel, the bill would bar EPA
1529 from issuing regulations to establish minimum technology-

1530 based emissions limits for the largest power plants and oil
1531 refineries. Do these emissions limits raise revenue for the
1532 government?

1533 Ms. {Brown.} No, cost on consumers.

1534 Mr. {Dingell.} Thank you. Thank you. None of the
1535 authorities and requirements, then, repealed by the bill are
1536 taxes, is that right?

1537 Ms. {Brown.} No, they are costs on consumers--

1538 Mr. {Dingell.} Good.

1539 Ms. {Brown.} --not revenue raisers for the government.

1540 Mr. {Dingell.} And again, I want to salute my friend,
1541 Mr. Upton, because I thought boy, that's a sly fellow. He
1542 has really pulled something off. You know, I spent a long
1543 time looking at the jurisdiction of this committee. I
1544 thought by golly, we have got a chairman who is going to do
1545 the kind of things I used to love to do. But this bill has
1546 been referred to Energy and Commerce and not Ways and Means.
1547 That tells me, I think, that there is no taxes either in or
1548 prevented in this legislation. And I do want to say--I have
1549 kind of pulled the leg of my friend, the chairman, and I have
1550 tried to do it in good humor because I have enormous
1551 affection and respect for him, but I do think we do need a
1552 little truth in the labeling here on this legislation. And
1553 if we are going to repeal taxes, we ought to do it or say it,

1554 and if we are not doing it, we ought not take credit for it
1555 because I find that that has the practical effect of making
1556 folks watch this committee. And I had to undergo that for a
1557 long time when the folks across the hall were always watching
1558 us or Ways and Means were always watching us because they
1559 thought I was trying to increase the jurisdiction of this
1560 committee. And I just warn my old friend that maybe this
1561 isn't such a good idea to be attracting that kind of unwanted
1562 attention because those folks across the way can get a little
1563 bit unfriendly when these things happen.

1564 The {Chairman.} Would the gentleman yield?

1565 Mr. {Dingell.} Of course, to my good friend, yes.

1566 The {Chairman.} I would note that our good friend, Mr.
1567 Camp, is a cosponsor of the bill, so we have the support of
1568 some of those in Ways and Means, and we would be delighted to
1569 add your name as a cosponsor later in the day when the House
1570 goes into session.

1571 Mr. {Dingell.} Well, I have told my good friend, and I
1572 really mean it, I am very sympathetic to what he is trying to
1573 do. And I think this situation is a nasty mess. And we are
1574 pretty close to getting together, but we got a little further
1575 to go. So I do want to express my good wishes and affection
1576 for the gentleman and thank you for the time, Mr. Chairman.

1577 Mr. {Inslee.} Does the gentleman yield his remaining

1578 time?

1579 Mr. {Dingell.} I have got 35 seconds. I will yield it
1580 to the gentleman.

1581 Mr. {Inslee.} Before we vote, I just want to read
1582 something that came across the wire about 10 minutes ago.
1583 This is from a NASA report. ``The Greenland and Antarctic
1584 ice sheets are losing mass at an accelerating pace according
1585 to new NASA-funded satellite study. The findings of this
1586 study, the longest to date of changes in polar ice sheet
1587 mass, suggest these ice sheets are overtaking ice loss from
1588 earth's mountain glaciers and ice caps to become the dominant
1589 contributor to global sea level rise much sooner than the
1590 model forecaster predicted.'' The report goes on to say that
1591 ``our sea level rise will be 1 foot by 2050.'' And I think
1592 it is an interesting historic irony that 30 minutes after our
1593 NASA scientists tell us that we have a big, big problem, this
1594 great committee votes to do nothing about it. Thanks.

1595 Mr. {Whitfield.} For what purpose does the gentleman
1596 from Pennsylvania seek recognition?

1597 Mr. {Doyle.} Move to strike the last word.

1598 Mr. {Whitfield.} The gentleman is recognized for 5
1599 minutes.

1600 Mr. {Doyle.} Thank you, Mr. Chairman. I want to ask
1601 Counsel some questions so that we can get some clarification

1602 on exactly what is required under these new requirements for
1603 stationary sources. Counsel, only new sources or existing
1604 sources that expand and significantly increase emissions are
1605 currently subject to any requirement to control their
1606 greenhouse gas emissions, correct?

1607 Ms. {Brown.} Yes, but new rulemakings that would also
1608 affect existing facilities are also underway, as well as
1609 there is a reporting of--

1610 Mr. {Doyle.} But that statement is correct, right?
1611 Thank you.

1612 Ms. {Brown.} No. But okay.

1613 Mr. {Doyle.} So let me ask you this. Let us take an
1614 example. If I operate a coal plant in Ohio and I don't make
1615 any major modifications to it, I don't need a greenhouse gas
1616 PSD permit from EPA, do I?

1617 Ms. {Brown.} Under rules that are forthcoming from EPA,
1618 they will be required for existing--

1619 Mr. {Doyle.} We are talking about Title V permits,
1620 reporting requirements?

1621 Ms. {Brown.} No, I am talking about new source
1622 performance standards under 111.

1623 Mr. {Doyle.} Counsel, I don't know where you get this--
1624 last week, Mr. Barton asked this question to EPA Assistant
1625 Administrator Ferrer and she confirmed that such a plant

1626 would not need a greenhouse gas permit. I understand that
1627 sources will have to address greenhouse gases in their Title
1628 V permits, but that is essentially a paperwork requirement.
1629 It doesn't trigger any actual control requirements. So let
1630 me ask you another thing. In May of 2010, EPA finalized a
1631 tailoring rule to limit permit review requirements to only
1632 the largest polluting facilities in the country. Counsel,
1633 under the tailoring rule, until June 30, 2011, only sources
1634 subject to prevention of significant deterioration permitting
1635 requirements for other pollutants will be required to
1636 consider greenhouse gases in their permits, is that correct?

1637 Ms. {Brown.} That is correct.

1638 Mr. {Doyle.} Thank you. And from July 1, 2011, until
1639 June 30, 2013, only new sources that emit at least 100,000
1640 tons of greenhouse gases per year or existing sources seeking
1641 to increase pollution by at least 75,000 tons per year will
1642 be required to obtain a greenhouse gas permit, correct?

1643 Ms. {Brown.} That is the requirement for PSD and Title
1644 V but when the new source performance standard regulations
1645 are promulgated, which that will be before that date, that
1646 will affect those additional--

1647 Mr. {Doyle.} But those are not in effect yet, though?

1648 Ms. {Brown.} They are in the process of.

1649 Mr. {Doyle.} They are not in effect, though. Thank

1650 you. And for the period after June 2013, EPA has said that
1651 it would not even consider applying greenhouse gas
1652 requirements to facilities that emit less than 50,000 tons of
1653 greenhouse gases per year, correct?

1654 Ms. {Brown.} I think correct, but I didn't hear the
1655 full question. I am sorry.

1656 Mr. {Doyle.} Do you want me to repeat it?

1657 Ms. {Brown.} Sure.

1658 Mr. {Doyle.} After June 2013 EPA has said that it would
1659 not even consider applying greenhouse gas requirements to
1660 facilities that emit less than 50,000 tons of greenhouse
1661 gases per year.

1662 Ms. {Brown.} Subject to reconsideration in 2016 about
1663 how to handle those smaller--

1664 Mr. {Doyle.} So what we are saying here is that a
1665 facility would have to emit carbon pollution equivalent to
1666 burning a rail car of coal every day to fall into the small
1667 pool facilities that are required to comply with EPA's
1668 greenhouse gas requirements. We are not talking about farms
1669 or residences or commercial building. We are talking about
1670 huge high-polluting facilities. Now, let us turn the process
1671 for facilities that would have to comply with these
1672 regulations. New facilities with carbon pollution that would
1673 exceed the threshold in the tailoring rule will have to go

1674 through a technology review process to determine the best
1675 available control technology, BACT, to limit carbon pollution
1676 at the facilities. In most of the country, this review is
1677 carried out by State or local permitting authorities, not by
1678 the EPA itself. Counsel, EPA has issued guidance to assist
1679 State and local permitting agencies with the BACT process.
1680 Is that correct?

1681 Ms. {Brown.} That is correct.

1682 Mr. {Doyle.} And the process begins with the State
1683 identifying all available technologies that limit carbon
1684 pollution. Counsel, in its guidance, EPA stated that fuel-
1685 switching would fundamentally redefine a source such as
1686 switching from coal to natural gas would not need to be
1687 considered as an option, is that correct?

1688 Ms. {Brown.} They said that States could require it as
1689 an option but it would not be required at the federal level.

1690 Mr. {Doyle.} Thank you. For certain facilities, this
1691 initial list of available technologies could include carbon
1692 capture and sequestration or CCS, but the State then ranks
1693 the various options for limiting emissions and eliminates
1694 options that are too expensive or technically infeasible.
1695 Counsel, EPA's guidance stated that CCS would likely be
1696 eliminated as an option for BACT because of high cost, right?

1697 Ms. {Brown.} There is no example of a commercial and

1698 economic CCS plan.

1699 Mr. {Doyle.} Well, that is certainly what we have seen
1700 so far. In New York, the Lafarge Cement Plant went through
1701 the process and the State quickly eliminated CCS as
1702 technically infeasible because no geological formation
1703 existed close to the cement plant. And so the EPA confirmed
1704 New York's approach, and that was consistent with their
1705 guidance. Finally, after looking over the technical
1706 feasibility and cost, the State selected a technology that
1707 was required, and in the case of the Lafarge plant, the State
1708 determined that the cement plant could reduce its carbon
1709 pollution by 12 percent by installing several types of
1710 efficiency equipment.

1711 So in closing, I would just like to say that the only
1712 thing happened in the Lafarge thing is they made changes to
1713 energy efficiency and improvements, which ended up saving the
1714 company money. Thank you, Mr. Chairman.

1715 Mr. {Barton.} Mr. Chairman?

1716 Mr. {Whitfield.} For what purposes does the gentleman
1717 from Texas seek recognition?

1718 Mr. {Barton.} Strike the representative over words.

1719 Mr. {Whitfield.} The gentleman is recognized for 5
1720 minutes.

1721 Mr. {Barton.} Thank you. I understand the angst on the

1722 minority side. I have been there. It is a terrible thing to
1723 not have the votes and have to sit through these type of
1724 markups. And I certainly understand where Mr. Dingell was
1725 coming from and Mr. Doyle was coming from and Mr. Green was
1726 coming from, and even Mr. Inslee, where he has been coming
1727 from. But I think we need to point out a few basic facts.
1728 So I want to ask the counsel some questions, too, okay? Now,
1729 under current law because of the endangerment finding, the
1730 EPA has the authority to set greenhouse gas regulations. Is
1731 that not correct?

1732 Ms. {Brown.} That is EPA's position.

1733 Mr. {Barton.} That is EPA's position. Now, EPA is
1734 trying to come across as some gentle-hearted benign entity.
1735 So the tailoring rule, which several of my friends on the
1736 minority side have commented on, the tailoring rule simply
1737 says that EPA is not going to regulate everything that they
1738 could under the Clean Air Act, is that not correct?

1739 Ms. {Brown.} Not at this time but they have reserved
1740 the right to regulate smaller sources down the line started--

1741 Mr. {Barton.} So just out of the goodness of their
1742 heart, the EPA has said we are going to use this tailoring
1743 rule.

1744 Ms. {Brown.} Um-hum.

1745 Mr. {Barton.} Now, same thing that Mr. Doyle was just

1746 asking about, you know, CCS, carbon capture sequestering and
1747 all these things, the EPA is saying if you have a power plant
1748 and you don't change it, we are not going to make you do
1749 anything. Is that not correct?

1750 Ms. {Brown.} At this time but they had--

1751 Mr. {Barton.} At this time. But if they wanted to, if
1752 they decided if we leave them alone, this EPA or the next EPA
1753 could, under the endangerment finding, come back and set
1754 those regulations, could they not?

1755 Ms. {Brown.} Yes, and this EPA has actually already
1756 started that process to be able to regulate existing
1757 utilities with a new rulemaking--

1758 Mr. {Barton.} And if they wanted to they could set a
1759 regulatory emissions standard so high that that particular
1760 power plant might have to shut down.

1761 Ms. {Brown.} It is discretionary, yes.

1762 Mr. {Barton.} It is discretionary. Now, if we pass
1763 this bill and it passes the full committee and it passes the
1764 House and it passes the Senate and the President signs it--
1765 now, I know that is a lot of ifs and my friends are starting
1766 salivate because when you finally get to the President, he
1767 only has one vote and I don't think he would vote with us
1768 today. I think he would vote with my friend Mr. Dingell and
1769 Mr. Doyle. So I understand that when it gets to that point,

1770 they will have the vote and we won't. But maybe by that time
1771 we can change the President's mind.

1772 Mr. {Waxman.} Gentleman yield?

1773 Mr. {Barton.} I will in just a second. But if we pass
1774 this bill and it becomes law, the EPA will have no
1775 discretionary authority on greenhouse gases. Is that not
1776 correct?

1777 Ms. {Brown.} Correct, for addressing climate change.

1778 Mr. {Barton.} So we don't have to rely on the goodwill
1779 of EPA in terms of greenhouse gases. They still have full
1780 authority under the Clean Air Act on the criteria of
1781 pollutants, is that not correct?

1782 Ms. {Brown.} Yes.

1783 Mr. {Barton.} Okay. So I would tell my friends on the
1784 other side, folks, on this side we know that we have a new
1785 and warm and fuzzy, friendly EPA. We understand that. But
1786 we are not sure that that is where they are always going to
1787 be. So we would just as soon pass a law saying for
1788 greenhouse gases, the EPA has no authority and just let that
1789 be the law. Now, I will be happy to yield to my friend from
1790 California, Mr. Waxman.

1791 Mr. {Waxman.} I thank you for yielding. It seems to me
1792 that if you pass this, EPA can do nothing about this problem.
1793 No one else is doing anything about the problem. Congress

1794 could pass some legislation. We put forward a proposal, Mr.
1795 Markey and I, last year and I asked you whether you would
1796 want to work with us and your response was why do I want to
1797 work on solving a problem that I don't think exists?

1798 Mr. {Barton.} That is exactly right.

1799 Mr. {Waxman.} Now, for those who do believe that there
1800 is a problem that does exist and that the science is not
1801 being denied, we should work together to do something. But I
1802 would suggest that what we are going to accomplish today is
1803 to say nobody can do anything about this problem. And if the
1804 gentleman would permit, I would like to put into the record
1805 an article from today's Washington Post about ice sheets
1806 melting faster than earlier estimates, and today New York
1807 Times it said ``heat damages Colombia coffee, raising
1808 prices.'' I think there is a problem. And if we want to
1809 pretend there is no problem and say EPA can't act, Congress
1810 won't act, the problem will get even worse.

1811 Mr. {Barton.} I have no objection to those going into
1812 the record, and I thank the chairman--

1813 Mr. {Whitfield.} Without objection.

1814 [The information follows:]

1815 ***** COMMITTEE INSERT *****

|
1816 Mr. {Whitfield.} The gentleman's time has expired. Mr.
1817 Matheson, for what purpose do you seek recognition?

1818 Mr. {Matheson.} Move to strike the requisite number of
1819 words.

1820 Mr. {Whitfield.} Recognized for 5 minutes.

1821 Mr. {Matheson.} I would like to yield my time to Mr.
1822 Rush.

1823 Mr. {Rush.} I want to thank the gentleman. I want to
1824 ask the legislative counsel some questions here. According
1825 to Chairman Upton, EPA is current and planned greenhouse gas
1826 requirements are virtually identical to the comprehensive
1827 Energy and Climate bill passed by the House in the last
1828 Congress. Do you agree with that?

1829 Ms. {Brown.} In general they are based on the same
1830 policy of trying to curb carbon emissions.

1831 Mr. {Rush.} Chairman Upton has said that the purpose of
1832 this bill is ``prevent EPA from imposing regulations, the
1833 massive cap-and-trade tax that Congress rejected last year.''
1834 So let us see whether the greenhouse gas regulations in the
1835 House bill actually are the same or even in the same
1836 ballpark. We will start at the House bill implemented cap-
1837 and-trade to reduce carbon pollution. I want to ask Counsel,
1838 through the prevention of significant deterioration or PSD

1839 permit requirements cap the total quantity of greenhouse gas
1840 emissions nationwide?

1841 Ms. {Brown.} No, but other provisions of the Clean Air
1842 Act do allow--

1843 Mr. {Rush.} Thank you so much. Do the PSD permit
1844 requirements create tradable emissions allowances?

1845 Ms. {Brown.} No, but other provisions of the--

1846 Mr. {Rush.} Thank you so much.

1847 Ms. {Brown.} --Clean Air Act can allow for--

1848 Mr. {Rush.} The existing clean air requirements of
1849 greenhouse gases are not a cap-and-trade program. They don't
1850 cap emissions and they don't create tradable allowances.
1851 That is what cap-and-trade means. The House bill would have
1852 required 80 percent reduction in emissions by 2020. Counsel,
1853 has the EPA required greenhouse gas emissions to be reduced
1854 by 80 percent nationwide by 2050 or set any other national
1855 standard?

1856 Ms. {Brown.} No. No clarity has been given on what
1857 EPA--

1858 Mr. {Rush.} Thank you.

1859 Ms. {Brown.} --plans to do with their--

1860 Mr. {Rush.} Thank you.

1861 Ms. {Brown.} --PSD regulations.

1862 Mr. {Rush.} The PSD--

1863 Mr. {Waxman.} Just a minute. That is just not an
1864 accurate statement. EPA has said what they want to do. What
1865 you are saying is that EPA could do other things but they are
1866 not saying they are going to do it, so that is not an
1867 accurate answer to the question.

1868 Mr. {Whitfield.} Just a minute. The gentleman from--

1869 Mr. {Rush.} I yield to the chairman.

1870 Mr. {Whitfield.} You don't control the time. The
1871 gentleman from Nevada controls the time.

1872 Mr. {Waxman.} You misread what I said. The counsel
1873 should just give factual questions of what the law is, not
1874 speculation of what EPA may do under certain--this is far
1875 beyond answering the question, and I would admonish counsel
1876 that if a question is asked, you shouldn't speculate. You
1877 should answer the question. EPA is proposing to do certain
1878 things now. Period.

1879 Mr. {Whitfield.} We know these regulations are not
1880 completed, so we have no idea what they are going to do. But
1881 Mr. Matheson, you control the time.

1882 Mr. {Matheson.} Yield back to Mr. Rush.

1883 Mr. {Whitfield.} The gentleman is recognized for the
1884 last 48 seconds.

1885 Mr. {Rush.} PSD permit requirements won't affect most
1886 existing facilities and EPA has said since the regulation

1887 will focus on power plants and refineries, so EPA's
1888 regulations aren't cap-and-trade. They cover far fewer
1889 sources and they wouldn't really achieve anywhere near the
1890 same emissions reductions as the House bill. Counsel, do the
1891 Clean Air Act greenhouse gas requirements include a renewable
1892 electricity standard?

1893 Ms. {Brown.} No.

1894 Mr. {Rush.} Do the Clean Air Act requirements include a
1895 national building retrofitted program to increase the energy
1896 efficiency of homes and commercial buildings?

1897 Ms. {Brown.} Different efficiency policies have begun
1898 under these rulemakings but not that specific one.

1899 Mr. {Rush.} Is your answer no?

1900 Ms. {Brown.} On that efficiency policy.

1901 Mr. {Rush.} Is that a no answer?

1902 Ms. {Brown.} I think so. Yes.

1903 Mr. {Rush.} Yes or no?

1904 Ms. {Brown.} Yes, it is no. Yes.

1905 Mr. {Rush.} Do the Clean Air Act requirements invest in
1906 carbon capture and storage technologies?

1907 Ms. {Brown.} Carbon capture and storage--

1908 Mr. {Rush.} Is that a yes or a no?

1909 Ms. {Brown.} --possible--yes. It is a possible per

1910 EPA's BACT--

1911 Mr. {Rush.} Possible--

1912 Ms. {Brown.} --is a possible BACT technology, carbon
1913 capture and sequestration.

1914 Mr. {Rush.} Well, is that currently technology that
1915 exists?

1916 Ms. {Brown.} No, there isn't but EPA's BACT guidance
1917 include CCS as a possible BACT technology.

1918 Mr. {Whitfield.} Time has expired. Does anyone else
1919 seek recognition at this time? The gentleman from Texas, for
1920 what purpose do you seek recognition?

1921 Mr. {Green.} Mr. Chairman, I strike the last word.

1922 Mr. {Whitfield.} The gentleman is recognized for 5
1923 minutes.

1924 Mr. {Green.} First of all, let me respond to my
1925 colleague and the Chairman Emeritus on the Republican side,
1926 Joe Barton. In his line of questioning, I think we are going
1927 to get to the point where we really want to solve the
1928 problem. It may be 6 months from now or a year from now. I
1929 would suggest that the new majority not wait like we did on
1930 the Senate acting on something before we come back and start
1931 doing something because, you know, that is going to be the
1932 problem because I want to be able to deal with it on a
1933 reasonable basis. And I do think Congress needs to be the
1934 leader on this instead of the EPA. With that I would like to

1935 yield my time to Congressman Inslee.

1936 Mr. {Inslee.} Thank you. I want to ask the question of
1937 counsel. At a hearing this week the Republicans called a
1938 scientist named Roger Pielke. And the Republican scientist
1939 testified that black carbon pollution, which is a product of
1940 combustion, is contributing to some of the damage we see in
1941 the Arctic to the Arctic ice sheet, basically accelerating
1942 the melt of the Arctic ice sheet, some of which I just
1943 addressed in the new NASA findings this morning. The
1944 intergovernmental panel on climate change has also found that
1945 black carbon contributes to climate change. And I have a
1946 bill that will help address that problem.

1947 Counsel, I would like to ask you about how this bill
1948 address black carbon pollution. And if we look at page 2,
1949 line 16 to 18, if the EPA sought to regulate black carbon
1950 pollution under the Clean Air Act, in order to address its
1951 contribution to climate change and its subsequent problems in
1952 human health, the language of this bill would actually
1953 prevent the Environmental Protection Agency from acting on
1954 it. Is that correct?

1955 Mr. {Barton.} Would the gentleman yield for a question?

1956 Mr. {Inslee.} Sure, if I can get enough time. Yeah.

1957 Mr. {Barton.} My understanding--and I don't claim to be
1958 quite as knowledgeable on some of the technicalities as the

1959 gentleman from Washington--is that CO2 is a greenhouse gas
1960 and is colorless and invisible. Black carbon is a
1961 particulate matter and as such would be covered by the Clean
1962 Air Act's original criteria of pollutants for particulate
1963 matter. So this bill wouldn't affect black carbon. Black
1964 carbon may be a new term that I am not familiar with. So
1965 could you enlighten the committee on when you say black
1966 carbon, exactly what are you referring to?

1967 Mr. {Inslee.} Carbon that is black in the physical
1968 chemistry of which I am associated with, and I never
1969 questioned the gentleman from Texas' understanding. But let
1970 us go through this with the counsel and then maybe I can
1971 answer--

1972 Mr. {Barton.} But you are not referring to CO2, then?

1973 Mr. {Inslee.} No, that is correct. I am referring to
1974 black carbon. It is a particulate matter. The gentleman is
1975 correct in that regard. But here is the point I want to make
1976 and I want to make sure I understand this. My reading of the
1977 bill would say that under the bill, if the EPA sought to
1978 regulate black carbon under the Clean Air Act, in order to
1979 address its contribution to climate change, the language of
1980 this bill would prevent the EPA from acting upon it, would it
1981 not? And I am referring specifically to page 2, line 16
1982 through 18.

1983 Ms. {Brown.} This legislation would prohibit regulation
1984 of black carbon only to the extent that the regulation was
1985 for the purpose of addressing climate change. EPA would be
1986 able to continue to regulate it as a particulate matter.

1987 Mr. {Inslee.} So I want to make sure I understand this.
1988 I asked you a very specific question. If the EPA sought to
1989 regulate black carbon under the Clean Air Act in order to
1990 address its contribution to climate change, this language
1991 would prevent the EPA from regulating it based on that
1992 reason, would it not?

1993 Ms. {Brown.} Yes, but it--

1994 Mr. {Inslee.} So the answer is yes, which is the
1995 correct answer, and it is an important correct answer for
1996 this reason. I want to point out this irony that I think we
1997 all ought to be aware of. Two days ago the Republican party
1998 brought its scientist that it asked to come testify about
1999 this subject to this committee. That scientist told us that
2000 black carbon, this is contributing to climate change and the
2001 destruction on a massive scale of the Arctic, which is a
2002 regulator of our climactic system. It is sort of the air
2003 conditioning system for the planet is melting because of
2004 black carbon, in part. This bill to me is a little bit
2005 ironic that the Republicans bring a witness. They tell us
2006 there is a problem that we have, this scientist, because of

2007 black carbon, and now you prohibit us from regulating it on
2008 this basis. I think this is bad--

2009 Mr. {Whitfield.} The gentleman's time is expired.

2010 Mr. {Terry.} Move to strike the last word.

2011 Mr. {Whitfield.} The gentleman is recognized for 5
2012 minutes.

2013 Mr. {Terry.} Thank you. Counsel, I am not sure that
2014 your yes it may have been accurate but not total answer. The
2015 EPA, as a particulate matter, has every right to regulate
2016 black carbon today, correct?

2017 Ms. {Brown.} Yes, that is correct. And EPA--

2018 Mr. {Terry.} Without any further congressional action,
2019 correct?

2020 Ms. {Brown.} Yes, correct.

2021 Mr. {Terry.} All right.

2022 Ms. {Brown.} And EPA's position is that black carbon is
2023 not a well-mixed, long-lived greenhouse gas, but rather an
2024 aerosol particulate.

2025 Mr. {Terry.} And they, under the Clean Air Act, have a
2026 right to regulate it?

2027 Ms. {Brown.} And in fact it is already regulated on
2028 rules like the heavy duty diesel truck rule.

2029 Mr. {Terry.} Very good. I have one more question and
2030 then Jay.

2031 Mr. {Whitfield.} Yeah. Thanks.

2032 Mr. {Terry.} Getting back to Mr. Doyle's line of
2033 questioning, we talked about the EPA's discretion in where
2034 they are setting the amount of carbon tons per year and that
2035 they are setting those and that the EPA--well, first of all,
2036 the first question is the EPA is setting those--I don't know
2037 what the right term would be--but setting the amount of CO2
2038 that would then trigger EPA's regulations, correct?

2039 Ms. {Brown.} Correct.

2040 Mr. {Terry.} And Congress has not set the carbon
2041 greenhouse gas threshold that would trigger either permitting
2042 or regulating?

2043 Ms. {Brown.} Correct.

2044 Mr. {Terry.} And the Clean Air Act has a citizen right
2045 of action, correct?

2046 Ms. {Brown.} Yes.

2047 Mr. {Terry.} Isn't it frequently used by environmental
2048 groups when they disagree with the EPA's decision on not to
2049 enforce the Clean Air Act on a particular industry?

2050 Ms. {Brown.} Yes.

2051 Mr. {Terry.} Or when the EPA uses their own thresholds,
2052 which would trigger permitting or regulating?

2053 Ms. {Brown.} Yes.

2054 Mr. {Terry.} So even though Lisa Jackson may come here

2055 and say we have no intention to regulate feed yards of cattle
2056 or hogs, the reality is is that the Environmental Defense
2057 Fund or Sierra Club or just an individual in collaboration
2058 with can bring a lawsuit, which would force the EPA to use a
2059 lower standard or enforce on a particular industry, correct?

2060 Ms. {Brown.} Yes, that is correct.

2061 Mr. {Terry.} So we have no certainty, as we sit here
2062 today, that feed lots in Nebraska aren't going to be
2063 regulated by the EPA tomorrow, despite what the director of
2064 the EPA said in front of this committee?

2065 Ms. {Brown.} There are provisions which allow for
2066 lawsuits to be brought.

2067 Mr. {Terry.} All right. Mr. Inslee, I will yield to
2068 you.

2069 Mr. {Inslee.} Yeah, I appreciate it because I think
2070 this is an important point and I think it is worthy of our
2071 discussion. As I understand what counsel has had us to
2072 understand--and I am going to use some hypothetical numbers
2073 here for the purposes of this question. If the EPA
2074 determined that 1,000 parts per million is endangering human
2075 health let us say because it causes respiratory distress, if
2076 this passes, the EPA would still be allowed to regulate black
2077 carbon if it made that finding, correct?

2078 {Counsel.} But they already regulate black carbon.

2079 Mr. {Inslee.} As a particulate. Okay. Now, here is
2080 the problem. If the EPA concludes that let us say a level of
2081 500, half the parts per million, they may not be directly
2082 injurious to human health from a respiratory standpoint, but
2083 if they conclude that 500 parts per million endangers human
2084 health because it is melting the Arctic, which as the
2085 regulators of the planet's climate will end up in us
2086 suffering health effects--

2087 Mr. {Terry.} Would the gentleman yield? Or would--

2088 Mr. {Inslee.} Yeah, just let me finish--

2089 Mr. {Terry.} And I do want just--

2090 Mr. {Inslee.} Just let me finish the question--

2091 Mr. {Terry.} --a few questions and then--

2092 Mr. {Inslee.} --and let us get an answer and then I
2093 will--but the point is--

2094 Mr. {Terry.} --get to the point--

2095 Mr. {Whitfield.} Mr. Terry controls the time. Are you
2096 yielding to who?

2097 Mr. {Terry.} I have to reclaim my time just so I can
2098 wrap up. By the way, black carbon U.S. emissions total 6
2099 percent of the world's particulates of black carbon. Mr.
2100 Ross, very quickly, I yield to you. Cory Gardner, whatever
2101 the--

2102 Mr. {Gardner.} Thank you, gentleman from Nebraska. Can

2103 a particulate be a gas?

2104 Mr. {Whitfield.} Pardon me?

2105 Mr. {Gardner.} In your opinion, can a particulate be a
2106 gas?

2107 {Counsel.} No.

2108 Mr. {Gardner.} Thank you.

2109 {Counsel.} But I am a lawyer.

2110 Mr. {Terry.} The gentleman yields back his time.

2111 Mr. {Inslee.} Mr. Chair? Can I make--

2112 Mr. {Whitfield.} For what purpose--

2113 Mr. {Inslee.} --I need unanimous consent just to see--

2114 Mr. {Whitfield.} For what purpose does the gentleman
2115 seek recognition?

2116 Mr. {Inslee.} I would ask unanimous consent to have 60
2117 seconds to finish my question and get an answer if I can.

2118 Mr. {Whitfield.} Okay. I am going to ask unanimous
2119 consent for 60 seconds to complete his question.

2120 Mr. {Inslee.} Thank you. What I want to make clear is
2121 that if this bill does become law and the EPA decides that
2122 500 parts per million will have a destructive action on the
2123 Arctic and thenceforth cause health impacts in America
2124 associated with climate change, this bill would prevent the
2125 EPA from acting on that basis, would it not?

2126 Ms. {Brown.} Yes, but EPA has concluded that there is

2127 no direct impact on human health.

2128 Mr. {Inslee.} I understand. But again, I just want to
2129 make sure that if the EPA concludes there is indirect human
2130 health effects due to climate change precipitated and
2131 aggravated by black carbon, which is the second worst thing
2132 we have got--and by the way this is the fastest thing we can
2133 do to reduce this problem is regulate black carbon--then this
2134 bill would prevent the EPA from doing that, wouldn't it, on
2135 that basis?

2136 Ms. {Brown.} To address climate change but they still
2137 have the authority to regulate it as a particulate.

2138 Mr. {Inslee.} I appreciate your answer. Thank you.

2139 Mr. {Whitfield.} The gentleman's time has expired.
2140 Does anyone else seek recognition? Does anyone have an
2141 amendment that they would like to offer to the bill?

2142 If there are no amendments, the question would now occur
2143 on favorably reporting the bill. All those in favor say aye?
2144 Those opposed? In the opinion of the chair, the ayes have
2145 it. The ayes have it and the bill is favorably reported.
2146 Without objection, staff is authorized to make technical and
2147 conforming changes to the bill approved by the subcommittee
2148 today. Hearing no objections, so ordered.

2149 Is there any further business to come before the
2150 subcommittee? If not, the chair thanks all the members and

2151 the staff very much for their participation. The
2152 subcommittee stands adjourned subject to the call of the
2153 chair.

2154 [Whereupon, at 11:09 a.m., the Subcommittee was
2155 adjourned.]