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MARKUP OF H.R. 2577, THE SAFE DATA ACT

WEDNESDAY, JULY 20, 2011

House of Representatives,

Subcommittee on Commerce,

Manufacturing and Trade,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 11:30 a.m., in Room 2123, Rayburn House Office Building, Hon. Mary Bono Mack [chairwoman of the subcommittee] presiding.

Present: Representatives Bono Mack, Blackburn, Stearns, Bass, Harper, Lance, Cassidy, Guthrie, Olson, McKinley, Pompeo, Kinzinger, Barton, Upton (ex officio), Butterfield, Dingell, Towns, Rush, Schakowsky, Ross, and Waxman (ex officio).

Staff Present: Gary Andres, Staff Director; Jim Barnette, General Counsel; Michael Beckerman, Deputy Staff Director; Mike

Bloomquist, Deputy General Counsel; Allison Busbee, Legislative Clerk; Paul Cancienne, Policy Coordinator, DMT; Peter Kielty, Senior Legislative Analyst; Brian McCullough, Senior Professional Staff Member, CMT; Jeff Mortier, Professional Staff Member; Gib Mullan, Chief Counsel, CMT; Katie Novaria, Legislative Clerk; Shannon Weinberg, Counsel, CMT; Kristin Amerling, Democratic Chief Counsel and Oversight Staff Director; Michelle Ash, Democratic Chief Counsel, Commerce, Manufacturing, and Trade; Phil Barnett, Democratic Staff Director; Jen Berenholz, Democratic Chief Clerk; Karen Lightfoot, Democratic Communications Director and Senior Policy Advisor; Felipe Mendoza, Democratic Counsel; and Will Wallace, Democratic Policy Analyst.

Mrs. Bono Mack. Good morning. The subcommittee will now come to order.

American consumers today find themselves under constant assault. Stealing personally identifiable information such as Social Security numbers and credit card numbers can be a low-risk, high-reward criminal enterprise. It is costing our economy billions of dollars a year, and it is leaving lives in shambles. Today I am calling on Congress to take immediate action.

The chair now recognizes herself for an opening statement.

Every year for millions of Americans identity theft has become the bogeyman in the closet. It is a crime that lurks in the shadows and strikes without warning, often leaving its victims trapped in a real-life nightmare where they can spend years trying to recover stolen assets, restore their credit and restore a normal life, if they are lucky.

According to the Federal Trade Commission, nearly 10 million Americans fall victim to identity theft each year. But a recent report using information from the ID Theft Center and other sources paints an even darker picture of this insidious crime, revealing that 1 in 10 Americans have had their identity stolen at some point in their life.

The toll has been predictable and devastating. The cost of identity theft to U.S. businesses is estimated to be more than $50 billion a year. Nearly 2 million American households a year have their bank accounts, credit cards or debit cards compromised. The average amount stolen from each American consumer amounts to nearly $5,000,

and the out-of-pocket costs for victims to resolve identity theft damage ranges from $850 to nearly $1,500.

Just as troubling, 70 percent of victims have difficulty removing negative information from their credit reports because of identity theft. It takes an average of 330 hours to repair the damage done by identity theft, and about 15 percent of victims don't learn of the identity theft for up to 4 years.

It is time for Congress to take decisive action. Sophisticated and carefully orchestrated cyberattacks designed to obtain personal information about consumers, especially when it comes to their credit cards, have become one of the fastest-growing criminal enterprises here in the U.S. and across the world. The boldness of these attacks and the threat they present to unsuspecting Americans was underscored recently by massive data breaches at Sony, Epsilon and Citigroup.

This constant assault on American consumers only reinforces my long-held belief that much more needs to be done to protect sensitive personal information. The Secure and Fortify Electronic Data Act, H.R. 2577, is designed to accomplish this goal by establishing uniform national standards for data security and data breach notification.

The SAFE Data Act is crafted around a guiding principle: Consumers should be promptly informed if their personal information has been jeopardized. With cyberattacks clearly on the rise, something needs to be done immediately. In April of this year alone, some 30 data breaches at hospitals, insurance companies, universities, banks, airlines and governmental agencies impacted nearly 100 million

records, and that is in addition to the massive breaches at Sony, Epsilon and Citigroup.

To help combat this growing problem, the SAFE Data Act requires companies and other entities that hold personal information to establish and maintain appropriate security policies to prevent unauthorized acquisition of that data. It requires notification of consumers within 48 hours after identifying that specific information was breached, unless it was an innocent or inadvertent breach unlikely to result in harm.

The SAFE Data Act also gives the FTC authority over nonprofits for purposes of this act only. These organizations often possess a tremendous amount of consumer information, and they have been subjected to numerous breaches in the past.

In addition, this legislation requires all covered businesses to establish a data minimization plan providing for the elimination of consumers' personal data that is no longer necessary for business purposes or for other legal obligations.

Finally, the SAFE Data Act preempts similar State laws to create uniform national standards for data security and data breach notification. We learned during our recent hearings that consumer notification is often hampered by the fact that companies must first determine their obligations under 47 different State regimes.

Since our draft discussion was first released more than a month ago, we have had countless meetings, reaching out to stakeholders and my colleagues on the other side of the aisle. We have made a good faith

effort to address their concerns.

Most notably, at the urging of the Democrats, we have agreed to make the concept of assessing the nature and scope of a breach more precise so it cannot become a pretext for delaying notification. We have agreed to strike the requirement to reasonably restore the integrity of the data system. We have agreed that entities covered by Gramm-Leach-Bliley but fall under the FTC jurisdiction are subject to the requirements of the SAFE Data Act. And importantly, we have agreed on a backstop of 45 days for breach notification. In past legislation, the drop-dead date for notification was 60 days.

With nearly 1.5 billion credit cards now in use in the U.S. and identity theft attacking as many as 1 in 10 Americans, the SAFE Data Act provides important new safeguards for consumers, and I strongly urge its adoption.

[The information follows:]

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Mrs. Bono Mack. With that, I would like to recognize the gentleman from North Carolina Mr. Butterfield, the ranking member of the subcommittee, for 5 minutes for his opening statement.

Mr. Butterfield. I thank the chairman.

I am looking forward to today's markup on 2577, which is the Secure and Fortify Electronic Data Act. Just this year data breaches have resulted in havoc on tens of millions of Americans whose personal information has been compromised. And with over 2,500 data breaches having occurred since 2005, it is clear the serious work of protecting consumers' data is something that has taken a back seat in this Congress.

The patchwork of State breach notification laws are cumbersome for businesses who are required to notify impacted individuals following a breach. Instead, a single Federal standard will better protect Americans and provide clear guidance to businesses in the event of a breach.

I was hopeful that this bill would provide much-needed protections to Americans, but, unfortunately, 2577 stops short of delivering on that promise. In the 111th Congress, the House passed H.R. 2221. That bill in the 111th Congress would have required an entity holding personal data to implement reasonable and appropriate security policies to safeguard that data and require notification in the event of a breach.

H.R. 2221 provided strong consumer protections that are absent from this bill, including special requirements for information

brokers, including requiring brokers to submit security policies to the FTC, and requiring an annual audit of brokers' security practices, among other things. Striking those key provisions from the bill significantly weakened the consumer protections it is supposed to provide.

Madam Chairman, I take significant exception to the definition of "personal information" that is defined as an individual's name, address or phone number in combination with a Social Security number or other government-issued number. This means that if an entity with which I do business falls victim to a breach, I am only notified if my name, address or phone number is captured along with my Social Security number or driver's license number. If only my Social Security number was captured during the breach, the entity having experienced the breach would not, would not, have to notify me.

I don't need to tell any of my colleagues the ease with which skilled hackers can get a Social Security number and figure out to whom it belongs. The definition of "personal information" is far too limited and must be expanded. It should be expanded to better protect the American people.

I am also disappointed that publicly available information is specifically excluded from the definition of "personal information." Data aggregators assemble publicly available personal information from disparate sources and compile that information into very useful and valuable files used by businesses for a number of purposes, including behavioral advertising. The bill we are considering today totally

absolves aggregators from having to protect those valuable files they assemble, and does not require notification in the event of a breach. Once public information is married with other information into something of value and sold for profit, it absolutely should be protected and subject to the same regulations as other personal information.

I had hoped that H.R. 2221, the bill we passed in the last Congress, would have been the foundation for the bill we are considering today, but, unfortunately, 2577 does little to protect consumers' sensitive personal data. I hope your staff, Madam Chairman, would work with the Democratic staff between now and the full committee markup to expand the definition of "personal information," require the safeguarding of publicly available personal information, and require notification if a breach should occur.

I thank, you Madam Chairman. I yield back.

Mrs. Bono Mack. I thank the gentleman.

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Mrs. Bono Mack. Pursuant to the committee rules, all Members' opening statements will be made part of the record.

[The information follows:]

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

Mrs. Bono Mack. Are there further opening statements?

Mr. Waxman. I would like to give an opening statement.

Mrs. Bono Mack. The chair would now recognize Mr. Upton for 5 minutes for his opening statement.

The Chairman. Thank you, Chairman Bono Mack. I commend you on your leadership to make this important consumer protection issue one of your top priorities. Your commitment to the issue in this Congress began with hearings into the problems of data security, highlighted by several high-profile data breaches, and progressed to your legislation, H.R. 2577, the SAFE Data Act, which we will consider today. This deliberative process builds on the committee's longstanding interest and work to create national standards for data security and breach notification.

This legislation, 2577, is a measured response to an identified problem. Data breaches of consumers' personal information, whether by accident or by deliberate criminal activity, can lead to identity theft, fraud and other unlawful conduct. Consumers who have been victims of identify theft can recount the time and effort often required to stop the financial damage and reestablish their identity.

It costs more than just the losses to the victims and the companies that lose literally billions of dollars every year. We all lose some freedom in order to protect ourselves from such criminal activity. H.R. 2577 will help mitigate the problem by requiring companies that collect and maintain our information to provide better protection of the data and notification to consumers in the event of a breach so they

can protect themselves from risks that come when information is acquired by unauthorized folks with criminal intentions. As one stakeholder commented, it only requires a criminal to be right once, but a company has to be right 100 percent of the time to prevent a criminal attack.

This is good legislation that will protect consumers and provide a uniform Federal standard. It is time to pass this legislation for consumers, and I urge all my colleagues to support it.

I yield back.

Mrs. Bono Mack. I thank the gentleman.

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Mrs. Bono Mack. The chair now recognizes Mr. Waxman for 5 minutes for his opening statement.

Mr. Waxman. Thank you very much, Madam Chairman.

I am disappointed that the bill before us today is not the result of a bipartisan effort. At our hearing in June, I urged that we work together on a bipartisan basis to produce a bill that all members of the committee and all Members of the House could support. That is exactly what we did last Congress. We worked together to write a bipartisan data security bill that every member of the committee supported and that passed the House on a voice vote. But today we have taken that bipartisan compromise and filled it with loopholes that sacrifice data security and privacy. Because of these significant changes, I cannot support the current version.

Perhaps the biggest loophole is the bill's definition of "personal information." Under the current version of the bill, most personal information stored on line or in company databases is not protected. There is no protection for personal emails; no protection for personal photographs and videos stored on line; no protection for records of book, video and other consumer purchases; no protection for records of purchases of over-the-counter drugs, including pregnancy tests; no protection for payroll records. There is not even protection for information recorded in smart phones about the location of children. In fact, even if your bank or financial account is hacked and your account number is disclosed, there is no protection, unless your personal password and your name, address or phone number is also

taken. A Social Security number or a credit card number is not personal information under this bill unless it is combined with other information.

At the same time that the definition of "personal information" in last year's bill has been narrowed beyond recognition, the bill retains the provisions that preempt State laws. That is a dangerous combination. I supported preemption last Congress in exchange for a strong Federal law. This bill eliminates scores of State consumer protections without putting equivalent or stronger Federal protections in their place.

The narrow definition of "personal information" could also undermine the Federal Trade Commission's current efforts to curb data security breaches. Since 2001, the FTC has brought dozens of enforcement cases against businesses that failed to protect consumers' personal information. Only a handful of those cases would be able to be brought based on the definition of "personal information" in this bill. The cases that the FTC brought to protect other information, including payroll information, employment histories, health information, mortgage information, email addresses, income histories, book and music purchases and tax returns, could be blocked under this legislation. The net result is that a bill that is supposed to be enhancing data security and consumer privacy would actually seriously undermine it.

There are other holes in this bill. This bill deletes key provisions from the bipartisan effort on information brokers, which

are companies that aggregate personal data about individuals and make a profit selling that personal information. In addition, data aggregators and other companies are exempted from the requirements to safeguard personal information any time the data can be obtained from a State or local government. Moreover, this new version also creates a new gap in coverage that was not contained in the June draft proposal.

This bill contains a section that is entitled "Conforming Amendments," but is actually a giveaway to the cable industry. The conforming amendment exempts cable operators from complying with current Cable Act privacy requirements to protect records of what their consumers watch.

Madam Chair, this bill is not balanced. It preempts strong State laws and replaces them with a weak Federal one. It threatens the FTC's existing authorities. It is filled with loopholes. I hope you will rethink your approach and embrace our offer to work together to pass strong legislation that is a step forward, not backward, and will have bipartisan support.

We have tried to work on a bipartisan basis. I have talked to you about it. We don't get called up, we don't get consulted, and then we are presented a bill like this. I just must express my very deep disappointment. This is not the way for Congress to enact legislation.

And it is not the way for Congress to act, have two subcommittees meeting at the same time, one on a markup and one in a hearing. We have complained about this in the past to the chairman of the full committee, and we are told there is no other time. I think that is

an unfair way for us to proceed, and I want to register my objection to it.

[The information follows:]

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Mrs. Bono Mack. The gentleman's time has expired.

The chair now recognizes Mr. Barton for 3 minutes for his opening statement.

Mr. Barton. Thank you, Madam Chairwoman. I won't take 3 minutes. I am going to submit my formal statement for the record.

[The information follows:]

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Mr. Barton. I do want to comment on several things, though. First of all, you have had at least two general hearings on this issue in this Congress. You have had a legislative hearing on the bill before us, and you had one other hearing; plus I think the oversight subcommittee had a hearing. I think it is time to legislate in this area. I think the draft bill that we are going to mark up today is a good step. It is not everything that I would like in a bill, but it certainly is a step in the right direction.

As to what former Chairman Waxman just said about the schedule, with six subcommittees it is going to be a few times that you have simultaneous things going on. It happened when I was chairman, it happened when Mr. Waxman was chairman, when Mr. Dingell was chairman. Sometimes it is just unfortunate.

Mr. Upton has changed the rules of the committee this Congress so that votes can be rolled. I personally don't like that, but on occasions such as today, it is acceptable to do, if the majority and minority wishes.

Mr. Waxman. Will the gentleman yield?

Mr. Barton. Sure.

Mr. Waxman. You and I always had an accommodation with each other because you objected when you were the ranking minority member of markups in one subcommittee and hearings in another at the same time. So we never did that. It was an appropriate concern that you raised, and I think it is an appropriate one that we have raised.

I know we have a lot of subcommittees, and we have a lot of hearings

at the same time. Yesterday we didn't do anything. We could have had this markup yesterday. We have other days as well. But I just think that to do them simultaneously is a disadvantage.

And votes cannot be rolled unless we all agree to it. We want to agree to it to accommodate each other, but not to allow scheduling conflicts.

Mr. Barton. If I could reclaim my time, the hearing that is going on upstairs, as you know, Mr. Waxman, is an oversight hearing. It is not a legislative hearing. We both know that hearing started over an hour ago, and most Members go, make an opening statement, listen to testimony, ask a question when it is their turn, and then leave.

This is a legislative hearing, a legislative markup. It started later. It is subcommittee. It is not full committee. Members can go back and forth, and, if the minority agrees, votes can be rolled. If you choose not to agree, then votes will not be rolled.

But I will agree it would be better not to have it simultaneously, but there are occasions when it can't be helped. This is one of those times. This is a subcommittee markup which will hopefully lead to a full committee markup next week or the week after, and given all the things that happened, I think it is appropriate.

I yield back.

Mrs. Bono Mack. The chair now recognizes Mrs. Blackburn for 3 minutes.

Mrs. Blackburn. Thank you, Madam Chairman.

Before I begin my opening, and I will submit the full statement,

I would just like to remind the former chairman of the full committee that during the health care debate, we saw a PPACA bill go to the floor, and the amendments that had been placed in the very brief markup we had in full committee had been stripped from that bill, specifically rural health care. So I would just remind you that there were some things that did not please us during that last Congress. And I do want to applaud the chairman for having hearings --

Mr. Waxman. Will the gentlelady yield to me?

Mrs. Blackburn. No, sir, I have 3 minutes.

The legislation is laudable. We need to attack identity theft. We need clearer enforcement rules. We need to provide certainty for businesses, some of which have been the victim of very sophisticated on-line attacks in recent months.

I think no one challenges the good intentions of the bill. I think there are some sections that as we move to full committee that we need to do some work on. Preemption is one, rulemaking authority is one, enforcement is one, and the trigger in section 3 is another.

I want to thank the chairman for allowing the amendment that will address the rulemaking authority that Mr. Olson and I will bring forward a little bit later. Preemption language in section 6 has too many carve-outs and not enough teeth to pass an implied preemption analysis. We can prevent this legislation from being tied up in the courts if we address it. The current language could expose a company to a host of lawsuits. Even if a company is 100 percent compliant with the new statute, a trial lawyer could begin to bring some suits forward, and

I think our chairman addressed that appropriately.

So looking at these carve-outs in subsection B(2) and all of subsection C, page 31, are going to be important. The rulemaking authority I mentioned, and we will get to that later in our markup. This is a good, solid starting point, and I am looking forward to continuing to work on the bill to improve it as we move forward, and I yield back.

Mrs. Bono Mack. I thank the gentlelady.

[The information follows:]

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Mrs. Bono Mack. I recognize Mr. Bass for 3 minutes.

Mr. Bass. Thank you, Madam Chairman. I appreciate this hearing. I think it is a very important issue.

The issue of data security is not new to this committee. In fact, I recall supporting a similar bill at least on the subject back in 2005. Since then, the number of data breaches has multiplied Lord knows how many times, and it has become a significant source of insecurity on the part of both consumers as well as entities that conduct business using the Internet and so forth. It hurts large companies, it hurts small companies, it hurts countless numbers of individuals.

Identity theft and data security breaches and its impact on our society has become a major issue that many of us deal with in our congressional offices, and I think it is high time that this committee move forward with a substantive plan which we have before us today that balances the need to provide protection and predictability with the need to make sure that we don't create a whole new set of problems through the passage of the legislation.

I look forward to working with you and my colleagues on both sides of the aisle as we move forward with this bill and send it to the full committee.

I yield back.

Mrs. Bono Mack. I thank the gentleman.

[The information follows:]

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Mrs. Bono Mack. The chair recognizes Mr. Harper for 3 minutes for his opening statement.

Mr. Harper. Thank you, Madam Chairman, for your leadership and continuing Congress' efforts that have now spanned several Congresses and changing majorities to enact a comprehensive Federal response to data breaches.

Consumer information traveling over the Web and being stored by companies has become a daily routine, if not a necessity, in order to participate in a world economy. Unfortunately, there are individuals, groups and some foreign actors that would like to exploit this information for criminal purposes. In today's age of technology advancements and near real time, it is impossible to prevent every attack, but consumers must be confident that the companies that they provide their information to are doing everything possible to safeguard their information, and that he or she will be notified in a timely fashion that a data breach has occurred and what information was compromised.

The legislation we have before us today is an excellent first step to ensuring that this goal is met. While I am concerned with certain aspects of the SAFE Data Act, I look forward to working with the Chairman to ensure that these concerns are addressed.

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

[The information follows:]

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Mrs. Bono Mack. The chair now recognizes Mr. Lance for 3 minutes.

Mr. Lance. I have no statement.

Mrs. Bono Mack. Mr. Lance waives.

We recognize Mr. Olson for 3 minutes.

Mr. Olson. Thank you, Madam Chairman, and thank you for holding this markup today.

As I have said in our past hearings on data security, I believe there is strong bipartisan agreement that we need to move forward with Federal data security legislation. We need a uniform standard instead of a confusing patchwork of laws.

The chairwoman has worked diligently and tirelessly to advance a comprehensive data security bill, and she should be commended, but I think it is important that the bill we report out of this subcommittee and ultimately to the House floor is a balanced bill that protects consumers without putting unnecessary burdens on companies or hindering the important use of data.

Today I am going to offer an amendment with my colleague from Tennessee Mrs. Blackburn that will strike some of the excessive APA rulemaking authority granted to the FTC in section 5 of this bill. As currently drafted, the bill appropriately defines the definition of "personal information," but the bill also allows the FTC to go and modify the definition of "personal information."

After receiving testimony directly from FTC Commissioner Ramirez, we know, we know that the Commission is not going to be shy about opening up that definition and expanding it beyond Congress'

intentions. Such a modification would completely reform the scope of the bill and the obligation under it by expanding the set of covered data in ways the FTC later deems appropriate. We can't take that risk. We can't abdicate our lawmaking duties to an unelected body.

I have shared these concerns with the chairwoman, who has been very gracious in understanding what I am trying to achieve today with the amendment that I will offer. I thank the chairwoman for her leadership in bringing us forward with a comprehensive data security bill, and I look forward to continuing to work with her and my colleagues to improve the bill as we move forward.

I yield back my time.

[The information follows:]

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Mrs. Bono Mack. Are there further Members wishing to make opening statements?

Mr. Pompeo and Mr. Kinzinger both waive.

Mrs. Blackburn. Madam Chairwoman, I have a U.S. Chamber of Commerce letter pertaining to the bill that I would like permission to submit for the record.

Mrs. Bono Mack. Without objection.

[The information follows:]

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Mrs. Bono Mack. The chair calls up H.R. 2577 and asks the clerk to report.

The Clerk. H.R. 2577, to protect consumers by requiring reasonable security policies and procedures to protect data containing personal information, and to provide for nationwide notice in the event of a security breach.

Mrs. Bono Mack. Without objection, the first reading of the bill --

Mr. Waxman. I object.

Mrs. Bono Mack. The Clerk will read.

The Clerk. A bill to protect consumers by requiring reasonable security policies and procedures to protect data containing personal information, and to provide for nationwide notice in the event of a security breach.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Secure and Fortify Electronic Data Act” or the “SAFE Data Act”.

SEC. 2. REQUIREMENTS FOR INFORMATION SECURITY.

(a) GENERAL SECURITY POLICIES AND PROCEDURES.—.

(1) REGULATIONS.—Not later than 1 year after the date of enactment of this Act, the Commission shall promulgate regulations under section 553 of title 5, United States Code, to require any person engaged in interstate commerce that owns or possesses data containing personal

information related to that commercial activity, including an information broker and any third party that has contracted with such person to maintain or process such data on behalf of such person, to establish and implement reasonable policies and procedures regarding information security practices for the treatment and protection of personal information, taking into consideration—.

(A) the size of, and the nature, scope, and complexity of the activities engaged in by, such person;.

(B) the current state of the art in administrative, technical, and physical safeguards for protecting such information; and.

(C) the cost of implementing such safeguards.

(2) DATA SECURITY REQUIREMENTS.—Such regulations shall, taking into consideration the quantity, type, nature, and sensitivity of the personal information, require the policies and procedures to include the following:

(A) A security policy with respect to the collection, use, sale, other dissemination, and maintenance of such personal information.

(B) The identification of an officer or other individual as the point of contact with responsibility for the management of information security.

(C) A process for identifying and assessing any reasonably foreseeable vulnerabilities in each system maintained by such person that contains such data, which shall include regular monitoring to detect a breach of security of each such system.

(D) A process for taking preventive and corrective action to

mitigate against any vulnerabilities identified in the process required by subparagraph (C), which may include implementing any changes to security practices and to the architecture and installation of network or operating software.

(E) A process for disposing of data in electronic form containing personal information by shredding, permanently erasing, or otherwise modifying the personal information contained in such data to make such personal information permanently unreadable or indecipherable.

(F) A standard method or methods for the destruction of paper documents and other nonelectronic data containing personal information.

(b) DATA MINIMIZATION REQUIREMENTS.—A person subject to the requirements under subsection (a) shall establish a plan and procedures for minimizing the amount of personal information maintained by such person. Such plan and procedures shall provide for the retention of such personal information only as reasonably needed for the business purposes of such person or as necessary to comply with any legal obligation.

(c) EXEMPTION FOR CERTAIN SERVICE PROVIDERS.—Nothing in this section shall apply to a service provider for any electronic communication by a third party that is transmitted, routed, or stored in intermediate or transient storage by such service provider.

SEC. 3. NOTIFICATION AND OTHER REQUIREMENTS IN THE EVENT OF A BREACH OF SECURITY.

(a) REQUIREMENTS IN THE EVENT OF A BREACH OF SECURITY.—Any person

engaged in interstate commerce that owns or possesses data in electronic form containing personal information related to that commercial activity, following the discovery of a breach of security of any system maintained by such person that contains such data, shall, without unreasonable delay—.

(1) notify appropriate Federal law enforcement officials of the breach of security, unless such person determines that the breach involved no unlawful activity;.

(2) take such steps necessary to prevent further breach or unauthorized disclosures;.

(3) identify affected individuals whose personal information may have been acquired or accessed; and.

(4) not later than 48 hours after identifying affected individuals under paragraph (3), unless the person makes a reasonable determination that the breach of security presents no reasonable risk of identity theft, fraud, or other unlawful conduct affecting such individuals, notify—.

(A) the Commission; and.

(B) as promptly as possible, subject to subsection (c), each individual who is a citizen or resident of the United States whose personal information is known to have been acquired or accessed as a result of such a breach of security.

(b) SPECIAL NOTIFICATION REQUIREMENTS.—.

(1) THIRD PARTY AGENTS.—In the event of a breach of security of any third party entity that has contracted with a person to maintain

or process data in electronic form containing personal information on behalf of such person, such third party entity shall—.

(A) take the actions required under paragraphs (1) and (2) of subsection (a); and.

(B) notify as promptly as possible such person of the breach of security.

Upon receiving notification from the third party entity under subparagraph (B), such person shall take the actions required under paragraphs (3) and (4) of subsection (a).

(2) SERVICE PROVIDERS.—If a service provider becomes aware of a breach of security of data in electronic form containing personal information that is owned --

The Chairman. Will the clerk suspend? If I can be recognized for a minute?

Mrs. Bono Mack. The gentleman is recognized.

The Chairman. I know that this bill is being read because the Oversight Subcommittee is having a hearing, and I don't know of any other committee that has had a markup scheduled before a subcommittee that has delayed subcommittee hearings. It is one thing if there were two subcommittee marks. But I have asked Cliff Stearns to adjourn his subcommittee, to recess it until this markup is done, and I just put Members on notice that we will start markups in subcommittees a little earlier, 8:00 or 8:30.

But I have asked Mr. Stern's subcommittee to recess until this one is over so all Members would be here, and I ask unanimous consent

that the bill be considered as read.

Mr. Waxman. Reserving the right to object, I would like to be recognized.

Mrs. Bono Mack. The gentleman is recognized.

Mr. Waxman. I thank the gentleman for calling on the other subcommittee to recess. We are sending a signal to you that the practice that Mr. Dingell and Mr. Barton and I engaged in where we did not have simultaneous committees meeting at the same time when there is a markup --

The Chairman. If the gentleman will yield --

Mr. Waxman. No, not yet. I am recognized on my reservation. It is one, I think, we should adhere to. If we have an agreement to do otherwise, that is one thing. But when we don't have an agreement, I don't think that Members ought to be treated this way, and certainly those of us in the minority. We are in the minority, and we have only the rules to protect us so that we can offer amendments.

This bill is not very satisfactory to us. I am sorry we weren't brought in on the negotiations and development of this bill. We have amendments to highlight the deficiencies in it. That is what we can do in the minority and hope that the majority will pay attention to us. We do want to be paid attention to, because we represent the same number of constituents you do, each of you in the majority.

So I am going to still insist that this bill be read -- well, until I know for sure that the other subcommittee has recessed.

The Chairman. It has recessed. I talked to Cliff Stearns, and

I asked him to recess.

Mr. Waxman. Under those circumstances, I will not object to the bill being considered as read, and I hope we don't have this kind of situation in the future. I withdraw my reservation.

Mr. Bartlett. Reserving the right to object, I kind of like the bill being read. It forces me to listen to it. I will not object if the chairman doesn't want me to, but the young man reading it actually reads in a way that I can understand, and it is helpful.

Mrs. Bono Mack. All right. So moving along --

Mr. Barton. I am going to remove my objection to the bill being considered as read.

Mrs. Bono Mack. I appreciate that. I would just ask -- actually, so let us go ahead. Without objection, the bill is considered as read.

[The information follows:]

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

Mrs. Bono Mack. Are there amendments to the bill?

Mr. Waxman. Madam Chairman?

Mrs. Bono Mack. The chair recognizes Mr. Olson. For what purpose does Mr. Olson seek recognition?

Mr. Olson. Madam Chairwoman, I have an amendment at the desk.

Mrs. Bono Mack. The clerk will report.

The Clerk. Amendment offered by Mr. Olson of Texas.

Mrs. Bono Mack. Without objection, the reading of the amendment is dispensed with, and the gentleman is recognized for 5 minutes in support of his amendment.

[The information follows:]

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

Mr. Olson. I thank the chair.

I am pleased to be partnering with my friend and colleague from Tennessee Mrs. Blackburn in offering this amendment which will strike the FTC's APA rulemaking authority to define "personal information."

The bill as currently drafted has appropriately defined the term "personal information." This definition stands well on its own. We cannot delegate our lawmaking responsibilities to the FTC and allow an unelected body to unilaterally modify this definition. Such a delegation could completely reform the scope of the bill by expanding the set of covered data in ways the FTC deems appropriate. The mere provision of allowing such discretionary authority to the FTC would create significant business uncertainty and regulatory environmental risk for all businesses in America that handle customer information.

It should be noted that there are not corresponding State data breach notification laws, none that I am aware of, that allow for the adjustment and modification of the definition of "personal information" by a State's consumer protection agency.

In general, State data breach notification statutes set forth a set of narrow notification rules for businesses and law enforcement, and no secondary rulemaking authority other than delegated powers given to State consumer protection agencies. Our comprehensive Federal bill, which will preempt the patchwork of State laws, should do the same and not delegate more power to the FTC.

It is important to note that the Olson-Blackburn amendment only strikes the APA rulemaking authority defining "personal information."

Under APA rulemaking, the FTC can adopt rules very quickly, in as little as 60 days, without taking into account something as important as economic effect. However, under the Magnuson-Moss regulating process, which has been in place for over 35 years, longer than some members of this committee have been alive, the FTC is required to take a more thoughtful and deliberate approach to rulemaking and such requirement to provide a statement as to the economic effect of the rule taking into account the effect on small businesses and consumers when issuing the rule. It is common sense. This economic effect consideration is not, not required under section 553 APA rulemaking.

So my colleagues, the Olson-Blackburn amendment does not, does not, take away the FTC's ability to change the definition of "personal information." It just takes away their ability to quickly and abruptly expand and modify the definition through a quick APA rulemaking process instead of considering the economic effects.

The FTC could still technically alter the definition of "personal information" through other means such as the more thoughtful and deliberative Magnuson-Moss rulemaking, or by coming to Congress and asking for a change to see if there is a demonstrated need.

I urge all of my colleagues to support this commonsense amendment which will help eliminate excessive FTC APA rulemaking authority and create certainty for American businesses and industry.

I yield back.

Mrs. Bono Mack. The gentleman yields back.

Is there further discussion?

Mr. Butterfield. Madam Chairman, I would like to speak in opposition to the amendment.

Mrs. Bono Mack. The gentleman is recognized for 5 minutes.

Mr. Butterfield. Madam Chairman, the bill before us, 2577, already severely hampers the FTC's ability to ever add to the definition of "personal information" by requiring that several determinations be made by the agency, including that any change not impede technological innovation. This term is unclear. It is undefined. It is untested. The agency has never had to waive this in its directed rulemakings.

I already had major concerns with this provision because I believe it will lead to unending challenges to the FTC's authority on this and leave the Commission unable to expand the definition of "personal information." Now this amendment, this amendment seeks to erect even more roadblocks by taking away more streamlined APA rulemaking and instead requiring the FTC to use the incredibly hard-to-overcome rulemaking process known as Magnuson-Moss. The FTC has issued almost no rules under this process because it is almost impossible to overcome. We should be giving the FTC the ability to be flexible and adaptable to changing threats to consumers from the collection of information, not putting in law a definition of "personal information" that is already outdated and ineffective.

I am going to urge my colleagues to oppose this amendment.

Mr. Olson. Will the gentleman yield?

Mr. Butterfield. Yes, I yield.

Mr. Olson. I thank the gentleman. I just want to emphasize that

we are not taking away the rulemaking authority. We are making sure that we in Congress have a say here. Magnuson-Moss is a much better system than allowing the APA authority.

Again, in this economic environment -- and one thing I applaud the President for is wanting to reduce the government burdens and regulatory environment here to get America going again, get us creating jobs. This amendment does that.

Mr. Butterfield. Let me reclaim my time. The FTC needs discretion. It does not need an absolute rule. It needs discretion in order to resolve these issues as we go along. I oppose the amendment.

Mr. Olson. Will the gentleman yield one more time?

Mr. Butterfield. I yield back.

Mrs. Bono Mack. Is there further discussion on the amendment?

Mrs. Blackburn. Madam Chairman.

Mrs. Bono Mack. Mrs. Blackburn is recognized for 5 minutes.

Mrs. Blackburn. Thank you, Madam Chairman, and I thank the gentleman from Texas and appreciate the opportunity to work with him on this amendment. Indeed, it is an important amendment, and it is an important correction to this bill.

Now, in today's Wall Street Journal, there is an article about how the agencies cannot handle the impact of rulemaking authority. When we pass bills and we send them to the agencies for rulemaking, the SEC says they are overburdened. The FCC says they are overburdened. They can't handle this. So it is imperative that we

as Members of Congress do a couple of things.

Number one is to be more definitive. If we think something is going to need the impact and the force of law, we need to put it in the statute. Number two, we don't need to kick the can over to the agencies and say, when you get around to it, get it done.

The article in today's Wall Street Journal talks about the impact of Frank-Dodd and how they are coming up on the 1-year anniversary, and how they are struggling to get through this rulemaking process. And then what do we hear here in Congress? Well, we don't have enough people. We don't have enough money. You need to send us more money if you are going to require us to do these roles.

So let us not get into this as we look at data security. Let us be definitive. That is what we are doing with the amendment. It claws back that and says the APA rulemaking authority is not going to be there for the FTC. We have a good definition of "personal information." We need to stick with this.

Look at what Commissioner Ramirez said in the June 15th hearing. She indicated that the agency would all but certainly use new authority to expand the definition of "personal information" far beyond Congress' intentions, saying, and I am quoting her, "I think that the touchstone here is information that can be uniquely tied to an individual, broader than the definition that is currently used in the draft bill."

So, as we have had hearings on the bill, as we have talked our way through what a process should be for data security, we have heard from the FTC that they would like more authority than what they were

given in the draft bill. We are saying they need less. I encourage my colleagues to support the amendment.

Mr. Olson. Would my colleague yield?

Mrs. Blackburn. I do yield to the gentleman.

Mr. Olson. Thank you very much. Just to follow up on your very wise comments about our amendment.

All our colleagues should know that the Marketing Research Association has sent a letter of support for the amendment that has been offered by my colleague from Tennessee and myself, and we have also received positive support from the National Retail Federation and the Retail Industry Leaders Association.

So this is commonsense legislation that ensures that the regulatory environment doesn't kill American jobs and actually helps our businesses.

I yield back.

Mrs. Blackburn. I thank the gentleman for yielding the time back. I will add to his remarks that we also have a letter from the U.S. Chamber of Commerce addressing this personally identifiable information, and reading from the letter, "While the Chamber appreciates the limitations placed on the FTC's ability to modify the definition of PII, we believe that the FTC's ability to modify the definition through their current rulemaking authority is sufficient. Providing the FTC with additional rulemaking authority in this case would create regulatory uncertainty and harm businesses' ability to innovate."

And not only to innovate, Madam Chairman. As we have worked on the issue of jobs, we hear repeatedly that the uncertainty from the regulatory agencies is indeed inhibiting jobs growth.

I yield back.

Mrs. Bono Mack. Is there further discussion?

Mr. Dingell. Madam Chairman.

Mrs. Bono Mack. For what purpose does the gentleman seek recognition?

Mr. Dingell. To oppose the amendment.

Mrs. Bono Mack. The gentleman is recognized for 5 minutes.

Mr. Dingell. Last year this committee reported out by a very heavy margin a bipartisan bill which passed the House on suspension. All of a sudden, that is not good enough, so now we are going through, and, first of all, we have a bill that is not very good. It doesn't protect people.

Now, here is what is at stake. At stake is the ability of people to be secure in their personal information, and the bill consistently in all of its parts cuts back on that security. It reduces the definition of those things which are personal security-related information, and it makes it harder for that information to be properly protected.

Now, this is bad, because if you haven't been aware of it, there is a major problem with regard to personal information, business information and other kinds of information being stolen by a bunch of sharpshooters who are taking away from the people their security. As

a result, people are being destituted, they are being bankrupted, and all other manner of mischiefs are attending to them.

Now, the bill doesn't require the FTC to update the definition of "personal information." It simply gives it the authority to do so. It allows for administration by that agency in a way which makes sense, which protects ordinary individuals, and, very frankly, which protects also businesses who do need the same kinds of protections.

Look at some little guy on the street as you drive down the road, and you will see he is in business installing windows or running a garage or selling auto parts or doing whatever he might happen to be doing. He needs these protections just as much as the ordinary citizen does.

So taking away the Administrative Procedures Act in this case is ridiculous. Now, why? Because it forces then the Federal Trade Commission to rely upon Magnuson-Moss. If you want to absolutely assure there will be no protection from people in terms of their personal information and things of that kind, this is a splendid way to do it, because we have found over the years that under Magnuson-Moss it takes 10 years, 10 years, to complete a rulemaking. And this business of raiding personal information and steps of that kind being taken by sharpshooters and rascals around the country is something which won't sustain that kind of delay and which will not permit then the FTC to take steps to protect the ordinary citizen against the evil consequences of this information being stolen and being used to destitute the individual, to steal his identity, to put him into bankruptcy, or to do all manner of other evil and wicked things.

Now, this step we are having in this amendment is just one of a sequence of amendments that we are going to have offered today and the changes in the legislation. And the interesting thing about the changes in the legislation are that it always makes it harder for the citizen to protect himself with personal information that is necessary to be secured against some of these sharpshooters stealing his identity and taking away from him those few protections which he has.

Remember that when all things else fail, the American people look to their government to protect them. And there is one thing they are going to wonder about is why is it that this Congress is not increasing protections, but rather is taking protections away from the American citizenry without any collateral or commensurate benefits in other places?

So, what we are doing here is just make making it harder for the ordinary citizen to go to his government and get protected by the agency which traditionally has had this responsibility, the Federal Trade Commission, and you are going to find that it won't probably affect any of us in this room at this time, but you can be just dead certain that in the orderly passage of time, somebody is going to say, just who in the hell could have done that kind of thing to me and to the American people?

I oppose the amendment and yield back the balance of my time.

Mrs. Bono Mack. Is there further discussion on the amendment?

The gentleman from Kansas. For what purpose do you seek recognition?

Mr. Pompeo. I would like to rise in support of the amendment.

Mrs. Bono Mack. The gentleman is recognized for 5 minutes.

Mr. Pompeo. I listened to the gentleman from Michigan, who has been a great defender of this body's power for a long time. This isn't partisan. This is about who is going to make these decision on the definition, whether we want to turn over that authority to the FTC, or if we want to do it here.

Indeed, the other side has offered numerous amendments where we are going to talk about the scope of the definition. So from my perspective what we are trying to do here is make sure it is this body. As you said, when folks are trying to protect their privacy, they turn to the Federal Government, they turn to us, their elected officials, to protect those rights and those important things.

So I can't see why we would turn that over to the FTC. Who knows what the FTC will look like 5 years or 10 years from now. It might shrink the definition of privacy. It could change it in many ways. I just think that is an authority we ought to keep, so I support this amendment.

Mrs. Bono Mack. Is there further discussion?

For what purpose does the gentleman seek recognition?

Mr. Waxman. May I be recognized in opposition?

Mrs. Bono Mack. Yes, the gentleman is recognized in opposition to the amendment for 5 minutes.

Mr. Waxman. The problem with this bill is that it says it is to protect consumers by requiring reasonable security policies and

procedures to protect data containing personal information, and to provide for nationwide notice in the event of a security breach. Well, that sounds great until you realize this bill doesn't do much. It doesn't protect a lot of data that people think ought to be protected, and I agree with them.

I would want the data to be protected to include my personal emails. I don't think anybody ought to have access to that. Or my personal photographs, or videos that I put on line, or books or other consumer purchases. I don't think anybody ought to be able to access from my data if I purchased over-the-counter drugs. It is just none of their business.

But these things are not protected under the existing bill. Why aren't they protected? Because of a narrow definition of the term "personal information." We are going to offer amendments on our side to expand that definition. The gentleman wants Congress to do it. Let us do it right. But under the bill, "personal information" is so narrow that these things that I cited are not covered. But not only are they not covered, the amendment before us would make sure that the FTC doesn't broaden the coverage to protect people's privacy and the breach of their data.

So, if you want us to trust the Congress, we are going to have to change this bill to include a lot of things that people ought to have protected and we all want to have protected. There is not even protection for information about, as I mentioned in my opening statement, if you have in your phone the location of where your children

are at any moment. I don't want people to know that, but I can't protect that data under this legislation. I wouldn't allow the FTC to be able to protect it either if they wanted to expand it through rulemaking.

The FTC has had a burden under the Magnuson-Moss regulations that makes it impossible for them to act. It has taken decades before the FTC has been able to act. Other agencies operate under the Administrative Procedures Act. I think FTC ought to be able to operate under those same rules. The amendment that is before us is to take a bill that is so narrow and make sure it cannot get widened in terms of the data that can be breached and people can have protected. And that is not the right direction for us to take. I strongly oppose --

Mr. Olson. Would the gentleman yield?

Mr. Waxman. Who is asking me to yield? Yes, I yield to the gentleman.

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Mr. Olson. I thank the gentleman from California.

I just want to inform the gentleman that the definition of personal information that is in this bill is consistent with 46 States in their definition of personal information. So it is not sort of some sort of untested thing. It has been tried and proven effective.

Mr. Waxman. That is not our understanding of the bill. And not only that, this bill, as I understand it, preempts the States from being even more protective than this minimal Federal law would provide.

Does the gentleman want me to yield anymore to him? Because I think he is incorrect in the information he has.

Mrs. Bono Mack. Well, if the gentleman would yield to me.

Mr. Waxman. Certainly.

Mrs. Bono Mack. Former Chairman Waxman --

Mr. Waxman. I believe in yielding. I am not like some people who don't even yield because they don't want to be challenged.

Mrs. Bono Mack. I appreciate that. Then yield, please.

Mr. Waxman. I will certainly yield.

Mrs. Bono Mack. The gentleman repeatedly refers to the 2007 bill or previous bills that we have passed out of this committee and speaks to the bipartisan nature and how good they were and how well-crafted they were. And I think that is all very true and a good starting place for us to continue to examine this problem.

In the previous bill, as the gentleman is aware, is that the definition of PII, as written in that language specifically, is where we took our information. In that bill it said the term personal information means an individual's first name or initial, last name or address or phone number, in combination with one or more of the following data elements for that individual: social security number, driver's license number, passport number, military ID number or other similar number issued on a government document used to verify identity, financial account number.

And I am wondering if the world has shifted so dramatically that today that this bill you want to change the definition that you were very pleased with and keep referring back to this bill. Yet our definition of PII --

Mr. Waxman. Well, if I could reclaim my time, because it is about to expire, just to respond to you.

The previous bill did give the FTC, under the Administrative Procedure Act, to further expand the definition of the privacy information that people wanted to have protected. This amendment would restrict the FTC from doing that, and the bill I think is much more narrow than what we had in our previous proposed legislation.

So I oppose the pending amendment. And I will be happy to yield, but I have run out of time, or whatever the chair wants.

Mrs. Bono Mack. The gentleman's time has expired.

Is there further discussion on the amendment?

Mr. Rush. Madam chair.

Mrs. Bono Mack. For what purpose does the gentleman seek recognition?

Mr. Rush. I seek recognition to speak in opposition.

Mrs. Bono Mack. The gentleman is recognized for 5 minutes.

Mr. Rush. Madam Chair, this bill before us already severely hampers the FTC's ability to ever add to the definition of personal information by requiring that several determinations be made by the agency, including that any agency not impede, quote, technological innovation, end of quote. This term is unclear, undefined, and it is also untested. The agency, the FTC, has never had to weigh this type of requirement and precondition in its directed rulemaking, not ever before.

Madam Chair, I already had major concerns with this provision, because I believe that it will lead to unending challenges to the FTC's authority -- and we had an indication of that already in this markup -- and will leave the Commission unable to expand the definition of, quote, personal information, PII, which is a real concern that we have.

Under the bill as passed in previous congresses the FTC had the authority -- and we gave them the authority. It was stated authority. As a matter of fact, it encouraged them to expand the definition of PII. Now, this amendment seeks to erect even more roadblocks by taking away more streamlined APA rulemaking and instead requiring the FTC to use the incredibly hard-to-overcome rulemaking process known as Magnuson-Moss.

I remember, Madam Chair, because I chaired this committee in the last Congress, we asked the FTC to give us an idea and be explicit about it. Let us know what is your process and how long will that process take under Magnuson-Moss. And they went line by line in the hearing and said that it would take at least 10 years to get rulemaking through the FTC utilizing Magnuson-Moss. The FTC, Madam Chair, has issued almost no rules under this process because it is almost impossible to overcome new restriction impediments.

Mr. Olson. Will the gentleman yield?

Mr. Rush. No, I won't yield as of yet. After I finish, I will yield.

We should be giving the FTC the ability to be nimble, to be flexible, to be adaptive to changing threats to consumers from the collection of their information, not putting in law a definition of personal information that is already outdated and ineffective.

Madam Chair, I think that this amendment, this bill that is before us, that this is indeed something that will severely handicap the American people because it severely handicaps the FTC, and I think that we can do a much better job. I really believe and wish that we had followed up on the pattern and the method that we used in prior congresses --

Mr. Olson. Will the gentleman yield?

Mr. Rush. When I finish, I will yield -- and that is that we will have more attempts to have a bipartisan involvement and we have more discussion, rather than the majority trying to ram this down the throats

of the American people and down the throats on this side of the aisle.

Madam Chair, I really sincerely and wholeheartedly object to this bill and to this amendment. I just think that this could be better done, and I think that what your intentions are will not be met. And maybe your intentions are not what is being stated in your preamble. Maybe your intentions are not really what you are saying. Maybe you are saying one thing and doing another. That is the only conclusion that I can draw. You are saying you want to protect the private information of the American consumer, the personal information of the American consumer, but it seems to me that you want to hamper the American consumer.

Mrs. Bono Mack. The time is expired.

Mr. Barton. Madam Chairwoman.

Mrs. Bono Mack. For what purpose does the gentleman seek recognition?

Mr. Barton. To strike the requisite words and ask counsel a question.

Mrs. Bono Mack. The gentleman is recognized for 5 minutes.

Mr. Barton. I want to make sure I understand the amendment. It strikes a number of words on page 28. If the amendment is agreed to -- I want to read and see if the counsel agrees with me -- if we accept the amendment, it would say the Commission may, by rule, modify the definition of personal information under subparagraph (A). Is that correct?

Mr. Mullan. Could the gentleman repeat the inquiry? I didn't

fully get it.

Mr. Barton. If the amendment is accepted, the modified language would say on page 28, beginning on line 20, the Commission may, by rule, modify the definition of personal information under subparagraph (A). Is that correct?

Mr. Mullan. Yes, it is.

Mr. Barton. And what that would mean is not necessarily that you have to follow this cumbersome procedure that Mr. Dingell and Mr. Rush just referred to but simply that the Commission could still modify the definition, but they would have to do it by a rule that they promulgate, is that correct?

Mr. Mullan. Yes, it is correct.

Mr. Barton. So the minority's contention that if you accept the amendment you go to this cumbersome process is not correct?

Mr. Mullan. My understanding is that the Commission lacks general Administrative Procedure Act rulemaking authority. And so that, although it does have to go by rule, that if it is defaulted to a rulemaking procedure that they do have to follow the Magnuson-Moss procedure.

Mr. Barton. That they would have to follow?

Mr. Mullan. That is my understanding.

Mr. Barton. That they couldn't just adopt a rule of their choosing?

Mr. Mullan. I don't believe so.

Mr. Barton. Thank you.

Mr. Waxman. A point of order, Madam Chair. If there are questions of counsel the procedure has always been to have counsel at the table, and I think that would be appropriate if we are going to have counsel answer questions.

Mrs. Bono Mack. I thank the gentleman, and we will make the change.

Is there further discussion on the amendment?

If there is no further discussion, the vote occurs on the amendment. All those in favor shall signify by saying aye. All those opposed, say no.

The ayes have it, and the amendment is agreed to.

Mr. Rush. Madam Chair, can I have a roll call?

Mrs. Bono Mack. The gentleman requests a roll call vote. The clerk will call the roll.

Mr. Rush. I withdraw.

Mrs. Bono Mack. The gentleman withdraws. We withdraw the request.

The Chairman. Can I make a unanimous consent request that any votes on the amendments between now and when the House takes its first series of votes on the House floor be rolled until after the votes on the House -- until 15 minutes after the votes on the House floor concludes?

Mr. Butterfield. Is the gentleman suggesting voice votes or roll call votes?

The Chairman. No, on any votes ordered -- well, it would be roll

call votes requested, that they be rolled until after the first series of votes on the House floor.

Mr. Waxman. Reserving the right to object so I can ask the chairman a question, are we going to have the other committee meeting at the same time?

The Chairman. I was going to suggest that the other hearing, knowing that we wouldn't have any recorded votes here until probably quarter to two, I am told that the first series of votes is expected on the floor between 1:15 and 1:30, don't know how many votes there will be, but that would then allow the Oversight Subcommittee to resume its first panel.

Mr. Stearns. Will the gentleman yield?

The Chairman. If I yield to the -- if the gentleman will yield to me. If I yield to the chair of the Oversight Subcommittee, I don't know exactly where you are in terms of the first panel.

Mr. Stearns. Thank you, Mr. Chairman.

We practically have been through the members asking on the first panel, including myself, Ms. DeGette, including Mr. Dingell and Mr. Waxman, have all asked their questions. We have all these patient -- seven witnesses who are sitting up there patiently. And I think with just a little finesse we can get through them and then be done with the first panel and get the administration, who has been patiently waiting, right after the votes. And we could do that.

Or, if Mr. Waxman felt, we could delay the reconvening of the Oversight Committee after we got through the first panel and reconvened

the administration tomorrow, if Mr. Waxman likes. But I would certainly ask the other side to consider the fact that these patient -- there is seven of them up there that has been waiting, and we could get through it pretty quickly before the votes. And I just would ask that consideration.

Mr. Waxman. Further clarification, if one of you would yield. You are suggesting you would reconvene your subcommittee to complete the first panel?

Mr. Stearns. The first panel. There is only about two or three left.

Mr. Waxman. And then you would not have the testimony or the questions of the second panel?

Mr. Stearns. That is correct.

Mr. Waxman. Until when?

Mr. Stearns. Until after you finish this hearing or this subcommittee is done. And if you go all day today, then we would have him come tomorrow.

Mr. Waxman. I withdraw my objection.

The Chairman. So, again, let me just make my unanimous consent request that any recorded votes on amendments between now and when the House has its first series of votes on the floor will be rolled until 15 minutes after that first series of votes concludes on the House floor, is that right?

Mr. Waxman. Mr. Chairman, I don't know that that is necessary. We haven't had any roll call votes.

The Chairman. But you may have some.

Mr. Waxman. Well, you may have some, and then there may be another one that would be dependent on the first one that comes out. And so let me withhold temporarily and let me check with other amendments whether we would be disadvantaged by not having a roll call vote before we proceed to the next amendment. If that is not a problem, then I won't object.

Mrs. Bono Mack. The gentleman withdraws?

The Chairman. I withdraw my request.

Mrs. Bono Mack. Are there any further amendments at the desk?

Mr. Waxman. Madam Chair -- Mr. Upton. Mr. Chairman, I consulted over here. We think that that will work out okay, so I will agree to your unanimous consent request.

The Chairman. Okay. So I will make my UC request that any votes on amendments that are asked for a recorded vote are rolled until 15 minutes after votes are concluded on the first round of floor votes on the House floor this afternoon, which then allows the Subcommittee on Oversight and Investigations to resume its first panel promptly.

Mrs. Bono Mack. Without objection, so ordered.

And are there further amendments at the desk?

Mr. Waxman. Madam Chair.

Mrs. Bono Mack. For what purpose does the gentleman seek recognition?

Mr. Waxman. I have an amendment at the desk.

Mrs. Bono Mack. The clerk will report.

Mr. Stearns. Madam Chair, just by unanimous consent, I just want to make an announcement then. Members on the Oversight and Investigations, if you want to ask questions on the first panel just kindly come up, because we are going to wrap up the first panel.

The Clerk. Mr. Waxman, which number?

Mr. Waxman. Underscore five.

The Clerk. An amendment offered by Mr. Waxman of California --

Mrs. Bono Mack. Without objection, the reading of the amendment is dispensed with; and the gentleman is recognized for 5 minutes in support of his amendment.

[The information follows:]

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

Mr. Waxman. Madam Chair, members of the subcommittee, millions of Americans rely on the Internet to communicate or store and sometimes share in limited ways what they reasonably believe is personal information. H.R. 2577, however, essentially says that your personal emails, your personal photos, your personal videos stored on-line aren't personal at all. Because this bill does not see those things as personal Web mail services like gmail or hotmail, photo sharing sites like Flicker, social networks like Facebook and Google Plus, don't have to protect these things and they don't have to tell you if anyone breaks into their systems and looks at or takes these things.

I think every one of us here agrees that our emails are personal and private. The same goes for photos or videos we back up and store on-line. To some extent, we also expect that any photos or videos that we choose to share with a limited and select group of people will remain within that circle. I think this bill should respect common consumer expectations, and they expect these things to remain private and to be secured against any unauthorized and potentially harmful access by hackers.

My amendment would make sure we do that by including in the definition of personal information all personal electronic communications, photos, and videos stored on-line, along with any other similar content the FTC determines is personal. I think this is a commonsense change. I urge my colleagues to support the amendment.

And I would be happy to yield to anybody who wants me to yield. Otherwise, I will yield back.

Mrs. Bono Mack. The gentleman yields back.

Is there a discussion on the amendment.

Mr. Barton. Would the gentleman yield?

Mr. Waxman. Yes, I will yield.

Mr. Barton. If we accept your definition, Mr. Waxman, do we keep the definition that is here in terms of social security number, driver's license number, financial account number, and we just add to it? Is your amendment an additive?

Mr. Waxman. That is correct.

Mr. Barton. Thank you.

Mrs. Bono Mack. The gentleman yields back.

Is there further discussion on the amendment?

The chair recognizes herself for 5 minutes in opposition to the amendment. And I would just like to explain to probably both sides of the aisle here that this is really sort of the crux of the debate here on how you define this. Clearly, people are worked up on both sides over this topic; and I would say to both sides that between subcommittee markup and full markup we ought to have a very robust discussion about these.

And I spoke earlier with the gentleman from California, Mr. Waxman, about my belief that privacy and data security are very similar, yet they are also very different. And I believe that much of what the gentleman from California is referring to really moves into the privacy realm. And I certainly echo and understand and underscore his concerns, but I would ask him that we have these discussions between

now and the full committee. And not only do we ask about PII and what it is, but where does it go from here.

You know, in Congress in much of what we do there is a sweet spot where you try not to go too far but you want to do the right thing, and we are trying to find that sweet spot. But what the gentleman is offering to me sounds like it potentially can go too far. It sounds like the unintended consequences of his suggestions could go very far, and I believe we need to kick them around a lot further before we would adopt them. So I would urge a no vote.

Mr. Waxman. Will the gentlewoman yield?

Mrs. Bono Mack. Yes, I will be happy to yield.

Mr. Waxman. Well, the amendment says the term personal information also includes personal electronic communications, personal photographs, and videos stored on-line and other similar personal content that the Commission determines should be included in the definition of personal information.

I don't see what is objectionable to that. I don't know what any unintended consequences would be. If we vote this down, we are in effect telling people -- I don't know what -- wait until --

Mrs. Bono Mack. If the gentleman would yield --

Mr. Waxman. Wait until a privacy bill? But this is a data breach bill and if this is data that is breached people want to know about it.

Mrs. Bono Mack. If the gentleman would yield, to me, I see it clearly different. I see what happened with Sony and Epsilon and these

massive data breaches. Clearly, there weren't photographs involved in those cases. And I would ask the gentleman if a photograph say on somebody's Facebook page or something that they have tweeted or anywhere, how that could be stolen for personal identity theft, how in fact just a photograph would do that? And, trust me, I certainly understand and respect an individual's right to privacy, but I think in this case a photograph does not mean that you are going to in fact steal somebody's identity.

Mr. Waxman. Will the gentlelady yield further?

Mrs. Bono Mack. Yes.

Mr. Waxman. Sony and Epsilon wouldn't even be covered by this bill, so data breaches that they experience wouldn't even be covered by this legislation. But what we are talking about are data breaches that are obvious that people I think want protected, their personal photos and videos stored on-line, their personal electronic communications. So I respectfully disagree with you --

Mr. Pompeo. Would the gentleman yield?

Mr. Waxman. It is not my time.

Mrs. Bono Mack. I would be happy to yield.

Mr. Pompeo. I was just going to ask the gentleman from California if this language was in the previous bill, 2221, before I was here in Congress. Was this definition part of the PI in the previous bill that you were talking about earlier this morning?

Mr. Waxman. We expected in that last legislation that after FTC rulemaking this would be covered.

Mr. Pompeo. But it wasn't in the bill. You passed a bill that didn't contain this.

Mr. Waxman. But we gave the FTC authority. And I think if we are going to, as we did by the first amendment, make it harder for the FTC to act because we want to make the decisions we ought to put this into the law.

Mrs. Bono Mack. All right. I yield back the balance of my time.

Mr. Olson. I am sorry. Will the chairman yield for just a brief comment?

Mrs. Bono Mack. Yes, I will yield.

Mr. Olson. I oppose this amendment just because it will basically undo what we just did. We just passed an amendment to restrict the FTC's regulation of the PII, and this amendment would just undo what we just did. Let's move forward.

I yield back.

Mrs. Bono Mack. I thank the gentleman and would ask --

Mr. Butterfield. Can I be recognized to support the amendment?

Mrs. Bono Mack. As soon as I am done with my time.

To the gentleman from California, when you said our definition of personal information is the same as yours from the last Congress or 2009, you said that we allowed the FTC to amend. But that is where the point about institutional competency really comes in. Was there a plan to have a modest definition of personal information and to have the FTC and all these other things? But that does not cede the Congress' role to the executive branch.

And I think that my time is expired, and I am recognizing Mr. Butterfield for what purpose.

Mr. Butterfield. For the purpose of supporting the amendment.

Mrs. Bono Mack. The gentleman is recognized for 5 minutes.

Mr. Butterfield. Madam chairman, I strongly support the amendment offered by Mr. Waxman. I have read this amendment two or three times, and there is nothing radical about this amendment. It simply says that the definition is also going to include personal electronic communications. There is nothing radical about that, and most consumers would expect that to be part of the definition, personal photographs and videos stored on-line. There is nothing radical about this amendment. It is a commonsense amendment. It is what the American people would expect us to include in this definition, and so I would ask my colleagues to support the amendment.

Mr. Waxman. Will the gentleman yield?

Mr. Butterfield. I will yield.

Mr. Waxman. I just want to clarify a point. In last year's bill, we spelled out some things in the legislation but gave the FTC the authority to go beyond it. What we have by virtue of the First Amendment that was adopted is a very strict limitation on the FTC's ability to go beyond what is in the legislation. That is why I think it is important to put this in the legislation itself so that we are clear that we want this personal information to be protected. And I agree with you. I do support this amendment and hope my colleagues will vote for it as well.

Mr. Butterfield. Reclaiming my time, I mean, this is a legislative prerogative. We are directing the FTC to include these three things in the definition and nothing radical about this.

Mr. Bass. Will the gentleman yield?

Mr. Butterfield. Yes, I will yield.

Mr. Bass. I am going to oppose this amendment, but I believe that Mr. Waxman makes a point. If we are going to restrict the agency's ability to expand the definition this is an appropriate debate to have, and between now and the time this bill comes to the full committee I think it should be. All of these amendments, I know there are a lot more after this, should be very carefully considered and possibly added.

I yield back to my friend.

Mr. Butterfield. I thank the gentleman.

Mrs. Bono Mack. And if the gentleman would yield to me?

Mr. Butterfield. I will.

Mrs. Bono Mack. And again, to echo Mr. Bass' point, this is what I am trying to say, is, again, the base language that we took was out of the previous bill and started that, but by no means is that an end point. And I also agree with Mr. Bass that if we are going to define it ourselves then we need to kick it around a heck of a lot. And again reiterating my request and my statement to the minority, that I look forward to kicking this around.

And certainly as a Californian I think we take great pride in leading the way in technology -- and some of my colleagues might argue

the fact and say they do, too -- but as Californians these things really matter and they have, again, potential impacts that I think we need to discuss before we adopt them.

So, again, I want to reiterate my opposition to this amendment.

Mr. Rush. Madam Chair, will you yield, please?

Mrs. Bono Mack. It is not my time to yield.

Mr. Butterfield. Reclaiming my time. I yield to the gentleman from Illinois.

Mr. Rush. Madam Chair, I just want to remind those members who are present, 2 years ago we had this discussion, and we decided in the bill that we passed that we were not going to try to be exhaustive in terms of trying to itemize and list the separate items here. We concluded that we weren't technological experts and that things have changed, so we gave the FTC the flexibility to add more services, Facebook, other IC services. We gave them the authority to do that because we knew that we could not in the bill exhaust all these future instruments and devices and applications that would be utilized that would need to be covered under the legislation.

So we gave them that authority. We didn't try to restrict them in terms of the future and what they will be faced with in the future.

And I think that, right now, this thing you have here, it is not exhaustive, you know. As a matter of fact, by the time we finish voting in a few minutes on this amendment it will be obsolete. So I really think that we are -- I think that Mr. Waxman's amendment is really the appropriate way.

Mr. Butterfield. I thank the gentleman.

Reclaiming my time, I do recall when we debated this bill when you offered it in the last congress, Mr. Rush, and I do recall that we did delegate to the FTC some authority to revisit and to expand the definition. But under Mr. Waxman's amendment this would be a minimum. These three things must be included in the definition, yet giving flexibility to the Commission to expand it. So I agree with your assessment and that of Mr. Waxman.

My time is expired. I thank you.

Mrs. Bono Mack. I thank the gentleman.

Is there further discussion on the amendment?

If there is no further discussion, the vote occurs on the amendment. All those in favor shall signify by saying aye. All opposed, no.

The noes have it, and the amendment is not agreed to.

Mr. Barton. I would like a show of hands.

Mr. Waxman. I am going to ask for a roll call.

Mr. Barton. You will win a show of hands.

Mr. Waxman. Okay. Let's show a show of hands.

Mrs. Bono Mack. The chair requests a roll call vote. And on that, because of our prior UC, we will roll the vote until later today.

So are there further amendments.

Mr. Kinzinger. Madam Chairman, I have an amendment at the desk.

Mrs. Bono Mack. The clerk will report.

The Clerk. Which amendment, Mr. Kinzinger?

Mr. Kinzinger. It is the email and password one.

The Clerk. An amendment offered by Mr. Kinzinger of Illinois --

Mrs. Bono Mack. Without objection, the reading of the amendment is dispensed with; and the gentleman is recognized for 5 minutes in support of his amendment.

[The information follows:]

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

Mr. Kinzinger. Thank you, Madam Chair.

I am supportive of my colleague's efforts to remove the FTC's authority of determining what personable identifiable information should require notice, but I am concerned that we are leaving too many openings for criminals to obtain access to things on-line. My amendment would simply add the combination of email address and password as identifiable information.

Sixty to 75 percent of the public use the same password for everything. If a thief steals your email address and password, it is more likely or not that they are going to have access to multiple accounts that would allow easy access to all information stored on-line.

This committee has a role to play in determining what should be included as personably identifiable information, and any information that could be used to access or steal other information should be included. I want to continue to work with this committee in addressing this issue, and I know there is some concerns on some of those details. So in the interest of that, Madam Chair, I will go ahead and withdraw this amendment but ask that we continue to work with the committee to address this situation.

Mrs. Bono Mack. The gentleman's amendment is withdrawn, and I thank the gentleman very much and appreciate that he has heard my --

Mr. Waxman. Will the gentleman yield to me to make one comment?

I don't see any problem with your amendment. We ought to protect people's email address and their password. But I want to point out

that, after you have protected that, you haven't protected the emails inside. That is what we just voted on or we are going vote on in a few minutes.

I know this is not an amendment that is pending, since you have withdrawn it. But as you think about this issue I hope you will recognize we want to protect the password and the email account number and the emails, because that is a breach of people's privacy.

Mr. Kinzinger. Thank you. I yield back.

Mrs. Bono Mack. The gentleman yields back.

Are there further amendments at the desk.

Mr. Butterfield. Madam Chair, I have an amendment at the desk. It is kids 01.

Mrs. Bono Mack. The clerk will report the amendment.

The Clerk. An amendment offered by Mr. Butterfield of North Carolina --

Mrs. Bono Mack. Without objection, the reading of the amendment is dispensed with; and the gentleman is recognized for 5 minutes in support of his amendment.

[The information follows:]

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

Mr. Butterfield. I thank the chairman.

Colleagues, the definition of personal information is so narrow that it includes almost none of the information that we should be concerned about with respect to a young child. I think one of the things that we can agree on as being particularly sensitive is any information regarding the whereabouts, the whereabouts, the location of a child. Location information about a child can make them susceptible to stalking or kidnapping and any other number of unspeakable harms.

But location information about children isn't required to be secured under this bill. I believe we must make sure that anyone who keeps a record of this information should have at least some minimum obligation to secure that information. My amendment would require that by including in the definition of personal information any information that identifies the location of a child under the age of 13.

The FTC would also be authorized to expand that definition of personal information to include any other information about a child under the age of 13 it determines -- it, the FTC -- determines should be included.

I think we can all agree we need to do all we can to keep our children safe, particularly when the Internet and mobile device applications have made it easy to know where they have been and where they are going in real time. Having this information, Madam Chairman, is great for parents, but we need to do everything to make sure it

doesn't fall into the wrong hands. This amendment is one way to do that. I urge my colleagues to support it.

I yield back.

Mrs. Bono Mack. Is there any further discussion on the amendment?

The chair recognizes herself in opposition to the amendment and would point out the fact that, as a parent, when you are talking about the security of your children, there could in fact be times that you would want to do some geo tracking. And these are my concerns, that if we jump into this, we rush into this, that we have unintended consequences where you could in fact not be making kids any safer.

The point of the data security legislation is that there has been -- we have seen harm from these. We have seen what can happen in fact with identity theft. And I think that these very legitimate questions that the gentleman raises are worth discussing and talking about under the context of privacy, which is a much different, in many regards, discussion and debate to have.

So I would thank the gentleman for the concerns and agree that these things do need to be kicked around. And, as the gentleman from Illinois said earlier, these things move so quickly, they change so quickly, technology adapts, and what we talk about today in technological terms will be different 6 months from now. And I do believe that we need to have a different and longer conversation about these, so I respectfully oppose the amendment and would urge my colleagues to do the same.

Mr. Waxman. Will the gentlelady yield?

Mrs. Bono Mack. Yes, I will yield.

Mr. Waxman. As I understand, the amendment is, if Apple, for example, has your location because of your individual iPhone and so they know your location and they are hacked into, this would require that they inform the parent of a child -- I guess it would be the child's cell phone -- that they be informed about it. I don't know what unintended consequences there could be. A parent wants to know if somebody has hacked into the Apple system and then they know where your child is located. Isn't that -- if I could ask Mr. Butterfield, isn't that what this amendment is all about?

Mr. Butterfield. Yes, that essentially is it, Mr. Waxman. You are correct.

Mr. Waxman. I can't understand what reason we wouldn't want to make sure that a parent is informed that the child's location has been taken or the identification of the child's location is now made available to somebody who is unauthorized and hacked into the system.

Mrs. Bono Mack. If the gentleman would yield?

Mr. Waxman. It is your time.

Mrs. Bono Mack. Back to me then.

Again, I appreciate this. And it points out the fact that if you could -- I need to sort of think of things in concrete terms. Can you point to an example of this happening to make me perhaps see it a little bit more the way you are? We are talking theoretical as opposed to the data breaches that have occurred in the past. And if you could

just perhaps point out for me an example of this happening I might understand it a little bit better. And I would be happy to yield to the gentleman. And, if not, we can --

Mr. Waxman. If the gentlelady would yield to me?

Mrs. Bono Mack. Yes, sir.

Mr. Waxman. There are hundreds of breaches of what is going on electronically. And we just learned that the iPhone keeps track of the location of the owner who is using the iPhone. And so if that has been breached --

Mrs. Bono Mack. So the gentleman is saying that Apple keeps a database of where we are at any given time at any given place, perhaps right now knowing that we are here?

Mr. Waxman. That is my understanding, that that information has just been available. And so if there is a breach of this information about a location -- let's see if the amendment -- and the amendment says personal information includes identity of the location of a child under the age of 13 and other information related to children under the age of 13. Then that should -- that breach of that data should go to the parent.

Mrs. Bono Mack. Once again, can the gentleman point out, rather than theoretical, that this has actually happened with a child under the age of 13 -- and again under the assumption that Apple is keeping a database of where we are, rather than --

Mr. Waxman. Well, it is not so theoretical. We have just been this whole last week or so been hearing about hacking into people's

emails by Rupert Murdoch, not himself personally, but the people that work for him in England. So we know that hacking takes place. And this amendment --

Mrs. Bono Mack. Reclaiming my time. You are specific to a GEO location here?

Mr. Waxman. Yes.

Mrs. Bono Mack. And so I again just want to urge my colleagues to oppose the amendment.

Mr. Rush. Madam Chair.

Mrs. Bono Mack. Yes, I will yield my last 21 seconds to the gentleman.

Mr. Rush. Madam Chair, I move to strike the last word.

Mrs. Bono Mack. The gentleman is recognized for 5 minutes.

Mr. Rush. Madam Chair, in your bill, section 2(a)(2)(D), the words here, a process for taking into consideration the quantity, type, nature, and sensitivity of the data -- now, Madam Chair, that infers to me that any information of a sensitive -- or any data that is sensitive should be included. And what the gentleman's amendment does is just expound upon and makes it much more clear. But here in this section you have a section that says that sensitive data should be included. And what can be more sensitive than a child, the whereabouts of a child, data around the child? Madam Chair, I think that in order to clarify section 2(a)(2)(D), then I think the gentleman's amendment is in order.

Mrs. Bono Mack. If the gentleman will yield?

Mr. Rush. I certainly will.

Mrs. Bono Mack. Thank you.

Again, I just think of the numbers of times I have had to buy telephones for my children. Those phones are registered in the adult name. They are not registered in the name of the child. How would anybody in fact know that it is somebody under the age of 13 who has that phone in their possession and actually is tracking somebody under the age of 13?

And, again, these are why I think these questions need to be discussed and talked about thoroughly, as to understand what this means. So how in fact --

Ms. Schakowsky. Would the gentleman yield to respond to that?

Mr. Rush. Yes.

Ms. Schakowsky. Thank you.

Well, you know when there are custodial battles that certain people would certainly know that someone else has a telephone, that a child would have a telephone and want to get that information. I mean, we have -- I am sure there are plenty of examples in the real world, but we certainly can all envision that situation.

Mrs. Bono Mack. If the gentlelady will yield -- and to remind my colleagues we have a floor vote on with 7 minutes left to go.

But, again, the point is, how does in fact anybody know when it is you carrying the phone or somebody under the age of 13? These are very good questions. And again, under the context of privacy and safety, we should discuss them. And again, I don't know how in fact

you would somehow have a separate database for when that date was collected for when the adult has it than when the child has it. Is there a switch you flip on your phone that says the child is now carrying it around the mall as opposed to the adult?

Mr. Waxman. Will the gentleman yield?

Mr. Rush. I certainly will yield.

Mr. Waxman. Look, if we want to discuss this between now and the full committee we certainly can do it, but it is inexplicable that you would oppose this. Anybody that has a cell phone, now that we know that your location can be identified and that could be hacked into, should probably be notified that somebody has hacked into your phone and they can identify where you are located. But this amendment is restricted to 13-year-olds or younger. And Ms. Schakowsky points out that it could be one parent versus another. It is the kind of thing that ought to be -- it is the kind of data that ought to be protected.

Now, we will talk about it, and I believe you will come to accept this as we talk about it, but we should have talked about it before. And I think it is a terrible vote for people on this committee to say they are going to reject the identification and location of a child under the age of 13 or other information related to children. I think it ought to be broader than that. But at least for children there ought to be a determination that this is personal information that ought to -- when that data is breached ought to be made available to the owner of the cell phone, which is usually a parent.

So, look, you are a new grandmother --

Mrs. Bono Mack. Not yet, but soon. Thank you.

Mr. Waxman. Oh, okay. I have grandchildren, and I have had children, and I would want to know if when they just have this ubiquitous cell phone on all the time and sending text messages or just have it available so you can call the child, that if somebody has hacked into it, I would want to know. And this at least allows the person to know that their cell phone has been hacked into and their location has been identified. I think people have a right to know certainly when it pertains to children, but I think all people ought to have a right to know if their location is being identified.

Mr. Butterfield. Is this your time, Mr. Waxman?

Mr. Waxman. It is Mr. Rush's.

Mr. Butterfield. Can I ask Mr. Waxman a question?

Mrs. Bono Mack. The time is expired.

And again I wouldn't be so quick to point that out, but we do have a floor vote pending and would ask that we continue this markup immediately following the last floor votes. About 1:45 we will continue. So, right now, the subcommittee stands in recess.

Mr. Barton. We are not going to vote on this amendment before we go?

Mrs. Bono Mack. We will be happy to call for further questions.

Mr. Barton. I am asking if they are prepared to vote.

Mrs. Bono Mack. All right. All those in favor of the amendment will say aye. All those opposed, say no.

Mr. Barton, have my back.

Mr. Barton. I voted aye.

Mrs. Bono Mack. Okay. Well, the noes have it.

Mr. Waxman. Madam Chair, let's have a roll call vote.

Mr. Butterfield. I only heard one no.

Mrs. Bono Mack. It is a very powerful no.

Mr. Butterfield. Let's put it on the record. I ask for a roll call vote.

Mrs. Bono Mack. I thank all of the gentleman and will look forward to seeing you back here at 1:45. The subcommittee will stand in recess until then.

[Recess.]

RPTS COCHRAN

DCMN HERZFELD

[1:55 p.m.]

Mrs. Bono Mack. The subcommittee will come to order, please.

When the subcommittee had recessed, it had rolled two roll call votes, the Waxman amendment relating to personal electronic communications and the Butterfield amendment relating to child location.

So a vote now occurs on the Waxman amendment, and the clerk will call the roll.

The Clerk. Mrs. Blackburn?

Mrs. Blackburn. Nay.

The Clerk. Mrs. Blackburn, nay.

Mr. Stearns?

[No response.]

The Clerk. Mr. Bass?

[No response.]

The Clerk. Mr. Harper?

[No response.]

The Clerk. Mr. Lance?

Mr. Lance. No.

The Clerk. Mr. Lance, nay.

Mr. Cassidy?

[No response.]

The Clerk. Mr. Guthrie?

Mr. Guthrie. No.

The Clerk. Mr. Guthrie, nay.

Mr. Olson?

[No response.]

The Clerk. Mr. McKinley?

Mr. McKinley. No.

The Clerk. Mr. McKinley, nay.

Mr. Pompeo?

Mr. Pompeo. No.

The Clerk. Mr. Pompeo, no.

Mr. Kinzinger?

Mr. Kinzinger. No.

The Clerk. Mr. Kinzinger, no.

Mr. Barton?

[No response.]

The Clerk. Mr. Upton?

The Chairman. No.

The Clerk. Mr. Upton, nay.

Mr. Butterfield?

Mr. Butterfield. Yes.

The Clerk. Mr. Butterfield, aye.

Mr. Gonzalez?

[No response.]

The Clerk. Mr. Matheson?

[No response.]

The Clerk. Mr. Dingell?

Mr. Dingell. Aye.

The Clerk. Mr. Dingell, aye.

Mr. Towns?

[No response.]

The Clerk. Mr. Rush?

Mr. Rush. Aye.

The Clerk. Mr. Rush, aye.

Ms. Schakowsky?

Ms. Schakowsky. Aye.

The Clerk. Ms. Schakowsky, aye.

Mr. Ross?

[No response.]

The Clerk. Mr. Waxman?

[No response.]

The Clerk. Mrs. Bono Mack?

Mrs. Bono Mack. No.

The Clerk. Mrs. Bono Mack, nay.

Mrs. Bono Mack. Are there any Members wishing to be recorded?

Mr. Cassidy. No.

The Clerk. Mr. Cassidy, nay.

Mrs. Bono Mack. Any other Members wishing to be recorded?

The clerk will report the result.

Mr. Waxman, do you wish to be recorded?

Mr. Waxman. I do. Aye.

The Clerk. Mr. Waxman, aye.

Mrs. Bono Mack. Mr. Bass?

Mr. Bass. No.

The Clerk. Mr. Bass, nay.

Mrs. Bono Mack. Any other Members wishing to be recorded?

Seeing none, the clerk will report the results.

The Clerk. On that there were 5 ayes, 10 nays.

Mrs. Bono Mack. The vote is 5 ayes and 10 nays, and the amendment is not agreed to.

A vote now occurs on the Butterfield amendment. The clerk will call the roll.

The Clerk. Mrs. Blackburn?

Mrs. Blackburn. No.

The Clerk. Mrs. Blackburn, nay.

Mr. Stearns?

[No response.]

The Clerk. Mr. Bass?

Mr. Bass. Nay.

The Clerk. Mr. Bass, nay.

Mr. Harper?

[No response.]

The Clerk. Mr. Lance?

Mr. Lance. Nay.

The Clerk. Mr. Lance, nay.

Mr. Cassidy?

Mr. Cassidy. Nay.

The Clerk. Mr. Cassidy, nay.

Mr. Guthrie?

Mr. Guthrie. No.

The Clerk. Mr. Guthrie, nay.

Mr. Olson?

[No response.]

The Clerk. Mr. McKinley?

Mr. McKinley. Nay.

The Clerk. Mr. McKinley, nay.

Mr. Pompeo?

Mr. Pompeo. No.

The Clerk. Mr. Pompeo, nay.

Mr. Kinzinger?

Mr. Kinzinger. No.

The Clerk. Mr. Kinzinger, nay.

Mr. Barton?

[No response.]

The Clerk. Mr. Upton?

The Chairman. No.

The Clerk. Mr. Upton, nay.

Mr. Butterfield?

Mr. Butterfield. Aye.

The Clerk. Mr. Butterfield, aye.

Mr. Gonzalez?

[No response.]

The Clerk. Mr. Matheson?

[No response.]

The Clerk. Mr. Dingell?

Mr. Dingell. Aye.

The Clerk. Mr. Dingell, aye.

Mr. Towns?

[No response.]

The Clerk. Mr. Rush?

Mr. Rush. Aye.

The Clerk. Mr. Rush, aye.

Ms. Schakowsky?

[No response.]

The Clerk. Mr. Ross?

[No response.]

The Clerk. Mr. Waxman?

Mr. Waxman. Aye.

The Clerk. Mr. Waxman, aye.

Mrs. Bono Mack?

Mrs. Bono Mack. I would like to be recorded as a no.

The Clerk. Mrs. Bono Mack, nay.

Are there any other Members -- Mr. Stearns?

Mr. Stearns. No.

The Clerk. Mr. Stearns, nay.

Mrs. Bono Mack. Any other Members wishing to be recorded?

If not, the clerk will report the result.

The Clerk. On that there were 4 ayes, 11 nays.

Mrs. Bono Mack. The vote is 4 ayes and 11 nays, and the amendment is not agreed to.

Are there further amendments to the bill?

Mr. Stearns. Madam Chair, we have an amendment at the desk.

Mrs. Bono Mack. The clerk will report the amendment.

The Clerk. An amendment by Mr. Stearns of Florida.

Mrs. Bono Mack. Without objection, the reading --

The Clerk. Mr. Stearns, which number?

Mr. Stearns. It is the data minimization provision of the bill. It is myself and Mr. Pompeo offering this amendment together.

Mrs. Bono Mack. Without objection, the reading is dispensed with, and the gentleman is recognized for 5 minutes in support of his amendment.

[The information follows:]

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

Mr. Stearns. Thank you, Madam Chair. I will speak briefly on this, and then my colleague Mr. Pompeo is ready to speak also.

This provision, my colleagues, is a new addition from the bill I offered back in 2005, and I want to make sure that if we are adding this provision, we are not doing so in a way that overburdens the scope of government authority.

During the subcommittee June 15 hearing, I questioned Commissioner Edith Ramirez on how the Federal Trade Commission would address data minimization, and her testimony indicated that she believed the FTC has rulemaking authority in this area. I am relieved to hear this was not the intent of the legislation; however, I am concerned that the FTC believes otherwise. In fact, that was what we came clearly away with. Therefore, I, along with my colleague Mr. Pompeo, am pleased to introduce this amendment to clarify, just simply clarify, that the FTC has no such rulemaking authority.

I remind my colleagues that it wasn't long ago when the Democrat Congress stripped away the FTC's APA rulemaking authority because it had overstepped its power. It is irresponsible and unwise for Congress to return this type of authority through piecemeal legislation. Therefore, this amendment would simply add the sentence, quote, "The Commission may not promulgate any regulation with regard to the establishment of such plans and procedures," end quote, at the end of section 2(b).

So I ask my colleagues on the other side of the aisle to realize we are just simply putting in a very simple sentence to allow Congress

to have the authority, and not the Federal Trade Commission, with establishing rules and regulations for plans and procedures.

With that, I yield the balance of my time to the gentleman from Kansas.

Mr. Pompeo. Thank you for yielding, Mr. Stearns.

I also had a chance to have a colloquy with Ms. Ramirez during the hearing, and we added this provision that you can only keep certain amounts of data and asked her how she would decide what was reasonable, and whose property this information is, their property rights, and whose information they would feel like the FTC had the authority to make them get rid of, even if it had value to them.

I was very concerned as well, so I was very pleased when Mr. Stearns came up with the idea, and I am very glad to support this amendment. We have to be real careful about giving the FTC the power. If we have certain things we want in the minimization plan, we ought to talk about them and discuss them among ourselves. But to give the FTC the authority to post hoc make an analysis of what data a company can keep I think is a real risk. So I am glad we are putting forth this amendment, and I would urge my colleagues to support it.

Mrs. Bono Mack. The gentleman yields back his time.

Is there further discussion on the amendment?

Mr. Butterfield. I seek recognition.

Mrs. Bono Mack. For what purpose?

Mr. Butterfield. In opposition to the amendment.

Mrs. Bono Mack. The gentleman is recognized for 5 minutes.

Mr. Butterfield. Madam Chair, the language of the bill states that it is up to businesses to establish plans and procedures for minimizing data. I believe it is straightforward. The Federal Trade Commission is not given any specific authority to write rules related to that language, and the bill does not grant the FTC the general authority to write whatever rules it believes are needed to carry out the act. Having said that, if later in time businesses find that they do not read the provision clearly, the FTC should be allowed, through an open process of notice and comment, to clarify it.

This amendment's sole purpose is hamstringing an agency that is already hamstrung in its rulemaking authorities. Those of us who have been around for a couple of years know that the FTC has a particularly tough rulewriting process that Congress imposed on it. The result has been that the agency hasn't written many, if any, rules since we put that process in place. Most of the rules they have written since then have been at the specific direction of Congress in law and under the more streamlined APA process allowed in each of those laws. This bill doesn't give them APA rulemaking for the data minimization plans or direct them to do anything. The chances they will act on their own are less than zero.

This amendment is nothing more than more of the same from the other side, the argument that regulations are bad. Well, in a case like data minimization, it is businesses that could be hurt, businesses that will be hurt, because they can and often do ask agencies like the FTC for clarity. This would prevent that.

Mr. Stearns. Will the gentleman yield?

Mr. Butterfield. Yes, I will yield.

Mr. Stearns. I understand what you are saying. You are saying the bill pretty much is clear, and that you don't want to specify anything in the bill that would hamper them. But you mention the businesses. I am telling you the stakeholders are concerned.

Mr. Pompeo and I both heard the Federal Trade Commission speak on this, and clearly what she said is they are going to initiate rulemaking particularly with data minimization. So I would think you as a member of this committee would want to make sure they come back to us if they have to interpret anything. So why not just support this fairly simple sentence which really just says in effect that if they are going to do rulemaking, they will come back to see us?

So we are not changing the bill, just saying basically come back to see us if you are going to stipulate beyond some rulemaking that you feel is necessary. So it is really keeping our authority for this committee.

I thank the gentleman for yielding.

Mr. Butterfield. Reclaiming my time, the FTC is well equipped to deal with this rulemaking, and I ask my colleagues to oppose the amendment.

Mrs. Bono Mack. Is there further discussion on the amendment?

Mr. Waxman. Yes.

Mrs. Bono Mack. For what purpose does the gentleman seek recognition?

Mr. Waxman. To strike the last word.

Mrs. Bono Mack. The gentleman is recognized for 5 minutes.

Mr. Waxman. It just seems to me that the bill itself states it is up to businesses to establish plans and procedures for minimizing data. We don't want storage of a lot of data that there is no need to be held, like we had old credit cards and things like that, the data that was breached. I think that is straightforward.

The FTC is not given any specific authority to write rules. If at some later time businesses find that they don't read the provision clearly, the FTC should be allowed, through an open process of notice and comment, to clarify it. So the sole purpose of this amendment seems to be to hamstring an agency that is already hamstrung in its rulemaking authorities.

Those of us who have been around for a while know that the FTC has a particularly tough rulewriting process that Congress imposed on it. Most of the rules they have written have been held up for a very long period of time because of the Magnuson-Moss rulemaking, rather than the APA. This bill doesn't give them APA rulemaking for the data minimization plans or direct them to do anything here. So the chances they will act on their own are pretty close to zero.

So this amendment is nothing more than more of the same from my colleagues on the other side, the argument that regulations are bad. And I just think that we have a Federal Trade Commission. They develop expertise. When they see problems, they ought to be able to address those problems. If they think the laws need to be clarified further,

they ought to have the ability to do that. So I would join in opposition.

Mr. Stearns. Will the gentleman yield?

Mr. Waxman. Yes, sure.

Mr. Stearns. In your conversation that you just did here, you indicated you don't think the bill gives the FTC rulemaking authority. So then if that is true, why would you object to just a sentence that says they don't have it, because basically it is just confirming what you already said?

Mr. Waxman. Number one, I don't like that they don't have it. But two, it is not just the rulemaking, it is the interpretation of the rule at a later time if there is a rule in place, and I think they ought to be able to deal with that.

Mr. Stearns. I thank the gentleman.

Mr. Waxman. So I oppose the amendment.

Mrs. Bono Mack. Is there further discussion on the amendment?

All right. If there is no further discussion, the vote occurs on the amendment. All those in favor shall signify by saying aye.

All those opposed, no.

The ayes have it, and the amendment is agreed to.

Mr. Rush. Madam Chair, I have an amendment at the desk, Rush No. 1.

Mrs. Blackburn. Madam Chairman, I would like to reserve a point of order.

Mrs. Bono Mack. A point of order is reserved on the amendment.

The Clerk. Amendment offered by Mr. Rush of Illinois.

Mrs. Bono Mack. Without objection, the reading of the amendment is dispensed with, and the gentleman is recognized for 5 minutes in support of his amendment.

[The information follows:]

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

Mr. Rush. Madam Chair, section 2 of the Secure and Fortify Electronic Data Act would require covered entities under the law to establish and implement reasonable information and security policies and procedures. Under the subheading "Needed Security Requirements," the FTC will be required to adopt regulations, regulations proscribing that such security policies apply to the collection, use, sale and other dissemination and maintenance of personal information.

My amendment would make clear that these information security policy regulations are to also apply to off-line and paper records and not just to personal information, letters contained in electronic data, or to data in electronic form, which is a defined term in section 5 of the SAFE Act.

This amendment would also clarify the zone for Federal preemption with respect to State data breach laws. Among the 46 States, the District of Columbia, Puerto Rico and the Virgin Islands, all of which have data security breach laws, some of those laws will extend to the possession of non electronic data containing personal information. Another way to say this is that my amendment would make it clear that the scope of section 2's requirements are similar enough in scope to any State laws that cover personal information found in nonelectronic data.

By voting to pass my amendment, we will remove any and all doubt that it is Congress' intent to preempt State security breach laws and policies relating to personal information that is contained in non electronic data and paper records.

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

Mrs. Blackburn. Madam Chairman, I withdraw my point of order.

Mrs. Bono Mack. I thank the gentlelady.

Just for clarification purposes, Mr. Rush, were you, in fact, referring to amendment Rush 01?

Mr. Rush. 01, yes.

Mrs. Bono Mack. We are happy to let you know that this side is going to accept your amendment and congratulate you for that fact.

Is there further discussion on the amendment?

If there is no further discussion on the amendment, the vote occurs on the amendment. All those in favor shall signify by saying aye.

All those opposed, no.

The ayes have it, and the amendment is agreed to.

Mr. Kinzinger. Madam Chair, I have an amendment at the desk.

Mrs. Bono Mack. The clerk will report.

The Clerk. Amendment to H.R. 2577 offered by Mr. Kinzinger.

Mrs. Bono Mack. Without objection, the reading of the amendment is dispensed with, and the gentleman is recognized for 5 minutes in support of his amendment.

[The information follows:]

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

Mr. Kinzinger. Thank you, Madam Chair.

My amendment would provide a flat exemption for small businesses coupled with field preemption, as proposed by the White House in its cybersecurity proposal.

As currently written, the SAFE Data Act would let the FTC decide who should be covered under security requirements and breach notification. President Obama's proposal has defined a business entity as essentially any business of any size regardless of inter- or intrastate operation. The White House proposal proposes that only businesses that collect or store info on 10,000 people or more over any 12-month period would have to provide notice under the Federal law in the event of a breach. The White House proposal then preempts all laws regarding notice affecting any business entity.

The end result is there are no State notice laws for anyone, and a business must only notice under the Federal law if it collects or stores information on more than 10,000 people. My amendment would simply apply this same regime to both the notification and security requirements of this bill. I would also note that Senator Leahy included small business relief in his bill as well.

It is important that this committee not create undue burdens for small business. I want to continue to work on this solution with my colleagues to ensure my amendment would not complicate the preemption of State laws.

With that in mind, Madam Chair, I will withdraw this amendment.

Mrs. Bono Mack. The gentleman withdraws his amendment. I thank

the gentleman and look forward to working with him on that.

At this point, I would ask if there are any further amendments to the bill. The amendment is withdrawn. Are there any further amendments to the bill?

Mr. Rush. Madam Chairman.

Mrs. Bono Mack. For what purpose does the gentleman seek recognition?

Mr. Rush. I have an amendment at the desk.

Mrs. Bono Mack. The clerk will report the amendment.

The Clerk. Amendment to H.R. 2577 offered by Mr. Rush of Illinois.

Mrs. Bono Mack. Is that amendment 41?

Mr. Rush. No, I am sorry, it is Rush 041.

The Clerk. Yes, sir.

Mrs. Bono Mack. Without objection, the reading of the amendment is dispensed with, and the gentleman is recognized for 5 minutes in support of his amendment.

[The information follows:]

******** INSERT 3-4 ********

Mr. Rush. I want to thank you, Madam Chair.

Section 5, subsection 7, of the Secure and Fortify Electronic Data Act defines "personal information" in a manner that excludes the term "public record information." Section 5, subsection 8, then goes on to define the term "public record information" as information about an individual that is largely made available to the general public from Federal, State or local government records. However, Madam Chair, that definition does not contemplate whether the information was acquired legally.

With all the recent attention and scrutiny that is being paid to the News Corp. phone hacking scandals across the Atlantic Ocean, we have no excuse for not attaching this provision. By eliminating the public record information carve-out from public information, Congress will be stating emphatically that just because personal information can be collected from the public domain does not excuse entities that make it their business to collect and handle personal information to ensure that said information was legally acquired to begin with.

The definition of "personal information" is far too important in this bill for us not to confront this potentially huge exclusion.

Madam Chairman, with that, I yield back the balance of my time.

Mrs. Bono Mack. The gentleman yields back.

The chair will recognize herself for 5 minutes in opposition to the amendment.

I will state in crafting this legislation, we followed the model of California's breach notification law, which was the very first in

the Nation. That provision explicitly states that the term "personal information" does not include publicly available information that is lawfully made available to the general public from Federal, State or local government records.

There is plenty of precedent for this exclusion. The FTC's own safeguard rule excludes public records, including information reported in the media. The banking agency's guidance on breach notification also excludes the same information. Additionally, over 20 States have similarly excluded public information. And then to strike this provision means that companies would be subject to a stricter standard than the government regarding the same kinds of information.

Worse than a stricter standard, it is a completely contrary standard. So while governments are mandated to disclose certain information in records, private companies would be mandated to protect the same information and notify consumers when someone accesses this already public information.

So, with that, I would urge my colleagues to vote against this amendment, and I yield to Mr. Stearns.

Mr. Stearns. Yes. I also want to speak against the amendment.

I would say to my colleague, when you go to page 28, what you are basically doing, you want to exclude public record information. But, you know, that is what Zillow is all about. I can go on to Zillow, the Web page, and find out the real estate values, I can find out what a property sold for. I can go to an appraiser Website in my hometown and find this information. This is all public information. So I

really don't understand why you want to prevent this from -- it says such term does not include public record information.

I think the average American wants to get this public record information. It is available today, and I am afraid if you did what you are saying, this would change the whole manner of understanding what public records are available, which we all assume we can either get on the Internet or call our appraiser.

I just think it is a bad amendment, so I urge my colleagues to vote against it.

Mr. Rush. Will the gentleman yield?

Mrs. Bono Mack. It is my time, and, yes, I will yield.

Mr. Rush. I think what you are missing, I haven't heard anyone address this particular issue, we are talking about information that has not been certified as being legally gathered. There is information that is illegally obtained, and we want to make sure that the information that is under the label of public information, that that information was legally gathered. That is what this amendment addresses, the legality of the information. Certainly we do understand that we are in a changed environment now since the News Corp. scandal --

Mr. Stearns. Will the gentleman yield?

Mr. Rush. It is not my time.

Mrs. Bono Mack. It is my time, and I gladly yield.

Mr. Stearns. If you go on page 29, they define public record information. It says the term "public record information" means

information about an individual that is lawfully made available to the general public through Federal, State or local government.

So your understanding or what you just said about illegal information doesn't even apply, because the definition is right here on page 29, lines 16 through 20.

Mr. Rush. If the gentleman would yield, I would just say there is a difference between being available and obtaining. There are vast differences in terms of attaining information and then making the information available. I think the higher standard here is the obtaining of the information, not just the availability of it.

Mrs. Bono Mack. Reclaiming my time, I still believe that the California breach notification law is a good model to begin with and again urge my colleagues to vote against the amendment.

Is there further discussion on the amendment?

Mr. Butterfield. I would like to speak in favor of the Rush amendment.

Mrs. Bono Mack. The gentleman is recognized for 5 minutes.

Mr. Butterfield. Thank you, Madam Chairman.

Mr. Stearns seems to suggest these are just public records, that they are in the public domain, and therefore they should not be protected in any way. But just because information came from a public record doesn't mean that it isn't personal or sensitive. Data aggregators have your name, they have your Social Security number, they have your address and a few of the other things this bill suggests are sensitive. And guess what? They also have your divorce record, your

bankruptcy filings, your gun license, your hunting permits.

They have gone all out and collected all of this from every city, county and State government building that allows this information to be released. But now they have put all of this data in one place, and they don't want to take any responsibility for the damage that could be done to hundreds of millions of people because they put it all in one place.

They should not get a free pass. The damage to consumers will be the same no matter where the information originates. So the aggregators of the information should be required to guard and tell people when they have failed to do so. This amendment would ensure that that happens.

I support the amendment, I congratulate my colleague for offering it, and I would yield back.

Mr. Rush. Will the gentleman yield?

Mr. Butterfield. I yielded back, but I will yield.

Mrs. Bono Mack. The gentleman did yield back.

Is there further discussion on the amendment? For what purpose does the gentlelady seek recognition?

Ms. Schakowsky. To strike the last word.

Mrs. Bono Mack. The gentlelady is recognized for 5 minutes.

Ms. Schakowsky. And I would like to yield to my colleague Mr. Rush.

Mr. Rush. I want to thank the gentlelady for yielding.

Madam Chairman, in California, I mean, I love Californians, it

is a nice State, I like to visit it quite often. But in this instance it is not the gold standard for privacy or for data security.

I would draw your attention to the State of Massachusetts. This is the wording of the security laws as it relates to the citizens of that State, and I quote these words: "Provided, however, that 'personal information' shall not include information that is lawfully obtained from publicly available information or from Federal, State or local government records lawfully made available to the general public."

Madam Chair, in this instance I think that my amendment is certainly consistent with a more stringent, higher level of protection for the American public, and that protection resides in the Massachusetts laws and not in the California laws.

Mrs. Bono Mack. Does the gentlelady yield back?

Ms. Schakowsky. I yield back my time.

Mrs. Bono Mack. Is there further discussion on the amendment?

All right. If there is no further discussion, the vote occurs on the amendment. All those in favor shall signify by saying aye.

All those opposed, no.

The nays have it, and the amendment is not agreed to.

Mr. Stearns. Madam Chair, I have an amendment at the desk.

Mrs. Bono Mack. The clerk will report the amendment.

The Clerk. An amendment offered by Mr. Stearns of Florida.

Mrs. Bono Mack. Without objection, the reading of the amendment is dispensed with, and the gentleman is recognized for 5 minutes in

support of his amendment.

[The information follows:]

******** INSERT 3-5 ********

Mr. Stearns. Thank you. I intend to offer this amendment and then withdraw it.

I have talked to some of my colleagues, and I think the feeling is that this should be discussed at the full committee, and plus our counsel has indicated that after we pass this bill, he could come up with report language which would satisfy us. But I thought I would go through and explain the purpose of the amendment is to address when notification is appropriate.

I want to emphasize that I believe companies should notify both consumers and law enforcement as soon as they have confirmed that there is a breach. The question, however, is when does that confirmation actually occur? I have had the opportunity to talk to stakeholders. I have come to believe that there is no magical moment during an investigation of a potential data breach that a company confirms that a breach has, in fact, occurred. Therefore, I am concerned with any legislation that creates stiff timetables for action without specifically clarifying when the clock begins to run against that company.

When this is unclear, we force companies to rush to judgment, overnotify and often confuse their customers by changing their stories once information is discovered. For that reason, I thought of this amendment to make sure companies can concentrate on determining when and whether a breach has occurred, and how simply to best protect customers rather than calculating when the clock begins ticking.

Accurately and appropriately addressing a security breach is

obviously vital to a company's business model. No company can be the one that sits on their breach and doesn't report, because if consumers do not trust how a company uses that information, they will turn to the company's competitors quickly. Therefore incentives for timeliness already exist.

Sometimes timeliness is beyond 45 days, which is in the bill. During the hearing we learned that it took one company 115 days to receive their forensic report confirming a breach. Most recently the IRS took 86 days to notify customers. So think about this: If it took a giant government entity with abundant resources 86 days to notify, how can we expect a small company to do all the forensic analysis and confirm a breach within 45 days?

The subcommittee appears to understand the importance of this language because they have the words "unreasonable delay" as included on page 5, line 9, when addressing when consumers and the FTC should be notified. I respect that, and I think that was wise to have that language on reasonable delay in there. Confusingly though, several pages later, however, a cap of 45 days is inserted. So right away there is a little bit of ambiguity here.

This amendment would simply eliminate this ambiguity, this confusion, and return the bill to the important regime of "unreasonable delay." That was in my 2005 bill that we approved, and I think a lot of people have expressed concern that we should return to that.

So I hope perhaps that we can get proper report language after this bill is sent to the full committee. In the meantime, Madam Chair,

I look forward to working with you to see if we can clarify on that.

Without further ado, I ask unanimous consent to withdraw my amendment.

Mrs. Bono Mack. The gentleman withdraws his amendment. I would just like to speak briefly to it first and congratulate you. I think that is the first time I have ever heard a member use the IRS as a model of efficiency, but you did it.

I just firmly believe in the 45 days. I will continue to work with you on this, but I do believe that it is important consumers do know as quickly as possible. Both of those examples you cited really would have a law enforcement exemption, or simply at the request of law enforcement they could, in fact, extend that 45-day period.

With that, I appreciate the gentleman's willingness to work with me and thank him for withdrawing his amendment.

Mr. Stearns. If the gentlelady will yield just for a second, we can give you other cases where companies that are much smaller than the IRS who, through forensic evidence, was unable to come up within the 45 days because they were in that zone of ambiguity. So I will be glad to give you more examples where this is certainly an area for concern. So with that, I look forward to working with you.

Mrs. Bono Mack. I look forward to it, too.

The gentleman again withdraws.

Are there any further amendments?

Mr. Rush. Madam Chairman.

Mrs. Bono Mack. For what purpose does the gentleman seek

recognition?

Mr. Rush. Madam Chair, I have an inquiry of the counsel.

Mrs. Bono Mack. The gentleman will state his inquiries.

Mr. Rush. Subsection 3(f)2 of the SAFE Act does not authorize the FTC to adopt rules pertaining to which security methodologies and technologies would suffice as a basis for a legal presumption. I would note that in one part of the subsection, the FTC is authorized to issue guidance. However, on page 18, line 4, the SAFE Act would seem to also authorize the FTC to adopt rules. Is this a drafting error?

Mrs. Bono Mack. Can the gentleman repeat the question, please, for counsel?

Mr. Rush. I want to know if subsection 3(f)2 of the act does not authorize the FTC to adopt rules pertaining to which security methodologies and technologies would suffice as a basis for a legal presumption? I would note that in one part of the subsection, the FTC is authorized to issue guidance. However, on page 18, line 4, the act would seem to also authorize the FTC to adopt rules.

So my question is is this a drafting error?

Mr. Mullan. My answer is yes, it is a drafting error, and on page 18 it should not refer to rules. On page 18, line 4, "in issuing such guidance," it should say.

Mr. Rush. The second part of the question, would a Federal court or State court applying this law then view the FTC's guidance as being only an administrative agency's advisory opinion, thereby leaving commercial entities with a weaker defense?

Mr. Mullan. I believe that the Federal Trade Commission's guidance on this point would be persuasive, but not conclusive.

Mr. Rush. Thank you very much.

I have a second question, and that question is can a service provider also be a third party agent? For example, when a service provider offers cloud computing or hosted services, would the service provider fit the third party agent definition, which in turn would subject them to section 3(b)'s special notification requirements or to section 2's reasonable security policy and procedures?

Mr. Mullan. I believe there could be circumstances where a service provider is such an agent, yes.

Mr. Rush. Thank you.

Mrs. Bono Mack. I thank the gentleman.

Are there further amendments to the bill?

Mr. Rush. I have an amendment.

Mrs. Bono Mack. For what purpose does the gentleman seek recognition?

Mr. Rush. I have an amendment at the desk.

Mrs. Bono Mack. The clerk will report the amendment.

The Clerk. An amendment offered by Mr. Rush of Illinois.

Mrs. Bono Mack. Without objection, the reading of the amendment is dispensed with, and the gentleman is recognized for 5 minutes in support of the amendment.

[The information follows:]

******** INSERT 3-6 ********

Mr. Rush. Thank you, Madam Chair.

Madam Chair, my amendment in the nature of a substitute would strike all provisions of the SAFE Act and insert the Data Accountability and Trust Act, H.R. 1707, which I introduced along with Mr. Barton and Ms. Schakowsky on May 4, 2011. This would be the fourth Congress in which my bill has been introduced, notwithstanding its passage on suspension in the 111th Congress.

The Data Act has two basic components: First, the bill requires that persons possessing electronic data that contains personal information must take steps to ensure that that data is secure. Second, the bill establishes notification procedures that a company must take when the data breach occurs in order to allow affected consumers to protect themselves.

As is the case under the SAFE Act, companies will not have to initiate such notices if they determine that "there is no reasonable risk of identity theft, fraud or other unlawful conduct." However, unlike the SAFE Act, H.R. 1707 would also impose special requirements on data brokers, but accommodates other laws that govern how certain data brokers are regulated.

With that, Madam Chair, I would ask for support from members of the subcommittee, and I yield back the balance of my time.

Mrs. Bono Mack. I thank the gentleman.

We would like to get some clarification, if I might, on whether this is search 01 or the substitute 01.

Mr. Rush. Substitute 01.

Mrs. Bono Mack. If we can just ask the clerk to distribute the correct amendment.

We don't have it. Okay. Apparently what this amendment does, it strikes and replaces all of this bill with H.R. 2221 as passed the House last Congress. It includes access and a provision for marketing databases; is that correct?

Mr. Rush. Madam Chair, I didn't hear you.

Mrs. Bono Mack. Is the substitute -- the amendment you are speaking to just strikes the bill and replaces it with 2221.

Mr. Rush. Yes. Madam Chair, until the committee is ready to distribute my amendment, I will withdraw the amendment so we can move forward.

Mr. Butterfield. If the gentleman will yield for just a second, does your substitute amendment track verbatim what was circulated earlier and what was passed in the last Congress?

Mr. Rush. Yes, it does.

Mr. Butterfield. Have there been any changes, as far as you know?

Mr. Rush. No, not as far as I know.

Mr. Butterfield. I would ask unanimous consent that we proceed with consideration of the substitute.

The Chairman. I object.

Mrs. Bono Mack. Objection is heard. The gentleman withdraws temporarily his amendment until the committee can get it before them.

Are there further amendments to the bill?

Ms. Schakowsky. Yes.

Mrs. Bono Mack. For what purpose does the gentlelady seek recognition?

Ms. Schakowsky. Madam Speaker, I have an amendment at the desk.

Mrs. Bono Mack. Thank you.

The clerk will report.

Ms. Schakowsky. Purchases 01.

The Clerk. An amendment offered by Ms. Schakowsky of Illinois.

Mrs. Bono Mack. Without objection, the reading of the amendment is dispensed with and the gentlelady is recognized for --

The Chairman. May I reserve a point of order?

Mrs. Bono Mack. A point of order is reserved.

The reading of the amendment is dispensed with.

[The information follows:]

******** INSERT 3-7 ********

Mrs. Bono Mack. The gentlelady is recognized for 5 minutes in support of her amendment.

Ms. Schakowsky. Okay. We have been having a discussion a bit on whether or not this is on privacy or security, but reading from the bill itself, it says its purpose is to establish and implement reasonable policies and procedures regarding information and security practices for the treatment and protection of personal information. Later it says taking into consideration data security requirements.

Such regulations shall, taking into consideration the quantity, type, nature and sensitivity of the personal information, require the policies and procedures to include the following: A, a security policy with respect to the collection, use, sale and other dissemination and maintenance of such personal information.

My amendment deals with a particular kind of personal information, and that has to do with a woman's decision to have a baby, whether or not a woman might be carrying a baby, and to whom and when she reveals that information. And those are incredibly personal pieces of information, or, according to bill, they are sensitive pieces of information.

But a woman could unknowingly open herself to revealing all this to the world simply by using a frequent shopper or loyalty card at her drugstore or supermarket. These cards allow retailers to keep a record of each and every purchase we make, including over-the-counter drugs such as contraceptives, and medical screening devices such as pregnancy tests.

But this bill does not require retail to secure any of this information against hackers or any other unauthorized access because it isn't included in the incredibly narrow universe of "personal information" covered by this bill. I looked carefully at the definitions section. It is very, very limited.

Ask any young professional woman what the harm is in information about a potential pregnancy getting out at the wrong time, and she will not be at a loss for an answer: the denial of a job. It is not uncommon, at least in my experience, to find that that young women who are seeking jobs or promotions at a time when they were also in the early stages of their pregnancies will admit to having been afraid to reveal they were pregnant for fear of not getting a job or moving up the organizational ladder. They are likely afraid because they have seen it happen to other women.

The scope of personal information covered in this bill needs to be significantly expanded to require retailers to protect this and other sorts of health-related information that they collect and store. My amendment moves this bill in that direction by amending the definition of "personal information" to include records of an individual's purchases of over-the-counter drugs and devices, including pregnancy tests. The FTC is also given authority to expand the definition of "personal information" to include other health-related information it determines should be included.

I would urge my colleagues to seriously consider this amendment and to support it.

I yield back.

Mrs. Bono Mack. Does the gentleman withdraw his point of order?

The Chairman. I do.

Mrs. Bono Mack. Is there any further discussion on the amendment?

Mr. Olson. Madam Chairwoman, I would like to make a couple comments.

Mrs. Bono Mack. The gentleman is recognized for 5 minutes.

Mr. Olson. This is the same debate we have had over and over on this amendment. Again, it is expanding the FTC's influence over these decisions and giving them the power we should be exercising here in Congress.

Again, the one thing that the American public says over and over when I go back home, their number one concern is jobs and the economy. And giving the FTC more authority and creating more uncertainty, more regulations isn't creating jobs, it is hurting jobs.

Again, we have proposed all sorts of alternatives over here to address this consideration, and, again, you know, some of the things that have been said about personal information, that the things that we proposed in this bill are untested, is patently false. It has been tested in 46 States.

The rulemaking process -- people say we are taking the rulemaking process away from the FTC. We just want to challenge them to go over and do something that Magnuson-Moss Act, which is much better than the APA because it actually requires an economic effect.

Again, we have got to remember the context of what we are dealing with. The American people are concerned about jobs, and we can't pass more regulations and put that burden upon them. We need to create jobs and have commonsense regulations. I think this bill strikes a compromise, and I oppose the legislation.

I yield back.

Mrs. Bono Mack. The gentleman yields back.

Is there further discussion?

Mr. Waxman. I seek recognition in support of the amendment.

Mrs. Bono Mack. The gentleman is recognized for 5 minutes.

Mr. Waxman. The amendment says if they keep track of your over-the-counter drugs, and that is hacked into, you have to be informed of that information.

If I could ask counsel a question. Doesn't this bill preempt the State laws on this subject?

Mr. Mullan. The bill does contain preemption provisions.

Mr. Waxman. California has a law that says if your health information, such as prescription drugs, over-the-counter drugs, as well as other health information, is confidential. Would this law be preempted?

Mr. Mulvaney. I think that would call for some detailed analysis.

Mr. Waxman. If California law said if you are hacked into, if there is a database that is hacked into that says somebody has gotten pharmaceutical over-the-counter drugs, that has to be protected. If

this amendment is not adopted, that wouldn't be protected, but the State law would be overturned; am I correct?

Mr. Mulvaney. I think it would call for fine analysis. The preemption provision that is in this bill is not a field preemption provision which automatically wipes out all State laws on the subject. So I am not --

Mr. Waxman. You don't know for sure.

Mr. Mulvaney. I am not sure.

Mr. Waxman. Well, I am afraid it might. But let us say it doesn't. Is there any reason anybody should be able to get information about the over-the-counter drugs that you get from a pharmacy if that information is hacked into? This could have real-life serious consequences. This isn't about protecting jobs. This is about protecting people from information that may keep them from getting a job or have others intrude on their personal privacy.

So, as I understood the gentlelady's amendment, and I am going to yield to her, you are seeking in a very narrow way to make sure that if information on people's purchases of drugs is hacked into, and someone has that information, that they have to inform the person about whom the information pertains; is that correct?

Ms. Schakowsky. That is certainly correct. It simply adds to what the very limited definitions of "personal information" include. Frankly, I think that if you ask the American people if they think that their information about what they buy at the drugstore should be protected or not, I think overwhelmingly people would say absolutely.

And it is a jobs issue. As I pointed out in my testimony, there are women, if they reveal that they are pregnant, they may lose the opportunity to have a job or to have a promotion.

This is not about limiting businesses. This is about protecting information from hackers.

I yield back.

Mr. Waxman. If there is an herbal substance that is sold, but not as a drug, but is sold, and it is represented to give men sexual vitality, maybe some of the men maybe can't relate to the women, but you can relate to yourselves. Do you think that is information that other people ought to have? I don't think it is their business.

So I support this amendment. I don't understand the argument against it, something about the FTC doing something or other.

Mrs. Bono Mack. If the gentleman would yield, I have before me the California law, and I am asking for a clarification, if possible, from what you are saying.

It does say that for purposes of this section, medical information means any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnoses by a health care professional. But I don't see over-the-counter drugs anywhere in there, but I certainly understand the point you are trying to make and agree with you, of course, that information should be held private.

But that gets back into the belief, my belief, that this is a privacy matter. At the same time, people do willingly give or

subscribe to CVS or Rite Aid or whomever, and they get a frequent buyer card, and they do allow those purchases to be tracked.

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Mrs. Bono Mack. So I agree with you that you do need to protect that.

But my problem is in the leap from the fact that I have bought Band-Aids or something -- you know, something that I wouldn't want other people to know, whatever it was -- that they would make that leap into identifying me as a person and then stealing my identity and then using that. I don't know how the combination of my name or a number and that I bought Band-Aids would in fact put me at risk for identity theft, but I agree with the gentleman's and the gentlelady's concern about privacy wholeheartedly.

Mr. Waxman. Well, this is a data breach bill and this is the kind of data, if it is breached, should be -- there should be some response to the person involved that they know that that data has been breached. So I support the gentlelady's amendment.

Mrs. Bono Mack. All right. Is there further discussion on the amendment?

Hearing none, the question occurs on the amendment. All those in favor, say aye. All those opposed, say no.

The noes have it.

Mr. Waxman. I ask for a roll call vote.

Mrs. Bono Mack. The gentleman requests a roll call vote, and the clerk will call the roll.

The Clerk. Mrs. Blackburn.

Mrs. Blackburn. No.

The Clerk. Mrs. Blackburn, nay.

Mr. Stearns.

[No response.]

The Clerk. Mr. Bass.

[No response.]

The Clerk. Mr. Harper.

Mr. Harper. Nay.

The Clerk. Mr. Harper, nay.

Mr. Lance.

Mr. Lance. Nay.

The Clerk. Mr. Lance, nay.

Mr. Cassidy.

Dr. Cassidy. No.

The Clerk. Mr. Cassidy, nay.

Mr. Guthrie.

Mr. Guthrie. No.

The Clerk. Mr. Guthrie, nay.

Mr. Olson.

Mr. Olson. No.

The Clerk. Mr. Olson, nay.

Mr. McKinley.

[No response.]

The Clerk. Mr. Pompeo.

[No response.]

The Clerk. Mr. Kinzinger.

[No response.]

The Clerk. Mr. Barton.

[No response.]

The Clerk. Mr. Upton.

The Chairman. No.

The Clerk. Mr. Upton, nay.

Mr. Butterfield.

Mr. Butterfield. Yes.

The Clerk. Mr. Butterfield, aye.

Mr. Gonzalez.

[No response.]

The Clerk. Mr. Matheson.

[No response.]

The Clerk. Mr. Dingell.

Mr. Dingell. Aye.

The Clerk. Mr. Dingell, aye.

Mr. Towns.

[No response.]

The Clerk. Mr. Rush.

Mr. Rush. Aye.

The Clerk. Mr. Rush, aye.

Ms. Schakowsky.

Ms. Schakowsky. Aye.

The Clerk. Ms. Schakowsky, aye.

Mr. Ross.

[No response].

The Clerk. Mr. Waxman.

Mr. Waxman. Aye.

The Clerk. Mr. Waxman, aye.

Mrs. Bono Mack.

Mrs. Bono Mack. No.

The Clerk. Mrs. Bono Mack, nay.

Mrs. Bono Mack. Are there further members wishing to be recorded?

Mr. Stearns.

Mr. Stearns. No.

The Clerk. Mr. Stearns, nay.

Mrs. Bono Mack. Mr. Bass.

Mr. Bass. No.

The Clerk. Mr. Bass, nay.

Mrs. Bono Mack. Any further members?

Dr. Cassidy.

The Clerk. The gentleman is recorded nay.

Mrs. Bono Mack. The clerk will report the vote.

The Clerk. On that, there were five ayes, ten nays.

Mrs. Bono Mack. How is Mr. Ross recorded?

The Clerk. The gentleman is not recorded.

Mrs. Bono Mack. Mr. Ross.

Mr. Ross. Aye.

The Clerk. Mr. Ross, aye.

Mrs. Bono Mack. Any other members wishing to be recorded?

Seeing none, the clerk will report.

The Clerk. On that, there were six ayes, ten nays.

Mrs. Bono Mack. All right. With six yeas and ten noes the amendment is not agreed to.

Are there further amendments?

Mr. Waxman. Madam Chair.

Mrs. Bono Mack. For what purpose does the gentleman --

Mr. Waxman. I have an amendment. Searches 1 I have been told is the identifier.

Mrs. Blackburn. Madam Chairman, reserve a point of order.

Mrs. Bono Mack. The clerk will report the amendment.

The Clerk. An amendment offered by Mr. Waxman of California --

Mrs. Bono Mack. Okay. The gentlelady reserves a point of order, and without objection the reading --

[The information follows:]

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

Mr. Waxman. Well, I would like to have it read. It is very short. It is self-explanatory, although I will take some time to explain it further, but let's hear it read.

Mrs. Bono Mack. The clerk will read.

The Clerk. Page 28, line 2, strike "definition" and insert "in general".

Page 28, after line 16, insert the following:

(B) certain on-line searches. The term "personal information" also includes records of on-line searches for health- or disease-related information by individuals, and other health-related information that the Commission determines should be included in the definition of personal information.

Page 28, line 17, strike "(B)" and insert "(C)".

Page 28, line 19, strike "(C)" and insert "(D)".

Mr. Waxman. Madam Chair, if I can be recognized on this amendment?

Mrs. Bono Mack. Yes, the gentleman is recognized for 5 minutes.

Mr. Waxman. I can't think of any category of information that is more personal than information about our health. Yet this bill, which purports to impose minimum standards for the protection of personal information collected by businesses, makes no effort to protect records of health-related information generated through our on-line searches and interactions.

The Internet has made it possible for each of us to query general and specialized Web sites about illnesses we are curious about or are

suffering from and drugs and treatments we have heard about or have been prescribed. It is also possible, however, for these same sites and even third parties to track and record our searches for information about symptoms we might be suffering, diseases we want to learn more about, or drugs we have been prescribed.

If anyone is going to keep this information about us, they should have some minimum obligation to protect it from unauthorized access and to tell us when security measures have failed to protect this information. My amendment does just that by modifying the definition of personal information to include records of on-line searches for health- or disease-related information.

It also grants the FTC the ability to include in the definition of personal information other health-related information it believes should be included. I think this is just self-evident. It is nobody's business what I might or anybody might look for on Internet searches relating to diseases or health. And those who have those Web sites, like WebMD or whatever it might be, that they keep that information, and if it is hacked into I should know about it. So I urge support for this amendment.

I yield back my time.

Mrs. Bono Mack. Okay. There is a vote on the floor, so at this point we are going to recess and resume debate on the Waxman amendment when we return from the floor.

Mr. Waxman. Well, then I would reserve my time.

Mrs. Bono Mack. Okay. So the subcommittee stands in recess.

[Recess.]

Mrs. Bono Mack. The subcommittee will come to order.

When the subcommittee recessed, we had under consideration the Waxman amendment. At this point, is there further discussion of the Waxman amendment?

The chair will recognize herself for 5 minutes in opposition to the amendment and again say to my colleague that I certainly understand what he is trying to do and I look forward to broader discussions about the privacy topic. And, with that, I just will encourage my colleagues to vote against the Waxman amendment.

Mr. Waxman. Will the gentlelady yield?

Mrs. Bono Mack. Yes, I will yield.

Mr. Waxman. I don't understand when you talk about the piracy. That is a separate bill, isn't it?

Mrs. Bono Mack. Privacy, I'm sorry.

Mr. Waxman. Privacy, right. But when you talk about privacy, you are talking about a different bill than this?

Mrs. Bono Mack. Yes, that is correct. We have had hearings. We hope to have more hearings. I think the hearing that we had last week was very informative. I believe the gentleman participated.

And, as I was saying to you earlier, I believe that there is a lot that still has to be discussed and a lot of confusion that has to be clarified on both sides of the aisle and that it really matters for the future of technology and the jobs that we are all talking about. And I really think that privacy is incredibly important, and I would

look forward to working with you.

Mr. Waxman. Well, I agree with you. If you yield to me further, I absolutely agree with you. I look forward to working on that bill. But we do have this bill, and this bill is to protect data. And what I was trying to do by this amendment is to keep people from getting data that has been aggregated, that has been personalized as well, that should be kept private, and if it is not kept private then people ought to be able to know about it.

Mrs. Bono Mack. And if the gentleman will yield back?

Mr. Waxman. Sure.

Mrs. Bono Mack. Again, it just goes to me if data is compiled and you have two columns in a database and you have to put those two together to try to create a person and steal their identity, you are not going to be able to do that with some of the information that you are speaking to, and to me it speaks of privacy.

And, as I said earlier to the gentleman, privacy is something that I care deeply about; and I know quite a few members on this side of the aisle care a lot about privacy and are very invested in these hearings. I look forward to your participation, and I do believe that your amendments that you have offered today will be sort of a great guiding path with the privacy discussions as we move forward.

Mr. Waxman. Will the gentlelady yield further?

Privacy I usually think of is what information people can gather about you. But here we are talking about information that has already been collected and whether that information, once it goes into somebody

else's hands improperly through some kind of hacking of the system, whether you should be informed about it. So I just think that they are related, but they are not exactly the same thing.

Mrs. Bono Mack. I thank the gentleman, and I agree with you on that point. Again, reclaiming my time, I urge a no vote on the Waxman amendment.

I yield back my time and look to see if there are any other members who wish to speak on the amendment.

And seeing none, at this point --

Mr. Waxman. Do you want to postpone the roll call?

Mrs. Bono Mack. Yes, we will be happy to -- actually, we will call the roll, but we will postpone it at this point in time until -- how much longer are you seeking?

Mr. Waxman. Until the end of the bill. I think we only have two more amendments.

Mrs. Bono Mack. So, without objection, we will roll the votes until the conclusion of the next two amendments.

Are there further amendments at the desk.

Mr. Butterfield. I have an amendment at the desk.

Mrs. Bono Mack. The clerk will report.

The Clerk. Which number, Mr. Butterfield?

Mr. Butterfield. Let's try, purchases 04.

The Clerk. An amendment offered by Mr. Butterfield of North Carolina --

Mrs. Bono Mack. Without objection, the reading of the bill is

dispensed with; and the gentleman is recognized for 5 minutes on his bill.

[The information follows:]

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

Mr. Butterfield. I thank the chairman.

Madam Chairman, this amendment would change the definition of personal information to include records of books and video purchases. Essentially, the effect would be that businesses holding records of book and video purchases would have to secure that information to prevent breaches and notify customers if that information is breached.

In the late 1980s, Congress passed a Video Privacy Protection Act to prevent video stores from knowingly disclosing rental records. It did this after the video rental records of President Reagan's failed Supreme Court nominee Bob Bork were disclosed to and printed in a newspaper. Congress recognized at that time that the things we watch can say something about us and can potentially be used to embarrass or humiliate us, which is why a newspaper printed those personal records of Judge Bork.

The same is true of the books that we read today. However, this bill doesn't consider records kept about the books and videos we have purchased to be personal information, so there is no obligation to protect these records from hacks and other unauthorized access. There is also no obligation to tell me if someone steals this information from whoever was accumulating it. History shows that we previously believed this information to be personal and that its release can cause significant harm. I think it makes good sense to protect this information hereto not just when it is knowingly disclosed. So I urge my colleagues to support this amendment.

Mrs. Bono Mack. Is there further discussion on the amendment?

Mr. Waxman. Will the gentleman yield?

Mr. Butterfield. I will yield, Mr. Waxman.

Mr. Waxman. Since you do have time.

This is such a simple amendment. It says that records of an individual's purchases and rentals of books and videos and other records of consumer purchases or rentals that the Commission determines should be included in the definition of personal information.

This is different than privacy. Privacy would be whether they get the information about what books you get on-line or videos you check out on-line. That is a question of privacy, whether they can get this information. But when you go to Amazon dot-com and you order books, they have a record of your books. If you go to Netflix, they have a record of your videos. And they have the record, not a question of whether they can keep that information or not, they have it.

But then the issue gets to be the data and when that data is breached whether the person whose data is affected has the right to know about it. And we even have a law that was adopted by the Congress as a result of the Supreme Court nominee whose video records were released. This is for Clarence Thomas. And we said, that is outrageous. Why should anybody know what videos he checks out at a video store?

Well, that's right. It is nobody's business.

But if you check on-line at a video service, why should anybody else be able to get that information if they hack into Netflix dot-com or some other source? So I don't know why anybody would object to

defining personal information to include records of individual purchases of books and videos and other consumer purchases. So I just think it makes a lot of sense, I can't see an argument against it, and I want to join you in urging my colleagues to support it.

Mr. Butterfield. Thank you. I thank the gentleman for supporting the amendment.

As the gentleman said, this is so simple. Book purchases, video purchases, we want to protect those and make those secure. Thank you, Mr. Waxman.

I yield back.

Mr. Bass. Madam Chairman.

Mrs. Bono Mack. For what purpose does the gentleman seek recognition?

Mr. Bass. To strike the last word.

Mr. Butterfield. Madam Chairman, if I can ask your indulgence for just a moment. I want to clarify that I offered purchases 02 and not purchases 01.

Mrs. Bono Mack. I thank the gentleman.

Mr. Butterfield. Thank you. I yield back.

Mrs. Bono Mack. And the chair now recognizes the gentleman from New Hampshire for 5 minutes.

Mr. Bass. Thank you, Madam Chairman; and I won't take anywhere near 5 minutes.

I have respect for many of the amendments that have been offered by my colleagues on the other side of the aisle, but I don't know where

this ends. This is a financial harm financially -- or at least as I understand it -- related bill relating to identity theft. I am as concerned as anyone else about the use of data that might be damaging, especially if you don't know where it is going and what is happening. But this is -- I mean, at some point, we are going to try to include every single commercial transaction that ever occurs. And now we are down, if you will, to video rentals, and I don't know what else, books. If you read a book, you are going to have some regulation concerning that.

And this whole discussion belongs I think in a different venue. And I appreciate the line of debate here, but this kind of amendment at this level I think is inappropriate in the context of the mission and purpose of this bill.

So I oppose the amendment and yield back.

Mr. Waxman. Will the gentleman yield to me?

Mr. Bass. I will.

Mr. Waxman. What do you think is the purpose of the bill?

Mr. Bass. I think the purpose of the bill is to protect consumers from financial harm, financial fraud. I think that there is a legitimate debate that we could have about some of the earlier amendments that you proposed, especially the first one. And we may have an opportunity to talk about that, but at some point I could draft an amendment that would broaden the scope of this legislation to include parking meter information or bus tokens or subway tickets.

Mr. Waxman. Certainly you can distinguish between that and your

medical records?

Mr. Bass. I don't think this amendment relates to medical records. This is an amendment that relates to individual purchases.

Mr. Waxman. No, I understand that.

Mr. Bass. And my discussion of this amendment related to whether or not it was appropriate to include books and videos and purchases and rentals in a bill which I thought or recalled had been primarily focused on data security relating to social security records, credit card numbers, and so forth. I just see this -- my friend from California can understand that there may be a legitimate reason to be concerned about this, but is this really relevant or is this a digression?

Mr. Waxman. Well, if the gentleman would yield?

Mr. Bass. Certainly.

Mr. Waxman. We are talking about data breaches where the information about you has already been gathered and it is stored and someone is able to breach that and get into it. And if the people holding that data know that there has been a breach you would agree they ought to inform you on your financial matters, but why shouldn't they have to inform you about your personal health matters when that has been breached?

Mr. Bass. Well, fair enough. I certainly understand your point. But it is a much larger issue that I do not believe should be a part -- an internal part of this legislation, especially at this level.

Mrs. Blackburn. If the gentleman would yield?

Mr. Bass. Certainly, to the gentlelady of Tennessee.

Mrs. Blackburn. I appreciate the gentleman yielding, and I would just point my colleague's attention to the second part of this amendment, line 4, after the comma: and other records of consumer purchases or rentals that the Commission determines should be included in the definition of personal information.

Well, we made a decision in the first amendment that was offered, Mr. Olson's amendment, where we said we were not going to give this rulemaking authority, we were not going to have them have that APA rulemaking authority. It is for Congress to make that decision. So while we may want to say that this is just about books and videos, I think the overreach is contained in lines 5, 6, and 7 of the amendment, and I encourage my colleagues to vote no.

Mr. Waxman. Will the gentleman from New Hampshire yield to me?

Mr. Bass. Certainly.

Mr. Waxman. I can see your argument. I don't agree with it, but I can see your argument that this bill is about financial data that is breached, and you don't want to go beyond it into these other personal matters. But this bill that is before us preempts States from dealing with that. So if your State of New Hampshire wants to say that your health information -- if that information has been breached, you are entitled to be informed about -- it would preclude --

Mr. Bass. Reclaiming the few seconds I have left. The amendment before us has to do with books, videos, and other records of consumer

purchases, and I would respectfully suggest that this is going far beyond what some of the earlier amendments --

Mr. Waxman. Do you think that your State ought to be preempted from passing laws in this area?

Mr. Bass. I think that --

Mr. Waxman. I ask unanimous consent that the gentleman be able to answer.

Mr. Bass. I believe that the subject of whether or not books, videos, and other records of consumer purchase or rental should not be part of a Federal data security bill whose primary function was to deal with the issue of financial harm, fraud, and other abuses that are associated with data.

Mr. Waxman. And why shouldn't it be -- in those areas?

Mr. Bass. I believe that this bill, which is the bill that closely mimics or follows the bill that was brought up not only in 2005 but last year, is unnecessarily expanded by the amendments that are being offered by the gentleman from California and others on the other side of the aisle.

I yield back.

Mrs. Bono Mack. The gentleman yields back.

Mr. Waxman. Madam Chair.

Mrs. Bono Mack. Is there further discussion on the amendment? For what purpose?

Mr. Waxman. I would like to be recognized to ask the counsel a question. Does this bill preempt States from passing laws on data

breaches when it comes to questions like health information or on videos you get or any other kind of information that a lot of people would consider private? The underlying bill itself, doesn't it preempt the States?

Mr. Mullan. It preempts the States on laws that are, quote, similar to those under section 2.

So you had asked me a question about this before, and my comment was that I think it calls for careful analysis because the preemption is not -- the preemption is not a sweeping preemption but rather is defined in terms of things that are similar to what our bill does.

Mr. Waxman. Well, the language in the bill says this Act supersedes any provision of a statute, regulation, or rule of a State or political subdivision of a State with respect to any entity subject to this Act that contains, one, requirements for information, security practices, or treatment of data similar to those under section 2, or requirements for notification of a breach of security similar to the notification required under section 3.

Now, let's go back to section 2. Section 2 says, such regulation shall take into consideration a security policy with respect to collection, use, sale, or other dissemination and maintenance of such personal information.

And then of course we are defining what personal information is. The bill, counsel, defines personal information with regard to financial issues only, is that your understanding?

Mr. Mullan. It could be interpreted that similar would confine

this preemption to provisions that are similar in scope and content to the ones that are in our bill.

Mr. Waxman. The preemption talks about data. Data is pretty broad, isn't it?

Mr. Mullan. But the term similar I interpret as modifying statute, regulation, or rule of a State that is similar to those under section 2.

Mr. Waxman. And section 2 says anything that is considered personal, corrective actions -- such regulations consideration of quantity, type, nature, and sensitivity of the personal information.

I just don't see -- what is the reason for a preemption?

Mr. Mullan. The reason for a preemption is to avoid the States regulating in the same area as the Federal Government.

Mr. Waxman. Well, the way I read this is we are not regulating at the Federal level. A data that is breached, we are not regulating that at the Federal level. And then we are telling the States don't you regulate it either. And I don't see the reason for that, and I just want to point that out to my colleagues.

I yield back my time.

Mrs. Blackburn. Madam Chairman.

Mrs. Bono Mack. The gentleman yields back.

For what purpose does the gentlelady seek recognition.

Mrs. Blackburn. Move to strike the last word for the purpose of asking counsel a question.

Mrs. Bono Mack. The gentlelady is recognized for 5 minutes.

Mrs. Blackburn. Counsel, my question is this. Are there any States that use video, book, these type purchases, as personally identifiable information? Is there any State that uses this for PII?

Mr. Mullan. I can only say that I am not personally aware of any States. In our review of State laws, we did not identify that, but I can't be certain that there is no State law.

Mrs. Blackburn. So, to your knowledge, there --

Mr. Mullan. To my knowledge, no.

Mrs. Blackburn. Okay. Would this information and privacy and protection of this not be covered under the Video Protection Privacy Act?

Mr. Mullan. I would have to study that issue and get back to you. I am not certain of whether it would be covered under the Video Privacy Act. I know Mr. Butterfield referred to it in his remarks.

Mrs. Blackburn. Thank you.

Madam Chairman, I think that one of the things that we all are wanting to be careful of, and that our constituents talk to us regularly about, is not setting duplicative rules, not getting into this situation where the agencies are into a turf battle of who is responsible for what and what laws are going to come first in the queue, if you will.

So I would again forward those concerns, and in light of those current concerns they do heighten my reservations and I continue to urge a no vote. Yield back.

Mrs. Bono Mack. The gentlelady yields back.

Is there further discussion on the amendment?

If there is no further discussion, the vote occurs on the amendment, and we will roll that vote until after the next amendment.

So are there further amendments at the desk?

Mr. Rush. Madam Chair, since counsel is present, I want to return to a subject that we had discussed earlier. And I have this inquiry of counsel. Counsel, you advised us earlier this morning that there could be instances in which a, quote, service provider, end of quote, will be deemed a third-party agent. In those cases, would a service provider be able to avail itself of the service provider exemptions in this Act?

Mr. Mullan. They could, but the service provider exemption in this Act does not cover everything that a service provider would do.

Mr. Rush. So you are saying that a service provider would be able to avail themselves. And I really would just ask for a yes or no answer.

Mr. Mullan. The service provider exemption does not cover everything that a service provider can do. So it is a limited exemption.

Mr. Rush. So they are exempted. And the answer is, yes, they do have an exemption. They can be exempted, is that correct?

Mr. Mullan. They are exempt -- well, they are not exempt, but they are -- their requirements for -- their obligation to protect information is limited in the case of information that flows through their systems by transmission or transient storage.

Mr. Rush. So when they are doing cloud computing and hosting

services, are they exempt doing that?

Mr. Mullan. The exemption relates to electronic communications by a third party that is transmitted, routed, or stored in intermediate or transient storage by such storage provider.

But what I am saying is that a storage provider could provide other -- could be involved in other kinds of things that involved something other than is covered by the exemption. And the very case that you raised earlier might be one of those. That is, there could be situations where, for example, long-term storage were involved that could change the result and would be covered by the bill. So the exemption for service providers, in other words, is primarily focused on communications flow through service provider connections.

I hope I am being responsive.

Mr. Rush. Yes. Thank you. I think the answer is really yes to my question, right? Okay.

Thank you, Madam Chair. I yield back.

Mrs. Bono Mack. All right. Are there any further amendments?

Mr. Rush. I do have an amendment at the desk.

Mr. Barton. Madam Chairman, a parliamentary inquiry before we go to that.

Mrs. Bono Mack. The gentleman will state his inquiry.

Mr. Barton. On the last vote you didn't even call for a roll call vote -- I mean a voice vote. Wouldn't it be in order to have a voice vote and then determining how that -- which side prevails, determine if there is going to be a roll call vote. Or did you all -- you are

just rolling every vote?

Mrs. Bono Mack. Well, we had decided that we would roll the last three and didn't determine at that time whether they are voiced or -- we just said we would roll them. The gentleman raised a very good point, that this can be quite confusing at times up here.

Mr. Barton. If that was the agreement -- I wasn't here. I understand, and I withdraw my parliamentary inquiry.

Mrs. Bono Mack. I thank the gentleman. Okay.

And so the business is that the gentleman has an amendment.

Mr. Rush. Madam Chair, I do have an amendment that was before the subcommittee earlier and we had to --

Mrs. Bono Mack. Okay. The clerk will report the amendment.

The Clerk. An amendment offered by Mr. Rush of Illinois --

Mrs. Bono Mack. Without objection, the reading of the amendment is dispensed with; and the gentleman is recognized for 5 minutes in support of his amendment.

[The information follows:]

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

Mr. Rush. Madam Chair, in the interest of time, I basically have already made my argument that the subcommittee pass this amendment, and those arguments are still pertinent right now. So I would also ask that we vote to pass this amendment.

Mrs. Bono Mack. All right. The gentleman yields back.

Is there further discussion on the amendment?

The chair will recognize herself for a brief response in opposition to the amendment and again thank the gentleman for his leadership and his knowledge on this issue that has percolated through Congress for many years and also to thank my colleague from Florida. They have worked hard on this issue.

And just say that replacing this bill by going backwards is not a step forward. And that I do believe that there have been changes. The bill that we have, for example, includes nonprofit entities. It does a whole host of things that are improvements. And I do believe that -- I have repeatedly said and others have said -- between today's markup and full committee we can work together to work together to address all of the concerns.

And, with that, I will just urge a no vote from my colleagues.

Ms. Schakowsky. Madam Chair, I am wondering if I could strike the last word?

Mrs. Bono Mack. I yield back my time. The gentlelady is recognized for 5 minutes.

Ms. Schakowsky. Thank you.

As many of us remember, last Congress Mr. Rush, along with a

bipartisan group of members from this committee introduced H.R. 2221, the Data Accountability and Trust Act. And that piece of legislation was a consensus product that passed through the subcommittee, the full committee, and the full House, all by voice votes. Months of stakeholder meetings and staff discussions and tough compromises preceded its passage. While the Senate did not act on the bill, it was not for lack of support in the House on both sides of the aisle.

The SAFE Data Act departs from H.R. 2221 in many crucial ways. It was created essentially by one side of the aisle. The FTC, FCC, and NTIA all oppose it. But the main reason we should vote the SAFE Data Act down is not because of the process or who supports it. We should reject it because it is bad policy. And I propose that we replace it with the text of a much more palatable piece of legislation, and I think that we have that before us now in the Rush amendment.

From a policy standpoint, H.R. 2221 was much easier to swallow than the bill before us for several reasons.

First, the FTC had the ability to modify the definition of, quote, personal information, unquote, without undue burden. This permitted the House to pass the bill knowing that, as time went on, the definition of personal information could be kept up to date through the rulemaking process. Future regulators would not be boxed in, left only capable of enforcing law for what was considered, quote, personal information in 2005.

The SAFE Data Act, by contrast, would force the FTC to reach such a high bar for noninterference with technological innovation and

commerce as to render it completely unable to ever alter the definition of personal information.

Second, H.R. 2221 included a section of special requirements for information brokers, those third-party entities whose business is to collect, assemble, or maintain personal information. Information brokers are at the center of the market for America's personal data, often possessing hundreds of data points on each of us, including demographic, financial, and even medical information. If information is stolen from them, it is likely to be more sensitive and comprehensive than if taken from other entities.

Moreover, if information brokers possess inaccurate data, it is likely to reach farther and to be sold to more entities than if inaccuracies exist in the databases of other types of companies.

Under H.R. 2221 information brokers will be required to submit their security policies to FTC review, permit FTC audits of their security practices if they experienced a breach, and provide certain access and correction rights to consumers. By contrast, the SAFE Data Act has no special requirements for information brokers, having completely stripped out that section of the bill.

And, third, H.R. 2221 created only targeted exemptions for the breach of public record information. That legislation differentiated public record information from other personal data for only two reasons: One, so that if the consumer found a record of theirs that needed to be corrected and the source of this information was the public record the data holder only was required to refer the consumer to the

source of the information and if reasonably available to where a request for correction may be directed; and, two, for the purposes of the affirmative defense against enforcement under the breach notification requirements, not the data security requirements.

By contrast, the SAFE Data Act completely exempts public record information from coverage, leaving consumers vulnerable to identity theft, fraud, and other serious acts.

These three areas best exemplify why the text of H.R. 2221 is preferable to the bill before us today, but they are not the only ones. And I encourage my colleagues to remember the bill we produced last year and urge them to move the text of H.R. 2221 forward, rather than the seriously flawed and partisan SAFE Data Act before us today.

And I yield back.

Mrs. Bono Mack. Is there further discussion on the amendment?

For what purpose does the gentleman seek recognition.

Mr. Waxman. Strike the last word.

Mrs. Bono Mack. The gentleman is recognized for 5 minutes.

Mr. Waxman. The bill that was passed last year protected personal information, and personal information was more broadly defined than what we see in this bill, as I understand it. So, under the current bill, the underlying bill, most personal information stored on-line or on company databases are not protected. They are just not protected. What is protected under the bill itself is your first name, your last name, your address, phone number, social security number, driver's license, military identification, financial account number,

credit or debit card number, any required security codes to access that. It does not include public records.

So as I read this, if we are trying to protect people's financial well-being you can protect access to your account, but if somebody hacked your credit card account you are not entitled to be informed about the hacking of what they got, the information they got from your credit card. Only if they gave you -- only if they got your security code, access code, or password.

And, similarly, when we talk about the term "personal information" you have personal emails. So if that is taken, then there is no requirement to inform you of that.

We talked about videos and books and other consumer purchases, but how about purchases for over-the-counter drugs? That is a commercial kind of activity. Over-the-counter drugs could include pregnancy tests. That is not protected. You can say it is not a financial record, but, on the other hand, it is personal information. And if there is a breach of that personal information you should be informed of it.

The other area where we talk about definition of personal information in last year's bill it has been narrowed, it has been narrowed beyond recognition. The bill retains provisions that preempt State laws, and if we are going to preempt the State laws we ought to have a strong Federal one. But this bill eliminates a lot of State consumer protections without putting equivalent or stronger Federal protections in place.

So what we have is a term "personal information", and personal information is defined only in terms of what is spelled out in the bill; not your email accounts but maybe your password; not your financial records but only your access numbers to get to that financial information. And if somebody got through and got that information I can't see why we wouldn't want to have that data breach as something for which you would be informed that someone has breached the data that has been stored in these records. So I support the proposal to go back to last year's bill. It passed unanimously --

Mrs. Bono Mack. Will the gentleman yield?

Mr. Waxman. -- and it ought to be acceptable now.

I will certainly yield.

Mrs. Bono Mack. I thank the gentleman.

A question for counsel. Can you please tell me the differences between 2577 and in the substitute bill other than public records as far as identifying PII?

Mr. Mullan. The definition of personal information -- what is defined as personal information by the bill is identical to between the two bills.

Mrs. Bono Mack. I yield back.

Mr. Waxman. Well, let me ask counsel further. But we have more specific identifications. Was that in the previous bill? If you look at the language in this bill, definition, the term personal information means, and you go through all of this.

But then, beyond that, it says, the Commission made by rule

promulgated under 553 of U.S. Code modified the definition of personal information to the extent such modification is necessary to accomplish for the purpose of subsection as a result of changes in technologies or practices and will not unreasonably impede technological advances.

Access to or acquisition of the additional data elements in the breach of security would create an unreasonable risk of identity theft, fraud, or other unlawful conduct that such modification will not unreasonably impede. So we leave it to the FTC in the other bill to go further, and that is removed by the amendments certainly that have been adopted today and I believe the bill, is that right, counsel? FTC can't define personal information more broadly than what is spelled out.

Mr. Mullan. It can, but it can only do so by certain procedures and under certain circumstances, and the same was true under the Rush bill.

Mr. Waxman. And we have submitted that those procedures now by amendment have been offered -- prevent the FTC from acting. That has been the historical record. I think that we are too narrow, and I think the bill we had before left open the ability for the FTC to expand that personal information definition. And I think that is one of the things people on the other side of the aisle don't want. They don't want the FTC going into that issue and broadening it.

Mrs. Bono Mack. The gentleman's time is expired.

Mr. Waxman. So I support the Rush amendment.

Mrs. Bono Mack. All right. Is there further discussion on

the --

Mr. Rush. Madam Chair, I move to strike the last word. I won't take up a lot of time, Madam Chairman. Am I recognized?

Mrs. Bono Mack. Well, I believe if Ms. Schakowsky could be recognized, because you were already recognized.

Mr. Butterfield. I will claim the time, Madam Chairman. I ask to strike the requisite number of words.

Mrs. Bono Mack. The gentleman is recognized for 5 minutes.

Mr. Butterfield. Thank you, Madam Chairman. I yield to the gentleman from Illinois.

Mrs. Bono Mack. Thank you. The gentleman is recognized for 5 minutes.

Mr. Rush. As Mr. Waxman pointed out, this is a data security bill. The SAFE Act is a data access bill. That approach does not protect American citizens.

I might add that the Republicans, based on the comments today, would have you to believe that we are taking a privacy approach. We are not. We are talking about personal PII or personal identifiable information. And I think that is something we need to keep in the forefront as we begin to deliberate and take action on this bill.

Lastly, Madam Chairman, I just have to say that last year the reason why we had a bipartisan bill was because we had bipartisan input. We had input from Mr. Markey and from Mr. Stearns. We had input from Mr. Radanovich, from Mr. Barton. I mean, it was the height of exemplified bipartisanship that produced that, not only here in the

subcommittee but when we went to the full committee, the same thing, strong cooperation. Because the number one priority was to protect the data of the American citizens.

When we went to the floor, the same thing, unanimous. I think we had one vote on the floor in opposition. The bill passed under suspension, under voice vote, passed under suspension.

Madam Chair, I just want to say this. Our motion is not movement, and certainly all motion is not progress. We have a lot of motion here, but we are not progressing. I say we are digressing, because this is the kind of legislation and this is the moment where we should exemplify to the American people a strong sense of bipartisanship. Because we all agree about that this is a severe problem that we are suffering under and the American people are faced with. And for us to now go into our respective corners and quibble and argue and fight about things that are nonsensical I just think it really kind of is a disservice and really kind of makes us -- and demeans this whole process.

For the life of me, I just don't see why we are -- the bill that is before us right now, in my opinion, Madam Chairman, and I do this respectfully out of a sense of -- out of respect for you as the chairman, but I just think that it is an inferior bill and we are passing out inferior legislation.

And the question that I have is the same question that Mr. Waxman asked: Why are we doing this? You know, why are we trying to -- are we trying to again hamstring another Federal agency? I mean, there is no agency in the Federal Government that has more public support

than the Federal Trade Commission, not one, not one agency.

Mrs. Bono Mack. Will the gentleman yield?

Mr. Rush. I will, Madam Chairman.

Let me just make this one point. There is not one agency in the Federal Government that has more support, widespread support, among its consumers than the FTC. And let us not hamstring that one agency that has been doing a remarkable job over the years.

I yield to the chairman.

Mrs. Bono Mack. I thank the gentleman and appreciate his comments and just the great question why are we doing this.

First of all, yes, we have passed it out of the House a couple of times to go nowhere. And every bill in this Congress deserves a fresh look. The American people deserve that. Not only that elections bring different people to the House and a different set of eyeballs and a different set of ideas and a different set of constituencies. And that is why we are where we are today. It is a new time. It is a new bill.

And I appreciate very much the comments that I have heard from your side of the aisle suggesting that we work together and look for bipartisanship. I still believe that that is possible. And I don't know the calendar between now and the fall, but I look forward to very robust discussions with all of you and recognize that the Congress is different now and the sentiment of the Congress might be different than it was last Congress or the Congress before that and before that.

It is my goal and the goal of this subcommittee to get something

signed into law and continue to say, well, it passed the House, and it was not contested. It is just not good enough anymore.

So I appreciate the gentleman yielding to me.

Mr. Rush. I am sorry -- reclaiming -- I have just got a minute -- reclaiming my time.

I want to say now, though, for this bill in terms of -- and I'm not trying to predict what is going to happen in the future. I don't know. But I don't think this bill is going to become law either.

Mrs. Bono Mack. The gentleman's time has expired.

Mr. Kinzinger. Madam Chair.

Mrs. Bono Mack. Thank you. For what purpose does the gentleman seek recognition?

Mr. Kinzinger. Move to strike.

Mrs. Bono Mack. The gentleman is recognized for 5 minutes.

Mr. Kinzinger. Thank you, Madam Chair.

I think you made a great point. I mean, the point here is that H.R. 2221 by my colleague from Illinois did have bipartisan input and that is a great thing. And I think this in many cases replicates that bipartisan input.

So when you have a bill that I think really kind of steps it up a little bit, takes the advantage of having another -- a little bit of time to look at the changes we need to make, that is it.

H.R. 2221 didn't accomplish many of its other goals as clearly or as concisely as it could. We haven't wrecked H.R. 2221, but we have improved it. For instance, 2577 ensures that the innocent consumer

who holds information on another and suffers a breach -- if you ever had your email account hacked -- is not ensnared in this Federal regulation by tying the holding of information to interstate activity.

2577 also clarifies that covered entities include data brokers and third-party agents such as cloud providers. And this is a new technology that nobody really knew what a cloud was just a few months ago, rather than having duplicative provisions for those entities.

It also distills the bill to its main goal of ensuring data security of information held regardless of how it is gathered. How information is gathered is something we should address in the privacy context. It makes the carve-outs for GLBA- and HIPAA-covered activities explicit, rather than requiring a Federal agency to judge whether its sister agencies' regimes are protective enough. That is not the job of a Federal agency. That is our responsibility, responsibility that the language of 2221 would advocate.

Accepting the substitute amendment would get rid of the new requirement to have a data minimization plan, something nearly every Democrat applauded at the legislative hearing. Accepting the substitute amendment would also mean the FTC would not have jurisdiction over nonprofits like charities or universities, who literally hold personal information on tens of thousands of people. And it would also mean consumers would not benefit -- would not be notified that a hacker accessed their information as quickly as would be required under this bill.

It further means that the FTC would not have the flexibility to

take into consideration a business' size or type, quantity, and sensitivity of data held when promulgated on security rules given needed flexibility for small businesses.

I think what is obvious here is that, you know, look, we can take a bill that had bipartisan input under the other side of the House having the majority. Now that we have the majority take that, too, and continue to take input and make it what we think is a little bit better.

So, with that, I yield back; and I thank the chair.

RPTS COCHRAN

DCMN MAGMER

[4:20 p.m.]

Mr. Rush. Just for a moment, will the gentleman yield?

You know, something that this bill lacks is something that is really so basic for the protection of the American consumer, access and correction. That provision is not included in this bill. So that means if someone got erroneous data in their possession and you are aware of it, you have no -- as a consumer, no right to access that information nor to correct that information. So that information, if this bill were to pass, will continue to be erroneous information. It will have untold harmful effects.

Mr. Kinzinger. Well, reclaiming my time, and I appreciate that concern and that is something that I am sure we would be happy to continue to discuss.

When we talk about this amendment, which replaces this bill, 2577, and takes it to the old one, again with bipartisan support, but this would basically replace some of the good provisions I have talked about.

With that, I yield back and I thank the chair.

Mrs. Bono Mack. The gentleman yields back.

Anybody else wishing to speak?

Hearing nobody else, if there are no further amendments, we will now vote on the rolled votes.

First up is a vote on the Waxman amendment. The Clerk will call

the roll.

The Clerk. Mrs. Blackburn.

Mrs. Blackburn. No.

The Clerk. Mrs. Blackburn, nay.

Mr. Stearns.

[No response.]

The Clerk. Mr. Bass.

Mr. Bass. No.

The Clerk. Mr. Bass, nay.

Mr. Harper.

Mr. Harper. No.

The Clerk. Mr. Harper, nay.

Mr. Lance.

Mr. Lance. No.

The Clerk. Mr. Lance, nay.

Mr. Cassidy.

[No response.]

The Clerk. Mr. Guthrie.

Mr. Guthrie. No.

The Clerk. Mr. Guthrie, nay.

Mr. Olson.

Mr. Olson. No.

The Clerk. Mr. Olson, nay.

Mr. McKinley.

[No response.]

The Clerk. Mr. Pompeo.

Mr. Pompeo. No.

The Clerk. Mr. Pompeo, nay.

Mr. Kinzinger.

Mr. Kinzinger. No.

The Clerk. Mr. Kinzinger, nay.

Mr. Barton.

Mr. Barton. Present.

The Clerk. Mr. Barton, present.

Mr. Upton.

The Chairman. No.

The Clerk. Mr. Upton, nay.

Mr. Butterfield.

Mr. Butterfield. Yes.

The Clerk. Mr. Butterfield, aye.

Mr. Gonzales.

[No response.]

The Clerk. Mr. Matheson.

[No response.]

The Clerk. Mr. Dingell.

Mr. Dingell. Aye.

The Clerk. Mr. Dingell, aye.

Mr. Towns.

Mr. Towns. Aye.

The Clerk. Mr. Towns, aye.

Mr. Rush.

Mr. Rush. Aye.

The Clerk. Mr. Rush, aye.

Ms. Schakowsky.

Ms. Schakowsky. Aye.

The Clerk. Ms. Schakowsky, aye.

Mr. Ross.

Mr. Ross. No.

The Clerk. Mr. Ross, nay.

Mr. Waxman.

Mr. Waxman. Aye.

The Clerk. Mr. Waxman, aye.

Mrs. Bono Mack.

Mrs. Bono Mack. Nay.

The Clerk. Mrs. Bono Mack, nay.

Mrs. Bono Mack. Are there further members seeking to vote?

Mr. Matheson. No.

The Clerk. Mr. Matheson, nay.

Mrs. Bono Mack. The clerk will report.

The Clerk. On that, there were six ayes, 12 nays, and one present.

Mrs. Bono Mack. Six ayes and 12 noes. The amendment is not agreed to.

Next we have a vote on the Butterfield amendment. All those in favor, say aye; all those opposed, say no.

In the opinion of the chair, the noes have it and the amendment is not agreed to.

So the next vote will be on the Rush amendment, and the clerk will call the roll.

The Clerk. Mrs. Blackburn.

Mrs. Blackburn. No.

The Clerk. Mrs. Blackburn, nay.

Mr. Stearns.

[No response.]

The Clerk. Mr. Bass.

Mr. Bass. No.

The Clerk. Mr. Bass, nay.

Mr. Harper.

Mr. Harper. No.

The Clerk. Mr. Harper, nay.

Mr. Lance.

Mr. Lance. No.

The Clerk. Mr. Lance, nay.

Mr. Cassidy.

[No response.]

The Clerk. Mr. Guthrie.

Mr. Guthrie. No.

The Clerk. Mr. Guthrie, no.

Mr. Olson.

Mr. Olson. No.

The Clerk. Mr. Olson, no.

Mr. McKinley.

[No response.]

The Clerk. Mr. Pompeo.

Mr. Pompeo. No.

The Clerk. Mr. Pompeo, no.

Mr. Kinzinger.

Mr. Kinzinger. No.

The Clerk. Mr. Kinzinger, no.

Mr. Barton.

Mr. Barton. Aye.

The Clerk. Mr. Barton, aye.

Mr. Upton.

The Chairman. No.

The Clerk. Mr. Upton, nay.

Mr. Butterfield.

Mr. Butterfield. Yes.

The Clerk. Mr. Butterfield, aye.

Mr. Gonzales.

[No response.]

The Clerk. Mr. Matheson.

Mr. Matheson. Aye.

The Clerk. Mr. Matheson, aye.

Mr. Dingell.

Mr. Dingell. Aye.

The Clerk. Mr. Dingell, aye.

Mr. Towns.

Mr. Towns. Aye.

The Clerk. Mr. Towns, aye.

Mr. Rush.

Mr. Rush. Aye.

The Clerk. Mr. Rush, aye.

Ms. Schakowsky.

Ms. Schakowsky. Aye.

The Clerk. Ms. Schakowsky, aye.

Mr. Ross.

Mr. Ross. Aye.

The Clerk. Mr. Ross, aye.

Mr. Waxman.

Mr. Waxman. Aye.

The Clerk. Mr. Waxman, aye.

Mrs. Bono Mack.

Mrs. Bono Mack. No.

The Clerk. Mrs. Bono Mack, nay.

Mrs. Bono Mack. The Clerk will report.

The Clerk. On that, there were nine ayes, ten nays.

Mrs. Bono Mack. The amendment is not agreed to.

The question now occurs on favorably reporting the bill to the full committee. All those in favor, say aye; those opposed, no.

The ayes have it, and the bill is favorably reported.

As the legislation moves forward, I want to assure everyone I will continue to work with Mr. Butterfield and Mr. Waxman and all of my colleagues on the other side of the aisle to see if we can find common ground. At the end of the day, we all want the very same thing, new safeguards that will better protect American consumers in the future.

Without objection, staff is authorized to make technical and conforming changes to the bill approved by the subcommittee today. Hearing no objection, so ordered.

I thank all members and staff. This subcommittee stands adjourned, subject to the call of the Chair.

[Whereupon, at 4:25 p.m., the subcommittee was adjourned, subject to the call of the Chair.]