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MARKUP OF H.R. 1633, H.R. 1173,
H.R. 3309, AND H.R. 3310
TUESDAY, NOVEMBER 29, 2011
House of Representatives,
Committee on Energy and Commerce,
Washington, D.C.

The committee met, pursuant to call, at 4:38 p.m., in Room 2123, Rayburn House Office Building, Hon. Fred Upton [chairman of the committee] presiding.

Present: Representatives Upton, Barton, Shimkus, Pitts, Burgess, Gingrey, Scalise, Olson, McKinley, Waxman, Dingell, Pallone, Engel, Green, Butterfield, and Christensen.

Staff Present: Jim Barnette, General Counsel; Allison Busbee, Legislative Clerk; Peter Kielty, Senior Legislative Analyst; Heidi King, Chief Economist; Ben Lieberman, Counsel, Energy and Power; Jeff Mortier, Professional Staff Member; Mary Neumayr, Senior Energy

Counsel; Katie Novaria, Legislative Clerk; Kristin Amerling, Minority Chief Counsel and Oversight Staff Director; Phil Barnett, Minority Staff Director; Jen Berenholz, Minority Chief Clerk; Kelley Greenman, Minority Legislative Associate; Ruth Katz, Minority Chief Public Health Counsel; Karen Lightfoot, Minority Communications Director and Senior Policy Advisor; Anne Morris Reid, Minority Professional Staff Member; Roger Sherman, Minority Chief Counsel, Communications and Technology; and Kara van Stralen, Minority Special Assistant.

The Chairman. The committee will come to order.

We will only be conducting opening statements today on the bills that we are going to be marking up tomorrow at 10 o'clock, and the chair now recognizes himself for 5 minutes.

So today we are going to begin consideration of four bills, four more in a long line of legislation that this panel has carefully drafted, reviewed, debated, and advanced this year. Both sides have not always agreed on the outcome, but I am proud of this committee's hard work this year. Before anyone thinks that we are wrapping it up, let me assure you we are going to keep working just as hard and being just as productive as long as Congress is in session.

This week, the full committee takes up four bills with a common theme, a government that works, government that fosters job creation instead of stifling it. We will begin with H.R. 1633, the Farm Dust Regulation Prevention Act, a commonsense bill with 117 cosponsors from both parties.

[The information follows:]

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

The Chairman. I especially want to thank Representative Kristi Noem for her leadership on the issue, along with Congressmen Boswell, Hurt, and Kissell for their hard work.

This bill achieves two important goals: regulatory certainty in the short term and common sense for rural America in the long term. The bill maintains the current coarse particulate matter standard for 1 year, a position that Lisa Jackson, the Administrator of EPA, has embraced with her plans to propose maintaining the standard; and it offers regulatory relief to rural America by recognizing that States and local communities are better equipped to monitor and control farm dust. EPA would no longer be in the business of regulating rural dust except in cases where it is not already being regulated and the benefits of EPA regulation outweigh the costs.

I have a sampling of the letters that we have received that clearly explain the need for the legislation. Letters from the Imperial County Board of Supervisors and the Imperial County Farm Bureau discuss the EPA's efforts to impose new -- additional new dust control measures in their community. A letter from the Arizona Cattlemen's Association explains the cost and consequence of current dust regulation on livestock producers. And, finally, I have a letter signed by more than 185 organizations representing farmers, ranchers, growers, meat and dairy producers, rural businesses across the Nation. These organizations continue to believe that this bill is necessary to offer regulatory certainty, and I welcome their support.

I request unanimous consent to insert those letters into the

record and do so.

[The information follows:]

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

The Chairman. The Farm Dust Regulation Prevention Act is about certainty, and so is the second bill that we are going to take up, H.R. 1173, the Fiscal Responsibility and Retirement Security Act.

[The information follows:]

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The Chairman. The bill permanently repeals the unsustainable CLASS program, eliminating an accounting gimmick that was designed to obscure the true costs of the President's health care law. Sadly, none of us were surprised when HHS announced that it could not implement the CLASS program.

Before it was signed into law, actuaries and policy experts questioned the viability of the program, with one HHS staffer suggesting the program seemed like a recipe for disaster. But it made it into the health care law anyway, giving the false impression that the law cost \$80 billion less than it actually did.

I believe we have to start over on long-term care reform, an issue that will affect millions of Americans as they or a loved one need care. But, first, we must erase the program that we know will not work, a program that was never structured to work, and one that we could not afford. That is why we must permanently repeal the CLASS program. To create a government that works, we must both eliminate what is broken, as we are doing with the CLASS Act, and we must also encourage what works well.

The third and fourth bills look to reform the processes of the FCC.

[The information follows:]

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The Chairman. Given the FCC's role as the Federal regulator of the communications and technology sector, one of the largest drivers of our economy and one that continues to create high-quality jobs despite the sluggish national economy, it is imperative that the FCC operate in a transparent and accountable manner that encourages job creation, investment, and innovation.

Chairman Walden led the GOP transition, and one of his top priorities was to make Congress more open and transparent. Now he is working to do the same thing for the FCC, and I applaud him in that effort.

These bills embrace the principles of good government, regulate sensibly, enact programs that we can afford, and repeal those that we cannot, encourage transparency, predictability, and fairness. I encourage all of my colleagues to support these bills; and I yield to the ranking member of the committee, Mr. Waxman, for 5 minutes.

Mr. Waxman. Thank you, Mr. Chairman.

Today, the committee begins markup on four bills. Three of them are bad policy, making today's markup a trifecta of terrible ideas.

The first bill, H.R. 1633, the so-called farm dust bill, is another attack on the Clean Air Act. So far this year, the House has voted 170 times to weaken our environmental laws. The biggest single target has been the Clean Air Act. We have voted 61 times to dismantle the Clean Air Act; and if this bill comes to the floor, it will be 62 times.

House Republicans say this is a commonsense bill to prevent EPA

from regulating dust from family farms. It is time for a reality check. EPA does not regulate dust on family farms or any farms, and the Administrator announced that she intends to propose no changes to the PM-10 standards.

So this bill goes beyond science denial. We are now into legislating against fantasies. In fact, this bill is not really about farms at all. It exempts industrial mining operations from regulation under the Clean Air Act, and it is all being sold under the guise that we ought to stop EPA from regulating farm dust. It rolls back the particulate standards that protect families living in both rural and urban communities.

This committee has a grim track record of reporting bills that allow more weather-altering carbon pollution, more toxic mercury pollution, more arsenic and lead pollution, more sulfur dioxide pollution, and more nitrogen oxide pollution. These bills have created air pollution loopholes for incinerators, oil and gas rigs, power plants, industrial boilers, and cement plants. And if we pass this new bill, we will have one that will exempt industrial mining operations as well.

Well, I think that is a pretty deplorable record. We have become the most anti-environmental committee in the most anti-environment House in the history of the House of Representatives.

That is the first bill.

The second bill, H.R. 1173, would repeal the CLASS Act. It would tear down the only framework we have to begin to address the Nation's

long-term-care crisis.

The Community Living Assistance Services and Supports program is an important effort to provide assistance to the elderly and the disabled who need help with daily living. It is not a perfect bill. But, rather than working to fix this law, the House Republicans want to throw out the CLASS and replace it with absolutely nothing.

We should not force the elderly and disabled to spend down into poverty so they can qualify for Medicaid coverage to pay for their long-term care and supports, not when 25 million Americans will be in need of such services by 2020 and not when long-term care is draining our Medicaid resources. Instead, we should maintain the framework that CLASS provides for achieving a goal we should all share, ensuring that Americans who require long-term care and support services are able to get what they need.

This bill does the opposite. It doesn't fix it, just repeals it to get no answer to these problems, no solutions.

The third bill is the Federal Communications Process Reform Act. It would not reform the FCC but disable it. Simply put, this bill makes it more difficult for the FCC to protect consumers. It gives the phone and cable companies new opportunities to block FCC initiatives in court, and it strips the FCC of its power to ensure mergers between telecommunication companies are in the public interest. If this bill is enacted, it would stymie the ability of the agency to do much of anything except produce scorecards for Congress.

This week, we will be considering on the House floor a bill that

would render H.R. 3309 largely superfluous because it would apply many of the ill-advised provisions in this bill to all agencies. This may be claimed as making government work. It seems to me it shows that the right hand does not know what the far right hand is doing. We should abandon consideration of H.R. 3309 and defeat the Regulatory Accountability Act on the floor.

But I don't want to be negative, Mr. Chairman, because there is a fourth bill.

The Chairman. Is this striking the last word? Are you trying to get another 5 minutes?

Mr. Barton. Just give him a little extra time.

Mr. Waxman. I support the purpose of H.R. 3310, which streamlines the FCC's reporting obligations. So that fourth bill will have my tentative support. But further work is needed to improve the bill before it goes to the floor.

Well, rather than say anything bad, Mr. Chairman, I just want to yield back my time and complete my statement.

[The statement of Mr. Waxman follows:]

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

The Chairman. Thank you.

The chair would recognize the gentleman from Texas, the gentleman, Mr. Barton, for 5 minutes, for an opening statement.

Mr. Barton. I thank the distinguished chairman.

I share the pain of the ranking member. I have sat in his seat and know how fun it is to have this kind of a markup.

Before I give my formal opening statement I just want to comment on Dr. Gingrey's sartorial splendor. He is before us in a purple tie and a pink shirt. My wife went to the beach for Thanksgiving, and I got to wash my own clothes. And I washed all my whites with a maroon shirt that I thought was permanent press. So I now have a number of pink shirts to match yours.

Dr. Gingrey. You can have this tie.

Mr. Barton. So never leave a husband alone with a washing machine. It is not a good thing.

But, Mr. Chairman, in terms of the issues before us today, I am in strong support of the four bills that the full committee is going to mark up tomorrow. These are well-thought-out bills, and they all serve a positive public purpose.

On the farm dust bill, it is true that Administrator Jackson has contended that she is prepared to propose the retention with no revision. That is a very altruistic statement on her part of the current PM-10 standards. However, history shows us that the EPA standards could change during the rulemaking process or as a result of legal challenges. An environmental advocacy group called the Wild

Earth Guardian is considering suing the EPA if they don't come down harder on controlling dust.

PM-10 is found mainly in rural areas naturally occurring from driving on unpaved roads or working in farm fields. Many rural areas have a difficult time meeting the current standards of 150 micrograms per cubic meter. Farmers and ranchers in Arizona and California can't meet the current standard. In my home State of Texas, we all know that dust is a fact of life. Dry desert dusty like conditions are natural among many parts of the United States.

I fully support H.R. 1633. This will give us the regulatory relief and, most importantly, Mr. Chairman, certainty to the agricultural industry that would keep the EPA from revising the PM-10 standard for at least a year and will exempt dust from normal activities raised in rural areas from regulation under the Clean Air Act. So I am a very strong supporter of that.

In terms of H.R. 1173, I am not surprised that the provisions of the President's Patient Protection and Affordable Care Act, otherwise known by many colloquially as ObamaCare, are proving to be unsustainable, unaffordable, and undesirable. As the son of a Medicare beneficiary, I strongly believe that we need to reach a long-term solution when it comes to long-term health care planning. Medicaid, which is designed for indigent care, unfortunately spends more money on long-term health care than it does on actual health care for indigents.

We need a solution that will help reduce the health care costs

and give individuals more flexibility and freedom. The CLASS Act is not the way to solve this problem, and so we are wise to move the bill to repeal it legally.

In terms of the FCC reform bill, I am a very strong supporter of that bill, also.

I am disappointed, quite frankly, to learn that the FCC was ready to reject the merger between AT&T and T-Mobile and that they were not going to allow AT&T to withdraw their merger proposal. According to Politico, the news has just broken that they, the FCC, are going to allow AT&T to withdraw their merger application. I am gratified to learn that.

In any event, Chairman Walden's efforts to reform the processes at the FCC are long overdue. It would bring more transparency, more certainty, and more due process to an agency that could certainly use a dose of all three of the above. So I am very supportive of that bill.

I look forward to the markup tomorrow, Mr. Chairman, and hopefully it will be bipartisan and positive. And I yield back the balance of my time.

The Chairman. The gentleman yields back.

The chair would recognize another chairman emeritus of the committee, Mr. Dingell, from the great State of Michigan, for 5 minutes.

Mr. Dingell. Mr. Chairman, I thank you for your courtesy, and I hope you will not take offense at my comments today.

Today and tomorrow's committee proceedings will be an unfortunate

waste of the committee's time. We are considering bills that do not have a hope of being taken up by the Senate, much less being signed into law by the President. These bills will do nothing to put Americans back to work. They will do nothing to help the economy. They are, in the kindest way I can describe them, an unappetizing smorgasbord upon which this committee will labor to no goal or end.

They will certainly not address the real problems the committee should be dealing with, such as affordable health care, energy independence, sensible environmental laws that balance health concerns with the need to boost the economy. We are instead wasting the valuable time of this committee on House Republicans' desire to pursue ideological agendas at the cost of real progress for the American people.

This is not to say that my Republican colleagues haven't identified some problems that need to be addressed. For example, as pointed out by my colleague, Mr. Barton, the Federal Communications Commission has seemingly disregarded its own statutory limits in promulgating a net neutrality order; and it has routinely flouted my requests and those of other Members for information about voluntary incentive auctions of spectrum.

Process reform is necessary, but my colleagues on the other side go too far in H.R. 3309 and effectively cripple the commission instead of fixing it. And it certainly does need fixing.

Likewise, H.R. 1633 prevents the Environmental Protection Agency from regulating what it has already said it will not and cannot

regulate. And H.R. 1173 repeals a program that the Department of Health and Human Services says it cannot and will not implement at this time. In short, these appear to be dilatory measures meant mostly to distract the Congress and the American people from more pressing matters.

Congress, and this committee in particular, have a particular responsibility to the American people to help them live, compete, and work in the 21st century. I do not believe that the bills before us will help us meet this goal.

As I discussed in a recent article that appeared in Politico, this Congress has a dismal record of passing legislation that is ultimately signed by the President. Only 54 bills have been signed into law to date, whereas a total of 333 bills were signed into law during the 104th Congress, when the Republicans controlled both Chambers of Congress and there was a Democratic President.

I remind my colleagues that, while this session of the 112th Congress has been largely fruitless and we have spent much time mulling and toiling over little of importance, we do have time before the end of this year to set things right. I urge my colleagues to roll up their sleeves and spend the rest of December working on legislation that has a future and that will meaningfully help Americans and improve their lives.

Mr. Chairman, I thank you for your courtesy, and I yield back the balance of my time.

Dr. Gingrey. [Presiding.] The chair now recognizes the

gentleman from Illinois for 1 minute, Mr. Shimkus -- I am sorry, for 5 minutes.

Mr. Shimkus. I will be real brief. Thank you, Mr. Chairman.

It is good to get back home during the break and wish everybody a Happy Thanksgiving, but it does reinforce how divorced this national government is from the people at home. All you got to do is go home. They know that the entitlement system in this country is bankrupting this Nation.

The CLASS Act seeks to end, with the administration's agreeing that the CLASS Act is actuarially unsound. And because of that, we should codify it and kill it and start again with something else.

Also, the dust act codifies what the Administrator of the EPA said she would not do. But in testimony before this committee, the Assistant Administrator said, "as of now". Now, many of us, in listening to her, said, well, what about tomorrow? And that is why if the dust act is not good now, it is not going to be good later, and we ought to pass this legislation and move it to the floor.

I am glad to hear a lot of agreement on FCC reform. It is timely. I want to applaud my friend Anna Eshoo for working with me and I working with her on the Sunshine Act, where we allow at least when the FCC commissioners go someplace on a panel that you don't have to kick one out of the room when the other one is speaking. It is outdated, it is ridiculous, and the Sunshine Act has been included in this legislation, which I support.

With that, Mr. Chairman, I yield back my time.

Dr. Gingrey. The chair now recognizes the gentleman from New Jersey, the distinguished ranking member of the Health Subcommittee, for his opening statement.

Mr. Pallone. Thank you.

Mr. Chairman, I am opposed to all four bills that are being considered by the committee today. However, I will limit my remarks to the Republican misguided effort to repeal the CLASS program.

H.R. 1173 is a giant step backward towards addressing the long-term care crisis in this country; and, sadly, it does nothing to solve the problems millions of Americans are faced with today. Instead of offering any real solutions for long-term care access in America, my Republican colleagues continue to claim that Congress can't do anything. And that is not what the American people want to hear.

You know, I have a lot of admiration for my colleague from Illinois, Mr. Shimkus, but I have to tell you that when I go home all I hear from my constituents is that Congress doesn't do anything. It doesn't address their concerns.

I mean, we have got all kinds of concerns out there that come from the recession and the economy and the list goes on and on. But one of the things they are concerned about is the absence of options for long-term care.

And so, you know, for the Republicans to just say, well, we are going to repeal this bill, but we have nothing to replace it with, and just throw up their hands, that is not what the American people want. The American people don't want us to basically replace something with

nothing. If they are going to repeal something, they want it to be replaced with something that is going to address the problem that the CLASS Act was trying to deal with.

So, you know, I very much disagree. I think that those of us who supported and sponsored the CLASS Act were trying to deal with a real problem. And for the Republicans to simply say, well, you know, we don't have any alternative, but we will just get rid of this now makes no sense.

It is also really unfortunate for the disability community. The disability community needs our help. How are they going to get the care they need? They simply have too few long-term care options.

The CLASS program is an important step in changing the way we think about and provide long-term care services to the elderly and the disabled. It helps people take personal responsibility to plan for their eventual long-term care needs and not be a burden on Medicaid.

When we had a hearing on this issue, I heard some of my colleagues on the other side say, well, you know, you are putting more of a burden on the government. You are putting less burden on the government with the CLASS Act because people are paying into a fund which they then take out to pay for their long-term care. And that saves money for Medicaid and eliminates the burden on Medicaid, which means that the government is getting a break, basically, because people are taking their own responsibility. They are going to have access to long-term care services that they need.

Now, current law, in my opinion, under CLASS provides a good

framework. I am going to offer an amendment today that will prohibit repeal until the CLASS Independence Advisory Council is appointed and functioning. The expertise of this Council is critical to informing Congress on workable solutions to implement CLASS in a fiscally sound manner.

So I am not giving up on CLASS, Mr. Chairman. I believe it can be implemented in a meaningful way if everyone merely tried. And I think we have to be positive. I hate to say it. You have heard me say it over and over again. We have to be positive, not negative.

I worry when I go home that people have an extremely negative attitude about what we do down here because they don't see us accomplishing anything. They want us to fix problems. They don't want us to exacerbate them.

So I would strongly urge my colleagues to oppose H.R. 1173. Even if you don't like the way the bill is, then work with me. You know, we can work with this Council that I mentioned to try to move forward with the framework and come up with some solutions. The foundation of the current law I think has a lot of promise, and we should keep it on the books and work with it and not just repeal it and say that's it and throw up our hands.

I yield back, Mr. Chairman.

Dr. Gingrey. The chair recognizes the gentleman from Pennsylvania, the chair of the Health Subcommittee, Mr. Pitts, for an opening statement.

Mr. Pitts. Thank you, Mr. Chairman.

I would like to also speak on H.R. 1173, the Fiscal Responsibility and Retirement Security Act of 2011, which repeals the CLASS program that was enacted into law in last year's health reform bill.

The Health Subcommittee has held two hearings on the CLASS program this year. The first hearing was on March 17, 2011, and the most recent hearing was on October 26, 2011.

On February 16 of this year, HHS Secretary Kathleen Sebelius publicly admitted that the CLASS Act is, quote, totally unsustainable. But it was not until 8 months later, on October 14, that the Department of Health and Human Services announced it was not moving forward with the implementation of the CLASS program, quote, at this time.

On October 26, 2011, Assistant Secretary Kathy Greenlee testified before the Health Subcommittee that the Department had spent \$5 million in 2010 and 2011 trying to implement the program. The Secretary's conclusion that the CLASS program could not meet the law's 75-year solvency requirement and was not sustainable was not a surprise to anyone who had been following the issue. Even before its inclusion in the President's health care law in March of 2010, we were warned by the administration's own actuary, the American Academy of Actuaries, Members of Congress from both parties, and outside experts, that the program would not be fiscally sustainable.

On July 9, 2009, approximately 8 months before PPACA was signed into law, CMS's own actuary, Richard Foster, wrote, "36 years of actuarial experience lead me to believe that this program would collapse in short order and require significant Federal subsidies to

continue".

I support the intent behind the CLASS program to help Americans purchase long-term care policies that most of us will end up needing at some point but only about 9 million Americans actually purchase. Long-term care costs are frighteningly high, and many Americans face bankruptcy or end up on Medicaid or both in order to get the care they need.

While the goals of the program were worthy, good intentions do not make up for a fundamentally flawed, actuarially unsound policy designed to show the illusion of savings. I have heard some of my colleagues say if you support repeal of the CLASS program you are either denying that a long-term care problem exists in this country or you simply don't care people are suffering under the crushing weight of medical bills and imminent poverty.

I disagree. There are many of us who are very concerned about the long-term care situation that our country faces. But we, along with HHS, realize that the CLASS program is not the answer.

I would note that when my colleagues on the other side of the aisle controlled the House in the 110th and the 111th Congresses, the Health Subcommittee did not hold a single hearing on long-term care. Perhaps if we had, or had even had a hearing on the CLASS program itself, we may not be in this position today.

Shelving the program is not enough. As long as it is on the books, it will continue to create substantial uncertainty in the private sector about what the government's role in long-term care insurance

will be. Let's repeal the CLASS program, not try to tinker around the edges of a fundamentally flawed model, and take up real solutions to this problem instead.

With that, I yield back.

Dr. Gingrey. The gentleman yields back.

The gentleman from New York, Mr. Engel, is now recognized for 3 minutes for his opening statement.

Mr. Engel. Thank you. Thank you very much, Mr. Chairman. I appreciate it.

And I would like to say that I am opposed to all four bills but want to also talk about the CLASS Act, H.R. 1173. I want to align myself with remarks made by my Democratic colleagues, Mr. Waxman, Mr. Dingell, and Mr. Pallone.

You know, once again, my friends on the other side of the aisle have an assault on health care. I don't know why this is. I don't know why we would want to repeal the CLASS Act and not replace it with something that is viable. Here we are again today wasting our efforts on ways to eliminate or weaken the Affordable Care Act when our time could be spent in many more productive ways.

As we discussed in the Health Subcommittee earlier this month, the CLASS Act establishes an important framework for dealing with the very serious problem senior citizens find themselves in when trying to obtain affordable long-term care insurance. The CLASS Act established the National Clearinghouse for Long-Term Care, which I believe is a truly innovative step in helping seniors identify real

solutions to their long-term care needs. A repeal of this Act, without any plan to address what is going to be a continued problem, is not only shortsighted, it is downright irresponsible.

And now we are told that the answer is private long-term care insurance by our friends on the other side of the aisle. Do we really know if that is the case? I say we do not. And the committee should be engaged with HHS to make sure that seniors' long-term care needs will be met through the private market, which so far as I know has not yet proved an affordable option. I will be proposing an amendment tomorrow which will deal with this very problem.

So I urge my colleagues to vote no on the repeal of the CLASS Act so that Congress and HHS can work to build upon an established framework that doesn't leave our Nation's seniors behind.

And I thank you, Mr. Chairman, for your courtesy.

Dr. Gingrey. The gentleman yields back.

The chair will now recognize himself for about 1 minute for his opening statement.

CBO Director Douglas Elmendorf recently responded to a question of mine by stating the Secretary of HHS has now concluded that the CLASS program cannot be operated without mandatory participation so as to ensure its solvency. The Secretary has floated other options to make CLASS work, for instance, imposing a 15-year waiting period on the chronically ill patient or only marketing the program to healthy patients at first.

Therefore, the question we need to ask is, do we support forcing

Americans to purchase government insurance or requiring chronically ill patients to wait 15 years for health insurance? I, for one, do not; and today I will be voting to reject forcing workers to purchase unsustainable health insurance or programs that discriminate against sick patients.

Mr. Chairman, as an original cosponsor of this legislation, I urge all of my colleagues to support passage of H.R. 1173 and the other three bills that we are discussing and will be marking up tomorrow.

With that, I will yield back.

At this time I recognize the gentlelady from the Virgin Islands, Dr. Christensen, for her opening statement of 1 minute.

Dr. Christensen. Thank you, Mr. Chairman.

I adamantly oppose H.R. 1173. Today, over 10 million Americans need long-term care, and by 2020 that number will rise to 15 million. Places like the Territories, which have a cap on Medicaid, simply cannot afford to provide the care to many who need it. And we do need a solution, but repeal of CLASS is clearly not it.

As I stated during the hearing, while I support the intent of 3310, I share the concerns that the authority and data collection and certain reporting requirements could be affected. Unless they have been satisfactorily addressed since the hearing, I would likely oppose this bill as well.

With regard to 3309, given the great work the current FCC has done to improve transparency, accountability, public participation, and to ensure that the public benefits are preserved, and given the precedent

that they set for future commissions, this bill is not only unnecessary but risks paralyzing the FCC at a time when their oversight and regulation is very much needed. And I can't support it.

I live in a place where particulate matter as well as other harmful emissions are a hazard to the health of my community. H.R. 1633 could potentially limit Clean Air Act public health protections, and it is not even clear that this bill is necessary to achieve its stated purpose. Further, I cannot support a measure that would ultimately create more confusion and possibly litigation if it is enacted. So I oppose H.R. 1633 as well, and I yield back the balance of my time.

Dr. Gingrey. The chairman now recognizes the gentleman from Louisiana, Mr. Scalise, for his opening statement of 1 minute.

Mr. Scalise. Thank you, Mr. Chairman. I appreciate you having this meeting today and, of course, the markup tomorrow.

The four bills we are taking up are all important bills that I fully support that will save taxpayers billions of dollars and help our economy rebound. Beginning with the CLASS Act, this radical program, like other aspects of the President's health care law, would be completely unsustainable and would cost taxpayers billions of dollars. The bill today that repeals the CLASS Act is responsible legislation, and I urge my colleagues to support it.

Also, our bill to prevent the EPA from regulating farm dust will resolve an area where there is tremendous uncertainty over what the EPA is going to do in the future. This uncertainty has cost jobs at a time when our economy can least afford it; and, unfortunately, we

are seeing the same issue across the board when it comes to radical EPA regulations or future rules that are running millions of jobs out of our country, hurting our ability to get our economy back on track.

In addition, I am pleased we are considering bills that modernize the way the FCC does business. Providing greater flexibility to the FCC by consolidating eight annual and triennial reports to a single biennial communications marketplace report is a commonsense idea that reduces the regulatory burdens on job creators, while also making the FCC more efficient. I believe the FCC Consolidated Reporting Act strikes the right balance between easing reporting burdens on our job creators and ensuring the FCC has the data it needs to act in instances of market failure. I look forward to working with my colleagues on both sides of the aisle so we can in fact enact meaningful reform to the FCC for the first time in decades.

Thank you, Mr. Chairman. I yield back.

Dr. Gingrey. The chair now recognizes the gentleman from Texas, Mr. Green, for his opening statement for about 1 minute.

Mr. Green. Mr. Chairman, I would like to defer to my colleague from North Carolina, if he hasn't given his statement, because he was here first.

Dr. Gingrey. The gentleman from North Carolina is so recognized for 1 minute.

Mr. Butterfield. Let me thank the gentleman for yielding. You are very kind, Mr. Green. I am wondering what I have to give in return for that.

Mr. Green. It is a tall order, Judge.

Mr. Butterfield. But, Mr. Chairman, let me thank you for bringing us together today; and, sadly, I must say that I do not at this time support any of the bills that would be under consideration by the committee. Though I am sympathetic to the underlying issues that my Republican colleagues have attempted to address, the methods that you prescribe in these bills do not, in my opinion, appropriately deal with the problem.

H.R. 1633 does seek to address an issue that is important to me as a representative of a largely rural district. However, the legislation is overly broad. It is overly broad in its definition of nuisance dust which it would seek to exclude from regulation, and I cannot support it.

H.R. 3309 creates a new regulatory framework for only the FCC, essentially making it an island apart from all other agencies. Considering the government-wide regulatory process reforms already under way, 3309 is unnecessary and potentially damaging to the FCC.

Mr. Chairman, in the interests of time, I will submit the balance of my statement for the record.

[The statement of Mr. Butterfield follows:]

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

Dr. Gingrey. I thank the gentleman.

The chair now recognizes for 1 minute for the purpose of an opening statement the gentleman from Texas, Mr. Olson.

Mr. Olson. I thank the chair; and, while he no longer appears to be here, I would like to thank Chairman Upton for his leadership in bringing these four commonsense bills to markup. These are good government bills, and I am happy to strongly support each one of them.

I would like to focus my comments on a bill I am a proud cosponsor of, the Fiscal Responsibility and Retirement Security Act, otherwise known as H.R. 1173. This bill will repeal the flawed Community Living Assistance Services and Supports Act, otherwise known as CLASS, which was created under the administration's more flawed health care reform package. The Department of Health and Human Services finally saw what I and my Republican colleagues saw from the very beginning, that the CLASS Act was neither viable nor fiscally sustainable.

HHS has rightfully announced that it is shelving it. I applaud this move. But repeal of the CLASS Act program only further underlines the fiscal and additional train wreck that is rolling down the tracks because the previous majority jammed a flawed health care bill through the House without an open debate. The American people deserve better. They are getting it with passage of these four bills.

I yield back the balance of my time.

Dr. Gingrey. The chair now recognizes the gentleman from Texas, Mr. Green, for his opening statement for 1 minute.

Mr. Green. Thank you, Mr. Chairman; and I would ask unanimous

consent to have my full statement placed in the record.

I know our first bill we are going to consider is H.R. 1633, the Farm Dust Regulation Act, that would prohibit EPA from proposing, finalizing, implementing, and enforcing any regulations revising the national ambient air standards.

Of course, I know my history on the committee. I don't have any problem with disagreeing with the EPA. But, in this case, I think the EPA has actually said they don't intend to regulate farm dust in that provision; and, frankly, we have enough battles going on with the EPA without picking one where they are not doing something.

On the CLASS Act, the health care law, this was a last-minute addition. It actually came back from the United States Senate in the bill, and I know it was the legacy of the late Senator Ted Kennedy, and the Department of Health and Human Services has already released a report and announced they are suspending the program.

I would much rather be on the side of trying to reform it. Because, as all of us know, with Social Security not as rich as we would like it to be for folks, they still need to have some type of care that they can plan for their whole life if they can't get it through their employer. We are just fortunate in our cases that the Federal Government offers an addition to our health care plan that would include assisted living and something like the CLASS Act. So do a lot of large companies but not everyone.

The telecom bills regarding the FCC today, again, I haven't been pleased with how the FCC has conducted their business, but I do think

H.R. 3309 goes too far.

And with that, Mr. Chairman, I appreciate you putting my full statement in the record. Thank you.

[The statement of Mr. Green follows:]

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

Dr. Gingrey. Thank the gentleman.

The chair now recognizes, last but not least, the gentleman from West Virginia, Mr. McKinley, for his opening statement for about a minute.

Mr. McKinley. Thank you, Mr. Chairman.

Let me concentrate my remarks to the farm dust bill. While I appreciate the sentiments of Administrator Jackson and her assistant that the EPA plans to retain the current PM-10 standard, this bill simply codifies that decision. America's agricultural communities, like our country's small businesses, are being overwhelmed with overregulation by potentially questionable rules.

In this particular case, the magnitude of the farm dust threshold, 150 micrograms per cubic meter, equates to the weight of this piece of paper, 8-and-a-half square inches, in the volume of 70,000 square cubic feet of this room. This is the weight of dust that would put someone in violation.

Have these regulators ever been to a farm? Have they ever been outside the Beltway? Congress should be focused on creating more jobs, not putting up more barriers and adding to the uncertainties of our country's farms.

Thank you, Mr. Chairman, finally; and I yield back my time.

Dr. Gingrey. And I thank the gentleman for his succinctness in giving that final opening statement.

Are there any more opening statements?

Seeing none, then the chair calls up H.R. 1633 and asks the clerk

to report.

The Clerk. H.R. 1633, to establish a temporary prohibition against revising any national ambient air quality standard applicable to coarse particulate matter, to limit Federal regulation of nuisance dust in areas in which such dust --

Dr. Gingrey. Without objection, the first reading of the bill is dispensed with, and the bill will be open for amendment at any point. So ordered.

For the information of members, we are now on H.R. 1633. The committee shall reconvene at 10 o'clock in the morning. I remind members that the chair will give priority recognition to amendments offered on a bipartisan basis. I look forward to seeing all of you tomorrow.

The committee stands in recess.

[Whereupon, at 5:22 p.m., the committee adjourned, to reconvene at 10:00 a.m. on Wednesday, November 30, 2011.]