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4 MARKUP ON H.R. 1633, THE ``FARM DUST REGULATION PREVENTION
5 ACT OF 2011''; AND
6 H.R. 1173, THE ``FISCAL RESPONSIBILITY AND RETIREMENT
7 SECURITY ACT OF 2011''
8 Wednesday, November 30, 2011
9 House of Representatives,
10 Committee on Energy and Commerce
11 Washington, D.C.

12 The Committee met, pursuant to call, at 10:10 a.m., in
13 Room 2123 of the Rayburn House Office Building, Hon. Fred
14 Upton [Chairman of the Committee] presiding.

15 Members present: Representatives Upton, Barton,
16 Stearns, Whitfield, Shimkus, Pitts, Bono Mack, Walden, Terry,
17 Rogers, Myrick, Sullivan, Murphy, Burgess, Blackburn,
18 Bilbray, Bass, Gingrey, Scalise, Latta, McMorris Rodgers,

19 Harper, Lance, Cassidy, Guthrie, Olson, McKinley, Gardner,
20 Pompeo, Kinzinger, Griffith, Waxman, Dingell, Markey, Towns,
21 Pallone, Rush, Eshoo, Engel, Green, DeGette, Capps, Doyle,
22 Schakowsky, Gonzalez, Inslee, Ross, Matheson, Butterfield,
23 Barrow, Matsui, Christensen and Castor.

24 Staff present: Gary Andres, Staff Director; Jim
25 Barnette, General Counsel; Allison Busbee, Legislative Clerk;
26 Debbie Keller, Press Secretary; Heidi King, Chief Economist;
27 Ben Lieberman, Counsel, Energy and Power; Ryan Long, Chief
28 Counsel, Health; Jeff Mortier, Professional Staff Member;
29 Mary Neumayr, Senior Energy Counsel; Katie Novaria,
30 Legislative Clerk; Monica Popp, Professional Staff Member,
31 Health; Andrew Powaleny, Assistant Press Secretary; Heidi
32 Stirrup, Health Policy Coordinator; Kristin Amerling,
33 Democratic Chief Counsel and Oversight Staff Director; Phil
34 Barnett, Democratic Staff Director; Alli Corr, Democratic
35 Policy Analyst; Kelley Greenman, Democratic Legislative
36 Associate; Caitlin Haberman, Democratic Policy Analyst; Ruth
37 Katz, Democratic Chief Public Health Counsel; Elizabeth
38 Letter, Democratic Assistant Press Secretary; Karen
39 Lightfoot, Democratic Communications Director and Senior
40 Policy Advisor; Karen Nelson, Democratic Deputy Committee
41 Staff Director for Health; Anne Morris Reid, Democratic
42 Professional Staff Member; and Alexandra Teitz, Democratic

43 Senior Counsel, Environment and Energy.

|

44 H.R. 1633

45 The {Chairman.} Good morning, everybody. The committee
46 will come to order, and I would note that at the conclusion
47 of opening statements yesterday, the chair called up H.R.
48 1633, the Farm Dust Regulation Prevention Act of 2011, and
49 the bill was open for amendment at any point.

50 [H.R. 1633 follows:]

51 ***** INSERT 1 *****

|
52 The {Chairman.} So at this juncture, are there any
53 bipartisan amendments to the bill? Seeing none, are there
54 any other amendments wishing to be offered? Let me go to Mr.
55 Waxman first.

56 Mr. {Waxman.} Mr. Chairman, I seek recognition to
57 strike the last word.

58 The {Chairman.} The gentleman is recognized for 5
59 minutes.

60 Mr. {Waxman.} I am beginning to wonder what did the
61 Clean Air Act ever do to the Republicans. I ask, because
62 under Republican leadership, this committee's agenda has been
63 relentlessly anti-environmental, anti-EPA, anti-Clean Air
64 Act, and pro-pollution. In fact, this committee's agenda is
65 profoundly harmful to public health. Today, we have yet
66 another attack on the Clean Air Act. So far this year, the
67 House has voted 170 times to weaken our environmental laws.
68 The biggest single target has been the Clean Air Act. We
69 have voted 61 times to dismantle the Clean Air Act, and if
70 this bill comes to the Floor, it will be the 62nd time.

71 This committee has voted time and again to stop the EPA
72 from taking action on air pollution. Today's bill would stop
73 EPA even though they are not taking action. H.R. 1633 is
74 called the Farm Dust Regulation Prevention Act of 2011.

75 Despite the bill's title, EPA does not regulate dust from
76 farms, does not intend to regulate dust from farms. The
77 Administrator recently announced that she intends to propose
78 no change to the PM10 standards. There is no need for
79 legislation here. We might as well tell EPA not to regulate
80 fairy dust.

81 In fact, this bill is not really about farms at all. It
82 exempts industrial mining operations from regulation under
83 the Clean Air Act, and it rolls back the particulate
84 standards that protect families in both rural and urban
85 communities. Section 3 of the bill exempts so-called
86 nuisance dust from any regulation under the Clean Air Act.
87 Well, that is a new term, so it is defined in an incredibly
88 broad way. The definition covers both coarse particulates
89 and deadly fine particulates. It covers particulates from
90 earth moving, which means industrial mining operations, and
91 from activities typically conducted in rural areas, which
92 includes cement plants, smelters and coal-processing plants.
93 Most of the particulate pollution from these sources isn't
94 from combustion, so the subcommittee didn't fix this. Yet
95 under this bill, these sources would be exempt from
96 regulation under the Clean Air Act.

97 There are other serious problems with the bill.
98 According to EPA, the broad exemption for nuisance dust

99 ``raises the issue of whether the EPA could enforce or
100 maintain existing fine or coarse particle pollution
101 standards.'' EPA's air quality monitors cannot measure
102 particle pollution from certain sources while ignoring
103 particles from other sources, but that is what the bill
104 requires. This would likely invalidate the existing
105 standards and make crafting and implementing a health-based
106 standard for particle pollution virtually impossible.

107 This bill is based on another false premise. EPA
108 scientists reviewed all of the medical evidence and concluded
109 that exposure to coarse particles may cause mortality,
110 cardiovascular effects and respiratory effects. The science
111 is even more definitive for the deadly effects of fine
112 particles. There is simply no scientific basis for claiming
113 that so-called nuisance dust is safe to breathe.

114 The American people support the Clean Air Act. People
115 want clean air. And over the past 40 years, the Clean Air
116 Act has brought us dramatic air quality improvements. But
117 this committee is intent on undoing these gains in bill after
118 bill for one industry or another. This committee has voted
119 to punch holes in the Clean Air Act. It has voted for more
120 weather-altering carbon pollution, more toxic mercury
121 pollution, more arsenic and lead pollution, more sulfur
122 dioxide pollution and more nitrogen oxide pollution. This

123 committee should support the Clean Air Act, not attack it yet
124 again, and I urge my colleagues to oppose this unnecessary
125 and dangerous piece of legislation.

126 I yield back my time.

127 The {Chairman.} The gentleman yields back.

128 For what purpose does the gentleman from West Virginia
129 seek recognition?

130 Mr. {McKinley.} Mr. Chairman, I have an amendment at
131 the desk.

132 The {Chairman.} The gentleman has an amendment at the
133 desk. The clerk will read the title.

134 The {Clerk.} Amendment to H.R. 1633 offered by Mr.
135 McKinley of West Virginia.

136 [The amendment follows:]

137 ***** INSERT 2 *****

|
138 The {Chairman.} And without objection, the amendment
139 will be considered as read, and the staff will distribute the
140 amendment, and the gentleman from West Virginia is recognized
141 for--

142 Mr. {Waxman.} Mr. Chairman, I reserve a point of order.
143 We haven't seen the amendment.

144 The {Chairman.} Point of order is reserved, and the
145 gentleman from West Virginia is recognized for 5 minutes in
146 support of his amendment.

147 Mr. {McKinley.} Thank you, Mr. Chairman.

148 This amendment to H.R. 1633 addresses the concerns that
149 the definition of farm dust may be too broad. Therefore,
150 this amendment clarifies that the definition of nuisance dust
151 in H.R. 1633 does not include coal ash or other coal
152 combustion residuals.

153 As reported to the full committee, the definition of
154 nuisance dust explicitly excluded emissions from combustions
155 but we would like to be perfectly clear that nuisance dust is
156 not comprised of any residual from the combustion of coal and
157 that nothing in the bill prevents the EPA, State, local or
158 tribal governments from regulating coal ash or other coal
159 combustion residuals.

160 With this amendment, the definition of nuisance dust is

161 clarified to mean particulate matter that satisfies four
162 conditions. Specifically, it means particulate matter that,
163 one, is generated primarily from natural sources, unpaved
164 roads, agriculture activities, earth moving or other
165 activities typically conducted in rural areas; two, consists
166 primarily of soil, other natural or biological materials or
167 some combination thereof; three, is not emitted directly into
168 the ambient air from combustion such as exhaust from
169 combustion engines and emissions from stationary combustion
170 processes, and most importantly, item number four, it is not
171 comprised of residuals from the combustion of coal.

172 These changes make it clear that H.R. 1633 does not
173 hinder the EPA, State, local or tribal governments from
174 regulating coal ash because nuisance dust cannot be comprised
175 of coal combustion residuals.

176 I urge my colleagues to support this amendment and to
177 support the passage of this legislation. Thank you.

178 Mr. {Shimkus.} Would the gentleman yield?

179 Mr. {McKinley.} Yes.

180 Mr. {Shimkus.} I just want to thank him for the
181 amendment. It does address a concern that was raised. It
182 helps clarify all our great work on making sure coal is a
183 primary commodity for electricity generation in this country.
184 We know it is currently and continues to be under attack.

185 This just takes us off the debate for this issue, and I
186 applaud you for the work on that, and I yield back.

187 Mr. {McKinley.} Thank you.

188 The {Chairman.} The gentleman yields back his time.

189 Are other members wishing to speak on the amendment?

190 The gentleman from California, Mr. Waxman.

191 Mr. {Waxman.} First of all, Mr. Chairman, I withdraw my
192 point of order. This amendment is clearly germane.

193 Secondly, I want to talk about the amendment itself.

194 The supporters of this bill claim that this bill is about so-
195 called farm dust but the bill is drafted so broadly that it
196 could exempt dangerous air pollution from a whole range of
197 industrial activities as well. Coal-fired power plants with
198 giant coal ash waste pits are one of the sources of
199 particulate pollution that this bill would exempt from the
200 Clean Air Act, and during the consideration of the coal ash
201 bill that went through this committee, we heard testimony
202 about how wind dispersal of coal ash dust can harm human
203 health, and there are a number of examples of this. This
204 pollution can trigger asthma attacks and exacerbate other
205 respiratory disease. But air pollution from coal ash can be
206 laced with hexavalent chromium, arsenic, lead and other heavy
207 metals linked with serious health effects including lung
208 cancer.

209 Many members of this committee on both sides worked to
210 ensure that the coal ash legislation in the bill we passed
211 would address these health risks, and many members wanted to
212 include dust controls such as covering the ash, storing it in
213 tanks or buildings, or treating it with water. The final
214 bill on coal ash that the committee reported did not include
215 such requirements to address the health risks posed by dust
216 from coal ash pits. It relies exclusively on compliance with
217 any controls imposed under a Clean Air Act State
218 implementation plan. In fact, the Republican committee
219 report on the bill says that the applicable Clean Air Act
220 provisions are adequate to address any potential dust issues
221 at coal ash impoundments.

222 Now, the bill that is before us would eliminate those
223 same Clean Air Act provisions, and that is why I am going to
224 support this amendment to remove coal ash from the bill's
225 overbroad definition of nuisance dust. We should not exempt
226 coal ash disposal from the Clean Air Act under the guise of
227 protecting farmers.

228 But this amendment just highlights the larger problem
229 with this bill. At the subcommittee markup, the Republicans
230 amended the bill so it would no longer exempt from the Clean
231 Air Act particulate pollution directly emitted from power
232 plant combustion, school buses and tractors. Now they are

233 excluding particulate pollution from coal ash as well. But
234 the bill still exempts mining operations and smelters. It
235 still blocks controls on particulate pollution from cement
236 plants and coal-processing plants and other industrial
237 sources typically located in rural areas. Are we going to
238 pass exclusions from the Clean Air Act exemption for each of
239 these sources or just certain favorite sources and not
240 others? I am going to have an amendment on this subject in a
241 minute. I don't think that is the proper way to legislate.

242 This bill is based on the false premise that particulate
243 pollution from some activities is harmless while
244 indistinguishable particulate pollution from other activity
245 harms health. It is no surprise that the legislative
246 structure build on this flawed foundation makes no sense and
247 does not work.

248 While I will support this amendment, the fact that it is
249 necessary proves that this bill is not limited to farm dust,
250 and while the amendment highlights the bill's flawed
251 approach, it fails to fix it. So I support this amendment as
252 far as it goes and I will have another amendment on a similar
253 subject.

254 Yield back my time.

255 The {Chairman.} The gentleman yields back.

256 Are there other members wishing to speak on the

257 amendment? Seeing none, the vote occurs on the McKinley
258 amendment. Those in favor will say aye. Those opposed, say
259 no. In the opinion of the chair, the ayes have it. The ayes
260 have it. The amendment is adopted.

261 Mr. {Waxman.} Mr. Chairman.

262 The {Chairman.} For what purpose does the gentleman
263 from California seek recognition?

264 Mr. {Waxman.} I have an amendment at the desk, number
265 two.

266 The {Chairman.} If the clerk could read the title of
267 the amendment?

268 The {Clerk.} Amendment to H.R. 1633 offered by Mr.
269 Waxman of California.

270 [The amendment follows:]

271 ***** INSERT 3 *****

|
272 The {Chairman.} The amendment will be considered as
273 read. The staff will disburse the text of the amendment to
274 the members. And the gentleman from California is recognized
275 for 5 minutes in support of his amendment.

276 Mr. {Waxman.} The supporters, Mr. Chairman, of this
277 bill claim they are simply trying to exempt so-called farm
278 dust from the Clean Air Act. There are several reasons why
279 it isn't a good idea for public health or public policy. But
280 this bill would exempt pollution from sources well beyond
281 farms.

282 The bill defines nuisance dust to include particulate
283 matter that consists primarily of natural materials that are
284 generated from earth moving. It seems clear that this would
285 include particle pollution from open-pit mines. In the
286 legislative hearing, EPA agreed that the bill would have this
287 effect.

288 While the bill's supporters continue to claim that the
289 bill is for farms, they have not denied that it would also
290 have the effect of exempting particle pollution from
291 industrial mining operations from the Clean Air Act. This is
292 an egregious overreach.

293 The Kennecott, Utah, copper mine serves as a perfect
294 example. Kennecott Copper operates one of the largest open-

295 pit copper mines in the world in Utah. The mine is visible
296 from space. Every day, Kennecott Copper mines about 150,000
297 tons of copper ore and 330,000 tons of waste rock from its
298 Bingham Canyon Mine. Kennecott's operations are the single
299 largest source of particle pollution in Utah. Salt Lake
300 County to the east of the mine violates the health-based
301 limits for both fine and coarse particulate pollution.
302 Kennecott almost for almost a fifth of the county's PM10
303 emissions and a quarter of the county's PM2.5 emissions.
304 That certainly isn't farm dust. Kennecott wants to expand
305 its Bingham Canyon mine, increasing the amount of rock
306 blasted, hauled and crushed in the giant pit by 32 percent,
307 or about 60 million tons each year.

308 This bill would allow Kennecott to increase its
309 pollution without limits by exempting all of its particulate
310 pollution from the entire Clean Air Act. This expansion
311 would increase particulate pollution in an area that already
312 suffers from bad air quality and it would leave the 1 million
313 residents of Salt Lake County suffering from harmful air
314 pollution without any recourse through the Clean Air Act.

315 It is not surprising that Kennecott is a member of a
316 coalition supporting this bill. In fact, some people think
317 this is the reason for the bill. This is only one example of
318 a mine that could get a permit to pollute under this

319 legislation. This bill would benefit mines, gravel pits and
320 other activities across the country that involve earth
321 moving.

322 A few years ago, I released a report with Representative
323 Hilda Solis on the health effects of 17 gravel-mining
324 operations that were located in her district in L.A. Local
325 residents worried that the mining operations were harming the
326 health of their families. Parents were particularly
327 concerned about asthma, which afflicted many of the children.
328 We found these mining operations were a significant threat.
329 They emitted large quantities of both fine and coarse
330 particulate matter. Yet under this bill, they would be
331 exempt from regulation under the Clean Air Act.

332 So my amendment clarifies that this bill does not apply
333 to particle pollution from any mining activities. The
334 science shows that the coarse and fine particle pollution
335 regardless of the source can harm public health. That is why
336 I oppose exempting favorite sources of this pollution from
337 the Clean Air Act and I oppose the bill. But at the minimum,
338 just as we just did on coal ash, we should ensure that the
339 bill is true to its name, the Farm Dust Regulation Prevention
340 Act. Large industrial open-pit mines and gravel-mining
341 operations shouldn't get a free pass to pollute under the
342 guise of helping farmers, so I urge my colleagues to support

343 this amendment and yield back the balance of my time.

344 The {Chairman.} The gentleman yields back.

345 Are there other members wishing to speak on the
346 amendment?

347 Mr. {Shimkus.} Mr. Chairman.

348 The {Chairman.} Mr. Shimkus is recognized for 5
349 minutes.

350 Mr. {Shimkus.} Thank you, Mr. Chairman.

351 The 2006 EPA itself proposed to exempt rural wind-blown
352 dust and soils and particulate matter generated by
353 agricultural and mining sources. This amendment is not
354 necessary because mines are already heavily regulated through
355 other statutes including the Resources Conservation Recovery
356 Act, the Clean Water Act, Federal Land Policy and Management
357 Act, National Environmental Policy Act, and the list goes on.

358 Rural America needs certainty that the regulation of
359 dust in rural areas is left to States and local governments.
360 Obviously, I oppose this amendment.

361 A couple brief facts. I love it when we attack industry
362 and business and jobs. I don't know much. I haven't been to
363 Kennecott. I have been to open-pit mining operations in my
364 district. There is not a lot of operation going on right now
365 because there is not a lot of jobs. We are not building
366 stuff. I would love to see earth-moving equipment digging up

367 the soil and creating jobs.

368 Kennecott Mine has 1,885 employees, 1,885 employees. It
369 produces 18 to 25 percent of the country's copper needs.
370 Obviously, copper is used extensively in home building,
371 electronics. It is a valuable asset that we have in this
372 country like all mining operations, and these mining
373 operations are in rural America. You don't see open-pit
374 mining in the Los Angeles basin. You see it in Johnson
375 County. You see it in Monroe County. You see it in areas
376 where you can buy land cheap and dig in the ground.

377 So I would argue against this amendment and for jobs in
378 this country. This assault on working men and women through
379 the Environmental Protection Agency when we have the cleanest
380 air we have had in decades just has to stop, and that is the
381 importance of this bill, and that is why we need to reject
382 this amendment.

383 Mr. {Waxman.} Will the gentleman yield to me?

384 Mr. {Shimkus.} I would be happy to yield to you.

385 Mr. {Waxman.} I thank you for yielding to me.

386 Let me point out, first of all, there are gravel mines,
387 even in Los Angeles. Second of all, the Kennecott copper
388 mine employs 1,800 people. They do so under existing law.
389 And under existing law, mines are covered by the Clean Air
390 Act. Under this bill, they will no longer be covered by the

391 Clean Air Act.

392 Mr. {Shimkus.} If the gentleman would--

393 Mr. {Waxman.} I just--

394 Mr. {Shimkus.} And I will let you go. I am just going
395 to also state that mines already are regulated under the
396 Resource Conservation and Recovery Act. They are regulated
397 under the Clean Water Act. They are regulated under the
398 Federal Land Policy and Management Act. They are regulated
399 under the National Environmental Policy Act. So they are
400 highly regulated already, and by States themselves.

401 Mr. {Waxman.} Will the gentleman yield to me further?

402 Mr. {Shimkus.} I would be happy to yield.

403 Mr. {Waxman.} I don't dispute they are regulated under
404 other statutes but they are now regulated under the Clean Air
405 Act, and if this bill passes, they will no longer be
406 regulated. The Clean Air Act protects the public from
407 harmful pollution, and some of this pollution is quite
408 harmful to the public health. Under RCRA, you clean up the
409 mines when they are deserted. Under other laws, they affect
410 other things. But the Clean Air Act protects public health
411 when people either breathe in the air that has these
412 chemicals or otherwise exposed to them in the air itself. Do
413 you see a reason to exempt them from the Clean Air Act?

414 Mr. {Shimkus.} There is uncertainty placed if the EPA

415 goes down to 2.5 standard. They are already regulated under
416 PM10, and that is acceptable. And in all testimonies, there
417 has been no documented proof on any of these health hazards
418 that you all continue to claim, especially in rural America.

419 So I appreciate the time. We are going to have much
420 more opportunity to debate this, but I would encourage my
421 colleagues to reject this amendment.

422 Mr. {Waxman.} Will the gentleman yield just a few
423 seconds that you have left?

424 Mr. {Shimkus.} Yes.

425 Mr. {Waxman.} Look, we have a fundamental debate. This
426 bill is supposed to be about farm dust. You are trying to
427 make sure that the bill also covers mining pollution, and I
428 think that that is a different issue and there is no reason
429 to exempt them under the Clean Air Act. The Clean Air Act
430 applies now. EPA has not done anything to change the status.
431 Kennecott Copper has 1,800 people working. They want to
432 expand, and if their expansion produces harmful effects under
433 the Clean Air Act, we shouldn't be--

434 Mr. {Shimkus.} And reclaiming my last 5 seconds, we
435 should want Kennecott Copper to expand because that is more
436 jobs, and I yield back my time.

437 The {Chairman.} The gentleman yields back.

438 The gentl lady from California is recognized for 5

439 minutes.

440 Ms. {Eshoo.} Thank you, Mr. Chairman.

441 First of all, I support Mr. Waxman's amendment. I think
442 it is a very important one. And I might add, toward the end
443 of the debate that we just heard, that with all of the
444 federal agencies that Mr. Shimkus mentioned, none of them
445 regulates air and air quality, and that is what is at the
446 heart of what we are debating today.

447 I continue to be amazed by the debate we are having in
448 this committee, and I think today's debate is no exception.
449 Our Republican colleagues are talking about protecting
450 farmers from a nonexistent threat. The EPA Administrator,
451 Lisa Jackson, has stated publicly that she has reviewed the
452 current science and decided not to propose revising the
453 existing air quality standards for coarse particles. Even
454 worse, I think, my Republican colleagues continue to pretend
455 that this bill is about dirt on farms when in fact the
456 definition of nuisance dust in this bill is so broad that it
457 captures dangerous air pollution from a range of industrial
458 activities. If that is what you want to do, that is what you
459 should call it, but under the guise of dirt on farms, I don't
460 think this really flies.

461 We keep hearing that this bill will give certainty to
462 America's farmers but what this bill will really do is

463 guarantee that giant multinational mining companies will not
464 have to comply with the Clean Air Act, and that is what is at
465 the heart of this, and that is why I support Mr. Waxman's
466 amendment. It brings honesty to the debate that we are
467 having today.

468 My colleague mentioned the Kennecott copper mine in Utah
469 as an example of a mine that could benefit from this bill's
470 exemption. Kennecott is owned by Rio Tinto, which is
471 headquartered in the U.K. and Australia. Now, this company
472 can afford to do what it takes to protect public health from
473 the dangerous particle pollution generated from its mining
474 activities in the United States. I am all for the jobs that
475 they create. I want to see them expand what they are doing.
476 But I believe that it is the Congress and its representatives
477 that need to guarantee the American people that their air is
478 clean. I don't think that is asking something of any company
479 and its activities in the United States.

480 In August, the company announced record earnings for the
481 first half of the year of \$7.8 billion. The Kennecott, Utah,
482 copper mine is not the only mine that would benefit. It is
483 just happens to be one of the largest. Companies mining for
484 gold, copper, nickel and other metals across the country
485 would be able to release dangerous fine and coarse particle
486 pollution without limits.

487 Now, how do you go to your constituents and say this
488 passes the sensible test? All in the name of protecting
489 farmers? I mean, I think you have got some things tangled up
490 here.

491 We know that particle pollution can cause asthma
492 attacks, exacerbate chronic lung disease, trigger heart
493 attacks and lead to premature death, and particulate matter
494 from mines is more likely to be contaminated with heavy
495 metals such as arsenic, lead, chromium, mercury and other
496 toxic substances. That is quite a stew. That is quite a
497 stew.

498 My colleague's amendment simply states that this bill's
499 exemption for so-called nuisance dust does not apply to
500 particulate matter from mining activities, and if this bill
501 is really about farm dust, then this amendment should be non-
502 controversial, and that is why I urge my colleagues to
503 support the amendment.

504 Mr. {Shimkus.} Would my colleague yield 30 seconds?

505 Ms. {Eshoo.} I would be glad to.

506 Mr. {Shimkus.} You know, I just put on the record that
507 we are talking about the PM10 standard. Mines are still
508 regulated under the Clean Air Act, and, you know, if we are
509 going to have this debate, we are just clarifying for the
510 debate.

511 Thank you for yielding.

512 Ms. {Eshoo.} Yield back.

513 The {Chairman.} The gentlelady yields back.

514 Are there other members wishing to speak on the

515 amendment? Seeing none, the vote occurs on the amendment.

516 All those in favor will say aye. Those opposed, say no.

517 Mr. {Waxman.} Mr. Chairman, I ask for a recorded vote.

518 The {Chairman.} Roll call is requested. The clerk will

519 call the roll.

520 The {Clerk.} Mr. Barton?

521 [No response.]

522 The {Clerk.} Mr. Stearns?

523 Mr. {Stearns.} Votes no.

524 The {Clerk.} Mr. Stearns votes no.

525 Mr. Whitfield?

526 [No response.]

527 The {Clerk.} Mr. Shimkus?

528 Mr. {Shimkus.} No.

529 The {Clerk.} Mr. Shimkus votes no.

530 Mr. Pitts?

531 Mr. {Pitts.} No.

532 The {Clerk.} Mr. Pitts votes no.

533 Mrs. Bono Mack?

534 Mrs. {Bono Mack.} No.

535 The {Clerk.} Mrs. Bono Mack votes no.
536 Mr. Walden?
537 Mr. {Walden.} No.
538 The {Clerk.} Mr. Walden votes no.
539 Mr. Terry?
540 Mr. {Terry.} No.
541 The {Clerk.} Mr. Terry votes no.
542 Mr. Rogers?
543 [No response.]
544 The {Clerk.} Mrs. Myrick?
545 [No response.]
546 The {Clerk.} Mr. Sullivan?
547 Mr. {Sullivan.} No.
548 The {Clerk.} Mr. Sullivan votes no.
549 Mr. Murphy?
550 Mr. {Murphy.} No.
551 The {Clerk.} Mr. Murphy votes no.
552 Mr. Burgess?
553 Dr. {Burgess.} No.
554 The {Clerk.} Mr. Burgess votes no.
555 Mrs. Blackburn?
556 [No response.]
557 The {Clerk.} Mr. Bilbray?
558 Mr. {Bilbray.} No.

559 The {Clerk.} Mr. Bilbray votes no.
560 Mr. Bass?
561 [No response.]
562 The {Clerk.} Mr. Gingrey?
563 Dr. {Gingrey.} No.
564 The {Clerk.} Mr. Gingrey votes no.
565 Mr. Scalise?
566 Mr. {Scalise.} No.
567 The {Clerk.} Mr. Scalise votes no.
568 Mr. Latta?
569 Mr. {Latta.} No.
570 The {Clerk.} Mr. Latta votes no.
571 Mrs. McMorris Rodgers?
572 Mrs. {McMorris Rodgers.} No.
573 The {Clerk.} Mrs. McMorris Rodgers votes no.
574 Mr. Harper?
575 Mr. {Harper.} No.
576 The {Clerk.} Mr. Harper votes no.
577 Mr. Lance?
578 Mr. {Lance.} No.
579 The {Clerk.} Mr. Lance votes no.
580 Mr. Cassidy?
581 Dr. {Cassidy.} No.
582 The {Clerk.} Mr. Cassidy votes no.

583 Mr. Guthrie?
584 Mr. {Guthrie.} No.
585 The {Clerk.} Mr. Guthrie votes no.
586 Mr. Olson?
587 Mr. {Olson.} No.
588 The {Clerk.} Mr. Olson votes no.
589 Mr. McKinley?
590 Mr. {McKinley.} No.
591 The {Clerk.} Mr. McKinley votes no.
592 Mr. Gardner?
593 Mr. {Gardner.} No.
594 The {Clerk.} Mr. Gardner votes no.
595 Mr. Pompeo?
596 Mr. {Pompeo.} No.
597 The {Clerk.} Mr. Pompeo votes no.
598 Mr. Kinzinger?
599 Mr. {Kinzinger.} No.
600 The {Clerk.} Mr. Kinzinger votes no.
601 Mr. Griffith?
602 Mr. {Griffith.} No.
603 The {Clerk.} Mr. Griffith votes no.
604 Mr. Waxman?
605 Mr. {Waxman.} Aye.
606 The {Clerk.} Mr. Waxman votes aye.

607 Mr. Dingell?

608 Mr. {Dingell.} Aye.

609 The {Clerk.} Mr. Dingell votes aye.

610 Mr. Markey?

611 [No response.]

612 The {Clerk.} Mr. Towns?

613 Mr. {Towns.} Aye.

614 The {Clerk.} Mr. Towns votes aye.

615 Mr. Pallone?

616 Mr. {Pallone.} Aye.

617 The {Clerk.} Mr. Pallone votes aye.

618 Mr. Rush?

619 Mr. {Rush.} Aye.

620 The {Clerk.} Mr. Rush votes aye.

621 Ms. Eshoo?

622 Ms. {Eshoo.} Aye.

623 The {Clerk.} Ms. Eshoo votes aye.

624 Mr. Engel?

625 [No response.]

626 The {Clerk.} Mr. Green?

627 Mr. {Green.} Aye.

628 The {Clerk.} Mr. Green votes aye.

629 Ms. DeGette?

630 Ms. {DeGette.} Aye.

631 The {Clerk.} Ms. DeGette votes aye.
632 Mrs. Capps?
633 Mrs. {Capps.} Aye.
634 The {Clerk.} Mrs. Capps votes aye.
635 Mr. Doyle?
636 Mr. {Doyle.} Yes.
637 The {Clerk.} Mr. Doyle votes aye.
638 Ms. Schakowsky?
639 Ms. {Schakowsky.} Aye.
640 The {Clerk.} Ms. Schakowsky votes aye.
641 Mr. Gonzalez?
642 Mr. {Gonzalez.} Aye.
643 The {Clerk.} Mr. Gonzalez votes aye.
644 Mr. Inslee?
645 [No response.]
646 The {Clerk.} Ms. Baldwin?
647 [No response.]
648 The {Clerk.} Mr. Ross?
649 [No response.]
650 The {Clerk.} Mr. Matheson?
651 Mr. {Ross.} Ross votes no.
652 The {Clerk.} Oh, Mr. Ross votes no.
653 Mr. Matheson?
654 Mr. {Matheson.} No.

655 The {Clerk.} Mr. Matheson votes no.
656 Mr. Butterfield?
657 Mr. {Butterfield.} Yes.
658 The {Clerk.} Mr. Butterfield votes aye.
659 Mr. Barrow?
660 Mr. {Barrow.} Votes no.
661 The {Clerk.} Mr. Barrow votes no.
662 Ms. Matsui?
663 Ms. {Matsui.} Aye.
664 The {Clerk.} Ms. Matsui votes aye.
665 Mrs. Christensen?
666 Mrs. {Christensen.} Aye.
667 The {Clerk.} Mrs. Christensen votes aye.
668 Ms. Castor?
669 Ms. {Castor.} Aye.
670 The {Clerk.} Ms. Castor votes aye.
671 Chairman Upton?
672 The {Chairman.} Votes no.
673 The {Clerk.} Chairman Upton votes no.
674 The {Chairman.} Are there other members wishing to--Mr.
675 Bass?
676 Mr. {Bass.} No.
677 The {Clerk.} Mr. Bass votes no.
678 The {Chairman.} Ms. Blackburn?

679 Mrs. {Blackburn.} No.

680 The {Clerk.} Mrs. Blackburn votes no.

681 The {Chairman.} Are there other members wishing to cast
682 their vote? Seeing no more, the clerk will report the tally.

683 The {Clerk.} Mr. Chairman on that vote, there were 16
684 yeas, 30 nays.

685 The {Chairman.} Sixteen ayes, 30 nays. The amendment
686 is not agreed to.

687 Are there further amendments to the bill?

688 Mr. {Rush.} Mr. Chairman?

689 The {Chairman.} I am going to yield first to the
690 gentlelady next to you, who had her hand up first. Ms. Eshoo
691 is recognized.

692 Ms. {Eshoo.} Mr. Chairman, I have an amendment at the
693 desk, number four.

694 The {Chairman.} The clerk will report the title of the
695 amendment.

696 The {Clerk.} Amendment to H.R. 1633 offered by Ms.
697 Eshoo of California.

698 [The amendment follows:]

699 ***** INSERT 4 *****

|
700 The {Chairman.} The amendment will be considered as
701 read, and the staff will disburse the language of the
702 amendment, and the gentlelady is recognized for 5 minutes.

703 Ms. {Eshoo.} Thank you, Mr. Chairman.

704 One basic premise of this bill is that nuisance dust,
705 and we have to remember that this is the definition created
706 by political scientists and not scientists, has no harmful
707 health effects and therefore it is find to accept nuisance
708 dust, to exempt it from the Clean Air Act. That premise is
709 not based on the science. In fact, it is simply false.

710 The committee recently received a letter--I hope you
711 have all read it--from a team of physicians and researchers
712 at Johns Hopkins School of Public Health, and I ask, Mr.
713 Chairman, that this letter be placed in the record by
714 unanimous consent.

715 The {Chairman.} Without objection.

716 Ms. {Eshoo.} Thank you.

717 [The information follows:]

718 ***** COMMITTEE INSERT *****

|
719 Ms. {Eshoo.} Here is what the experts say about the
720 science: ``A large peer-reviewed literature has associated
721 occupational exposure to rural particulate matter with
722 serious adverse health effects and a growing peer-reviewed
723 literature has associated off-farm exposure to rural
724 particulate matter with serious adverse health effects as
725 well.''

726 The letter cites numerous studies showing that exposure
727 to rural particulate matter can cause serious health effects.
728 One of these studies published in Environmental Health
729 Prospectus found that ``dust generated by crop and food
730 animal production comprises many different materials
731 including feces, bacteria and other hazards. These can cause
732 serious lung diseases including bronchitis, pneumonia and
733 viral infections.''

734 The physicians who authored this letter came to a very
735 clear conclusion. They wrote that this legislation ``does
736 not account for current or future knowledge of health risks
737 posed by rural particulate matter exposure and rather enacts
738 a permanent exemption of rural particulate matter from Clean
739 Air Act regulation. This approach is not supported by the
740 scientific evidence or good professional judgment and is not
741 scientifically defensible.''

742 In contrast, there is not a single scientific paper or
743 medical study that shows that ``nuisance dust'' is harmless.
744 That would be impossible, since the Republicans invented this
745 new category of pollution just a few weeks ago.

746 So I continue to be amazed at how the majority continues
747 to ignore science on one issue after another. Science.
748 Science. This bill is no exception. It would prohibit the
749 EPA from paying heed to the scientists who say it is
750 important to protect public health from exposure to particle
751 pollution from all sources.

752 My amendment is straightforward. If the Administrator
753 and the Clean Air Scientific Advisory Committee find that
754 this bill could increase the incidence of asthma attacks,
755 respiratory disease, cardiovascular disease or premature
756 mortality, then the bill has no effect, and that is why--

757 Dr. {Gingrey.} Will the gentlelady yield?

758 Ms. {Eshoo.} --I ask my colleagues to support it.

759 Dr. {Gingrey.} Will the gentlelady yield to this side?

760 Ms. {Eshoo.} I would be glad to.

761 Dr. {Gingrey.} I thank the gentlelady from California
762 for yielding.

763 In her amendment, the language of the amendment, quite
764 honestly, if it is so purely scientific, I ask the
765 gentlelady, why does the language on line 3 say that if the

766 Clean Air Scientific Advisory Committee finds that
767 application of subsection (a) could increase the incidence of
768 asthma, respiratory disease, etc.? It just as well could
769 not. I mean, why wouldn't it say ``would'' increase if it
770 were purely scientific? And I yield back to the lady for her
771 response.

772 Ms. {Eshoo.} Well, I would be glad to respond. If you
773 would support the amendment by changing from ``could'' to
774 ``would'', I would accept it. The point here is, is that
775 scientists have spoken, and I doubt that any one of us, any
776 one of us would choose for our family, for our children, or
777 if we are blessed enough to have grandchildren, the standards
778 that you are supporting. I think that we have an obligation
779 to pay heed to the scientists in our country. This is not
780 some rump group. This is from the Johns Hopkins Center and
781 the scientists there.

782 So I think that the amendment allows for science and
783 scientists to weigh in and to be instructive to us in shaping
784 public policy. And I want to go back to one of the points
785 that I made, and that is that science is really left out of
786 this. This is a term--the underlying legislation is based on
787 a term that was made up by politicians, not by scientists.
788 So I think that I would listen to what scientists have to say
789 and depend on that kind of thinking rather than terms that

790 are made up, and I yield back my time.

791 The {Chairman.} The gentlelady's time is expired.

792 Are other members to speak on the amendment?

793 Mr. {Shimkus.} May I move to speak?

794 The {Chairman.} The gentleman from Illinois, Mr.

795 Shimkus.

796 Mr. {Shimkus.} I speak against the amendment. Thank

797 you, Mr. Chairman.

798 This amendment strikes the nuisance dust provisions in
799 the bill if the EPA determines that these provisions would
800 increase adverse health effects. The bill explicitly allows
801 State, local and tribal governments to regulate nuisance dust
802 as they deem necessary, and they have a track record of doing
803 so.

804 The bill gives EPA backstop authority to regulate
805 nuisance dust in the absence of such State and local measures
806 if the benefits of doing so outweigh the costs. EPA's own
807 analysis shows that the public health case against coarse
808 particulate matter is weak.

809 I come from rural America. My first district, there
810 were 19 counties. In my current district, I represent 30
811 counties. In a redrawn district, I will represent 33
812 counties. I visit community health clinics. I visit all my
813 hospitals. I visit with my docs. Not once in my 15 years

814 has any health care professional in my rural district ever
815 complained about rural dust, never, ever.

816 The only thing you might get is, you might get some city
817 folks who move to rural America and move next to some
818 livestock operation, and they may not like some of the aroma
819 that comes but that is part of living in rural America. I
820 have never, ever had any health care professional--hospital,
821 clinic--come to me with the points addressed that it affects
822 the health care of the individuals of rural America.

823 Ms. {Eshoo.} Will the gentleman yield?

824 Mr. {Shimkus.} I would be happy to yield.

825 Ms. {Eshoo.} Thank you. I appreciate it.

826 I would just like to make one point. As you list out
827 the constituents that you have met with and that they have
828 not raised this. They haven't raised it because the EPA has
829 already--this is regulated and people are protected. This
830 bill strips that.

831 And so I think that we have got a point here that--

832 Mr. {Shimkus.} Reclaiming my time. I would--

833 Ms. {Eshoo.} I have farms. I have agriculture in my
834 district.

835 Mr. {Shimkus.} I would argue that this debate is over
836 PM10 or PM2.5, which is a more strict standard, and we want
837 to maintain the current standard which is protecting--

838 Ms. {Eshoo.} But it is not in the bill. PM10 is not in
839 the bill.

840 Mr. {Shimkus.} That is the whole--this is--the whole
841 debate is the particulate matter standard and keeping the EPA
842 from reducing that standard, and I yield back my time.

843 The {Chairman.} The gentleman yields back his time.

844 Are there other members--

845 Mr. {Waxman.} Mr. Chairman.

846 The {Chairman.} Mr. Waxman is recognized for 5 minutes.

847 Mr. {Waxman.} I would like to address my comments to
848 the gentleman from Illinois. This bill you say exempts them
849 from the PM10 standard but the bill goes beyond that. It
850 exempts them from the PM10, the PM2.5 and the toxics. You
851 are saying that people in your rural area don't have a
852 problem. Well, they don't have a problem because in your
853 area they are in compliance with the requirements under the
854 law. But this bill would change that. And what our
855 colleague, Ms. Eshoo, is suggesting is, fine, go along with
856 this change, but if it turns out--and the argument is that
857 this change is okay because it is not a harmful issue. But
858 the amendment states that the exemption from the Clean Air
859 Act for nuisance dust will have no effect if the EPA
860 Administrator in consultation with the Clean Air Scientific
861 Advisory Committee determines that the exemption would harm

862 public health.

863 So it seems to me that is a responsible approach. You
864 exempt them from the Clean Air Act, but if it turns out based
865 on the science there is a harm, we won't exempt them from the
866 Clean Air Act.

867 The gentleman from Georgia said well, it should be
868 ``would'' instead of ``could.'' I agree with him. I would
869 like to make a unanimous consent request to do that. But
870 before I do, I don't know if that is going to satisfy
871 everybody because as I understand Mr. Shimkus's argument,
872 that if there are other regulations that we shouldn't have
873 the Clean Air Act apply. Well, the Clean Air Act applies at
874 the present time. If there no harm from the pollution, then
875 there is no reason to regulate. There is no regulation that
876 people are concerned about now if they are under compliance.

877 So let me ask unanimous consent whether you will agree
878 to the amendment or not that the word ``could'' be changed to
879 ``would'' on line 3 of the amendment.

880 The {Chairman.} There is a unanimous consent request.
881 Is there objection?

882 Dr. {Cassidy.} I object.

883 The {Chairman.} Objection is heard.

884 Mr. {Waxman.} Who has objected?

885 Dr. {Cassidy.} I object. We don't know--permission to

886 speak?

887 Mr. {Waxman.} I yield to you, yes.

888 Dr. {Cassidy.} One, you can't prove a negative, and so
889 this amendment basically says prove a negative. Secondly,
890 you can't just by fiat say that something will or will not.

891 Mr. {Waxman.} Reclaiming my time. The language of the
892 Eshoo amendment says ``If the Administrator in consultation
893 with the Clean Air Scientific Advisory Committee finds that
894 application of subsection (a)''--she would say ``would''
895 instead of ``could'' if you would allow her, if you would
896 allow ``could'' to be ``would''--``increase the incidence of
897 asthma'' so they have to make a scientific finding, not a
898 negative, but a scientific finding that there would be an
899 increase in the incidence of asthma attacks, respiratory
900 diseases or cardiovascular diseases, etc.

901 So it doesn't make any difference to me. I would think
902 ``would'' makes sense, and I don't know--

903 Dr. {Cassidy.} Can I make a second comment?

904 Mr. {Waxman.} Certainly.

905 Dr. {Cassidy.} I have concern with how EPA determines
906 this. In our last meeting with EPA, there was a conversation
907 in which I asked if EPA is saying that there is a premature
908 incidence of death, are they comparing it among asthmatics?
909 Are they comparing that to asthmatics in another location or

910 are they comparing that to the general population in another
911 location?

912 Mr. {Waxman.} Reclaiming my time.

913 Dr. {Cassidy.} Well, can I finish the point? And the
914 person replied, we are comparing it to the general
915 population, we are not comparing it to asthmatics.

916 Now, I hope--

917 Mr. {Waxman.} I want to reclaim my time, which I have
918 the right to do.

919 It seems to me that the whole basis of the Clean Air Act
920 is a scientific finding about the health impact of pollution,
921 and the health impact of pollution is based on the
922 concentration, the exposure, wherever that may be, whether it
923 is a rural area or an urban area, and then they set a
924 standard of what is an appropriate amount of exposure to that
925 pollutant, and then it is up to the local government using
926 the States to develop an implementation plan to come into
927 compliance.

928 Mr. Chairman, I would like to offer a second-degree
929 amendment to change the word ``could'' on line 3 to
930 ``would.'' Since we can't get unanimous consent, I so move
931 it. If you want, we will hustle and get it in writing but I
932 am making the motion.

933 The {Chairman.} I think we all understand it. I am not

934 sure that we need it in writing. There is an amendment to
935 change the word ``could'' to ``would'' in line 3 of the
936 amendment offered by Ms. Eshoo. Those in favor of the
937 amendment change will vote aye. Those opposed, say no. In
938 the opinion of the chair, the ayes have it. The ayes have
939 it. The amendment is agreed to.

940 The gentleman will proceed--actually, the gentleman's
941 time is expired.

942 Are there other members wishing to speak on the
943 amendment as amended?

944 Mr. {Bilbray.} Mr. Chairman.

945 The {Chairman.} Mr. Bilbray from California.

946 Mr. {Bilbray.} You know, Mr. Chairman, I wish this--you
947 know, those of us in Washington understand that Washington
948 and the federal government is not the alpha and the omega
949 when it comes to public health. There are members of this
950 committee who are acting like if EPA doesn't do it, it never
951 gets done, that EPA somehow has scientists and researchers
952 better than everybody else in this country and that only the
953 federal government can do this. And now, I will just say
954 this. I take real personal offense to that attitude for
955 everybody who is in local and state agencies that are doing
956 public health and clean air strategies as if Washington knows
957 best always.

958 And so I just have to remind all of you, there is a
959 whole lot of people and agencies out there that are not only
960 doing a good job, they are doing a damn better job to the
961 point that the federal government many times stands in the
962 way of public health.

963 Ms. {Eshoo.} Would the gentleman yield?

964 Mr. {Bilbray.} I will yield.

965 Ms. {Eshoo.} I think the gentleman and I have something
966 in common, and what has been highly instructive to us, and
967 that is that before we came to Congress, we both served on
968 our respective air district boards in California, and if
969 there was a place where I learned not only what the
970 California Clean Air Act was about but also saw how we
971 implemented, our standards were even higher than what the
972 federal Clean Air Act is.

973 So my thinking and my approach on this really was shaped
974 when I was in local government and represented my county on
975 the Bay Area Air Quality Management District Board, and it is
976 a combination of that. I don't think that there is a--I am
977 not coming from only one place and one perfection. This is a
978 partnership with States and regions across our country and--

979 Mr. {Bilbray.} Reclaiming my time. I understand that.
980 The 10 years I served on an air district, the 6 years,
981 though, at the Air Resources Board, where I will just be

982 frank with you, that the Air Resources Board scientists found
983 again and again that the federal government was operating off
984 of bad science. So when people in this committee talk about
985 science, I can go down the list of mistakes the federal
986 government has done in the name of protecting the environment
987 that has actually hurt the environment.

988 So I just hope you understand, good intentions of the
989 federal government going into local States and communities
990 and imposing their perception of good science doesn't work
991 out the way you always think it does. And so I just want to
992 say again, this bill specifically says if the locals who are
993 breathing the air are engaged in the issue, who has more of a
994 vested interest at seeing a safe outcome than the people who
995 live in the community? Do you really think Washington, D.C.,
996 cares more about the air in California or in Montana than the
997 people who live in California or Montana? And by the way,
998 when I got here, I was appalled to see what this city does
999 with its air pollution but I am not going to sit there and
1000 say that we are going to now mandate that California dictate
1001 everything to everybody else.

1002 So I have to say this again. I just want to bring this
1003 out, and I apologize. This bill specifically says give the
1004 locals the priority. If they are addressing it, then allow
1005 them to take the lead on this issue. But you have been

1006 superseded again and again not only by federal heavy-
1007 handedness but by federal special interest groups, by federal
1008 bad science, by federal attitude that Washington knows best,
1009 and I apologize, but I have sat here for long enough and keep
1010 hearing these comments, and I think we have to make it clear
1011 that Washington should be working to help the locals, not
1012 mandating on the locals, and I rest again. Who cares more
1013 about the area in the community? Washington, D.C., or the
1014 community itself?

1015 Mr. {Waxman.} Will the gentleman yield?

1016 Mr. {Bilbray.} I will yield.

1017 Mr. {Waxman.} I thank you for yielding.

1018 First of all, I would like to have the record kept open
1019 so you can put in some examples of bad science coming out of
1020 the EPA that has caused problems because I would be very
1021 interested in that report. But the whole basis--

1022 Mr. {Bilbray.} Mr. Chairman, I will give you right
1023 back. Using tailpipe emissions rather than total emissions
1024 with automobile emissions, that is bad science, and I will
1025 bring that up until I leave this Congress.

1026 Mr. {Waxman.} I want the record to be open. I want you
1027 to stand by your statement.

1028 But the Clean Air Act requires the EPA to set the
1029 National Ambient Air Quality Standards based on medical

1030 evidence of the health effects from exposure to air
1031 pollution. Then the State and local governments that care as
1032 much about this issue as anyone else figure out how to meet
1033 those health-based standards. That is the way it has worked
1034 for 40 years. I don't think we have at the local government
1035 level the ability to set different standards for exposure to
1036 air pollution. That is why we have a Clean Air Act that has
1037 a federal standard that is set by EPA that has the expertise
1038 in consultation with the medical community.

1039 The {Chairman.} The gentleman's time is expired.

1040 Are there other members wishing to speak on the
1041 amendment? The gentleman from Michigan, Mr. Dingell, is
1042 recognized for 5 minutes.

1043 Mr. {Dingell.} I rise in support of the amendment, and
1044 I would like to explain to my colleagues something that I
1045 don't think anybody on the other side is realizing. Air
1046 moves around. When there is pollution in Detroit, it will go
1047 to Toledo or across the river into Windsor, Ontario.
1048 California's pollution moves east and can be found in the
1049 eastern part of the United States. This stuff doesn't just
1050 sit in a place. It moves around. That is why it is a
1051 federal question, and that is why the federal government sets
1052 standards to affect all of the pollution because we all
1053 breathing stuff that is generated more by others than it is

1054 by us. But we contribute all fair share of the problems to
1055 others.

1056 Having said this, this whole bill is a mess. There is
1057 no need for it. The two newspapers in the State of the
1058 author starting with the Argus Leader had some interesting
1059 observations to say it is disappointing, they say, to see the
1060 authors of the legislation fighting against a made-up problem
1061 like the potential for farm dust regulations by the
1062 Environmental Protection Agency. And they point out the
1063 problem is that the EPA has repeatedly and at every turn said
1064 that it has no intention of regulating farm dust. On Monday,
1065 it went as far as to write a letter to Congress stating it
1066 would not be regulating dust kicked up by combines. That
1067 should put the issue to rest.

1068 And so we have here a magnificent straw man which we are
1069 beating the bejeebers out of and we have a solution which is
1070 scurrying around to find a use. There is no need for this
1071 legislation.

1072 Now, let us hear what the other, the Press and Dakotan
1073 says. They say, ``We have been skeptical ever since we began
1074 hearing allegations that the EPA was going to crack down on
1075 farm dust, and for good reason: it is a myth. The EPA
1076 reinforced that fact in a recent letter to two U.S. Senators,
1077 and even the president of the National Farmers Union said he

1078 hopes it puts to rest the misinformation regarding dust
1079 regulation. However, these latest developments don't seem to
1080 have cleared the dust from the eyes of the sponsors of the
1081 legislation. They are vowing to continue to push this
1082 legislation. We wish that those pushing this legislation
1083 would stop trying to stir the fear of farmers and ranchers
1084 and instead spend their time on fighting real problems rather
1085 than imagined ones.''

1086 Now, EPA had some other things to say in a letter signed
1087 by Lisa Jackson, the Administrator. She said, ``We have been
1088 making steady progress on reducing the emissions of
1089 particulate matter, both fine and coarse, in this country for
1090 more than two decades, providing the public health of
1091 Americans while the economy has continued to grow. It is
1092 important that a standard for particulate matter be
1093 protective of the health of the public. Based on my
1094 consideration of the scientific record,'--Mrs. Lisa Jackson,
1095 the Administrator, speaking--``I am prepared to propose the
1096 retention with no revision of the current PM10 standard and
1097 form that is sent to OMB for interagency review.''

1098 What she is saying is that here we have a vast tempest in a teapot
1099 where we are attacking a problem that does not exist, where
1100 we are beating a straw man and wasting the time of the
1101 Congress and the committee on doing things about a problem

1102 which does not exist.

1103 So I would urge my colleagues, let us adopt the
1104 amendment, let us vote against the bill. Let us get down to
1105 more serious business like jobs and the economy and focus on
1106 the business that the American people want us to do instead
1107 of beating the bejeebers out of straw men and trying to help
1108 a solution find a place to be inserted into the law to solve
1109 a problem which does not exist.

1110 I yield back the balance of my time.

1111 The {Chairman.} The gentleman's time is expired.

1112 The chair would recognize the gentleman from
1113 Pennsylvania for 5 minutes.

1114 Mr. {Murphy.} Thank you, Mr. Chairman.

1115 There is a couple reasons why I think this amendment is
1116 troubling. It is based upon having the Clean Air Scientific
1117 Advisory Committee establish policy without any oversight.
1118 Let us think of a couple of things here. First of all, they
1119 are appointed by the EPA, and the title ``scientist'' does
1120 not make someone unbiased or remove all conflicts of
1121 interest. Now, they are also paid by the EPA and they write
1122 the articles that they reference with regard to science.
1123 That in itself is a huge conflict of interest.

1124 But it is also a matter that once again we are in a
1125 position where Congress is abdicating its own role of

1126 oversight, and that is, rather than to have scientific
1127 findings come back to Congress where we would review them and
1128 look at its impact upon policy and law and regulations, we
1129 abdicate responsibility to this group of appointed scientists
1130 of which Congress has absolutely no authority to review what
1131 they are saying, and this solidifies and codifies that
1132 authority and abdicates Congressional responsibility.

1133 Now, with regard to responding to Congress, I would also
1134 like to reference back in March when we had a hearing here
1135 with Administrator Jackson and a subsequent time she has
1136 appeared here, I have asked her to specifically respond to my
1137 request to what objections the EPA has to Pennsylvania's laws
1138 or regulations, are they adequate or inadequate when it comes
1139 to dealing with fracking for natural gas, and if they are
1140 adequate, then are they adequately or inadequately enforced.
1141 She has not responded to either. That I use as just an
1142 example from this year where the EPA has refused to respond
1143 to Congress.

1144 Now, I think they have a responsibility to us. We are
1145 the ones appointed by the Constitution to establish the laws
1146 and to have oversight over them. The troubling thing about
1147 this is not that we don't want to review science. Indeed, we
1148 do and we should. But science itself has a number of times
1149 over the years when there have been frauds and hoaxes over

1150 centuries where people lived by what was then seen as the
1151 science of the day only to find out later whether it was the
1152 issue of Einstein's expanding universe, cold fusion. So many
1153 other issues have come up over time where people thought
1154 science was one way and later on found it was not. I don't
1155 want to have these things set in law by groups that have
1156 absolutely no oversight from Congress. I believe that this
1157 is a serious problem, and if we really are concerned about
1158 science and we really are concerned about our role as Members
1159 of Congress, we should have oversight and do not under any
1160 circumstances continue down this road of abdicating.

1161 Congress has done this in the past. I think this has
1162 been done on the basis of trust, but I am seriously concerned
1163 now that this is going so far that when we hear from the EPA
1164 that they also say they will not take into account the impact
1165 upon jobs or the economy, and when we have a situation here
1166 where they refuse to respond to Congressional inquiries about
1167 findings, that tells us that let us not continue down this
1168 road of having no Congressional oversight.

1169 And I would like to yield the balance of my time to the
1170 gentleman from Nebraska.

1171 Mr. {Terry.} I may use more than a minute 40, so can I
1172 decline?

1173 Mr. {Shimkus.} Would the gentleman yield?

1174 Mr. {Waxman.} Would the gentleman yield?

1175 Mr. {Shimkus.} Would the gentleman--

1176 Mr. {Murphy.} I will yield to Mr. Shimkus.

1177 Mr. {Shimkus.} And I will be quick too.

1178 When Assistant Administrator McCarthy was before us and
1179 we asked her specifically on this bill, her response was ``as
1180 of now.'' That was her response, ``as of now.'' So I said,
1181 what about tomorrow, and the question was, she was silent.
1182 So this bill codifies what it would be Congressional intent
1183 on the PM10 standards.

1184 Let me also say that just because the Administration
1185 promises something doesn't mean they will do that. The
1186 Administration promised a decision on Keystone XL pipeline in
1187 December. That is not going to happen because they have
1188 broken their promise on permitting the Keystone XL pipeline
1189 for whatever--we know the reasons. So just because they say
1190 they are not going to do something doesn't mean they are not
1191 going to do it, and that is why we have to move legislation,
1192 and I yield back to the gentleman from Pennsylvania.

1193 Mr. {Waxman.} Will the gentleman yield?

1194 Mr. {Murphy.} I yield to the gentleman from California.

1195 Mr. {Waxman.} As I understand your argument, EPA
1196 appoints the scientific panel and just because somebody calls
1197 himself or herself a scientist, that is not good enough.

1198 Mr. {Murphy.} No, that is not what I said, sir. It has
1199 to do with what is the oversight, and although one assumes
1200 that they are appointing people who have the scientific
1201 credentials, Congress has no authority to review, and your
1202 amendment would automatically, as the wording is here,
1203 automatically eliminate Congress's oversight over that, and I
1204 think that is a problem given that this panel is political
1205 appointees by the EPA, they are paid by the EPA, and I think
1206 there are serious questions about whether there are conflicts
1207 of interest along those lines. I would not like to abdicate
1208 our responsibility.

1209 The {Chairman.} The gentleman's time is expired.

1210 Are there other members wishing to speak? Mr. Towns is
1211 recognized for 5 minutes.

1212 Mr. {Towns.} Thank you very much, Mr. Chairman. I
1213 would like to yield to the gentleman from California, Mr.
1214 Waxman.

1215 Mr. {Waxman.} I thank you for yielding, because I want
1216 to examine that argument that has just been made by the
1217 previous speaker.

1218 So the scientific panel is appointed by the EPA. We can
1219 review who they appoint. That is a legitimate part of our
1220 oversight. If they are appointing people who have no
1221 scientific qualifications, we ought to know about it, and the

1222 way to correct any bias a scientist might have, because after
1223 all, some of these people, as I understood their argument,
1224 have written articles on the subject. Well, I would
1225 certainly want people who have some knowledge of the subject
1226 to be on the advisory committee. We can review what they
1227 have to say. But it is hard for me to imagine how Congress
1228 is going to exercise oversight over what the scientists are
1229 saying without holding a hearing and bringing the other
1230 scientists in, which is a job that EPA is supposed to be
1231 doing.

1232 Now, we have the ability to do oversight. We also have
1233 the ability to stop a regulation if they propose one if
1234 Congress doesn't feel it is based on the science. I can
1235 easily imagine what it would be like if we were sitting here
1236 reevaluating the science. We would have people's talking
1237 points based on what is given to them by the interests groups
1238 that don't want to be regulated and they would say this
1239 scientist had a conflict of interest because he has written
1240 20 articles on this subject and he is stale or he has a bias.
1241 Well, okay, that is an argument that could be made but I
1242 don't know if that is a really productive way for us to
1243 evaluate the science.

1244 The gentleman from Pennsylvania argued EPA hasn't
1245 answered all the requests from members of the committee, and

1246 he cited that they haven't answered his inquiry about
1247 fracking. This bill is not about fracking, but the fracking
1248 issue, as far as I know, EPA is studying and maybe they are
1249 not in a position yet to answer it. They may be looking at
1250 something under TSCA but they are studying the issue. They
1251 haven't done anything. When they do something, then we ought
1252 to look at it carefully, and maybe even if they propose
1253 something under the Congressional Review Act use that time to
1254 exercise our oversight.

1255 But what seems to me to be involved in this debate is
1256 that there is something wrong with having scientific advisory
1257 committees appointed by the EPA that may have some funding
1258 from EPA, I suppose for their incidental expenses. This is
1259 painting a picture of a conflict that I don't see.

1260 Dr. {Cassidy.} Will the gentleman yield?

1261 Mr. {Murphy.} Will the gentleman yield so I can
1262 respond?

1263 Mr. {Waxman.} If there is a conflict, we ought to have
1264 it raised. I would hope the gentleman from New York would do
1265 that.

1266 Mr. {Towns.} I would be delighted to yield.

1267 Mr. {Murphy.} Would you yield?

1268 Mr. {Towns.} I yield to the gentleman from
1269 Pennsylvania.

1270 Mr. {Murphy.} Thank you.

1271 I appreciate the gentleman's concerns. I just want to
1272 make it clear what I am saying here. I have no objections to
1273 scientists being involved as a scientist, having some
1274 scientific training myself. I consider that to be the high
1275 standard we should be looking to. But it is also the
1276 obligation of scientists to be willing to review
1277 contradictory information.

1278 My concern here is that with your amendment is not
1279 whether or not we should be looking to scientific
1280 information. I think that is vital and that is important.
1281 What I want to make sure is we don't abdicate automatically
1282 Congressional oversight in this.

1283 And what I was referring to with fracking was that in
1284 this instance, the EPA I think should be coming back to this
1285 committee and not necessarily having things automatically
1286 become regulation but let us have Congressional oversight. I
1287 use that example because twice I have asked Administrator
1288 Jackson for information and have yet to receive that, but it
1289 is has a big impact upon Pennsylvania's economy.

1290 So it is not about whether or not scientists have a
1291 responsibility in this or qualifications. It is how Congress
1292 would automatically abdicate our role in reviewing that.

1293 I yield back.

1294 Mr. {Towns.} Reclaiming my time and yield to the
1295 gentlewoman from California.

1296 Ms. {Eshoo.} Thank you, Mr. Towns.

1297 I think that this is an important discussion and debate
1298 on my amendment, and I think that as one member of this
1299 committee, and I think this is something that is shared by
1300 all the members of the committee, how important Congressional
1301 oversight is. There isn't anything in this amendment that
1302 eliminates Congressional oversight. I don't know. I mean,
1303 if you want to go to the amendment, it is very clear. It
1304 lists the limitation, if the Administrator in consultation
1305 with the Clean Air Scientific Advisory Committee finds that
1306 application of subsection (a) could or would, where we
1307 changed it to ``would'' increase the incidence of the health
1308 impacts, then the subsection shall cease to apply.

1309 Mr. {Murphy.} But that is an automatic--

1310 Ms. {Eshoo.} So I don't think there is anyplace in this
1311 where Congressional oversight is curbed or eliminated or
1312 injured. So I appreciate that concern.

1313 Mr. {Waxman.} If the gentleman would yield for one last
1314 second. It is not automatic. It says that it could increase
1315 the incidence of impact on health and then the subsection
1316 won't apply, and the subsection that won't apply is exempting
1317 them from any regulation by the EPA because there is no

1318 reason to exempt them from regulation if they are harmful.
1319 The argument that is the premise for the bill is that they
1320 are not harmful. Well, if they are, we should allow them to
1321 be regulated if it is appropriate.

1322 Mr. {Towns.} Thank you very much, Madam Chairman. My
1323 time is expired. Thank you for your generosity.

1324 Mrs. {Myrick.} [Presiding] Thank you.

1325 Mr. {Terry.} Thank you, Madam Chair. I move to strike
1326 the requisite number of words.

1327 You know, if you look at the overall impact, I mean, the
1328 efforts from various agencies right now, many of our farm
1329 groups and farmers and ranchers, at least in the Nebraska
1330 area, I can't testify to Illinois or any other States, but
1331 they really feel that with this Administration there is a war
1332 on farmers, and the EPA and the dust issue is fairly central
1333 to their feeling that they are under attack. I just got to
1334 deal with an issue about 14- and 15-year-olds being able to
1335 detassel because the labor department wants to end that.
1336 They want to end children of farmers being able to do
1337 handiwork around the farm. They are attacking the very
1338 culture of farming today, and this is just one example.

1339 Now, my favorite member from Michigan, Mr. Dingell,
1340 mentioned the farmer union letter but I can tell you, in my
1341 personal discussions with farm bureau, our corn growers, our

1342 wheat growers, our soybean growers, all of them are worried
1343 about the EPA and the dust. So I don't have letters to
1344 submit but I can tell you, they are all concerned about how
1345 the EPA can come in on their new particulate for dust or
1346 particles, apply it to dust and shut down farming as we know
1347 it today.

1348 You can say that is ridiculous. Lisa Jackson was here
1349 and said we are not going to apply that to agriculture so
1350 this is just talk of fairy dust. Well, it is interesting
1351 that we call it fairy dust as if it is fictional and then the
1352 next paragraph of the argument is, and I have scientific
1353 studies that say fairy dust is harmful to human health.

1354 So the reality is, the current EPA Director can come
1355 before us and say on the record that is not intending to
1356 apply a new particulate rule to dust, but the reality is, she
1357 is one lawsuit away from a court order to do so because as
1358 the gentlelady from California read, there are already
1359 studies out there by some scientists that say it is harmful,
1360 therefore, it is an open-and-shut case that we will have to
1361 regulate unless Congress steps in and says you can't regulate
1362 farm dust, and that is why to save our farming as we now know
1363 it, because frankly, I can't imagine what the rules would be
1364 to allow farming when there will be dust. I can't tell you
1365 enough when you till the soil, you are going to have dust.

1366 When you drive on a non-paved gravel or dirt road, there will
1367 be dust.

1368 And the way the EPA has historically worked, at least
1369 our experience in Nebraska, for example, copper pipes, they
1370 forced every city or small town that was using well water to
1371 have to put in a water treatment plant. We came in and said
1372 why don't we just pay to have every pipe removed and put in
1373 with PVC, and they said no, this is our way. So they have
1374 already proved that they are going to go to the extremes and
1375 not be practical in its application. That is what the scares
1376 the hell out of our farmers in Nebraska. This is why it is
1377 important that we specifically state that farming and
1378 ranching is going to be exempt.

1379 I yield back.

1380 The {Chairman.} The gentleman yields back.

1381 Ms. {DeGette.} Mr. Chairman.

1382 Are there other members--the gentlelady from Colorado is
1383 recognized for 5 minutes.

1384 Ms. {DeGette.} Thank you, Mr. Chairman. I yield to the
1385 gentleman from Michigan, Mr. Dingell.

1386 Mr. {Dingell.} Thank you for yielding to me.

1387 I didn't think we were going to have to go into a
1388 tutorial on the Clean Air Act, but I have never heard this
1389 committee spend so much time debating stuff that had nothing

1390 to do with the issue at hand.

1391 First of all, let us understand. When we are talking
1392 about EPA regulating this and that and the other thing, yes,
1393 they do, and there is oftentimes a very good reason for doing
1394 this. Now, I have a better record of fighting EPA when they
1395 were doing something stupid than anybody on this committee,
1396 and it has cost me dear, but I will try and explain what EPA
1397 does so that perhaps my colleagues can understand.

1398 First of all, we are talking about the Clean Air Act.
1399 Second of all, we are talking about particulates. Particles
1400 come from all kinds of sources, from people driving cars,
1401 from trucks, from what falls off of trucks, from smoke from
1402 chimneys, smokestacks, households, from somebody beating a
1403 rug in their backyard, and what EPA does is to administer a
1404 law which requires them to identify the levels of particles
1405 that constitute a risk to the public health and the
1406 environment.

1407 When they have done this in a proper scientific fashion,
1408 they then proceed to require the States, and this is
1409 something which happened a long time ago, about 30 or 40
1410 years ago, to issue regulations controlling the level of
1411 these kinds of pollutants that are getting into the
1412 environment. They do this on water. They do this on air.
1413 It was a source of long contention in the Congress about how

1414 the States were going to be participating in the problems of
1415 regulating.

1416 We one time had a President who said water pollution is
1417 a uniquely local blight. Well, it turns out that that is not
1418 quite true. When somebody flushes a toilet up in Minneapolis
1419 at the headwaters of the Mississippi, about 2 weeks or 3
1420 weeks later, the folks in Louisiana know what that fellow had
1421 for dinner, and the same situation occurs with regard for
1422 clean water and for clean air.

1423 So what we are doing here is to reduce the level and the
1424 burden of emissions to levels which do not constitute a risk
1425 to human health and the environment. That is all we are
1426 doing. EPA has said that they are not going to regulate farm
1427 dust. The simple fact of the matter is, we have to regulate
1428 the levels of particulates because they fly around in the
1429 air, and people in Nevada know what is going on in California
1430 because the wind moves that way, and my people in Michigan
1431 know what is going on across Lake Michigan in Wisconsin or
1432 Minnesota or Illinois because the wind blows that way, and so
1433 what we are trying to do is to see to it that we achieve a
1434 fair regulation.

1435 I don't know why it is impossible for members of this
1436 committee to accept the word of the Administrator of the EPA
1437 that she is not going to do this. I do believe that we have

1438 things that are more important to do than taking on EPA over
1439 something they say they are not going to do when we are in
1440 fact denouncing our great agreement with that agency on this
1441 particular point. So what EPA does under the law is to fix
1442 standards for emissions which it turns then over to the
1443 States to administer, and the result is that everybody gets
1444 clean air.

1445 Now, the Clean Air Act is one of the nastiest things
1446 that we have to deal with. The last time we dealt with it,
1447 it took us 13 years to write the legislation, and we were in
1448 conference in the Senate for 18 hours, or rather for 18
1449 months, to get the business done. We finally finished it. I
1450 would beg you to not go into this question until you know
1451 what the consequences are of what you are doing. The simple
1452 fact of the matter is, EPA is not going to do anything to
1453 this, and what we ought to be doing is simply going home and
1454 telling our farm bureaus, as I have to do from time to time,
1455 fellas, you don't have anything to worry about because this
1456 is not going to happen.

1457 So I yield back the balance of my time.

1458 The {Chairman.} The gentleman's time is expired.

1459 I think we are close to actually voting on the
1460 amendment. Let me go to Mr. Whitfield and maybe you can
1461 share time.

1462 Let me make an announcement as well. A number of
1463 members have talked about lunch, and I am not paying for it.
1464 My intention is that we will deal with these amendments until
1465 shortly after 12:00, finish the amendment that we are working
1466 on then, and we will adjourn and come back promptly at 1
1467 o'clock. So I'll just give people notice that we will take
1468 that time to be away.

1469 I yield now to the gentleman first from Louisiana and he
1470 will yield to the gentleman, I hope, from Kentucky.

1471 Dr. {Cassidy.} I will.

1472 Mr. Dingell, I have so much respect for you and Mr.
1473 Waxman, and I was trying to think of what my objections are,
1474 and it is because, frankly, I am not sure we can trust the
1475 EPA's scientific community. Now, that is not me speaking;
1476 that is the National Academy of Science and their findings on
1477 the EPA's formaldehyde rule, and I have here--and they came
1478 and testified and National Academy of Science was as blunt as
1479 they could be in the sort of testimony that they would give,
1480 and I will just read one thing. The National Academy of
1481 Science found that the EPA's draft assessment on
1482 formaldehyde, which I think took them 13 years, was not
1483 prepared in a logically consistent fashion, lacked clear
1484 links to an underlying conceptual framework, did not
1485 sufficiently document methods and criteria used to identify

1486 evidence for selecting and evaluating studies, and I could go
1487 on, but I think you get the point. And the National Academy
1488 of Science has recommended certain reforms for how the EPA
1489 does reports. I was trying to hastily draft up an amendment
1490 to Ms. Eshoo's amendment that would require them, if they did
1491 do such an evaluation, to have fully implemented the National
1492 Academy of Science's recommendations. But frankly, until
1493 scientists can feel better about how the EPA is delivering
1494 their recommendations, I have pause about accepting those
1495 recommendations. And again, that is not based upon
1496 partisanship, it based upon what the National Academy of
1497 Science's critique is of how EPA does their work.

1498 Mr. {Dingell.} Will the gentleman yield to me?

1499 Dr. {Cassidy.} I will.

1500 Mr. {Dingell.} I say this with all respect. There is a
1501 thing called oversight. This committee and every committee
1502 in the Congress is supposed to engage in oversight.

1503 Dr. {Cassidy.} Reclaiming my time. I accept that
1504 without doubt. But apparently the comment period upon the
1505 EPA rule on formaldehyde was so short that the Texas
1506 Department of Environmental Quality said listen, we can't
1507 even figure out their methodology in a way to figure out what
1508 was wrong.

1509 Mr. {Dingell.} Well, but with respect to my friend, I

1510 can understand your frustrations on dealing with these issues
1511 because most people don't understand the law. They don't
1512 tell us the truth about it and not infrequently EPA does some
1513 very stupid things. That is why we have an oversight
1514 subcommittee that is supposed to haul these folks up here and
1515 say fellas, why are you doing something as stupid as this.

1516 Dr. {Cassidy.} I accept that, but when the comment
1517 period is 30 days or when the issues are so complex that the
1518 scientists themselves--

1519 Mr. {Dingell.} With all respect, that 30-day comment
1520 period doesn't limit this committee to hauling them up here
1521 and saying--

1522 Dr. {Cassidy.} Reclaiming my time. But it does limit
1523 the ability of people like Texas DEQ to do a thorough
1524 consideration of what the work is. Our critique is going to
1525 be based upon that critique of others.

1526 If EPA instituted these National Academy of Science
1527 recommendations, which frankly, that seems a pretty
1528 reasonable thing to do, I would have much more faith than
1529 what they do.

1530 Mr. {Dingell.} If the gentleman would yield?

1531 Dr. {Cassidy.} Mr. Dingell, let me reclaim my time and
1532 give it to Mr. Whitfield because I was asked to do so by my
1533 chairman.

1534 Mr. {Dingell.} If the gentleman would yield? This is
1535 probably a subject for a good hearing, and I will join the
1536 gentleman in requesting that we have a hearing in this matter
1537 to haul EPA up and help instruct them on what should be done.

1538 Dr. {Cassidy.} And consider it requested, and I will
1539 work with you on that, but let me reclaim my time to give to
1540 Mr. Whitfield, please.

1541 Mr. {Whitfield.} I certainly want to thank the
1542 gentleman, and I would just say that Kristi Noem and Mr.
1543 Pompeo, in my view, have a very reasonable piece of
1544 legislation here.

1545 First of all, it delays implementation. It simply
1546 prohibits EPA from doing this any time within one year after
1547 the enactment of the legislation. So it is not even
1548 permanent, first of all. Second of all, we know that so many
1549 decisions are being made today on environmental regulations
1550 by the court system, and it doesn't make any difference what
1551 Administrator Jackson says; we know that groups are prepared
1552 to file lawsuits to require this particulate matter standard
1553 to be changed. For example, Wild Earth Guardians is
1554 considering suing the EPA over this very matter. And when
1555 you consider the overall economic condition we find ourselves
1556 in today and when in our hearing farmers came in, cattle
1557 growers came in, and one cattleman said at our hearing that

1558 he is required to spread 4 gallons of water around his
1559 feedlot for every cow that he has. We also heard testimony
1560 that in Arizona on certain windy days, they are prohibited
1561 from plowing or doing anything.

1562 So this is a very reasonable piece of legislation. It
1563 is not permanent, and when you consider the economic
1564 condition we find ourselves in today, I think Congress is
1565 simply asserting itself and saying we don't want the court to
1566 decide this right now, we want to delay this for a period of
1567 time until our economy can renew itself and strengthen.

1568 The {Chairman.} The gentleman's time is expired.

1569 Are there other members wishing to speak on the
1570 amendment? Seeing none, the vote will occur on the
1571 amendment as amended. All those in favor will say aye. All
1572 those opposed, say no. The nos appear to have it. The nos
1573 have it. The amendment is not agreed to.

1574 Mr. {Waxman.} Roll call vote.

1575 The {Chairman.} The clerk will call the roll as a
1576 recorded vote was requested.

1577 The {Clerk.} Mr. Barton?

1578 [No response.]

1579 The {Clerk.} Mr. Stearns?

1580 [No response.]

1581 The {Clerk.} Mr. Whitfield?

1582 Mr. {Whitfield.} No.
1583 The {Clerk.} Mr. Whitfield votes no.
1584 Mr. Shimkus?
1585 [No response.]
1586 The {Clerk.} Mr. Pitts?
1587 Mr. {Pitts.} No.
1588 The {Clerk.} Mr. Pitts votes no.
1589 Mrs. Bono Mack?
1590 Mrs. {Bono Mack.} No.
1591 The {Clerk.} Mrs. Bono Mack votes no.
1592 Mr. Walden?
1593 Mr. {Walden.} No.
1594 The {Clerk.} Mr. Walden votes no.
1595 Mr. Terry?
1596 Mr. {Terry.} No.
1597 The {Clerk.} Mr. Terry votes no.
1598 Mr. Rogers?
1599 Mr. {Rogers.} No.
1600 The {Clerk.} Mr. Rogers votes no.
1601 Mrs. Myrick?
1602 Mrs. {Myrick.} No.
1603 The {Clerk.} Mrs. Myrick votes no.
1604 Mr. Sullivan?
1605 Mr. {Sullivan.} No.

1606 The {Clerk.} Mr. Sullivan votes no.
1607 Mr. Murphy?
1608 Mr. {Murphy.} No.
1609 The {Clerk.} Mr. Murphy votes no.
1610 Mr. Burgess?
1611 Dr. {Burgess.} No.
1612 The {Clerk.} Mr. Burgess votes no.
1613 Mrs. Blackburn?
1614 [No response.]
1615 The {Clerk.} Mr. Bilbray?
1616 Mr. {Bilbray.} No.
1617 The {Clerk.} Mr. Bilbray votes no.
1618 Mr. Bass?
1619 Mr. {Bass.} No.
1620 The {Clerk.} Mr. Bass votes no.
1621 Mr. Gingrey?
1622 Dr. {Gingrey.} No.
1623 The {Clerk.} Mr. Gingrey votes no.
1624 Mr. Scalise?
1625 Mr. {Scalise.} No.
1626 The {Clerk.} Mr. Scalise votes no.
1627 Mr. Latta?
1628 Mr. {Latta.} No.
1629 The {Clerk.} Mr. Latta votes no.

1630 Mrs. McMorris Rodgers?
1631 Mrs. {McMorris Rodgers.} No.
1632 The {Clerk.} Mrs. McMorris Rodgers votes no.
1633 Mr. Harper?
1634 Mr. {Harper.} No.
1635 The {Clerk.} Mr. Harper votes no.
1636 Mr. Lance?
1637 Mr. {Lance.} No.
1638 The {Clerk.} Mr. Lance votes no.
1639 Mr. Cassidy?
1640 Dr. {Cassidy.} No.
1641 The {Clerk.} Mr. Cassidy votes no.
1642 Mr. Guthrie?
1643 Mr. {Guthrie.} No.
1644 The {Clerk.} Mr. Guthrie votes no.
1645 Mr. Olson?
1646 Mr. {Olson.} No.
1647 The {Clerk.} Mr. Olson votes no.
1648 Mr. McKinley?
1649 Mr. {McKinley.} No.
1650 The {Clerk.} Mr. McKinley votes no.
1651 Mr. Gardner?
1652 Mr. {Gardner.} No.
1653 The {Clerk.} Mr. Gardner votes no.

1654 Mr. Pompeo?
1655 Mr. {Pompeo.} No.
1656 The {Clerk.} Mr. Pompeo votes no.
1657 Mr. Kinzinger?
1658 Mr. {Kinzinger.} No.
1659 The {Clerk.} Mr. Kinzinger votes no.
1660 Mr. Griffith?
1661 Mr. {Griffith.} No.
1662 The {Clerk.} Mr. Griffith votes no.
1663 Mr. Waxman?
1664 Mr. {Waxman.} Aye.
1665 The {Clerk.} Mr. Waxman votes aye.
1666 Mr. Dingell?
1667 Mr. {Dingell.} Aye.
1668 The {Clerk.} Mr. Dingell votes aye.
1669 Mr. Markey?
1670 Mr. {Markey.} Aye.
1671 The {Clerk.} Mr. Markey votes aye.
1672 Mr. Towns?
1673 Mr. {Towns.} Aye.
1674 The {Clerk.} Mr. Towns votes aye.
1675 Mr. Pallone?
1676 Mr. {Pallone.} Aye.
1677 The {Clerk.} Mr. Pallone votes aye.

1678 Mr. Rush?
1679 Mr. {Rush.} Aye.
1680 The {Clerk.} Mr. Rush votes aye.
1681 Ms. Eshoo?
1682 Ms. {Eshoo.} Aye.
1683 The {Clerk.} Ms. Eshoo votes aye.
1684 Mr. Engel?
1685 Mr. {Engel.} Aye.
1686 The {Clerk.} Mr. Engel votes aye.
1687 The {Clerk.} Mr. Green?
1688 Mr. {Green.} Aye.
1689 The {Clerk.} Mr. Green votes aye.
1690 Ms. DeGette?
1691 Ms. {DeGette.} Aye.
1692 The {Clerk.} Ms. DeGette votes aye.
1693 Mrs. Capps?
1694 Mrs. {Capps.} Aye.
1695 The {Clerk.} Mrs. Capps votes aye.
1696 Mr. Doyle?
1697 Mr. {Doyle.} Yes.
1698 The {Clerk.} Mr. Doyle votes aye.
1699 Ms. Schakowsky?
1700 Ms. {Schakowsky.} Aye.
1701 The {Clerk.} Ms. Schakowsky votes aye.

1702 Mr. Gonzalez?

1703 Mr. {Gonzalez.} Aye.

1704 The {Clerk.} Mr. Gonzalez votes aye.

1705 Mr. Inslee?

1706 [No response.]

1707 The {Clerk.} Ms. Baldwin?

1708 [No response.]

1709 The {Clerk.} Mr. Ross?

1710 Mr. {Ross.} No.

1711 The {Clerk.} Mr. Ross votes no.

1712 Mr. Matheson?

1713 Mr. {Matheson.} No.

1714 The {Clerk.} Mr. Matheson votes no.

1715 Mr. Butterfield?

1716 Mr. {Butterfield.} Aye.

1717 The {Clerk.} Mr. Butterfield votes aye.

1718 Mr. Barrow?

1719 Mr. {Barrow.} No.

1720 The {Clerk.} Mr. Barrow votes no.

1721 Ms. Matsui?

1722 Ms. {Matsui.} Aye.

1723 The {Clerk.} Ms. Matsui votes aye.

1724 Mrs. Christensen?

1725 Mrs. {Christensen.} Aye.

1726 The {Clerk.} Mrs. Christensen votes aye.
1727 Ms. Castor?
1728 Ms. {Castor.} Aye.
1729 The {Clerk.} Ms. Castor votes aye.
1730 Chairman Upton?
1731 The {Chairman.} Votes no.
1732 The {Clerk.} Chairman Upton votes no.
1733 The {Chairman.} Are there other members wishing to
1734 vote? Mr. Stearns?
1735 Mr. {Stearns.} No.
1736 The {Clerk.} Mr. Bass Stearns votes no.
1737 The {Chairman.} Mr. Barton?
1738 Mr. {Barton.} No.
1739 The {Clerk.} Mr. Barton votes no.
1740 The {Chairman.} Are there other members wishing to cast
1741 their vote?
1742 Mr. {Shimkus.} Mr. Chairman.
1743 The {Chairman.} Mr. Shimkus?
1744 Mr. {Shimkus.} No.
1745 The {Clerk.} Mr. Shimkus votes no.
1746 The {Chairman.} Are there other members wishing to cast
1747 a vote? Seeing no more, the clerk will report the tally.
1748 While the clerk is reporting the tally, I just want to
1749 repeat again that we will try to finish this next amendment,

1750 vote on it, and then adjourn until 1 o'clock.

1751 The {Clerk.} Mr. Chairman on that vote, there were 18
1752 ayes, 33 nays.

1753 The {Chairman.} Eighteen ayes, 33 nays. The amendment
1754 as amended is not agreed to.

1755 Are there other amendments?

1756 Mr. {Rush.} Mr. Chairman?

1757 The {Chairman.} The gentleman from Illinois.

1758 Mr. {Rush.} Mr. Chairman, I have an amendment at the
1759 desk.

1760 The {Chairman.} The clerk will report the title of the
1761 amendment.

1762 The {Clerk.} Mr. Rush, what number is your amendment?

1763 Mr. {Rush.} Rush zero one--zero eight.

1764 The {Clerk.} Amendment to H.R. 1633 offered by Mr. Rush
1765 of Illinois.

1766 [The amendment follows:]

1767 ***** INSERT 5 *****

|
1768 The {Chairman.} The amendment will be considered as
1769 read, the staff will distribute the amendment, and the
1770 gentleman from Illinois is recognized for 5 minutes in
1771 support of his amendment.

1772 Mr. {Rush.} I want to thank you, Mr. Chairman.

1773 During the subcommittee's hearing on H.R. 1633, we heard
1774 testimony from the bill's sponsor, Kristi Noem, that the
1775 intent was to address the ``regulatory uncertainty'' over
1776 coarse particulate matter, or farm dust. However, during
1777 that same hearing, we also heard testimony from Administrator
1778 Gina McCarthy where she expressed serious concerns over the
1779 ambiguous language in the bill and the overly broad impact it
1780 could have on existing Clean Air Act programs.

1781 Mr. Chairman, if the premise of the bill is to simply
1782 provide regulatory certainty to rural farmers, I reiterate
1783 what Administrator Jackson has already publicly stated, that
1784 EPA would not alter the Bush-era standards for coarse
1785 particulate matter, then I have an amendment that will
1786 satisfy that objective.

1787 On page 2, line 13 through 15, my amendment would strike
1788 ``applicable to particulate matter with an aerodynamic
1789 diameter greater than 2.5 micrometers'' and insert ``for
1790 PM10.'' At the end of section 2, my amendment would add the

1791 following: ``Nothing in this Act precludes the Administrator
1792 from proposing, finalizing, implementing or enforcing the
1793 national primary ambient air quality standard or the national
1794 secondary ambient air quality for PM2.5.''

1795 Mr. Chairman, this would make it absolutely crystal
1796 clear in legislative language that section 2 would not block
1797 EPA's ongoing review and rulemaking for PM2.5 of the National
1798 Ambient Air Quality Standards. Additionally, because there
1799 is such widespread suspicion that the real intent of this
1800 legislation is to roll back existing Clean Air Act
1801 protections, which goes far beyond the narrowly defined
1802 objectives that the bill's sponsor articulated in the
1803 subcommittee hearing, my amendment would strike section 3
1804 altogether, which contains the most overly ambiguous and
1805 excessively broad provisions of this bill.

1806 As drafted, H.R. 1633 could hinder or even prevent the
1807 EPA from reducing deadly fine particle pollution as well as
1808 coarse particulate matter in rural and urban areas all across
1809 the country. In section 3, the bill's exclusion for
1810 particulate matter from combustion would not exclude particle
1811 pollution from all such industrial activities that generate
1812 particulate matter through processes other than combustion
1813 such as milling, grinding, smelting or other high-temperature
1814 industrial processes.

1815 Ms. McCarthy raised serious concerns about the effect of
1816 this bill on existing health-based standards because the
1817 current air quality standards do not distinguish between
1818 nuisance dust and other particles, and since the term
1819 ``nuisance dust'' is not a scientifically defined term, it is
1820 probably hocus pocus dominocus science, it would really be
1821 very difficult to incorporate a scientifically based program.
1822 As Ms. McCarthy noted, coarse particles have been linked to a
1823 variety of adverse health effects including hospital visits
1824 related to cardiovascular or respiratory disease and
1825 premature death. While the body of scientific evidence is
1826 much more limited for coarse PM than that for fine particles,
1827 the agency's review of the studies indicates that short-term
1828 exposure to coarse particles remains a concern.

1829 Mr. Chairman, my amendment would remove the ambiguity
1830 from this bill and would keep in place standards to protect
1831 America's health. I urge all my colleagues to support my
1832 amendment.

1833 With that, Mr. Chairman, I yield back.

1834 The {Chairman.} The gentleman's time is expired.

1835 Members wishing to speak on the amendment? The
1836 gentleman from California.

1837 Mr. {Waxman.} Mr. Chairman, the bill is called the Farm
1838 Dust Regulation Prevention Act. That name is misleading for

1839 a couple of reasons.

1840 First, there is nothing to prevent, because nothing is
1841 happening. EPA Administrator Jackson has publicly announced
1842 she will not propose to revise the standards for coarse
1843 particles, which have been in place since 1987. Well, wait a
1844 minute, some of my colleagues are saying, she could be sued
1845 and forced to regulate and therefore her assurances aren't
1846 good enough. Well, Mr. Rush's amendment codifies the
1847 Administrator's commitment for one year.

1848 Secondly, the bill's supporters often describe dirt
1849 kicked up from plows and cows as the type of particle
1850 pollution that should be exempted from the Clean Air Act.
1851 But this bill goes well beyond so-called farm dust. The bill
1852 creates and exempts for the Clean Air Act a new category of
1853 pollution, a new category of pollution created in this
1854 legislation without any scientific basis for that category.
1855 The introduced bill would have exempted particulate pollution
1856 from power plants and school buses. When we pointed out, the
1857 Republicans said oh, no, we don't mean that, so they amended
1858 that out. But even after they amended it out, the definition
1859 is still very broad.

1860 For example, the definition of nuisance dust includes
1861 particle pollution from earth moving, which captures more
1862 than just a plow pushing dirt around a farm. Large open-pit

1863 mining, we had a debate on that. Oh, that is okay, that is
1864 part of the thing we don't want the EPA to cover, even though
1865 some of those open-mine operations could have sand and gravel
1866 quarries creating large amounts of particulate pollution
1867 through earth moving. The definition also could capture
1868 particle pollution generated by other industrial operations
1869 that often are located in rural areas such as cement kilns,
1870 coal-processing plants, which generate particle pollution
1871 from the crushing, grinding and unloading of materials. So
1872 under the guise of protecting farmers, this bill would exempt
1873 particle pollution from open-pit mines, sand and gravel
1874 quarries, cement kilns, coal-processing plants and other
1875 industrial processes from the entire Clean Air Act.

1876 Now, unlike the comment made by my good friend from
1877 Kentucky, this is a permanent change in the law. It is not a
1878 temporary one. It is a permanent change in the law that EPA
1879 may not regulate these pollutants permanently under the Clean
1880 Air Act. Well, talk about science. Reams of science and
1881 medical studies have demonstrated that fine particles trigger
1882 asthma attacks, heart attacks, strokes and lead to premature
1883 deaths. In contrast, the Republicans don't have a single
1884 shred of scientific evidence to show that exempting so-called
1885 nuisance dust won't harm public health. They just say it
1886 should be exempted.

1887 EPA raised concerns that section 2 of the bill could
1888 prevent EPA from revising the health-based standards for fine
1889 particles, even if the Administrator determines that the
1890 current fine particle standard is inadequate to protect
1891 public health. Periodically updating these standards is
1892 important because it means that they can look at the latest
1893 scientific evidence and the Administrator's responsibilities,
1894 and that is one of the most important ones. If you want to
1895 change the way EPA looks at the science, that is another
1896 issue, but to say they should ignore the science is not what
1897 this committee ought to be doing.

1898 So the Rush amendment addresses the bill's fatal flaws.
1899 It clarifies that nothing in this bill is intended to prevent
1900 EPA from revising air quality standards for fine particles.
1901 It also strikes a poorly worded exemption for nuisance dust
1902 that could allow deadly fine and coarse particle pollution
1903 from a range of industrial sources to escape any Clean Air
1904 Act regulation.

1905 This bill creates more problems than the imaginary ones
1906 it purports to solve, and I think the Rush amendment is well
1907 taken. It will try to make this bill more rational than it
1908 is now, and I urge members to support the Rush amendment.

1909 The {Chairman.} Other members wishing to speak on the
1910 amendment? The gentleman from Illinois, Mr. Shimkus.

1911 Mr. {Shimkus.} Thank you, Mr. Chairman.

1912 This amendment was debated and defeated in the
1913 subcommittee, a couple reasons why. This would eliminate
1914 section 3 which both defines and exempts rural nuisance dust
1915 from the federal regulation providing certainty and
1916 regulatory relief. That is kind of why we have the bill
1917 here. I don't know how many times we can say it, is that
1918 when the Assistant Administrator testified, she said ``at
1919 this time.'' We don't trust the EPA. We know they will come
1920 back and we know they will go after dust, coarse particulates
1921 in rural America. That is why we have this bill.

1922 It is always been interesting, the President's Council
1923 on Jobs and Competitiveness came out with a report. There is
1924 only one sector that from December 2007 until today has
1925 created jobs in America, one sector, and that is the mining
1926 sector, and yes, it is called farm dust but I am here for my
1927 open-pit mines in southern Illinois that we don't close them
1928 down and that we can still have a thriving mining sector in
1929 this country. Again, for us, it is about jobs and an
1930 overzealous EPA, our attempt to codify this so that in the
1931 coarse particulate matter, the dust aspect, the EPA stays out
1932 of it.

1933 The fine particulate matter standards, EPA still--it
1934 doesn't interfere with EPA's ability to implement its fine

1935 particular standards. So this is about coarse standards.
1936 This is about rural agricultural dust. This is about mining
1937 dust in parts of our country that you have to drive many
1938 miles to see anyone.

1939 And with that, I will yield to my friend from Kentucky.

1940 Mr. {Whitfield.} I want to thank the gentleman for
1941 yielding, and I might add that we have over 180 organizations
1942 that actually support this legislation, and the distinguished
1943 gentleman from Illinois, Mr. Rush, as the distinguished
1944 gentleman from Illinois, Mr. Shimkus, noted, Mr. Rush offered
1945 this amendment in subcommittee and we had a big discussion
1946 about it at that time. It was defeated.

1947 And I would point out also that EPA still can regulate
1948 if the nuisance dust is not regulated under State, tribal or
1949 local laws. So for that reason, I would respectfully ask
1950 that we all on our side oppose Mr. Rush's amendment, and
1951 yield back to the gentleman from Illinois.

1952 Mr. {Shimkus.} And I yield back my time, Mr. Chairman.

1953 The {Chairman.} The gentleman yields back.

1954 Are there other members wishing to speak on the
1955 amendment? Seeing none, the vote will occur on the amendment
1956 offered by the gentleman from Illinois. All those in favor
1957 will say aye.

1958 Mr. {Rush.} Mr. Chairman.

1959 The {Chairman.} All those opposed, say no.
1960 Mr. {Rush.} Roll call, Mr. Chairman.
1961 The {Chairman.} In the opinion of the chair, the nos
1962 win. A roll call is requested and the clerk will call the
1963 roll. This will be the last vote before lunch.
1964 The {Clerk.} Mr. Barton?
1965 [No response.]
1966 The {Clerk.} Mr. Stearns?
1967 [No response.]
1968 The {Clerk.} Mr. Whitfield?
1969 Mr. {Whitfield.} No.
1970 The {Clerk.} Mr. Whitfield votes no.
1971 Mr. Shimkus?
1972 Mr. {Shimkus.} No.
1973 The {Clerk.} Mr. Shimkus votes no.
1974 Mr. Pitts?
1975 Mr. {Pitts.} No.
1976 The {Clerk.} Mr. Pitts votes no.
1977 Mrs. Bono Mack?
1978 Mrs. {Bono Mack.} No.
1979 The {Clerk.} Mrs. Bono Mack votes no.
1980 Mr. Walden?
1981 Mr. {Walden.} No.
1982 The {Clerk.} Mr. Walden votes no.

1983 Mr. Terry?

1984 Mr. {Terry.} No.

1985 The {Clerk.} Mr. Terry votes no.

1986 Mr. Rogers?

1987 Mr. {Rogers.} No.

1988 The {Clerk.} Mr. Rogers votes no.

1989 Mrs. Myrick?

1990 Mrs. {Myrick.} No.

1991 The {Clerk.} Mrs. Myrick votes no.

1992 Mr. Sullivan?

1993 Mr. {Sullivan.} No.

1994 The {Clerk.} Mr. Sullivan votes no.

1995 Mr. Murphy?

1996 [No response.]

1997 The {Clerk.} Mr. Burgess?

1998 Dr. {Burgess.} No.

1999 The {Clerk.} Mr. Burgess votes no.

2000 Mrs. Blackburn?

2001 [No response.]

2002 The {Clerk.} Mr. Bilbray?

2003 Mr. {Bilbray.} No.

2004 The {Clerk.} Mr. Bilbray votes no.

2005 Mr. Bass?

2006 Mr. {Bass.} No.

2007 The {Clerk.} Mr. Bass votes no.
2008 Mr. Gingrey?
2009 [No response.]
2010 The {Clerk.} Mr. Scalise?
2011 Mr. {Scalise.} No.
2012 The {Clerk.} Mr. Scalise votes no.
2013 Mr. Latta?
2014 Mr. {Latta.} No.
2015 The {Clerk.} Mr. Latta votes no.
2016 Mrs. McMorris Rodgers?
2017 Mrs. {McMorris Rodgers.} No.
2018 The {Clerk.} Mrs. McMorris Rodgers votes no.
2019 Mr. Harper?
2020 Mr. {Harper.} No.
2021 The {Clerk.} Mr. Harper votes no.
2022 Mr. Lance?
2023 Mr. {Lance.} No.
2024 The {Clerk.} Mr. Lance votes no.
2025 Mr. Cassidy?
2026 Dr. {Cassidy.} No.
2027 The {Clerk.} Mr. Cassidy votes no.
2028 Mr. Guthrie?
2029 Mr. {Guthrie.} No.
2030 The {Clerk.} Mr. Guthrie votes no.

2031 Mr. Olson?

2032 Mr. {Olson.} No.

2033 The {Clerk.} Mr. Olson votes no.

2034 Mr. McKinley?

2035 Mr. {McKinley.} No.

2036 The {Clerk.} Mr. McKinley votes no.

2037 Mr. Gardner?

2038 Mr. {Gardner.} No.

2039 The {Clerk.} Mr. Gardner votes no.

2040 Mr. Pompeo?

2041 Mr. {Pompeo.} No.

2042 The {Clerk.} Mr. Pompeo votes no.

2043 Mr. Kinzinger?

2044 Mr. {Kinzinger.} No.

2045 The {Clerk.} Mr. Kinzinger votes no.

2046 Mr. Griffith?

2047 Mr. {Griffith.} No.

2048 The {Clerk.} Mr. Griffith votes no.

2049 Mr. Waxman?

2050 Mr. {Waxman.} Aye.

2051 The {Clerk.} Mr. Waxman votes aye.

2052 Mr. Dingell?

2053 Mr. {Dingell.} Dingell votes aye.

2054 The {Clerk.} Mr. Dingell votes aye.

2055 Mr. Markey?

2056 Mr. {Markey.} Aye.

2057 The {Clerk.} Mr. Markey votes aye.

2058 Mr. Towns?

2059 Mr. {Towns.} Aye.

2060 The {Clerk.} Mr. Towns votes aye.

2061 Mr. Pallone?

2062 Mr. {Pallone.} Aye.

2063 The {Clerk.} Mr. Pallone votes aye.

2064 Mr. Rush?

2065 Mr. {Rush.} Aye.

2066 The {Clerk.} Mr. Rush votes aye.

2067 Ms. Eshoo?

2068 Ms. {Eshoo.} Aye.

2069 The {Clerk.} Ms. Eshoo votes aye.

2070 Mr. Engel?

2071 Mr. {Engel.} Aye.

2072 The {Clerk.} Mr. Engel votes aye.

2073 Mr. Green?

2074 Mr. {Green.} Aye.

2075 The {Clerk.} Mr. Green votes aye.

2076 Ms. DeGette?

2077 Ms. {DeGette.} Aye.

2078 The {Clerk.} Ms. DeGette votes aye.

2079 Mrs. Capps?

2080 Mrs. {Capps.} Aye.

2081 The {Clerk.} Mrs. Capps votes aye.

2082 Mr. Doyle?

2083 Mr. {Doyle.} Yes.

2084 The {Clerk.} Mr. Doyle votes aye.

2085 Ms. Schakowsky?

2086 Ms. {Schakowsky.} Aye.

2087 The {Clerk.} Ms. Schakowsky votes aye.

2088 Mr. Gonzalez?

2089 Mr. {Gonzalez.} Aye.

2090 The {Clerk.} Mr. Gonzalez votes aye.

2091 Mr. Inslee?

2092 [No response.]

2093 The {Clerk.} Ms. Baldwin?

2094 [No response.]

2095 The {Clerk.} Mr. Ross?

2096 Mr. {Ross.} No.

2097 The {Clerk.} Mr. Ross votes no.

2098 Mr. Matheson?

2099 Mr. {Matheson.} No.

2100 The {Clerk.} Mr. Matheson votes no.

2101 Mr. Butterfield?

2102 Mr. {Butterfield.} Aye.

2103 The {Clerk.} Mr. Butterfield votes aye.
2104 Mr. Barrow?
2105 Mr. {Barrow.} No.
2106 The {Clerk.} Mr. Barrow votes no.
2107 Ms. Matsui?
2108 Ms. {Matsui.} Aye.
2109 The {Clerk.} Ms. Matsui votes aye.
2110 Mrs. Christensen?
2111 Mrs. {Christensen.} Aye.
2112 The {Clerk.} Mrs. Christensen votes aye.
2113 Ms. Castor?
2114 Ms. {Castor.} Aye.
2115 The {Clerk.} Ms. Castor votes aye.
2116 Chairman Upton?
2117 The {Chairman.} Votes no.
2118 The {Clerk.} Chairman Upton votes no.
2119 The {Chairman.} Are there other members wishing to
2120 vote? Mr. Barton?
2121 Mr. {Barton.} No.
2122 The {Clerk.} Mr. Barton votes no.
2123 The {Chairman.} Mr. Stearns?
2124 Mr. {Stearns.} No.
2125 The {Clerk.} Mr. Stearns votes no.
2126 The {Chairman.} Are there other members wishing to

2127 vote? Seeing none, the clerk will report the tally.

2128 The {Clerk.} Mr. Chairman on that vote, there were 18
2129 ayes, 31 nays.

2130 The {Chairman.} Eighteen ayes, 31 nays. The amendment
2131 is not agreed to.

2132 We will now recess until 1 o'clock.

2133 [Recess.]

2134 The {Chairman.} The committee is going to resume its
2135 markup of H.R. 1633, and are there other members--

2136 Mr. {Waxman.} Mr. Chairman, I think we ought to have a
2137 call of the committee. I don't see a quorum, and we ought to
2138 have more members here to move on this bill.

2139 The {Chairman.} We will wait until we have a quorum
2140 then.

2141 Mr. {Terry.} Mr. Chairman, is there a motion for a
2142 quorum call so we can--we might as well get it on the record
2143 if we are going to participate in this. What is your
2144 recommendation? Michigan beats Nebraska and look what
2145 happens.

2146 The {Chairman.} Just the first of many.

2147 We have a working quorum so we will resume, 17 members.

2148 The gentlelady from Florida, for what purpose do you
2149 seek recognition?

2150 Ms. {Castor.} Thank you, Mr. Chairman. I have an

2151 amendment at the desk.

2152 The {Chairman.} The clerk will read the title of the
2153 amendment.

2154 The {Clerk.} Amendment to H.R. 1633 offered by Ms.
2155 Castor of Florida.

2156 [The amendment follows:]

2157 ***** INSERT 6 *****

|
2158 The {Chairman.} The amendment will be considered as
2159 read, the staff will distribute the amendment, and the
2160 gentlelady is recognized for 5 minutes.

2161 Ms. {Castor.} Thank you, Mr. Chairman.

2162 Colleagues, this Republican bill amends the Clean Air
2163 Act to effectively eliminate EPA's authority to regulate
2164 anything they define as nuisance dust. The problem is that
2165 they crafted the definition of nuisance dust that is way
2166 overbroad. Part of the definition refers to particulate
2167 matter that consists primarily of natural or biological
2168 materials, and the premise appears to be that if particular
2169 pollution is composed of natural materials, it cannot be
2170 harmful to human health.

2171 But we all know that is not true. There are many
2172 natural materials that are dangerous to breathe, pollution
2173 composed of mixtures of minerals, volatile organic compounds
2174 and heavy metals including arsenic, chromium and lead, among
2175 others, and nuisance dust as defined in this GOP bill could
2176 contain any of these substances.

2177 These exemptions from the Clean Air Act are not based on
2178 any scientific study that shows that arsenic and other heavy
2179 metals are harmless to public health. To the contrary,
2180 studies have shown that areas such as communities near mining

2181 operations are particularly vulnerable to arsenic and
2182 contamination of the air, land and water. Yet this bill
2183 defines in an overbroad fashion nuisance dust, also including
2184 earth-moving activities without any necessary safeguards.
2185 This would allow communities near mines to be exposed to
2186 arsenic and other toxic metals without any recourse under the
2187 Clean Air Act. Studies have shown that inhalation of arsenic
2188 is associated with increased risk of lung cancer in people
2189 working in and living near smelters, yet this bill would
2190 exempt particulate matter from activities typically conducted
2191 in rural areas, which includes smelters.

2192 The Republican majority changed the definition of
2193 nuisance dust to exclude particulates directly emitted from
2194 combustion but this does not address industrial activities
2195 that create particulates through non-combustion processes
2196 such as smelters and cement plants. Under this GOP bill, EPA
2197 would have no authority to protect the public from
2198 particulates containing arsenic and other heavy metals from
2199 smelters and other sources.

2200 My amendment does not fix all of the flaws in this bill.
2201 It simply narrows the GOP's huge new exemption for nuisance
2202 dust relating to particulate matter that contains arsenic,
2203 lead, cadmium or other toxic substances. This will allow EPA
2204 to continue to regulate particulate matter that is laced with

2205 these toxic heavy metals.

2206 Over the past year, my GOP colleagues have repeatedly
2207 attacked the Clean Air Act. They have allowed more air
2208 pollution and sacrificed Americans' health, and are we now
2209 really going to allow uncontrolled arsenic and other toxic
2210 particle pollution from mines and other sources? I don't
2211 think we should. I think it is poor public policy.

2212 So I urge my colleagues to stand up for the public
2213 health, stand up for communities across America and support
2214 this amendment.

2215 I yield back.

2216 The {Chairman.} The gentlelady yields back.

2217 Other members wishing to speak on the amendment? Mr.
2218 Shimkus is recognized.

2219 Mr. {Shimkus.} Thank you, Mr. Chairman. I speak
2220 against the amendment.

2221 First, I will just remind all of us that it is a
2222 Republican piece of legislation with a lot of Republican
2223 members as cosponsors. We do have five Democrat cosponsors
2224 on this piece of legislation. Most of them are from rural
2225 America, and of course, that is the intent of this
2226 legislation. The intent is to exempt rural dust from costly
2227 federal regulations. This does not include hazardous
2228 substances emitted from industrial stacks, and those will

2229 continue to be regulated through other parts of the Clean Air
2230 Act.

2231 Traces of elements occur in nature and are part of the
2232 world around us. They only pose a risk at high
2233 concentrations, and even EPA says they don't require
2234 businesses to clean up natural background levels, at least
2235 not yet.

2236 Based on a review of all the science, EPA itself in 2006
2237 proposed to exempt rural windblown dust and soils and
2238 particulate matter generated by agricultural and mining
2239 sources. This amendment is not necessary because rural dust
2240 does not present a public health risk.

2241 So I ask my colleagues to reject the amendment, and I
2242 yield back my time.

2243 The {Chairman.} Other members wishing to speak? The
2244 gentleman from California, Mr. Waxman.

2245 Mr. {Waxman.} Mr. Shimkus said this is a Republican
2246 bill. That is fine. It is not going to change. It will
2247 still be a Republican bill. You have some Democrats
2248 cosponsoring it. But that doesn't mean we are excused as a
2249 policy committee from trying to make sure the bill makes
2250 sense. So we start off with a bill that says we don't want
2251 to regulate farm dust. Then there is a definition of this
2252 that is so broad, and we think the definition is too broad.

2253 So the amendment before us says that if its particulate
2254 matter containing arsenic, lead, cadmium, chromium or other
2255 toxic heavy metals, we wouldn't exempt that from the Clean
2256 Air Act regulations because the bill takes everything out
2257 from Clean Air Act regulation. We would say no, for those
2258 cases or for these kind of pollutants, we won't take it out
2259 from clean air regulation because that is what the Clean Air
2260 Act is all about.

2261 The bill defines nuisance dust so broadly as to capture
2262 particulate matter pollution from a range of industrial sites
2263 including mining, smelting, cement kilns and others. So when
2264 you have those kinds of activities producing what is called
2265 farm dust, it is not really farm dust anymore. Large mining
2266 operations remove, crush and process millions of tons of rock
2267 each year to get at valuable metals in the earth's crust.
2268 The particulate matter generated from these operations isn't
2269 just harmless dirt. It can be laced with arsenic and other
2270 heavy metals including the metals that the mining companies
2271 are trying to recover. Well, if you inhale these particulate
2272 matters, it could cause a range of acute health effects
2273 including asthma attacks, heart attacks and premature death.

2274 Some of you may say oh, the science is not clear on
2275 these points. The science is clear on it. Particulate
2276 matter containing heavy metals may cause health effects over

2277 short- and long-periods. Arsenic, for example, is a known
2278 poison that can cause a range of serious health effects even
2279 from low-dose exposures over long periods of time.

2280 Inhalation of hexavalent chromium can cause lung cancer.

2281 This amendment would allow EPA to ensure that it has the
2282 authority to protect the public health from the effects of
2283 exposure to particles laced with, and it is very clear in the
2284 amendment, arsenic and other toxic materials. I think it is
2285 a commonsense amendment. It doesn't defeat the underlying
2286 purpose of the bill. I don't think those who have argued for
2287 the bill think that it is a good idea to excuse known toxic
2288 substances from the Clean Air Act. Sure, they may be
2289 regulating under some other law somewhere but the Clean Air
2290 Act is what regulates exposure to these harmful chemicals
2291 when they are inhaled in the air. So I would urge my
2292 colleagues to support this amendment.

2293 You would think that somebody, the average person
2294 reading this amendment would be dumbfounded that such an
2295 amendment is even necessary, but we haven't demonstrated a
2296 good track record of voting with common sense in mind. Here
2297 is a chance. At least if you don't want to--we had this
2298 nuisance dust and we said we are going to make certain
2299 exceptions to the nuisance dust. Here is a place where we
2300 ought to have another exception where we know that it is

2301 toxic material and EPA ought to be able to regulate and reach
2302 those toxic materials that would otherwise be exempt from
2303 coverage by virtue of the way this bill is drafted.

2304 I would be happy to yield to anybody or yield back the
2305 time.

2306 I yield back the time.

2307 The {Chairman.} The gentleman yields back.

2308 Other members wishing to speak on the amendment? The
2309 gentleman from West Virginia.

2310 Mr. {McKinley.} Very briefly, Mr. Chairman.

2311 I wish that people on the committee would have listened
2312 to what the Congressman from Illinois was saying, that trace
2313 elements of all these chemicals are in our soils. They are
2314 in our bodies. Trace levels of arsenic can be found in apple
2315 juice.

2316 I am afraid that so many folks here don't understand
2317 science. There is a level of toxicity we have to be
2318 concerned with, not the fact that it is present. That is why
2319 we have TCLP ratings, to be able to determine what that is,
2320 and you can go down through. We have arsenic in our
2321 backyard. We have mercury in our dirt. But it has to be
2322 2,000 times more concentrated before it reaches a level of
2323 toxicity.

2324 But it seems to be in this committee what I have heard

2325 over the past year is, it is as though they are just learning
2326 how to pronounce some words. They don't understand the
2327 science behind mercury, cadmium, lead. They just do--it is a
2328 sexy word to use. Understand it. It is in our--it is all
2329 about us, and it has to be a level, not just simply just say
2330 particulate matter contains arsenic. What level?

2331 Mr. {Waxman.} Will the gentleman yield?

2332 Mr. {McKinley.} One in 10 billion parts, sure.

2333 Mr. {Waxman.} Well, that is a good issue. Sometimes
2334 trace amounts of some of these chemicals can be harmful. You
2335 are saying sometimes trace amounts are not harmful. So you
2336 need to know at what level it is harmful. That ought to be--

2337 Mr. {McKinley.} If I could regain my time, that is why
2338 the EPA has published TCLP rating levels. If this had said
2339 containing arsenic at a level equal to or above the TCLP
2340 ratings, I would probably support the amendment, but it
2341 doesn't say that.

2342 Mr. {Waxman.} Well the gentleman yield to me further?
2343 What this amendment says is that the EPA would still have the
2344 authority to regulate it as it does under existing law with
2345 these ratings but the underlying bill takes away from EPA any
2346 regulatory authority. Now, realize, we are talking about
2347 mining operations--

2348 Mr. {McKinley.} If I could reclaim my time, I

2349 appreciate your observation, but again, let us be more
2350 specific. Let us quit this scaring people just simply we can
2351 pronounce the word ``mercury'' or ``lead.'' Let us find out
2352 what level it is that we are talking about before we do these
2353 kinds of consequences that we have.

2354 I yield back my time.

2355 The {Chairman.} The gentleman yields back.

2356 Are there other members wishing to speak on the
2357 amendment?

2358 Mr. {Waxman.} Would somebody yield me some time?

2359 The {Chairman.} The gentlelady from California--

2360 Ms. {Eshoo.} I would like to yield my time to Mr.
2361 Waxman, please.

2362 The {Chairman.} --yields to Mr. Waxman, please. Thank
2363 you.

2364 Mr. {Waxman.} The gentleman that just spoke on the
2365 Republican side said let us be specific, not just be proud
2366 that we can pronounce these names. If that brings pride,
2367 that is good, but I think we ought to be proud of the fact
2368 that we are looking out for the public health and the adverse
2369 impact of these chemicals. But in effect, by not adopting
2370 the Castor amendment, we are saying whatever adverse impact
2371 these chemicals may have we are not going to let EPA do
2372 anything about it because the underlying bill says the EPA

2373 under the Clean Air Act will no longer have jurisdiction over
2374 what is now called farm dust or nuisance dust. And nuisance
2375 dust includes mining operations and lead smelters, chemical
2376 facilities, industrial facilities that can cause these kinds
2377 of pollutants to go in the air.

2378 So rather than saying that we have got to make a
2379 decision right now what level it should be where we are going
2380 to have a regulation, it should be based on the science and
2381 EPA is supposed to make those decisions after talking to the
2382 scientific committees and I would hope listening to all the
2383 arguments. Instead, we tell them you can't listen to
2384 anybody's arguments because there is nothing you can do about
2385 it. So when you end up with that kind of result, it means
2386 that people are going to be exposed to these chemicals, and
2387 you are in effect saying if you vote against this amendment,
2388 we don't care because we don't think any level of exposure is
2389 harmful. We, Members of Congress, are deciding to put our
2390 position ahead of all the scientists, and if the scientists
2391 have a different point of view, there is nothing they can do
2392 about it because we are taking it out of the operation of the
2393 Clean Air Act.

2394 So I wanted to clarify that point. When it comes to
2395 these kinds of pollutants where we know that at some level
2396 they are toxic and even sometimes at trace levels they are

2397 toxic, we ought to allow EPA to look at them to decide what
2398 would be the appropriate level of regulation. That is the
2399 purpose of the Castor amendment. Without the Castor
2400 amendment, EPA is precluded from reviewing the matter or
2401 doing anything about it no matter how overwhelming the
2402 science may be. And we are not talking about farm dust from
2403 horses. We are talking about what you call farm dust from
2404 serious operations that we know lead to these toxic
2405 pollutants--lead smelters, mining operations, whatever.

2406 So I urge adoption of the Castor amendment. I would be
2407 happy to yield to anybody if you want me to yield to you. Do
2408 you want me to yield to you? Okay.

2409 I yield my time back to Ms. Eshoo.

2410 The {Chairman.} The gentleman yields back.

2411 Ms. {Eshoo.} There is just a little time left.

2412 You know, in listening to the debate, it is so
2413 disjointed. I mean I think that you have got to go back to
2414 if you want to call it the core principle of the bill and we
2415 wander off in different directions. We say that scientists
2416 should be able to examine this and inform. We don't want the
2417 scientists to do that. We are legislating on something that
2418 you are afraid may happen, even though it hasn't, but we are
2419 going to legislate nonetheless.

2420 No one really went back at Mr. Dingell and what he put

2421 out and I am still waiting for someone to try and debate what
2422 he put out relative to particles and the effect that they
2423 have and that they do travel. And who knows at what point
2424 who has had what for dinner and on and on. So I think you
2425 have got a really bad bill. I think you really have a bad
2426 bill. I am sorry to say that. And I don't think the bill
2427 rises to the level of sophistication that this committee is
2428 known for.

2429 We are going to have some differences on environmental
2430 matters. There is a big change in the Republican Party on
2431 the environment. We know that. But this legislation is not
2432 thought out well, and it is based on a very faulty premise
2433 because you are the ones that came up with this whole
2434 bollocks-ed up phrase of farm dust. You know, I mean it
2435 doesn't exist in any scientific manual anywhere so you are
2436 going to build your bill on something that you made up. It
2437 is faulty. So I am sorry that we are spending all this time
2438 on it, but it is what it is.

2439 The {Chairman.} Other members wishing to speak?

2440 Gentleman from Kentucky?

2441 Mr. {Whitfield.} I might just mention that there has
2442 been some allegation here that nothing like this is being
2443 enforced now, and the fact of the matter is there are many
2444 areas of the country that are in nonattainment today to the

2445 ambient air quality standards. And if they are, they are
2446 being regulated. That is why at our hearing we had farmers
2447 come in, cattlemen come in that said they were in
2448 nonattainment areas. They are having to regulate their dust
2449 emissions. As I had mentioned earlier, one cattle rancher
2450 said that he had to spray 4 gallons of water for every cow
2451 that he had. So this is a real issue and I think that our
2452 legislation is reasonable and it defines nuisance dust
2453 generated primarily from natural sources, agricultural
2454 activities, other activities typically conducted in rural
2455 areas, consist primarily of soil, other natural biological
2456 materials, and is not emitted directly into the ambient air
2457 from combustion such as exhaust from combustion engines, and
2458 emissions from stationary combustion processes.

2459 So I think the protections are there and I would urge
2460 the members to--

2461 Mr. {Waxman.} Would the gentleman yield?

2462 Mr. {Whitfield.} I would be happy to yield.

2463 Mr. {Waxman.} Do you disagree with the idea that mining
2464 operations are covered by the legislation?

2465 Mr. {Whitfield.} Well, let me just say this. EPA
2466 regulates mining operations today whether they are in rural--
2467 wherever they may be.

2468 Mr. {Waxman.} But this bill would say EPA can no longer

2469 regulate these kinds of pollutants and you--

2470 Mr. {Whitfield.} Well, mining operations are not
2471 primarily from natural sources.

2472 Mr. {Waxman.} Well, but we had an amendment to strike
2473 mining operations. It was defeated because we understand
2474 that pollution from mining operations would be considered
2475 this farm dust, same as lead smelters. Do you disagree with
2476 that conclusion? Do you think they are covered or you think
2477 they are not covered?

2478 Mr. {Whitfield.} I would say that on a review of all of
2479 the science, EPA itself in 2006 proposed to exempt rural
2480 windblown dust and soils and particulate matter generated by
2481 agricultural and mining sources. So, you know, this just
2482 seems to be an academic discussion and the reality is this is
2483 a commonsense bill to protect rural America from intrusive
2484 regulations of the EPA even though they have said they are
2485 not going to do it. But we are very much concerned about the
2486 legal action and many of these EPA decisions and
2487 environmental decisions today are made in the courts.

2488 Mr. {Waxman.} Gentleman yield further?

2489 Mr. {Whitfield.} I would be happy to yield.

2490 Mr. {Waxman.} Mining operations release natural
2491 materials. Mr. Shimkus said the intent of the bill was to
2492 cover mines and therefore anything coming from the mines,

2493 even if it is arsenic, would be beyond the reach of the EPA
2494 to deal with under the Clean Air Act. Is that a goal--

2495 Mr. {Whitfield.} I yield to the gentleman from
2496 Illinois.

2497 Mr. {Shimkus.} I would just again we can keep going
2498 back and forth but the EPA itself in 2006 proposed to exempt
2499 rural windblown--we are talking about rural--windblown dust
2500 and soils and particulate matter generated by agricultural
2501 and mining sources. So I mean we are spending a lot of time
2502 to say--the EPA already said that they are exempting these
2503 sectors. There is enough concern in this country by folks
2504 from rural America of a fear the EPA cranking down on the
2505 rules that will make it impossible for production agriculture
2506 to continue to exist in this country or mining operations.
2507 This is a response.

2508 And again we think it saves jobs, actually will help
2509 promote jobs. I just stated that mining operations was the
2510 only sector that grew jobs in this country, and I am an
2511 unabashed supporter of supporting and expanding mining
2512 operations in this country.

2513 Mr. {Waxman.} Will the gentleman from Kentucky yield to
2514 me to make a statement for the record?

2515 Look, the Bush EPA proposed this regulation; then, they
2516 looked at it and said they didn't think they had the legal

2517 authority to do it. They also thought it was unworkable. So
2518 it isn't what EPA is asking for. It was a feeler they put
2519 out and they decided against it themselves. Now, this
2520 Republican bill wants to adopt it into law. And insofar as
2521 it is dust from farms, that is one thing. But insofar as it
2522 is toxic materials from smelters and mining operations, this
2523 is not an academic issue. This will produce jobs in the
2524 healthcare sector, but this is a hell of a way to produce
2525 jobs.

2526 The {Chairman.} The gentleman's time has expired.

2527 The gentlelady from California is recognized.

2528 Mrs. {Capps.} I just want to get back to the point of
2529 the Castor amendment and focus on what ordinary people
2530 recognize when they think of arsenic. The exemptions from
2531 the Clean Air Act aren't based on--well, let me start here.
2532 Studies have shown that mining communities are particularly
2533 vulnerable to arsenic exposure due to the contamination of
2534 outdoor dust, air, soil, and water. Yet this bill defines as
2535 nuisance dust, dust particulates from earthmoving activities.
2536 This would allow communities near mines to be exposed to
2537 arsenic and other toxic metals without any recourse under the
2538 Clean Air Act. And yet studies have shown that inhalation of
2539 arsenic is associated with increased risk of lung cancer in
2540 people working in and near smelters. Yet this bill would

2541 exempt particulate matters from activities typically
2542 conducted in rural areas and it would include smelters.

2543 The majority has changed the definition of nuisance dust
2544 to exclude particulates directly emitted from combustion, but
2545 this does not address industrial activities that create
2546 particulates through non-combustion processes such as
2547 smelters and cement plants. Under this bill, the EPA would
2548 have no authority to protect the public from particulates
2549 containing arsenic and other heavy metals from smelters and
2550 other sources.

2551 The Castor amendment does not fix the fundamental flaws
2552 of the bill but it really simply at least ensures that the
2553 bill does not characterize arsenic or other toxic heavy
2554 metals as mere nuisance dust. That is, to me, the height of
2555 common sense. And this amendment would allow EPA to continue
2556 to regulate particulate matter that contains these toxic
2557 heavy metals. The public understands this.

2558 Republicans over the past year, Republicans on this
2559 committee have repeatedly attacked the Clean Air Act allowing
2560 for more air pollution and at the sacrifice of American's
2561 health. Now, are we really now also going to allow
2562 uncontrolled arsenic and other toxic particulate pollution
2563 from mines and other sources? So I just think--

2564 Mr. {Shimkus.} Would the gentlelady yield?

2565 Mrs. {Capps.} I would like some answers. I am happy to
2566 yield.

2567 Mr. {Shimkus.} Would the gentlelady yield?

2568 The bill explicitly allows state, local, and tribal
2569 governments to regulate nuisance dust as they deem necessary.
2570 My friend from California went in a long debate about the
2571 strength of even your State's--

2572 Mrs. {Capps.} Reclaiming my time, though. Why do we
2573 exempt ourselves--

2574 Mr. {Shimkus.} Why don't we trust the locals to be
2575 concerned about the health of the local communities? That is
2576 what we don't understand.

2577 Mrs. {Capps.} We do but--

2578 Mr. {Shimkus.} I mean the bill explicitly allows
2579 States--

2580 Mrs. {Capps.} Reclaiming my time, sir.

2581 Mr. {Shimkus.} What is that?

2582 Mrs. {Capps.} If I could reclaim--

2583 Mr. {Shimkus.} Sure. It is your time.

2584 Mrs. {Capps.} --what is left of my time. Yes, you are
2585 right but as the United States of America, don't we have some
2586 role in making sure there is at least a bottom line of common
2587 sense protection no matter where you live in this country
2588 that you would have protection against arsenic with the known

2589 toxic properties that it contains?

2590 Mr. {Shimkus.} Would the gentlelady yield?

2591 Mrs. {Capps.} Yes.

2592 Mr. {Shimkus.} The bill also gives EPA backstop
2593 authority to regulate nuisance dust in the absence of such
2594 state and local measures if the benefits of doing so outweigh
2595 the cost.

2596 Mrs. {Capps.} That begs the question--

2597 Mr. {Shimkus.} No, it doesn't. It answers the
2598 question.

2599 Mrs. {Capps.} --why don't we give the amendment the
2600 credibility that it seeks by at least elevating this bill a
2601 tiny bit to a level--

2602 Mr. {Waxman.} Will the gentlelady yield?

2603 Mrs. {Capps.} Yes, I will be happy to yield.

2604 Mr. {Waxman.} I don't know where this logic would lead
2605 us except to say why do we have a Clean Air Act at all? Let
2606 the States and local governments regulate everything that is
2607 now covered by the Clean Air Act except--which you all my say
2608 that is a great idea--except the idea of the Clean Air Act,
2609 which was adopted originally in 1970 and signed by President
2610 Nixon, advised in 1990, signed by President Bush, the idea of
2611 the Clean Air Act has always been a federal program where the
2612 Federal Government has the access to figuring out and talking

2613 to the scientists to set the national standards, and then the
2614 state and local government decide how to achieve those
2615 standards.

2616 If you want the states and local governments to set the
2617 standards, you are putting a tremendous burden on them--

2618 Mrs. {Capps.} If I could reclaim my time for the last
2619 few seconds, I just refer back to the very commonsense point
2620 that our colleague from Michigan made, Mr. Dingell, when he
2621 said air does not stay put. One locality could be very
2622 sensible about this but the next-door neighboring community
2623 might not be and then again the vulnerability of our
2624 constituents are at stake. This does not make sense.

2625 The {Chairman.} The gentlelady's time has expired.

2626 Are there other members seeking to speak?

2627 Seeing none, the vote occurs on the amendment offered by
2628 the gentlelady from Florida.

2629 Those in favor of the amendment will say aye. Those
2630 opposed say no.

2631 Nos appear to have it. Nos have it.

2632 Mr. {Waxman.} Roll call.

2633 The {Chairman.} Roll call is requested. The clerk will
2634 call the roll.

2635 The {Clerk.} Mr. Barton?

2636 [No response.]

2637 The {Clerk.} Mr. Stearns?
2638 [No response.]
2639 The {Clerk.} Mr. Whitfield?
2640 Mr. {Whitfield.} No.
2641 The {Clerk.} Mr. Whitfield votes no.
2642 Mr. Shimkus?
2643 Mr. {Shimkus.} No.
2644 The {Clerk.} Mr. Shimkus votes no.
2645 Mr. Pitts?
2646 Mr. {Pitts.} No.
2647 The {Clerk.} Mr. Pitts votes no.
2648 Mrs. Bono Mack?
2649 Mrs. {Bono Mack.} No.
2650 The {Clerk.} Mrs. Bono Mack votes no.
2651 Mr. Walden?
2652 Mr. {Walden.} No.
2653 The {Clerk.} Mr. Walden votes no.
2654 Mr. Terry?
2655 Mr. {Terry.} No.
2656 The {Clerk.} Mr. Terry votes no.
2657 Mr. Rogers?
2658 [No response.]
2659 The {Clerk.} Mrs. Myrick?
2660 Mrs. {Myrick.} No.

2661 The {Clerk.} Mrs. Myrick votes no.
2662 Mr. Sullivan?
2663 Mr. {Sullivan.} No, no, no.
2664 The {Clerk.} Mr. Sullivan votes no.
2665 Mr. Murphy?
2666 Mr. {Murphy.} No.
2667 The {Clerk.} Mr. Murphy votes no.
2668 Mr. Burgess?
2669 Dr. {Burgess.} No.
2670 The {Clerk.} Mr. Burgess votes no.
2671 Mrs. Blackburn?
2672 Mrs. {Blackburn.} No.
2673 The {Clerk.} Mrs. Blackburn votes no.
2674 Mr. Bilbray?
2675 Mr. {Bilbray.} No.
2676 The {Clerk.} Mr. Bilbray votes no.
2677 Mr. Bass?
2678 Mr. {Bass.} No.
2679 The {Clerk.} Mr. Bass votes no.
2680 Mr. Gingrey?
2681 Dr. {Gingrey.} No.
2682 The {Clerk.} Mr. Gingrey votes no.
2683 Mr. Scalise?
2684 Mr. {Scalise.} No.

2685 The {Clerk.} Mr. Scalise votes no.
2686 Mr. Latta?
2687 Mr. {Latta.} No.
2688 The {Clerk.} Mr. Latta votes no.
2689 Mrs. McMorris Rodgers?
2690 Mrs. {McMorris Rodgers.} No.
2691 The {Clerk.} Mrs. McMorris Rodgers votes no.
2692 Mr. Harper?
2693 Mr. {Harper.} No.
2694 The {Clerk.} Mr. Harper votes no.
2695 Mr. Lance?
2696 Mr. {Lance.} No.
2697 The {Clerk.} Mr. Lance votes no.
2698 Mr. Cassidy?
2699 Dr. {Cassidy.} No.
2700 The {Clerk.} Mr. Cassidy votes no.
2701 Mr. Guthrie?
2702 Mr. {Guthrie.} No.
2703 The {Clerk.} Mr. Guthrie votes no.
2704 Mr. Olson?
2705 Mr. {Olson.} No.
2706 The {Clerk.} Mr. Olson votes no.
2707 Mr. McKinley?
2708 Mr. {McKinley.} No.

2709 The {Clerk.} Mr. McKinley votes no.
2710 Mr. Gardner?
2711 Mr. {Gardner.} No.
2712 The {Clerk.} Mr. Gardner votes no.
2713 Mr. Pompeo?
2714 Mr. {Pompeo.} No.
2715 The {Clerk.} Mr. Pompeo votes no.
2716 Mr. Kinzinger?
2717 [No response.]
2718 The {Clerk.} Mr. Griffith?
2719 Mr. {Griffith.} No.
2720 The {Clerk.} Mr. Griffith votes no.
2721 Mr. Waxman?
2722 Mr. {Waxman.} Aye.
2723 The {Clerk.} Mr. Waxman votes aye.
2724 Mr. Dingell?
2725 Mr. {Dingell.} Votes aye.
2726 The {Clerk.} Mr. Dingell votes aye.
2727 Mr. Markey?
2728 [No response.]
2729 The {Clerk.} Mr. Towns?
2730 Mr. {Towns.} Aye.
2731 The {Clerk.} Mr. Towns votes aye.
2732 Mr. Pallone?

2733 Mr. {Pallone.} Aye.

2734 The {Clerk.} Mr. Pallone votes aye.

2735 Mr. Rush?

2736 [No response.]

2737 The {Clerk.} Ms. Eshoo?

2738 Ms. {Eshoo.} Aye.

2739 The {Clerk.} Ms. Eshoo votes aye.

2740 Mr. Engel?

2741 Mr. {Engel.} Aye.

2742 The {Clerk.} Mr. Engel votes aye.

2743 Mr. Green?

2744 Mr. {Green.} Aye.

2745 The {Clerk.} Mr. Green votes aye.

2746 Ms. DeGette?

2747 Ms. {DeGette.} Aye.

2748 The {Clerk.} Ms. DeGette votes aye.

2749 Mrs. Capps?

2750 Mrs. {Capps.} Aye.

2751 The {Clerk.} Mrs. Capps votes aye.

2752 Mr. Doyle?

2753 Mr. {Doyle.} Aye.

2754 The {Clerk.} Mr. Doyle votes aye.

2755 Ms. Schakowsky?

2756 [No response.]

2757 The {Clerk.} Mr. Gonzalez?
2758 [No response.]
2759 The {Clerk.} Mr. Inslee?
2760 Mr. {Inslee.} Aye.
2761 The {Clerk.} Mr. Inslee votes aye.
2762 Ms. Baldwin?
2763 [No response.]
2764 The {Clerk.} Mr. Ross?
2765 Mr. {Ross.} No.
2766 The {Clerk.} Mr. Ross votes no.
2767 Mr. Matheson?
2768 Mr. {Matheson.} No.
2769 The {Clerk.} Mr. Matheson votes no.
2770 Mr. Butterfield?
2771 Mr. {Butterfield.} Aye.
2772 The {Clerk.} Mr. Butterfield votes aye.
2773 Mr. Barrow?
2774 Mr. {Barrow.} No.
2775 The {Clerk.} Mr. Barrow votes no.
2776 Ms. Matsui?
2777 Ms. {Matsui.} Aye.
2778 The {Clerk.} Ms. Matsui votes aye.
2779 Mrs. Christensen?
2780 Mrs. {Christensen.} Aye.

2781 The {Clerk.} Mrs. Christensen votes aye.
2782 Ms. Castor?
2783 Ms. {Castor.} Aye.
2784 The {Clerk.} Ms. Castor votes aye.
2785 Chairman Upton?
2786 The {Chairman.} Votes no.
2787 The {Clerk.} Chairman Upton votes no.
2788 The {Chairman.} Members wishing to cast votes? How is
2789 Dr. Burgess registered?
2790 The {Clerk.} Mr. Burgess is not recorded. Mr. Burgess
2791 votes no.
2792 The {Chairman.} Other members wishing to cast a vote?
2793 Gentleman from Illinois?
2794 Mr. {Rush.} Aye.
2795 The {Clerk.} Mr. Rush votes aye.
2796 The {Chairman.} Other members wishing to cast a
2797 recorded vote? Seeing none, the clerk will report the tally.
2798 The {Clerk.} Mr. Chairman, on that vote there were 16
2799 ayes, 30 nays.
2800 The {Chairman.} 16 ayes, 30 nays. The amendment is not
2801 agreed to.
2802 Are there other amendments?
2803 Gentleman from California.
2804 Mr. {Waxman.} Mr. Chairman, I have an amendment at the

2805 desk, number 11.

2806 The {Chairman.} The clerk will report the title.

2807 The {Clerk.} Amendment to H.R. 1633 offered by Mr.

2808 Waxman of California.

2809 [The information follows:]

2810 ***** INSERT 7 *****

|
2811 The {Chairman.} And the amendment will be considered as
2812 read. The staff will circulate the amendment and the
2813 gentleman is recognized for 5 minutes.

2814 Mr. {Waxman.} Mr. Chairman and my colleagues, this
2815 amendment states that this bill's definition of ``nuisance
2816 dust'' does not include particulate matter from uranium
2817 mining and processing. My Republican colleagues argue that
2818 this bill is intended to apply to the dirt from plows and
2819 cows. They show pictures of tractors tilling the land. They
2820 don't show uranium mines and the radioactive pollution that
2821 those mines have left behind.

2822 I want to share with you an experience that I have had
2823 when I was chairman of the Oversight Committee. At that
2824 time, the chairman of the Committee Congressman Tom Davis and
2825 I looked at the toxic legacy of uranium mining and milling in
2826 the Navajo Nation in Arizona, New Mexico, and Utah. Between
2827 the 1940s and 1980s, private companies mined millions of tons
2828 of uranium ore in the Navajo Nation in order to supply the
2829 Federal Government with the uranium yellowcake it needed to
2830 build a nuclear weapons stockpile for the Cold War. After
2831 the mining ended in the late 1980s, over 500 radioactive
2832 mines in the Navajo Nation were abandoned without being
2833 cleaned up. Five uranium mill sites where uranium ore was

2834 processed were also left behind.

2835 Over the years, these open pits filled with rain.
2836 Navajos used the pools for drinking water and to add water
2837 for their herds. Mill tailings and chunks of uranium ore
2838 were used to build foundations, floors, and walls, some of
2839 their homes. Families were literally living in radioactive
2840 houses. And radioactive dust from abandoned mines and waste
2841 piles blew in the air and was inhaled by those who lived
2842 nearby. Because of this contamination, Navajo people,
2843 especially those living near the abandoned mines and the
2844 former mill sites faced higher risk for cancer and kidney
2845 failure.

2846 What we did as a result of the hearings was we called
2847 the relevant federal agencies together and jointly told them
2848 they had to prepare a plan to begin to address this
2849 contamination, which they have done. We have a plan, a 5-
2850 year plan. The Federal Government is taking responsibility
2851 for this modern American tragedy to fix this issue. We
2852 should all on this committee be able to agree that this
2853 tragedy should not be repeated.

2854 New uranium mines are operating and mining companies are
2855 seeking to open up additional areas to uranium mining,
2856 including parts of Virginia and areas near the Grand Canyon.
2857 It is essential that any new mining be done in an

2858 environmental-responsible way.

2859 The underlying bill that we have before us would prevent
2860 EPA from doing anything to protect communities now or in the
2861 future from radioactive dust blowing from abandoned uranium
2862 mines and waste piles. First, the bill would rename the
2863 radioactive dust as simply ``nuisance dust'' since it is
2864 comprised primarily of natural materials. Then, the bill
2865 would entirely exempt all so-called nuisance dust from Clean
2866 Air protections. Regardless of what you call it, radioactive
2867 dust from uranium mining is radioactive and harmful to human
2868 health. Uranium is natural but that doesn't mean it is safe.
2869 We can't just declare this pollution a nuisance and wish the
2870 problem away, and that is why this amendment would say that
2871 the definition of ``nuisance dust'' would not include
2872 particulate matter from uranium mining and processing, and I
2873 hope my colleagues can support this amendment.

2874 I yield back my time.

2875 The {Chairman.} The gentleman yields back. The chair
2876 will yield to himself. We are prepared to accept this
2877 amendment.

2878 Mr. {Shimkus.} Just, you know, so people understand the
2879 mining industry today, the regulations applicable to mining
2880 operations, the Clean Air Act, the Clean Water Act, the
2881 Resource Conservation and Recovery Act, the Comprehensive

2882 Environmental Response Compensation and Liability Act,
2883 Endangered Species Act, Federal Land Policy and Management
2884 Act, the National Environment Policy Act, the National
2885 Historic Preservation Act, Safe Drinking Water Act, Surface
2886 Mining Control and Reclamation Act, the Toxic Substances
2887 Control Act, the Wild and Scenic Rivers Act, the Wilderness
2888 Act, BLM Surface Management Regulations, 4 Surface Management
2889 Regulations, Office of Surface Mining Regulations, and State
2890 laws and regulations. I would just like to place that in the
2891 record.

2892 Mr. {Waxman.} Would the gentleman yield to me? Mr.
2893 Upton?

2894 Mr. {Shimkus.} Yes.

2895 Mr. {Waxman.} I would like to know why you are willing
2896 to accept this amendment. I don't want to look askance to a
2897 gift horse, but why are you willing to accept this amendment
2898 and you weren't willing to accept an amendment that would
2899 exempt the consequences from smelters and mining operations
2900 that had arsenic and other toxic pollution? Why is this
2901 different than the other amendment?

2902 The {Chairman.} Just thought it might get your vote at
2903 the very end. No, no--

2904 Mr. {Waxman.} You are not going to get my vote.

2905 The {Chairman.} --no, I know. No. You made a very

2906 compelling case, a better case for this amendment than the
2907 others. We are prepared to accept it.

2908 Mr. {Waxman.} Will the chairman yield to me further?

2909 The {Chairman.} Glad to.

2910 Mr. {Waxman.} I appreciate the compliment but I don't
2911 think I made any more compelling case on this one than what
2912 was made on the others.

2913 The {Chairman.} This is more narrowly focused and it is
2914 something that we can accept. And so it is a good amendment
2915 and we are prepared to vote yes.

2916 Mr. {Waxman.} Mr. Shimkus pointed out all these other
2917 areas of regulation of these uranium mines. Is he willing to
2918 agree that the Clean Air Act--

2919 Mr. {Shimkus.} Would the gentleman yield?

2920 Mr. {Waxman.} --doesn't apply to uranium mines?

2921 Mr. {Shimkus.} Would you want me to reread the
2922 extensive list of--

2923 Mr. {Waxman.} No, I heard that.

2924 Mr. {Shimkus.} --regulations and laws pertaining to the
2925 mining sector?

2926 Mr. {Waxman.} If you go along with Mr. Upton in
2927 addition to all of those, none of which--

2928 Mr. {Shimkus.} If the gentleman--

2929 Mr. {Waxman.} --apply to the Clean Air--

2930 Mr. {Shimkus.} If the gentleman would yield because
2931 this amendment is narrowly focused on uranium mining
2932 production facilities and processing, I believe it is not
2933 objectionable.

2934 Mr. {Waxman.} So I would like to understand, Mr.
2935 Chairman, if I narrowly focus the amendment on arsenic and
2936 said mines that produce--nuisance dust does not include
2937 particulate matter containing arsenic as opposed to uranium
2938 dust or radioactivity, would that be something you would be
2939 willing to accept?

2940 The {Chairman.} Probably not but I will take--

2941 Mr. {Waxman.} Probably not? But why not?

2942 The {Chairman.} Well, I would be glad to talk to the
2943 gentleman later. I would like to get through this amendment
2944 so we can get to the next one.

2945 Mr. {Waxman.} Oh, you are just accepting this to go to
2946 the next?

2947 The {Chairman.} Well, that is what the regular order
2948 would be.

2949 Mr. {Waxman.} All right. Well, thank you very much,
2950 Mr. Chairman.

2951 The {Chairman.} All right. Is there further discussion
2952 on this amendment?

2953 Seeing none, those in favor will say aye. Those opposed

2954 say no.

2955 Mr. {Waxman.} I would like to a roll call vote.

2956 The {Chairman.} A roll call vote is requested. The

2957 clerk will call the roll.

2958 Mr. {Waxman.} No, I--

2959 The {Chairman.} The ayes carry. The amendment is

2960 adopted.

2961 Are there further amendments to the bill?

2962 Gentlelady from the Virgin Islands.

2963 Mrs. {Christensen.} Mr. Chairman, I have an amendment

2964 at the desk.

2965 The {Chairman.} The clerk will report the title of the

2966 amendment.

2967 Mrs. {Christensen.} Seven, sorry.

2968 The {Clerk.} Amendment to H.R. 1633 offered by Mrs.

2969 Christensen of the Virgin Islands.

2970 [The information follows:]

2971 ***** INSERT 8 *****

|
2972 The {Chairman.} Amendment will be considered as read.

2973 And the gentlelady is recognized for 5 minutes in
2974 support of her amendment.

2975 Mrs. {Christensen.} Thank you.

2976 This amendment seeks to ensure that the public health is
2977 protected. H.R. 1633 essentially eliminates EPA's authority
2978 to control so-called nuisance dust except in a very narrow
2979 set of circumstances. First, the administrator must find
2980 that nuisance dust causes substantial adverse public health
2981 and welfare effects. Second, even if the administrator
2982 determines that nuisance dust causes substantial harm, she
2983 must also find that the benefits of regulating nuisance dust
2984 outweigh the costs, including impacts on employment. This
2985 approach upends the way EPA has been setting health-based air
2986 pollution standards for 40 years.

2987 The Clean Air Act requires EPA--requires EPA--to set
2988 each air quality standard based purely on science and medical
2989 evidence showing the health effects of exposure to the
2990 pollutant. The standard basically identifies the level of
2991 pollution that is safe to breathe. We know that many
2992 pollutants exist naturally in trace amounts, but she must
2993 identify the level of pollution that is safe to breathe.

2994 The Clean Air Act also requires EPA to set the standard

2995 with an adequate margin of safety to account for uncertainty
2996 and protect sensitive subpopulations such as children with
2997 asthma. Essentially, this bill would require EPA to
2998 determine the level of air pollution that is safe to breathe
2999 based on the cost of control, not the medical evidence.

3000 And third, under the bill, the administrator only has
3001 this limited authority where state, local, or tribal
3002 governments are not regulating nuisance dust, but the bill
3003 provides no minimum standard of protection, no federal floor.
3004 That means that even the most minimal state or local
3005 requirement is sufficient to bar EPA action on anything that
3006 falls under the definition of nuisance dust. This is really
3007 unacceptable to claim that any state or local dust
3008 regulation, no matter how minimal, will be sufficient to
3009 protect public health.

3010 We tried to address air pollution only on the state and
3011 local level through the 1960s. It didn't work. Companies
3012 blocked cleaner air protections by threatening to leave for
3013 other States with weaker standards. This widely acknowledged
3014 failure produced overwhelming support for the cooperative
3015 federalism approach embodied in the Clean Air Act since 1970.
3016 Under this approach, the Federal Government sets minimum
3017 uniform standards to protect health and States and localities
3018 decide how to achieve them.

3019 Since 1970, then, as my colleague Congresswoman Capps
3020 asserted earlier, every American has the same basic rights to
3021 clean and healthy air. My amendment simply preserves those
3022 rights and ensures that the residents of every State and
3023 locality, including the territories, are afforded a baseline
3024 level of protection against particle pollution. My amendment
3025 says that if the state, local, or tribal laws are not
3026 sufficient to protect public health from exposure to
3027 dangerous particle pollution, then EPA has authority under
3028 the Clean Air Act to step in and take action to reduce that
3029 pollution.

3030 This bill tries to turn back the clock at a time when
3031 state and local air pollution laws were not strong enough to
3032 protect the public health. We all know the saying that those
3033 who are ignorant of history are doomed to repeat it, so let
3034 us learn our history and recognize that both States and the
3035 Federal Government played valuable roles in ensuring that
3036 Americans breathe clean and healthy air, and I urge my
3037 colleagues to support this amendment.

3038 The {Chairman.} The gentlelady yields back?

3039 Mrs. {Christensen.} I yield back the balance of my
3040 time.

3041 The {Chairman.} The gentleman from California, Mr.
3042 Bilbray, is recognized for 5 minutes.

3043 Mr. {Bilbray.} Thank you, Mr. Chairman.

3044 Mr. Chairman, I regretfully oppose the amendment and let
3045 me point out that, you know, the success of the Clean Air Act
3046 can't be disputed from the environmental point of view.
3047 There are problems, economic impacts get into it. But what
3048 can't be disputed, too, is the Clean Air Act's success is
3049 probably more attributed to one single factor and that is of
3050 all environmental strategies, it included the local
3051 communities in the development and the implementation of the
3052 environmental strategy. It was locally based, initiated,
3053 managed with minimal federal control compared to any other
3054 federal environmental law. And that in my opinion is where
3055 the real success of that program. And I think the Clean
3056 Water Act needs to be looked at at how to make it more like
3057 the Clean Air Act.

3058 But I would like to point out and actually introduce
3059 into evidence a letter written to Bob Filner by the Imperial
3060 County Board of Supervisors. Now, here is a county that is
3061 50 percent of its population is in farming. It is surrounded
3062 by federal lands that are not cultivated that are major dust
3063 problems. They are adjacent to Mexico which has major dust
3064 problems, but even with all the problems they have, the local
3065 county implemented a very aggressive particulate management
3066 plan. They went out of their way to get it done. And EPA

3067 has waited 5 years to approve the plan as if--well, and I see
3068 why. I mean let us face it; it is not EPA's children that
3069 are living in the Imperial Valley that is breathing the air.
3070 Five years the County Board of Supervisors have been waiting
3071 for the Federal Government to take action. So I just want to
3072 make sure we remember having the Federal Government be the
3073 controller of health strategies is not necessarily everything
3074 the people in Washington think it is cracked up to be.

3075 And I would just like to again introduce this letter to
3076 Bob Filner by the County Board of Supervisors which have
3077 unanimously supported this bill. And I yield back my time.

3078 The {Chairman.} The gentleman yields back.

3079 Are there members wishing to discuss this amendment?

3080 Gentleman from California, Mr. Waxman.

3081 Mr. {Waxman.} This amendment goes to the heart of the
3082 relationship between the Federal Government and the state and
3083 local governments. The bill, first of all, exempts this
3084 broad swath of particle pollution from the Clean Air Act
3085 without any scientific showing it won't harm public health.
3086 Okay? That was a reason I opposed the bill. But then the
3087 bill allows EPA to act only in the narrowest of
3088 circumstances. And among other reasons where EPA cannot act
3089 is if a state or local government is regulating something
3090 that falls under the bill's broad definition of nuisance

3091 dust. So there is no minimum standard.

3092 You can have a state or local law, for example, on these
3093 gravel mines in California. In California we have a lot of
3094 environmental regulatory laws dealing with all sorts of
3095 things, including these gravel pits, gravel mines, and yet
3096 the California law may not be sufficient to protect the
3097 public health. So even though there is a local regulation,
3098 it doesn't meet a minimum standard. And what the Christensen
3099 amendment does is we will defer to the state and local
3100 government but there has to be a minimum standard. And the
3101 minimum standard of that regulation ought to be at a level
3102 requisite to protect public health as determined by the
3103 administrator.

3104 Now, you can have a law at the local level that can
3105 regulate the amount of truck traffic in and out of an area
3106 where there is a mine. If that is a local law, that
3107 shouldn't preempt Federal Government from dealing with the
3108 problem. That shouldn't be sufficient because it doesn't
3109 deal with protecting the public health. So that is why I
3110 think this amendment makes a lot of sense.

3111 Let me give you an example. Under the language of the
3112 bill, it would be perfectly legal for one State to allow high
3113 levels of pollution that trigger asthma attacks in children
3114 while another State requires industry to cut their emissions

3115 of course and fine particles. So you can have States right
3116 next to each other, one State has a law that is effective;
3117 the other State has a law that is not effective. And then I
3118 guess the issue is going to be up to the asthmatic children
3119 to relocate to a safer neighborhood. Well, that isn't what
3120 makes sense to anybody. It is a failed approach and what we
3121 need to do is if we are going to allow the States to pass
3122 laws not just a race to the bottom; they ought to be required
3123 to pass laws that meet this minimum standard as set out in
3124 the Christensen amendment. And I am going to yield to the
3125 gentlelady from the Virgin Islands.

3126 Mrs. {Christensen.} Thank you, Ranking Member Waxman.

3127 And really all my amendment does is insert at a level
3128 requisite to protect the public health. It does not take
3129 away any authority of the state, tribal, or local entity to
3130 regulate the nuisance dust, but it sets a standard to protect
3131 the public health while the States and the tribal areas still
3132 have the ability to--

3133 Mr. {Bilbray.} Will the gentlelady yield?

3134 Mr. {Waxman.} It is my time. I will yield to you.

3135 Mr. {Bilbray.} The fact is, though, as the gentleman
3136 from California will tell you, it does depend on the EPA to
3137 make the determination that it does reach the minimum, so you
3138 end up having 5 years a local community trying to wait to

3139 implement a plan because the Federal Government just can't
3140 get around to it because it is not their air they are
3141 breathing.

3142 Mr. {Waxman.} Now, you are working on a lot of
3143 assumptions. First of all, you are working on an assumption
3144 that the local plan is really going to protect public health
3145 when it may not. And then if they don't, then nobody is
3146 going to have anything to say about it. And the proposal
3147 says EPA could look at it and say, well, they are not
3148 adequately protecting public health. You are assuming they
3149 are asking to take 5 years. It could be a simple letter
3150 saying if you are regulating the traffic of trucks, that is
3151 not dealing with protecting the public health. So I would
3152 dispute what you are saying.

3153 Mr. {Bilbray.} Well, if the gentleman would yield?

3154 Mr. {Waxman.} Sure.

3155 Mr. {Bilbray.} The fact is with the case of Imperial
3156 County, they haven't even given them a yes or a no in 5
3157 years. They haven't said that we have concerns. They just
3158 haven't responded. They are too busy doing something else.

3159 And I yield back.

3160 Mr. {Waxman.} So do I.

3161 The {Chairman.} The gentleman from Michigan.

3162 Mr. {Dingell.} Thank you, Mr. Chairman.

3163 You know, Mr. Chairman, these rulemakings and these
3164 questions of compliance with the law or the drafting of the
3165 rules by EPA are not simple. They require--if you will read
3166 the Administrative Procedures Act--a huge opportunity for
3167 everyone to consult and discuss and to be heard. And that is
3168 a constitutional right which is protected. EPA gives these
3169 people these chances and then we find out infrequently that
3170 there are problems that rise with the state administration.
3171 I have just heard the EPA criticized about the fact that it
3172 takes them too long to do things. Sometimes that statement
3173 is perfectly valid. Sometimes it is the state agency that
3174 doesn't do it. Sometimes it is the fact that some do-gooder
3175 will put the matter in court by an appeal. And so sometimes
3176 these things don't happen the way we would like to see them
3177 happen with speed and efficiency.

3178 There is also the nice problem that not infrequently we
3179 find that the communities or the States have not submitted
3180 their rules or their compliance documents in proper form
3181 because the Federal Government, under the Clean Air Act and
3182 under the Clean Water Act see to it that the communities and
3183 the States do the actual enforcement. But they have to do it
3184 in conformity with the federal statute as interpreted by EPA.
3185 This is not a simple process. And very frankly not
3186 infrequently everybody involved except EPA drags their feet

3187 and tries to see to it that the matter does not proceed
3188 rapidly.

3189 Industry oft times doesn't want these decisions to be
3190 made because they are proceeding to go about their business
3191 of making whatever they make while not having to comply with
3192 a new and a tougher law. Now, these are the rights of
3193 everybody concerned and we applaud it. And I want it to be
3194 understood that I have been as critical of EPA as anybody,
3195 but before we start making a lot of claims about what EPA is
3196 not doing or is not doing well, familiarize yourself with the
3197 complexity of the issue, understand why these things are
3198 proceeding slowly. Remember, these are statutes that have
3199 been written in the Congress and not infrequently written by
3200 this committee. I have warned, as we were writing these
3201 legislations, that not infrequently they were hopelessly
3202 complex and oft times they are set up so that the courts take
3203 over and have control over the whole business.

3204 For example, everybody is complaining--and I think
3205 properly so--about the fact that EPA now is regulating carbon
3206 dioxide, a perfectly legitimate complaint because we never
3207 intended that they should do so. But the reason they are
3208 doing so is because the courts have stuck their nose in and
3209 have completely misinterpreted the statute. We felt it was
3210 so clear that this was not going to be the case that we never

3211 bothered instructing EPA that EPA would not consider CO₂ to be
3212 a pollutant. And so the court stuck their nose in and said
3213 it is clearly in defiance of the intent and the findings of
3214 the Congress.

3215 But I am not rising to the defense of EPA. What I am
3216 rising to is to say before you start making judgments about
3217 what is wrong, know the facts. Listen to what the doctors
3218 say in the Hippocratic Oath. They say ``First, do no
3219 wrong.'' Know what it is that you are doing; know what the
3220 problem is before you go out to solve it. Here, we have a
3221 magnificent solution running around and looking for a
3222 problem. This is a crazy way to do. These problems are not
3223 simple. They require a huge amount of attention, a great
3224 amount of study before you can come up with an understanding
3225 of what the real problem is.

3226 And I would beg my colleagues to approach these problems
3227 this way. Darn it, if you want to correct EPA, let us have
3228 some carefully phrased hearings. You can find plenty to go
3229 after EPA for and plenty to go after other polluters or state
3230 agencies if you want if you will just gather the facts and
3231 know what you are talking about before you rush into these
3232 kinds of things seeking a problem to fit some kind of a
3233 cockamamie solution onto.

3234 Thank you. I yield back the balance of my time.

3235 The {Chairman.} The gentleman's time has expired.
3236 Are there members wishing to speak on the amendment?
3237 Seeing none, the vote occurs on the amendment offered by
3238 the gentlelady from the Virgin Islands.
3239 Those in favor of the amendment will say aye. Those
3240 opposed, say no.
3241 In the opinion of the chair, the nos have it. The
3242 amendment is not agreed to.
3243 Mrs. {Christensen.} I would like to request a roll call
3244 vote.
3245 The {Chairman.} Roll call is requested. The clerk will
3246 call the roll.
3247 The {Clerk.} Mr. Barton?
3248 [No response.]
3249 The {Clerk.} Mr. Stearns?
3250 [No response.]
3251 The {Clerk.} Mr. Whitfield?
3252 Mr. {Whitfield.} No.
3253 The {Clerk.} Mr. Whitfield votes no.
3254 Mr. Shimkus?
3255 Mr. {Shimkus.} No.
3256 The {Clerk.} Mr. Shimkus votes no.
3257 Mr. Pitts?
3258 Mr. {Pitts.} No.

3259 The {Clerk.} Mr. Pitts votes no.
3260 Mrs. Bono Mack?
3261 [No response.]
3262 The {Clerk.} Mr. Walden?
3263 [No response.]
3264 The {Clerk.} Mr. Terry?
3265 [No response.]
3266 The {Clerk.} Mr. Rogers?
3267 [No response.]
3268 The {Clerk.} Mrs. Myrick?
3269 Mrs. {Myrick.} No.
3270 The {Clerk.} Mrs. Myrick votes no.
3271 Mr. Sullivan?
3272 Mr. {Sullivan.} No.
3273 The {Clerk.} Mr. Sullivan votes no.
3274 Mr. Murphy?
3275 Mr. {Murphy.} No.
3276 The {Clerk.} Mr. Murphy votes no.
3277 Mr. Burgess?
3278 Dr. {Burgess.} No.
3279 The {Clerk.} Mr. Burgess votes no.
3280 Mrs. Blackburn?
3281 Mrs. {Blackburn.} No.
3282 The {Clerk.} Mrs. Blackburn votes no.

3283 Mr. Bilbray?

3284 Mr. {Bilbray.} No.

3285 The {Clerk.} Mr. Bilbray votes no.

3286 Mr. Bass?

3287 Mr. {Bass.} No.

3288 The {Clerk.} Mr. Bass votes no.

3289 Mr. Gingrey?

3290 Dr. {Gingrey.} No.

3291 The {Clerk.} Mr. Gingrey votes no.

3292 Mr. Scalise?

3293 Mr. {Scalise.} No.

3294 The {Clerk.} Mr. Scalise votes no.

3295 Mr. Latta?

3296 Mr. {Latta.} No.

3297 The {Clerk.} Mr. Latta votes no.

3298 Mrs. McMorris Rodgers?

3299 [No response.]

3300 The {Clerk.} Mr. Harper?

3301 Mr. {Harper.} No.

3302 The {Clerk.} Mr. Harper votes no.

3303 Mr. Lance?

3304 Mr. {Lance.} No.

3305 The {Clerk.} Mr. Lance votes no.

3306 Mr. Cassidy?

3307 Dr. {Cassidy.} No.

3308 The {Clerk.} Mr. Cassidy votes no.

3309 Mr. Guthrie?

3310 Mr. {Guthrie.} No.

3311 The {Clerk.} Mr. Guthrie votes no.

3312 Mr. Olson?

3313 Mr. {Olson.} No.

3314 The {Clerk.} Mr. Olson votes no.

3315 Mr. McKinley?

3316 Mr. {McKinley.} No.

3317 The {Clerk.} Mr. McKinley votes no.

3318 Mr. Gardner?

3319 Mr. {Gardner.} No.

3320 The {Clerk.} Mr. Gardner votes no.

3321 Mr. Pompeo?

3322 Mr. {Pompeo.} No.

3323 The {Clerk.} Mr. Pompeo votes no.

3324 Mr. Kinzinger?

3325 Mr. {Kinzinger.} No.

3326 The {Clerk.} Mr. Kinzinger votes no.

3327 Mr. Griffith?

3328 Mr. {Griffith.} No.

3329 The {Clerk.} Mr. Griffith votes no.

3330 Mr. Waxman?

3331 [No response.]

3332 The {Clerk.} Mr. Dingell?

3333 Mr. {Dingell.} Votes aye.

3334 The {Clerk.} Mr. Dingell votes aye.

3335 Mr. Markey?

3336 [No response.]

3337 The {Clerk.} Mr. Towns?

3338 Mr. {Towns.} Aye.

3339 The {Clerk.} Mr. Towns votes aye.

3340 Mr. Pallone?

3341 Mr. {Pallone.} Aye.

3342 The {Clerk.} Mr. Pallone votes aye.

3343 Mr. Rush?

3344 [No response.]

3345 The {Clerk.} Ms. Eshoo?

3346 Ms. {Eshoo.} Aye.

3347 The {Clerk.} Ms. Eshoo votes aye.

3348 Mr. Engel?

3349 [No response.]

3350 The {Clerk.} Mr. Green?

3351 [No response.]

3352 The {Clerk.} Ms. DeGette?

3353 [No response.]

3354 The {Clerk.} Mrs. Capps?

3355 Mrs. {Capps.} Aye.

3356 The {Clerk.} Mrs. Capps votes aye.

3357 Mr. Doyle?

3358 [No response.]

3359 The {Clerk.} Ms. Schakowsky?

3360 Ms. {Schakowsky.} Aye.

3361 The {Clerk.} Ms. Schakowsky votes aye.

3362 Mr. Gonzalez?

3363 [No response.]

3364 The {Clerk.} Mr. Inslee?

3365 Mr. {Inslee.} Aye.

3366 The {Clerk.} Mr. Inslee votes aye.

3367 Ms. Baldwin?

3368 [No response.]

3369 The {Clerk.} Mr. Ross?

3370 Mr. {Ross.} No.

3371 The {Clerk.} Mr. Ross votes no.

3372 Mr. Matheson?

3373 Mr. {Matheson.} No.

3374 The {Clerk.} Mr. Matheson votes no.

3375 Mr. Butterfield?

3376 Mr. {Butterfield.} Aye.

3377 The {Clerk.} Mr. Butterfield votes aye.

3378 Mr. Barrow?

3379 Mr. {Barrow.} No.

3380 The {Clerk.} Mr. Barrow votes no.

3381 Ms. Matsui?

3382 Ms. {Matsui.} Aye.

3383 The {Clerk.} Ms. Matsui votes aye.

3384 Mrs. Christensen?

3385 Mrs. {Christensen.} Aye.

3386 The {Clerk.} Mrs. Christensen votes aye.

3387 Ms. Castor?

3388 [No response.]

3389 The {Clerk.} Chairman Upton?

3390 The {Chairman.} Votes no.

3391 The {Clerk.} Chairman Upton votes no.

3392 The {Chairman.} Are there members wishing to vote?

3393 Mr. Walden?

3394 Mr. {Walden.} No.

3395 The {Clerk.} Mr. Walden votes no.

3396 The {Chairman.} Ms. Bono Mack?

3397 Mrs. {Bono Mack.} No.

3398 The {Clerk.} Ms. Bono Mack votes no.

3399 The {Chairman.} Mr. Terry?

3400 Mr. {Terry.} Mr. Terry votes no.

3401 The {Clerk.} Mr. Terry votes no.

3402 The {Chairman.} Mr. Green?

3403 Mr. {Green.} Mr. Green votes aye.
3404 The {Clerk.} Mr. Green votes aye.
3405 The {Chairman.} Mr. Engel?
3406 Mr. {Engel.} Engel votes aye.
3407 The {Clerk.} Mr. Engel votes aye.
3408 The {Chairman.} Are there members wishing to cast their
3409 vote?
3410 Ms. Castor?
3411 Ms. {Castor.} Aye.
3412 The {Clerk.} Ms. Castor votes aye.
3413 The {Chairman.} Other members?
3414 Seeing none, the clerk will report the tally.
3415 The {Clerk.} Mr. Chairman, on that vote there were--
3416 The {Chairman.} Mr. Rush recorded.
3417 Mr. {Rush.} Aye.
3418 The {Clerk.} Mr. Rush votes aye.
3419 Mr. Chairman, on that vote there were 14 ayes, 30 nays.
3420 The {Chairman.} 14 ayes, 30 nays. The amendment is not
3421 agreed to.
3422 The chair will recognize Mr. Butterfield from North
3423 Carolina.
3424 Mr. {Butterfield.} Mr. Chairman, I have an amendment at
3425 the desk, and I think it is labeled D-3.
3426 The {Clerk.} Amendment to H.R. 1633 offered by Mr.

3427 Butterfield of North Carolina.

3428 [The information follows:]

3429 ***** INSERT 9 *****

|
3430 The {Chairman.} The amendment will be considered as
3431 read. The staff will distribute the amendment and the
3432 gentleman is recognized for 5 minutes.

3433 Mr. {Butterfield.} Should I proceed while the staff is
3434 distributing, Mr. Chairman, in the--

3435 The {Chairman.} Yes.

3436 Mr. {Butterfield.} --interest of time?

3437 The {Chairman.} Yes.

3438 Mr. {Butterfield.} Thank you very much, Mr. Chairman.

3439 I am going to try to crystallize this definition that we
3440 have been working with over the last few hours in hopes that
3441 my colleagues will accept this amendment.

3442 Mr. Chairman, as most of my colleagues know, I represent
3443 a rural district in eastern North Carolina. We grow more
3444 tobacco than any other district in the country. Down home we
3445 call it bacca. We are 7th in peanuts, 10th in cotton, 14th
3446 in hogs. My amendment, Mr. Chairman, is intended to speak
3447 for the farmers in rural communities in my district and in my
3448 State of North Carolina, and I am very concerned, Mr.
3449 Chairman, about how federal policies are going to affect
3450 rural America.

3451 Make no mistake, if EPA actually planned to start
3452 cracking down on the dirt kicked up by plows, I would be as

3453 outraged as anyone, but EPA has stated clearly, Mr. Chairman,
3454 that it has no plans to regulate farm dust and has no plans
3455 to revise its air quality standards for coarse particles for
3456 another 5 years at the very least. Instead, this bill
3457 creates new concerns for my district in North Carolina and
3458 others across the country.

3459 By exempting a broad swath of pollution from the Clean
3460 Air Act, this bill could harm public health by exposing
3461 people, including children and the elderly, to higher levels
3462 of dangerous particle pollution. As others have said
3463 throughout the day, this bill creates a new category of
3464 pollution called nuisance dust and removes it from the Clean
3465 Air Act entirely. I am very concerned the actual language in
3466 the bill would exempt pollution from a whole range of
3467 industrial activities that have nothing, nothing to do with
3468 farming. Massive open pit mines and gravel pits and coal ash
3469 impoundments and smelters and coal processing plants, cement
3470 kilns, this bill's definition of nuisance dust is so overly
3471 broad that it could exempt both fine and coarse particle
3472 pollution from any and all of these sources.

3473 My concern, as I am sure it is the concern of the bill
3474 supporters, is with the farmers. And so my amendment, Mr.
3475 Chairman, would ensure that this bill does what it claims
3476 without exempting major industrial polluters from the Clean

3477 Air Act. The committee is not in order, Mr. Chairman.

3478 First, my amendment, Mr. Chairman, clarifies that the
3479 term nuisance dust includes only coarse crustal particulate
3480 matter that is produced from agricultural activities. The
3481 coarse part of this definition ensures that it does not
3482 include deadly fine particle pollution. The crustal part
3483 ensures we are talking about dirt and other fugitive dust
3484 from the earth's crust and then the amendment specifies that
3485 it only covers such dust produced by agricultural activities.

3486 Second, my amendment clarifies that nuisance dust does
3487 not include particulate matter generated from combustion
3488 processes. This amendment exempts from regulation exactly
3489 what the bill supporters say they are concerned about--dirt
3490 kicked up as a natural byproduct of agricultural activity.

3491 So if you are for farmers as I certainly am, you should
3492 support this amendment. I ask my colleagues to read it very
3493 carefully. It is very straightforward and it is very clear I
3494 think. I urge my colleagues on both sides of the aisle to
3495 stand with rural America and support this amendment.

3496 Thank you, Mr. Chairman. I yield back.

3497 The {Chairman.} The gentleman yields back. Are there
3498 other members wishing to speak on the amendment?

3499 Mr. {Rush.} Mr. Chairman?

3500 The {Chairman.} The gentleman from Illinois, Mr. Rush.

3501 Mr. {Rush.} Mr. Chairman, I move to strike the last
3502 word. Thank you, Mr. Chairman. I support the Butterfield
3503 amendment. This bill needs some truth in advertising. The
3504 sponsors claim that the focus is dust from farming activities
3505 such as moving livestock or plowing land. At the legislative
3506 hearing, I expressed concern that the bill is much broader
3507 and could exempt the significant industrial pollution from
3508 the Clean Air Act. This bill's sponsor responded by pointing
3509 out that the title references farm dust. Since the title is
3510 legally irrelevant and the text is sweeping, this certainly
3511 was not reassuring.

3512 Despite its title, the legal effect of the bill extends
3513 far beyond anything that could possibly be considered farm
3514 dust. It entirely exempts from the Clean Air Act both coarse
3515 and fine particulate pollution from massive mining operation,
3516 sand and gravel quarries, cement plants, smelters, coal
3517 processing facilities, and other sources typically located in
3518 rural areas. The Butterfield amendment simply amends the
3519 bill to match its supporters' rhetoric by focusing the bill
3520 on coarse dust from farming activities. The amendment would
3521 not fix all the problems with this bill. The bill will still
3522 be unnecessary. EPA has made it clear that it does not
3523 regulate farm dust now and does not intend to regulate farm
3524 dust in the future.

3525 Administrator Jackson has announced that she would not
3526 propose to change the coarse particulate matter standard,
3527 which would leave the current standard in place for at least
3528 5 years. The bill would still be based on a false premise
3529 that rests on the notion that particulate matter from certain
3530 activities such as agriculture doesn't harm health while
3531 particulate matter from other activities does harm health.
3532 There is simply no scientific or medical basis for this
3533 distinction. As we know from the reams of peer reviewed
3534 published articles and studies that particulate matter and
3535 especially small particles does harm health.

3536 Furthermore, the bill could be impossible for EPA to
3537 implement. Polluting monitors don't distinguish between
3538 coarse particulates from farming activities and coarse
3539 particulates from the example for mining activities. If the
3540 EPA has no authority with respect to particulate pollution,
3541 that may invalidate the current particulate matter standards
3542 and throw the whole program into disarray.

3543 But I support the Butterfield amendment because it does
3544 address one of the most serious problems with this bill. It
3545 will close the massive loophole the bill creates for
3546 dangerous particulate pollution for many industrial
3547 activities. The Butterfield amendment will narrow this
3548 bill's sweeping exemption for nuisance dust to just coarse

3549 particulate matter produced by agricultural activities.

3550 Mr. {McKinley.} Will the gentleman yield?

3551 Mr. {Rush.} No, I won't yield as of yet.

3552 And further ensure the EPA will retain its authority to
3553 address particulates produced by combustion, for example,
3554 from tractors and from school buses.

3555 Even with this amendment, this bill is dangerous and
3556 unnecessary and I will oppose this bill whether or not the
3557 amendment passes. But the amendment does genuinely improve
3558 the bill both by limiting some of the damage it will cause
3559 and by bringing it some truth in advertising to this
3560 exercise.

3561 And I yield whatever time I have to whoever was asking.

3562 Mr. {Butterfield.} I think the gentleman was trying to
3563 accept the amendment, Mr. Rush.

3564 The {Chairman.} It wasn't to me.

3565 Before I yield 5 minutes to Mr. McKinley let me just
3566 make a little housekeeping notice. It does appear that we
3567 are going a little bit longer than we anticipated and it is
3568 my understanding that this is the last amendment to this
3569 bill. After this we will do the CLASS Act. We expect a
3570 number of votes at four o'clock, so the likelihood that we
3571 will do either one of the two FCC bills that we had noticed
3572 that probably doesn't happen today. We will move it to next

3573 week.

3574 So with that I yield 5 minutes to strike the last word
3575 the gentleman from West Virginia.

3576 Mr. {McKinley.} Mr. Chairman, I am not going to need 5
3577 minutes. I have just been listening to discussion, what, we
3578 have had 3 or 4 hours today on this and there seems to be an
3579 awful lot of discussion about the EPA not changing its mind.
3580 They are not going to do something, but they can change their
3581 mind and they have done that. They have changed their mind.
3582 We have experienced it in West Virginia, 4 years ago they
3583 gave a permit to a coal company, they started mining, they
3584 invested millions of dollars in an operation; 258 people were
3585 working in a mine and they pulled the permit 4 years later.
3586 So things like that can happen and I think we are trying to
3587 send a message here is stop that so that there is no unknown.
3588 They say they are not going to do it. They are going to
3589 change--they change their mind--I bet we would find scores of
3590 times that they have changed their mind. So when you say
3591 they will not change their mind, quite frankly I think that
3592 is a misrepresentation. But they are entitled to change
3593 their mind. We are just trying to codify that they can't,
3594 and this one, this is done.

3595 I yield back my time.

3596 Mr. {Whitfield.} Mr. McKinley--

3597 The {Chairman.} The gentleman yields back.

3598 Are there members wishing to speak on the amendment?

3599 Mr. {Whitfield.} Mr. Upton?

3600 The {Chairman.} The gentleman from Kentucky.

3601 Mr. {Whitfield.} I just want to make one comment. In
3602 this definition, you say that nuisance dust means coarse
3603 crustal particulate. Now, what that means is that in the
3604 soil there are bits of minerals of various kinds but there
3605 are many parts of rural America in which in the soil there is
3606 no minerals; there is bits of leaves and plants and so forth
3607 and so there would be wide parts of America in rural areas in
3608 which the soil would not include crustal particulate matter
3609 that would no longer be protected. So for that reason--

3610 Mr. {Butterfield.} Would the gentleman yield?

3611 Mr. {Whitfield.} Yes, I would be happy to.

3612 Mr. {Butterfield.} Yes, I think if you would read the
3613 sentence in its entirety, the final part of the sentence says
3614 ``from agricultural activities.'' And so any particulate
3615 matter from agricultural activities would be exempted. What
3616 we--

3617 Mr. {Whitefield.} But it says it means coarse crustal
3618 particulate matter that is produced from agricultural
3619 activity. It doesn't say material that may be only leaf and
3620 plant particles in it. You can find it only the crustal

3621 particulate.

3622 Mr. {Terry.} Mr. Whitfield, would you yield for 30
3623 seconds?

3624 Mr. {Whitfield.} I would be happy to yield to the
3625 gentleman.

3626 Mr. {Terry.} I would also worry about the other issue
3627 of the grain truck--

3628 Mr. {Whitfield.} I will yield the balance of my time to
3629 the gentleman.

3630 Mr. {Terry.} Well, on the roads, too, because that is a
3631 major issue is the dust that comes up on the road and that is
3632 gravel. I am not sure that would be crustal as well because
3633 that would be mined gravel put on road. So the crustal part
3634 I think we would need to work through a little bit more here.

3635 Mr. {Butterfield.} Would the gentleman yield, Mr.
3636 Terry?

3637 Mr. {Terry.} Yes.

3638 Mr. {Butterfield.} Would it make you feel better if we
3639 used the word organic material as opposed to crustal? Would
3640 that be acceptable? You are from farm country. I think you
3641 know how important this is to farms.

3642 Mr. {Terry.} Yes. I actually represent more cement
3643 than dirt but it is only a few feet outside my district and
3644 that is our economy and that is why I am so concerned.

3645 Mr. {Butterfield.} Yes.

3646 Mr. {Terry.} I haven't been able to work through the
3647 organic part. I think we are probably getting closer there.

3648 Mr. {Butterfield.} Um-hum.

3649 Mr. {Terry.} I would have to yield back to--let's see.
3650 Anyone else want this time?

3651 The {Chairman.} The gentleman from Nebraska now
3652 controls the time.

3653 Mr. {Terry.} Mr. Cassidy?

3654 Dr. {Cassidy.} Organic, you know, again, I am going
3655 back to college but organic has a certain carbonaceous--it
3656 implies it is carbon-based. I am not sure that a dirt
3657 particle is carbon-based, so I think you are getting there,
3658 but again organic does I think have a technical meaning to a
3659 chemist.

3660 Mr. {Terry.} Yield back.

3661 The {Chairman.} The gentleman yields back.

3662 Are there other members wishing to speak on this
3663 amendment?

3664 Mr. Gardner from Colorado.

3665 Mr. {Gardner.} Strike the last word, Mr. Chairman.

3666 I wanted to point out that I have heard on the
3667 discussion of this amendment the gentleman from Illinois
3668 describe this overall the underlying legislation as dangerous

3669 and necessary. I have heard a lot of people talk about how
3670 harmful this is for one purpose or another. I am looking at
3671 a list of 190 different organizations that support the
3672 underlying legislation as it is written. In my State alone,
3673 the Colorado Association of Wheat Growers, the Colorado
3674 Cattlemen's Association, the Colorado Corn Growers
3675 Association, the Colorado Land Council, the Colorado
3676 Livestock Association, the Colorado Pork Producers Council,
3677 the Colorado Potato Administrative Committee, the Colorado
3678 Sheep and Wool Authority, the Colorado Wool Growers
3679 Association, the Colorado Farm Bureau, these are
3680 organizations that will not support legislation that hurts
3681 their environment and their ability to operate, that hurts
3682 their ability pass on a farm to the next generation.

3683 And so it is hard for me to believe this bill is
3684 demonized as it when it comes to the groups that support this
3685 bill, 190 organizations from around the country, so many in
3686 the State of Colorado. This is not dangerous and unnecessary
3687 legislation. This is legislation that is necessary to the
3688 future of farmers and ranchers in my State who believe that
3689 they are working in a regulatory environment that might now
3690 allow them to continue if somebody at the EPA decides that
3691 they want to go ahead and move forward with farm dust
3692 regulation.

3693 We had the assistant administrator here, Gina McCarthy,
3694 saying that oh, farm dust is this new creation but they do
3695 regulate dust from farms, a matter of semantics. That is
3696 what has my farmers worried; that is what has the ranchers in
3697 Colorado worried. I think Mr. Terry from Nebraska makes a
3698 great point. What about dirt roads? There are over 57,000
3699 miles of dirt roads in Colorado. Is the EPA going to all of
3700 a sudden have monitors on each road because of traveling to
3701 and from a home or a farm or a ranch? Fifty-seven thousand
3702 miles of dirt roads in my State alone. I would oppose this
3703 amendment. Move on and pass this important legislation for
3704 the future of rural America.

3705 The {Chairman.} The gentleman yields back. Are there
3706 other members wishing to speak on the amendment?

3707 Seeing none, the vote occurs on the amendment offered by
3708 the gentleman from North Carolina.

3709 Mr. {Butterfield.} Mr. Chairman, may I ask a question
3710 of the chair?

3711 The {Chairman.} Yes.

3712 Mr. {Butterfield.} If I wanted to insert two words ``or
3713 organic into my amendment, would that be permitted under the
3714 rules?

3715 The {Chairman.} You can ask unanimous consent to do
3716 that.

3717 Mr. {Butterfield.} All right. Without binding the
3718 members to a particular vote, I would ask unanimous consent
3719 that we add the words ``or organic'' after the word
3720 ``crustal'' but before the word ``particulate.'' So it would
3721 read ``means coarse crustal or organic particulate matter.''

3722 The {Chairman.} Without objection, the two words are
3723 added to line 3 of the amendment.

3724 Mr. {Butterfield.} That is correct, Mr. Chairman.

3725 The {Chairman.} The vote now occurs on the amendment as
3726 amended by the gentleman from North Carolina.

3727 Those in favor will say aye. Those opposed will say no.

3728 The amendment is not agreed to.

3729 Mr. {Butterfield.} Ask for a roll call vote.

3730 The {Chairman.} The clerk will call the roll.

3731 The {Clerk.} Mr. Barton?

3732 [No response.]

3733 The {Clerk.} Mr. Stearns?

3734 [No response.]

3735 The {Clerk.} Mr. Whitfield?

3736 Mr. {Whitfield.} No.

3737 The {Clerk.} Mr. Whitfield votes no.

3738 Mr. Shimkus?

3739 Mr. {Shimkus.} No.

3740 The {Clerk.} Mr. Shimkus votes no.

3741 Mr. Pitts?
3742 Mr. {Pitts.} No.
3743 The {Clerk.} Mr. Pitts votes no.
3744 Mrs. Bono Mack?
3745 Mrs. {Bono Mack.} No.
3746 The {Clerk.} Mrs. Bono Mack votes no.
3747 Mr. Walden?
3748 Mr. {Walden.} No.
3749 The {Clerk.} Mr. Walden votes no.
3750 Mr. Terry?
3751 Mr. {Terry.} No.
3752 The {Clerk.} Mr. Terry votes no.
3753 Mr. Rogers?
3754 [No response.]
3755 The {Clerk.} Mrs. Myrick?
3756 Mrs. {Myrick.} No.
3757 The {Clerk.} Mrs. Myrick votes no.
3758 Mr. Sullivan?
3759 Mr. {Sullivan.} No.
3760 The {Clerk.} Mr. Sullivan votes no.
3761 Mr. Murphy?
3762 Mr. {Murphy.} No.
3763 The {Clerk.} Mr. Murphy votes no.
3764 Mr. Burgess?

3765 Dr. {Burgess.} No.

3766 The {Clerk.} Mr. Burgess votes no.

3767 Mrs. Blackburn?

3768 [No response.]

3769 The {Clerk.} Mr. Bilbray?

3770 Mr. {Bilbray.} No.

3771 The {Clerk.} Mr. Bilbray votes no.

3772 Mr. Bass?

3773 Mr. {Bass.} No.

3774 The {Clerk.} Mr. Bass votes no.

3775 Mr. Gingrey?

3776 Dr. {Gingrey.} No.

3777 The {Clerk.} Mr. Gingrey votes no.

3778 Mr. Scalise?

3779 Mr. {Scalise.} No.

3780 The {Clerk.} Mr. Scalise votes no.

3781 Mr. Latta?

3782 Mr. {Latta.} No.

3783 The {Clerk.} Mr. Latta votes no.

3784 Mrs. McMorris Rodgers?

3785 [No response.]

3786 The {Clerk.} Mr. Harper?

3787 Mr. {Harper.} No.

3788 The {Clerk.} Mr. Harper votes no.

3789 Mr. Lance?
3790 Mr. {Lance.} No.
3791 The {Clerk.} Mr. Lance votes no.
3792 Mr. Cassidy?
3793 Dr. {Cassidy.} No.
3794 The {Clerk.} Mr. Cassidy votes no.
3795 Mr. Guthrie?
3796 Mr. {Guthrie.} No.
3797 The {Clerk.} Mr. Guthrie votes no.
3798 Mr. Olson?
3799 Mr. {Olson.} No.
3800 The {Clerk.} Mr. Olson votes no.
3801 Mr. McKinley?
3802 Mr. {McKinley.} No.
3803 The {Clerk.} Mr. McKinley votes no.
3804 Mr. Gardner?
3805 Mr. {Gardner.} No.
3806 The {Clerk.} Mr. Gardner votes no.
3807 Mr. Pompeo?
3808 Mr. {Pompeo.} No.
3809 The {Clerk.} Mr. Pompeo votes no.
3810 Mr. Kinzinger?
3811 Mr. {Kinzinger.} No.
3812 The {Clerk.} Mr. Kinzinger votes no.

3813 Mr. Griffith?

3814 Mr. {Griffith.} No.

3815 The {Clerk.} Mr. Griffith votes no.

3816 Mr. Waxman?

3817 Mr. {Waxman.} Aye.

3818 The {Clerk.} Mr. Waxman votes aye.

3819 Mr. Dingell?

3820 Mr. {Dingell.} Votes aye.

3821 The {Clerk.} Mr. Dingell votes aye.

3822 Mr. Markey?

3823 [No response.]

3824 The {Clerk.} Mr. Towns?

3825 Mr. {Towns.} Aye.

3826 The {Clerk.} Mr. Towns votes aye.

3827 Mr. Pallone?

3828 Mr. {Pallone.} Aye.

3829 The {Clerk.} Mr. Pallone votes aye.

3830 Mr. Rush?

3831 Mr. {Rush.} Aye.

3832 The {Clerk.} Mr. Rush votes aye.

3833 Ms. Eshoo?

3834 Ms. {Eshoo.} Aye.

3835 The {Clerk.} Ms. Eshoo votes aye.

3836 Mr. Engel?

3837 [No response.]

3838 The {Clerk.} Mr. Green?

3839 [No response.]

3840 The {Clerk.} Ms. DeGette?

3841 Ms. {DeGette.} Aye.

3842 The {Clerk.} Ms. DeGette votes aye.

3843 Mrs. Capps?

3844 Mrs. {Capps.} Aye.

3845 The {Clerk.} Mrs. Capps votes aye.

3846 Mr. Doyle?

3847 [No response.]

3848 The {Clerk.} Ms. Schakowsky?

3849 Ms. {Schakowsky.} Aye.

3850 The {Clerk.} Ms. Schakowsky votes aye.

3851 Mr. Gonzalez?

3852 [No response.]

3853 The {Clerk.} Mr. Inslee?

3854 Mr. {Inslee.} Aye.

3855 The {Clerk.} Mr. Inslee votes aye.

3856 Ms. Baldwin?

3857 [No response.]

3858 The {Clerk.} Mr. Ross?

3859 Mr. {Ross.} No.

3860 The {Clerk.} Mr. Ross votes no.

- 3861 Mr. Matheson?
- 3862 Mr. {Matheson.} No.
- 3863 The {Clerk.} Mr. Matheson votes no.
- 3864 Mr. Butterfield?
- 3865 Mr. {Butterfield.} Aye.
- 3866 The {Clerk.} Mr. Butterfield votes aye.
- 3867 Mr. Barrow?
- 3868 Mr. {Barrow.} No.
- 3869 The {Clerk.} Mr. Barrow votes no.
- 3870 Ms. Matsui?
- 3871 Ms. {Matsui.} Aye.
- 3872 The {Clerk.} Ms. Matsui votes aye.
- 3873 Mrs. Christensen?
- 3874 Mrs. {Christensen.} Aye.
- 3875 The {Clerk.} Mrs. Christensen votes aye.
- 3876 Ms. Castor?
- 3877 Ms. {Castor.} Aye.
- 3878 The {Clerk.} Ms. Castor votes aye.
- 3879 Chairman Upton?
- 3880 The {Chairman.} Votes no.
- 3881 The {Clerk.} Chairman Upton votes no.
- 3882 The {Chairman.} Mr. Stearns?
- 3883 Mr. {Stearns.} No.
- 3884 The {Clerk.} Mr. Stearns votes no.

3885 The {Chairman.} Mr. Engel?
3886 Mr. {Engel.} Votes aye.
3887 The {Clerk.} Mr. Engel votes aye.
3888 The {Chairman.} Mr. Barton?
3889 Mr. {Barton.} No.
3890 The {Clerk.} Mr. Barton votes no.
3891 The {Chairman.} Mr. Markey?
3892 Mr. {Markey.} Aye.
3893 The {Clerk.} Mr. Markey votes aye.
3894 The {Chairman.} Are there other members wishing to cast
3895 a vote?
3896 Seeing none, the clerk will report the tally.
3897 How are Ms. McMorris Rodgers and Mrs. Blackburn recorded
3898 on the amendment?
3899 The {Clerk.} Mrs. McMorris Rodgers votes no.
3900 The {Chairman.} And Mrs. Blackburn?
3901 The {Clerk.} Mrs. Blackburn votes no.
3902 The {Clerk.} Mr. Chairman, on that vote there were 16
3903 ayes, 33 nays.
3904 The {Chairman.} 16 ayes, 33 nays. The amendment is not
3905 agreed to.
3906 Are there further amendments to the bill?
3907 Seeing none, the question now occurs on favorably
3908 reporting the bill as amended to the House. All those in

3909 favor of the bill will say aye. Those opposed say no.

3910 Nos appear to have it so I will ask for a roll call

3911 vote. The clerk will call the roll.

3912 The {Clerk.} Mr. Barton?

3913 Mr. {Barton.} Aye.

3914 The {Clerk.} Mr. Barton votes aye.

3915 Mr. Stearns?

3916 Mr. {Stearns.} Aye.

3917 The {Clerk.} Mr. Stearns votes aye.

3918 Mr. Whitfield?

3919 Mr. {Whitfield.} Aye.

3920 The {Clerk.} Mr. Whitfield votes aye.

3921 Mr. Shimkus?

3922 Mr. {Shimkus.} Aye.

3923 The {Clerk.} Mr. Shimkus votes aye.

3924 Mr. Pitts?

3925 Mr. {Pitts.} Aye.

3926 The {Clerk.} Mr. Pitts votes aye.

3927 Mrs. Bono Mack?

3928 Mrs. {Bono Mack.} Aye.

3929 The {Clerk.} Mrs. Bono Mack votes aye.

3930 Mr. Walden?

3931 Mr. {Walden.} Aye.

3932 The {Clerk.} Mr. Walden votes aye.

- 3933 Mr. Terry?
- 3934 Mr. {Terry.} Aye.
- 3935 The {Clerk.} Mr. Terry votes aye.
- 3936 Mr. Rogers?
- 3937 [No response.]
- 3938 The {Clerk.} Mrs. Myrick?
- 3939 [No response.]
- 3940 The {Clerk.} Mr. Sullivan?
- 3941 Mr. {Sullivan.} Yes.
- 3942 The {Clerk.} Mr. Sullivan votes aye.
- 3943 Mr. Murphy?
- 3944 Mr. {Murphy.} Aye.
- 3945 The {Clerk.} Mr. Murphy votes aye.
- 3946 Mr. Burgess?
- 3947 Dr. {Burgess.} Aye.
- 3948 The {Clerk.} Mr. Burgess votes aye.
- 3949 Mrs. Blackburn?
- 3950 Mrs. {Blackburn.} Aye.
- 3951 The {Clerk.} Mrs. Blackburn votes aye.
- 3952 Mr. Bilbray?
- 3953 Mr. {Bilbray.} Aye.
- 3954 The {Clerk.} Mr. Bilbray votes aye.
- 3955 Mr. Bass?
- 3956 Mr. {Bass.} Aye.

- 3957 The {Clerk.} Mr. Bass votes aye.
- 3958 Mr. Gingrey?
- 3959 Dr. {Gingrey.} Aye.
- 3960 The {Clerk.} Mr. Gingrey votes aye.
- 3961 Mr. Scalise?
- 3962 Mr. {Scalise.} Aye.
- 3963 The {Clerk.} Mr. Scalise votes aye.
- 3964 Mr. Latta?
- 3965 Mr. {Latta.} Aye.
- 3966 The {Clerk.} Mr. Latta votes aye.
- 3967 Mrs. McMorris Rodgers?
- 3968 Mrs. {McMorris Rodgers.} Aye.
- 3969 The {Clerk.} Mrs. McMorris Rodgers votes aye.
- 3970 Mr. Harper?
- 3971 Mr. {Harper.} Aye.
- 3972 The {Clerk.} Mr. Harper votes aye.
- 3973 Mr. Lance?
- 3974 Mr. {Lance.} Aye.
- 3975 The {Clerk.} Mr. Lance votes aye.
- 3976 Mr. Cassidy?
- 3977 Dr. {Cassidy.} Aye.
- 3978 The {Clerk.} Mr. Cassidy votes aye.
- 3979 Mr. Guthrie?
- 3980 Mr. {Guthrie.} Aye.

3981 The {Clerk.} Mr. Guthrie votes aye.
3982 Mr. Olson?
3983 Mr. {Olson.} Aye.
3984 The {Clerk.} Mr. Olson votes aye.
3985 Mr. McKinley?
3986 Mr. {McKinley.} Aye.
3987 The {Clerk.} Mr. McKinley votes aye.
3988 Mr. Gardner?
3989 Mr. {Gardner.} Aye.
3990 The {Clerk.} Mr. Gardner votes aye.
3991 Mr. Pompeo?
3992 Mr. {Pompeo.} Aye.
3993 The {Clerk.} Mr. Pompeo votes aye.
3994 Mr. Kinzinger?
3995 Mr. {Kinzinger.} Aye.
3996 The {Clerk.} Mr. Kinzinger votes aye.
3997 Mr. Griffith?
3998 Mr. {Griffith.} Aye.
3999 The {Clerk.} Mr. Griffith votes aye.
4000 Mr. Waxman?
4001 Mr. {Waxman.} No.
4002 The {Clerk.} Mr. Waxman votes no.
4003 Mr. Dingell?
4004 Mr. {Dingell.} Votes no.

4005 The {Clerk.} Mr. Dingell votes no.
4006 Mr. Markey?
4007 Mr. {Markey.} No.
4008 The {Clerk.} Mr. Markey votes no.
4009 Mr. Towns?
4010 Mr. {Towns.} No.
4011 The {Clerk.} Mr. Towns votes no.
4012 Mr. Pallone?
4013 Mr. {Pallone.} No.
4014 The {Clerk.} Mr. Pallone votes no.
4015 Mr. Rush?
4016 Mr. {Rush.} No.
4017 The {Clerk.} Mr. Rush votes no.
4018 Ms. Eshoo?
4019 Ms. {Eshoo.} No.
4020 The {Clerk.} Ms. Eshoo votes no.
4021 Mr. Engel?
4022 Mr. {Engel.} No.
4023 The {Clerk.} Mr. Engel votes no.
4024 Mr. Green?
4025 Mr. {Green.} No.
4026 The {Clerk.} Mr. Green votes no.
4027 Ms. DeGette?
4028 Ms. {DeGette.} No.

4029 The {Clerk.} Ms. DeGette votes no.
4030 Mrs. Capps?
4031 Mrs. {Capps.} No.
4032 The {Clerk.} Mrs. Capps votes no.
4033 Mr. Doyle?
4034 [No response.]
4035 The {Clerk.} Ms. Schakowsky?
4036 Ms. {Schakowsky.} No.
4037 The {Clerk.} Ms. Schakowsky votes no.
4038 Mr. Gonzalez?
4039 [No response.]
4040 The {Clerk.} Mr. Inslee?
4041 Mr. {Inslee.} No.
4042 The {Clerk.} Mr. Inslee votes no.
4043 Ms. Baldwin?
4044 [No response.]
4045 The {Clerk.} Mr. Ross?
4046 Mr. {Ross.} Aye.
4047 The {Clerk.} Mr. Ross votes aye.
4048 Mr. Matheson?
4049 Mr. {Matheson.} Aye.
4050 The {Clerk.} Mr. Matheson votes aye.
4051 Mr. Butterfield?
4052 Mr. {Butterfield.} No.

4053 The {Clerk.} Mr. Butterfield votes no.
4054 Mr. Barrow?
4055 Mr. {Barrow.} Aye.
4056 The {Clerk.} Mr. Barrow votes aye.
4057 Ms. Matsui?
4058 Ms. {Matsui.} No.
4059 The {Clerk.} Ms. Matsui votes no.
4060 Mrs. Christensen?
4061 [No response.]
4062 The {Clerk.} Ms. Castor?
4063 Ms. {Castor.} No.
4064 The {Clerk.} Ms. Castor votes no.
4065 Chairman Upton?
4066 The {Chairman.} Votes aye.
4067 The {Clerk.} Chairman Upton votes aye.
4068 The {Chairman.} Are there others wishing to cast a
4069 vote? Seeing none, the clerk will report the tally.
4070 How is Mrs. Myrick recorded?
4071 The {Clerk.} Mrs. Myrick is not recorded.
4072 Mrs. {Myrick.} I vote aye.
4073 The {Clerk.} Mrs. Myrick votes aye.
4074 The {Chairman.} Other members seeking to cast a vote?
4075 The clerk will report the tally.
4076 The {Clerk.} Mr. Chairman, on that vote there were 33

4077 ayes, 16 nays.

4078 The {Chairman.} 33 ayes, 16 nays. The bill is passed
4079 and favorably reported.

4080 Mr. {Dingell.} Mr. Chairman?

4081 The {Chairman.} Yes?

4082 Mr. {Dingell.} Permit an inquiry? How much time will
4083 the minority have to file minority views on this matter?

4084 The {Chairman.} The requisite number of days, I think
4085 it is 3. We will make sure the minority has the normal
4086 requisite number of days allows.

4087 Mr. {Dingell.} Those are 3 legislative days?

4088 The {Chairman.} I expect to file the bill on Monday, so
4089 you have got 3 days, Wednesday, Thursday, Friday.

4090 Mr. {Dingell.} Thank you, Mr. Chairman.

|

4091 H.R. 1173

4092 The {Chairman.} Okay. The chair now calls up H.R. 1173

4093 and asks the clerk to report.

4094 The {Clerk.} H.R. 1173 to repeal the CLASS program.

4095 [H.R. 1173 follows:]

4096 ***** INSERT 10 *****

|
4097 The {Chairman.} Without objection, the first reading of
4098 the bill is dispensed with. So ordered.

4099 Are there any bipartisan amendments to the bill?

4100 Seeing none--for what purpose does the gentleman from
4101 Nebraska seek recognition?

4102 Mr. {Terry.} I have an amendment at the desk.

4103 The {Chairman.} The clerk will report the title.

4104 The {Clerk.} Amendment to H.R. 1173 offered by Mr.
4105 Terry of Nebraska.

4106 [The amendment follows:]

4107 ***** INSERT 11 *****

|
4108 The {Chairman.} Amendment will be considered as read.
4109 The staff will distribute the amendment, and the gentleman
4110 from Nebraska is recognized for 5 minutes in support of his
4111 amendment.

4112 Mr. {Terry.} Thank you, Mr. Chairman.

4113 This amendment would authorize funding for the National
4114 Clearinghouse for Long-Term Care Information but prohibit any
4115 of the funds in that fund from being used to promote the
4116 CLASS program, which the President has withdrawn and said it
4117 is not workable. The amendment would also alter the
4118 program's funding from appropriation to an authorization as
4119 it is important we ensure spending on any program is done--

4120 The {Chairman.} Gentleman will suspend just for a
4121 second so we can hear.

4122 Mr. {Terry.} Now, thank you, Mr. Chairman. Go blue.

4123 The National Clearinghouse for Long-Term Care
4124 Information was originally funded by the Deficit Reduction
4125 Act of 2005 and signed into law in 2006. It was created to
4126 help individuals plan for their future by providing
4127 information on private long-term care coverage emphasizing
4128 the importance of not depending on Medicaid or other
4129 government programs. Bottom line is the more people have
4130 access and receive information about products that are

4131 available, tools, whether it is in the State or private
4132 sector that will help them plan for their long-term
4133 healthcare, the less cost to government and frankly the
4134 higher level of care for the seniors.

4135 So I think that as we eliminate--this bill overall
4136 eliminates the CLASS Act from law that we make sure we
4137 protect what was already in law, the National Clearinghouse
4138 for Long-Term Care Information.

4139 So that is the crux of this amendment, Mr. Chairman, and
4140 if there is anyone that would like me to yield time,
4141 otherwise it is pretty simple and straightforward.

4142 Seeing no requests, I will yield back my time.

4143 The {Chairman.} Gentleman yields back. Are there
4144 members--gentlelady from California is recognized.

4145 Mrs. {Capps.} I have an amendment to the amendment at
4146 the desk. I think it is filed.

4147 The {Chairman.} The clerk will report the title of the
4148 amendment.

4149 The {Clerk.} Amendment offered by Mrs. Capps to the
4150 amendment offered by Mr. Terry.

4151 [The amendment follows:]

4152 ***** INSERT 12 *****

|
4153 The {Chairman.} And the amendment to the amendment will
4154 be considered as read. Staff will distribute the amendment
4155 and the gentlelady is recognized for 5 minutes in support of
4156 her provision.

4157 Mrs. {Capps.} Thank you, Mr. Chairman.

4158 You know, in the rush to repeal part of the Affordable
4159 Care Act and wipe the CLASS Act from the books, the National
4160 Clearinghouse for Long-Term Care is an innocent bystander.
4161 H.R. 1173 would de-authorize and defund the only program we
4162 have to raise awareness and to encourage planning for long-
4163 term care in this country. Of interest I believe--to me at
4164 least--this is something that neither the bill's authors,
4165 cosponsors, nor the majority subcommittee staff chose to fix
4166 as of 10 o'clock this morning because I had drafted the
4167 original amendment to save this program.

4168 And while I very much support the Clearinghouse, I
4169 cannot support this amendment. It is nothing but a shell.
4170 It is a vote to give members cover to say they support the
4171 Clearinghouse while undercutting it and taking away its
4172 funding. And we all know in this place that a program
4173 without funding is not much of a program. As I mentioned in
4174 the Health Subcommittee markup of this bill, some of us are
4175 lucky to have family members or friends to guide us through

4176 the arduous long-term care planning process, but statistics
4177 clearly show that the message isn't getting to everyone. And
4178 that is one of the issues this Clearinghouse is trying to
4179 address.

4180 Mr. Chairman, I can't really hear myself think either.

4181 The {Chairman.} The gentlelady is correct.

4182 Mrs. {Capps.} And that is one of the issues the
4183 Clearinghouse is trying to address, but this amendment would
4184 strip the funds the Clearinghouse absolutely must have to
4185 address this issue. It would waste the time and money that
4186 has already been spent to set up their 5-year plan and it
4187 would leave the program in dangerous limbo. And that is why
4188 I have now put a secondary amendment at the desk. My
4189 amendment makes the fixes that should be made to H.R. 1173
4190 and it should be supported no matter how you feel about the
4191 CLASS program. It is simple. It would remove the National
4192 Clearinghouse from the bill and allow it to maintain both its
4193 authorization and its very small but essential funding
4194 stream.

4195 Despite claims from some of my friends on the other side
4196 of the aisle, using advanced appropriations for this program
4197 is not radical. In fact, mandatory funding for the
4198 Clearinghouse is not a novel or even a democratic idea.
4199 Instead, it is as old as the program itself that was included

4200 as part of the Deficit Reduction Act of 2005, a bill that was
4201 passed with each of my Republican friends on this committee
4202 and with near unanimous Republican support in the House and
4203 the Senate signed into law by George W. Bush. The DRA
4204 included 3 measly million dollars per year in mandatory
4205 spending for this program.

4206 The Affordable Care Act simply extended--didn't raise
4207 it--extended the flat funding through 2015. Now, any of my
4208 colleagues who have managed a budget whether for their
4209 household, their office, or their business knows
4210 predictability and stability in funding is vital to implement
4211 a multi-year project, and that is exactly what this
4212 Clearinghouse is doing. So to strip their future funding
4213 means gutting the Clearinghouse, funding that was good enough
4214 for the program in 2005 but for some reason or another is no
4215 longer valid in 2011 when our baby boomers are hitting
4216 retirement and when more and more families are relying on
4217 Medicaid for their long-term care needs. This is what we
4218 want to do now is gut this program? It doesn't make any
4219 sense to do that.

4220 So let us be clear. If you support the Clearinghouse,
4221 you should support this secondary amendment, which is the
4222 only way it becomes legitimate. It is the only option to
4223 guarantee that this vital source of public information will

4224 be available to everyone who needs it.

4225 At that point I am happy to yield to my colleagues, or
4226 else I will yield back my time. Thank you.

4227 The {Chairman.} Other members wishing to speak on the
4228 amendment?

4229 The gentleman from New Jersey is recognized for 5
4230 minutes.

4231 Mr. {Pallone.} Thank you, Mr. Chairman.

4232 I want to support the Capps amendment and again point
4233 out the deficiency of the underlying amendment that was
4234 proposed by my Republican colleague.

4235 You know, I am very much opposed to repeal. We had a
4236 hearing on this in our Health Subcommittee and I think
4237 anybody who was there that day knows how opposed I am to
4238 repeal. But during all the debate that day or at the
4239 hearing, many of my Republican colleagues kept saying that
4240 they still want to have some kind of long-term care program
4241 in place. I am not sure how significant it is that they are
4242 saying they want it because they are repealing or suggesting
4243 that we repeal the CLASS Act today without putting anything
4244 in its place. And I think if you just repeal it outright and
4245 don't put something in its place, then I don't really believe
4246 that you are serious about trying to find an alternative.

4247 But the Clearinghouse, which was also debated at that

4248 hearing, was a very significant part of this bill. And the
4249 fact that it has mandatory funding and a stream of funding to
4250 allow both the Department as well as the States that it works
4251 with to at least make people aware of options for long-term
4252 care that are out there is very significant. And I think
4253 that if you really are serious at all about trying to find
4254 alternatives, then you wouldn't want to eliminate the
4255 mandatory funding for the Clearinghouse because if you do
4256 that and simply authorize on an annual basis, the likelihood
4257 is there will never be any money, there will never be any
4258 Clearinghouse, and people won't even be aware of the limited
4259 long-term care options that are out there.

4260 I would also point out that when you tell people about
4261 long-term care options, as limited as they are, if they do in
4262 fact take responsibility and buy long-term care insurance or
4263 do other things, anything of that nature saves the Federal
4264 Government money. I know that, you know, that our budget
4265 people don't score any of this stuff unfortunately, but I
4266 think any time you make people aware of long-term care
4267 options that they might purchase privately, the impact on the
4268 Federal Government is that we save money because those people
4269 don't end up using community-based services under Medicaid
4270 that are essentially funded by the federal as well as the
4271 state government.

4272 So I think it would be really wrong for the Republicans
4273 to basically put this amendment through that eliminates the
4274 mandatory funding if they are at all serious at all about
4275 trying to give people long-term care options or looking for
4276 ways for the Federal Government to save money. They should
4277 keep this program in place and the Republican amendment
4278 doesn't do that because essentially it leaves it to the
4279 appropriators and that is not going to happen in this
4280 environment.

4281 So I would urge support for the Capps amendment to the
4282 amendment if you want to show any kind of real support for
4283 long-term care options.

4284 Thank you, Mr. Chairman. I yield back.

4285 The {Chairman.} Gentleman yields back.

4286 Let me yield myself 5 minutes and I don't intend to use
4287 all that time.

4288 We all know that this Nation is broke. We are borrowing
4289 44 cents on every dollar that we spend, and I support the
4290 Terry amendment. I do not support the amendment offered by
4291 Mrs. Capps because this ought to be a discretionary program
4292 and not an entitlement. And you are right, we move it from
4293 forward funding to an annual discretionary debate, and that
4294 debate ought to occur every year as part of the normal
4295 process rather than making it an entitlement. And we have

4296 got to take steps however large or small to try and get our
4297 budget balanced. So I would urge my colleagues to vote no on
4298 the Capps amendment to the Terry amendment. And let me just
4299 yield to Dr. Gingrey and I will be glad to yield time as
4300 well.

4301 Dr. {Gingrey.} Well, I appreciate the chairman yielding
4302 to me.

4303 ObamaCare actually skewed the original intent of the
4304 Clearinghouse. ObamaCare's inclusion of CLASS information in
4305 the Clearinghouse has changed the scope. In fact--and this
4306 is in the notes on the Terry amendment--just yesterday, the
4307 Clearinghouse website read as follows, ``the CLASS program is
4308 a national voluntary insurance program being developed that
4309 will give most working adults a new option to pay for
4310 services and supports to help them remain independent.'' The
4311 point is that a good public resource should have no
4312 information about a failed big government program like CLASS,
4313 especially one that the Administration has already announced
4314 isn't workable.

4315 Now, I would like to ask a question of the author, Mr.
4316 Terry, of his amendment, and refer back through the chairman
4317 the remaining time.

4318 Mr. Terry, in the National Clearinghouse that was
4319 created I think in 2005 Republicans were working to expand

4320 the Long-Term Care Partnership Program, and that was signed
4321 into law by President Bush, and today, it has established
4322 more than 280,000 Americans to buy long-term care insurance.
4323 I would be happy to yield time to Mr. Terry maybe to explain
4324 that if he would like in regard to the success of that
4325 program. And I yield to the gentleman from Nebraska.

4326 Mr. {Terry.} In 2005 there was a variety of marketplace
4327 options out there for seniors, and Mr. Pallone from New
4328 Jersey is right. The impetus was how do we get people into
4329 long-term healthcare insurance? How can we promote that so
4330 it puts less pressure on Medicaid? What we received
4331 testimony was that financial advisors were actually advising
4332 people of how to shelter their assets so they could be
4333 eligible in some States for Medicaid for long-term healthcare
4334 needs. And so it was successful in that point.

4335 Making it mandatory is the issue here today. Now, I
4336 can't tell you honestly how successful the program actually
4337 was in the last several years.

4338 Dr. {Gingrey.} Well, if the gentleman will yield to me,
4339 the number that I have is some 280,000 Americans. And here
4340 again I mean that is the direction in which we want to go, to
4341 be able to explain to people, to incentivize them indeed to
4342 sign up for long-term care. And this particular program, it
4343 would allow them to protect some of their assets. Let us say

4344 as an example, if they had in the aggregate \$150,000 benefit
4345 and they went beyond that on this long-term care insurance
4346 program, then they could protect \$150,000 of their assets
4347 like their home and still be eligible for Medicaid if they
4348 happen to go beyond that level of coverage.

4349 Dr. {Burgess.} Will the gentleman yield on that?

4350 Dr. {Gingrey.} And I will yield to the gentleman.

4351 Dr. {Burgess.} You know, it is so interesting when we
4352 worked on this in the Deficit Reduction Act in 2005 in this
4353 committee, this was actually a bill introduced by Mr. Pomeroy
4354 and I to expand the long-term care partnerships. Long-term
4355 care partnerships at that time were restricted to 4 States;
4356 now there are 40. I mean this has been an enormous success
4357 and I believe that the Clearinghouse has been part of that
4358 success and I think this is the proper approach to keep the
4359 Clearinghouse in place and allow our seniors to have access
4360 to this information.

4361 And I will yield back to the gentleman from Georgia.

4362 Dr. {Gingrey.} And I will yield back the remaining time
4363 to the chairman.

4364 Mr. {Waxman.} Mr. Chairman?

4365 The {Chairman.} I will yield back my time.

4366 The gentleman from California is recognized for 5
4367 minutes.

4368 Mr. {Waxman.} Mr. Chairman, I think this last exchange
4369 illustrated why we should continue funding the National
4370 Clearinghouse on Long-Term Care. That was what motivated us
4371 in 2005 when we set it up. We set it up on a bipartisan
4372 basis as a program that would have automatic funding. It is
4373 a small amount of money, and without automatic funding, the
4374 truth of the matter is it becomes harder and harder even for
4375 a small amount of money to be set aside for this kind of
4376 purpose.

4377 And so we all seem to agree we ought to continue the
4378 Clearinghouse. The disagreement seems to be whether it will
4379 be the automatic funding that the Republicans agreed to in
4380 2005 when it was set up or whether we are going to turn our
4381 back on the automatic funding and throw it in with everything
4382 else that has to fight for the appropriations. I think we
4383 should maintain this same funding mechanism that it has
4384 always had. It was good enough for Republicans in 2005; I
4385 think it should work for them now. That is why I was
4386 supporting the Capps amendment.

4387 I think we have an interest in making sure we have
4388 unbiased information on long-term care availability. I know
4389 a lot of people want private insurance to be the answer. It
4390 hasn't been the answer yet, but maybe with a Clearinghouse
4391 working it can encourage more and more people to recognize

4392 that long-term care insurance makes sense. But there is no
4393 guarantee this Department will be able to continue its work
4394 on this initiative and its LongTermCare.gov website unless we
4395 continue the program on an automatic funding basis. So I
4396 support the Capps amendment and would oppose the amendment
4397 without the Capps second degree.

4398 The {Chairman.} Are there members wishing to speak on
4399 the amendment?

4400 Mr. Pitts?

4401 Mr. {Pitts.} Mr. Chair, I would just add today we are
4402 in a little bit of a situation than we were in 2005. We have
4403 got a \$15 trillion debt. Our deficit this year is 1.5 or
4404 nearly \$1.5 trillion. We are flat broke. And I think the
4405 Terry amendment is a good one. I think it ensures a
4406 responsible path forward for the Clearinghouse. I think we
4407 should adopt his amendment, not return to the mandatory
4408 entitlement spending but discretionary and ensure in a tough
4409 fiscal situation that programs are funded responsibly and
4410 deliberately. I think the Terry amendment took this
4411 approach. We should adopt that and defeat the Capps
4412 amendment.

4413 Mr. {Pallone.} Mr. Chairman, could you yield some of
4414 your time? Mr. Chairman, could you yield?

4415 Mr. {Pitts.} I yield back.

4416 Mr. {Pallone.} My only point was--and I know you go to
4417 CBO and they don't score these things, but the point is for
4418 this small amount of money that we are spending if people go
4419 to the Clearinghouse and they do actually buy long-term care
4420 insurance, I think they are probably going to save the
4421 federal and the state governments under Medicaid more money
4422 than the Clearinghouse actually costs. And I know that, you
4423 know, these are all these things that we can't get CBO to
4424 score, but I mean the bottom line is that if any significant
4425 portion of the American people go out and end up buying the
4426 private insurance pursuant to the Clearinghouse, it will
4427 actually save the government money.

4428 So I think again this is one of those, what is it, penny
4429 wise, pound foolish type of things where if people aren't
4430 informed, then they are not going to exercise that option.

4431 But I yield back.

4432 Mr. {Pitts.} I yield back.

4433 The {Chairman.} The gentlelady--do you want to yield
4434 some of your time still to Mrs. Capps? Yes, Mrs. Capps is
4435 asking for some of your time.

4436 Go ahead, Mrs. Capps.

4437 Mrs. {Capps.} My point I was going to say was said by
4438 Mr. Waxman and Mr. Pallone, but I really think Dr. Burgess
4439 also underscored that because the program has worked means

4440 that there has been quite a bit of success. But I don't know
4441 about the rest of you. I have so many constituents who still
4442 are caught in the dark when it comes to planning for their
4443 long-term healthcare needs and end up spending down--as Mr.
4444 Pallone just said--costing taxpayers more money through
4445 Medicaid because they are the primary recipients of Medicaid
4446 dollars because we have not developed these partnerships.
4447 This is exactly what we should be doing. The role the
4448 Federal Government plays in this Clearinghouse is a small
4449 portion of a partnership with both state and private sector
4450 responses to the needs for long-term care.

4451 We are certainly not where we should be. Our role is
4452 such a limited role, and to gut the small role that we play
4453 with this Clearinghouse is going to pull the lynchpin out of
4454 what can happen across the country at I believe a critical
4455 time and right at the time in our economy, in our recession
4456 when we ought to be looking at the penny-wise, pound-foolish
4457 ways that we are attempting to do in this action of this
4458 amendment without the funding mechanism to be there. It is
4459 not an entitlement; it is simply mandated funding small
4460 amount so that the program can actually do what it is
4461 designed to do which is to be a clearinghouse.

4462 And so I yield back.

4463 The {Chairman.} The gentleman's time has expired.

4464 Other members wishing to speak on the amendment? Seeing
4465 none, a vote occurs on the Capps amendment to the Terry
4466 amendment.

4467 Those in favor of the Capps amendment will say aye.
4468 Those opposed say no.

4469 Roll call is requested. The clerk will call the roll.

4470 The {Clerk.} Mr. Barton?

4471 Mr. {Barton.} No.

4472 The {Clerk.} Mr. Barton votes no.

4473 Mr. Stearns?

4474 [No response.]

4475 The {Clerk.} Mr. Whitfield?

4476 Mr. {Whitfield.} No.

4477 The {Clerk.} Mr. Whitfield votes no.

4478 Mr. Shimkus?

4479 Mr. {Shimkus.} No.

4480 The {Clerk.} Mr. Shimkus votes no.

4481 Mr. Pitts?

4482 Mr. {Pitts.} No.

4483 The {Clerk.} Mr. Pitts votes no.

4484 Mrs. Bono Mack?

4485 [No response.]

4486 The {Clerk.} Mr. Walden?

4487 Mr. {Walden.} No.

4488 The {Clerk.} Mr. Walden votes no.
4489 Mr. Terry?
4490 Mr. {Terry.} No.
4491 The {Clerk.} Mr. Terry votes no.
4492 Mr. Rogers?
4493 [No response.]
4494 The {Clerk.} Mrs. Myrick?
4495 Mrs. {Myrick.} No.
4496 The {Clerk.} Mrs. Myrick votes no.
4497 Mr. Sullivan?
4498 [No response.]
4499 The {Clerk.} Mr. Murphy?
4500 Mr. {Murphy.} No.
4501 The {Clerk.} Mr. Murphy votes no.
4502 Mr. Burgess?
4503 Dr. {Burgess.} No.
4504 The {Clerk.} Mr. Burgess votes no.
4505 Mrs. Blackburn?
4506 Mrs. {Blackburn.} No.
4507 The {Clerk.} Mrs. Blackburn votes no.
4508 Mr. Bilbray?
4509 Mr. {Bilbray.} No.
4510 The {Clerk.} Mr. Bilbray votes no.
4511 Mr. Bass?

4512 [No response.]

4513 The {Clerk.} Mr. Gingrey?

4514 Dr. {Gingrey.} No.

4515 The {Clerk.} Mr. Gingrey votes no.

4516 Mr. Scalise?

4517 Mr. {Scalise.} No.

4518 The {Clerk.} Mr. Scalise votes no.

4519 Mr. Latta?

4520 Mr. {Latta.} No.

4521 The {Clerk.} Mr. Latta votes no.

4522 Mrs. McMorris Rodgers?

4523 Mrs. {McMorris Rodgers.} No.

4524 The {Clerk.} Mrs. McMorris Rodgers votes no.

4525 Mr. Harper?

4526 Mr. {Harper.} No.

4527 The {Clerk.} Mr. Harper votes no.

4528 Mr. Lance?

4529 Mr. {Lance.} No.

4530 The {Clerk.} Mr. Lance votes no.

4531 Mr. Cassidy?

4532 [No response.]

4533 The {Clerk.} Mr. Guthrie?

4534 Mr. {Guthrie.} No.

4535 The {Clerk.} Mr. Guthrie votes no.

4536 Mr. Olson?
4537 Mr. {Olson.} No.
4538 The {Clerk.} Mr. Olson votes no.
4539 Mr. McKinley?
4540 Mr. {McKinley.} No.
4541 The {Clerk.} Mr. McKinley votes no.
4542 Mr. Gardner?
4543 Mr. {Gardner.} No.
4544 The {Clerk.} Mr. Gardner votes no.
4545 Mr. Pompeo?
4546 Mr. {Pompeo.} No.
4547 The {Clerk.} Mr. Pompeo votes no.
4548 Mr. Kinzinger?
4549 Mr. {Kinzinger.} No.
4550 The {Clerk.} Mr. Kinzinger votes no.
4551 Mr. Griffith?
4552 Mr. {Griffith.} No.
4553 The {Clerk.} Mr. Griffith votes no.
4554 Mr. Waxman?
4555 Mr. {Waxman.} Aye.
4556 The {Clerk.} Mr. Waxman votes aye.
4557 Mr. Dingell?
4558 Mr. {Dingell.} Aye.
4559 The {Clerk.} Mr. Dingell votes aye.

4560 Mr. Markey?
4561 [No response.]
4562 The {Clerk.} Mr. Towns?
4563 Mr. {Towns.} Aye.
4564 The {Clerk.} Mr. Towns votes aye.
4565 Mr. Pallone?
4566 Mr. {Pallone.} Aye.
4567 The {Clerk.} Mr. Pallone votes aye.
4568 Mr. Rush?
4569 [No response.]
4570 The {Clerk.} Ms. Eshoo?
4571 Ms. {Eshoo.} Aye.
4572 The {Clerk.} Ms. Eshoo votes aye.
4573 Mr. Engel?
4574 [No response.]
4575 The {Clerk.} Mr. Green?
4576 Mr. {Green.} Aye.
4577 The {Clerk.} Mr. Green votes aye.
4578 Ms. DeGette?
4579 [No response.]
4580 The {Clerk.} Mrs. Capps?
4581 Mrs. {Capps.} Aye.
4582 The {Clerk.} Mrs. Capps votes aye.
4583 Mr. Doyle?

4584 [No response.]

4585 The {Clerk.} Ms. Schakowsky?

4586 Ms. {Schakowsky.} Aye.

4587 The {Clerk.} Ms. Schakowsky votes aye.

4588 Mr. Gonzalez?

4589 [No response.]

4590 The {Clerk.} Mr. Inslee?

4591 Mr. {Inslee.} Aye.

4592 The {Clerk.} Mr. Inslee votes aye.

4593 Ms. Baldwin?

4594 [No response.]

4595 The {Clerk.} Mr. Ross?

4596 [No response.]

4597 The {Clerk.} Mr. Matheson?

4598 Mr. {Matheson.} No.

4599 The {Clerk.} Mr. Matheson votes no.

4600 Mr. Butterfield?

4601 Mr. {Butterfield.} Aye.

4602 The {Clerk.} Mr. Butterfield votes aye.

4603 Mr. Barrow?

4604 Mr. {Barrow.} Aye.

4605 The {Clerk.} Mr. Barrow votes aye.

4606 Ms. Matsui?

4607 Ms. {Matsui.} Aye.

4608 The {Clerk.} Ms. Matsui votes aye.
4609 Mrs. Christensen?
4610 Mrs. {Christensen.} Aye.
4611 The {Clerk.} Mrs. Christensen votes aye.
4612 Ms. Castor?
4613 Ms. {Castor.} Aye.
4614 The {Clerk.} Ms. Castor votes aye.
4615 Chairman Upton?
4616 The {Chairman.} Votes no.
4617 The {Clerk.} Chairman Upton votes no.
4618 The {Chairman.} Members to vote, Mr. Stearns?
4619 Mr. {Stearns.} No.
4620 The {Clerk.} Mr. Stearns votes no.
4621 The {Chairman.} Mrs. Bono Mack?
4622 Mrs. {Bono Mack.} No.
4623 The {Clerk.} Mrs. Bono Mack votes no.
4624 The {Chairman.} Mr. Bass?
4625 Mr. {Bass.} No.
4626 The {Clerk.} Mr. Bass votes no.
4627 The {Chairman.} Mr. Ross? Mr. Engel.
4628 The {Clerk.} One second. Mr. Ross, could you repeat,
4629 please?
4630 Mr. {Ross.} No.
4631 The {Clerk.} Mr. Ross votes no.

4632 The {Chairman.} Mr. Engel?

4633 Mr. {Engel.} Aye.

4634 The {Clerk.} Mr. Engel votes aye.

4635 The {Chairman.} Mr. Cassidy?

4636 Dr. {Cassidy.} Votes aye.

4637 The {Chairman.} Votes aye?

4638 Dr. {Cassidy.} Yeah, votes aye.

4639 The {Chairman.} Votes aye.

4640 The {Clerk.} Mr. Cassidy votes aye.

4641 The {Chairman.} Other members wishing to vote?

4642 Seeing none, the clerk will report the tally.

4643 The {Clerk.} Mr. Chairman, on that vote there were 16

4644 ayes, 30 nays.

4645 The {Chairman.} 16 ayes, 30 nays. The amendment is not

4646 agreed to.

4647 The vote now occurs on the Terry amendment. Those in

4648 favor of the Terry amendment will vote aye. Those opposed

4649 say no.

4650 In the opinion of the chair, the ayes have it. The ayes

4651 have it and the amendment is agreed to.

4652 Are there further amendments to the bill? Mr. Pallone?

4653 Mr. {Pallone.} Mr. Chairman, I have Amendment 01 at the

4654 desk.

4655 The {Chairman.} The clerk will report the title of the

4656 amendment.

4657 Mrs. {Myrick.} I reserve a point of order.

4658 The {Chairman.} And the gentlelady reserves a point of
4659 order on the amendment but the clerk will report it.

4660 The {Clerk.} Amendment to H.R. 1173 offered by Mr.

4661 Pallone of New Jersey.

4662 [The amendment follows:]

4663 ***** INSERT 13 *****

|
4664 The {Chairman.} And the amendment will be considered as
4665 read.

4666 Again, a point of order has been raised and the
4667 gentleman is recognized for 5 minutes as the staff
4668 distributes the amendment.

4669 Mr. {Pallone.} Thank you, Mr. Chairman.

4670 My amendment is very simple. It would prohibit repeal
4671 of the CLASS program until a number of actions are taken as
4672 required under current law. As many of you know, the law
4673 stipulates that the Secretary of HHS appoint members to the
4674 CLASS Independence Advisory Council to help advise her on
4675 matters of general policy and the administration of the CLASS
4676 program, and that has yet to be done.

4677 Therefore, my amendment requires the following occur
4678 before any repeal bill goes into effect. First, members of
4679 the CLASS Independence Advisory Council are appointed by the
4680 President as required by Section 3207(b)(1) of the Public
4681 Health Service Act.

4682 Second, the Council conducts at least one meeting; and
4683 third, the Council submits to the Secretary of HHS and the
4684 Congress a report that contains recommendations that outline
4685 how the CLASS program can be implemented in a fiscally sound
4686 manner. Fourth, after submission of such report to the

4687 Congress, legislation is enacted addressing the
4688 recommendations. And finally, number five, a program is
4689 implemented to help working American families in the disabled
4690 community purchase community living assistance services.

4691 Now, Mr. Chairman, I oppose H.R. 1173 because we can't
4692 sacrifice the important step forward we have taken in
4693 changing the way we provide long-term care services to the
4694 elderly and disabled in this country. CLASS helps people
4695 plan for their eventual long-term care needs and saves the
4696 taxpayers money by easing the burden on Medicaid. And it
4697 begins to address the work we all need to be doing in making
4698 sure that as people grow older or need assistance, they have
4699 access to the long-term care services they need.

4700 The CLASS Act will help adults have or develop
4701 functional impairments to remain independent, employed, and
4702 stay as part of their community. This program would greatly
4703 help remove the barriers to independence and choice--for
4704 example, housing modifications, assistive technologies,
4705 personal assistance services, and transportation that can be
4706 overwhelmingly costly right now.

4707 I believe that long-term care is the one major health
4708 expense for which nearly all Americans are uninsured. In
4709 fact, nearly 7 in 10 people will need some level of long-term
4710 care after turning 65, and 1 in 20 will need 5 years or more

4711 in a nursing home. And that doesn't include the many young
4712 healthy people who fall victim to life-altering events that
4713 leave them in need of long-term care services as well.

4714 So I simply as my Republican colleagues, what are these
4715 people and their families supposed to do? How are they going
4716 to get the care they need? And for many families, there
4717 simply are too few options. With these sorts of odds of
4718 financial devastation, something has to be done to address
4719 long-term care access, and that is why the CLASS's program
4720 framework is so critical and should not be repealed. Now, I
4721 will admit it is not perfect. I am not sure I know of any
4722 legislation that is perfect, but I don't think we should give
4723 up on the foundation that CLASS represents.

4724 So my amendment will ensure Congress does not abandon
4725 the CLASS program. It will require the advisory council be
4726 appointed and deliberate before any repeal takes effect and I
4727 am certain that the expertise of this council can inform
4728 Congress and HHS about how we can move forward under CLASS.
4729 I just think that repeal is not a solution. Our work is not
4730 complete. Appointing the CLASS Independence Advisory Council
4731 is a solution, and I urge my colleagues to support this
4732 amendment. I do believe that CLASS can be implemented in a
4733 meaningful way if we simply try. I want us to be positive.

4734 I said at the hearing that we had that I worry that we

4735 are just too negative. You know, I go home and we are there
4736 for the Thanksgiving break and people say to me why doesn't
4737 Congress do anything? You all fight, you deliberate, but you
4738 don't do anything. And I think repealing something that has
4739 a framework for moving forward with such an important issue
4740 as long-term care and not having something to substitute in
4741 its place is clearly a mistake and it is just another
4742 indication of a Congress that doesn't do anything, doesn't,
4743 you know, really address concerns that people have.

4744 So I simply ask my colleagues, really, let us not just
4745 abandon this program. Let us try to do things that can make
4746 a difference and move forward with a long-term care option.
4747 So you know, I know I keep making the same plea and I hope it
4748 doesn't fall on, you know, that you don't listen to it. So I
4749 yield the balance of my time.

4750 Thank you, Mr. Chairman.

4751 The {Chairman.} The gentleman yields back his time.

4752 It is the Chairman's understanding that the--

4753 Mr. {Pallone.} Yes, I am sorry. I understand that
4754 objection has been made to the germaneness and I agree that
4755 it is germane. That was explained to me.

4756 The {Chairman.} That it is not--

4757 Mr. {Pallone.} That it is not germane so at this time I
4758 would withdraw the amendment, Mr. Chairman.

4759 The {Chairman.} Amendment is withdrawn.

4760 Are there further amendments to the bill?

4761 Mr. {Pallone.} Yes, Mr. Chairman.

4762 The {Chairman.} The gentleman from New Jersey.

4763 Mr. {Pallone.} This is number 01-B, Mr. Chairman.

4764 The {Chairman.} The clerk will report the title.

4765 The {Clerk.} Amendment to H.R. 1173 offered by Mr.

4766 Pallone.

4767 [The amendment follows:]

4768 ***** INSERT 14 *****

|
4769 The {Chairman.} And the amendment will be considered as
4770 read. The staff will distribute the amendment and the
4771 gentleman again is recognized for 5 minutes in support of his
4772 amendment.

4773 Mr. {Pallone.} Thank you, Mr. Chairman.

4774 And as we said the previous amendment was out of order
4775 but I believe that this amendment is germane. It is very
4776 similar to the amendment that was ruled out of order. It
4777 would prohibit repeal of the CLASS program until a number of
4778 actions are taken as required under current law. However, in
4779 this version, unlike the previous one that I proposed, there
4780 would be only 3 necessary actions regarding the CLASS
4781 Independence Advisory Council. And those would include
4782 appointment of the members of the CLASS Independence Advisory
4783 Council; second, that the council has conducted at least one
4784 meeting; and third, that the council submits to the Secretary
4785 of HHS and the Congress a report that contains
4786 recommendations that outline how the CLASS program can be
4787 implemented in a fiscally sound manner.

4788 I have explained I think, Mr. Chairman, why I believe
4789 that repeal of CLASS is detrimental. The disability
4790 community and working American families need our help. This
4791 amendment is not my first choice because it doesn't first

4792 require an alternative long-term care program be in place,
4793 but it is better than the straight repeal. It allows the
4794 council to deliberate, continue the important conversation of
4795 how to move forward, and give Congress the insight we need to
4796 move forward through a report that we would receive.

4797 And again I don't think we should give up on the
4798 foundation that CLASS represents. I plead with my Republican
4799 colleagues to work with me and not against me in helping to
4800 address their concerns with their current statute. Let us
4801 just see what the advisory council suggests and then we can
4802 decide whether or not we want to implement their changes. I
4803 think CLASS can be implemented in a meaningful way if
4804 everyone simply tried. And again I think we have to be
4805 positive. Let us fix problems and not make them worse. Let
4806 us return Congress to a meaningful body that it really is
4807 meant to be.

4808 So I urge my colleagues to support this second
4809 amendment, and I yield back, Mr. Chairman.

4810 The {Chairman.} The gentleman yields back.

4811 The chair would recognize Dr. Gingrey for 5 minutes.

4812 Dr. {Gingrey.} Mr. Chairman, thank you. And I rise in
4813 opposition to the Pallone amendment.

4814 Let us go back to the hearing that we had in October of
4815 this year with Secretary Greenlee who was administering this

4816 program under the Administration on Aging. And I asked her
4817 at that time, ``Secretary Greenlee, you stated in testimony
4818 before this committee on March the 17th, 2011, that you
4819 should not repeal CLASS until we have made every effort to
4820 reform the program.'' Just this month, HHS concluded in a
4821 report that the Administration has ``not identified a way to
4822 make CLASS work at this time. In light of this announcement,
4823 will HHS now support repeal of the CLASS program?'' And this
4824 is what Secretary Greenlee said: ``Congressman Gingrey, we
4825 feel that repealing CLASS would serve no useful purpose at
4826 this point.'' She went on and repeated, ``we feel that
4827 repealing the law would serve no useful purpose at this
4828 point. We have stated publicly we do not intend to implement
4829 and have no plans to move forward on implementation.'' And
4830 then I said to her, ``let me then suggest a useful purpose to
4831 you that you may want to take under consideration,'' because
4832 Section 3203 of the Patient Protection and Affordable Care
4833 Act indeed requires the Secretary to designate a benefit
4834 plan, a CLASS independence benefit plan no later than October
4835 the 1st, 2012.

4836 Absent repeal, if the Secretary cannot find a way to
4837 make CLASS work by October the 1st, 2012, I am concerned that
4838 some private citizen or interest group could sue the
4839 Secretary for not following the statute. Has the Secretary

4840 of Health and Human Services created any contingency plans in
4841 case she cannot make CLASS solvent? And basically Secretary
4842 Greenlee said no, we are not concerned about that.

4843 Well, we submitted this same question, Mr. Chairman, to
4844 CRS and got a report back dated November the 15th, 2011. I
4845 would ask unanimous consent to submit that for the record,
4846 which basically says very clearly--and I will read a couple
4847 of excerpts from that report, but particularly in regard to
4848 this Independent Advisory Council--and this comes straight
4849 from CRS--`despite the Secretary's October 2011 letter to
4850 Congress that the Agency does not see a viable path forward
4851 for CLASS implementation at this time, HHS could continue
4852 with the creation of the advisory council as it is required
4853 by law to do so.'" That is exactly what Mr. Pallone wants us
4854 to do.

4855 However, the duties of the advisory council are
4856 generally limited to advising on the administration of the
4857 CLASS program that will be established, the formulation of
4858 regulations to implement the CLASS insurance plan, and
4859 evaluating and recommended one of the three alternative
4860 benefit plans to be developed by the Secretary. The advisory
4861 council does not appear to be authorized to advise the
4862 secretary in any other function such as the creation of the
4863 benefit plan.

4864 And that is exactly what Mr. Pallone's amendment would
4865 do with this advisory council. Under the language of the
4866 law, they are not even permitted to do that. So I will be
4867 glad to yield to any of my colleagues on this side or at the
4868 appropriate time back to Mr. Pallone.

4869 Mr. {Pallone.} Mr. Gingrey, would you yield to me?

4870 Dr. {Gingrey.} But clearly leaving this language in
4871 there is just one more opportunity, as I said in previous
4872 testimony, to re-resurrect Freddie Kruger to bring this
4873 Dracula of a bill back to life. And we need to wipe the
4874 slate clean, we need to repeal just as the Boustany bill
4875 calls for, repeal CLASS and then get on and let the
4876 Clearinghouse do their work in the appropriate manner as
4877 suggested by Mr. Terry of Nebraska.

4878 If there is anybody on my side that would like to
4879 utilize this time, if not I will yield back to Mr. Pallone.

4880 Mr. {Pallone.} Would the gentleman yield? Thank you.

4881 First of all, let me say I disagree that the statute
4882 wouldn't allow the advisory council to, you know, do an
4883 analysis and make a recommendation about implementation of
4884 the CLASS Act, regardless of what HHS has said. But in any
4885 case, I would point out that the amendment specifically says
4886 that that is what the advisory council would be. So
4887 regardless of how you interpret the current law, if the

4888 amendment were adopted , it would clearly give the advisory
4889 council the ability to make a recommendation about
4890 implementation regardless of what HHS has said so far.

4891 Dr. {Gingrey.} Well, reclaiming my time and I have just
4892 got a couple of seconds, one left, but my good friend from
4893 Georgia, the good Democrat Representative Barrow just
4894 suggested that the better analogy would have been
4895 resurrecting the turkey since it is after Thanksgiving. And
4896 indeed this is a turkey of a bill. And I yield back.

4897 The {Chairman.} The gentleman's time has expired.

4898 Other members wishing to speak on the amendment?

4899 Seeing none, the vote occurs on the amendment offered by
4900 Mr. Pallone. All those in favor will say aye. Those opposed
4901 say no. Nos appear to have it. Roll call is requested. The
4902 clerk will call the roll.

4903 The {Clerk.} Mr. Barton?

4904 Mr. {Barton.} No.

4905 The {Clerk.} Mr. Barton votes no.

4906 Mr. Stearns?

4907 [No response.]

4908 The {Clerk.} Mr. Whitfield?

4909 [No response.]

4910 The {Clerk.} Mr. Shimkus?

4911 Mr. {Shimkus.} No.

- 4912 The {Clerk.} Mr. Shimkus votes no.
- 4913 Mr. Pitts?
- 4914 Mr. {Pitts.} No.
- 4915 The {Clerk.} Mr. Pitts votes no.
- 4916 Mrs. Bono Mack?
- 4917 Mrs. {Bono Mack.} No.
- 4918 The {Clerk.} Mrs. Bono Mack votes no.
- 4919 Mr. Walden?
- 4920 [No response.]
- 4921 The {Clerk.} Mr. Terry?
- 4922 Mr. {Terry.} No.
- 4923 The {Clerk.} Mr. Terry votes no.
- 4924 Mr. Rogers?
- 4925 [No response.]
- 4926 The {Clerk.} Mrs. Myrick?
- 4927 [No response.]
- 4928 The {Clerk.} Mr. Sullivan?
- 4929 [No response.]
- 4930 The {Clerk.} Mr. Murphy?
- 4931 [No response.]
- 4932 The {Clerk.} Mr. Burgess?
- 4933 [No response.]
- 4934 The {Clerk.} Mrs. Blackburn?
- 4935 [No response.]

4936 The {Clerk.} Mr. Bilbray?
4937 Mr. {Bilbray.} No.
4938 The {Clerk.} Mr. Bilbray votes no.
4939 Mr. Bass?
4940 Mr. {Bass.} No.
4941 The {Clerk.} Mr. Bass votes no.
4942 Mr. Gingrey?
4943 Dr. {Gingrey.} No.
4944 The {Clerk.} Mr. Gingrey votes no.
4945 Mr. Scalise?
4946 Mr. {Scalise.} No.
4947 The {Clerk.} Mr. Scalise votes no.
4948 Mr. Latta?
4949 Mr. {Latta.} No.
4950 The {Clerk.} Mr. Latta votes no.
4951 Mrs. McMorris Rodgers?
4952 Mrs. {McMorris Rodgers.} No.
4953 The {Clerk.} Mrs. McMorris Rodgers votes no.
4954 Mr. Harper?
4955 Mr. {Harper.} No.
4956 The {Clerk.} Mr. Harper votes no.
4957 Mr. Lance?
4958 Mr. {Lance.} No.
4959 The {Clerk.} Mr. Lance votes no.

4960 Mr. Cassidy?
4961 Dr. {Cassidy.} No.
4962 The {Clerk.} Mr. Cassidy votes no.
4963 Mr. Guthrie?
4964 Mr. {Guthrie.} No.
4965 The {Clerk.} Mr. Guthrie votes no.
4966 Mr. Olson?
4967 Mr. {Olson.} No.
4968 The {Clerk.} Mr. Olson votes no.
4969 Mr. McKinley?
4970 Mr. {McKinley.} No.
4971 The {Clerk.} Mr. McKinley votes no.
4972 Mr. Gardner?
4973 [No response.]
4974 The {Clerk.} Mr. Pompeo?
4975 Mr. {Pompeo.} No.
4976 The {Clerk.} Mr. Pompeo votes no.
4977 Mr. Kinzinger?
4978 Mr. {Kinzinger.} No.
4979 The {Clerk.} Mr. Kinzinger votes no.
4980 Mr. Griffith?
4981 Mr. {Griffith.} No.
4982 The {Clerk.} Mr. Griffith votes no.
4983 Mr. Waxman?

4984 Mr. {Waxman.} Aye.

4985 The {Clerk.} Mr. Waxman votes aye.

4986 Mr. Dingell?

4987 Mr. {Dingell.} Aye.

4988 The {Clerk.} Mr. Dingell votes aye.

4989 Mr. Markey?

4990 [No response.]

4991 The {Clerk.} Mr. Towns?

4992 Mr. {Towns.} Aye.

4993 The {Clerk.} Mr. Towns votes aye.

4994 Mr. Pallone?

4995 Mr. {Pallone.} Aye.

4996 The {Clerk.} Mr. Pallone votes aye.

4997 Mr. Rush?

4998 [No response.]

4999 The {Clerk.} Ms. Eshoo?

5000 Ms. {Eshoo.} Aye.

5001 The {Clerk.} Ms. Eshoo votes aye.

5002 Mr. Engel?

5003 [No response.]

5004 The {Clerk.} Mr. Green?

5005 Mr. {Green.} Aye.

5006 The {Clerk.} Mr. Green votes aye.

5007 Ms. DeGette?

5008 Ms. {DeGette.} Aye.

5009 The {Clerk.} Ms. DeGette votes aye.

5010 Mrs. Capps?

5011 Mrs. {Capps.} Aye.

5012 The {Clerk.} Mrs. Capps votes aye.

5013 Mr. Doyle?

5014 [No response.]

5015 The {Clerk.} Ms. Schakowsky?

5016 Ms. {Schakowsky.} Aye.

5017 The {Clerk.} Ms. Schakowsky votes aye.

5018 Mr. Gonzalez?

5019 [No response.]

5020 The {Clerk.} Mr. Inslee?

5021 Mr. {Inslee.} Aye.

5022 The {Clerk.} Mr. Inslee votes aye.

5023 Ms. Baldwin?

5024 [No response.]

5025 The {Clerk.} Mr. Ross?

5026 Mr. {Ross.} No.

5027 The {Clerk.} Mr. Ross votes no.

5028 Mr. Matheson?

5029 Mr. {Matheson.} No.

5030 The {Clerk.} Mr. Matheson votes no.

5031 Mr. Butterfield?

- 5032 Mr. {Butterfield.} Aye.
- 5033 The {Clerk.} Mr. Butterfield votes aye.
- 5034 Mr. Barrow?
- 5035 Mr. {Barrow.} No.
- 5036 The {Clerk.} Mr. Barrow votes no.
- 5037 Ms. Matsui?
- 5038 Ms. {Matsui.} Aye.
- 5039 The {Clerk.} Ms. Matsui votes aye.
- 5040 Mrs. Christensen?
- 5041 Mrs. {Christensen.} Aye.
- 5042 The {Clerk.} Mrs. Christensen votes aye.
- 5043 Ms. Castor?
- 5044 Ms. {Castor.} Aye.
- 5045 The {Clerk.} Ms. Castor votes aye.
- 5046 Chairman Upton?
- 5047 The {Chairman.} Votes no.
- 5048 The {Clerk.} Chairman Upton votes no.
- 5049 The {Chairman.} Other members wishing to vote? Mr.
- 5050 Whitfield?
- 5051 Mr. {Whitfield.} No.
- 5052 The {Clerk.} Mr. Whitfield votes no.
- 5053 The {Chairman.} Mr. Murphy?
- 5054 Mr. {Murphy.} No.
- 5055 The {Clerk.} Mr. Murphy votes no.

5056 The {Chairman.} Mr. Burgess?
5057 Dr. {Burgess.} No.
5058 The {Clerk.} Mr. Burgess votes no.
5059 The {Chairman.} Mrs. Myrick?
5060 Mrs. {Myrick.} No.
5061 The {Clerk.} Mrs. Myrick votes no.
5062 The {Chairman.} Mr. Gardner?
5063 Mr. {Gardner.} No.
5064 The {Clerk.} Mr. Gardner votes no.
5065 The {Chairman.} Mr. Walden?
5066 Mr. {Walden.} No.
5067 The {Clerk.} Mr. Walden votes no.
5068 The {Chairman.} Mr. Engel?
5069 Mr. {Engel.} Aye.
5070 The {Clerk.} Mr. Engel votes aye.
5071 The {Chairman.} Other members seeking to vote?
5072 Seeing no more, the clerk will report the tally.
5073 The {Clerk.} Mr. Chairman, on that vote there were 15
5074 ayes, 30 nays.
5075 The {Chairman.} 15 ayes, 30 nays. The amendment is not
5076 agreed to.
5077 Are there further amendments to the bill?
5078 The gentleman from New York, Mr. Towns.
5079 Mr. {Towns.} Mr. Chairman, I have an amendment at the

5080 desk.

5081 The {Clerk.} Mr. Towns, do you know the number?

5082 Mr. {Towns.} Amendment number one.

5083 The {Chairman.} The clerk will report the title.

5084 The {Clerk.} Amendment to H.R. 1173 offered by Mr.

5085 Towns of New York.

5086 [The amendment follows:]

5087 ***** INSERT 15 *****

|
5088 The {Chairman.} The amendment will be considered as
5089 read and the gentleman is recognized for 5 minutes in support
5090 of his amendment as the staff circulates the amendment.

5091 Mr. {Towns.} Thank you very much, Mr. Chairman.

5092 The purpose of my amendment is to deal with a very
5093 serious problem: the rising need for an affordable,
5094 sustainable long-term care program. The fact is that the
5095 need for and the cost associated with obtaining long-term
5096 care are increasing exponentially. However, long-term care
5097 is out of reach for most seniors and disabled Americans.
5098 Because of these costs, the current options for long-term
5099 care are not sustainable as we learned during the numerous
5100 Health Subcommittee hearings on the CLASS program. I was
5101 impressed by the level of bipartisan support for finding an
5102 affordable and sustainable solution to this problem.

5103 It is estimated that over 10 million Americans need
5104 long-term care. The demand for these services is expected to
5105 grow on account of the aging of the baby boom generation and
5106 the escalating number of people living with chronic
5107 conditions. The current options for obtaining long-term care
5108 are very limited. Currently, most individuals rely on help
5109 from family and friends, but a significant growing number of
5110 people are turning to paid care to help with long-term

5111 services needs.

5112 Most private health insurance does not cover long-term
5113 care, and those that do are expensive and out of reach for
5114 many low- and middle-income Americans. Over time, Medicaid
5115 has evolved to become our Nation's primary payer for the
5116 long-term services and support financing 43 percent of all
5117 spending on long-term care services. Unless other options
5118 are provided, Medicaid will remain the major financing system
5119 for long-term services and support in our Nation.

5120 The status quo is simply unsustainable. That is why we
5121 cannot merely repeal CLASS and leave no other options for
5122 those who need affordable long-term care. To that end, my
5123 amendment would not allow the repeal of CLASS without
5124 ensuring that there is a sustainable and affordable long-term
5125 care in its place. Let us try to be compassionate.

5126 As the population and cost associated with long-term
5127 increase, maintaining the status quo is unsustainable.
5128 Therefore, it is imperative to have other options in place.
5129 As Assistance Secretary of Aging Kathy Greenlee noted, ``the
5130 repeal of CLASS serves no helpful purpose.'' And I repeat,
5131 she said, ``it serves no helpful purpose.'' HHS indicated
5132 its intent to work with Congress to explore ways to address
5133 the Nation's pressing long-term care needs. My amendment
5134 said let us work together to be certain that we have an

5135 affordable, sustainable long-term care program is in place
5136 before we repeal the CLASS program.

5137 Mr. Chairman, I urge my colleagues to support this
5138 amendment. And on that note, I will yield back. Before I
5139 yield back, Mr. Chairman, let me yield to the gentleman from
5140 New Jersey.

5141 Mr. {Pallone.} Let me support--

5142 The {Chairman.} The gentleman yields to Mr. Pallone.

5143 Mr. {Towns.} I yield to Mr. Pallone.

5144 The {Chairman.} All right. Mr. Pallone is recognized.

5145 Mr. {Pallone.} Thank you, Mr. Chairman.

5146 I just want to support Mr. Towns' amendment. You know,
5147 it concerns me a great deal that my colleagues on the other
5148 side keep saying they want to address long-term care, but yet
5149 they repeal CLASS or suggested repeal of CLASS without
5150 putting anything in its place. I think that is wrong. I
5151 think Mr. Towns' amendment makes clear that it shouldn't be
5152 repealed unless there is a program in its place.

5153 And I don't quite understand the fear on the other side.
5154 I heard Mr. Gingrey talk about a lawsuit. I am not looking
5155 for lawsuits, but I mean the bottom line is why is there a
5156 fear that somehow, you know, we might resurrect this and
5157 actually move forward with a long-term care solution? If you
5158 really believe that we should have one and you are not

5159 suggesting that we just abandon the issue altogether, then
5160 there doesn't seem to be any harm whatsoever in leaving CLASS
5161 in place, either have this advisory council or someone else,
5162 you know, come up with a proposal that would allow us to move
5163 forward with the framework.

5164 I don't understand how you suggest on the one hand that
5165 you really care about the issue but then on the other hand
5166 say, well, let us just repeal it without an alternative. So
5167 I think that Mr. Towns' amendment is really the right way to
5168 go.

5169 Mr. {Barton.} [Presiding] Gentleman's time has--2
5170 seconds. Who seeks recognition? I was going to recognize
5171 Dr. Burgess but Mr. Shimkus seeks recognition, so we will
5172 recognize Mr. Shimkus for 5 minutes.

5173 Mr. {Shimkus.} Thank you. And I wasn't going to take
5174 the whole time. I was going to yield to Dr. Gingrey.

5175 First of all, let me just to my colleagues, Mr. Pallone
5176 and Mr. Towns, great respect. You know, sometimes we get
5177 carried away in the battle. No one questions the intent, and
5178 you are right. There is a huge need to address long-term
5179 care. That part of the debate on the amendments earlier on
5180 these state partnership programs and that exchange. There
5181 has been some progress but not nearly enough made. I do
5182 think we need to be involved in this issue.

5183 The whole reason we are here is because HHS did a pretty
5184 thorough analysis of the CLASS program. In their report,
5185 they looked at a basic plan, a modified CLASS plan option,
5186 and a CLASS plan with phased enrollment, family of options,
5187 temporary exclusion, a pre-exchange plan, a temporary
5188 exclusion plan, limited initial benefits, prepaid benefit.
5189 We talked about this in the hearing. Some with premiums as
5190 low as \$114 to \$3,000 a month cherry picking all the--and all
5191 their analysis came up that they couldn't guarantee solvency
5192 over 75 years. So why I am supportive of what we are doing
5193 is let us get this cleared off the deck and then I would hope
5194 that the Health Subcommittee would start based upon your
5195 encouragement they have hearings on long-term care, and look
5196 at ways to really address this and I think we can move
5197 forward.

5198 But our issue is I don't agree with HHS very much. They
5199 have been helpful on some issues but they have done a pretty
5200 thorough analysis of the program and they said it just could
5201 not be done.

5202 So with that I would like to yield my time to Dr.
5203 Gingrey.

5204 Dr. {Gingrey.} I appreciate the gentleman for yielding.
5205 I mean you know the point is he suggested and I agree with
5206 that that we have great respect for Mr. Pallone and Mr.

5207 Towns, and what they are saying is essentially very similar
5208 to the attitude on this side. We don't want Medicaid to be
5209 the payer of last resort for long-term care. That is not
5210 what Medicaid was designed for. And, you know, back in 2005
5211 with the Long-Term Care Partnership Program, as I mentioned
5212 earlier, some 280,000 folks have taken advantage of that in
5213 40 different States. And with the amendment that we have
5214 passed by Mr. Terry in regard to the Clearinghouse, I think
5215 that we can work harder to get that information out there to
5216 individuals so that they know that they don't have to put
5217 themselves in a position of being destitute or appearing to
5218 be destitute by some scheme that lawyers come up with and
5219 break our Medicaid program.

5220 Now, let me say one other thing before I yield back to
5221 whoever wants time. Mr. Towns, basically in what he said in
5222 his amendment is essentially what Secretary Greenlee said to
5223 us at the hearing. Hey, what is the harm in leaving it on
5224 the books? Well, again, let me refer back to the CRS report
5225 of the 15th of this month. And this is a direct quote, page
5226 5 and 6, ``a failure by the Secretary to designate a CLASS
5227 benefit plan by October the 1st, 2012,' ' less than a year
5228 away presumably predicated upon a determination by her that
5229 it is not possible to develop 3 actuarially sound benefit
5230 plans that meet all the requirements of the Act would appear

5231 to be ``a final agency action from which legal consequences
5232 will flow.'' Some individual undoubtedly or group of
5233 individuals will file suit against the Federal Government.
5234 This will stay in courts for 10 years and all the while the
5235 private marketplace is going to just sit there in limbo.
5236 That is why we need to defeat the Towns amendment and wipe
5237 this slate clean.

5238 I will yield to Dr. Burgess if he would like time.

5239 Mr. {Barton.} Actually, I don't think you can yield.

5240 Dr. {Gingrey.} Excuse me. I yield back to the
5241 chairman.

5242 Mr. {Barton.} Mr. Shimkus.

5243 Mr. {Shimkus.} Well, I don't want to yield to Dr.
5244 Burgess. No, I will. I will yield to Dr. Burgess.

5245 Mr. {Barton.} Dr. Burgess is recognized.

5246 Dr. {Burgess.} Claim my own time.

5247 Can I just ask a question of counsel?

5248 Currently, as it is drawn, how many people are covered
5249 under the CLASS Act?

5250 {Counsel.} Zero, sir.

5251 Dr. {Burgess.} And how many people are covered under
5252 partnership programs today?

5253 {Counsel.} Just over 286,000.

5254 Dr. {Burgess.} And how many States participated in

5255 partnership programs we worked on the Deficit Reduction Act?

5256 {Counsel.} The Long-Term Care Partnership Program

5257 contractor site shows 44 States with active policies.

5258 Dr. {Burgess.} But prior to our refurbishing that?

5259 {Counsel.} Four.

5260 Dr. {Burgess.} Four. So we have had a massive

5261 expansion of this program under legislation worked on by this

5262 committee. You know, I am kind of reminded of the old Mark

5263 Twain observation about Wagner's music. It is better than it

5264 sounds. That is kind of where we are with the CLASS Act, but

5265 in reality, there are things on the ground that are working.

5266 CLASS Act is not designed to work, was never designed to

5267 work. We ought to finish the job and eliminate the CLASS Act

5268 from consideration and then come back to this committee and

5269 work on plausible solutions to this problem.

5270 I will yield back to the gentleman.

5271 Mr. {Barton.} The gentleman's time has expired.

5272 Does anybody else seek--does the gentleman from New

5273 Jersey seek recognition?

5274 Mr. {Pallone.} Yes, Mr. Chairman.

5275 Mr. {Barton.} The gentleman is recognized for 5

5276 minutes.

5277 Mr. {Pallone.} Mr. Chairman, I would yield to the

5278 gentleman from New York, Mr. Towns.

5279 Mr. {Towns.} I thank the gentleman for yielding.

5280 Let me say that, you know, it is amazing how the
5281 Greenlee, what was stated--she said the repeal of CLASS
5282 serves no helpful purpose. I mean that is what she said.
5283 And then HHS indicated its intent to work with Congress to
5284 explore ways to address the Nation's pressing long-term care
5285 needs. My amendment says let us work together to be certain
5286 that we have an affordable, sustainable long-term care before
5287 repealing the CLASS program. That is what it says. And I
5288 was at the hearing as well, and how you have gotten that
5289 interpretation that that needs repeal CLASS, I don't know how
5290 you got that out of it. I mean so let us just move forward
5291 recognizing the fact that we should not repeal it and
5292 continue to work on it as was suggested by HHS. Being a
5293 gentleman from Illinois who is so impressed with what HHS
5294 said, I mean let us look at the total statement.

5295 Mr. {Barton.} Does the gentleman yield back?

5296 Mr. {Towns.} I would be delighted to yield. I am
5297 sorry. I don't have the time.

5298 Mr. {Barton.} Does Mr. Pallone yield back?

5299 Mr. {Pallone.} Unless someone else wants my time I
5300 would yield back.

5301 Mr. {Barton.} The gentlelady from the Virgin Islands.

5302 Mrs. {Christensen.} Yeah, I just want to support the

5303 Towns amendment. There are 10 million Americans and their
5304 families who need long-term care. I am afraid that if we
5305 actually repeal this that it will be a long time before we
5306 get this close to anything like a CLASS Act or providing
5307 affordable long-term care again. A lot of work went into it.
5308 I wish that the amendment on the council had been adopted
5309 because I think the work of the council could have really
5310 informed us going forward. But I think it is important not
5311 to repeal it. The Secretary has suspended it. Again, the
5312 statement was made that the repeal serves no useful purpose,
5313 but I think there is a useful purpose in continuing to work
5314 with the Department of Health and Human Services to find a
5315 long-term program that is affordable to meet the needs of
5316 those 10 million seniors and children and adults with
5317 disabilities.

5318 I will yield back.

5319 Mr. {Barton.} The gentleman who controls the time, Mr.
5320 Pallone?

5321 Mr. {Pallone.} Yeah, unless someone else wants my time,
5322 I would yield back.

5323 Mr. {Barton.} The gentleman yields back.

5324 Is there any other discussion on the Towns amendment?

5325 Seeing no hands raised, the vote now occurs on the Towns
5326 amendment. All those in favor say aye. All those opposed

5327 say no.

5328 Mr. {Towns.} Mr. Chairman, roll call vote.

5329 Mr. {Barton.} Well, I have to call it first.

5330 Mr. {Towns.} Yeah, go ahead.

5331 Mr. {Barton.} The nos do appear to have it. The

5332 gentleman requests a roll call vote?

5333 Mr. {Towns.} Yes, I figured that.

5334 Mr. {Barton.} All right. The clerk will call the roll.

5335 Those in favor vote aye; those opposed vote no on the Towns

5336 amendment.

5337 The {Clerk.} Mr. Barton?

5338 Mr. {Barton.} No.

5339 The {Clerk.} Mr. Barton votes no.

5340 Mr. Stearns?

5341 [No response.]

5342 The {Clerk.} Mr. Whitfield?

5343 Mr. {Whitfield.} No.

5344 The {Clerk.} Mr. Whitfield votes no.

5345 Mr. Shimkus?

5346 Mr. {Shimkus.} No.

5347 The {Clerk.} Mr. Shimkus votes no.

5348 Mr. Pitts?

5349 [No response.]

5350 The {Clerk.} Mrs. Bono Mack?

5351 Mrs. {Bono Mack.} No.

5352 The {Clerk.} Mrs. Bono Mack votes no.

5353 Mr. Walden?

5354 [No response.]

5355 The {Clerk.} Mr. Terry?

5356 [No response.]

5357 The {Clerk.} Mr. Rogers?

5358 [No response.]

5359 The {Clerk.} Mrs. Myrick?

5360 [No response.]

5361 The {Clerk.} Mr. Sullivan?

5362 [No response.]

5363 The {Clerk.} Mr. Murphy?

5364 Mr. {Murphy.} No.

5365 The {Clerk.} Mr. Murphy votes no.

5366 Mr. Burgess?

5367 Dr. {Burgess.} No.

5368 The {Clerk.} Mr. Burgess votes no.

5369 Mrs. Blackburn?

5370 [No response.]

5371 The {Clerk.} Mr. Bilbray?

5372 Mr. {Bilbray.} No.

5373 The {Clerk.} Mr. Bilbray votes no.

5374 Mr. Bass?

5375 Mr. {Bass.} No.

5376 The {Clerk.} Mr. Bass votes no.

5377 Mr. Gingrey?

5378 Dr. {Gingrey.} No.

5379 The {Clerk.} Mr. Gingrey votes no.

5380 Mr. Scalise?

5381 Mr. {Scalise.} No.

5382 The {Clerk.} Mr. Scalise votes no.

5383 Mr. Latta?

5384 Mr. {Latta.} No.

5385 The {Clerk.} Mr. Latta votes no.

5386 Mrs. McMorris Rodgers?

5387 Mrs. {McMorris Rodgers.} No.

5388 The {Clerk.} Mrs. McMorris Rodgers votes no.

5389 Mr. Harper?

5390 Mr. {Harper.} No.

5391 The {Clerk.} Mr. Harper votes no.

5392 Mr. Lance?

5393 Mr. {Lance.} No.

5394 The {Clerk.} Mr. Lance votes no.

5395 Mr. Cassidy?

5396 Dr. {Cassidy.} No.

5397 The {Clerk.} Mr. Cassidy votes no.

5398 Mr. Guthrie?

5399 Mr. {Guthrie.} No.

5400 The {Clerk.} Mr. Guthrie votes no.

5401 Mr. Olson?

5402 Mr. {Olson.} No.

5403 The {Clerk.} Mr. Olson votes no.

5404 Mr. McKinley?

5405 Mr. {McKinley.} No.

5406 The {Clerk.} Mr. McKinley votes no.

5407 Mr. Gardner?

5408 Mr. {Gardner.} No.

5409 The {Clerk.} Mr. Gardner votes no.

5410 Mr. Pompeo?

5411 Mr. {Pompeo.} No.

5412 The {Clerk.} Mr. Pompeo votes no.

5413 Mr. Kinzinger?

5414 Mr. {Kinzinger.} No.

5415 The {Clerk.} Mr. Kinzinger votes no.

5416 Mr. Griffith?

5417 Mr. {Griffith.} No.

5418 The {Clerk.} Mr. Griffith votes no.

5419 Mr. Waxman?

5420 [No response.]

5421 The {Clerk.} Mr. Dingell?

5422 Mr. {Dingell.} Votes aye.

5423 The {Clerk.} Mr. Dingell votes aye.
5424 Mr. Markey?
5425 [No response.]
5426 The {Clerk.} Mr. Towns?
5427 Mr. {Towns.} Aye.
5428 The {Clerk.} Mr. Towns votes aye.
5429 Mr. Pallone?
5430 Mr. {Pallone.} Aye.
5431 The {Clerk.} Mr. Pallone votes aye.
5432 Mr. Rush?
5433 [No response.]
5434 The {Clerk.} Ms. Eshoo?
5435 Ms. {Eshoo.} Aye.
5436 The {Clerk.} Ms. Eshoo votes aye.
5437 Mr. Engel?
5438 Mr. {Engel.} Aye.
5439 The {Clerk.} Mr. Engel votes aye.
5440 Mr. Green?
5441 Mr. {Green.} Aye.
5442 The {Clerk.} Mr. Green votes aye.
5443 Ms. DeGette?
5444 Ms. {DeGette.} Aye.
5445 The {Clerk.} Ms. DeGette votes aye.
5446 Mrs. Capps?

5447 Mrs. {Capps.} Aye.

5448 The {Clerk.} Mrs. Capps votes aye.

5449 Mr. Doyle?

5450 [No response.]

5451 The {Clerk.} Ms. Schakowsky?

5452 Ms. {Schakowsky.} Aye.

5453 The {Clerk.} Ms. Schakowsky votes aye.

5454 Mr. Gonzalez?

5455 [No response.]

5456 The {Clerk.} Mr. Inslee?

5457 Mr. {Inslee.} Aye.

5458 The {Clerk.} Mr. Inslee votes aye.

5459 Ms. Baldwin?

5460 [No response.]

5461 The {Clerk.} Mr. Ross?

5462 Mr. {Ross.} No.

5463 The {Clerk.} Mr. Ross votes no.

5464 Mr. Matheson?

5465 Mr. {Matheson.} No.

5466 The {Clerk.} Mr. Matheson votes no.

5467 Mr. Butterfield?

5468 Mr. {Butterfield.} Aye.

5469 The {Clerk.} Mr. Butterfield votes aye.

5470 Mr. Barrow?

5471 Mr. {Barrow.} No.

5472 The {Clerk.} Mr. Barrow votes no.

5473 Ms. Matsui?

5474 Ms. {Matsui.} Aye.

5475 The {Clerk.} Ms. Matsui votes aye.

5476 Mrs. Christensen?

5477 Mrs. {Christensen.} Aye.

5478 The {Clerk.} Mrs. Christensen votes aye.

5479 Ms. Castor?

5480 Ms. {Castor.} Aye.

5481 The {Clerk.} Ms. Castor votes aye.

5482 Chairman Upton?

5483 [No response.]

5484 Mr. {Barton.} Members that haven't cast their vote?

5485 The gentleman from Pennsylvania?

5486 Mr. {Pitts.} No.

5487 The {Clerk.} Mr. Pitts votes no.

5488 Mr. {Barton.} The gentleman from Oregon?

5489 Mr. {Walden.} No.

5490 The {Clerk.} Mr. Walden votes no.

5491 Mr. {Barton.} The gentleman from Nebraska?

5492 Mr. {Terry.} No.

5493 The {Clerk.} Mr. Terry votes no.

5494 Mr. {Barton.} The gentelady from North Carolina?

5495 Mrs. {Myrick.} No.

5496 The {Clerk.} Mrs. Myrick votes no.

5497 Mr. {Barton.} Are there any members on the minority
5498 side that haven't voted? Do any members wish to change their
5499 vote? If not, the clerk will tally and report the vote.

5500 The gentleman from Illinois, Mr. Rush, seeks to be
5501 recorded.

5502 Mr. {Rush.} Votes aye.

5503 The {Clerk.} Mr. Rush votes aye.

5504 Mr. {Barton.} Be here on time next time, Mr. Rush.

5505 The {Clerk.} Mr. Chairman, on that vote there were 15
5506 ayes, 29 nays.

5507 Mr. {Barton.} 15 ayes, 29 nays. The amendment is not
5508 agreed to.

5509 Chairman Upton has informed me that he would like to
5510 finish this bill before we go to vote at 4:00 if at all
5511 possible. And if that does occur, we will not have to come
5512 back because we do not plan to take up the FCC bill.

5513 Are there other amendments to the bill?

5514 The gentleman from New York, Mr. Engel.

5515 Mr. {Engel.} Thank you, Mr. Chairman.

5516 In light of what you just said, I will try to speak
5517 fast.

5518 Mr. {Barton.} Does the gentleman have an amendment at

5519 the desk?

5520 Mr. {Engel.} Yes, I do.

5521 Mr. {Barton.} The clerk will report the amendment.

5522 The {Clerk.} Amendment to H.R. 1173 offered by Mr.

5523 Engel of New York.

5524 [The amendment follows:]

5525 ***** INSERT 16 *****

|
5526 Mr. {Barton.} Ask unanimous consent the amendment be
5527 considered as read.

5528 And the gentleman from New York is recognized for 5
5529 minutes in support of his amendment.

5530 Mr. {Engel.} Thank you, Mr. Chairman.

5531 Let me first say that I really think it is unfortunate
5532 that we are here today pursuing and really wasting our
5533 efforts on legislation that we know has no chance of becoming
5534 law when we should be putting our heads together and spending
5535 our time getting Americans back to work and strengthening the
5536 economy.

5537 I offer my amendment to H.R. 1173, which is of course
5538 the repeal of the CLASS Act, and I am really aghast that we
5539 would repeal the CLASS Act. I said so in my opening
5540 statement yesterday. Repealing it and replacing it with
5541 nothing else is not my way of being responsible. So what my
5542 amendment will do, it would prevent this repeal from taking
5543 effect until the Secretary of Health and Human Services
5544 certifies to Congress that 50 percent of individuals in the
5545 United States who are 18 years of age or older have private
5546 long-term care insurance.

5547 Now, I cannot see why any of my colleagues, particularly
5548 my Republican friends would not support this amendment

5549 considering the faith that they place in private insurance to
5550 bring down costs that we know our Nation's seniors are
5551 suffering under. And more so, they must recognize that it is
5552 irresponsible to repeal the framework of a program that helps
5553 our Nation's seniors without any plan or substitute. We have
5554 heard that silence before when my Republican colleagues were
5555 last in the majority.

5556 Now, I don't agree with the underlying bill and I urge
5557 my colleagues to vote against it and I will vote against it,
5558 but my Republican colleagues must know that they are not
5559 being responsible with the well being of those who cannot
5560 afford long-term care coverage. We have been down this road
5561 before. We have all heard the promises from the majority
5562 that they promised to repeal and replace agenda for the
5563 Affordable Care Act. All we get are various repeals but we
5564 don't really get any replacements. Have we seen any
5565 replacements? No, we haven't. Have we had a single
5566 committee hearing outlining the majority's vision for
5567 providing access to affordable quality care? Certainly not.
5568 Does the majority have an agenda for managing spiraling costs
5569 that are dragging our Nation deeper and deeper into debt? I
5570 don't see it. It is the same song and dance day after day,
5571 week after week, repeal but no replace.

5572 So Mr. Chairman, my amendment is an opportunity. I

5573 think it is a solution. While I strongly disagree with the
5574 continuous repeal-and-ignore strategy that this committee
5575 seems to be taking in the 112th Congress, we have a chance to
5576 come to the table and offer real solutions. This amendment
5577 is a step in the right direction of recognizing that this
5578 country has a serious issue with affordable long-term care
5579 insurance and makes a bold statement that we are determined
5580 to do something about it rather than stick our head in the
5581 sand and pretend that all these problems will magically go
5582 away if we just repeal, repeal, and repeal.

5583 So I urge my colleagues to pass this amendment and I
5584 yield back my time.

5585 Mr. {Barton.} The gentleman yields back.

5586 Who seeks recognition? The gentleman from Georgia, Dr.
5587 Gingrey.

5588 Dr. {Gingrey.} Mr. Chairman, thank you. And I rise to
5589 respectfully oppose the Engel amendment.

5590 Mr. {Barton.} The gentleman is recognized for 5 minutes
5591 and hopefully won't take it all.

5592 Dr. {Gingrey.} And I won't, Mr. Chairman. I would just
5593 say in this amendment don't repeal CLASS until 50 percent of
5594 individuals 18 and older have signed up for long-term care
5595 insurance. Again with all due respect Mr. Engel might as
5596 well have put in there mandatory requirement that people 18

5597 and older sign up for long-term care insurance. I don't
5598 think we will ever get to the 50 percent mark even in a free
5599 market. But clearly as long as the CLASS law stays on the
5600 books and indeed can be resurrected as was said many times,
5601 it is just going to disincentivize and discourage the free
5602 market from continuing.

5603 There are some 8 million Americans today who have long-
5604 term care insurance, and we talked about the program that was
5605 created in 2005 to incentivize folks and some 285,000 counsel
5606 told us just a few minutes ago signed up for it whereby they
5607 would be able to set aside a certain amount of their assets,
5608 and that encourages them to go into the free market and
5609 purchase long-term care insurance. So the Engel amendment,
5610 quite honestly, until 50 percent of those over 18 have signed
5611 up for long-term care? So he wants to continue the CLASS
5612 Act, keep it on the books in perpetuity.

5613 And with that, that is all I can say in opposition to
5614 the amendment.

5615 Mr. {Bilbray.} Will the gentleman yield?

5616 Dr. {Gingrey.} I will be glad to yield to anybody who
5617 wants--

5618 Mr. {Bilbray.} Will the gentleman yield?

5619 Dr. {Gingrey.} I yield to the--

5620 Mr. {Barton.} The gentleman from California.

5621 Dr. {Gingrey.} --gentleman from California, Mr.
5622 Bilbray.

5623 Mr. {Bilbray.} I think you hit on the point. And then
5624 testimony brought into it, if you want this system to work,
5625 then you go back to your base bill and just mandate that all
5626 young people have to buy insurance. The insurance companies
5627 would love it. You just do a mandate and just say if you are
5628 legally in this country, you can't live here unless you buy
5629 long-term insurance. And the insurance companies will love
5630 it and support it and that is how you would be able to save
5631 the system. It seems like the proposal of the base bill was
5632 the answer to everything is a federal mandate on individuals
5633 that if they want to live in the United States, there are
5634 certain things we are going to force you to buy, and why the
5635 heck--why didn't you include this in that--

5636 Dr. {Gingrey.} And reclaiming my time, the gentleman
5637 makes a good point. And in fact this is one of the options
5638 that the Secretary of Health and Human Services looked at,
5639 making it mandatory and they rejected that.

5640 At this point I will yield whatever time that he wants
5641 to, my physician colleague from Texas, Dr. Burgess.

5642 Mr. {Barton.} Okay. Would you yield for a question
5643 from Mr. Engel, the author of the amendment?

5644 Dr. {Gingrey.} Yes, I will be glad to yield to Mr.

5645 Engel for a question.

5646 Mr. {Engel.} Thank you. I thank my friend from Georgia
5647 for yielding.

5648 Since he was objecting to the 50 percent threshold
5649 saying that it was too high a threshold to climb, is there a
5650 lower threshold that he would accept than 50 percent?
5651 Because, you see, what I am trying to do, what scares me is
5652 that we are repealing the CLASS Act but we are not replacing
5653 it with anything. I am trying to see if we can replace it
5654 and so I am wondering that.

5655 Dr. {Gingrey.} Well--

5656 Mr. {Engel.} And with Mr. Bilbray, we tried in the
5657 Affordable Care Act to have the mandate and that is now
5658 being--

5659 Dr. {Gingrey.} Well, reclaiming my time and giving an
5660 answer to the gentleman--

5661 Mr. {Engel.} Thank you.

5662 Dr. {Gingrey.} --no, I would not be in favor of any
5663 percentage, deadline, or requirement before repealing CLASS
5664 because of the things that I pointed out. And I don't want
5665 to repeat those. You have all heard that. I am going to
5666 yield my remaining time to Dr. Burgess.

5667 Dr. {Burgess.} I thank the gentleman for yielding. Can
5668 I just ask counsel a question?

5669 The CLASS Act as drawn, is it long-term care insurance
5670 or is it a supplemental assistance program?

5671 {Counsel.} It is a supplemental daily benefit.

5672 Dr. {Burgess.} And as you testified earlier, there are
5673 zero people enrolled in CLASS but even if there was one
5674 person enrolled in CLASS, that person would not be counted as
5675 someone who had long-term care insurance. Is that correct?

5676 {Counsel.} Correct.

5677 Dr. {Burgess.} So if there were 100,000 people enrolled
5678 in CLASS, that would not count as 100,000 people who had
5679 long-term care insurance, correct?

5680 {Counsel.} In defining long-term care insurance is not
5681 a daily benefit, that is correct.

5682 Dr. {Burgess.} Well, long-term care insurance, correct,
5683 is much more than what was defined in the CLASS Act, so I
5684 don't see this amendment gets us anywhere other than spending
5685 more time on a process that has already consumed more time
5686 than it should have. I would reject this amendment and get
5687 on with the vote on the underlying bill.

5688 And I yield back.

5689 Dr. {Gingrey.} And I yield back the balance of my time.

5690 Mr. {Green.} Mr. Chairman?

5691 Mr. {Barton.} Does any other person seek recognition?

5692 Gentleman from Texas--

5693 Mr. {Green.} Mr. Chairman, I just have a brief
5694 observation. We have almost been 5 hours here today and our
5695 first bill we did was prohibit a regulation of farm dust that
5696 the EPA said they don't want to regulate. This bill repeals
5697 a portion of the Affordable Care Act that Health and Human
5698 Services, they don't want to continue. Can we possibly, next
5699 time we spend 5 hours in our legislative committee, deal with
5700 issues that are much more important, maybe discussing the
5701 reform of maybe the Affordable Care Act and maybe even
5702 dealing--which you and I share some concerns about the EPA on
5703 real issues that we have conflict with them.

5704 Mr. {Barton.} I will take that--

5705 Mr. {Green.} So with that I will yield my time to my
5706 colleague from New York.

5707 Mr. {Barton.} I will take that up with the chairman,
5708 but I think this is a real issue.

5709 Mr. {Engel.} I thank my colleague from Texas for
5710 yielding to me.

5711 I just wanted to make the point that in the question
5712 that was asked before of counsel, my amendment does not
5713 define long-term care at all. So I would be happy to work
5714 with my Republican colleagues to have a definition that we
5715 could agree upon and use to help. We don't define it so I am
5716 open to some kind of compromise to define it.

5717 My problem is simply that by repealing the CLASS Act and
5718 not replacing it with anything, we are leaving all these
5719 people in the lurch, and I think that is an irresponsible and
5720 dangerous thing to do.

5721 Mr. {Barton.} Does the gentleman yield back?

5722 Mr. {Engel.} I yield back.

5723 Mr. {Barton.} Okay. Is there any other person seeking
5724 recognition? Seeing none, the vote now occurs on the Engel
5725 amendment and I am going to turn it over to the chairman to
5726 have that vote.

5727 The {Chairman.} [Presiding] All those in favor, say
5728 aye. All those opposed say no. The nos appear to have it.
5729 The nos have it. Roll call is requested? Okay. The clerk
5730 will call the roll quickly.

5731 The {Clerk.} Mr. Barton?

5732 Mr. {Barton.} No.

5733 The {Clerk.} Mr. Barton votes no.

5734 Mr. {Barton.} They were well behaved, Mr. Chairman,
5735 until you got back.

5736 The {Clerk.} Mr. Stearns votes no.

5737 Mr. Whitfield?

5738 Mr. {Whitfield.} No.

5739 The {Clerk.} Mr. Whitfield votes no.

5740 Mr. Shimkus?

5741 Mr. {Shimkus.} No.
5742 The {Clerk.} Mr. Shimkus votes no.
5743 Mr. Pitts?
5744 Mr. {Pitts.} No.
5745 The {Clerk.} Mr. Pitts votes no.
5746 Mrs. Bono Mack?
5747 Mrs. {Bono Mack.} No.
5748 The {Clerk.} Mrs. Bono Mack votes no.
5749 Mr. Walden?
5750 Mr. {Walden.} No.
5751 The {Clerk.} Mr. Walden votes no.
5752 Mr. Terry?
5753 Mr. {Terry.} No.
5754 The {Clerk.} Mr. Terry votes no.
5755 Mr. Rogers?
5756 [No response.]
5757 The {Clerk.} Mrs. Myrick?
5758 [No response.]
5759 The {Clerk.} Mr. Sullivan?
5760 [No response.]
5761 The {Clerk.} Mr. Murphy?
5762 Mr. {Murphy.} No.
5763 The {Clerk.} Mr. Murphy votes no.
5764 Mr. Burgess?

5765 Dr. {Burgess.} No.

5766 The {Clerk.} Mr. Burgess votes no.

5767 Mrs. Blackburn?

5768 Mrs. {Blackburn.} No.

5769 The {Clerk.} Mrs. Blackburn votes no.

5770 Mr. Bilbray?

5771 Mr. {Bilbray.} No.

5772 The {Clerk.} Mr. Bilbray votes no.

5773 Mr. Bass?

5774 Mr. {Bass.} No.

5775 The {Clerk.} Mr. Bass votes no.

5776 Mr. Gingrey?

5777 Dr. {Gingrey.} No.

5778 The {Clerk.} Mr. Gingrey votes no.

5779 Mr. Scalise?

5780 Mr. {Scalise.} No.

5781 The {Clerk.} Mr. Scalise votes no.

5782 Mr. Latta?

5783 Mr. {Latta.} No.

5784 The {Clerk.} Mr. Latta votes no.

5785 Mrs. McMorris Rodgers?

5786 Mrs. {McMorris Rodgers.} No.

5787 The {Clerk.} Mrs. McMorris Rodgers votes no.

5788 Mr. Harper?

5789 Mr. {Harper.} No.
5790 The {Clerk.} Mr. Harper votes no.
5791 Mr. Lance?
5792 Mr. {Lance.} No.
5793 The {Clerk.} Mr. Lance votes no.
5794 Mr. Cassidy?
5795 Dr. {Cassidy.} No.
5796 The {Clerk.} Mr. Cassidy votes no.
5797 Mr. Guthrie?
5798 Mr. {Guthrie.} No.
5799 The {Clerk.} Mr. Guthrie votes no.
5800 Mr. Olson?
5801 Mr. {Olson.} No.
5802 The {Clerk.} Mr. Olson votes no.
5803 Mr. McKinley?
5804 Mr. {McKinley.} No.
5805 The {Clerk.} Mr. McKinley votes no.
5806 Mr. Gardner?
5807 Mr. {Gardner.} No.
5808 The {Clerk.} Mr. Gardner votes no.
5809 Mr. Pompeo?
5810 Mr. {Pompeo.} No.
5811 The {Clerk.} Mr. Pompeo votes no.
5812 Mr. Kinzinger?

5813 Mr. {Kinzinger.} No.

5814 The {Clerk.} Mr. Kinzinger votes no.

5815 Mr. Griffith?

5816 Mr. {Griffith.} No.

5817 The {Clerk.} Mr. Griffith votes no.

5818 Mr. Waxman?

5819 [No response.]

5820 The {Clerk.} Mr. Dingell?

5821 Mr. {Dingell.} Aye.

5822 The {Clerk.} Mr. Dingell votes aye.

5823 Mr. Markey?

5824 [No response.]

5825 The {Clerk.} Mr. Towns?

5826 Mr. {Towns.} Aye.

5827 The {Clerk.} Mr. Towns votes aye.

5828 Mr. Pallone?

5829 Mr. {Pallone.} Aye.

5830 The {Clerk.} Mr. Pallone votes aye.

5831 Mr. Rush?

5832 Mr. {Rush.} Aye.

5833 The {Clerk.} Mr. Rush votes aye.

5834 Ms. Eshoo?

5835 Ms. {Eshoo.} Aye.

5836 The {Clerk.} Ms. Eshoo votes aye.

5837 Mr. Engel?
5838 Mr. {Engel.} Aye.
5839 The {Clerk.} Mr. Engel votes aye.
5840 Mr. Green?
5841 Mr. {Green.} Aye.
5842 The {Clerk.} Mr. Green votes aye.
5843 Ms. DeGette?
5844 Ms. {DeGette.} Aye.
5845 The {Clerk.} Ms. DeGette votes aye.
5846 Mrs. Capps?
5847 Mrs. {Capps.} Aye.
5848 The {Clerk.} Mrs. Capps votes aye.
5849 Mr. Doyle?
5850 Mr. {Doyle.} Aye.
5851 The {Clerk.} Mr. Doyle votes aye.
5852 Ms. Schakowsky?
5853 Ms. {Schakowsky.} Aye.
5854 The {Clerk.} Ms. Schakowsky votes aye.
5855 Mr. Gonzalez?
5856 [No response.]
5857 The {Clerk.} Mr. Inslee?
5858 Mr. {Inslee.} Aye.
5859 The {Clerk.} Mr. Inslee votes aye.
5860 Ms. Baldwin?

5861 [No response.]

5862 The {Clerk.} Mr. Ross?

5863 Mr. {Ross.} No.

5864 The {Clerk.} Mr. Ross votes no.

5865 Mr. Matheson?

5866 [No response.]

5867 The {Clerk.} Mr. Butterfield?

5868 Mr. {Butterfield.} Yes.

5869 The {Clerk.} Mr. Butterfield votes aye.

5870 Mr. Barrow?

5871 Mr. {Barrow.} No.

5872 The {Clerk.} Mr. Barrow votes no.

5873 Ms. Matsui?

5874 Ms. {Matsui.} Aye.

5875 The {Clerk.} Ms. Matsui votes aye.

5876 Mrs. Christensen?

5877 Mrs. {Christensen.} Aye.

5878 The {Clerk.} Mrs. Christensen votes aye.

5879 Ms. Castor?

5880 Ms. {Castor.} Aye.

5881 The {Clerk.} Ms. Castor votes aye.

5882 Chairman Upton?

5883 The {Chairman.} Votes no.

5884 The {Clerk.} Chairman Upton votes no.

5885 The {Chairman.} Are there members wishing to cast a
5886 vote?

5887 Mr. Matheson?

5888 Mr. {Matheson.} No.

5889 The {Clerk.} Mr. Matheson votes no.

5890 The {Chairman.} Ms. Myrick.

5891 Mrs. {Myrick.} No.

5892 The {Clerk.} Ms. Myrick votes no.

5893 The {Chairman.} Other members? Going once. The clerk
5894 will report the tally.

5895 It is my understanding that we are getting to final
5896 next. Mr. Sullivan, have you--

5897 Mr. {Sullivan.} No.

5898 The {Clerk.} Mr. Sullivan votes no.

5899 Mr. Chairman, on that vote there were 16 ayes, 33 nays.

5900 The {Chairman.} 16 ayes, 33 nays. The amendment is not
5901 accepted.

5902 Are there further amendments to the bill?

5903 Mr. {Pallone.} Mr. Chairman, I don't have an amendment
5904 but if could ask unanimous consent to enter into the record a
5905 letter from various national organizations that oppose repeal
5906 of CLASS. And I believe you have a copy of it.

5907 Mr. {Shimkus.} I will not object but--

5908 The {Chairman.} The gentleman from Illinois.

5909 Mr. {Shimkus.} In response to that letter which we have
5910 a copy of, on the second page there is a statement that says,
5911 ``the actuary report also noted that federal actuaries agree
5912 that certain plans designed to mitigate the adverse selection
5913 risk can be actuarially sound and attractive to the
5914 consumers.'' Based upon the HHS analysis over 75 years of
5915 all the options, I disagree with that statement. So I want
5916 to just follow up the insertion with this comment because I
5917 don't believe that part of the letter is accurate based upon
5918 the HHS analysis.

5919 The {Chairman.} Mr. Shimkus' statement will follow the
5920 insertion in the record.

5921 [The information follows:]

5922 ***** COMMITTEE INSERT *****

5923 Mr. {Shimkus.} Thank you.

5924 The {Chairman.} Seeing no further amendments, the
5925 question now occurs on favorably reporting the bill as
5926 amended to the House.

5927 So all those in favor will say aye. Those opposed will
5928 say no. The ayes appear to have it.

5929 Mr. {Pallone.} If the chairman ask for a roll call.

5930 The {Chairman.} A roll call is requested. The clerk
5931 will call the roll.

5932 The {Clerk.} Mr. Barton?

5933 Mr. {Barton.} Aye.

5934 The {Clerk.} Mr. Barton votes aye.

5935 Mr. Stearns?

5936 Mr. {Stearns.} Votes aye.

5937 The {Clerk.} Mr. Stearns votes aye.

5938 Mr. Whitfield?

5939 Mr. {Whitfield.} Aye.

5940 The {Clerk.} Mr. Whitfield votes aye.

5941 Mr. Shimkus?

5942 Mr. {Shimkus.} Aye.

5943 The {Clerk.} Mr. Shimkus votes aye.

5944 Mr. Pitts?

5945 Mr. {Pitts.} Aye.

5946 The {Clerk.} Mr. Pitts votes aye.
5947 Mrs. Bono Mack?
5948 Mrs. {Bono Mack.} Aye.
5949 The {Clerk.} Mrs. Bono Mack votes aye.
5950 Mr. Walden?
5951 Mr. {Walden.} Aye.
5952 The {Clerk.} Mr. Walden votes aye.
5953 Mr. Terry?
5954 Mr. {Terry.} Aye.
5955 The {Clerk.} Mr. Terry votes aye.
5956 Mr. Rogers?
5957 [No response.]
5958 The {Clerk.} Mrs. Myrick?
5959 Mrs. {Myrick.} Aye.
5960 The {Clerk.} Mrs. Myrick votes aye.
5961 Mr. Sullivan?
5962 Mr. {Sullivan.} Aye.
5963 The {Clerk.} Mr. Sullivan votes aye.
5964 Mr. Murphy?
5965 Mr. {Murphy.} Aye.
5966 The {Clerk.} Mr. Murphy votes aye.
5967 Mr. Burgess?
5968 Dr. {Burgess.} Aye.
5969 The {Clerk.} Mr. Burgess votes aye.

5970 Mrs. Blackburn?
5971 Mrs. {Blackburn.} Aye.
5972 The {Clerk.} Mrs. Blackburn votes aye.
5973 Mr. Bilbray?
5974 Mr. {Bilbray.} Aye.
5975 The {Clerk.} Mr. Bilbray votes aye.
5976 Mr. Bass?
5977 Mr. {Bass.} Aye.
5978 The {Clerk.} Mr. Bass votes aye.
5979 Mr. Gingrey?
5980 Dr. {Gingrey.} Aye.
5981 The {Clerk.} Mr. Gingrey votes aye.
5982 Mr. Scalise?
5983 Mr. {Scalise.} Aye.
5984 The {Clerk.} Mr. Scalise votes aye.
5985 Mr. Latta?
5986 Mr. {Latta.} Aye.
5987 The {Clerk.} Mr. Latta votes aye.
5988 Mrs. McMorris Rodgers?
5989 Mrs. {McMorris Rodgers.} Aye.
5990 The {Clerk.} Mrs. McMorris Rodgers votes aye.
5991 Mr. Harper?
5992 Mr. {Harper.} Aye.
5993 The {Clerk.} Mr. Harper votes aye.

5994 Mr. Lance?
5995 Mr. {Lance.} Aye.
5996 The {Clerk.} Mr. Lance votes aye.
5997 Mr. Cassidy?
5998 Dr. {Cassidy.} Aye.
5999 The {Clerk.} Mr. Cassidy votes aye.
6000 Mr. Guthrie?
6001 Mr. {Guthrie.} Aye.
6002 The {Clerk.} Mr. Guthrie votes aye.
6003 Mr. Olson?
6004 Mr. {Olson.} Aye.
6005 The {Clerk.} Mr. Olson votes aye.
6006 Mr. McKinley?
6007 Mr. {McKinley.} Aye.
6008 The {Clerk.} Mr. McKinley votes aye.
6009 Mr. Gardner?
6010 Mr. {Gardner.} Aye.
6011 The {Clerk.} Mr. Gardner votes aye.
6012 Mr. Pompeo?
6013 Mr. {Pompeo.} Aye.
6014 The {Clerk.} Mr. Pompeo votes aye.
6015 Mr. Kinzinger?
6016 Mr. {Kinzinger.} Aye.
6017 The {Clerk.} Mr. Kinzinger votes aye.

6018 Mr. Griffith?

6019 Mr. {Griffith.} Aye.

6020 The {Clerk.} Mr. Griffith votes aye.

6021 Mr. Waxman?

6022 [No response.]

6023 The {Clerk.} Mr. Dingell?

6024 Mr. {Dingell.} No.

6025 The {Clerk.} Mr. Dingell votes no.

6026 Mr. Markey?

6027 [No response.]

6028 The {Clerk.} Mr. Towns?

6029 Mr. {Towns.} No.

6030 The {Clerk.} Mr. Towns votes no.

6031 Mr. Pallone?

6032 Mr. {Pallone.} No.

6033 The {Clerk.} Mr. Pallone votes no.

6034 Mr. Rush?

6035 Mr. {Rush.} No.

6036 The {Clerk.} Mr. Rush votes no.

6037 Ms. Eshoo?

6038 Ms. {Eshoo.} No.

6039 The {Clerk.} Ms. Eshoo votes no.

6040 Mr. Engel?

6041 Mr. {Engel.} No.

6042 The {Clerk.} Mr. Engel votes no.
6043 Mr. Green?
6044 Mr. {Green.} No.
6045 The {Clerk.} Mr. Green votes no.
6046 Ms. DeGette?
6047 Ms. {DeGette.} No.
6048 The {Clerk.} Ms. DeGette votes no.
6049 Mrs. Capps?
6050 Mrs. {Capps.} No.
6051 The {Clerk.} Mrs. Capps votes no.
6052 Mr. Doyle?
6053 Mr. {Doyle.} No.
6054 The {Clerk.} Mr. Doyle votes no.
6055 Ms. Schakowsky?
6056 Ms. {Schakowsky.} No.
6057 The {Clerk.} Ms. Schakowsky votes no.
6058 Mr. Gonzalez?
6059 [No response.]
6060 The {Clerk.} Mr. Inslee?
6061 Mr. {Inslee.} No.
6062 The {Clerk.} Mr. Inslee votes no.
6063 Ms. Baldwin?
6064 [No response.]
6065 The {Clerk.} Mr. Ross?

6066 Mr. {Ross.} Aye.

6067 The {Clerk.} Mr. Ross votes aye.

6068 Mr. Matheson?

6069 Mr. {Matheson.} Aye.

6070 The {Clerk.} Mr. Matheson votes aye.

6071 Mr. Butterfield?

6072 Mr. {Butterfield.} No.

6073 The {Clerk.} Mr. Butterfield votes no.

6074 Mr. Barrow?

6075 Mr. {Barrow.} Aye.

6076 The {Clerk.} Mr. Barrow votes aye.

6077 Ms. Matsui?

6078 Ms. {Matsui.} No.

6079 The {Clerk.} Ms. Matsui votes no.

6080 Mrs. Christensen?

6081 Mrs. {Christensen.} No.

6082 The {Clerk.} Mrs. Christensen votes no.

6083 Ms. Castor?

6084 Ms. {Castor.} No.

6085 The {Clerk.} Ms. Castor votes no.

6086 Chairman Upton?

6087 The {Chairman.} Votes aye.

6088 The {Clerk.} Chairman Upton votes aye.

6089 The {Chairman.} Are there members wishing to vote?

6090 Mr. Waxman?

6091 Mr. {Waxman.} No.

6092 The {Clerk.} Mr. Waxman votes no.

6093 The {Chairman.} Are there members wishing to cast their
6094 vote? Seeing none, the clerk will report the tally.

6095 The {Clerk.} Mr. Chairman, on that vote there were 33
6096 ayes, 17 nays.

6097 The {Chairman.} 33 ayes, 17 nays. The bill is
6098 favorably reported.

6099 Mr. {Pallone.} Mr. Chairman, can I request the
6100 requisite number of days to file additional dissenting
6101 minority views?

6102 The {Chairman.} Yes. The gentlelady will make sure
6103 that you have got the appropriate number of days.

6104 And I want to say without objection, the staff is
6105 authorized to make technical and conforming changes to the
6106 bills approved by the committee today. So ordered.

6107 The chair thanks all members and staff and the committee
6108 now stands adjourned.

6109 [Whereupon, at 4:07 p.m., the Committee was adjourned.]