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4 MARKUP ON H.R. 6213, THE ``NO MORE SOLYNDRAS ACT'';

5 H.R. 6194, THE ``U.S. AGRICULTURAL SECTOR RELIEF ACT OF

6 2012''; AND

7 H.R. 6190, THE ``ASTHMA INHALERS RELIEF ACT OF 2012''

8 Wednesday, August 1, 2012

9 House of Representatives,

10 Committee on Energy and Commerce

11 Washington, D.C.

12 The Committee met, pursuant to call, at 10:24 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, Green, DeGette, Capps, Doyle,  
22 Schakowsky, Gonzalez, Ross, Matheson, Butterfield, Barrow,  
23 Matsui, Christensen, Castor and Sarbanes.

24 Staff present: Nick Abraham, Legislative Clerk; Paige  
25 Anderson, Commerce, Manufacturing and Trade Coordinator; Gary  
26 Andres, Staff Director; Charlotte Baker, Press Secretary;  
27 Mike Bloomquist, General Counsel; Sean Bonyun, Communications  
28 Director; Anita Bradley, Senior Policy Advisor to Chairman  
29 Emeritus; Maryam Brown, Chief Counsel, Energy and Power; Matt  
30 Bravo, Professional Staff Member; Allison Busbee, Legislative  
31 Clerk; Patrick Currier, Counsel, Energy and Power; Paul  
32 Edattel, Professional Staff Member, Health; Todd Harrison,  
33 Chief Counsel, Oversight/Investigations; Cory Hicks, Policy  
34 Coordinator, Energy and Power; Peter Kielty, Associate  
35 Counsel; Heidi King, Chief Economist; Ben Lieberman, Counsel,  
36 Energy and Power; Ryan Long, Chief Counsel, Health; Alexa  
37 Marrero, Deputy Staff Director; Mary Neumayr, Senior Energy  
38 Counsel; Katie Novaria, Legislative Clerk; Chris Sarley,  
39 Policy Coordinator, Environment and Economy; Charlotte  
40 Savercool, Executive Assistant; Jeff Baran, Democratic Senior  
41 Counsel; Phil Barnett, Democratic Staff Director; Jen  
42 Berenholz, Democratic Chief Clerk; Brian Cohen, Democratic

43 Oversight and Investigations Staff Director and Senior Policy  
44 Advisor; Greg Dotson, Democratic Energy and Environment Staff  
45 Director; Caitlin Haberman, Democratic Policy Analyst; Karen  
46 Lightfoot, Democratic Communications Director and Senior  
47 Policy Advisor; Matt Siegler, Democratic Counsel; and Will  
48 Wallace, Democratic Policy Analyst.

|  
49           The {Chairman.} The committee will come to order.

50           At the conclusion of opening statements yesterday, the  
51 Chair called up H.R. 6213. The bill was open for amendment  
52 at any point.

53           Are there any bipartisan amendments to the bill? Seeing  
54 none, are there any other amendments to the bill?

55           Mr. {Green.} Mr. Chairman, I have an amendment at the  
56 desk.

57           The {Chairman.} The Chair would recognize the gentleman  
58 from Texas, Mr. Green, who has an amendment at the desk. The  
59 clerk will--

60           The {Clerk.} Amendment to H.R. 6213 offered by Mr.  
61 Green of Texas.

62           [The amendment follows:]

63           \*\*\*\*\* INSERT 1 \*\*\*\*\*

|  
64           The {Chairman.} The amendment will be considered as  
65 read and the staff will distribute the amendment, and the  
66 gentleman from Texas is recognized for 5 minutes in support  
67 of his amendment.

68           Mr. {Green.} Thank you, Mr. Chairman, and those of you  
69 who are on the Energy and Power Subcommittee, this is an  
70 amendment I had during our markup last week. Our amendment  
71 actually gained votes from both sides of the aisle during the  
72 subcommittee markup, and this amendment gives Congress and  
73 the Administration a breather to really assess the strengths  
74 and weaknesses of the loan guarantee program absent the  
75 influence of election-year politics.

76           At the same time, the amendment leaves in place the  
77 blanket prohibition on subrogation that I thought was already  
78 in the statute. I know when we had our full committee  
79 hearings, I was offended, I think as everyone else, that the  
80 Department of Energy made a decision based on an attorney's  
81 letter that something I thought was pretty black and white in  
82 the statute. I believe explicitly prohibiting subrogation in  
83 all cases should be the main focus of our bill. Instead, we  
84 have pages of politically charged findings and a misguided  
85 sunset provision.

86           At one time this loan guarantee program enjoyed broad

87 bipartisan support. Members of both sides of the committee  
88 voted for it as part of the Energy Policy Act of 2005. It  
89 was a Republican House of Representatives, passed in a  
90 Republican Senate and signed by a Republican President. In  
91 fact, 22 Republicans in the House and only five Republicans  
92 in the Senate opposed the bill.

93 My amendment imposes a 1-year moratorium on issuing any  
94 new loan guarantees. During this time, the Administration  
95 must conduct a study including recommended statutory and  
96 administrative changes which would keep the same mistakes  
97 from being repeated. If they do not submit their report, the  
98 program is automatically repealed. If Congress doesn't like  
99 the report, we can always act on that to end the program.

100 I come from Houston, a city that relies on energy  
101 production from oil, natural gas, wind and solar. The loan  
102 guarantee program helps fund innovative oil and gas  
103 technology, new nuclear technology, wind and solar power, as  
104 well as clean coal. My colleagues who have these industries  
105 in their districts should look at their constituents and  
106 realize that many of them would be employed at these new  
107 energy jobs if the new ventures get off the ground. If we do  
108 not make these investments, other countries, especially  
109 China, will. China will have the energy jobs that will be  
110 ours if we fail to make the necessary investments in our

111 domestic sector.

112       Over the past few decades, we have ceded enough ground  
113 to China already. We have cited their low wages and low  
114 environmental standards as the reason we can't compete.  
115 Today we are sitting here with the opportunity to give a  
116 competitive edge to our own industry and we are fighting  
117 partisan battles. It is critical to our standing in the  
118 world and our continued long-term economic prosperity to be  
119 the leader in technological innovations. We have to be  
120 better than the Chinese, the Germans or others. Otherwise we  
121 will see higher and higher energy costs and fewer and fewer  
122 jobs in our own country. Without a doubt, mistakes were made  
123 with the loan guarantee program but it doesn't mean the whole  
124 program is bad. If you support my amendment, let us take a  
125 break and allow the program to be studied and reevaluated  
126 this year.

127       All, Mr. Chairman, this amendment does is say the  
128 program was good in 2005, the way it was used in the last few  
129 years was not, let us take a breather for a year and come  
130 back and make the changes that we need to do in this program  
131 and yet we can still help emerging energy technologies that  
132 may not be possible now on a cost-benefit analysis but in the  
133 long run will be part of our energy sector. And again,  
134 coming from an oil and gas area, the 2005 energy bill that I

135 was proud to vote for, in fact, 77 Democrats on the House  
136 Floor voted for it, that would actually allow for us to  
137 expand nuclear, and if it wasn't the case, in my case it was  
138 mainly nuclear I was interested in. But I have to admit, we  
139 were going to expand under this loan guarantee in the south  
140 Texas plant that serves my area but one of our minority  
141 owners was Tokyo Power, and of course, after Fukushima, we  
142 weren't going to get \$125 million out of Japan to help us  
143 with our loan guarantee. So those loan guarantees for  
144 nuclear power are going to other States, and I wish they  
145 would come to Texas but they are not, but I am happy that  
146 they are going at least in our country to expand our nuclear  
147 power generation in our own country that we have been 30 to  
148 40 years behind.

149       And I know Congressman Murphy and I were in France last  
150 year to see what they are doing on long-term storage as well  
151 as 80 percent of their power in France comes from nuclear.  
152 We get about 20 percent of it now, and I think we could use  
153 more than 20 percent, although again, with natural-gas  
154 prices, and I am not unhappy about that, and I am glad we are  
155 expanding production of natural gas.

156       Mr. Chairman, I ask an aye vote on the amendment and  
157 yield back my time.

158       The {Chairman.} The gentleman yields back. The Chair

159 would recognize the gentleman from Florida.

160 Mr. {Stearns.} Mr. Chairman, I move to strike the last  
161 word.

162 The {Chairman.} Five minutes.

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

164 In all deference to my colleague from Texas, I ask my  
165 colleagues to vote against his amendment. Along with  
166 Chairman Upton, I am a proud sponsor of this bill, H.R. 6213,  
167 the No More Solyndras Act.

168 This legislation, my colleague, is the product of an  
169 intensive and thorough 18-month investigation by the  
170 Subcommittee on Oversight and Investigation and will fix the  
171 problems we have uncovered. Specifically, the No More  
172 Solyndras Act will phase out DOE's flawed loan guarantee  
173 program under Title XVII of the Energy Policy Act of 2005 and  
174 provide taxpayers strong new protection for any pending  
175 participants in this program.

176 The bill provides greater loan guarantee transparency by  
177 requiring DOE to report to Congress on the decision-making  
178 process and details of the loan. The bill also prohibits DOE  
179 from restructuring the terms of the loan guarantee and  
180 forbids the subordinate of U.S. taxpayers' dollars to any  
181 other investors and provides penalties for failing to follow  
182 the law. And of course, as many of you know, Solyndra was

183 the first recipient of a DOE loan guarantee under Title XVII  
184 of the Energy Policy Act and was simply the poster child for  
185 President Obama's stimulus-driven green economy. It was also  
186 the first stimulus-backed recipient of a recipient DOE loan  
187 guarantee to file for bankruptcy, raided by the FBI a week  
188 later, just 2 years after the loan closed and 6 months after  
189 DOE restructured the loan and subordinated taxpayers'  
190 interest to two wealthy and well-connected investors through  
191 their hedge funds, all but ensuring taxpayers won't see a  
192 dime.

193 Other DOE loan recipients have also struggled. Three of  
194 the first five companies which received loan guarantees  
195 issued by the DOE loan guarantee program have now filed for  
196 bankruptcy--Beacon, Abounds, Solyndra--and hundreds of  
197 millions of taxpayers' dollars will never, ever be recovered.

198 Congress has reviewed the Title XVII program. GAO has  
199 reviewed the program. The Inspector General of the Treasury  
200 has reviewed the program. The White House's own hired  
201 consultant has reviewed the program. Now for my colleague  
202 from Texas to suggest that another review, another report  
203 will add any value whatsoever is inappropriate, and frankly  
204 in all deference to him, is not being responsible. After  
205 what our investigation uncovered over the last 18 months, do  
206 we really trust DOE to provide an unbiased self-evaluation of

207 the program they administered themselves? Please raise your  
208 hands. When they testified at the legislative hearing, they  
209 called the program an enormous success. We heard them say  
210 that it was an enormous success.

211 The moratorium isn't a real moratorium. DOE could  
212 rubber-stamp a report and simply go right back to making the  
213 risky bets with taxpayers' dollars. My colleagues, we do not  
214 need additional reviews, additional studies, additional  
215 reports. What we need is to get the government out of the  
216 venture capitalist business, and we can start by getting rid  
217 of Title XVII.

218 Let me conclude. The Solyndra investigation and the  
219 introduction of this bill is a great example of how  
220 Congressional oversight should work. You ask tough  
221 questions. You collect all the facts. You identify the  
222 problems and then you offer legislative solutions, and that  
223 is what Chairman Upton and I have done. So I encourage my  
224 colleagues not to support this bill. If anything, the  
225 investigation showed that DOE failed to consult with the  
226 Treasury Department as simply required by the Energy Policy  
227 Act prior to issuing any conditional commitments to Solyndra,  
228 and the Treasury didn't even play a role in reviewing the  
229 restructuring. So this No More Solyndra Act will correct  
230 this by ensuring that Treasury is actively involved in the

231 loan process to protect taxpayers, and I urge my colleagues  
232 to vote no on this amendment.

233 Thank you, Mr. Chairman.

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

235 Are there other members wishing to speak on the  
236 amendment? The gentlelady from Colorado is recognized for 5  
237 minutes.

238 Ms. {DeGette.} Thank you very much, Mr. Chairman.

239 A new spirit of cooperation has erupted down here at  
240 this end of the Democratic dais. I support Mr. Green's  
241 amendment, and the reason I support it is, it improves a bill  
242 that really needs a lot of improvement, and what it does is,  
243 it does not eliminate the Republican ban on subordinate of  
244 loans under the Title XVII loan guarantee program.

245 We have heard a lot about subordinate on the Solyndra  
246 loan, and much of what we have heard today and in past  
247 hearings is just simply inaccurate. So I want to clear up a  
248 couple of misconceptions about the findings of the Oversight  
249 and Investigation Subcommittee with regard to the  
250 subordination of the Solyndra loan.

251 The subordination of the Solyndra loan had a bad outcome  
252 but the action taken by DOE was determined by the legal  
253 counsel to be correct, and during our oversight hearings on  
254 Solyndra, we learned that DOE looked carefully looked at the

255 text of the Title XVII loan guarantee statute. They  
256 concluded that although subordination was not allowed during  
257 the origination process for the loan guarantee in the  
258 original legislation, it was permitted in the event that a  
259 loan needed to be restructured. The most senior lawyers at  
260 DOE, the loan program's outside counsel and the top legal  
261 counsel at OMB all agreed with this decision.

262         The Democratic staff of the committee sought to have an  
263 outside opinion from the former general counsel at DOE. She  
264 concluded that the subordination is ``both supported by the  
265 statute, the regulations governing the loan guarantee program  
266 and the associated rulemakings and by commercial practice  
267 with respect to the restructuring of loans that are in  
268 default.''

269         Now, Mr. Chairman, I know subordination may not be  
270 popular and I am well aware of the unfortunate outcome of the  
271 Solyndra loan, but at the hearing on this bill, DOE told us  
272 why the law makes sense. Sometimes the subordination option  
273 is the best way to save a badly performing law and ultimately  
274 save taxpayer money.

275         Now, the reason we have these loan guarantees is because  
276 we are trying to develop the solar industry, and it is a  
277 little bit of a risky endeavor in general but it is important  
278 that the government support the development of this industry

279 for a whole host of reasons, not the least of which is, it is  
280 in our interests of national defense to become independent  
281 from foreign sources of oil. And so if you are going to have  
282 a loan guarantee, if you don't have the ability to  
283 subordinate on a restructuring, not on the initial loan, then  
284 it is going to dry up capital for the initial loans as well  
285 as the subordination, and that is why in a very rare  
286 circumstance when you have a loan that is going bad like  
287 happened in the Solyndra case, if the folks over at DOE feel  
288 that it might be some way to salvage the taxpayer money, that  
289 is a tool they should be able to have in their arsenal and  
290 that is why the lawyer said for the restructuring, it could  
291 in some circumstances be appropriate.

292         So that is why DOE wants to keep it as an option on  
293 future loans, and that is one of the many reasons why I think  
294 the legislation we are considering today needs to be fixed,  
295 and with that, Mr. Chairman, I will yield back.

296         The {Chairman.} The gentlelady yields back.

297         Are there other members wishing to speak on the  
298 amendment?

299         Mr. {Griffith.} Mr. Chairman.

300         The {Chairman.} The gentleman from Virginia, Mr.  
301 Griffith.

302         Mr. {Griffith.} Mr. Chairman, I just want to make sure

303 that we are talking about the same thing because I don't  
304 recall those facts as being the way that the gentlelady has  
305 portrayed them.

306         The Department of Treasury raised questions about the  
307 Solyndra loan and said you ought to check with Justice. DOE  
308 did not want to do so. I think the language of the bill is  
309 very clearly as it currently reads that you cannot do it. I  
310 was not the DOE position in the memo written by Susan  
311 Richardson that they could do it only in cases of distress.  
312 It was their position that they could do it at any time  
313 subsequent to the closing of the loan. I have repeatedly  
314 made the comment, under their theory, you could close the  
315 loan at 11 o'clock, go to lunch and come back and subordinate  
316 it at 2:00 in the afternoon. Clearly, that was never the  
317 intent of Congress. Clearly they knew because they didn't  
318 take the advice of Treasury and have it examined by Justice  
319 to see whether they had authority. They clearly stretched it  
320 to the limits. I believe they knew that what they were doing  
321 was not proper. This is not a regular deal. This is  
322 taxpayer money.

323         And last but not least, to add insult to injury, when  
324 they did the subordination, while they gave lip to, you know,  
325 maybe we can do better for the American taxpayers, they had  
326 not yet given out the last \$90 million of the Solyndra money.

327 Secretary Chu said that at the time that they were discussing  
328 subordination and did the subordination, they knew that the  
329 Chinese could both make and sell their product cheaper than  
330 Solyndra could sell or make--the Chinese could make and sell  
331 cheaper than Solyndra could make their product. There is no  
332 way that the subordination of this loan was ever going to  
333 have any chance in the world if you look at it as a  
334 reasonable person of saving the taxpayers money, and after  
335 the subordination was done, the taxpayers went in the hole  
336 another \$90 million.

337         It is outrageous and we need to take action, and I urge  
338 my colleagues to vote no on this amendment.

339         Mr. {Waxman.} Mr. Chairman.

340         The {Chairman.} The Chair would recognize the gentleman  
341 from California, Mr. Waxman.

342         Mr. {Waxman.} If you had listened to the last speaker,  
343 you would think this amendment was about subordination. But  
344 Mr. Green's amendment is the same amendment that Congressman  
345 Barton circulated before it was introduced by Mr. Green last  
346 week at the subcommittee markup. The Green amendment  
347 received bipartisan support. Mr. Bilbray and Mr. Barton both  
348 voted for it.

349         This bill has a lot of problems. The amendment doesn't  
350 fix all those problems but it is a clear improvement. The

351 amendment provides a mechanism for meaningful reforms to the  
352 loan guarantee program. It is clear this bill does not end  
353 the loan guarantee program. It allows DOE to use its  
354 existing authority to provide \$34 billion more in loan  
355 guarantees. We need to reform this program and eliminate the  
356 arbitrary cutoff date that prevents DOE from considering  
357 applications received after December 31, 2011.

358         The bill picks winners and losers based on an arbitrary  
359 deadline that is in this bill. It won't allow DOE to pick  
360 the best or most promising technologies for loan guarantees  
361 if they applied after this deadline. This is foolish, and I  
362 will have an amendment on this issue later on. Does anyone  
363 really believe that the existing applications are always  
364 going to be the best possible projects and that there are no  
365 new innovative technologies coming down the pike?

366         The Green amendment fixes this problem. It would allow  
367 DOE to run the program in a way that supports continued  
368 innovation, and I would encourage members on both sides of  
369 the aisle, if you are going to keep this program, and it is  
370 clear the Republicans want to keep it, and I think that is  
371 wise, although sometimes in the debate you don't know whether  
372 they really understand their own bill, but if you are going  
373 to keep this program, the Green amendment calls for an  
374 evaluation and halts all new grants for a year while we try

375 to figure out what will make this program successful.

376 So I urge support for this amendment and yield my time  
377 to Mr. Green.

378 Mr. {Green.} Thank you, Mr. Chairman, and I thank my  
379 colleague and ranking member for yielding me the time.

380 As our ranking member said, this amendment does not  
381 touch the original bill on subordination at all. I agree  
382 that the Department of Energy made some differences. Now, my  
383 colleague from Colorado and I may have a different legal  
384 opinion but that is what the DOE got. They got a different  
385 legal opinion that I disagreed with that legal opinion. But  
386 all we are going to do is say take a break. This law was put  
387 into place for new technology, and again, it is not just for  
388 wind and solar. Like I said, it is for oil and gas, it is  
389 for nuclear expansion loan guarantees. So we are taking out  
390 everything, and if we want to make sure our country has the  
391 opportunity to benefit from what other countries are doing,  
392 and in my statement I talked about China. China is investing  
393 billions of dollars into the wind system and the solar system  
394 and that is why we need to make sure we are competitive.

395 I have windmill blades coming into the Port of Houston,  
396 and I see them every day when I am at home. They are going  
397 out to west Texas to build windmills in south Texas. I wish  
398 those could be built in my district but they are not. They

399 are actually built somewhere else and sending them to us. We  
400 don't want to be behind the curve on that type of energy  
401 production. That is why this loan guarantee was right in  
402 2005 on a very bipartisan basis and it is right today but we  
403 do need to take a step back and that is what the amendment  
404 says: take a year back, come back to us with a report, and  
405 if DOE doesn't come back to us with that report, the program  
406 is ended. But if they do come back and we don't like the  
407 report, Congress still has the opportunity in that program.

408         And again, I want to thank my colleague for yielding  
409 time to me.

410         The {Chairman.} The gentleman yields back. The Chair  
411 would recognize Mr. Barton from Texas for 5 minutes.

412         Mr. {Barton.} Thank you, Mr. Chairman.

413         I was intending to speak but my name has been used and  
414 it has been used honestly, so I feel empowered to respond.

415         Mr. Waxman is absolutely totally correct when he says  
416 that I circulated this amendment 2 weeks ago for subcommittee  
417 and he is also correct that I voted for it. My good friend  
418 Gene Green and I had discussed offering this as a bipartisan  
419 amendment, and that would have been a good thing, but I want  
420 my junior members on the majority side to know one thing:  
421 the two people that most needed to support the amendment, the  
422 full committee chairman and the subcommittee chairman, who

423 are also my very good friends, decided that they didn't  
424 support it. Now, things that may be reasonable and make  
425 sense, if you don't have the Chairman and you don't have the  
426 subcommittee chairman, they are not going to go very far. So  
427 there is a difference between circulating and offering. I  
428 did circulate it. I wanted to offer it, but I yielded to my  
429 friends on the majority side who happen to be the people who  
430 have been drafting the bill.

431         So members do lots of things before markups, and it is a  
432 good thing when we operate in a bipartisan fashion, but  
433 ultimately to be successful, you have to have support not  
434 just on the minority side. Unfortunately, for some very  
435 valid reasons, I couldn't get the majority support so I  
436 didn't offer the amendment. But my good friend, Mr. Green,  
437 who is a very wily legislator, decided to go ahead and offer  
438 it, and had I been in his shoes, I would have done the exact  
439 same thing.

440         So we have a bill that is a good-faith effort. We have  
441 some amendments that are good-faith efforts to improve it,  
442 but ultimately I think it is better, especially when you are  
443 in the majority, to support the leadership on the majority.

444         So I will vote for the Green amendment at full committee  
445 just like I did at subcommittee but I don't think that should  
446 bind anybody on my side other than myself.

447 Mr. {Green.} Mr. Chairman, would the gentleman yield?

448 Mr. {Barton.} I will yield.

449 Mr. {Green.} Well, to my good friend and really a good  
450 friend, I will joke, some of all may remember, we had a  
451 markup a few weeks ago, and our colleague, Bobby Rush, came  
452 in, who had an amendment, and Joe said is that my good friend  
453 Bobby Rush's amendment when Joe walked in, and he said oh, I  
454 am still going to vote no. But Joe is a good friend. In  
455 fact, we worked together in the 2005 energy bill, and I  
456 worked hard to make sure we could get enough Democratic votes  
457 in this committee for that 2005 energy bill, again, in an  
458 Republican House, in a Republican Senate and a Republican  
459 President, and 7 years later doesn't mean that program is  
460 wrong. Now, 7 years later we saw some of the problems with  
461 that program, and Solyndra is probably the worst example of  
462 it.

463 So that is why we need to look at why are we throwing  
464 out everything with this legislation. Why don't we take a  
465 step back and say okay, we want that to work. We don't want  
466 to cede the field, so to speak, to other countries in the  
467 world when we should have that same opportunity in our own  
468 country.

469 Mr. {Barton.} If I could reclaim my time?

470 Mr. {Green.} And I appreciate your friendship.

471 Mr. {Barton.} I will end up with another story.

472 In the debate over what we know call Obamacare on the  
473 majority side in the last Congress, we had a majority member  
474 from New York, Anthony Weiner, was on the committee, and we  
475 were debating Medicare, and he in what he thought was a burst  
476 of genius decided to offer an amendment to repeal Medicare  
477 and then he offered to withdraw it, and I wouldn't let him.  
478 So we actually called a vote on repealing Medicare, and  
479 nobody, even Mr. Weiner, voted for his own amendment. It got  
480 no votes as it should not have.

481 So I just remind my friends on both sides of the aisle  
482 that in the heat of the moment, sometimes we do things that  
483 are more for political show than good public policy, although  
484 I do say this amendment if it were enacted would give the  
485 next Administration an opportunity to decide about the  
486 program.

487 So with that, I yield back.

488 The {Chairman.} The gentleman yields back. The Chair  
489 would recognize the gentleman from Texas, Mr. Gonzalez.

490 Mr. {Gonzalez.} Thank you, Mr. Chairman. Of course, I  
491 rise in support of my colleague, Mr. Green's, amendment, but  
492 I am trying to get this straight, and I appreciate former  
493 Chairman Barton's comments and my fellow Texan that on the  
494 merits this is a good amendment. It makes perfect sense. It

495 is constructive. It is a positive thing. And I comment Mr.  
496 Barton for voting yes.

497 I just don't think that any member, whether a Republican  
498 or a Democrat, necessarily has to go with a chairman of a  
499 full committee or subcommittee if they truly believe the  
500 amendment or bill has merit. This is not exactly a Profiles  
501 in Courage moment for all of us. Maybe it doesn't rise to  
502 that. But maybe if we start practicing that at the committee  
503 level, it will manifest itself on the Floor of Congress where  
504 we are in desperate need of both sides of the aisle for  
505 getting sometimes political advantage or however the process  
506 may have worked because it is not working obviously, and  
507 voting for measures that we truly believe are beneficial and  
508 positive regardless of political advantage or established  
509 process, which has not served the best interests of this  
510 Congress, which means the best interests of the American  
511 people.

512 And with that, I would yield to Mr. Green if he has  
513 anything he wishes to add on his amendment.

514 Mr. {Green.} Mr. Chairman, I just thank my colleague  
515 from Texas and I appreciate my colleague, former Chair  
516 Barton, for his honesty. I know we all do things for  
517 political purposes but that is why we get elected every 2  
518 years. But I also know that if a program worked and it was

519 the goal of the program in 2005 and it worked for a number of  
520 years, we were just getting some of the rules from the  
521 Department of Energy and now we are going to cut it off, let  
522 us fix it and don't end it. And that is what this amendment  
523 is about.

524 Let us prohibit subrogation. Let us take a breather and  
525 say how we can make this program better. And with that, I  
526 yield back my time, or return my time to my colleague from  
527 Texas, Congressman Gonzalez.

528 Mr. {Gonzalez.} I yield back, Mr. Chairman. Thank you.

529 The {Chairman.} The gentleman yields back. The Chair  
530 would recognize the gentleman from Kentucky for 5 minutes.

531 Mr. {Whitfield.} Thank you very much, Mr. Chairman, and  
532 all of us have great respect for the gentlemen from Texas,  
533 both Mr. Barton and Mr. Green, and I think the bottom line on  
534 this is that we do have basic philosophical differences now  
535 on this program. For me personally, I think I have seen  
536 enough.

537 The 1705 program has already come to an end, and people  
538 have made the argument that this bill does not terminate the  
539 program, and so I would like to ask one question to the legal  
540 counsel. Does this No more Solyndras Act terminate the 1703  
541 program with the exception of those in the pipeline?

542 {Counsel.} With the exception of those in the pipeline,

543 yes, no new applications--

544 Mr. {Whitfield.} So we do terminate the program?

545 {Counsel.} Correct.

546 Mr. {Whitfield.} Okay. Now, so we do terminate the  
547 program.

548 Now, the reason I am opposed to the Green amendment is  
549 that this basically puts this back into the lap of the  
550 Department of Energy, and the Department of Energy is going  
551 to make a study and then come back to Congress on  
552 recommending whether or not this program should be kept or  
553 not, and if they recommend it should be kept, make any  
554 suggestions they want to to improve the program.

555 But when you have a country that has a \$16 trillion  
556 federal debt, why should the federal government be the  
557 venture capitalist for risky commercial ventures? And that  
558 is precisely what this program is all about, and I can  
559 understand people who want to have the government play that  
560 role but I personally, when you have this kind of debt, do  
561 not like the idea because the only projects that are  
562 receiving loan guarantees are those that are not commercially  
563 viable, and it has already been said, the very first three  
564 programs went into bankruptcy. There are two more that are  
565 on the verge of bankruptcy and there is going to be more of  
566 them.

567           But most important of all, we heard the arguments that  
568 these green projects would create jobs for Americans, and we  
569 did an analysis that showed that each job for the money that  
570 has been spent so far has cost the taxpayers over \$12 million  
571 per job, and I do not think that that is a wise use of  
572 taxpayer money, particularly when we are having difficulty  
573 meeting just basic infrastructure needs in this country. We  
574 can't afford to pay the health care bills under Medicare and  
575 Medicaid. So why does the federal government need to be  
576 involved as a venture capitalist, and particularly when some  
577 of the companies receiving this money, this loan guarantee,  
578 do not need loan guarantees? General Electric does not need  
579 loan guarantees. Google does not need loan guarantees.  
580 Statoil, the Norway company, does not need loan guarantees.  
581 They all have adequate capitalization. If they think these  
582 projects are so effective, let them put their money into it.  
583 Even the Google president said we wouldn't be involved in  
584 wind power except for these programs.

585           So as I said, while I have all respect in the world for  
586 Mr. Green and Mr. Barton, I just philosophically think that  
587 we need to stop this program. We have an opportunity to do  
588 it with this bill, and I hope that the members will defeat  
589 this amendment and support the bill. And I yield back the  
590 balance of my time.

591           The {Chairman.} The gentleman yields back. The  
592 gentl lady from California is recognized.

593           Ms. {Eshoo.} Thank you, Mr. Chairman. I wasn't  
594 planning on saying anything here, but in listening to the  
595 discussion, obviously I am going to.

596           So many of my colleagues on both sides of the aisle  
597 travel on a regular basis to Silicon Valley to understand  
598 better what the ingredients are there, to understand capital  
599 formation better, to understand what the elements of  
600 innovation are, the various investments and how we pave the  
601 way for a better future for our country. Obviously, you come  
602 for fundraising as well, but that is not the topic here  
603 today.

604           Now, you have made superb use of the Solyndra case,  
605 superb political use of it. Now, is everything right about  
606 it? No. Should taxpayer dollars be examined? Absolutely,  
607 and I agree with everyone on that. But you know, I think  
608 that this may be a classic discussion of whether there should  
609 be, indeed should be public-private partnerships. When the  
610 federal government helps to seed investments that are going  
611 to pay off for our collective future, I think that that is  
612 very important, and it seems to me that you are forgetting  
613 about that element and very purposefully because the only  
614 thing you have a laser-beam focus on is the word ``Solyndra''

615 and it went under.

616           The next time you come to Silicon Valley, ask the  
617 entrepreneurs, ask the venture capitalists, ask the  
618 innovators about what fails. If every time there were a  
619 failure and they withdrew their money, we wouldn't have a  
620 future, a future for new technologies, for new investment for  
621 moving forward. In fact, in my Congressional district that  
622 is most of Silicon Valley, you know what? You don't count  
623 unless you have failed. That really says something. You are  
624 part of an honor roll.

625           So this debate, I have to tell you at home, people are  
626 left scratching their heads. The venture capitalists asked  
627 me what is Congress doing, why is Solyndra blown up to be,  
628 you know, the worst thing that has happened since World War  
629 II or Vietnam or Afghanistan or, for that matter, Iraq. You  
630 don't pursue those failures, do you? Or the amount of money  
631 that has gone into them. So I just think that this is a  
632 fascinating discussion about where my pals are on the other  
633 side of the aisle. You want to have your eye on the future.  
634 I think you better understand, come to an understanding of  
635 what works, what the elements are. Yes, there were tax  
636 dollars in this. We should always pursue the examination of  
637 them. But you have turned this into exactly what you wanted  
638 to turn it into. I will acknowledge that for you. But you

639 know what? That is not great on the scorecard for the future  
640 of America.

641         So the next time you come to my district, in the region  
642 that is the innovation hub of our Nation and the envy of the  
643 world, understand what goes into it, and you know what?  
644 There are failures, and if you don't think there should be  
645 any kind of public-private partnership, why don't you just  
646 bring something before the committee to just outlaw all of  
647 that, to just outlaw all of that and that the federal  
648 government is not going to be a part of moving the United  
649 States of America forward to be a top competitor in a global  
650 market. That is really what you are pursuing with your  
651 thinking.

652         So with that, I yield back the balance of my time.

653         Mr. {Dingell.} Mr. Chairman.

654         The {Chairman.} Any other Republicans wishing to speak?  
655 Seeing none, the Chair would recognize the gentleman from the  
656 great State of Michigan, Mr. Dingell.

657         Mr. {Dingell.} Mr. Chairman, I thank you for your  
658 courtesy, and I begin again by expressing my affection and  
659 respect for my colleagues on the other side. I think we have  
660 come to the point where we ought to recognize that we have a  
661 bad bill and we are trying to correct a bad investigation and  
662 make it look like we have accomplished something, and we have

663 something right.

664         First of all, the legislation which authorized the loans  
665 and the loan guarantees was bipartisan. All the leadership  
666 on that side and I and the leadership on this side supported  
667 it, and we supported very clearly the idea that we ought to  
668 have these programs to encourage development of new energy  
669 sources and new ways of using energy. We thought it was  
670 good. We made speeches about it. We talked about it in  
671 campaigns and it passed the House and the Senate. It was one  
672 of the things everybody went home and said oh, my, haven't we  
673 done a good thing.

674         Well, it is still a good thing, and I would point out  
675 that if you were to just calculate this on the basis of the  
676 number of dollars per job that was created by any of these  
677 loans, you would probably be correct in being critical. The  
678 simple fact is, that is not the purpose of the basic  
679 legislation. The legislation was created for quite a  
680 different purpose and that is to see to it that we develop  
681 industries in this country that are going to make it possible  
682 for the United States to compete in the 21st century with new  
683 technologies that will be developed and manufactured here in  
684 this country. It is not to make anybody rich nor is it to  
685 see to it that we give any particular beneficiary the  
686 opportunity of developing a new business. It is to develop a

687 whole new set of industries in this country that will make us  
688 competitive. That is called vision, and as the Bible tells  
689 us, where there is no vision, the people perish.

690 Now, the question is, are we going to have vision here  
691 or are we going to simply go out and kill something which  
692 affords us an opportunity to do good for this country and to  
693 see to it that we are competitive? We are not doing that  
694 today. You have a bad investigation that you are trying to  
695 sanctify. You have got a bad bill to hurt a good piece of  
696 legislation and we are demonstrating our ignorance of what  
697 this country needs to do to be competitive.

698 The hard fact of the matter is, these jobs that are  
699 created in this industry are just a small thing but if we  
700 create the industry, we are creating many, many jobs and  
701 building a scientific and a technological base that is going  
702 to benefit this country. We are rejecting that opportunity  
703 this morning.

704 The amendment should be adopted. Quite frankly, with or  
705 without it, the bill ought to be rejected because the simple  
706 fact of the matter is, we are falling behind. When the Volt  
707 was driven out of the General Motors factory, it was a car  
708 that was American technology. It was driven on batteries  
709 that were American technology. But those batteries were  
710 produced in Korea because the Koreans are smart enough to

711 know that they want to spend government money to produce  
712 jobs, economic growth and new technology to fit their country  
713 to competition in the 21st century. Why in the name of  
714 common sense is it that we don't understand those things on  
715 this committee or in these Congresses and why is it that my  
716 Republican colleagues are so anxious to derail efforts which  
717 they led in the previous Congress to get us on track on these  
718 matters? That is what is at stake here. You are throwing  
719 away opportunity for the American people and you are  
720 destroying the opportunity for this country to be  
721 competitive, and that is not good politics nor is it good  
722 economics nor is it good technology. It is quite frankly a  
723 practice that the Luddites in Britain in the 17th century  
724 would have loved.

725       So my dear friends, let us support the amendment, reject  
726 the bill and try to draw the United States into the 21st  
727 century.

728       The {Chairman.} The gentleman yields back. I think we  
729 are ready to vote on this amendment. Are there other members  
730 wishing to speak?

731       Mr. {Markey.} Mr. Chairman.

732       The {Chairman.} Mr. Markey.

733       Mr. {Markey.} Thank you, Mr. Chairman, very much.

734       Let me just summarize the debate for us. If you want to

735 save the program, then vote for the Green amendment. If you  
736 want to keep this program around, vote for the Green  
737 amendment. If you want to end the program, I am going to  
738 make the Markey amendment later on this morning and that will  
739 save you any further concern about this program because it  
740 will end it in its entirety. And if you want to do neither,  
741 neither save it nor kill it, then you can vote for the  
742 underlying bill because the underlying bill picks winners and  
743 losers and calls it the end of the program. So you have  
744 three choices: save it, kill it or pass your bill, which  
745 does neither.

746         Because your bill is really one of the greatest  
747 political frauds of all time. It is a monument to the  
748 Republican-led worst environmental Congress in history. It  
749 is a monument to the complete and takeover of the Republican  
750 party's agenda by Big Coal and Big Oil. And if cynicism were  
751 an Olympic sport, the GOP would win the gold because it is a  
752 guaranteed victory because it is cynicism on steroids.  
753 Republicans have wasted almost a year or taxpayers' time  
754 dancing on the grave of the Solyndra loan program. They have  
755 said the Department moved too fast, too carelessly, even  
756 illegally when it granted Solyndra's loan guarantee, and they  
757 have even alleged that the Obama Administration's funding for  
758 renewable energy was motivated by political cronyism and that

759 the funds were used to outsource jobs.

760 Well, the Republicans seem to have forgotten that the  
761 loan guarantee program was created at 2:30 a.m. in 2005 on a  
762 hot August day when Republican then-Senator Pete Domenici,  
763 the Chairman of the Senate Energy Committee, in this room  
764 offered an amendment at 2:30 a.m. for the energy bill to find  
765 some way of giving loans to the nuclear industry. And so  
766 that bill passed out of this committee, out of the conference  
767 committee. But that wasn't enough for the nuclear industry.  
768 Oh, no, the nuclear industry wanted more. So the Nuclear  
769 Energy Institute then urged the Department of Energy to  
770 change its regulations so that private investors could get  
771 paid back before taxpayers in the case of default, the very  
772 thing DOE agreed to do to salvage the Solyndra loan program.  
773 They did what the Nuclear Energy Institute had successfully  
774 lobbied the Department of Energy to do.

775 So what caused the change of heart? I will tell you  
776 what caused it. Obama got elected. He said I am going to  
777 have an all-of-the-above strategy, both renewable energy and  
778 nuclear power, and the nuclear industry and the coal industry  
779 and the oil industry recoiled in terror because they don't  
780 like real competition. They don't like the fact that new  
781 wind power is cheaper than new coal or nuclear plants. They  
782 are scared to death that solar deployments will continue

783 doubling every single year. So when one solar company that  
784 received a loan guarantee got into financial trouble, the  
785 Republicans smelled blood. Republicans claimed that it is  
786 the No More Solyndras Act and it will put an end to the DOE  
787 loan guarantee program. They claim that it will ensure  
788 taxpayers are never again on the hook for risky government  
789 bets. But they have ignored one inconvenient fact. This  
790 bill should actually be called the \$76.5 Billion for Nuclear  
791 Solyndras Act of 2012 because that is how much money all of  
792 the nuclear loan guarantee applications currently at the  
793 Department of Energy are worth and that includes the loan  
794 guarantees for companies that are almost bankrupt and loan  
795 guarantees for companies whose projects are already a billion  
796 dollars over budget, but they are nuclear programs so you  
797 grandfather them in. Nothing is in this bill that will  
798 prevent the approval of any of those applications.

799 So we need some truth in advertising, please. This bill  
800 does not end the loan guarantee program. It does not prevent  
801 the Department of Energy from making awards to the two  
802 riskiest companies with the riskiest projects, and Mr.  
803 Stearns keeps saying we have to get the government out of the  
804 venture capital business and we can start. Okay, let us get  
805 rid of Title XVII. Let us just do it. And if you want to  
806 say that you have terminated the program, that is not what

807 your bill does. All you do is create an application  
808 deadline, a due date and you grandfather in all of these old  
809 projects that are risky. That is not getting us out of the  
810 venture capital business. That doesn't save a single dollar  
811 for the America taxpayer. So vote for the Green amendment  
812 because at least it will pass the test of truth in  
813 advertising.

814 I yield back the balance of my time.

815 The {Chairman.} The gentleman's time is expired. I  
816 think we are ready to vote on this amendment, seeing no  
817 further discussion.

818 All those in favor of the Green amendment will say aye.

819 Those opposed, say no.

820 The nos appear to have it. The nos have it.

821 Mr. {Waxman.} Roll call.

822 The {Chairman.} Roll call is requested. The clerk will  
823 call the roll.

824 The {Clerk.} Mr. Barton?

825 Mr. {Barton.} Aye.

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

827 Mr. Stearns?

828 Mr. {Stearns.} No.

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

830 Mr. Whitfield?

831 Mr. {Whitfield.} No.  
832 The {Clerk.} Mr. Whitfield votes no.  
833 Mr. Shimkus?  
834 Mr. {Shimkus.} No.  
835 The {Clerk.} Mr. Shimkus votes no.  
836 Mr. Pitts?  
837 Mr. {Pitts.} No.  
838 The {Clerk.} Mr. Pitts votes no.  
839 Mrs. Bono Mack?  
840 Mrs. {Bono Mack.} No.  
841 The {Clerk.} Mrs. Bono Mack votes no.  
842 Mr. Walden?  
843 Mr. {Walden.} No.  
844 The {Clerk.} Mr. Walden votes no.  
845 Mr. Terry?  
846 Mr. {Terry.} No.  
847 The {Clerk.} Mr. Terry votes no.  
848 Mr. Rogers?  
849 Mr. {Rogers.} No.  
850 The {Clerk.} Mr. Rogers votes no.  
851 Mrs. Myrick?  
852 [No response.]  
853 The {Clerk.} Mr. Sullivan?  
854 [No response.]

855 The {Clerk.} Mr. Murphy?  
856 Mr. {Murphy.} No.  
857 The {Clerk.} Mr. Murphy votes no.  
858 Mr. Burgess?  
859 Dr. {Burgess.} No.  
860 The {Clerk.} Mr. Burgess votes no.  
861 Mrs. Blackburn?  
862 Mrs. {Blackburn.} No.  
863 The {Clerk.} Mrs. Blackburn votes no.  
864 Mr. Bilbray?  
865 [No response.]  
866 The {Clerk.} Mr. Bass?  
867 Mr. {Bass.} Aye.  
868 The {Clerk.} Mr. Bass votes aye.  
869 Mr. Gingrey?  
870 [No response.]  
871 The {Clerk.} Mr. Scalise?  
872 Mr. {Scalise.} No.  
873 The {Clerk.} Mr. Scalise votes no.  
874 Mr. Latta?  
875 Mr. {Latta.} No.  
876 The {Clerk.} Mr. Latta votes no.  
877 Mrs. McMorris Rodgers?  
878 Mrs. {McMorris Rodgers.} No.

879 The {Clerk.} Mrs. McMorris Rodgers votes no.  
880 Mr. Harper?  
881 [No response.]  
882 The {Clerk.} Mr. Lance?  
883 Mr. {Lance.} No.  
884 The {Clerk.} Mr. Lance votes no.  
885 Mr. Cassidy?  
886 Dr. {Cassidy.} No.  
887 The {Clerk.} Mr. Cassidy votes no.  
888 Mr. Guthrie?  
889 [No response.]  
890 The {Clerk.} Mr. Olson?  
891 Mr. {Olson.} No.  
892 The {Clerk.} Mr. Olson votes no.  
893 Mr. McKinley?  
894 Mr. {McKinley.} No.  
895 The {Clerk.} Mr. McKinley votes no.  
896 Mr. Gardner?  
897 Mr. {Gardner.} No.  
898 The {Clerk.} Mr. Gardner votes no.  
899 Mr. Pompeo?  
900 Mr. {Pompeo.} No.  
901 The {Clerk.} Mr. Pompeo votes no.  
902 Mr. Kinzinger?

903 Mr. {Kinzinger.} No.

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

905 Mr. Griffith?

906 Mr. {Griffith.} No.

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

908 Mr. Waxman?

909 Mr. {Waxman.} Aye.

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

911 Mr. Dingell?

912 Mr. {Dingell.} Aye.

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

914 Mr. Markey?

915 Mr. {Markey.} Aye.

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

917 Mr. Towns?

918 Mr. {Towns.} Aye.

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

920 Mr. Pallone?

921 Mr. {Pallone.} Aye.

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

923 Mr. Rush?

924 [No response.]

925 The {Clerk.} Ms. Eshoo?

926 Ms. {Eshoo.} Aye.

927           The {Clerk.}   Ms. Eshoo votes aye.  
928           Mr. Engel?  
929           Mr. {Engel.}   Aye.  
930           The {Clerk.}   Mr. Engel votes aye.  
931           Mr. Green?  
932           Mr. {Green.}   Aye.  
933           The {Clerk.}   Mr. Green votes aye.  
934           Ms. DeGette?  
935           Ms. {DeGette.}  Aye.  
936           The {Clerk.}   Ms. DeGette votes aye.  
937           Mrs. Capps?  
938           Mrs. {Capps.}   Aye.  
939           The {Clerk.}   Mrs. Capps votes aye.  
940           Mr. Doyle?  
941           Mr. {Doyle.}   Yes.  
942           The {Clerk.}   Mr. Doyle votes aye.  
943           Ms. Schakowsky?  
944           Ms. {Schakowsky.} Aye.  
945           The {Clerk.}   Ms. Schakowsky votes aye.  
946           Mr. Gonzalez?  
947           Mr. {Gonzalez.}  Aye.  
948           The {Clerk.}   Mr. Gonzalez votes aye.  
949           Ms. Baldwin?  
950           [No response.]

951 The {Clerk.} Mr. Ross?  
952 Mr. {Ross.} Aye.  
953 The {Clerk.} Mr. Ross votes aye.  
954 Mr. Matheson?  
955 Mr. {Matheson.} Aye.  
956 The {Clerk.} Mr. Matheson votes aye.  
957 Mr. Butterfield?  
958 Mr. {Butterfield.} Aye.  
959 The {Clerk.} Mr. Butterfield votes aye.  
960 Mr. Barrow?  
961 Mr. {Barrow.} Aye.  
962 The {Clerk.} Mr. Barrow votes aye.  
963 Ms. Matsui?  
964 Ms. {Matsui.} Aye.  
965 The {Clerk.} Ms. Matsui votes aye.  
966 Mrs. Christensen?  
967 Dr. {Christensen.} Aye.  
968 The {Clerk.} Mrs. Christensen votes aye.  
969 Ms. Castor?  
970 [No response.]  
971 The {Clerk.} Mr. Sarbanes?  
972 Mr. {Sarbanes.} Aye.  
973 The {Clerk.} Mr. Sarbanes votes aye.  
974 Chairman Upton?

975           The {Chairman.} Votes no.

976           The {Clerk.} Chairman Upton votes no.

977           The {Chairman.} Are there other members wishing to cast  
978 a vote?

979           Mr. {Guthrie.} Mr. Chairman.

980           The {Chairman.} Mr. Guthrie.

981           Mr. {Guthrie.} I vote no.

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

983           The {Chairman.} Mr. Bilbray?

984           The {Clerk.} Mr. Bilbray is not recorded.

985           Mr. {Bilbray.} Bilbray votes aye.

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

987           The {Chairman.} Mr. Harper?

988           Mr. {Bilbray.} Excuse me. That was--

989           The {Clerk.} Oh, sorry. Mr. Bilbray votes aye.

990           The {Chairman.} Mr. Harper?

991           Mr. {Harper.} No.

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

993           The {Chairman.} Mr. Rush?

994           The {Clerk.} Mr. Rush is not recorded.

995           Mr. {Rush.} Aye.

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

997           The {Chairman.} Are there other members wishing to cast  
998 a vote? Seeing none, the clerk will report the tally.

999           The {Clerk.} Mr. Chairman, on that vote, there were 24  
1000 ayes, 25 nays.

1001           The {Chairman.} Twenty-four ayes, 25 nays. The  
1002 amendment is not agreed to.

1003           Are there other amendments to the bill?

1004           Mr. {Waxman.} Mr. Chairman.

1005           The {Chairman.} For what purpose does the gentleman  
1006 from California seek to be recognized?

1007           Mr. {Waxman.} I have an amendment at the desk, number  
1008 723.

1009           The {Chairman.} Amendment 723. The clerk will report  
1010 the title.

1011           The {Clerk.} Amendment to H.R. 6213 offered by Mr.  
1012 Waxman of California.

1013           [The amendment follows:]

1014           \*\*\*\*\* INSERT 2 \*\*\*\*\*

|  
1015           The {Chairman.} The amendment will be considered as  
1016 read and the staff will distribute the amendment, and the  
1017 gentleman is recognized for 5 minutes.

1018           Mr. {Waxman.} Mr. Chairman, the American people are  
1019 entitled to an honest debate about the purpose and effect of  
1020 this bill but the Republican rhetoric about what this bill  
1021 does is completely divorced from the reality.

1022           Recently, Chairman Whitfield said we are ending this  
1023 program but he said that we are going to close the loan  
1024 guarantee down yet the Republican bill does not do that. The  
1025 Republican bill does not terminate the loan guarantee  
1026 program. It does not end, phase out or sunset the loan  
1027 guarantee program. Under the bill, the Department of Energy  
1028 can use its existing authority to issue \$34 billion in new  
1029 loan guarantees. DOE can issue those loan guarantees  
1030 tomorrow, next year or 20 years from now. There is no end  
1031 date for this program.

1032           After lambasting this Bush-era program for more than a  
1033 year, House Republicans are leaving it in place to issue tens  
1034 of billions more in loan guarantees, and that is a fact.  
1035 That is what the acting director of the program told us at  
1036 the legislative hearing and that is what committee counsel  
1037 told us last week at the subcommittee markup. At that

1038 markup, the Republicans claimed they were allowing DOE to  
1039 issue \$34 billion more in loan guarantees because they are  
1040 concerned that DOE might incur liability if it did not issue  
1041 loan guarantees to companies with conditional commitments or  
1042 even companies that were just doing due diligence. There is  
1043 no support for this claim. The text of the loan guarantee  
1044 program, regulations, solicitations and term sheets makes it  
1045 clear that DOE can decide not to issue a loan guarantee for  
1046 any reason at any time. There is no contractual obligation  
1047 to issue a final loan guarantee.

1048         Let us turn to what the Republican bill actually does.  
1049 It arbitrarily picks winners and losers by prohibiting DOE  
1050 from considering any application for loan guarantees  
1051 submitted after December 31, 2011. It creates a winners list  
1052 of about 50 projects that are eligible for loan guarantees.  
1053 Everyone else, no matter how groundbreaking or promising  
1054 their technology, loses. The loan guarantee program is  
1055 supposed to support innovative technologies. That is the  
1056 whole point of the program. But under this bill, new  
1057 breakthrough technologies need not apply. Renewable energy  
1058 is a critical part of what we need to reduce our carbon  
1059 pollution and prevent unchecked climate change and the  
1060 disasters that come with it.

1061         Breakthroughs in renewable energy are occurring on a

1062 steady basis. These breakthroughs promise greater efficiency  
1063 at even lower prices, but this legislation walks away from  
1064 technological breakthroughs in renewable energy by  
1065 prohibiting DOE from even considering them. Even the  
1066 technologies that the Republicans claim to support are  
1067 abandoned. If a new application for a coal plant with carbon  
1068 capture and storage comes in, DOE cannot consider it, and if  
1069 an application for a small modular nuclear reactor or a next-  
1070 generation nuclear plant is submitted, DOE is required to  
1071 reject it.

1072 My amendment fixes this problem. It eliminates the  
1073 arbitrary provision that prevents DOE from considering any  
1074 application submitted after 2011. It keeps all the other  
1075 provisions of the bill, even the ones with which I disagree.  
1076 This ensures that DOE can use its remaining funds to provide  
1077 loan guarantees to the latest innovative energy projects.

1078 I want to be clear: my amendment does not increase or  
1079 decrease the amount of loan guarantees that can be awarded  
1080 under this program. It would simply allow new ideas to  
1081 compete with the older ones. I urge support for this  
1082 amendment. But in doing so, I want to note that when you  
1083 look at what is in the pipeline, the ones that are going to  
1084 be selected as winners by not allowing others to compete,  
1085 most of them are nuclear plants and exclude some of these

1086 other technological ideas for which we ought to offer a  
1087 guarantee if we want that technology to succeed.

1088 I urge support for the amendment and yield back my time.

1089 The {Chairman.} The gentleman yields back his time.

1090 The Chair would recognize the gentleman from Illinois, Mr.

1091 Shimkus, for 5 minutes.

1092 Mr. {Shimkus.} To speak against the amendment, Mr.

1093 Chairman.

1094 First of all, Mr. Chairman, just to go on record that if  
1095 you paint this room that green color, I am running for  
1096 chairman again. I am putting that on record right now.

1097 Mr. {Green.} Mr. Chairman, if we are going to have a  
1098 debate on it, I really like that shade of green. If I can't  
1099 win an amendment, can I win the paint?

1100 The {Chairman.} I have told my Michigan State friends I  
1101 am not putting a--

1102 Mr. {Shimkus.} It looks like we might be getting some  
1103 bipartisan agreement on this debate for a change.

1104 I appreciate my colleague from California. We heard  
1105 this amendment in the subcommittee and then again, and this  
1106 is how I reconciled it. You know, the government always  
1107 overpromises and we underdeliver, and this would be an  
1108 example of doing it again. Here we have rolled out a  
1109 program. We have got people who have applied. They are

1110 going through the process and now we just say no, we are out  
1111 of it, even those 50-some-odd that are in the process, we are  
1112 going to walk away from the whole deal of a promise being  
1113 made.

1114         There is a debate to be had on the future of this  
1115 program. To begin with, we are in for research and  
1116 development. But to stop what has already process that has  
1117 been promised I think it not helpful. It does continue to go  
1118 down the line of promising something and not delivering. You  
1119 know, and I am not the biggest climate change greenhouse gas  
1120 guy, as many of you know, but 17 I think are solar projects  
1121 by that measure.

1122         So with that, I would ask my colleagues to oppose the  
1123 amendment.

1124         Mr. {Terry.} Would you yield just--

1125         Mr. {Shimkus.} Yes, I would like to yield to my  
1126 colleague from Nebraska.

1127         Mr. {Terry.} I thank you.

1128         There was a suggestion that new emerging technologies  
1129 like the small nuclear modules would not go forward. The  
1130 reality is, they are going forward as any of the developing  
1131 technologies under different sections. Under Department of  
1132 Energy, in fact, there is a contest that is occurring that is  
1133 supposed to be announced which of the four major, or two of

1134 the four major presenters of new technology of the small  
1135 nuclear modules will receive DOE grants to move it forward  
1136 and then work with the NRC, Nuclear Regulatory Commission, to  
1137 be able to understand these better and permit them.

1138 So these technologies are still going through, and to  
1139 sit there and say because you have done away with a loan  
1140 program for major construction doesn't mean that the  
1141 research, development and pilot projects are stopped.

1142 I yield back to the gentleman from Illinois.

1143 Mr. {Shimkus.} Reclaiming my time. And just remember,  
1144 we spent a lot of time in research and development. That is  
1145 still going to go on. The question that we are having is,  
1146 should we be venture capitalists. I think most of us now  
1147 believe that we shouldn't, especially with the subordination  
1148 aspect burdening the taxpayer.

1149 So with that, I would ask my colleagues to oppose the  
1150 amendment and yield back my time.

1151 The {Chairman.} The gentleman yields back his time.

1152 Other members wishing to speak?

1153 Mr. {Rush.} Mr. Chairman.

1154 The {Chairman.} The gentleman from Illinois, Mr. Rush.

1155 Mr. {Rush.} Mr. Chairman, I want to support the Waxman  
1156 amendment.

1157 Mr. Chairman, let us be honest with the American people

1158 about what this bill does and does not do. Despite all of  
1159 the majority's hand-wringing, it is clear that this bill does  
1160 not end the DOE loan guarantee program. While I disagree  
1161 with the way that we are going about it, I agree that it is  
1162 important to keep this program in place.

1163         The program has already had major successes and we  
1164 should not block it from supporting new, innovative  
1165 technologies. The projects that are already financed by the  
1166 program are expected to support nearly 60,000 jobs and save  
1167 nearly 300 million gallons of gasoline per year. The program  
1168 has supported six power-generation projects that are already  
1169 complete and nine projects that are sending power to the  
1170 electricity grid. The program has funded one of the world's  
1171 largest wind farms, the world's largest concentrated solar  
1172 generation project, the world's largest solar power plant,  
1173 the Nation's first all-electric manufacturing facility,  
1174 vehicle manufacturing facilities, and the first nuclear power  
1175 plant to be built in this country in decades.

1176         With this program, private investors have come off the  
1177 sidelines to invest tens of billions of dollars to create  
1178 thousands of jobs. This program is an engine for job  
1179 creation and we need to look at the successes of this program  
1180 before we pass this poorly thought out, strictly political  
1181 messaging legislation as it currently exists.

1182           As currently drafted, this bill picks winners and losers  
1183 and that certainly is not the way that this committee should  
1184 be going. Let us pass the Waxman amendment and allow the  
1185 most innovative ideas of today and tomorrow to compete with  
1186 applications submitted in the previous years.

1187           Mr. Chairman and members of the committee, I strongly  
1188 urge support for the Waxman amendment, and with that, I yield  
1189 back the balance of my time.

1190           The {Chairman.} The gentleman yields back.

1191           Other members wishing to speak on the amendment? The  
1192 gentleman from Pennsylvania, Mr. Doyle.

1193           Mr. {Doyle.} Thank you, Mr. Chairman.

1194           I don't agree with a whole bunch of things with Mr.  
1195 Shimkus but I do agree on nixing that green paint, plus I  
1196 would point out that that is pretty close to Pittsburgh  
1197 Steeler colors over there, black and gold. So I think it  
1198 would look good in the room.

1199           Mr. {Bilbray.} So the gentleman is agreeing with this  
1200 side of the aisle?

1201           Mr. {Doyle.} Yes, on this particular matter.

1202           Mr. Chairman, I wish to speak in favor of the Waxman  
1203 amendment. A couple weeks ago, the Wall Street Journal  
1204 editorialized in favor of this bill we are considering today.  
1205 The editorial was entitled ``The GOP's Solyndra Wing.''

1206 Journal's editorial board is in favor of this bill, but I  
1207 think it is pretty apparent that they are mistaken about what  
1208 this legislation would actually do if enacted. The Journal's  
1209 editorial said ``A litmus test for the Republicans should be  
1210 eliminating the loan guarantee program.'' It goes on to say  
1211 that ``The No More Solyndras Act will defund the Energy  
1212 Department loan guarantee program.'' The Journal obviously  
1213 is simply wrong about what this legislation would do. If you  
1214 want to terminate, end, defund or eliminate the loan  
1215 guarantee program, this bill is not for you. I understand  
1216 there may be an amendment that will give us a chance to do  
1217 just that, but this bill won't do that.

1218         The legislation we are considering today does not  
1219 eliminate the program. It doesn't defund it. In fact, if we  
1220 were to enact this legislation tomorrow, DOE could issue \$34  
1221 billion in new loan guarantees for years to come. But if you  
1222 want to invest in clean energy to enhance our international  
1223 competitiveness and address the challenges of energy security  
1224 and climate change, this bill is not for you either.

1225         This bill allows DOE to award loan guarantees in 2020,  
1226 for instance, but it only allows DOE to pick from a static  
1227 list of applicants who submitted applications prior to the  
1228 end of 2011. Mr. Chairman, this just simply makes no sense.  
1229 The whole point of the program is to spur innovation, not to

1230 pick winners and losers now for years and years to come.

1231 I support the Waxman amendment. This bill would allow  
1232 \$34 billion in loan guarantees to be issued in the coming  
1233 years. Let us make sure the best ideas in clean energy can  
1234 compete for those guarantees.

1235 With that, Mr. Chairman, I will yield back.

1236 The {Chairman.} The gentleman yields back.

1237 Other members wishing to speak on the amendment? The  
1238 gentlelady from the Virgin Islands.

1239 Dr. {Christensen.} Thank you, Mr. Chairman. I just  
1240 want to add my support to the Waxman amendment.

1241 You know, the bill before us arbitrarily chooses winners  
1242 and losers. It creates a winners list of a few dozen  
1243 projects that submitted applications by the end of 2011.  
1244 Those are the only applications DOE can look at, and everyone  
1245 else, no matter how groundbreaking or promising their  
1246 technology might be, they lose. This program was created to  
1247 support innovative energy technologies. Under the Republican  
1248 bill, new breakthrough technologies are turned away.

1249 Almost every week, we read about advancements in solar  
1250 energy technology that makes it more competitive with  
1251 conventional polluting technologies but these new  
1252 technologies won't be eligible for loan guarantees under this  
1253 legislation. That puts our Nation at serious risk for ceding

1254 clean energy markets of China, Germany and other countries,  
1255 and I am sure all of us want our country to be a leader in  
1256 every respect. New, advanced coal technologies couldn't be  
1257 funded. A new application for a small modular nuclear  
1258 reactor or a next-generation nuclear plant could not be  
1259 funded. I don't think this is the way to go forward on this  
1260 program. I don't think the way to go forward is to create a  
1261 list of winners and then ignore all of the other potential  
1262 clean energy projects.

1263         Mr. Chairman, there is no public policy reason to think  
1264 that the applications already submitted are the perfect  
1265 projects and that there are no new ideas out there that will  
1266 be worth considering in the years to come. By limiting DOE  
1267 to old loan applications, this bill would stifle innovation  
1268 instead of boosting it.

1269         The Waxman amendment fixes this problem. It eliminates  
1270 the arbitrary cutoff date for loan applications and it makes  
1271 certain that DOE can fund the best and the most innovative  
1272 technologies to create jobs and usher the Nation into a clean  
1273 energy future, and I urge my colleagues to support this  
1274 amendment.

1275         The {Chairman.} The gentlelady yields back.

1276         Other members wishing to speak? The gentlelady from  
1277 Illinois.

1278 Ms. {Schakowsky.} Thank you, Mr. Chairman.

1279 So it appears that the misunderstandings continue in  
1280 lots of different places. There is a serious disconnect  
1281 here. We have told the bill does one thing--end the DOE loan  
1282 program--but the truth is, it does something else. It allows  
1283 DOE to give out \$34 billion more in new loan guarantees.

1284 At a legislative hearing we had on the bill a couple of  
1285 weeks ago, the acting director of the loan guarantee program  
1286 confirmed that the bill would allow the Department to  
1287 continue the loan program but with one big downside: it  
1288 would freeze the applicant pool and not allow DOE to fund the  
1289 newest and best loan applicants, and in fact, and it has been  
1290 said before but it is true, this picks winners and losers.  
1291 And Mr. Chairman, even supporters of the bill seem to be  
1292 confused about what it would do.

1293 So we have received some of the letters of support that  
1294 Chairman Whitfield placed in the record last week. The  
1295 American Energy Alliance says that the bill ``strips the  
1296 Department of Energy of its authority'' to approve any more  
1297 loan guarantees, but Mr. Chairman, the bill does not do that.  
1298 Americans for Tax Reforms says the bill ``would eliminate the  
1299 DOE loan guarantee program.'' But, of course, Mr. Chairman,  
1300 the bill does not do that. The American Conservative Union  
1301 says the bill would ``end the troubled loan guarantee

1302 program.'' But Mr. Chairman, the bill does not do that  
1303 either. The Heritage Foundation says the bill ``prohibits  
1304 any new loan guarantees from the Energy Policy Act of 2005,''  
1305 but Mr. Chairman, the bill does not do that either. It does  
1306 not do that at all.

1307 So we should be honest about what the bill does. It  
1308 does not eliminate the DOE loan guarantee program. It lets  
1309 DOE issue up to \$34 billion more in loan guarantees but it  
1310 handcuffs DOE, refusing the Department to consider any  
1311 applications filed after December 2011. This means that the  
1312 Department of Energy will still award loan guarantees but  
1313 will be unable to award them to the newest and most promising  
1314 technologies.

1315 Mr. Chairman, the amendment we are considering does not  
1316 extend the program or increase the amount of budget authority  
1317 for loan guarantees. All it does is stop the underlying bill  
1318 from picking winners and losers. If this amendment is  
1319 adopted, when DOE goes to award a loan guarantee next year or  
1320 5 years from now or 20 years from now, they can consider the  
1321 most promising technology out there and not be limited to the  
1322 best ideas of 2011 or earlier.

1323 And so I urge support for the Waxman amendment, and I  
1324 yield back.

1325 The {Chairman.} The gentlelady yields back.

1326 Other members wishing to speak? Seeing none, the vote  
1327 occurs on the amendment offered by Mr. Waxman.  
1328 All those in favor will say aye.  
1329 All those opposed, say no.  
1330 In the opinion of the Chair, the nos have it.  
1331 Mr. {Waxman.} Roll call.  
1332 The {Chairman.} Roll call is requested. The clerk will  
1333 read the roll.  
1334 The {Clerk.} Mr. Barton?  
1335 Mr. {Barton.} No.  
1336 The {Clerk.} Mr. Barton votes no.  
1337 Mr. Stearns?  
1338 Mr. {Stearns.} No.  
1339 The {Clerk.} Mr. Stearns votes no.  
1340 Mr. Whitfield?  
1341 [No response.]  
1342 The {Clerk.} Mr. Shimkus?  
1343 Mr. {Shimkus.} No.  
1344 The {Clerk.} Mr. Shimkus votes no.  
1345 Mr. Pitts?  
1346 Mr. {Pitts.} No.  
1347 The {Clerk.} Mr. Pitts votes no.  
1348 Mrs. Bono Mack?  
1349 Mrs. {Bono Mack.} No.

1350           The {Clerk.}   Mrs. Bono Mack votes no.  
1351           Mr. Walden?  
1352           Mr. {Walden.}   No.  
1353           The {Clerk.}   Mr. Walden votes no.  
1354           Mr. Terry?  
1355           Mr. {Terry.}   No.  
1356           The {Clerk.}   Mr. Terry votes no.  
1357           Mr. Rogers?  
1358           Mr. {Rogers.}   No.  
1359           The {Clerk.}   Mr. Rogers votes no.  
1360           Mrs. Myrick?  
1361           [No response.]  
1362           The {Clerk.}   Mr. Sullivan?  
1363           [No response.]  
1364           The {Clerk.}   Mr. Murphy?  
1365           Mr. {Murphy.}   No.  
1366           The {Clerk.}   Mr. Murphy votes no.  
1367           Mr. Burgess?  
1368           Dr. {Burgess.}   No.  
1369           The {Clerk.}   Mr. Burgess votes no.  
1370           Mrs. Blackburn?  
1371           Mrs. {Blackburn.}   No.  
1372           The {Clerk.}   Mrs. Blackburn votes no.  
1373           Mr. Bilbray?

1374 Mr. {Bilbray.} Aye.  
1375 The {Clerk.} Mr. Bilbray votes aye.  
1376 Mr. Bass?  
1377 [No response.]  
1378 The {Clerk.} Mr. Gingrey?  
1379 Dr. {Gingrey.} No.  
1380 The {Clerk.} Mr. Gingrey votes no.  
1381 Mr. Scalise?  
1382 Mr. {Scalise.} No.  
1383 The {Clerk.} Mr. Scalise votes no.  
1384 Mr. Latta?  
1385 Mr. {Latta.} No.  
1386 The {Clerk.} Mr. Latta votes no.  
1387 Mrs. McMorris Rodgers?  
1388 [No response.]  
1389 The {Clerk.} Mr. Harper?  
1390 Mr. {Harper.} No.  
1391 The {Clerk.} Mr. Harper votes no.  
1392 Mr. Lance?  
1393 Mr. {Lance.} No.  
1394 The {Clerk.} Mr. Lance votes no.  
1395 Mr. Cassidy?  
1396 Dr. {Cassidy.} No.  
1397 The {Clerk.} Mr. Cassidy votes no.

1398 Mr. Guthrie?  
1399 Mr. {Guthrie.} No.  
1400 The {Clerk.} Mr. Guthrie votes no.  
1401 Mr. Olson?  
1402 Mr. {Olson.} No.  
1403 The {Clerk.} Mr. Olson votes no.  
1404 Mr. McKinley?  
1405 Mr. {McKinley.} No.  
1406 The {Clerk.} Mr. McKinley votes no.  
1407 Mr. Gardner?  
1408 Mr. {Gardner.} No.  
1409 The {Clerk.} Mr. Gardner votes no.  
1410 Mr. Pompeo?  
1411 Mr. {Pompeo.} No.  
1412 The {Clerk.} Mr. Pompeo votes no.  
1413 Mr. Kinzinger?  
1414 Mr. {Kinzinger.} No.  
1415 The {Clerk.} Mr. Kinzinger votes no.  
1416 Mr. Griffith?  
1417 Mr. {Griffith.} No.  
1418 The {Clerk.} Mr. Griffith votes no.  
1419 Mr. Waxman?  
1420 Mr. {Waxman.} Aye.  
1421 The {Clerk.} Mr. Waxman votes aye.

1422 Mr. Dingell?

1423 Mr. {Dingell.} Aye.

1424 The {Clerk.} Mr. Dingell votes aye.

1425 Mr. Markey?

1426 [No response.]

1427 The {Clerk.} Mr. Towns?

1428 [No response.]

1429 The {Clerk.} Mr. Pallone?

1430 [No response.]

1431 The {Clerk.} Mr. Rush?

1432 Mr. {Rush.} Aye.

1433 The {Clerk.} Mr. Rush votes aye.

1434 Ms. Eshoo?

1435 Ms. {Eshoo.} Aye.

1436 The {Clerk.} Ms. Eshoo votes aye.

1437 Mr. Engel?

1438 Mr. {Engel.} Aye.

1439 The {Clerk.} Mr. Engel votes aye.

1440 Mr. Green?

1441 Mr. {Green.} Aye.

1442 The {Clerk.} Mr. Green votes aye.

1443 Ms. DeGette?

1444 Ms. {DeGette.} Aye.

1445 The {Clerk.} Ms. DeGette votes aye.

1446 Mrs. Capps?  
1447 Mrs. {Capps.} Aye.  
1448 The {Clerk.} Mrs. Capps votes aye.  
1449 Mr. Doyle?  
1450 [No response.]  
1451 The {Clerk.} Ms. Schakowsky?  
1452 Ms. {Schakowsky.} Aye.  
1453 The {Clerk.} Ms. Schakowsky votes aye.  
1454 Mr. Gonzalez?  
1455 Mr. {Gonzalez.} Aye.  
1456 The {Clerk.} Mr. Gonzalez votes aye.  
1457 The {Clerk.} Ms. Baldwin?  
1458 [No response.]  
1459 The {Clerk.} Mr. Ross?  
1460 [No response.]  
1461 The {Clerk.} Mr. Matheson?  
1462 Mr. {Matheson.} No.  
1463 The {Clerk.} Mr. Matheson votes no.  
1464 Mr. Butterfield?  
1465 Mr. {Butterfield.} Aye.  
1466 The {Clerk.} Mr. Butterfield votes aye.  
1467 Mr. Barrow?  
1468 Mr. {Barrow.} No.  
1469 The {Clerk.} Mr. Barrow votes no.

1470 Ms. Matsui?

1471 Ms. {Matsui.} Aye.

1472 The {Clerk.} Ms. Matsui votes aye.

1473 Mrs. Christensen?

1474 Dr. {Christensen.} Aye.

1475 The {Clerk.} Mrs. Christensen votes aye.

1476 Ms. Castor?

1477 Ms. {Castor.} Aye.

1478 The {Clerk.} Ms. Castor votes aye.

1479 Mr. Sarbanes?

1480 Mr. {Sarbanes.} Aye.

1481 The {Clerk.} Mr. Sarbanes votes aye.

1482 Chairman Upton?

1483 The {Chairman.} Votes no.

1484 The {Clerk.} Chairman Upton votes no.

1485 The {Chairman.} Other members wishing to cast a vote?

1486 Mr. Bass?

1487 Mr. {Bass.} Aye.

1488 The {Clerk.} Mr. Bass votes aye.

1489 The {Chairman.} Mrs. Myrick?

1490 Mrs. {Myrick.} No.

1491 The {Clerk.} Mrs. Myrick votes no.

1492 The {Chairman.} Mr. Ross?

1493 Mr. {Ross.} Mr. Ross of Arkansas votes no.

1494           The {Clerk.} Mr. Ross votes no.

1495           The {Chairman.} Other members wishing to cast a vote?

1496   Seeing note, the clerk will report the tally.

1497           The {Clerk.} Mr. Chairman, on that vote, there were 17

1498   ayes, 29 nays.

1499           The {Chairman.} Seventeen ayes, 29 nays. The amendment

1500   is not agreed to.

1501           Are there further amendments to the bill?

1502           Mr. {Pompeo.} Mr. Chairman.

1503           The {Chairman.} The gentleman from Kansas, Mr. Pompeo.

1504           Mr. {Pompeo.} Mr. Chairman, thank you. I have an

1505   amendment at the desk.

1506           The {Chairman.} The clerk will read the title of the

1507   amendment.

1508           The {Clerk.} Amendment to H.R. 6213 offered by Mr.

1509   Pompeo of Kansas.

1510           [The amendment follows:]

1511   \*\*\*\*\* INSERT 3 \*\*\*\*\*

|  
1512           The {Chairman.} The amendment will be considered as  
1513 read, the staff will distribute the amendment, and the  
1514 gentleman is recognized for 5 minutes in support of his  
1515 amendment.

1516           Mr. {Pompeo.} Thank you, Mr. Chairman.

1517           The 18-month Solyndra investigation and the subsequent  
1518 legislation we are marking up today have illustrated very  
1519 different views on the federal government's role in using  
1520 taxpayer money to promote certain private energy markets. We  
1521 have seen that debate play out here this morning as well.

1522           There are some like me who are very, very skeptical of  
1523 the federal government's ability to do this successfully, to  
1524 pick amongst winners and losers, and believe that consumers  
1525 and price should ultimately decide the fate of America's  
1526 energy future and it will work really well that way. There  
1527 are others, including some on this side of the aisle, who  
1528 believe there is a role for federal government from promoting  
1529 R&D up to very specific involvement in specific energy  
1530 technologies. These are very different views.

1531           It is important in any debate that we make sure that we  
1532 have good data, and the No More Solyndras Act has brought out  
1533 an opportunity to make sure we have that data. That will  
1534 give us a really productive discussion when we have that to

1535 rely on. It is why I am offering this amendment.

1536 This amendment would require the GAO to take inventory  
1537 of the federal government's handing out of taxpayer dollars  
1538 to particular energy sources including its support of  
1539 electricity generation technologies and transportation fuels.  
1540 The amendment would also require the GAO to study the impact  
1541 that these subsidies have had energy security, electricity  
1542 prices, fuel costs and its impact on consumers and the U.S.  
1543 taxpayers.

1544 Look, these impacts could be both positive and negative.  
1545 I suspect that they will be. There is no way to know unless  
1546 we have an unbiased, fair analysis on the subject. I  
1547 therefore urge my colleagues to support this amendment so  
1548 that we can have an informed debate.

1549 I yield back, Mr. Chairman.

1550 The {Chairman.} The gentleman yields back. The Chair  
1551 would recognize the gentleman from California, Mr. Waxman.

1552 Mr. {Waxman.} Mr. Chairman, I have a second-degree  
1553 amendment at the desk. I would like to have it reported.

1554 The {Chairman.} And if the clerk could report the  
1555 amendment?

1556 The {Clerk.} Amendment offered by Mr. Waxman of  
1557 California to the amendment offered by Mr. Pompeo of Kansas.

1558 [The amendment follows:]

1559 \*\*\*\*\* INSERT 4 \*\*\*\*\*

|  
1560           The {Chairman.} The secondary amendment will be  
1561 considered as read. The staff will distribute that secondary  
1562 amendment, and the gentleman from California is recognized  
1563 for 5 minutes in support of his amendment.

1564           Mr. {Waxman.} Mr. Chairman and my colleagues, Mr.  
1565 Pompeo's amendment asks the Controller General of the GAO to  
1566 do a study, and the focus of this study would have a focus on  
1567 federal subsidies in energy markets, primarily in the area of  
1568 renewables. Well, this amendment is a case of missing the  
1569 forest for the trees. Mr. Pompeo wants to examine where  
1570 federal policies create incentives for clean energy. But  
1571 what this amendment doesn't do is examine a much more  
1572 important question. This committee should be more concerned  
1573 with the question of what federal energy policies do we need  
1574 to establish, to maintain and to increase our Nation's global  
1575 competitiveness.

1576           China is working hard to capture this market. They have  
1577 flooded the market with subsidized solar panels to drive U.S.  
1578 manufacturers out of business. They know that this will be  
1579 an extremely important market as the world moves to low-  
1580 carbon energy sources. They see massive strategic and  
1581 economic benefits of leading the world in this technology.  
1582 Well, we can't be blind to this important issue.

1583           That is why I am offering a second-degree amendment to  
1584 ensure that GAO examines the economic importance of this  
1585 sector to our Nation. Looking at loan guarantees, direct  
1586 loans and tax credits in a vacuum will provide only less than  
1587 half of the full picture. Let us adopt this amendment so  
1588 that the GAO examines the full picture.

1589           My amendment also makes one other perfecting change.  
1590 The Pompeo amendment would not have GAO focus on such  
1591 subsidies that the oil companies have received for decades.  
1592 It ignores key tax policies that benefit this industry  
1593 including certain deductions, accelerated depreciation and  
1594 the benefits of master limited partnerships. Federal  
1595 subsidies for the oil industry are robust and longstanding  
1596 but the Pompeo amendment ignores these subsidies.

1597           So I would urge the adoption of my second-degree  
1598 amendment to address the flaws in the amendment that is  
1599 before us and I urge support for the amendment.

1600           The {Chairman.} Does anyone seek recognition? Mr.  
1601 Pompeo.

1602           Mr. {Pompeo.} Mr. Chairman, I oppose the secondary  
1603 amendment.

1604           The {Chairman.} The gentleman is recognized for 5  
1605 minutes.

1606           Mr. {Pompeo.} Thank you. I appreciate Mr. Waxman's

1607 effort to improve the amendment. I think he does just the  
1608 opposite. It is the case that the study that I am proposing  
1609 doesn't study everything in the universe. It is absolutely  
1610 true. He identifies a couple things that it doesn't do. I  
1611 could go on forever. For instance, it doesn't study the 50  
1612 percent expensing for cellulosic biofuel for plant property,  
1613 which expires in 2012. The study wouldn't cover 5-year cost  
1614 recovery, essentially accelerated depreciation for renewable  
1615 energy property, which includes wind and solar. So the  
1616 characterization that this amendment is trying to look only  
1617 at one kind of energy or one set of subsidies is just  
1618 fundamentally incorrect.

1619 This will certainly study tax credits that apply to the  
1620 oil and gas industry as well, so this is not a study that is  
1621 aimed at any particular energy source. It begins to conduct  
1622 an inventory of those places where we are taking taxpayer  
1623 dollars and directly imposing them into the energy markets.  
1624 I completely agree, there are lots of places that we look at  
1625 issues related to cost recovery and accelerated expenses.  
1626 Those are for another day when we do fundamental tax reform  
1627 next year.

1628 But what my amendment does is try to get GAO to look at  
1629 those places where we have got real taxpayer dollars  
1630 participating in venture capital and venture capital-like

1631 projects that I think we ought to get out of.

1632 Mr. {Waxman.} Will the gentleman yield to me for a  
1633 question?

1634 Mr. {Pompeo.} Yes, I yield.

1635 Mr. {Waxman.} Your amendment does not examine our  
1636 Nation's global competitiveness. Why wouldn't you want to  
1637 examine that issue, or have GAO examine that issue as well?  
1638 If we are going to have loan subsidies--

1639 Mr. {Bilbray.} Would the gentleman yield?

1640 Mr. {Waxman.} --why not look at the impact on our  
1641 Nation's global competitiveness with other industries that  
1642 are going to compete with ours?

1643 Mr. {Pompeo.} Reclaiming my time.

1644 The {Chairman.} If the gentleman would yield just a  
1645 second, I believe that Mr. Murphy has a secondary amendment  
1646 to in fact do that. It will be offered after yours.

1647 Mr. {Pompeo.} Did I hear someone? I yield to the  
1648 gentleman from California.

1649 Mr. {Bilbray.} Yes, I think if you want to talk about  
1650 competitiveness, let us talk about when we talk about  
1651 electrification and about efficiency of wind generation or  
1652 electric cars. Nobody here talks about the fact that there  
1653 is not one mining operation in the United States for rare  
1654 earth. Nobody talks about--they want to talk about the

1655 innovative approaches to next-generation nuclear. But we  
1656 don't talk about that even the Obama Administration admits  
1657 that the regulatory commission only knows how to permit  
1658 light-water reactors that next generation cannot get through  
1659 the regulatory obstructions. None of us want to sit down and  
1660 talk about what is causing the price to produce batteries or  
1661 products or solar panels in the United States is because it  
1662 is not legal to do a lot of it. Nobody wants to talk about  
1663 that California's State employees at UC San Diego had to  
1664 leave the State because they couldn't get the permits to make  
1665 green algae fuel in California in 7 years. Nobody wants to  
1666 talk about how do we reduce the need for private sector to  
1667 get these subsidies by eliminating the outrageous costs of  
1668 producing good environmental options in this country because  
1669 we regulated ourselves impotent, and that is a sad point that  
1670 I really feel that we ought to be recognizing that this  
1671 amendment is talking about one segment.

1672         Maybe we ought to have an amendment to look at all the  
1673 things that government is doing wrong to stand in the way of  
1674 innovative economic and environmental strategy and maybe then  
1675 we can talk frankly about why batteries aren't made in the  
1676 United States.

1677         Mr. {Rush.} Will the gentleman yield?

1678         Mr. {Pompeo.} Reclaiming my time.

1679 Mr. {Rush.} Will the gentleman yield?

1680 Mr. {Pompeo.} No, I won't yield.

1681 I want to reiterate, this amendment is an attempt to  
1682 look at programs that are Solyndra and Solyndra-like. That  
1683 is what the No More Solyndras Act was intended to address.  
1684 We have got a secondary amendment that comes to look at some  
1685 of the international impacts that are associated with things  
1686 like Solyndra and loan guarantee programs and tax credit  
1687 programs, and I think--

1688 Mr. {Rush.} Mr. Chairman.

1689 Mr. {Bilbray.} Will the gentleman yield?

1690 Mr. {Rush.} Mr. Chairman.

1691 Mr. {Pompeo.} I will yield to the gentleman from  
1692 California.

1693 Mr. {Bilbray.} Yes, let me just point out, when we  
1694 talked about Solyndra, we were talking about building a solar  
1695 panel factory where the electricity was about three times  
1696 more expensive than where the panels were made in China. All  
1697 these things affect the bottom line. And if we want to talk  
1698 about making it practical, then let us take the time to get  
1699 down to the level of saying what does it take to be  
1700 competitive in the world market but don't talk about that we  
1701 have to have the federal government always write blank checks  
1702 to be competitive. We need to do our part and change our

1703 regulations so innovative technology can thrive in this  
1704 country.

1705 I yield back to the gentleman.

1706 Mr. {Pompeo.} Reclaiming my time. I am happy to yield  
1707 to the gentleman from Illinois for 18 seconds.

1708 Mr. Chairman, I oppose the secondary amendment. I yield  
1709 back.

1710 The {Chairman.} The gentleman yields back. The Chair  
1711 would recognize the gentleman from Illinois for 5 minutes.

1712 Mr. {Rush.} Mr. Chairman, move to strike the last word.

1713 Mr. Chairman, there is a lot of talking going on. There  
1714 is talking going on with our Nation's industrial leaders.  
1715 There is talking going on with Bill Gates and many, many  
1716 others. There is a lot of talk, a lot of discussion going  
1717 on, and this is what the Nation's industrial leaders led by  
1718 Mr. Bill Gates, here is what they are saying. They say that  
1719 we need more commitment to clean energy and not less  
1720 commitment to clean energy. They say that clean energy will  
1721 be a trillion-dollar market and that this committee, this  
1722 very committee should be focused on how to make our Nation a  
1723 leader in this field and not just a follower.

1724 Mr. Chairman, I think that the substitute to the  
1725 amendment, Mr. Waxman's substitute, makes all the sense in  
1726 the world. It is consistent with the discussion, with the

1727 advice, with the attitude and with the leadership of our  
1728 Nation's industrial leaders led by Mr. Bill Gates, and I  
1729 thoroughly and wholeheartedly support the Waxman amendment.

1730 With that, I yield back.

1731 The {Chairman.} The gentleman yields back. Are there  
1732 other members wishing to speak on the secondary amendment?

1733 Seeing none, the vote occurs on the amendment offered by  
1734 Mr. Waxman to the Pompeo amendment.

1735 All those in favor will say aye.

1736 Those opposed, say no.

1737 The nos appear to have it. The nos have it. The  
1738 amendment is not agreed to.

1739 The Chair would recognize the gentleman from  
1740 Pennsylvania, Dr. Murphy, to offer a secondary amendment to  
1741 the Pompeo amendment.

1742 Mr. {Murphy.} Thank you, Mr. Chairman. I believe the  
1743 amendment is at the desk.

1744 The {Chairman.} The clerk will report the title.

1745 The {Clerk.} Amendment offered by Mr. Murphy of  
1746 Pennsylvania to the amendment offered by Mr. Pompeo of  
1747 Kansas.

1748 [The amendment follows:]

1749 \*\*\*\*\* INSERT 5 \*\*\*\*\*

|  
1750           The {Chairman.} The amendment will be considered as  
1751 read. The staff will distribute the amendment, and the  
1752 gentleman is recognized for 5 minutes in support of his  
1753 amendment.

1754           Mr. {Murphy.} Thank you, Mr. Chairman.

1755           This is actually a very brief amendment, which adds two  
1756 elements to Mr. Pompeo's study. One is to say that it would  
1757 also include any federal subsidies in energy markets provided  
1758 to foreign persons or corporations and also subsidies and  
1759 direct financial interest of any of the 15 foreign countries  
1760 with the largest gross domestic product are providing to  
1761 support energy markets in their respective countries. So far  
1762 today, this committee has, and rightly so, raised a lot of  
1763 questions about what foreign countries are doing to support  
1764 energy development in multiple ways. This amendment calls  
1765 for a review of those facts so this committee can review  
1766 them.

1767           We have spoken a great deal about this, so let us look  
1768 at those facts. They may include such things as countries  
1769 such as France and China and India and the United Kingdom and  
1770 Spain, Canada and others who provide a great deal of subsidy.  
1771 Let us look at a couple discussions of that. From the  
1772 Business Times, they wrote that Chinese companies might

1773 accumulate the bulk of the contracts for Iraq's richest oil  
1774 fields, leaving other international firms in the dust. By  
1775 December, a veritable stampede had begun to bid for  
1776 contracts. In the end, the major winners were state-owned  
1777 firms from Russia, Japan, Norway, Turkey, South Korea, Angola  
1778 and, of course, China. Or an article in the New York Times  
1779 quoted Alan Price, a partner who heads the international  
1780 trade practice of Wiley Rein, a law firm representing United  
1781 States companies in solar and wind cases, said that China  
1782 poses a particular threat to America's developing green-  
1783 energy sector.

1784         China's method is straightforward. It said it sets  
1785 forth industry-specific 5-year plans and then uses all forms  
1786 of national and local subsidies and other governmental  
1787 support to quickly transfer jobs, supply chains, intellectual  
1788 property and wealth to the permanent detriment of the United  
1789 States and global manufacturers.

1790         Also note that France owns two major energy companies.  
1791 Arriva is one of those, and we know that when you have  
1792 foreign countries who own a great portion of that company,  
1793 direct and indirectly they are subsidizing.

1794         So whatever energy sector that is in, is it coal, is it  
1795 natural gas, is it nuclear, is it wind, solar or whatever  
1796 energy sector that may be in, it is important if we are to

1797 clearly understand the long-term impact of whether or not we  
1798 provide loans or any subsidies for American companies, it is  
1799 important to know, A, what America is doing to help foreign  
1800 countries and, B, what foreign countries are doing to help  
1801 themselves. It is only in the light of that full knowledge I  
1802 think we can make long-term decisions about this, and I call  
1803 upon my colleagues on both sides of the aisle to support this  
1804 amendment.

1805         The {Chairman.} The Chair would recognize the gentleman  
1806 from California, Mr. Waxman.

1807         Mr. {Waxman.} Mr. Chairman, I support the Murphy  
1808 amendment.

1809         This amendment is about a long-discredited political  
1810 talking point that federal support for clean energy is going  
1811 to companies overseas. This is flat wrong. Independent fact  
1812 checkers have confirmed that it is flat wrong, but if a GAO  
1813 study of the issue will put this baseless attack to rest,  
1814 then I support requesting the study.

1815         Republicans point to Fisker and say it used money to  
1816 make cars overseas. Well, that is not true. Funds awarded  
1817 to Fisker were used for the company's U.S. design and  
1818 engineering operations. It is true that the company does  
1819 business overseas but there is nothing wrong with that, and  
1820 it does not mean that federal dollars went overseas. That is

1821 simply not accurate.

1822           Thousands of U.S. companies do business overseas while  
1823 getting support of some kind from the U.S. government. That  
1824 does not mean these funds are going overseas, but I suppose  
1825 it is a good political talking point, and my Republican  
1826 colleagues are sticking with it no matter how many times it  
1827 is proved to be false. I am hopeful that this GAO study will  
1828 put this issue to rest, and so I support my colleague's  
1829 amendment.

1830           I support the Murphy amendment for another important  
1831 reason. For nearly a year now, Democrats have been  
1832 requesting that the committee hold hearings on China's  
1833 support for clean-energy technology and how that impacts U.S.  
1834 companies' ability to compete. Well, we have had that  
1835 request completely ignored. We should have looked at it.  
1836 The reason Solyndra could not compete is because China's  
1837 subsidized companies made our company, Solyndra, non-  
1838 competitive. It is disappointing that we have to wait a year  
1839 to look at this issue and that we are not taking more  
1840 initiative to examine it in the committee, but a GAO study is  
1841 a step in the right direction and so I support the Murphy  
1842 amendment.

1843           The {Chairman.} Yield back?

1844           Mr. {Waxman.} Yes.

1845           The {Chairman.} The gentleman yields back. I think we  
1846 are done the discussion. The question comes on the Murphy  
1847 amendment to the Pompeo amendment.

1848           All those in favor of the Murphy amendment will say aye.

1849           All those opposed, say no.

1850           In the opinion of the Chair, the ayes have it. The ayes  
1851 have it.

1852           The question occurs on the Pompeo amendment as amended  
1853 by the Murphy amendment.

1854           All those in favor will say aye.

1855           Those opposed, say no.

1856           In the opinion of the Chair, the ayes have it. The ayes  
1857 have it. The amendment as amended is agreed to.

1858           Are there other amendments?

1859           Mr. {Rush.} Mr. Chairman.

1860           The {Chairman.} The gentleman from Illinois is  
1861 recognized.

1862           Mr. {Rush.} Mr. Chairman, I have an amendment at the  
1863 desk.

1864           The {Chairman.} The clerk will report the title of the  
1865 amendment.

1866           Mr. {Rush.} Number 731.

1867           The {Clerk.} Amendment to H.R. 6213 offered by Mr. Rush  
1868 of Illinois.

1869 [The amendment follows:]

1870 \*\*\*\*\* INSERT 6 \*\*\*\*\*

|  
1871           The {Chairman.} The amendment will be considered as  
1872 read. The staff will distribute the amendment, and the  
1873 gentleman from Illinois is recognized for 5 minutes in  
1874 support of his amendment.

1875           Mr. {Rush.} Mr. Chairman, despite the assurances that  
1876 the majority party has been making to their conservative  
1877 critics and to oil and gas lobbyists, the no-more-innovation  
1878 bill does not terminate section 1703 of DOE's loan program.  
1879 Instead, all this bill does is create a winners list of  
1880 projects that are eligible for tens of billions of dollars in  
1881 loan guarantees simply because they were submitted before  
1882 December of 2011. However, under this legislation, any  
1883 project submitted after that date regardless of how cutting-  
1884 edge or innovative the technology is, would be ineligible for  
1885 loan guarantees.

1886           Mr. Chairman, this logic is illogical. It makes no  
1887 sense. What the majority party is saying is that regardless  
1888 of the merits of any future project that may be submitted to  
1889 DOE, that project is deemed ineligible simply because it was  
1890 not submitted before the Republicans decided to make a  
1891 political message, create political hay over Solyndra. By  
1892 definition, this shortsighted legislation would discourage  
1893 innovative thinking by thoughtlessly and ambiguously

1894 prohibiting funding for any new technological advances years  
1895 in advance.

1896           Mr. Chairman, in March 2012, the EPA proposed the first  
1897 Clean Air Act standard for carbon pollution from future power  
1898 plants. In light of the EPA's action, we should allow power  
1899 plants that plan to meet the carbon standard in new and  
1900 innovative ways to apply for these loan guarantees. Today,  
1901 as we speak, there are six large-scale projects to install  
1902 carbon capture and storage technologies in power plants  
1903 currently planned or already under construction in our  
1904 Nation. While that is a positive step, we should do more and  
1905 we must do more to ensure that a clean-energy future is  
1906 available to us and we cannot afford to take any tools off  
1907 the table, much less loan guarantees, which have been a very  
1908 effective tool for developing and deploying advanced energy  
1909 technology.

1910           So Mr. Chairman, my amendment is very simple. It  
1911 provides that the ban on loan guarantees after December 31,  
1912 2011, does not apply to projects that would employ innovative  
1913 technologies to meet the EPA's carbon pollution standards for  
1914 power plants issued under the Clean Air Act.

1915           Mr. Chairman, since the beginning of this Congress,  
1916 members of this Congress, members of this committee have been  
1917 trying to protect the coal, oil and gas industries from

1918 making the necessary adjustments that they would need to make  
1919 in order to compete with cleaner, more efficient energy  
1920 sources of the 21st century. If we are really serious about  
1921 protecting these industries, then instead of attacking the  
1922 EPA or trying to roll back the Clean Air Act, we must  
1923 encourage those industries to adapt to today's environmental,  
1924 regulatory, market and political realities.

1925         Mr. Chairman, the E&C Committee should play a  
1926 significant role in spurring creativity and innovation in the  
1927 energy sector instead of trying to help certain industries  
1928 shirk their responsibilities and their duties under the law.  
1929 So I urge my colleagues to accept reality, recognize that  
1930 regulation of carbon pollution is here to stay, stand up for  
1931 innovative coal technology and help ensure a future for  
1932 America's coal miners.

1933         I urge my colleagues to support my amendment and with  
1934 that I yield back the rest of my time.

1935         The {Chairman.} The gentleman's time is expired. The  
1936 Chair would recognize the gentleman from Illinois, Mr.  
1937 Shimkus.

1938         Mr. {Shimkus.} Thank you, Mr. Chairman. I speak  
1939 against the amendment.

1940         Mr. Chairman, we also discussed this in the subcommittee  
1941 markup. First of all, my colleagues need to remember, we do

1942 have a pretty fervent R&D program, but the reality is, if you  
1943 want to really help coal, coal miners, low-cost electricity  
1944 generation, what we really need to do is, the right policy  
1945 would be to get the Greenhouse Gas New Performance Standards,  
1946 prevent the rule from being enacted to begin with.

1947         The reality is this: the Greenhouse Gas New Source  
1948 Performance Standards picks winners and losers by setting a  
1949 standard that no one can achieve. So we don't have the  
1950 technology to do it. It is not available and it is costly.  
1951 And it is amazing that just yesterday, the Mississippi  
1952 Supreme Court unanimously denied Mississippi Power a rate  
1953 increase it requested for a carbon capture coal plant in  
1954 Kemper, Mississippi. The costly plan has hit a lot of local  
1955 and environmental opposition, and Mississippi Power plans to  
1956 appeal the decision.

1957         So locally, there is no technology to capture the  
1958 carbon. There is no carbon capture and sequestration  
1959 technology. The federal government is doing some  
1960 investigation. But if you really want to get away from  
1961 picking winners and losers, it is this Greenhouse Gas New  
1962 Source Performance Standard that is going to kill low-cost  
1963 power and electricity that affects individual consumers and  
1964 manufacturing in this country.

1965         So I would ask my colleagues to reject this amendment,

1966 and I yield back my time.

1967           The {Chairman.} The gentleman yields back. The Chair  
1968 would recognize the gentleman from California, Mr. Waxman.

1969           Mr. {Waxman.} Thank you, Mr. Chairman.

1970           I support the amendment offered by Rush. I don't think  
1971 we should be excluding any meritorious application for loan  
1972 guarantees for any type of clean-energy technology based on  
1973 an arbitrary cutoff date. Creating a winners list on that  
1974 basis certainly won't improve the loan guarantee program.

1975           I think that renewables and efficiency technologies  
1976 generally offer the most promising return on investment in  
1977 terms of job, building America's international  
1978 competitiveness, boosting the economy and reducing carbon  
1979 pollution. Nevertheless, as we have examined carbon capture  
1980 and storage technology in previous Congresses, it has become  
1981 clear that the deployment of this technology could cut  
1982 pollution and add a valuable weapon in the fight against  
1983 climate change. According to the nonpartisan CBO, six large-  
1984 scale projects using CCS are currently planned or under  
1985 construction in the United States. That is good, but let us  
1986 not fool ourselves. These projects have had a lot of help to  
1987 get going. If we want to be in a position where we lead on  
1988 this technology and sell it around the world, we still have a  
1989 lot of work to do.

1990           The EPA is doing its part by sending the market a clear  
1991 signal. In its carbon pollution standard for fossil power  
1992 plants, EPA makes it clear that carbon capture and storage  
1993 will be a required technology in the future. Let us face  
1994 reality: carbon pollution controls are not going away. The  
1995 Supreme Court has ruled that EPA has authority to regulate  
1996 carbon pollution. The EPA has exercised its authority, and  
1997 the D.C. Circuit Court of Appeals resoundingly upheld EPA's  
1998 actions. Carbon pollution controls are inevitable. That is  
1999 because climate change is real and the costs of ignoring it  
2000 are enormous.

2001           Just look at the news. Day in and day out, we are  
2002 facing increasingly frequent and intense heat waves and  
2003 droughts. We are going to have a bill on the House Floor to  
2004 give relief to people suffering the economic costs of the  
2005 drought. You may want to ignore this reality but it is a  
2006 reality, and I would note that even in the newspaper, The  
2007 Hill, John Feehery, a former Republican staffer, argues that  
2008 perhaps ignoring this problem may be very harmful, you may  
2009 want to be a skeptic, you may want to be a denier, but you  
2010 could be wrong, and if you are wrong, we are all going to  
2011 suffer the consequences.

2012           Mr. Shimkus just mentioned that the technology is not  
2013 there. Well, we requested, Mr. Rush and I, hearings of the

2014 committee on the issue of carbon control and sequestration.  
2015 Well, we haven't had the opportunity for a hearing. The  
2016 leadership on the Republican side doesn't think it is worthy  
2017 of looking at the facts and so we hear statements, forget  
2018 about it, we are not going to be able to control the carbon  
2019 from coal.

2020           The Rush amendment is common sense. It allows new  
2021 fossil power plants that propose to meet the EPA's carbon  
2022 pollution standards in innovative ways to apply for part of  
2023 the billions of dollars in loan guarantees that this  
2024 Republican bill continues to make available. The only viable  
2025 long-term strategy to keep coal as a major source of energy  
2026 in the United States is to reduce its carbon pollution. And  
2027 one available way to support advancing carbon capture and  
2028 storage technologies and deployment is through loan  
2029 guarantees.

2030           In the subcommittee, the argument was made, we don't  
2031 need no loan guarantees, we are already spending money on  
2032 researching this. Well, wouldn't it be nice to have the  
2033 private sector want to do more in this area, and if they find  
2034 it too risky to get the capital to do it, give them loan  
2035 guarantees. Isn't that going to advance the cause?

2036           The underlying bill makes no sense and this amendment  
2037 doesn't fix all the bill's problems but this amendment does

2038 ensure that at least innovative fossil fuel power generation  
2039 will continue to be eligible for loan guarantees.

2040 Republican members talk about a war on coal. Well, what  
2041 we need is a way to help coal stay as one of the technologies  
2042 for the future, and unless we can develop this technology, we  
2043 are not going to keep coal around. This is their chance to  
2044 preserve some of the existing financial support available for  
2045 these technologies.

2046 I urge support for this common sense and modest  
2047 amendment and yield back the balance of my time.

2048 The {Chairman.} The gentleman's time is expired. Other  
2049 members wishing to speak on the amendment?

2050 Seeing none, the question occurs on the Rush amendment.

2051 All those in favor, say aye.

2052 All those opposed, say no.

2053 In the opinion of the Chair, the nos have it.

2054 Mr. {Waxman.} Roll call.

2055 The {Chairman.} Roll call is requested. The clerk will  
2056 call the roll.

2057 The {Clerk.} Mr. Barton?

2058 Mr. {Barton.} No.

2059 The {Clerk.} Mr. Barton votes no.

2060 Mr. Stearns?

2061 Mr. {Stearns.} No.

2062 The {Clerk.} Mr. Stearns votes no.  
2063 Mr. Whitfield?  
2064 Mr. {Whitfield.} No.  
2065 The {Clerk.} Mr. Whitfield votes no.  
2066 Mr. Shimkus?  
2067 Mr. {Shimkus.} No.  
2068 The {Clerk.} Mr. Shimkus votes no.  
2069 Mr. Pitts?  
2070 Mr. {Pitts.} No.  
2071 The {Clerk.} Mr. Pitts votes no.  
2072 Mrs. Bono Mack?  
2073 [No response.]  
2074 The {Clerk.} Mr. Walden?  
2075 Mr. {Walden.} No.  
2076 The {Clerk.} Mr. Walden votes no.  
2077 Mr. Terry?  
2078 Mr. {Terry.} No.  
2079 The {Clerk.} Mr. Terry votes no.  
2080 Mr. Rogers?  
2081 [No response.]  
2082 The {Clerk.} Mrs. Myrick?  
2083 Mrs. {Myrick.} No.  
2084 The {Clerk.} Mrs. Myrick votes no.  
2085 Mr. Sullivan?

2086 [No response.]

2087 The {Clerk.} Mr. Murphy?

2088 Mr. {Murphy.} No.

2089 The {Clerk.} Mr. Murphy votes no.

2090 Mr. Burgess?

2091 Dr. {Burgess.} No.

2092 The {Clerk.} Mr. Burgess votes no.

2093 Mrs. Blackburn?

2094 Mrs. {Blackburn.} No.

2095 The {Clerk.} Mrs. Blackburn votes no.

2096 Mr. Bilbray?

2097 Mr. {Bilbray.} No.

2098 The {Clerk.} Mr. Bilbray votes no.

2099 Mr. Bass?

2100 Mr. {Bass.} Yes.

2101 The {Clerk.} Mr. Bass votes aye.

2102 Mr. Gingrey?

2103 Dr. {Gingrey.} No.

2104 The {Clerk.} Mr. Gingrey votes no.

2105 Mr. Scalise?

2106 Mr. {Scalise.} No.

2107 The {Clerk.} Mr. Scalise votes no.

2108 Mr. Latta?

2109 Mr. {Latta.} No.

2110 The {Clerk.} Mr. Latta votes no.  
2111 Mrs. McMorris Rodgers?  
2112 Mrs. {McMorris Rodgers.} No.  
2113 The {Clerk.} Mrs. McMorris Rodgers votes no.  
2114 Mr. Harper?  
2115 Mr. {Harper.} No.  
2116 The {Clerk.} Mr. Harper votes no.  
2117 Mr. Lance?  
2118 Mr. {Lance.} No.  
2119 The {Clerk.} Mr. Lance votes no.  
2120 Mr. Cassidy?  
2121 Dr. {Cassidy.} No.  
2122 The {Clerk.} Mr. Cassidy votes no.  
2123 Mr. Guthrie?  
2124 Mr. {Guthrie.} No.  
2125 The {Clerk.} Mr. Guthrie votes no.  
2126 Mr. Olson?  
2127 Mr. {Olson.} No.  
2128 The {Clerk.} Mr. Olson votes no.  
2129 Mr. McKinley?  
2130 Mr. {McKinley.} No.  
2131 The {Clerk.} Mr. McKinley votes no.  
2132 Mr. Gardner?  
2133 [No response.]

2134 The {Clerk.} Mr. Pompeo?  
2135 Mr. {Pompeo.} No.  
2136 The {Clerk.} Mr. Pompeo votes no.  
2137 Mr. Kinzinger?  
2138 [No response.]  
2139 The {Clerk.} Mr. Griffith?  
2140 Mr. {Griffith.} No.  
2141 The {Clerk.} Mr. Griffith votes no.  
2142 Mr. Waxman?  
2143 Mr. {Waxman.} Aye.  
2144 The {Clerk.} Mr. Waxman votes aye.  
2145 Mr. Dingell?  
2146 Mr. {Dingell.} Aye.  
2147 The {Clerk.} Mr. Dingell votes aye.  
2148 Mr. Markey?  
2149 Mr. {Markey.} Aye.  
2150 The {Clerk.} Mr. Markey votes aye.  
2151 Mr. Towns?  
2152 [No response.]  
2153 The {Clerk.} Mr. Pallone?  
2154 Mr. {Pallone.} Aye.  
2155 The {Clerk.} Mr. Pallone votes aye.  
2156 Mr. Rush?  
2157 Mr. {Rush.} Aye.

2158 The {Clerk.} Mr. Rush votes aye.  
2159 Ms. Eshoo?  
2160 Ms. {Eshoo.} Aye.  
2161 The {Clerk.} Ms. Eshoo votes aye.  
2162 Mr. Engel?  
2163 Mr. {Engel.} Aye.  
2164 The {Clerk.} Mr. Engel votes aye.  
2165 Mr. Green?  
2166 Mr. {Green.} Aye.  
2167 The {Clerk.} Mr. Green votes aye.  
2168 Ms. DeGette?  
2169 Ms. {DeGette.} Aye.  
2170 The {Clerk.} Ms. DeGette votes aye.  
2171 Mrs. Capps?  
2172 [No response.]  
2173 The {Clerk.} Mr. Doyle?  
2174 [No response.]  
2175 The {Clerk.} Ms. Schakowsky?  
2176 Ms. {Schakowsky.} Aye.  
2177 The {Clerk.} Ms. Schakowsky votes aye.  
2178 Mr. Gonzalez?  
2179 Mr. {Gonzalez.} Aye.  
2180 The {Clerk.} Mr. Gonzalez votes aye.  
2181 Ms. Baldwin?

2182 [No response.]

2183 The {Clerk.} Mr. Ross?

2184 Mr. {Ross.} No.

2185 The {Clerk.} Mr. Ross votes no.

2186 Mr. Matheson?

2187 [No response.]

2188 The {Clerk.} Mr. Butterfield?

2189 Mr. {Butterfield.} Aye.

2190 The {Clerk.} Mr. Butterfield votes aye.

2191 Mr. Barrow?

2192 Mr. {Barrow.} No.

2193 The {Clerk.} Mr. Barrow votes no.

2194 Ms. Matsui?

2195 Ms. {Matsui.} Aye.

2196 The {Clerk.} Ms. Matsui votes aye.

2197 Mrs. Christensen?

2198 Dr. {Christensen.} Aye.

2199 The {Clerk.} Mrs. Christensen votes aye.

2200 Ms. Castor?

2201 Ms. {Castor.} Aye.

2202 The {Clerk.} Ms. Castor votes aye.

2203 Mr. Sarbanes?

2204 Mr. {Sarbanes.} Aye.

2205 The {Clerk.} Mr. Sarbanes votes aye.

2206 Chairman Upton?  
2207 The {Chairman.} Votes no.  
2208 The {Clerk.} Chairman Upton votes no.  
2209 The {Chairman.} Other members wishing to vote?  
2210 Ms. Bono Mack?  
2211 Mrs. {Bono Mack.} No.  
2212 The {Clerk.} Mrs. Bono Mack votes no.  
2213 The {Chairman.} Mr. Rogers of Michigan?  
2214 Mr. {Rogers.} Votes no.  
2215 The {Clerk.} Mr. Rogers votes no.  
2216 The {Chairman.} Mr. Sullivan?  
2217 Mr. {Sullivan.} No.  
2218 The {Clerk.} Mr. Sullivan votes no.  
2219 The {Chairman.} Mr. Towns?  
2220 Mr. {Towns.} Aye.  
2221 The {Clerk.} Mr. Towns votes aye.  
2222 The {Chairman.} Other members wishing to cast a vote?  
2223 Seeing none, the clerk will report the tally.  
2224 The {Clerk.} Mr. Chairman, on that vote, there were 18  
2225 ayes, 30 nays.  
2226 The {Chairman.} Eighteen ayes, 30 nays. The amendment  
2227 is not agreed to.  
2228 Mr. {Stearns.} Mr. Chairman.  
2229 The {Chairman.} For what purpose does the gentleman

2230 form Florida seek recognition?

2231 Mr. {Stearns.} Mr. Chairman, I have an amendment at the  
2232 desk. It is amendment to H.R. 6213.

2233 The {Clerk.} Does it have a number? In the top corner?

2234 Mr. {Stearns.} I think it is 737.

2235 The {Chairman.} Seven thirty-seven, I believe. The  
2236 clerk will report the title.

2237 The {Clerk.} Amendment to H.R. 6213 offered by Mr.  
2238 Stearns of Florida.

2239 [The amendment follows:]

2240 \*\*\*\*\* INSERT 7 \*\*\*\*\*

|  
2241           The {Chairman.} The amendment will be considered as  
2242 read and the staff will distribute the amendment, and the  
2243 gentleman from Florida is recognized for 5 minutes in support  
2244 of his amendment.

2245           Mr. {Stearns.} Mr. Chairman, thank you, and I am trying  
2246 to say to the committee, when you subordinate money, and the  
2247 Department of Energy did so, there is language in the  
2248 Department of Energy Act of 2005 that says, and let me read  
2249 it to you, on subordination: ``The obligation shall be  
2250 subject to the condition that the obligation is not  
2251 subordinated to other financing.'' Now, evidently on our  
2252 committee, and I think both people would agree, that we  
2253 thought that meant that you could not subordinate taxpayers'  
2254 money. Unfortunately, the Department of Energy found a way  
2255 to do just that to two hedge funds.

2256           So my colleagues, my amendment is very simple. It  
2257 replaces that language that says ``is not subordinate'' and I  
2258 simply insert this language: ``including any reorganization,  
2259 restructuring or termination thereof shall not at any time be  
2260 subordinate.'' So you can see, all I am doing is changing  
2261 the language which is the word ``is'' to putting in the words  
2262 ``shall not be subordinated'' and using ``including any  
2263 reorganization, restructuring or termination.''

2264           Now, I feel that this is important and I am reaching out  
2265 to my fellow Democrats to support me on this because I think  
2266 many of us realize when taxpayers put up half a billion  
2267 dollars as they did in Solyndra and then suddenly it goes  
2268 into bankruptcy, you would think taxpayers would get money  
2269 back. Now, some talk they might get \$20 million of the \$535  
2270 million but there is no guarantee, but my colleagues, those  
2271 hedge funds, two hedge funds, they got first right of refusal  
2272 and they went in and they got some terrific assets at 10  
2273 cents, 5 cents, 1 cent on the dollar, and they can take them  
2274 and do what they want whereas the taxpayers can't.

2275           So, you know, I think you can argue that the Department  
2276 of Energy was wrong in their subordination. In fact, an  
2277 outside law firm told them they were wrong and they went back  
2278 and rephrased the language and then the same law firm said  
2279 well, it is a possibility you could interpret that, but I am  
2280 not a lawyer but I think a lot of lawyers in this room would  
2281 agree that interpretation is a matter of personal opinion and  
2282 also sometimes based upon the exigencies of the  
2283 circumstances. The Department of Energy was just careening  
2284 forward to try and get this project to work.

2285           So my language is clear. It is unambiguous. So  
2286 regardless of how you feel about this, I hope you will agree  
2287 that making subordination prohibited based upon this new

2288 language is very important.

2289 Mr. {Waxman.} Will the gentleman yield?

2290 Mr. {Stearns.} Will you accept the amendment?

2291 Mr. {Waxman.} I want to debate it. I can do it on your  
2292 time or my time.

2293 Mr. {Stearns.} You can do it on your time.

2294 Mr. {Waxman.} You want to be here longer?

2295 Mr. {Stearns.} Yes, I do. I want to be at least 5  
2296 minutes.

2297 You know, even officials, and I say this to my  
2298 colleagues on the other side, at the Treasury Department and  
2299 of the Office of Management and Budget, all understood that  
2300 the loan should not be subordinated. In fact, one OMB branch  
2301 chief told DOE officials that they had stretched the  
2302 provision on subordination beyond its limits. Likewise,  
2303 Treasury officials told DOE that it was the opinion of the  
2304 Treasury's ``legal counsel that the statute and the DOE  
2305 regulations both required that the guaranteed loan should  
2306 not, should not be subordinated to any loan or other debt  
2307 obligation.''

2308 So there you have it. Within the Administration, the  
2309 Treasury Department, the Office of Management and Budget said  
2310 you can't subordinate, yet the Department of Energy parsed  
2311 the language and said they could. And yet DOE continued to

2312 think about some way to push this forward with their after-  
2313 the-fact legal opinion to justify its decision to put  
2314 taxpayers behind these two hedge funds.

2315         So Mr. Chairman, I just feel compelled to offer this  
2316 amendment to restate the obvious, which is, let us change the  
2317 language so the word ``shall'' instead of ``is'' and also to  
2318 make sure that we include the words ``any regulation,  
2319 restructuring or termination thereof shall be included and  
2320 shall not be subordinated.''

2321         Make no mistake about it. When the DOE agreed to  
2322 subordinate its obligation to third-party financing, it did  
2323 so in violation of the law. So it is a shame that I have to  
2324 offer this amendment, yet without it, DOE will simply  
2325 continue relying on its flawed analysis regardless of the  
2326 risks that are presented to taxpayers.

2327         Now, you could say well, Cliff, you know, you are  
2328 overreacting. Let me tell my colleagues, the Energy  
2329 Department has a DOE loan guarantee program acting director.  
2330 His name is David Fritz. And I asked him this question about  
2331 subordination, and he said yes, yes, very definitely we do  
2332 because we want to subordinate a project if it is in  
2333 distress. So he wants to go and continue to do that. He  
2334 could not give a definite answer as to whether they would  
2335 subordinate any other taxpayers' loan beyond saying ``not to

2336 my knowledge'' but the point is, that even the Department of  
2337 Energy, the acting loan program officer wants to continue to  
2338 subordinate. So let us put in my language. Let us make this  
2339 clear, ironclad that he can't do it. Vote for the Stearns  
2340 amendment.

2341           The {Chairman.} The gentleman's time is expired. The  
2342 Chair would recognize the gentleman from California, Mr.  
2343 Waxman.

2344           Mr. {Waxman.} Thank you, Mr. Chairman.

2345           It is clear that a number of members of this committee  
2346 felt it was wrong to subordinate the loan when some people  
2347 came in to try to save Solyndra from going into bankruptcy.  
2348 They didn't think it was legal or appropriate to have this  
2349 subordination. And there was a dispute as to whether it was  
2350 legal or not. Mr. Stearns and some others have said it was  
2351 not legal. Other people think it was legal.

2352           So to resolve this issue, the underlying bill makes it  
2353 illegal, and now we have an amendment saying not only is the  
2354 underlying bill going to say it is illegal but this amendment  
2355 would say that under Title XVII, we would not allow  
2356 subordination. This is an amendment that says we really mean  
2357 it when we said under the underlying bill that we will not  
2358 allow subordination. So I don't even really understand why  
2359 this amendment is necessary because it is part of the bill

2360 now.

2361           Let me just raise another possible way to look at the  
2362 matter. DOE and independent consultant Herb Allison both  
2363 explained why this subordination option is sometimes the best  
2364 way to save a badly performing loan and ultimately save  
2365 taxpayers money. It didn't turn out that way with Solyndra  
2366 but it might under some other circumstances. So I don't  
2367 agree with the idea of saying under no circumstances will we  
2368 ever allow subordination of a subsequent loan. But I don't  
2369 think I am going to prevail on that issue. But I do want you  
2370 to give some thought to it because you are continuing this  
2371 loan guarantee program and you might have a nuclear project  
2372 get a loan guarantee because they are one of the few still in  
2373 the pipeline and there may be a problem with it and they may  
2374 be about to go bankrupt and we don't want taxpayers' dollars  
2375 to be used if we can avoid the bankruptcy or the failure of  
2376 the loan guarantee which would call upon the government using  
2377 taxpayers' money to make that guarantee fulfilled.

2378           But this amendment doesn't do anything. It doesn't  
2379 represent a substantive change to the bill, and I was trying  
2380 to suggest if I could have had time from Mr. Stearns that I  
2381 don't disagree with his amendment if he wants it because that  
2382 is what the underlying bill does. But he wanted to take the  
2383 full 5 minutes, and I don't think it is necessary for me to

2384 take the full 5 minutes. I will oppose his amendment just as  
2385 I opposed the bill, but this amendment, in my view, is  
2386 completely unnecessary and I just wanted to point that out.  
2387 But Mr. Stearns did point out to all of us, he is not a  
2388 lawyer and so I believe him, and I want to recognize his  
2389 amendment does nothing that the bill doesn't already do.

2390 I yield back my time.

2391 Mr. {Barton.} Mr. Chairman.

2392 The {Chairman.} The Chair would recognize the gentleman  
2393 from Texas, Mr. Barton.

2394 Mr. {Barton.} And I am going to speak hopefully very  
2395 briefly.

2396 I am not an attorney either; I am an engineer. I used  
2397 to be a Registered Professional Engineer, but I am not  
2398 registered at this point in time. But in engineering, there  
2399 is always one best solution, and there is no ambiguity.  $E$   
2400 equals  $MC$  squared, two plus two equals four,  $A$  squared plus  $B$   
2401 squared equals  $C$  squared. You can calculate the load, you  
2402 can calculate--you know, formulas are exact.

2403 It is not that way in the legal profession. We passed a  
2404 bill in this committee 7 years ago and we said you can't  
2405 subordinate, and I don't remember there being a whole lot of  
2406 debate at the time, you know, you can't subordinate unless.  
2407 We just assumed that if we say you can't, you can't. Well,

2408 Solyndra came along and the folks at the Department of Energy  
2409 when the loan started going bad, they asked some folks at the  
2410 Treasury Department and the Treasury Department said we don't  
2411 think you can subordinate, and the people at OMB said we  
2412 don't think you can subordinate. Their outside legal counsel  
2413 said we don't think you can subordinate. But they finally  
2414 got an internal attorney in the counsel's office to say well,  
2415 maybe you can if you assume that what the law really meant  
2416 was, you can't subordinate at the time you originate the  
2417 loan. But if you restructure the loan, it is okay.

2418         So in the legal profession, there is always, no matter  
2419 how tightly you try to draft something, different people can  
2420 interpret it different ways. So I disagree with my friend  
2421 from California that this amendment is unnecessary because it  
2422 makes it absolutely clear you cannot subordinate when you  
2423 originate the loan, you cannot subordinate if you restructure  
2424 the loan, you cannot subordinate if you recapitalize; in  
2425 fact, you can't ever subordinate. Now, the Department of  
2426 Energy says well, you know, we really don't want to  
2427 subordinate but sometimes you have to to save the loan. If  
2428 it is that bad and that shaky, you shouldn't give the loan in  
2429 the first place.

2430         Now, in the private sector when you have private  
2431 capital, subordination is an option because people know they

2432 are assuming risk. The investors and the bankers know that  
2433 there is a risk quotient and different people view risk  
2434 different ways so you can subordinate private capital for  
2435 private capital if all the parties agree. But in the case of  
2436 public funds, we can't find a case that any public loan had  
2437 ever been subordinated before for any department. For any  
2438 department. So the Stearns amendment I think is an  
2439 improvement to the bill, is a necessary part of the bill,  
2440 because it puts to rest this debate about when you might  
2441 subordinate. You can't ever in the beginning, in the middle  
2442 or at the end, period, because it is public dollars and you  
2443 always protect public dollars before private dollars.

2444         So I am in strong support of the Stearns amendment, and  
2445 this should be one that both sides of the aisle totally agree  
2446 with unless you agree with the Department of Energy that  
2447 every now and then you might ought to subordinate it if you  
2448 made a bad loan to begin with and you mismanaged it and you  
2449 can't figure out how to get out of it so the only way to get  
2450 out of it is to put more money into it and then you can  
2451 subordinate the public funds. I don't think we should ever  
2452 do that, so I am in strong support of the Stearns amendment.

2453         Mr. {Green.} Mr. Chairman, will the gentleman yield?

2454         Mr. {Barton.} I will be happy to yield to my friend  
2455 from Texas.

2456 Mr. {Green.} Only for the sake of time, and I agree  
2457 that the 2005 bill or law did not allow even for  
2458 subordination on refinancing, and I don't have any problem  
2459 with the amendment. I think it makes it stronger, and like a  
2460 lot of members, I was frustrated with the Department of  
2461 Energy's effort.

2462 Now, as you and I know, in the private sector if you  
2463 have X amount of dollars in an investment, oftentimes you  
2464 will come in and take a superior position, but we don't  
2465 particularly do that with tax dollars. As you said, that is  
2466 why it was in the law in 2005 and it should still be in the  
2467 law, and maybe this just dots the i's and crosses the t's to  
2468 make sure that for taxpayers' dollars, if a loan is going  
2469 bad, you know, but the taxpayers still should be first in  
2470 line, and that is the issue.

2471 So I appreciate you yielding the time.

2472 Mr. {Barton.} And Mr. Chairman, I yield back.

2473 The {Chairman.} The gentleman yields back.

2474 Do we have other members wishing to speak? The  
2475 gentlelady from Colorado.

2476 Ms. {DeGette.} Thank you. I will be brief, Mr.  
2477 Chairman.

2478 I just want to reiterate what I said before, which is I  
2479 agree that we should never subordinate the public position on

2480 the initial loan, and that was clear in the original statute.  
2481 I also think that even though the attorneys said that  
2482 subordination was all right in the restructuring in this  
2483 situation, I think there may be situations where it is  
2484 appropriate where you are trying to save taxpayer dollars,  
2485 and that is what DOE was trying to do in this position is,  
2486 they were trying to save the initial investment they had  
2487 made.

2488 I disagree with this amendment because I think it--while  
2489 I would in general be opposed to subordination, there may be  
2490 a situation where it would be appropriate, and I have been  
2491 trying to think of situations where we could tighten down the  
2492 law and make it more appropriate but what I think the effect  
2493 of this amendment would be is to dry up funding for the loan  
2494 program to begin with, private funding, and perhaps that is  
2495 the intention, but in any event, I agree with the idea that  
2496 the public position should generally not be subordinated,  
2497 certainly never in the initial loan, and I would also agree  
2498 to tightening down the subordination in a restructuring  
2499 situation but I think this is an overbroad approach, and I  
2500 yield back.

2501 The {Chairman.} The gentlelady yields back.

2502 Are there other members wishing to speak? The gentleman  
2503 from Georgia.

2504 Dr. {Gingrey.} Mr. Chairman, very briefly.

2505 The comments that I am hearing from the other side  
2506 repeatedly and the comments from Mr. France when he testified  
2507 before the committee a week ago, I guess, is that in certain  
2508 circumstances, the end justifies the means. I mean, it is as  
2509 simple as that. The end doesn't justify the means when the  
2510 means are against the law, and that is the exclamation point  
2511 that the Stearns amendment puts on this and that ought to put  
2512 it to rest, and I yield back.

2513 The {Chairman.} The gentleman yields back.

2514 Other members wishing to speak? Seeing none, the vote  
2515 occurs on the Stearns amendment.

2516 All those in favor will say aye.

2517 All those opposed, say no.

2518 In the opinion of the Chair, the ayes have it. The ayes  
2519 have it.

2520 The request is for a recorded vote. The clerk will  
2521 call the roll.

2522 The {Clerk.} Mr. Barton?

2523 Mr. {Barton.} Aye.

2524 The {Clerk.} Mr. Barton votes aye.

2525 Mr. Stearns?

2526 Mr. {Stearns.} Aye.

2527 The {Clerk.} Mr. Stearns votes aye.

2528 Mr. Whitfield?  
2529 Mr. {Whitfield.} Aye.  
2530 The {Clerk.} Mr. Whitfield votes aye.  
2531 Mr. Shimkus?  
2532 [No response.]  
2533 The {Clerk.} Mr. Pitts?  
2534 Mr. {Pitts.} Aye.  
2535 The {Clerk.} Mr. Pitts votes aye.  
2536 Mrs. Bono Mack?  
2537 Mrs. {Bono Mack.} Aye.  
2538 The {Clerk.} Mrs. Bono Mack votes aye.  
2539 Mr. Walden?  
2540 Mr. {Walden.} Aye.  
2541 The {Clerk.} Mr. Walden votes aye.  
2542 Mr. Terry?  
2543 Mr. {Terry.} Aye.  
2544 The {Clerk.} Mr. Terry votes aye.  
2545 Mr. Rogers?  
2546 [No response.]  
2547 The {Clerk.} Mrs. Myrick?  
2548 Mrs. {Myrick.} Aye.  
2549 The {Clerk.} Mrs. Myrick votes aye.  
2550 Mr. Sullivan?  
2551 [No response.]

2552 The {Clerk.} Mr. Murphy?  
2553 [No response.]  
2554 The {Clerk.} Mr. Burgess?  
2555 Dr. {Burgess.} Aye.  
2556 The {Clerk.} Mr. Burgess votes aye.  
2557 Mrs. Blackburn?  
2558 Mrs. {Blackburn.} Aye.  
2559 The {Clerk.} Mrs. Blackburn votes aye.  
2560 Mr. Bilbray?  
2561 Mr. {Bilbray.} Aye.  
2562 The {Clerk.} Mr. Bilbray votes aye.  
2563 Mr. Bass?  
2564 Mr. {Bass.} Aye.  
2565 The {Clerk.} Mr. Bass votes aye.  
2566 Mr. Gingrey?  
2567 Dr. {Gingrey.} Aye.  
2568 The {Clerk.} Mr. Gingrey votes aye.  
2569 Mr. Scalise?  
2570 Mr. {Scalise.} Aye.  
2571 The {Clerk.} Mr. Scalise votes aye.  
2572 Mr. Latta?  
2573 Mr. {Latta.} Aye.  
2574 The {Clerk.} Mr. Latta votes aye.  
2575 Mrs. McMorris Rodgers?

2576 Mrs. {McMorris Rodgers.} Aye.

2577 The {Clerk.} Mrs. McMorris Rodgers votes aye.

2578 Mr. Harper?

2579 Mr. {Harper.} Aye.

2580 The {Clerk.} Mr. Harper votes aye.

2581 Mr. Lance?

2582 Mr. {Lance.} Aye.

2583 The {Clerk.} Mr. Lance votes aye.

2584 Mr. Cassidy?

2585 Dr. {Cassidy.} Aye.

2586 The {Clerk.} Mr. Cassidy votes aye.

2587 Mr. Guthrie?

2588 Mr. {Guthrie.} Aye.

2589 The {Clerk.} Mr. Guthrie votes aye.

2590 Mr. Olson?

2591 Mr. {Olson.} Aye.

2592 The {Clerk.} Mr. Olson votes aye.

2593 Mr. McKinley?

2594 Mr. {McKinley.} Aye.

2595 The {Clerk.} Mr. McKinley votes aye.

2596 Mr. Gardner?

2597 Mr. {Gardner.} Aye.

2598 The {Clerk.} Mr. Gardner votes aye.

2599 Mr. Pompeo?

2600 Mr. {Pompeo.} Aye.

2601 The {Clerk.} Mr. Pompeo votes aye.

2602 Mr. Kinzinger?

2603 [No response.]

2604 The {Clerk.} Mr. Griffith?

2605 Mr. {Griffith.} Aye.

2606 The {Clerk.} Mr. Griffith votes aye.

2607 Mr. Waxman?

2608 Mr. {Waxman.} No.

2609 The {Clerk.} Mr. Waxman votes no.

2610 Mr. Dingell?

2611 Mr. {Dingell.} No.

2612 The {Clerk.} Mr. Dingell votes no.

2613 Mr. Markey?

2614 Mr. {Markey.} No.

2615 The {Clerk.} Mr. Markey votes no.

2616 Mr. Towns?

2617 [No response.]

2618 The {Clerk.} Mr. Pallone?

2619 Mr. {Pallone.} No.

2620 The {Clerk.} Mr. Pallone votes no.

2621 Mr. Rush?

2622 Mr. {Rush.} No.

2623 The {Clerk.} Mr. Rush votes no.

2624 Ms. Eshoo?

2625 Ms. {Eshoo.} No.

2626 The {Clerk.} Ms. Eshoo votes no.

2627 Mr. Engel?

2628 Mr. {Engel.} No.

2629 The {Clerk.} Mr. Engel votes no.

2630 Mr. Green?

2631 Mr. {Green.} Aye.

2632 The {Clerk.} Mr. Green votes aye.

2633 Ms. DeGette?

2634 Ms. {DeGette.} No.

2635 The {Clerk.} Ms. DeGette votes no.

2636 Mrs. Capps?

2637 Mrs. {Capps.} No.

2638 The {Clerk.} Mrs. Capps votes no.

2639 Mr. Doyle?

2640 [No response.]

2641 The {Clerk.} Ms. Schakowsky?

2642 Ms. {Schakowsky.} No.

2643 The {Clerk.} Ms. Schakowsky votes no.

2644 Mr. Gonzalez?

2645 [No response.]

2646 The {Clerk.} Ms. Baldwin?

2647 [No response.]

2648 The {Clerk.} Mr. Ross?  
2649 Mr. {Ross.} Aye.  
2650 The {Clerk.} Mr. Ross votes aye.  
2651 Mr. Matheson?  
2652 Mr. {Matheson.} Aye.  
2653 The {Clerk.} Mr. Matheson?  
2654 Mr. {Matheson.} Aye.  
2655 The {Clerk.} Mr. Matheson votes aye.  
2656 Mr. Butterfield?  
2657 [No response.]  
2658 The {Clerk.} Mr. Barrow?  
2659 Mr. {Barrow.} Aye.  
2660 The {Clerk.} Mr. Barrow votes aye.  
2661 Ms. Matsui?  
2662 Ms. {Matsui.} No.  
2663 The {Clerk.} Ms. Matsui votes no.  
2664 Mrs. Christensen?  
2665 Dr. {Christensen.} No.  
2666 The {Clerk.} Mrs. Christensen votes no.  
2667 Ms. Castor?  
2668 Ms. {Castor.} No.  
2669 The {Clerk.} Ms. Castor votes no.  
2670 Mr. Sarbanes?  
2671 [No response.]

2672 The {Clerk.} Chairman Upton?  
2673 The {Chairman.} Votes aye.  
2674 The {Clerk.} Chairman Upton votes aye.  
2675 The {Chairman.} Other members? Mr. Shimkus?  
2676 Mr. {Shimkus.} Votes aye.  
2677 The {Clerk.} Mr. Shimkus votes aye.  
2678 The {Chairman.} Mr. Sullivan?  
2679 Mr. {Sullivan.} Aye.  
2680 The {Clerk.} Mr. Sullivan votes aye.  
2681 The {Chairman.} Mr. Rogers?  
2682 Mr. {Rogers.} Aye.  
2683 The {Clerk.} Mr. Rogers votes aye.  
2684 The {Chairman.} Other members wishing to cast a vote?  
2685 Seeing none, the clerk will report the tally.  
2686 The {Clerk.} Mr. Chairman, on that vote, there were 33  
2687 ayes and 13 nays.  
2688 The {Chairman.} Thirty-three ayes, 13 nays. The  
2689 amendment is agreed to.  
2690 Mr. {Markey.} Mr. Chairman.  
2691 The {Chairman.} For what purpose does the gentleman  
2692 from Massachusetts seek recognition?  
2693 Mr. {Markey.} Mr. Chairman, I have an amendment.  
2694 The {Chairman.} If I might just add two more votes? I  
2695 ask unanimous consent to include these. Mr. Butterfield

2696 votes no. Dr. Murphy, did you vote?

2697 Mr. {Murphy.} Aye.

2698 The {Chairman.} Mr. Murphy votes aye.

2699 The {Clerk.} Mr. Murphy votes aye.

2700 The {Chairman.} So the vote is 34 to 14.

2701 The gentleman from Massachusetts.

2702 Mr. {Markey.} Thank you, Mr. Chairman. I have

2703 amendment number 739 at the desk.

2704 The {Chairman.} Seven thirty-nine. The clerk will  
2705 report the title of the amendment.

2706 The {Clerk.} Amendment to H.R. 6213 offered by Mr.

2707 Markey of Massachusetts.

2708 [The amendment follows:]

2709 \*\*\*\*\* INSERT 8 \*\*\*\*\*

|  
2710           The {Chairman.} The amendment will be considered as  
2711 read. The staff will distribute the amendment, and the  
2712 gentleman is recognized for 5 minutes in support of his  
2713 amendment.

2714           Mr. {Markey.} Thank you, Mr. Chairman.

2715           This is the simplest amendment that will be offered all  
2716 day. It ends the Department of Energy loan guarantee  
2717 program. Now, I hear from my friends that they don't like  
2718 this loan guarantee program. I hear from my friends that  
2719 they want no more Solyndras. I hear from my friends that the  
2720 federal government should get out of the venture capital  
2721 business, and I know in the deepest recesses of your heart,  
2722 that is your goal, and that is why I have propounded the  
2723 Markey amendment today.

2724           There is no phase-out period. There is no  
2725 grandfathering of favored projects. There is no ifs, ands or  
2726 buts. My amendment takes away the authority of the Secretary  
2727 to give loan guarantees, period. This is the real No More  
2728 Solyndras amendment, and I am offering this amendment to  
2729 inject some truth in advertising into this debate. It is to  
2730 protect this committee from the Federal Trade Commission  
2731 bringing a Section 5 Unfair and Deceptive Practices Act  
2732 violation against us.

2733 I am here because in reality, the No More Solyndras Act  
2734 as drafted should be called The Only \$88.4 Billion More for  
2735 Nuclear and Coal No More Solyndras Act of 2012 because that  
2736 is what the majority, the Republicans, are propounding. This  
2737 is the program that will remain after you vote your bill  
2738 today. It will be The Only \$88.4 Billion More for Nuclear  
2739 and Coal No More Solyndras Act of 2012. Congratulations.  
2740 You should be proud of this attempt to get us out of venture  
2741 investment by the federal government.

2742 So there would be \$76 billion for nuclear, the riskiest,  
2743 \$11.9 billion for coal. I am sure that all of the  
2744 Republicans that support the coal industry must be happy with  
2745 that loan guarantee, huh? But then, you know, there will be  
2746 money here for geothermal and transmission and biomass and  
2747 wind but the truth is, those are just going to be scraps  
2748 because out of the \$101 billion in loan guarantees that get  
2749 grandfathered under the bill, nearly 90 percent are for coal  
2750 and nuclear projects, and those crumbs are left for solar and  
2751 renewables, which is after all your goal anyway. And so this  
2752 is your program.

2753 And that is what an all-of-the-above program for the  
2754 Republicans looks like. They give 90 percent of the pie to  
2755 their friends. They leave the scraps for everyone else and  
2756 then tell the public they have cut out wasteful spending.

2757 When faced with this awkward reality, Republicans say they  
2758 wish they could put an end to all loan guarantees but they  
2759 are afraid that the government would get sued for breach of  
2760 contract if they did. They say that they want to put the  
2761 government on a diet, let us just get out of it. But a  
2762 Republican diet for this program would be like saying I am on  
2763 a strict diet except for the five hot fudge sundaes with  
2764 whipped cream I am going to eat every day because that is the  
2765 program that you leave here. But it is only goodies for your  
2766 interests. Wind and solar, the orphans, as usual.

2767           And what are the conditions? Well, I have the  
2768 conditions here. The documents that spell out the \$8.3  
2769 billion conditional commitment that was signed by both the  
2770 Department of Energy and the Georgia Power Company, it says  
2771 that the Department of Energy can terminate the conditional  
2772 agreement if it becomes illegal for DOE to provide loan  
2773 guarantees because Congress changes the law. Well, we are  
2774 the Congress, my friends. We are the bankers. We can  
2775 decide. We can change the law. And if we do so, some fool  
2776 can try and file a frivolous lawsuit but the judge will toss  
2777 it right out of the court because we have ended the loan  
2778 guarantee to the southern company. We can do that. That is  
2779 what the law says. It is right in here.

2780           So let us not pretend that there is any real concern

2781 that if Congress repeals the loan guarantee program that  
2782 there is any real grounds for the nuclear industry to sue the  
2783 government, and I have a letter from Taxpayers for Common  
2784 Sense and that bastion of liberalism, the Competitive  
2785 Enterprise Institute, who say about this bill, they say the  
2786 No More Solyndras Act does not go far enough and leaves loan  
2787 guarantees available that would cost taxpayers billions of  
2788 dollars. They say although the bill prevents new loan  
2789 guarantees from the Department of Energy, it excludes  
2790 projects that applied before December of 2011. These  
2791 grandfathered loan guarantees went through the same failed  
2792 review process and are just as likely, if not more so, to end  
2793 in default just like Solyndra. That is the Competitive  
2794 Enterprise Institute.

2795 That is why I make the Markey amendment, to protect us  
2796 against this failed program. I urge an aye vote for the  
2797 Markey amendment.

2798 The {Chairman.} The gentleman's time is expired. The  
2799 gentleman from Kentucky is recognized for 5 minutes.

2800 Mr. {Whitfield.} Thank you. I seek recognition to  
2801 speak in opposition to the gentleman's amendment.

2802 I must say that it is appealing to be able to just stop  
2803 everything right now, and as Mr. Markey said, this is a  
2804 failed program so there is a lot of reasons to stop it right

2805 now. But before I get into why we shouldn't stop it right  
2806 now, I do want to make some comments about the chart that the  
2807 gentleman had up at the podium there.

2808 He talked about \$88 billion more for nuclear and coal.  
2809 I would say first of all, under the 1703 program, there is  
2810 only \$34 billion left because there is a cap at \$34 billion.  
2811 Now, the total amount of money asked for in the loan  
2812 guarantees from all the applicants certainly exceeds \$34  
2813 billion, not that many--not that amount of money in loan  
2814 guarantees can be awarded. So there is only \$34 billion  
2815 left.

2816 Now, we made the decision on this side of the aisle in  
2817 this legislation that any application in the pipeline filed  
2818 before December 31, 2011, would be considered, and I think  
2819 that is only fair to do because we all talk about the need  
2820 for certainty. Many of these companies have spent money on  
2821 this project already. There are some conditional approvals  
2822 already pending, and I might say that I am a little bit  
2823 surprised that the gentleman would be offering this amendment  
2824 because there are 50 applications still pending,  
2825 approximately 50, and of that 50, 17 of them are solar  
2826 projects, six are biomass, three are energy efficiency  
2827 projects, three are geothermal projects. There is even one  
2828 transmission project. So there is a lot of renewable

2829 projects that are in the queue.

2830           So while it is appealing to end the project right now,  
2831 let us just end the program right now, not consider any of  
2832 these pending applications, I think the better view is, let  
2833 us let the Department of Energy go through the remainder of  
2834 these applications that are already pending and let them make  
2835 that decision. But there is only \$34 billion left. There is  
2836 not \$88 billion out there. And so while I have all the  
2837 admiration and respect for the gentleman from Massachusetts,  
2838 I would urge all the members to oppose this amendment.

2839           Unless someone would like my remaining time, I would--I  
2840 yield to the gentleman from Virginia.

2841           Mr. {Griffith.} Thank you. I appreciate that very  
2842 much.

2843           You know, this is interesting. The American system of  
2844 law and justice evolved out of the English system, which was  
2845 based on both law and equity, and what is happening here is,  
2846 is that our side of the aisle is recalling those shadows that  
2847 still remain in the federal system of equity, and that means,  
2848 let us do what is fair. These companies put their proposals  
2849 forward. They spent countless dollars putting these  
2850 proposals forward and we shouldn't just yank the rug out from  
2851 under them.

2852           Now, the protection that Mr. Markey seeks when he says

2853 things and quotes people saying that these new ones that are  
2854 in the pipeline already are more likely to end in default  
2855 ought to be competent administration but the fact that he  
2856 feels this amendment is necessary underscores the fact that  
2857 he does not believe the Department of Energy can competently  
2858 determine which ones of these risks are legitimate and ones  
2859 that ought to have a chance to go forward, and based on past  
2860 history, he may be right. But the sense of equity, the sense  
2861 of fairness to those companies that might actually have a  
2862 legitimate use of this money compels us to vote against this  
2863 amendment and sustain the bill as it is currently written.

2864 Thank you, Mr. Chairman, and I yield back to the  
2865 gentleman from Kentucky.

2866 Mr. {Whitfield.} I yield back.

2867 The {Chairman.} The gentleman yields back the time.  
2868 The Chair would recognize the gentleman from California.

2869 Mr. {Waxman.} Thank you, Mr. Chairman.

2870 I am going to vote against the Markey amendment. I like  
2871 Mr. Markey, but I don't like this amendment. But his  
2872 amendment does what the Republicans say they are doing.  
2873 Republicans say let us end this program. Well, I don't think  
2874 we ought to end the program. The DOE loan guarantee program  
2875 has had major successes in supporting new, innovative  
2876 technologies. The projects financed by this program are

2877 expected to support 60,000 jobs, save nearly 300 million  
2878 gallons of gasoline per year. The program is funding one of  
2879 the world's largest wind farms, the world's largest  
2880 concentrated solar generation project, the world's largest  
2881 solar power plant and the Nation's first all-electric-vehicle  
2882 manufacturing facilities. We should applaud these successes,  
2883 but when you look at the efforts that China is making to  
2884 capture the clean-energy market, it is clear we need to do  
2885 more, not less. That is why we shouldn't terminate the Title  
2886 XVII loan guarantee program.

2887         But a funny thing is happening in the debate today. My  
2888 colleagues across the aisle say they want to terminate this  
2889 program and they say this bill will terminate this program.  
2890 Their rhetoric has gone way ahead of their reality. In fact,  
2891 this bill does not end the loan guarantee program. It  
2892 doesn't sunset or terminate the program. Under the  
2893 Republican bill, DOE will issue only \$34 billion in loan  
2894 guarantees in the coming years. Only \$34 billion. What if  
2895 we said Solyndra went bankrupt but it was only \$500 million?  
2896 Only \$500 million. You would be laughing at us. Only \$34  
2897 billion.

2898         And then we got a new interesting argument: equity,  
2899 equity to the companies who submitted applications. You  
2900 don't owe those companies anything. If you don't believe in

2901 the loan guarantee program, why go forward and guarantee  
2902 their loans? Just because they submitted an application?  
2903 Well, what about the fairness and equity to the programs that  
2904 may want to submit applications that are even better than the  
2905 ones in the pipeline? Oh, you all over there on the  
2906 Republican side of the aisle said no, no, no, no, we can't do  
2907 that.

2908 Well, this amendment, to Mr. Markey's credit, will make  
2909 the Republicans have to vote and all of us whether we want to  
2910 terminate the loan guarantee program, and I suspect that  
2911 there is going to be a bipartisan agreement that we should  
2912 continue the loan guarantee program. The vote on this  
2913 amendment will determine whether that is the case. If the  
2914 Republicans really want to terminate the program, this is  
2915 their opportunity. They should adopt this amendment and it  
2916 will be clear that no new loan guarantees can be issued under  
2917 the program. There is no legal obligation to consider those  
2918 loan applications that are in the pipeline now. It is only  
2919 that the bill says they will still be considered out of  
2920 fairness, out of equity, out of some conscience that we have  
2921 that they should stand and be judged and get loan guarantees.  
2922 Well, if this amendment fails, then it would be clear to  
2923 everyone that despite their rhetoric and bluster, there  
2924 remains bipartisan support for continuing the program. DOE

2925 should then go on with the business of helping innovative  
2926 clean-energy technologies to overcome market barriers.

2927       So if you want to terminate the program, vote for the  
2928 Markey amendment. If you don't want to terminate the  
2929 program, vote against the Markey amendment. But at least be  
2930 open about what you stand for, and don't give me this  
2931 business of only \$34 billion. Even where I come from, that  
2932 is a lot of money.

2933       So I would urge members to vote their consciences, and  
2934 yield back my time.

2935       Mr. {Stearns.} Mr. Chairman.

2936       The {Chairman.} The gentleman yields back. The Chair  
2937 would recognize Mr. Stearns for 5 minutes.

2938       Mr. {Stearns.} Mr. Chairman, thank you very much.

2939       Did you all see Mr. Markey's mark dissatisfaction when  
2940 Mr. Waxman said he was going to come out against his  
2941 amendment? You know, really, Mr. Markey should be on the  
2942 arena stage, in all deference to his acquired ability. He  
2943 can star in Othello or perhaps Macbeth or Romeo and Juliet  
2944 because really what he is trying to do is set up an amendment  
2945 to get Republicans to vote for it when he doesn't even  
2946 believe it, and we all know he doesn't even believe his own  
2947 amendment. In fact, Mr. Waxman sitting right next to him  
2948 pointed out that he is going to vote against it because he

2949 doesn't even believe Mr. Markey.

2950           So really, when Mr. Markey comes on the committee and  
2951 talks about political cynicism, I mean, this is really the  
2952 height of it, and he is really talking about an attempt to  
2953 try and embarrass Republicans. We are going to vote this  
2954 thing down, I say to my colleagues. This is just all playing  
2955 politics for him. And of course, we have seen him do it time  
2956 and time again. So when I see his mock dissatisfaction when  
2957 he throws the pen down and the pencil and looks over at Mr.  
2958 Waxman, it is all the ability to show that he could star on  
2959 the arena stage.

2960           So I would say to Mr. Markey, I have great respect for  
2961 your acting ability here and I appreciate your mock  
2962 dissatisfaction. Vote against the Markey amendment.

2963           Ms. {Eshoo.} Mr. Chairman.

2964           Mr. {Stearns.} Dr. Burgess?

2965           Okay. Mr. Gardner, I recognize you.

2966           Mr. {Gardner.} I thank the gentleman from Florida for  
2967 his time, and I wanted to follow up on your points.

2968           I think what disappoints me in this debate today is, I  
2969 am trying to figure out where the other side does stand. So  
2970 far, amendments have been offered to keep the program in its  
2971 totality. Amendments have been offered to eliminate the  
2972 program in its totality, that coming from the same side of

2973 the aisle, people voting to keep it, people voting to  
2974 eliminate it, amendments offered to keep it, amendments  
2975 offered to eliminate it. Clearly, clearly, what is happening  
2976 is not a concern about policy, but a concern about politics.  
2977 Concern about whether they can go and say well, we forced  
2978 this vote or we forced that vote. We are dealing with real  
2979 people's jobs here. We are dealing with half a billion  
2980 dollars of money that is wasted away. Taxpayer money. We  
2981 are dealing with people who are now unemployed because the  
2982 government failed to do its job in preventing the crony  
2983 capitalism that occurred in Solyndra.

2984         And so what we have here, putting aside the politics and  
2985 actually working for the policy is a bill that would prohibit  
2986 any new applications from being submitted. It would  
2987 establish a new safeguard for pending applications to prevent  
2988 the flawed decision making that allowed Solyndra to receive a  
2989 government-backed loan in the first place. And I would  
2990 remind the gentleman that while he can show his chart, the  
2991 chart ought to reflect that there are 51 applications with 17  
2992 solar applications, 9 nuclear applications, 6 biofuels  
2993 applications, 3 of geothermal, 3 wind, 3 efficiency and 3  
2994 coal applications that are pending. Sounds like a diverse  
2995 choice to me, a diverse opportunity to me. Yet, I believe  
2996 this amendment that he is offering does nothing more than

2997 pick winners and losers.

2998           And so it boils back down to the same simple point of  
2999 are you trying to find good policy or simply trying to make  
3000 good politics? He failed to note that there are a fraction  
3001 of applications that eventually received these loan  
3002 guarantees. Historically, only 7 percent of these applicants  
3003 have actually received a loan guarantee under Title 17 of the  
3004 program. And I agree, that in an ideal world we wouldn't  
3005 have to go down this road to create these kinds of programs  
3006 in the first place, but the reality is the applicants that  
3007 are in line waiting for these investments have invested time,  
3008 financial resources, effort, perhaps there are legal  
3009 obligations, but the one thing we know about is the need for  
3010 certainty in our economy. The one thing we know about is the  
3011 need for certainty in businesses. And yet once again, the  
3012 political maneuvering from the other side prevents not only  
3013 certainty but would add to the political theatre that the  
3014 American public is so sick and tired of.

3015           I would urge a no-vote of this amendment.

3016           Mr. {Stearns.} I still have 36 seconds. Dr. Burgess,  
3017 do you wish or--anyone else want to use my remaining 29  
3018 seconds? If not, I yield back.

3019           The {Chairman.} The gentleman yields back. The  
3020 gentl lady from California is recognized for 5 minutes.

3021 Ms. {Eshoo.} Thank you, Mr. Chairman. I yield to Mr.  
3022 Markey.

3023 Mr. {Markey.} I thank the gentlelady so much. Because  
3024 obviously the Republicans don't want to pick winners and  
3025 losers, far be it that that would ever be your goal. So when  
3026 last year out on the House Floor you all voted to end the \$18  
3027 billion in loan guarantees for the wind and solar industry  
3028 but to keep the \$18 billion worth of loan guarantees for the  
3029 nuclear and coal industry, you all voted that way. Of course  
3030 you weren't picking winners and losers.

3031 And when Mitt Romney earlier this week said that he was  
3032 going to actually raise taxes on the wind industry beginning  
3033 on January 1 of next year but keep the tax cuts for the oil  
3034 and gas industry, of course he, as your leader, was not  
3035 picking winners and losers. That was just passionate and now  
3036 where the proper allocation of federal resources should be  
3037 going, you know, to the oil and gas industry, to the nuclear  
3038 and coal industry.

3039 But you know what is really at the heart of all of this,  
3040 I will be honest with you? You know, the Democrats took over  
3041 the House in 2007. By 2008, 1 percent of all U.S.  
3042 electricity was generated by wind. In 2009, it was 2  
3043 percent. In 2011 it was 3 percent. This year it is 4  
3044 percent of all electricity is from wind in the United States.

3045 Next year it is projected to be 5 percent of all electricity  
3046 in America. And if the tax breaks stayed on the books, it  
3047 would go to 7, 8, 9 percent over the next several years.

3048 And that is what this is all about. It is protecting  
3049 the losers from the winners. It is making sure that these  
3050 winning new technologies don't continue to eat into coal or  
3051 nuclear. So the subsidies for nuclear and coal, they just  
3052 keep getting bigger and bigger because losers need bigger and  
3053 bigger federal handouts, picking them as the winners, as the  
3054 market has selected them as the losers. And as you take away  
3055 the loan guarantees for wind and solar as you did on the  
3056 House Floor last year, as you already announced that you are  
3057 going to raise taxes on wind next year but keep the oil and  
3058 gas tax breaks, the wealthiest industry in the history of the  
3059 world.

3060 And then I hear from the gentleman from Florida that he  
3061 is shocked, just shocked, like Claude Rains in Rick's Café in  
3062 Casablanca, shocked that there is gambling going on in this  
3063 casino, shocked that the Republicans would ever be charged  
3064 with favoring nuclear and coal and oil and gas over wind and  
3065 solar because theirs is clearly a wind and solar agenda. And  
3066 they had no idea why viewers of this movie would suspect that  
3067 the Claude Rains collected here today would in fact be  
3068 turning a blind eye to the kind of gambling that goes on with

3069 this loan guarantee program that the competitive enterprise  
3070 institute is begging you to end here today, to put it out of  
3071 its misery. Because each of these applications was made  
3072 under the same flawed process as the Solyndra loan was made,  
3073 same flawed process.

3074         So let us just attempt to test the depths of your  
3075 sincerity, your intellectual commitment to Adam Smith and  
3076 Hayek and Friedman and all of those that believe deeply in  
3077 the free market and to remove the heavy-handed government so  
3078 that those private-sector decisions are made dispassionately  
3079 by capitalists, rather than this totally distorted, thumb on  
3080 the scales of investment that will harm the winners on behalf  
3081 of the losers that are out in the marketplace with  
3082 statistical incontrovertible evidence of this dramatic change  
3083 which has happened, and that is the honestly, the sincere  
3084 basis of the Markey amendment, just so that we can ensure  
3085 that we bring to truth this entire debate.

3086         I thank the gentlelady, and I yield back the balance of  
3087 my time.

3088         The {Chairman.} The Chair recognizes the gentleman from  
3089 Texas, Dr. Burgess.

3090         Dr. {Burgess.} Mr. Chairman, I seek recognition to ask  
3091 questions of counsel. The question that I have, with all of  
3092 the flowery rhetoric that we have heard, is it Counsel's

3093 understanding that this amendment would indeed end all of the  
3094 so-called projects in the pipeline?

3095 {Counsel.} It would, yes.

3096 Dr. {Burgess.} And the dollar figure that we are given  
3097 for that is \$34 billion?

3098 {Counsel.} The current authorization loan guarantee  
3099 authority is \$34 billion. That is the cap.

3100 Dr. {Burgess.} Now, would this amendment,  
3101 notwithstanding, would that also end the appropriations that  
3102 might be included in the continuing resolution?

3103 {Counsel.} No.

3104 Dr. {Burgess.} So the money could still be funded  
3105 through the CR?

3106 {Counsel.} Possibly.

3107 Dr. {Burgess.} Let me ask you this. What happens if  
3108 the authorization is withdrawn? What happens to the money?  
3109 Would it simply go to the Department of Energy to use as they  
3110 see fit? Does it go to reduce the national debt? What  
3111 occurs to those dollars at that point?

3112 {Counsel.} That is unclear.

3113 Dr. {Burgess.} That is unfortunate.

3114 {Counsel.} Appropriators would have to take further  
3115 action to dictate where that goes.

3116 Dr. {Burgess.} So that would be up not to our Committee

3117 but the Committee of Appropriations?

3118 {Counsel.} Correct. They have jurisdiction there.

3119 Dr. {Burgess.} You know, Mr. Chairman, in a previous  
3120 hearing, I took an oath in this Committee to never again  
3121 support anything that Mr. Markey brought to this Committee.  
3122 And I am struggling with it right now, but I think because of  
3123 the answers I received it is a little unclear what the way  
3124 forward is. And that is unfortunate as well.

3125 Let me say as any physician in this country who has  
3126 practiced medicine in the last 40 years recognizes that the  
3127 Federal Government is an unreliable fiscal partner. We have  
3128 the rescissions coming up in January. Certainly defense  
3129 contractors around this country recognize the Federal  
3130 Government is an unreliable fiscal partner. We have a 78  
3131 percent reduction in discretionary appropriations that are  
3132 occurring at the Department of Health and Human Services.  
3133 Certainly those individuals will recognize that the Federal  
3134 Government is an unreliable fiscal partner. I don't really  
3135 see how this situation is much different, but I do not like  
3136 the concept that removing the authorization does not stop the  
3137 possibility of the appropriations from occurring, and I  
3138 actually wish there was more time to study that as an issue.

3139 Mr. {Whitfield.} Will the gentleman yield?

3140 Dr. {Burgess.} I will be happy to yield to the Chairman

3141 of the subcommittee.

3142 Mr. {Whitfield.} It is my understanding that if the  
3143 program is deauthorized and the appropriators provide money  
3144 for it, that the Chairman of the committee that has  
3145 jurisdiction over the program can make a point of order on  
3146 the House Floor and prevent the appropriation, the money for  
3147 an authorized program.

3148 Dr. {Burgess.} I thank the gentleman for that  
3149 information. I will yield back.

3150 Mr. {Waxman.} The gentleman yield to me?

3151 Dr. {Burgess.} If there is no one on my side

3152 Mr. {Stearns.} I will take some of your time.

3153 Dr. {Burgess.} No, Mr. Waxman asked first. I should  
3154 yield to him.

3155 Mr. {Waxman.} I am so pleased you didn't make a  
3156 resolution never to yield to me. I would just like to make  
3157 the argument that you ought to judge the proposals on their  
3158 merit, not who authored it, whether it was your side of the  
3159 aisle or not. Let us vote on the merits...

3160 Dr. {Burgess.} Reclaiming my time. That was only done  
3161 as a defensive move after being attacked by Mr. Markey. I  
3162 will yield to Mr. Stearns.

3163 Mr. {Stearns.} I would say to Dr. Burgess and my  
3164 colleagues, do you know on the House Floor lots of times we

3165 see, particularly since we are in the majority, the Democrats  
3166 have a Motion to Adjourn. And they don't really mean to  
3167 adjourn. They just want to make a point or they want to slow  
3168 down our operations. Well, we have a bill here that Mr.  
3169 Upton and I have put together, and thoughtfully, it  
3170 represents a huge amount of work, and this is really an  
3171 attempt to adjourn the Committee which the Democrats try to  
3172 do in the minority as an option.

3173 And I say really, to vote against a Markey, it is a  
3174 motion to really try to disrupt and not try to, as Mr.  
3175 Gardner pointed out, to have substance. So with that, I hope  
3176 the members will vote no on the Markey amendment.

3177 Dr. {Burgess.} I yield back.

3178 The {Chairman.} The Chairman yields back. Are there  
3179 other members wishing to speak on the amendment? Seeing  
3180 none, the vote occurs on the Markey amendment.

3181 Those in favor of the Markey amendment will say aye.

3182 Those opposed will say no.

3183 In the opinion of the Chair, the noes have it. Roll  
3184 call is requested. The Clerk will call the roll.

3185 The {Clerk.} Mr. Barton?

3186 [No response.]

3187 The {Clerk.} Mr. Stearns?

3188 Mr. {Stearns.} No.

3189 The {Clerk.} Mr. Stearns votes no.  
3190 Mr. Whitfield?  
3191 Mr. {Whitfield.} No.  
3192 The {Clerk.} Mr. Whitfield votes no.  
3193 Mr. Shimkus?  
3194 Mr. {Shimkus.} No.  
3195 The {Clerk.} Mr. Shimkus votes no.  
3196 Mr. Pitts?  
3197 Mr. {Pitts.} No.  
3198 The {Clerk.} Mr. Pitts votes no.  
3199 Mrs. Bono Mack?  
3200 [No response.]  
3201 The {Clerk.} Mr. Walden?  
3202 Mr. {Walden.} No.  
3203 The {Clerk.} Mr. Walden votes no.  
3204 Mr. Terry?  
3205 Mr. {Terry.} No.  
3206 The {Clerk.} Mr. Terry votes no.  
3207 Mr. Rogers?  
3208 [No response.]  
3209 The {Clerk.} Mrs. Myrick?  
3210 Mrs. {Myrick.} No.  
3211 The {Clerk.} Mrs. Myrick votes no.  
3212 Mr. Sullivan?

3213 Mr. {Sullivan.} No.

3214 The {Clerk.} Mr. Sullivan votes no.

3215 Mr. Murphy?

3216 [No response.]

3217 The {Clerk.} Mr. Burgess?

3218 Dr. {Burgess.} Aye.

3219 The {Clerk.} Mr. Burgess votes aye.

3220 Mrs. Blackburn?

3221 [No response.]

3222 The {Clerk.} Mr. Bilbray?

3223 Mr. {Bilbray.} No.

3224 The {Clerk.} Mr. Bilbray votes no.

3225 Mr. Bass?

3226 Mr. {Bass.} No.

3227 The {Clerk.} Mr. Bass votes no.

3228 Mr. Gingrey?

3229 Dr. {Gingrey.} No.

3230 The {Clerk.} Mr. Gingrey votes no.

3231 Mr. Scalise?

3232 [No response.]

3233 The {Clerk.} Mr. Latta?

3234 Mr. {Latta.} No.

3235 The {Clerk.} Mr. Latta votes no.

3236 Mrs. McMorris Rodgers?

3237 [No response.]

3238 The {Clerk.} Mr. Harper?

3239 Mr. {Harper.} No.

3240 The {Clerk.} Mr. Harper votes no.

3241 Mr. Lance?

3242 Mr. {Lance.} No.

3243 The {Clerk.} Mr. Lance votes no.

3244 Mr. Cassidy?

3245 Dr. {Cassidy.} No.

3246 The {Clerk.} Mr. Cassidy votes no.

3247 Mr. Guthrie?

3248 Mr. {Guthrie.} No.

3249 The {Clerk.} Mr. Guthrie votes no.

3250 Mr. Olson?

3251 Mr. {Olson.} No.

3252 The {Clerk.} Mr. Olson votes no.

3253 Mr. McKinley?

3254 Mr. {McKinley.} No.

3255 The {Clerk.} Mr. McKinley votes no.

3256 Mr. Gardner?

3257 Mr. {Gardner.} No.

3258 The {Clerk.} Mr. Gardner votes no.

3259 Mr. Pompeo?

3260 [No response.]

3261 The {Clerk.} Mr. Kinzinger?  
3262 Mr. {Kinzinger.} No.  
3263 The {Clerk.} Mr. Kinzinger votes no.  
3264 Mr. Griffith?  
3265 Mr. {Griffith.} No.  
3266 The {Clerk.} Mr. Griffith votes no.  
3267 Mr. Waxman?  
3268 Mr. {Waxman.} No.  
3269 The {Clerk.} Mr. Waxman votes no.  
3270 Mr. Dingell?  
3271 Mr. {Dingell.} Votes no.  
3272 The {Clerk.} Mr. Dingell votes no.  
3273 Mr. Markey?  
3274 Mr. {Markey.} No.  
3275 The {Clerk.} Mr. Markey votes no.  
3276 Mr. Towns?  
3277 [No response.]  
3278 The {Clerk.} Mr. Pallone?  
3279 Mr. {Pallone.} No.  
3280 The {Clerk.} Mr. Pallone votes no.  
3281 Mr. Rush?  
3282 [No response.]  
3283 The {Clerk.} Ms. Eshoo?  
3284 Ms. {Eshoo.} Pass.

3285 The {Clerk.} Ms. Eshoo votes aye.  
3286 Ms. {Eshoo.} No, pass.  
3287 The {Clerk.} Oh, pass? Oh, sorry. Ms. Eshoo passes.  
3288 Mr. Engel?  
3289 [No response.]  
3290 The {Clerk.} Mr. Green?  
3291 Mr. {Green.} No.  
3292 The {Clerk.} Mr. Green votes no.  
3293 Ms. DeGette?  
3294 Ms. {DeGette.} No.  
3295 The {Clerk.} Ms. DeGette votes no.  
3296 Mrs. Capps?  
3297 Mrs. {Capps.} No.  
3298 The {Clerk.} Mrs. Capps votes no.  
3299 Mr. Doyle?  
3300 Ms. {Doyle.} No.  
3301 The {Clerk.} Mr. Doyle votes no.  
3302 Ms. Schakowsky?  
3303 Ms. {Schakowsky.} No.  
3304 The {Clerk.} Ms. Schakowsky votes no.  
3305 Mr. Gonzalez?  
3306 [No response.]  
3307 The {Clerk.} Ms. Baldwin?  
3308 [No response.]

3309 The {Clerk.} Mr. Ross?  
3310 Ms. {Ross.} No.  
3311 The {Clerk.} Mr. Ross votes no.  
3312 Mr. Matheson?  
3313 Mr. {Matheson.} No.  
3314 The {Clerk.} Mr. Matheson votes no.  
3315 Mr. Butterfield?  
3316 [No response.]  
3317 The {Clerk.} Mr. Barrow?  
3318 Mr. {Barrow.} No.  
3319 The {Clerk.} Mr. Barrow votes no.  
3320 Ms. Matsui?  
3321 Ms. {Matsui.} No.  
3322 The {Clerk.} Ms. Matsui votes no.  
3323 Mrs. Christensen?  
3324 [No response.]  
3325 The {Clerk.} Ms. Castor?  
3326 Ms. {Castor.} No.  
3327 The {Clerk.} Ms. Castor votes no.  
3328 Mr. Sarbanes?  
3329 [No response.]  
3330 The {Clerk.} Chairman Upton.  
3331 The {Chairman.} Votes no.  
3332 The {Clerk.} Chairman Upton votes no.

3333           The {Chairman.} Members that wish to still cast a vote.  
3334 Mr. Pompeo?  
3335           Ms. {Pompeo.} Aye.  
3336           The {Clerk.} Mr. Pompeo votes aye.  
3337           The {Chairman.} Mr. Barton?  
3338           Mr. {Barton.} No.  
3339           The {Clerk.} Mr. Barton votes no.  
3340           The {Chairman.} Ms. Bono Mack?  
3341           Mrs. {Bono Mack.} No.  
3342           The {Clerk.} Mrs. Bono Mack votes no.  
3343           The {Chairman.} Mrs. McMorris Rodgers?  
3344           Mrs. {McMorris Rodgers.} No.  
3345           The {Clerk.} Mrs. McMorris Rodgers votes no.  
3346           The {Chairman.} Oh, I am sorry, Mr. Scalise?  
3347           Mr. {Scalise.} Aye.  
3348           The {Clerk.} Mr. Scalise votes aye.  
3349           The {Chairman.} Other members wishing to cast a vote?  
3350 Seeing none, the Clerk will report the tally.  
3351           The {Clerk.} Mr. Chairman, on that vote there were 3  
3352 ayes, 39 nays.  
3353           Mr. {Markey.} Shocking.  
3354           The {Chairman.} 3 ayes, 39 nays. The amendment is not  
3355 agreed to. The gentleman from Kentucky, Mr. Whitfield, is  
3356 recognized for what purpose?

3357 Mr. {Whitfield.} I have an amendment at the desk.

3358 The {Chairman.} Has an amendment at the desk. The

3359 Clerk will read the title of the amendment.

3360 Mr. {Whitfield.} It is number 722.

3361 The {Clerk.} Amendment to H.R. 6213 offered by Mr.

3362 Whitfield of Kentucky.

3363 [The amendment follows:]

3364 \*\*\*\*\* INSERT 9 \*\*\*\*\*

|  
3365           The {Chairman.} The amendment will be considered as  
3366 read. The staff will distribute the amendment, and the  
3367 gentleman is recognized for 5 minutes in support of his  
3368 amendment.

3369           Mr. {Whitfield.} Mr. Chairman, in the original language  
3370 of the No More Solyndra Act it says that no guarantees should  
3371 be made until the Secretary of the Treasury has reviewed the  
3372 proposed guarantee and made a recommendation written to the  
3373 Secretary of Energy on the merits of the guarantee. This  
3374 amendment really is just a technical amendment because the  
3375 expertise of the Treasury is about financial terms and  
3376 conditions, and this amendment simply narrows the written  
3377 recommendation and not on the merits of the guarantee, but  
3378 simply to the financial terms and conditions. Without that,  
3379 the Department of Treasury could do a complete de novo review  
3380 of the entire project, and this amendment just simply says  
3381 you focus on the financial terms and conditions. And so that  
3382 primarily is what this amendment is all about, and I would  
3383 urge support for the amendment and yield back the balance of  
3384 my time.

3385           The {Chairman.} Are you finished? Yielded back? Other  
3386 members wishing to speak on the amendment? The gentleman  
3387 from California.

3388 Mr. {Waxman.} Mr. Chairman, this amendment highlights  
3389 the fact that the Republican bill is not as advertised. The  
3390 amendment clearly demonstrates that the bill does not  
3391 terminate, end, phase out or sunset the loan guarantee  
3392 program. The Republican bill assigns the Treasury Department  
3393 the responsibility to review new proposed loan guarantees and  
3394 to provide recommendations to the Department of Energy.  
3395 Under the bill, DOE either has to accept the recommendations  
3396 or explain to Congress why it didn't accept the  
3397 recommendations. This amendment actually takes a step back  
3398 from the bill. Under the amendment, the Treasury Department  
3399 will just do an analysis of new loan guarantees and not offer  
3400 any recommendations. So this amendment means fewer  
3401 procedures for the issuance of new loan guarantees. In other  
3402 words, they are going to make loan guarantees easier.

3403 I think the amendment is unobjectionable because the  
3404 additional bureaucracy of the Treasury Department  
3405 recommendation is unnecessary, but it should go without  
3406 saying that a program issuing new loan guarantees has not  
3407 been terminated and in fact, how many Republicans, 25  
3408 Republicans on this Committee voted to continue the loan  
3409 guarantees.

3410 So if anybody thinks this bill, No More Solyndras, means  
3411 no more loan guarantees, they are absolutely wrong. I yield

3412 back my time.

3413           The {Chairman.} Are there members wishing to speak on  
3414 the amendment? Seeing none, the vote occurs on the Whitfield  
3415 amendment.

3416           Those in favor of it will say aye.

3417           Those opposed say no.

3418           In the opinion of the Chair, the ayes have it. The ayes  
3419 have it. The amendment is agreed to.

3420           Are there further amendments to the bill? The  
3421 gentlelady from Colorado.

3422           Ms. {DeGette.} Mr. Chairman, I have an amendment at the  
3423 desk.

3424           The {Chairman.} The Clerk will read the title of the  
3425 amendment.

3426           The {Clerk.} Ms. DeGette, can we please have the  
3427 number?

3428           Ms. {DeGette.} 733.

3429           The {Clerk.} Amendment to H.R. 6213 offered by Ms.  
3430 DeGette from Colorado.

3431           [The amendment follows:]

3432 \*\*\*\*\* INSERT 10 \*\*\*\*\*

|  
3433           The {Chairman.} The amendment will be considered as  
3434 read. The staff will distribute the amendments, and the  
3435 gentlelady is recognized for 5 minutes in support of her  
3436 amendment.

3437           Ms. {DeGette.} Thank you very much, Mr. Chairman. Mr.  
3438 Chairman, as the Ranking Member of the Oversight and  
3439 Investigations Subcommittee, I think it is really important  
3440 that any legislation that we write be accurate and truthful,  
3441 and unfortunately, there are many misleading and false  
3442 legislative findings in this legislation.

3443           So what my amendment does is it at least fixes the false  
3444 and misleading legislative findings so that the record is  
3445 clear and honest.

3446           In my opinion, in my respectful opinion, the majority  
3447 conducted a political investigation in this case ignoring the  
3448 benefits of the DOE loan program and the facts of the  
3449 Solyndra loan and tried to paper over their failure to find  
3450 any real wrongdoing with a series of frequently repeated but  
3451 misleading statements, many of which we have heard repeated  
3452 today in this markup. And the legislation we are considering  
3453 today reflects the poorly conducted investigation. It begins  
3454 with six pages of partisan findings, several of which  
3455 directly contradict the findings of the Oversight

3456 Subcommittee's investigation of the Solyndra loan. And in my  
3457 opinion, when any legislation has to begin with six pages of  
3458 inaccurate findings, one knows that there is a problem, a  
3459 fundamental problem with the legislation.

3460         So let me talk about some of those findings. First, the  
3461 findings of the bill state that the review of the Solyndra  
3462 loan application was ``driven by politics and ideology'' but  
3463 the opposite is true. Our committee's oversight work found  
3464 that the Solyndra loan determination was based on the  
3465 thorough, unbiased and fair analysis of career DOE and OMB  
3466 officials without political or ideological interference from  
3467 Obama Administration political appointees or career  
3468 officials. In fact, many of the officials who did these  
3469 determinations were appointed under the Bush Administration.

3470         Mr. Chairman, the findings of the bill state that the  
3471 DOE acted illegally in subordinating the Solyndra loan, an  
3472 assertion which we have heard oft repeated just today in this  
3473 markup. But again, this is not correct. DOE's general  
3474 counsel carefully analyzed the law and determined that  
3475 subordination during restructuring was allowed. This opinion  
3476 was supported by others in the Administration and by outside  
3477 experts consulted as part of the committee investigation.  
3478 And when we asked for additional witnesses to further explain  
3479 why the subordination in the restructuring was allowed, we

3480 weren't even allowed to have those witnesses come to the  
3481 hearing.

3482           So I just want to pose a question. After all, if  
3483 subordination was already illegal, as everybody on the other  
3484 side of the aisle claims, why are we now considering  
3485 legislation to make it illegal?

3486           DOE found that Title 17 loan guarantee programs have  
3487 created tens of thousands of jobs, but the findings ignore  
3488 that fact. Mr. Chairman, the findings of the bill describe  
3489 how Herb Allison, the independent consultant who reviewed the  
3490 program found that the DOE invested in high-risk project.  
3491 That part is true. After all, why would you have a loan  
3492 guarantee program if the projects were low risk. You  
3493 wouldn't have to have the Federal Government guaranteeing  
3494 those loans. And that is where the findings leave out Mr.  
3495 Allison's key conclusions. He found that the Title 17  
3496 portfolio is in strong shape overall, that it is performing  
3497 within the risk confines established by Congress in 2005  
3498 under the Bush Administration and that it is costing  
3499 taxpayers about \$2 billion less than anticipated.

3500           Mr. Chairman, everybody is entitled to their own opinion  
3501 about the DOE loan programs, but not everybody is entitled to  
3502 write the facts of this. My amendment makes sure that at  
3503 least the findings of the bill conform to the facts of our

3504 investigation. I urge adoption of the amendment, and I yield  
3505 back my time.

3506           The {Chairman.} The gentlelady yields back. The Chair  
3507 recognizes the gentleman from Florida.

3508           Mr. {Stearns.} Well, I am a little disappointed in the  
3509 Ranking Member. She was involved with this 18-month  
3510 investigation. I think she will agree it was exhaustive. We  
3511 had every agency come in. We put them under oath, we talked  
3512 to each individual. In fact, we had the Senior Loan Officer  
3513 of DOE come in, Mr. Silver, and shortly thereafter, he  
3514 resigned. So I am a little disappointed to think that she  
3515 thought this investigation, in her words, was not exhaustive  
3516 or not attention to detail. And she was with me when we  
3517 looked at some of these emails from some of the OMB and DOE.

3518           In fact, I can read one of the emails from Mr. Terrell  
3519 where he explicitly said this whole Solyndra was a rush job.  
3520 He said, ``We have ended up in a situation having to do  
3521 rushed approvals on a couple of occasions, and we are worried  
3522 about Solyndra at the end of this week. We prefer to have  
3523 sufficient time to do our due diligent reviews and have the  
3524 approval set the date for the announcement rather than the  
3525 other way around.''

3526           You know, we have had all kinds of emails showing this  
3527 was rushed to judgment. You know, the number they talk about

3528 the 60,000 jobs is patently wrong. This amendment claims  
3529 that DOE estimated that 60,000 jobs were to be created or  
3530 saved by project funded under Title 17 program. My  
3531 colleagues, the 60,000 job number on DOE website includes  
3532 jobs created or saved by projects funded by the ATVM program.  
3533 In addition to Section 1703 and 1705, the ATVM program is not  
3534 part of Title 17, and today's bill does not touch the ATVM  
3535 program. 38,700 of the 60,000 jobs that are cited in this  
3536 amendment she is talking about are from projects funded by  
3537 the ATVM program. Of that 38,700, 33,000 are attributed to  
3538 Ford Motor Company.

3539 We went to DOE's website and added up the actual number  
3540 of jobs each closed loan guarantee would create. You know  
3541 what that number was? 1,174. Now, this is according to the  
3542 Department of Energy's own website. And to break it down,  
3543 Abound Solar was slated to create or save 1,200 permanent  
3544 jobs, the most by far of any Section 1705 project. Without  
3545 those jobs and without the jobs lost at Solyndra and Beacon  
3546 according to DOE's own website, 1705 section would have  
3547 created 1,174 permanent jobs.

3548 Under Section 1705, the Loan Guarantee Office has  
3549 awarded a total of \$16 billion in loan guarantees. Now,  
3550 where do you think that comes up to the cost per permanent  
3551 job? \$13,738,075 for each permanent job. Most of the jobs

3552 created by the program were temporary. Now, if you include  
3553 all the temporary construction jobs, DOE estimated a total of  
3554 15,249 jobs, not 60,000 that she talks about would be created  
3555 or saved under 1705. Now, that comes down to, even taking  
3556 the temporary jobs, let us even take the temporary jobs.  
3557 That cost is \$1,057,676 per job.

3558 Now, I don't think there is anybody in this room that  
3559 believes that is an acceptable return on an investment. This  
3560 amendment, you know, is based on I guess her opinion. But  
3561 these same professionals that she said that we are  
3562 criticizing, they also raised flags, whether it was the  
3563 Treasury Department, OMB or Solyndra. And why do you think  
3564 Mr. Silver left? Why did he resign so quickly?

3565 An OMB staff member just prior to the loan's closing in  
3566 September 2009 noted that pricing pressures on solar panels  
3567 due to the Chinese subsidies would essentially bankrupt  
3568 Solyndra. So even in the Department of Energy and the OMB,  
3569 they had all these emails that showed this to be true.

3570 So for her to say that we weren't systematic, we weren't  
3571 exhaustive in this 18-month study is patently wrong. So I  
3572 urge you to vote no on the DeGette amendment.

3573 The {Chairman.} Mr. Waxman is recognized for 5 minutes.

3574 Mr. {Waxman.} Well, Mr. Chairman, I support the DeGette  
3575 amendment. The findings of this bill make it abundantly

3576 clear that this was a political exercise we are involved in  
3577 today. The least we can do is get the facts straight. You  
3578 know, it is pretty ironic this bill is called by the authors  
3579 ``No More Solyndras,'' but if you don't get the facts  
3580 straight, let us understand there was no Solyndra as they  
3581 describe it in their bill.

3582         We had a subcommittee investigation. They went on for  
3583 18 months. They had 5 investigative hearings, received over  
3584 200,000 pages of documents, 60 hours of interviews, White  
3585 House officials, DOE officials, OMB officials, private  
3586 investors in Solyndra. We have interviewed the career staff  
3587 who have made decisions on the loan, the Committee spoke to  
3588 the authors of the supposedly damaging emails my Republican  
3589 colleagues wave around, and each and every one of these  
3590 officials has said the same thing, that the Solyndra loan was  
3591 made purely on the merits and there was no improper political  
3592 influence on their decision-making. Mr. Stearns doesn't want  
3593 to say that. Mr. Stearns wants to say something else.

3594         If they had to make it hasty, they must have had some  
3595 corruption. If they are trying to do it fast, that must mean  
3596 that it was driven by politics and ideology divorced from  
3597 economic reality. That is what the bill says. But they  
3598 can't sustain that claim. There is no factual support for  
3599 it, but that is a political claim they would like to make.

3600           The other findings in this bill are similarly flawed.  
3601 They contain the statements and facts taken out of context.  
3602 They completely ignore the benefits of the program and the  
3603 findings of the independent analysis like Herb Allison who  
3604 found that the overall DOE portfolio was strong. I could  
3605 barely follow what Mr. Stearns was just telling us a minute  
3606 ago about the jobs created or not created by this bill  
3607 because what he wanted to do was focus on part of what this  
3608 law did and not other parts of what the law did. So he  
3609 wanted to play with the facts and disparage the Loan  
3610 Guarantee Program, disparage Solyndra by supporting a bill  
3611 that will create the possibility, quite frankly, for more  
3612 Solyndras. That is unique.

3613           Well, if you are going to make a claim on facts, let us  
3614 get the facts straight. If you believe having a Loan  
3615 Guarantee Program, as 25 Republicans have already voted to  
3616 do, okay, well, you will pass this bill out. But there is no  
3617 evidence in all the investigation--unless you want to make a  
3618 claim not substantiated by facts--that the people who made  
3619 the decision who are career staff made a decision on what  
3620 they thought--other than what they thought were the merits.  
3621 It turned out perhaps they were wrong on the other hand. It  
3622 may have been the merits when they approved it, but it may  
3623 not have been the reality when the Chinese competitors

3624 undercut them.

3625           So I support the DeGette amendment and would be happy to  
3626 yield to her if she would like more time.

3627           Ms. {DeGette.} If the gentleman would yield.

3628           Mr. {Waxman.} I would be happy to.

3629           Ms. {DeGette.} I will just be very quick. Chairman  
3630 Stearns said there were 5 investigative hearings, there were  
3631 13 people who were interviewed over 60 hours, we had all  
3632 these hearings, but the central tenet of the Republican  
3633 position on this, that there was somehow some illegal  
3634 subordination made, they have refused to let us have the  
3635 witnesses to talk about how the DOE lawyer said that this  
3636 would be legal. And we asked repeatedly, could you bring  
3637 them in to tell us why they made this advice? Then, when we  
3638 tried to introduce their memo into the record, the Chairman  
3639 and the Committee resisted.

3640           Now, look, I have been on the O&I Subcommittee for 16  
3641 years. Investigations should be to find the facts, not to  
3642 try to define the facts as we want. And if we have the  
3643 facts, then we can have good legislation, but we shouldn't be  
3644 trying to bend the facts for a thesis that we believe in, and  
3645 that is why I think that this amendment should be adopted so  
3646 that the facts and the findings can reflect accurately the  
3647 hearings that we had in the Oversight and Investigations

3648 Subcommittee.

3649 The {Chairman.} The gentleman's time is expired.

3650 The gentleman from Kentucky.

3651 Mr. {Whitfield.} I yield to the gentleman from Florida.

3652 Mr. {Stearns.} I thank my colleague.

3653 Basically, the ranking member is incorrect. We have  
3654 allowed numerous times to allow her to put into the record  
3655 many documents, and so I think the record will show that we  
3656 have not stopped her from putting her point of view in. And  
3657 many times, we have stayed longer to listen to their  
3658 objection to our investigation. And we felt in many ways in  
3659 a bipartisan fashion she and I worked together and I think  
3660 she will agree with that that she and I worked together.  
3661 Would the gentlelady also agree? I will yield to her that  
3662 many times we worked together on that Oversight Committee--

3663 Ms. {DeGette.} Mr. Chairman, I will agree on the fact  
3664 that we worked together, but I will also say that the central  
3665 tenet of the Republican position was that the subordination  
3666 was illegal on the refinancing and the majority refused to  
3667 allow the witnesses to come in and explain their legal  
3668 opinion, why it was legal.

3669 Mr. {Stearns.} Reclaiming my time, I would not agree  
3670 with you that we did not allow the witnesses to come in. And  
3671 you are right that the DOE wanted to subordinate and we

3672 disagree and that was true.

3673 And with that, Mr. Chairman, I--

3674 Ms. {DeGette.} Would the gentleman yield?

3675 Mr. {Stearns.} Well, I think we pretty much discussed  
3676 this. We agree not to agree.

3677 Ms. {DeGette.} Okay, fine.

3678 Mr. {Stearns.} So I yield back.

3679 The {Chairman.} Time is expired.

3680 Other Members wishing to speak? Seeing none, the vote  
3681 occurs on the DeGette amendment.

3682 Those in favor of the amendment will say aye.

3683 Those opposed, say no.

3684 In the opinion of the Chair, the noes have it. Noes  
3685 have it. The amendment is not agreed to.

3686 Are there further amendments to the bill?

3687 The gentleman from Texas, Dr. Burgess.

3688 Dr. {Burgess.} Mr. Chairman, I thank you for the  
3689 recognition. We have been at this for nearly 2 years of this  
3690 failed Loan Guarantee Program--

3691 The {Chairman.} May I just ask, are you striking the  
3692 last word or do you have an amendment?

3693 Dr. {Burgess.} No, I have an amendment at the desk. I  
3694 am sorry.

3695 The {Chairman.} The clerk will report the title of the

3696 amendment.

3697           The {Clerk.} Amendment to H.R. 6213 offered by Mr.

3698 Burgess of Texas.

3699           [The amendment follows:]

3700 \*\*\*\*\* INSERT 11 \*\*\*\*\*

|  
3701           The {Chairman.} The amendment will be considered as  
3702 read. The staff will distribute the amendment and the  
3703 gentleman is recognized for 5 minutes.

3704           Dr. {Burgess.} Thank you, Mr. Chairman.

3705           Two years of this investigation into the failed Loan  
3706 Guarantee Program under the Administration's watch, and the  
3707 Committee has uncovered a number of disturbing trends that  
3708 occurred under the leadership of Energy Secretary Steven Chu.  
3709 The most egregious of these, as we have come to learn, was  
3710 the willingness to flaunt the authorization which created the  
3711 Loan Guarantee Program, which explicitly stated that the  
3712 taxpayers' interest in being paid back by the recipient  
3713 company shall not be subordinated to private investments.

3714           The Department of Energy went out of its way to avoid  
3715 having any outside entity, whether it was a private law firm  
3716 or the Departments of Treasury and Justice, they went out of  
3717 their way to have any outside entity from telling them that  
3718 they couldn't subordinate taxpayer funds. They did so  
3719 because, as we have learned, Department of Energy made the  
3720 decision to subordinate the Government's interest long before  
3721 its in-house lawyers created the creative memo justifying the  
3722 action after the fact.

3723           During the markup of this legislation last week in the

3724 Energy and Power Subcommittee, I offered an amendment that  
3725 would provide for administrative penalties, including leave  
3726 without pay, threat of losing one's job for anyone who  
3727 violates the term of the Loan Guarantee Program as authorized  
3728 by this committee. It is clear that the Department of  
3729 Energy's actions leading up to the Solyndra bankruptcy took  
3730 place in part because it appears that the actors knew that no  
3731 real penalties existed in the legislation.

3732         But I will also share with you it became clear to me  
3733 during the markup that many members of this committee did not  
3734 believe that that language went far enough. Mr. Dingell, the  
3735 ranking member emeritus in a discussion with counsel,  
3736 lamented that my amendment merely restated the situation as  
3737 it exists today that officials at Department of Energy can be  
3738 sanctioned administratively for violating the laws that we  
3739 pass here in Congress. Unfortunately, since the people who  
3740 would responsible for sanctioning those actors would be the  
3741 same ones at the Department who were involved in the  
3742 decision-making process--that is their very superiors--it  
3743 became clear to me that stronger language was in order.

3744         So my amendment today builds on the discussion that Mr.  
3745 Dingell initiated with counsel. It gives real teeth toward  
3746 ensuring that the egregious activities which occurred during  
3747 the lead-up to the subordination of taxpayer dollars will

3748 never occur again. This language would impose civil  
3749 penalties no less than \$10,000, no more than \$50,000 on those  
3750 individuals who knowingly violate the laws that we in this  
3751 committee authorize them to follow. These penalties would be  
3752 in addition to any appropriate administrative penalties that  
3753 have been already agreed to by this committee.

3754 Now, just to clarify, this language applies only to the  
3755 individuals who are ultimately responsible for the signing  
3756 off on these loans, not to the general career staff following  
3757 orders and simply doing their jobs. It is the decision-  
3758 makers who are responsible when a law is not followed and it  
3759 should be those same decision-makers who in fact are held  
3760 accountable.

3761 I thank the Chairman for allowing me to further amend  
3762 the language from last week and I thank Mr. Dingell and the  
3763 minority for their robust discussion, which they initiated in  
3764 accepting this amendment, and I believe it will ultimately  
3765 make the legislation a stronger piece of legislation to  
3766 protect taxpayers from ever again undergoing the money loss  
3767 that we did with Solyndra.

3768 So Mr. Chairman, I respectfully offer the amendment and  
3769 yield back the balance of my time.

3770 The {Chairman.} The gentleman yields back.

3771 The gentleman from California is recognized for 5

3772 minutes.

3773           Mr. {Waxman.} Mr. Chairman, last week, Mr. Burgess  
3774 offered an amendment that said that any federal official that  
3775 violates the law should be subject to appropriate discipline.  
3776 And we accepted that because it seemed to be reasonable and  
3777 make sense. Now, Mr. Burgess is back with an amendment that  
3778 imposes punitive personal civil liability penalties on  
3779 federal employees. There is little precedent for this kind  
3780 of civil monetary penalty for federal employees and it serves  
3781 little purpose. Mr. Burgess' amendment from last week  
3782 clarified that if they break the law, employees are subject  
3783 to appropriate administrative penalties. The amendment is  
3784 also poorly thought out. Who decides if the law has been  
3785 broken? The amendment contains no good faith exemption for a  
3786 case when an employee takes an action like the subordination  
3787 of the Solyndra loan based on an opinion from the agency  
3788 general counsel that it is perfectly legal.

3789           Mr. Chairman, this amendment is not about making a law  
3790 work better; it is simply about making a political point.  
3791 And this political point is not even based on the facts of  
3792 the Oversight and Investigations Subcommittee investigation  
3793 itself. The facts of that investigation show that although  
3794 the subordination of the Solyndra loan had a bad outcome, the  
3795 action taken by DOE was legal.

3796           Now, during our oversight hearings on Solyndra, we  
3797 learned that DOE looked carefully at the text of the Title  
3798 XVII Loan Guarantee statute. They concluded that although  
3799 subordination was not allowed during the origination process  
3800 for the loan guarantee, it was allowed during restructuring.  
3801 The top legal counsel at OMB agreed with this decision. And  
3802 when the Democratic staff of the Committee sought an outside  
3803 opinion from the former DOE general counsel, she also agreed.  
3804 And at the hearing on this bill, DOE told us why the law  
3805 makes sense. Sometimes a subordination option is the best  
3806 way to save a badly performing loan and ultimately save the  
3807 taxpayers money. That is why DOE wants to keep it as an  
3808 option for future loans. But this committee and this bill  
3809 says, no, we are not going to allow that to happen in the  
3810 future.

3811           So Mr. Burgess' amendment is punitive, poorly thought  
3812 out, unnecessary. It would not even have affected the  
3813 targets, here, the federal employees responsible for the  
3814 subordination of the Solyndra loan. Those employees acted  
3815 within the confines of the law. That is what their lawyers  
3816 told them and that is what a number of people believed to be  
3817 the law at the time. I don't know if the Burgess amendment  
3818 would apply not only to the people who allowed the  
3819 subordination but their lawyers who had a different legal

3820 opinion. Would they, then, be subject to it as well?

3821 I think it is inexplicable and I would hope the  
3822 gentleman, if he is going to have--well, I think it is  
3823 inexplicable, unnecessary, and I will strongly oppose the  
3824 amendment.

3825 The {Chairman.} The gentleman yields back.

3826 The gentleman from Texas, Mr. Barton.

3827 Mr. {Barton.} Again, briefly, I am going to a movie and  
3828 I am running a little bit late and the speed limit says 45  
3829 and I get stopped and officer says, well, you are going 55 in  
3830 a 45. I said, I know. And he says, is there a reason? I  
3831 say, yeah, I am a little bit late for the movie so it is  
3832 okay. And besides that, I am a Congressman. He says, okay,  
3833 that is all right. Go on. Well, that is kind of what  
3834 happened with Solyndra. We said you can't subordinate and  
3835 the loan got in trouble, and so they finally got an opinion  
3836 within their own counsel that it was okay if it wasn't at  
3837 origination. And you know, we strongly disagree that  
3838 subordination is okay at any time, but there is no way the  
3839 Justice Department is going to prosecute the Department of  
3840 Energy for an in-house counsel legal memo, which most of  
3841 think is incorrect.

3842 So all Dr. Burgess is trying to do is say there are some  
3843 real penalties. And as he pointed out in his support of his

3844 amendment, he points out that this isn't going to affect the  
3845 civil servants, the career SES and all that. It is going to  
3846 affect the political appointees that okay it if I understand  
3847 him. Isn't that correct?

3848           And so I think it is appropriate, and I think honestly  
3849 it is necessary based on the debate at subcommittee where--

3850           Mr. {Waxman.} Does the gentleman yield?

3851           Mr. {Barton.} Sure.

3852           Mr. {Waxman.} It says any federal official who is  
3853 responsible for the issuance of a loan guarantee--

3854           Mr. {Barton.} Issuance, responsible for the issuance.

3855           Mr. {Waxman.} But any federal official--

3856           Mr. {Barton.} I would assume that means a political  
3857 appointee who approved--

3858           Mr. {Waxman.} I don't know that is the case.

3859           Mr. {Barton.} Well, I don't believe SES--I don't  
3860 believe careers issue them. I think they recommend. I mean  
3861 we can clarify that between now and the floor but you have  
3862 the take the author's intent--

3863           Mr. {Waxman.} Well, no, you have to look at the  
3864 statute.

3865           Dr. {Burgess.} Well, the person who issues the loan  
3866 guarantee would be the issuer and that is not going to be a  
3867 career person. That is going to be the political appointee,

3868 Secretary of--

3869 Mr. {Waxman.} And what if the career people recommend  
3870 it that they take--

3871 Mr. {Barton.} Well, recommendation is different than  
3872 issuance just like my circulating an amendment last week was  
3873 different than offering it. I mean there is a difference.  
3874 In any opinion--reclaiming my time--the good doctor--

3875 Mr. {Waxman.} It doesn't also apply to anybody  
3876 knowingly doing this. This applies to anybody doing this,  
3877 any federal official who is responsible, not knowingly  
3878 responsible for the loan guarantee, just responsible for  
3879 issuing the loan guarantee.

3880 Mr. {Barton.} Well, we can certainly put in report  
3881 language, and if necessary, I am sure on the floor the  
3882 gentleman would--

3883 Dr. {Burgess.} Well, those covered under the  
3884 Antideficiency Act would be the political appointees who  
3885 would be the ones who would actually issue the loan  
3886 guarantee, not the career civil servants who were simply  
3887 providing opinions or advice or preparing memos.

3888 Mr. {Barton.} But anyway, I support the gentleman's--I  
3889 will yield to Mr. Bilbray from California.

3890 Mr. {Bilbray.} Yeah, Mr. Chairman, I support Mr.  
3891 Burgess' motion. I think anyone sitting on either side of

3892 the aisle would agree that when this originally was voted on,  
3893 if somebody had come before this committee and said oh, by  
3894 the way, subjugation will only be inappropriate in the first  
3895 stage, I don't think anybody here would have said, oh yeah,  
3896 no problem. I am willing to go back to my constituents and  
3897 tell them that I voted for a bill that allowed their tax  
3898 dollars to go get behind the private investor on this. No  
3899 way this committee or the Congress at the time would have  
3900 voted to say, oh, the second time the law won't apply. All  
3901 this is going back and saying the original intent, the  
3902 original reason why this was stated will be applicable across  
3903 the board, not this reinvention of reality.

3904 And I would just like both sides to agree there is no  
3905 way you would have, on your side of the aisle, agreed to the  
3906 kind of subordination that the Administration applied on this  
3907 angle.

3908 Mr. {Barton.} I yield back, Mr. Chairman.

3909 The {Chairman.} The gentleman yields back.

3910 Are there other Members wishing to speak on the  
3911 amendment? Seeing none, the vote occurs on the amendment  
3912 offered by Dr. Burgess.

3913 All those in favor, say aye.

3914 All those opposed, say no.

3915 In the opinion of the Chair, the ayes have it. The ayes

3916 have it. The amendment is agreed to.

3917 Are there further amendments to the bill?

3918 Gentleman from Massachusetts.

3919 Mr. {Markey.} Mr. Chairman, I have amendment 138 at the  
3920 desk.

3921 The {Chairman.} Amendment 138 at the desk. The clerk  
3922 will read the title of the amendment.

3923 The {Clerk.} Amendment to H.R. 6213 offered by Mr.

3924 Markey of Massachusetts.

3925 [The amendment follows:]

3926 \*\*\*\*\* INSERT 12 \*\*\*\*\*

|  
3927           The {Chairman.} And the amendment is considered as  
3928 read. The staff will distribute the amendment.

3929           And I would note that we have votes on the Floor. So I  
3930 think we are going to take a recess until 3:00. We have  
3931 three votes on the Floor and that will allow folks to get a  
3932 sandwich and come back and we will come back at 3:00 and  
3933 discuss the Markey amendment.

3934           Mr. {Markey.} Thank you, Mr. Chairman.

3935           The {Chairman.} Is that all right?

3936           Stand adjourned.

3937           [Recess.]

3938           The {Chairman.} We recessed for the votes. We had seen  
3939 Mr. Markey offer an amendment. The title of the amendment  
3940 was read, considered as read, and he was just about to be  
3941 recognized for 5 minutes in support of his amendment. So at  
3942 this point, we will restart the clock and give him another 5  
3943 minutes.

3944           Mr. {Markey.} Thank you, Mr. Chairman, very much.

3945           My amendment is very simple. It says that if a publicly  
3946 traded company has received a letter from a stock exchange  
3947 warning that it will be delisted from the stock exchange  
3948 because it is trading at too low of a price to comply with  
3949 the exchange's listing standards, that company cannot get a

3950 loan guarantee from the Department of Energy under this bill  
3951 unless its stock prices recover. This will remove companies  
3952 whose stocks are in danger of being tossed out of the New  
3953 York Stock Exchange or the NASDAQ from eligibility for loan  
3954 guarantees under this program.

3955 Now, why do we need such a provision? Is this  
3956 theoretical? I wish it was. Because these listing standards  
3957 are an important measure of the financial health of a  
3958 company. Under the New York Stock Exchange and NASDAQ's  
3959 rules, if a company's stock plunges below \$1 per share, the  
3960 New York Stock Exchange or the NASDAQ can delist it, which  
3961 essentially turns it into a penny stock.

3962 Delisting in other words is clear. It is objective  
3963 evidence that a company has fallen into a financial death  
3964 spiral. That makes giving a taxpayer loan guarantee to such  
3965 a company a highly risky proposition. Some of you might  
3966 think this is a hypothetical. I wish it was. But the  
3967 reality is there is a \$2 billion loan guarantee application  
3968 that the Department of Energy could still award under this  
3969 legislation for the United States Enrichment Corporation.

3970 This is a company that we have already given billions of  
3971 dollars worth of Federal Government free uranium, free  
3972 centrifuge technology, free cleanup funds, and free liability  
3973 waivers. And what has happened to those investments? The

3974 entire company's market value is barely over \$100 million  
3975 even though the Department of Energy has just given is a \$132  
3976 million bailout. Even after the Department of Energy's  
3977 recent announcement of another gift of free uranium for USEC,  
3978 Standard & Poor's downgraded it to junk bond status where it  
3979 now sits. And yes, the company was warned in mid-May that it  
3980 may be delisted from the New York Stock Exchange and become a  
3981 penny stock because its shares were trading at under \$1.

3982         Its shares plummeted to 88 cents this morning after it  
3983 announced it had lost another \$121 million so far this year.  
3984 That was this morning. That is right, a \$2 billion loan  
3985 guarantee from this committee to a company that may soon be  
3986 on the penny stock list and it won't be prohibited under the  
3987 No More Solyndras Act. And here is what the United States  
3988 Enrichment Corporation told its investors about its delisting  
3989 risk. It said, ``our failure to maintain compliance with the  
3990 listing requirements of the New York Stock Exchange could  
3991 result in a delisting of our common stock, which could  
3992 require us to repurchase our convertible notes for cash and  
3993 trigger a default under our credit facility.'' This is from  
3994 USEC. That is right. They are telling their shareholders  
3995 that they might default on their current debts.

3996         So you would think we wouldn't be rushing to add the  
3997 United States' taxpayers to the list of lenders for this

3998 troubled corporation. But that is not the case. USEC's loan  
3999 guarantee is still pending before the Department and the \$132  
4000 million in taxpayer bailouts that it has recently received  
4001 are intended to be used to fix their broken centrifuges so  
4002 that the loan guarantee can proceed. Again, this is before  
4003 this morning's news.

4004         So again, let us go to the chart again here. Let us  
4005 just take a look at it. Okay? Again, under the Markey only  
4006 88.4 billion more for nuclear and coal No More Solyndras Act  
4007 of 2012, as you remember from earlier today, there is a big  
4008 slice here of 76.5 billion for nuclear loans. And in this  
4009 slice is this slice for a company that is now in junk bond  
4010 status and a company that the New York Stock Exchange says  
4011 could be a penny stock very soon. And all I am saying is,  
4012 okay, maybe we can't cut out all of the nuclear loan  
4013 guarantees, but my goodness, my goodness, you know, let us at  
4014 least be able to protect them from is obviously a mess and we  
4015 take note of this by just reading the newspaper.

4016         So that would be my request to you because we know how  
4017 good you are at rounding up all the usual suspects, the solar  
4018 companies, the teeny tiny solar companies, but here it is  
4019 pretty obvious that there is a big problem here with nuclear  
4020 and all I ask from you is that you give me a vote on this one  
4021 amendment so that we have some standards that we can say that

4022 we are establishing for the Department of Energy.

4023 And I yield back the balance of my time.

4024 The {Chairman.} The gentleman's time is expired.

4025 Now, I would just note that the USEC amendment is just  
4026 one of--the USEC applications is 1 of the 51 projects that is  
4027 there. Under this legislation, the Department of Treasury  
4028 has asked to safeguard to write a written recommendation to  
4029 weigh in. I would guess that capitalization would be part of  
4030 that and we believe that it is covered and we all believe  
4031 that, as we saw with the defeat of the Markey amendment  
4032 earlier this morning, that the projects within the pipeline,  
4033 those 51 that were in prior to the end of last year would  
4034 still be in the system and ultimately await its fate by the  
4035 Department of Energy and Treasury.

4036 So I would urge my colleagues to vote no on your  
4037 amendment.

4038 Is there further discussion on the amendment?

4039 If not, the vote will occur on the Markey amendment.

4040 Those in favor will say aye.

4041 Those opposed, say no.

4042 In--

4043 Mr. {Markey.} On that I request a recorded vote.

4044 The {Chairman.} A recorded vote is ordered. And the  
4045 clerk will call the role.

4046 The {Clerk.} Mr. Barton?  
4047 [No response.]  
4048 The {Clerk.} Mr. Stearns?  
4049 [No response.]  
4050 The {Clerk.} Mr. Whitfield?  
4051 [No response.]  
4052 The {Clerk.} Mr. Shimkus?  
4053 Mr. {Shimkus.} No.  
4054 The {Clerk.} Mr. Shimkus votes no.  
4055 Mr. Pitts?  
4056 Mr. {Pitts.} No.  
4057 The {Clerk.} Mr. Pitts votes no.  
4058 Mrs. Bono Mack?  
4059 [No response.]  
4060 The {Clerk.} Mr. Walden?  
4061 Mr. {Walden.} No.  
4062 The {Clerk.} Mr. Walden votes no.  
4063 Mr. Terry?  
4064 [No response.]  
4065 The {Clerk.} Mr. Rogers?  
4066 [No response.]  
4067 The {Clerk.} Mrs. Myrick?  
4068 [No response.]  
4069 The {Clerk.} Mr. Sullivan?

4070 [No response.]

4071 The {Clerk.} Mr. Murphy?

4072 [No response.]

4073 The {Clerk.} Mr. Burgess?

4074 Dr. {Burgess.} Aye.

4075 The {Clerk.} Mr. Burgess votes aye.

4076 Mrs. Blackburn?

4077 [No response.]

4078 The {Clerk.} Mr. Bilbray?

4079 [No response.]

4080 The {Clerk.} Mr. Bass?

4081 Mr. {Bass.} No.

4082 The {Clerk.} Mr. Bass votes no.

4083 Mr. Gingrey?

4084 Dr. {Gingrey.} No.

4085 The {Clerk.} Mr. Gingrey votes no.

4086 Mr. Scalise?

4087 Mr. {Scalise.} No.

4088 The {Clerk.} Mr. Scalise votes no.

4089 Mr. Latta?

4090 Mr. {Latta.} No.

4091 The {Clerk.} Mr. Latta votes no.

4092 Mrs. McMorris Rodgers?

4093 [No response.]

4094 The {Clerk.} Mr. Harper?  
4095 [No response.]  
4096 The {Clerk.} Mr. Lance?  
4097 Mr. {Lance.} No.  
4098 The {Clerk.} Mr. Lance votes no.  
4099 Mr. Cassidy?  
4100 [No response.]  
4101 The {Clerk.} Mr. Guthrie?  
4102 Mr. {Guthrie.} No.  
4103 The {Clerk.} Mr. Guthrie votes no.  
4104 Mr. Olson?  
4105 Mr. {Olson.} No.  
4106 The {Clerk.} Mr. Olson votes no.  
4107 Mr. McKinley?  
4108 Mr. {McKinley.} No.  
4109 The {Clerk.} Mr. McKinley votes no.  
4110 Mr. Gardner?  
4111 Mr. {Gardner.} No.  
4112 The {Clerk.} Mr. Gardner votes no.  
4113 Mr. Pompeo?  
4114 Mr. {Pompeo.} No.  
4115 The {Clerk.} Mr. Pompeo votes no.  
4116 Mr. Kinzinger?  
4117 Mr. {Kinzinger.} No.

4118 The {Clerk.} Mr. Kinzinger votes no.  
4119 Mr. Griffith?  
4120 Mr. {Griffith.} No.  
4121 The {Clerk.} Mr. Griffith votes no.  
4122 Mr. Waxman?  
4123 [No response.]  
4124 The {Clerk.} Mr. Dingell?  
4125 [No response.]  
4126 The {Clerk.} Mr. Markey?  
4127 Mr. {Markey.} Aye.  
4128 The {Clerk.} Mr. Markey votes aye.  
4129 Mr. Towns?  
4130 [No response.]  
4131 The {Clerk.} Mr. Pallone?  
4132 [No response.]  
4133 The {Clerk.} Mr. Rush?  
4134 [No response.]  
4135 The {Clerk.} Ms. Eshoo?  
4136 Ms. {Eshoo.} Yes.  
4137 The {Clerk.} Ms. Eshoo votes aye.  
4138 Mr. Engel?  
4139 [No response.]  
4140 The {Clerk.} Mr. Green?  
4141 Mr. {Green.} Yes.

4142           The {Clerk.} Mr. Green votes aye.  
4143           Ms. DeGette?  
4144           [No response.]  
4145           The {Clerk.} Mrs. Capps?  
4146           [No response.]  
4147           The {Clerk.} Mr. Doyle?  
4148           [No response.]  
4149           The {Clerk.} Ms. Schakowsky?  
4150           [No response.]  
4151           The {Clerk.} Mr. Gonzalez?  
4152           [No response.]  
4153           The {Clerk.} Ms. Baldwin?  
4154           [No response.]  
4155           The {Clerk.} Mr. Ross?  
4156           [No response.]  
4157           The {Clerk.} Mr. Matheson?  
4158           Mr. {Matheson.} Yes.  
4159           The {Clerk.} Mr. Matheson votes aye.  
4160           Mr. Butterfield?  
4161           Mr. {Butterfield.} Yes.  
4162           The {Clerk.} Mr. Butterfield votes aye.  
4163           Mr. Barrow?  
4164           Mr. {Barrow.} No.  
4165           The {Clerk.} Mr. Barrow votes no.

4166 Ms. Matsui?

4167 Ms. {Matsui.} Yes.

4168 The {Clerk.} Ms. Matsui votes aye.

4169 Mrs. Christensen?

4170 Dr. {Christensen.} Yes.

4171 The {Clerk.} Mrs. Christensen votes aye.

4172 Ms. Castor?

4173 [No response.]

4174 The {Clerk.} Mr. Sarbanes?

4175 [No response.]

4176 The {Clerk.} Chairman Upton?

4177 The {Chairman.} Votes no.

4178 The {Clerk.} Chairman Upton votes no.

4179 The {Chairman.} Other Members wishing to cast a vote?

4180 Mr. Stearns?

4181 Mr. {Stearns.} No.

4182 The {Clerk.} Mr. Stearns votes no.

4183 The {Chairman.} Ms. McMorris Rodgers?

4184 Mrs. {McMorris Rodgers.} No.

4185 The {Clerk.} Mrs. McMorris Rodgers votes no.

4186 The {Chairman.} Ms. Bono Mack?

4187 Mrs. {Bono Mack.} No.

4188 The {Clerk.} Mrs. Bono Mack votes no.

4189 The {Chairman.} Mr. Whitfield?

4190 Mr. {Whitfield.} No.

4191 The {Clerk.} Mr. Whitfield votes no.

4192 The {Chairman.} Mr. Terry?

4193 Mr. {Terry.} No.

4194 The {Clerk.} Mr. Terry votes no.

4195 The {Chairman.} Mrs. Blackburn?

4196 Mrs. {Blackburn.} No.

4197 The {Clerk.} Mrs. Blackburn votes no.

4198 The {Chairman.} Mrs. Capps?

4199 Mrs. {Capps.} Yes.

4200 The {Clerk.} Mrs. Capps votes aye.

4201 The {Chairman.} Ms. DeGette?

4202 Ms. {DeGette.} Aye.

4203 The {Clerk.} Ms. DeGette votes aye.

4204 The {Chairman.} Mr. Pallone?

4205 Mr. {Pallone.} Aye.

4206 The {Clerk.} Mr. Pallone votes aye.

4207 The {Chairman.} Mr. Ross?

4208 Mr. {Ross.} Aye.

4209 The {Clerk.} Mr. Ross votes aye.

4210 The {Chairman.} Other Members--Dr. Murphy?

4211 Mr. {Murphy.} No.

4212 The {Clerk.} Mr. Murphy votes no.

4213 The {Chairman.} Mr. Rush?

4214 Mr. {Rush.} Aye.

4215 The {Clerk.} Mr. Rush votes aye.

4216 The {Chairman.} Other Members wishing to cast a vote?

4217 Mr. Harper?

4218 Mr. {Harper.} No.

4219 The {Clerk.} Mr. Harper votes no.

4220 The {Chairman.} Other Members wishing to cast a vote?

4221 Seeing one coming through. Mr. Dingell?

4222 Mr. {Dingell.} Aye.

4223 The {Clerk.} Mr. Dingell votes aye.

4224 The {Chairman.} Other Members? Seeing none, the clerk

4225 will report the tally.

4226 The {Clerk.} Mr. Chairman, on that vote there were 14

4227 ayes, 25 nays.

4228 The {Chairman.} Fourteen ayes, twenty-five nays, the

4229 amendment is not agreed to.

4230 For what purpose does the gentleman from Massachusetts

4231 seek recognition?

4232 Mr. {Markey.} Chairman, I have Markey amendment number

4233 140 at the desk.

4234 The {Chairman.} The clerk will report the title of the

4235 amendment.

4236 The {Clerk.} Amendment to H.R. 6213 offered by Mr.

4237 Markey of Massachusetts.

4238 [The amendment follows:]

4239 \*\*\*\*\* INSERT 13 \*\*\*\*\*

|  
4240           The {Chairman.} The amendment will be considered as  
4241 read. The staff will distribute the amendment. And the  
4242 gentleman is recognized for 5 minutes in support of his  
4243 amendment.

4244           Mr. {Markey.} Yeah, thank you, Mr. Chairman, so much.

4245           The goal that I have in this amendment is to ensure that  
4246 if a project is already over budget by more than \$535 million  
4247 or if the company applying for the loan guarantee experienced  
4248 a net loss of more than \$535 million in the last year, that  
4249 project cannot receive a loan guarantee even if it has  
4250 already got an application in. Now, why did I pick 535  
4251 million? Well, that is the amount of money that the Solyndra  
4252 loan was for, 535. So if you lost that much money last year,  
4253 you can't get a loan. So Solyndra would automatically be  
4254 disqualified, right? And that would be right because it lost  
4255 so much money last year.

4256           And the Republicans say that they were shocked that a  
4257 company that received a Department of Energy loan guarantee  
4258 went bankrupt, shocked I heard. And they said that we would  
4259 act on legislation to end the program in its entirety and  
4260 ensure that another Solyndra does not happen again, although  
4261 we know it is really only \$88 billion for a nuclear and coal  
4262 loan guarantee No More Solyndras Act of 2012.

4263           But that being the problem that we really have to now  
4264 examine, what kind of applications are in the queue right  
4265 now? And when this bill was being drafted, somehow or other  
4266 the Republicans forgot to ensure that the riskiest projects  
4267 that are already under consideration be precluded from being  
4268 given loan guarantees. The Republicans did include a  
4269 provision to make sure Treasury gives the Energy Department  
4270 some advice on which projects were too risky, but they didn't  
4271 include a provision requiring the Department of Energy to  
4272 actually follow the Treasury Department's advice. Now, what  
4273 does that mean? Well, it means the Energy Department can  
4274 still grant any of the 57 loan guarantee applications worth  
4275 \$101 billion that are still pending. That means the Energy  
4276 Department can still grant any of the 13 nuclear loan  
4277 guarantee applications worth \$77 billion that are still  
4278 pending. And it means the Energy Department can still grant  
4279 two nuclear loan guarantees to projects, one of which has  
4280 already been conditionally approved by the Department of  
4281 Energy that could even be more damaging.

4282           But the reality is that a second loan guarantee  
4283 application for \$2 billion is for the United States  
4284 Enrichment Corporation, again, coincidentally. And this  
4285 company has been rated with junk bond status. It is in  
4286 danger of being delisted from the New York Stock Exchange and

4287 becoming a penny stock. There is a diminishing market for  
4288 its product following the Fukushima meltdowns. Its  
4289 centrifuges don't work despite the investment of billions of  
4290 dollars, and remarkably, its net losses last year were \$540  
4291 million, \$5 million greater than Solyndra just last year in  
4292 2011. What an eerie coincidence that USEC and Solyndra lost  
4293 the same amount of money last year but the nerve of USEC to  
4294 keep coming in for loan guarantees, notwithstanding that  
4295 astounding loss. And yesterday, it reported another \$121  
4296 million loss so far this year on top of the 540 last year.

4297         So I didn't add that up. I thought today I would just  
4298 keep it at 535 because I thought that was a nice symmetry  
4299 with the Solyndra number that has brought so much concern to  
4300 this committee's majority and their investigation of what is  
4301 wrong with the Loan Guarantee Program, and I thought that we  
4302 could apply that standard over to nuclear programs just so  
4303 that the taxpayer could sleep at night knowing that we were  
4304 policing this program properly as we go through this  
4305 comprehensive legislation here today.

4306         So I am sure that we all agree that our collective goal  
4307 here is to protect the taxpayers and that it is not a  
4308 vendetta against solar and wind just because wind isn't up to  
4309 5 percent of all electricity generated in America as of next  
4310 year up from almost 1 percent just 4 years ago. We know that

4311 is not what it is about. We know that it is a sincere,  
4312 deeply felt goal of protecting the taxpayers. And here is  
4313 something that cries out for remedy, you know. It is a  
4314 company that is losing millions by the day and we have a  
4315 chance to do something here before they get another loan from  
4316 the Department of Energy. We must protect the American  
4317 taxpayer. Vote for the Markey amendment and ensure that we  
4318 don't see a repetition of this great problem that we saw with  
4319 the Solyndra loan guarantee.

4320 I yield back the balance of my time.

4321 The {Chairman.} The gentleman yields back his time. I  
4322 would yield myself 5 minutes.

4323 I would just say again, remind my colleagues that we  
4324 rejected the earlier Markey amendment earlier this afternoon  
4325 and allowing the current projects, the 51 projects that are  
4326 in the pipeline to stay there. Still, this legislation  
4327 requires the Department of Treasury to look at all these  
4328 projects to make sure that they are viable. I am not sure  
4329 that there are many out there that would forecast that the  
4330 Southern Company is going to become a penny stock in the near  
4331 future, but maybe we should check the guidelines in the new  
4332 stock act that the President signed to see if that is an  
4333 accurate forecast.

4334 But I would urge the rejection of the amendment and

4335 would seek to yield to anyone that might seek to comment. If  
4336 not, I will yield back.

4337 Is there further discussion on the Markey amendment?

4338 Mr. {Markey.} I would like to just strike the requisite  
4339 number of words and just speak for 1 minute.

4340 The {Chairman.} The gentleman is recognized for 1  
4341 minute.

4342 Mr. {Markey.} What I have tried to do for the Members  
4343 in the majority who may have already voted against ensuring  
4344 that there is protection for all of these nuclear loan  
4345 guarantees, I thought that what I could do here is just to  
4346 pull out the most egregious case, which is the United States  
4347 Enrichment Corporation. It is already a junk bond. And to  
4348 really just say how can we loan them money from the taxpayers  
4349 at this point? And to give you a chance just to vote on that  
4350 one instance just so you can show that real concern for the  
4351 taxpayers that would be understandable by them rather than  
4352 having had a generic vote that rejects anything that I want  
4353 to do in terms of protection of the taxpayers to just pick  
4354 out this one egregious example and give you a chance to vote  
4355 with the taxpayer to protect them against the inevitable loss  
4356 of hundreds of millions of dollars as you vote today.

4357 So I thank you, Mr. Chairman.

4358 The {Chairman.} The gentleman yields back.

4359           The question now occurs on the Markey amendment.

4360           Those in favor, say aye.

4361           Those opposed, say no.

4362           In the opinion of the Chair, the noes have it.   The noes

4363 have it.

4364           Mr. {Markey.}   Mr. Chairman, could I have a roll call

4365 vote?

4366           The {Chairman.}   Roll call vote is requested.   The clerk

4367 will call the roll.

4368           The {Clerk.}   Mr. Barton?

4369           Mr. {Barton.}   No.

4370           The {Clerk.}   Mr. Barton votes no.

4371           Mr. Stearns?

4372           Mr. {Stearns.}   No.

4373           The {Clerk.}   Mr. Stearns votes no.

4374           Mr. Whitfield?

4375           [No response.]

4376           The {Clerk.}   Mr. Shimkus?

4377           Mr. {Shimkus.}   No.

4378           The {Clerk.}   Mr. Shimkus votes no.

4379           Mr. Pitts?

4380           Mr. {Pitts.}   No.

4381           The {Clerk.}   Mr. Pitts votes no.

4382           Mrs. Bono Mack?

4383 Mrs. {Bono Mack.} No.

4384 The {Clerk.} Mrs. Bono Mack votes no.

4385 Mr. Walden?

4386 Mr. {Walden.} No.

4387 The {Clerk.} Mr. Walden votes no.

4388 Mr. Terry?

4389 Mr. {Terry.} No.

4390 The {Clerk.} Mr. Terry votes no.

4391 Mr. Rogers?

4392 [No response.]

4393 The {Clerk.} Mrs. Myrick?

4394 [No response.]

4395 The {Clerk.} Mr. Sullivan?

4396 [No response.]

4397 The {Clerk.} Mr. Murphy?

4398 Mr. {Murphy.} No.

4399 The {Clerk.} Mr. Murphy votes no.

4400 Mr. Burgess?

4401 Dr. {Burgess.} Aye.

4402 The {Clerk.} Mr. Burgess votes aye.

4403 Mrs. Blackburn?

4404 Mrs. {Blackburn.} No.

4405 The {Clerk.} Mrs. Blackburn votes no.

4406 Mr. Bilbray?

4407 [No response.]

4408 The {Clerk.} Mr. Bass?

4409 Mr. {Bass.} No.

4410 The {Clerk.} Mr. Bass votes no.

4411 Mr. Gingrey?

4412 Dr. {Gingrey.} No.

4413 The {Clerk.} Mr. Gingrey votes no.

4414 Mr. Scalise?

4415 Mr. {Scalise.} No.

4416 The {Clerk.} Mr. Scalise votes no.

4417 Mr. Latta?

4418 Mr. {Latta.} No.

4419 The {Clerk.} Mr. Latta votes no.

4420 Mrs. McMorris Rodgers?

4421 Mrs. {McMorris Rodgers.} No.

4422 The {Clerk.} Mrs. McMorris Rodgers votes no.

4423 Mr. Harper?

4424 Mr. {Harper.} No.

4425 The {Clerk.} Mr. Harper votes no.

4426 Mr. Lance?

4427 Mr. {Lance.} No.

4428 The {Clerk.} Mr. Lance votes no.

4429 Mr. Cassidy?

4430 Mr. {Cassidy.} No.

4431 The {Clerk.} Mr. Cassidy votes no.  
4432 Mr. Guthrie?  
4433 Mr. {Guthrie.} No.  
4434 The {Clerk.} Mr. Guthrie votes no.  
4435 Mr. Olson?  
4436 Mr. {Olson.} No.  
4437 The {Clerk.} Mr. Olson votes no.  
4438 Mr. McKinley?  
4439 Mr. {McKinley.} No.  
4440 The {Clerk.} Mr. McKinley votes no.  
4441 Mr. Gardner?  
4442 Mr. {Gardner.} No.  
4443 The {Clerk.} Mr. Gardner votes no.  
4444 Mr. Pompeo?  
4445 Mr. {Pompeo.} No.  
4446 The {Clerk.} Mr. Pompeo votes no.  
4447 Mr. Kinzinger?  
4448 Mr. {Kinzinger.} No.  
4449 The {Clerk.} Mr. Kinzinger votes no.  
4450 Mr. Griffith?  
4451 Mr. {Griffith.} No.  
4452 The {Clerk.} Mr. Griffith votes no.  
4453 Mr. Waxman?  
4454 [No response.]

4455 The {Clerk.} Mr. Dingell?  
4456 Mr. {Dingell.} Aye.  
4457 The {Clerk.} Mr. Dingell votes aye.  
4458 Mr. Markey?  
4459 Mr. {Markey.} Aye.  
4460 The {Clerk.} Mr. Markey votes aye.  
4461 Mr. Towns?  
4462 [No response.]  
4463 The {Clerk.} Mr. Pallone?  
4464 Mr. {Pallone.} Aye.  
4465 The {Clerk.} Mr. Pallone votes aye.  
4466 Mr. Rush?  
4467 [No response.]  
4468 The {Clerk.} Ms. Eshoo?  
4469 Ms. {Eshoo.} Aye.  
4470 The {Clerk.} Ms. Eshoo votes aye.  
4471 Mr. Engel?  
4472 Mr. {Engel.} Aye.  
4473 The {Clerk.} Mr. Engel votes aye.  
4474 Mr. Green?  
4475 Mr. {Green.} No.  
4476 The {Clerk.} Mr. Green votes no.  
4477 Ms. DeGette?  
4478 Ms. {DeGette.} Aye.

4479 The {Clerk.} Ms. DeGette votes aye.  
4480 Mrs. Capps?  
4481 Mrs. {Capps.} Aye.  
4482 The {Clerk.} Mrs. Capps votes aye.  
4483 Mr. Doyle?  
4484 [No response.]  
4485 The {Clerk.} Ms. Schakowsky?  
4486 [No response.]  
4487 The {Clerk.} Mr. Gonzalez?  
4488 [No response.]  
4489 The {Clerk.} Ms. Baldwin?  
4490 [No response.]  
4491 The {Clerk.} Mr. Ross?  
4492 [No response.]  
4493 The {Clerk.} Mr. Matheson?  
4494 [No response.]  
4495 The {Clerk.} Mr. Butterfield?  
4496 Mr. {Butterfield.} Aye.  
4497 The {Clerk.} Mr. Butterfield votes aye.  
4498 Mr. Barrow?  
4499 Mr. {Barrow.} No.  
4500 The {Clerk.} Mr. Barrow votes no.  
4501 Ms. Matsui?  
4502 Ms. {Matsui.} Yes.

4503 The {Clerk.} Ms. Matsui votes aye.  
4504 Mrs. Christensen?  
4505 Dr. {Christensen.} Aye.  
4506 The {Clerk.} Mrs. Christensen votes aye.  
4507 Ms. Castor?  
4508 Ms. {Castor.} Aye.  
4509 The {Clerk.} Ms. Castor votes aye.  
4510 Mr. Sarbanes?  
4511 [No response.]  
4512 The {Clerk.} Chairman Upton?  
4513 The {Chairman.} Votes no.  
4514 The {Clerk.} Chairman Upton votes no.  
4515 The {Chairman.} Members wishing to vote?  
4516 Mr. Whitfield?  
4517 Mr. {Whitfield.} No.  
4518 The {Clerk.} Mr. Whitfield votes no.  
4519 The {Chairman.} Other Members wishing to cast a vote?  
4520 Mr. Matheson?  
4521 Mr. {Matheson.} No.  
4522 The {Clerk.} Mr. Matheson votes no.  
4523 The {Chairman.} Mr. Ross?  
4524 Mr. {Ross.} No.  
4525 The {Clerk.} Mr. Ross votes no.  
4526 Mr. {Bilbray.} Mr. Chairman, am I recorded?

4527 The {Chairman.} Is Mr. Bilbray recorded?  
4528 The {Clerk.} Mr. Bilbray is not recorded.  
4529 Mr. {Bilbray.} No.  
4530 The {Clerk.} Mr. Bilbray votes no.  
4531 The {Chairman.} Ms. Schakowsky?  
4532 Ms. {Schakowsky.} Votes aye.  
4533 The {Clerk.} Ms. Schakowsky votes aye.  
4534 The {Chairman.} Other Members seeking to cast a vote?  
4535 Seeing none, the clerk will report the tally.  
4536 The {Clerk.} Mr. Chairman, on that vote there were 13  
4537 ayes, 31 nays.  
4538 The {Chairman.} Thirteen ayes, thirty-one nays, the  
4539 amendment is not agreed to.  
4540 Are there further amendments at the desk?  
4541 The gentleman from Massachusetts, Mr. Markey?  
4542 Mr. {Markey.} Mr. Chairman, thank you. I have the  
4543 final Markey amendment.  
4544 The {Chairman.} Final Markey amendment.  
4545 Mr. {Markey.} And it is Markey 139.  
4546 The {Chairman.} The clerk will report the title.  
4547 The {Clerk.} Amendment to H.R. 6213 offered by Mr.  
4548 Markey of Massachusetts.  
4549 [The amendment follows:]

4550 \*\*\*\*\* INSERT 14 \*\*\*\*\*

|  
4551           The {Chairman.} The amendment is considered as read.  
4552 The staff will distribute the amendment and the gentleman is  
4553 recognized for 5 minutes.

4554           Mr. {Markey.} Thank you, Mr. Chairman, very much.

4555           My amendment is very simple. It says that in order to a  
4556 get a loan guarantee, at least 75 percent of the materials  
4557 and components used to carry out the part of the project  
4558 covered under the loan guarantee must be made in America.  
4559 And if the part of the project covered under the loan  
4560 guarantee requires the use of a factory, that factory has to  
4561 be located in the United States as well.

4562           Now, I have a report here from the Republican National  
4563 Committee which recently released this study on Obamanomics  
4564 Outsourced: The Truth about How Obama Has Shipped the  
4565 Recovery Overseas. According to this report, rather than  
4566 creating jobs here at home, President Obama funneled money to  
4567 some of the wealthiest countries in the world to create jobs  
4568 in places like Luxembourg and Switzerland and Denmark and  
4569 Finland and Spain. And how did the President do it?  
4570 According to this GOP report, the Department of Energy's Loan  
4571 Guarantee Program was a major conduit. So you would think  
4572 that the No More Solyndras bill would address the problem  
4573 identified by the Republican National Committee, but sadly,

4574 it does not because the No More Solyndras Act does not  
4575 require any of the more than potentially \$100 billion worth  
4576 of pending loan guarantee projects to guard against  
4577 outsourcing.

4578         And you may or may not have seen it. I have seen this  
4579 ad 30 times in the last 3 days. It is scary this Obama  
4580 outsourcing green jobs. I mean I see it, the ominous music,  
4581 the scary threat to our country talking about this program.  
4582 And it is not just Solyndra. Let me just read to you from  
4583 the GOP.gov. It says, ``remember Solyndra? The problem with  
4584 Obama's Loan Guarantee Program doesn't end there. The  
4585 largest recipient of Obama's program to jumpstart green  
4586 energy projects was the Spanish company Abengoa, which took  
4587 in 2.7 billion for loan guarantee projects. It just goes on  
4588 and on.

4589         So this gives us a chance here to set the standard  
4590 because it is clear that here the GOP and the Democrats, we  
4591 agree on this issue. No outsourcing of jobs under this Loan  
4592 Guarantee Program because I have seen this ad, really, 30  
4593 times and it is powerful and I am convinced that you are  
4594 right, that we should just make sure that we protect against  
4595 that.

4596         So the problem is, of course, that, you know, there is  
4597 going to be some industries that are here, the nuclear

4598 industry, which is going to argue--I just want to protect  
4599 you--because the nuclear industry is going to say, oh, we  
4600 have to outsource most of the jobs because we can't do it  
4601 here. But we all know that no Loan Guarantee Program should  
4602 be compromised in that way to create jobs at any time  
4603 overseas. And notwithstanding what the Southern Company says  
4604 or the United States Enrichment Corporation about needing to  
4605 go overseas that we should just have some standards.

4606         And this ad that I think is going to spend upwards of 10  
4607 or \$20 million in a national buy, it is persuasive and I  
4608 think the American people are understanding what is going on.  
4609 And my amendment just gives everyone on the Committee here to  
4610 square up and to say you are right. You are right, Mr. TV  
4611 commercial talker, with deep voice and threatening  
4612 intonations about how the Loan Guarantee Program is  
4613 undermining American prosperity. We are going to do  
4614 something about it here in the committee that authorizes and  
4615 is cleaning up the only \$88 billion for nuclear and coal No  
4616 More Solyndras Act of 2012. But since that is the bulk of  
4617 the problem, we just have to make sure they don't outsource  
4618 anything in terms of their technology needs because  
4619 ultimately solar is just, you know, it is just going to be a  
4620 rounding error compared to the number of jobs that can be  
4621 outsourced in the nuclear and other areas.

4622           So again in the interest of cleaning up the program, I  
4623 urge and I vote so that we stop this terrible loss of jobs  
4624 going overseas.

4625           And I yield back the balance of my time.

4626           The {Chairman.} I recognize myself.

4627           I would just again remind my colleagues that earlier we  
4628 did turn down the Markey amendment. We are allowing those  
4629 projects in the queue to move forward, that the Treasury is  
4630 going to make some recommendations. We are not adding more  
4631 requirements. That I think is all of it I am going to say.  
4632 I will share something with my colleague without putting it  
4633 into the record.

4634           Are there other Members wishing to speak on the  
4635 amendment? If not, the amendment--

4636           Mr. {Engel.} Mr. Chairman?

4637           The {Chairman.} The gentleman from New York is  
4638 recognized for 5 minutes.

4639           Mr. {Engel.} Thank you, Mr. Chairman.

4640           And I yield to Mr. Markey.

4641           Mr. {Markey.} I thank you. And I am just going to  
4642 speak very briefly. And, you know, I hear the Chairman  
4643 intoning the magical pipeline defense of all the projects  
4644 that are already in the pipeline and therefore we can ask no  
4645 questions about them about where their jobs go overseas,

4646 about whether or not they are penny stocks or in junk bond  
4647 status. And this magical pipeline which protects everything  
4648 that is already there at the Department of Energy seems kind  
4649 of a scary prospect to me looking at it from the perspective  
4650 of the taxpayer that we would allow, you know, the potential  
4651 risk not only of tens of billions of dollars but also jobs  
4652 and say, well, you can't ask any questions, you can't take  
4653 any votes, you can't do anything. We are impotent. Our  
4654 hands are tied. We are like Harry Houdini in a big container  
4655 of water and they have all tied us up and we just have no way  
4656 of ever breaking out and being able to help those who need  
4657 help out there, the taxpayers, the beleaguered taxpayers just  
4658 crying out to this committee for help to overhaul the  
4659 program, the only \$88 billion for nuclear and coal No More  
4660 Solyndras Act of 2012 program.

4661         So again I thank the gentleman from New York and I yield  
4662 back to them with his thanks and urge and aye vote for the  
4663 Markey amendment to keep jobs here in America.

4664         The {Chairman.} The gentleman yields back his time.

4665         All time is expired.

4666         The question now occurs on the Markey amendment.

4667         Those in favor will say aye.

4668         Those opposed, say no.

4669         In the opinion of the Chair, the ayes have it. So

4670 therefore, I will ask for a recorded vote. The clerk will  
4671 call the roll.

4672 The {Clerk.} Mr. Barton?

4673 [No response.]

4674 The {Clerk.} Mr. Stearns?

4675 Mr. {Stearns.} No.

4676 The {Clerk.} Mr. Stearns votes no.

4677 Mr. Whitfield?

4678 Mr. {Whitfield.} No.

4679 The {Clerk.} Mr. Whitfield votes no.

4680 Mr. Shimkus?

4681 Mr. {Shimkus.} No.

4682 The {Clerk.} Mr. Shimkus votes no.

4683 Mr. Pitts?

4684 Mr. {Pitts.} No.

4685 The {Clerk.} Mr. Pitts votes no.

4686 Mrs. Bono Mack?

4687 Mrs. {Bono Mack.} No.

4688 The {Clerk.} Mrs. Bono Mack votes no.

4689 Mr. Walden?

4690 [No response.]

4691 The {Clerk.} Mr. Terry?

4692 Mr. {Terry.} No.

4693 The {Clerk.} Mr. Terry votes no.

4694 Mr. Rogers?  
4695 [No response.]  
4696 The {Clerk.} Mrs. Myrick?  
4697 [No response.]  
4698 The {Clerk.} Mr. Sullivan?  
4699 [No response.]  
4700 The {Clerk.} Mr. Murphy?  
4701 Mr. {Murphy.} No.  
4702 The {Clerk.} Mr. Murphy votes no.  
4703 Mr. Burgess?  
4704 Dr. {Burgess.} No.  
4705 The {Clerk.} Mr. Burgess votes no.  
4706 Mrs. Blackburn?  
4707 Mrs. {Blackburn.} No.  
4708 The {Clerk.} Mrs. Blackburn votes no.  
4709 Mr. Bilbray?  
4710 Mr. {Bilbray.} No.  
4711 The {Clerk.} Mr. Bilbray votes no.  
4712 Mr. Bass?  
4713 Mr. {Bass.} No.  
4714 The {Clerk.} Mr. Bass votes no.  
4715 Mr. Gingrey?  
4716 Dr. {Gingrey.} No.  
4717 The {Clerk.} Mr. Gingrey votes no.

4718 Mr. Scalise?  
4719 [No response.]  
4720 The {Clerk.} Mr. Latta?  
4721 Mr. {Latta.} No.  
4722 The {Clerk.} Mr. Latta votes no.  
4723 Mrs. McMorris Rodgers?  
4724 Mrs. {McMorris Rodgers.} No.  
4725 The {Clerk.} Mrs. McMorris Rodgers votes no.  
4726 Mr. Harper?  
4727 Mr. {Harper.} No.  
4728 The {Clerk.} Mr. Harper votes no.  
4729 Mr. Lance?  
4730 Mr. {Lance.} No.  
4731 The {Clerk.} Mr. Lance votes no.  
4732 Mr. Cassidy?  
4733 Mr. {Cassidy.} No.  
4734 The {Clerk.} Mr. Cassidy votes no.  
4735 Mr. Guthrie?  
4736 Mr. {Guthrie.} No.  
4737 The {Clerk.} Mr. Guthrie votes no.  
4738 Mr. Olson?  
4739 Mr. {Olson.} No.  
4740 The {Clerk.} Mr. Olson votes no.  
4741 Mr. McKinley?

4742 Mr. {McKinley.} No.

4743 The {Clerk.} Mr. McKinley votes no.

4744 Mr. Gardner?

4745 Mr. {Gardner.} No.

4746 The {Clerk.} Mr. Gardner votes no.

4747 Mr. Pompeo?

4748 Mr. {Pompeo.} No.

4749 The {Clerk.} Mr. Pompeo votes no.

4750 Mr. Kinzinger?

4751 Mr. {Kinzinger.} No.

4752 The {Clerk.} Mr. Kinzinger votes no.

4753 Mr. Griffith?

4754 Mr. {Griffith.} I pass.

4755 The {Clerk.} Mr. Griffith, pass.

4756 Mr. Waxman?

4757 Mr. {Waxman.} Aye.

4758 The {Clerk.} Mr. Waxman votes aye.

4759 Mr. Dingell?

4760 Mr. {Dingell.} Votes aye.

4761 The {Clerk.} Mr. Dingell votes aye.

4762 Mr. Markey?

4763 Mr. {Markey.} Votes aye.

4764 The {Clerk.} Mr. Markey votes aye.

4765 Mr. Towns?

4766 [No response.]  
4767 The {Clerk.} Mr. Pallone?  
4768 Mr. {Pallone.} Aye.  
4769 The {Clerk.} Mr. Pallone votes aye.  
4770 Mr. Rush?  
4771 [No response.]  
4772 The {Clerk.} Ms. Eshoo?  
4773 Ms. {Eshoo.} Aye.  
4774 The {Clerk.} Ms. Eshoo votes aye.  
4775 Mr. Engel?  
4776 Mr. {Engel.} Aye.  
4777 The {Clerk.} Mr. Engel votes aye.  
4778 Mr. Green?  
4779 Mr. {Green.} Aye.  
4780 The {Clerk.} Mr. Green votes aye.  
4781 Ms. DeGette?  
4782 Ms. {DeGette.} Aye.  
4783 The {Clerk.} Ms. DeGette votes aye.  
4784 Mrs. Capps?  
4785 Mrs. {Capps.} Aye.  
4786 The {Clerk.} Mrs. Capps votes aye.  
4787 Mr. Doyle?  
4788 Mr. {Doyle.} Aye.  
4789 The {Clerk.} Mr. Doyle votes aye.

4790 Ms. Schakowsky?  
4791 Ms. {Schakowsky.} Aye.  
4792 The {Clerk.} Ms. Schakowsky votes aye.  
4793 Mr. Gonzalez?  
4794 [No response.]  
4795 The {Clerk.} Ms. Baldwin?  
4796 [No response.]  
4797 The {Clerk.} Mr. Ross?  
4798 Mr. {Ross.} Aye.  
4799 The {Clerk.} Mr. Ross votes aye.  
4800 Mr. Matheson?  
4801 Mr. {Matheson.} No.  
4802 The {Clerk.} Mr. Matheson votes no.  
4803 Mr. Butterfield?  
4804 Mr. {Butterfield.} Aye.  
4805 The {Clerk.} Mr. Butterfield votes aye.  
4806 Mr. Barrow?  
4807 Mr. {Barrow.} Aye.  
4808 The {Clerk.} Mr. Barrow votes aye.  
4809 Ms. Matsui?  
4810 Ms. {Matsui.} Yes.  
4811 The {Clerk.} Ms. Matsui votes aye.  
4812 Mrs. Christensen?  
4813 Dr. {Christensen.} Aye.

4814 The {Clerk.} Mrs. Christensen votes aye.  
4815 Ms. Castor?  
4816 Ms. {Castor.} Aye.  
4817 The {Clerk.} Ms. Castor votes aye.  
4818 Mr. Sarbanes?  
4819 [No response.]  
4820 The {Clerk.} Chairman Upton?  
4821 The {Chairman.} Votes no.  
4822 The {Clerk.} Chairman Upton votes no.  
4823 The {Chairman.} Members wishing to--Mr. Barton?  
4824 Mr. {Barton.} No.  
4825 The {Clerk.} Mr. Barton votes no.  
4826 The {Chairman.} Mr. Scalise?  
4827 Mr. {Scalise.} No.  
4828 The {Clerk.} Mr. Scalise votes no.  
4829 The {Chairman.} Other Members wishing to cast a vote?  
4830 Mr. Rush, have you voted?  
4831 Mr. {Rush.} Yes.  
4832 The {Clerk.} Mr. Rush votes aye.  
4833 The {Chairman.} Other Members?  
4834 The {Clerk.} Mr. Griffith votes aye.  
4835 The {Chairman.} Other Members seeking to vote? Seeing  
4836 none, the clerk will report the tally.  
4837 The {Clerk.} Mr. Chairman, on that vote there were 19

4838 ayes, 27 nays.

4839 The {Chairman.} Nineteen ayes, twenty-seven nays, the  
4840 amendment is not agreed to.

4841 Are there further amendments to the bill? Seeing none,  
4842 the question now occurs on favorably reporting H.R. 6213 as  
4843 amended to the House.

4844 All those in favor will say aye.

4845 Those opposed, say no.

4846 The ayes appear to have it.

4847 Mr. {Waxman.} Roll call.

4848 The {Chairman.} Roll call is requested. The clerk will  
4849 call the role.

4850 The {Clerk.} Mr. Barton?

4851 Mr. {Barton.} Aye.

4852 The {Clerk.} Mr. Barton votes aye.

4853 Mr. Stearns?

4854 Mr. {Stearns.} Aye.

4855 The {Clerk.} Mr. Stearns votes aye.

4856 Mr. Whitfield?

4857 Mr. {Whitfield.} Aye.

4858 The {Clerk.} Mr. Whitfield votes aye.

4859 Mr. Shimkus?

4860 Mr. {Shimkus.} Aye.

4861 The {Clerk.} Mr. Shimkus votes aye.

4862 Mr. Pitts?  
4863 Mr. {Pitts.} Aye.  
4864 The {Clerk.} Mr. Pitts votes aye.  
4865 Mrs. Bono Mack?  
4866 Mrs. {Bono Mack.} Aye.  
4867 The {Clerk.} Mrs. Bono Mack votes aye.  
4868 Mr. Walden?  
4869 [No response.]  
4870 The {Clerk.} Mr. Terry?  
4871 Mr. {Terry.} Aye.  
4872 The {Clerk.} Mr. Terry votes aye.  
4873 Mr. Rogers?  
4874 [No response.]  
4875 The {Clerk.} Mrs. Myrick?  
4876 [No response.]  
4877 The {Clerk.} Mr. Sullivan?  
4878 [No response.]  
4879 The {Clerk.} Mr. Murphy?  
4880 Mr. {Murphy.} Aye.  
4881 The {Clerk.} Mr. Murphy votes aye.  
4882 Mr. Burgess?  
4883 Dr. {Burgess.} Aye.  
4884 The {Clerk.} Mr. Burgess votes aye.  
4885 Mrs. Blackburn?

4886 Mrs. {Blackburn.} Aye.  
4887 The {Clerk.} Mrs. Blackburn votes aye.  
4888 Mr. Bilbray?  
4889 Mr. {Bilbray.} No.  
4890 The {Clerk.} Mr. Bilbray votes no.  
4891 Mr. Bass?  
4892 Mr. {Bass.} No.  
4893 The {Clerk.} Mr. Bass votes no.  
4894 Mr. Gingrey?  
4895 Dr. {Gingrey.} Aye.  
4896 The {Clerk.} Mr. Gingrey votes aye.  
4897 Mr. Scalise?  
4898 Mr. {Scalise.} Aye.  
4899 The {Clerk.} Mr. Scalise votes aye.  
4900 Mr. Latta?  
4901 Mr. {Latta.} Aye.  
4902 The {Clerk.} Mr. Latta votes aye.  
4903 Mrs. McMorris Rodgers?  
4904 Mrs. {McMorris Rodgers.} Aye.  
4905 The {Clerk.} Mrs. McMorris Rodgers votes aye.  
4906 Mr. Harper?  
4907 Mr. {Harper.} Aye.  
4908 The {Clerk.} Mr. Harper votes aye.  
4909 Mr. Lance?

4910 Mr. {Lance.} Aye.  
4911 The {Clerk.} Mr. Lance votes aye.  
4912 Mr. Cassidy?  
4913 Mr. {Cassidy.} Aye.  
4914 The {Clerk.} Mr. Cassidy votes aye.  
4915 Mr. Guthrie?  
4916 Mr. {Guthrie.} Aye.  
4917 The {Clerk.} Mr. Guthrie votes aye.  
4918 Mr. Olson?  
4919 Mr. {Olson.} Aye.  
4920 The {Clerk.} Mr. Olson votes aye.  
4921 Mr. McKinley?  
4922 Mr. {McKinley.} Aye.  
4923 The {Clerk.} Mr. McKinley votes aye.  
4924 Mr. Gardner?  
4925 Mr. {Gardner.} Aye.  
4926 The {Clerk.} Mr. Gardner votes aye.  
4927 Mr. Pompeo?  
4928 Mr. {Pompeo.} Aye.  
4929 The {Clerk.} Mr. Pompeo votes aye.  
4930 Mr. Kinzinger?  
4931 Mr. {Kinzinger.} Aye.  
4932 The {Clerk.} Mr. Kinzinger votes aye.  
4933 Mr. Griffith?

4934 Mr. {Griffith.} Aye.

4935 The {Clerk.} Mr. Griffith votes aye.

4936 Mr. Waxman?

4937 Mr. {Waxman.} No.

4938 The {Clerk.} Mr. Waxman votes no.

4939 Mr. Dingell?

4940 Mr. {Dingell.} Votes no.

4941 The {Clerk.} Mr. Dingell votes no.

4942 Mr. Markey?

4943 Mr. {Markey.} No.

4944 The {Clerk.} Mr. Markey votes no.

4945 Mr. Towns?

4946 [No response.]

4947 The {Clerk.} Mr. Pallone?

4948 Mr. {Pallone.} No.

4949 The {Clerk.} Mr. Pallone votes no.

4950 Mr. Rush?

4951 Mr. {Rush.} No.

4952 The {Clerk.} Mr. Rush votes no.

4953 Ms. Eshoo?

4954 Ms. {Eshoo.} No.

4955 The {Clerk.} Ms. Eshoo votes no.

4956 Mr. Engel?

4957 Mr. {Engel.} No.

4958 The {Clerk.} Mr. Engel votes no.  
4959 Mr. Green?  
4960 Mr. {Green.} No.  
4961 The {Clerk.} Mr. Green votes no.  
4962 Ms. DeGette?  
4963 Ms. {DeGette.} No.  
4964 The {Clerk.} Ms. DeGette votes no.  
4965 Mrs. Capps?  
4966 Mrs. {Capps.} No.  
4967 The {Clerk.} Mrs. Capps votes no.  
4968 Mr. Doyle?  
4969 Mr. {Doyle.} No.  
4970 The {Clerk.} Mr. Doyle votes no.  
4971 Ms. Schakowsky?  
4972 Ms. {Schakowsky.} No.  
4973 The {Clerk.} Ms. Schakowsky votes no.  
4974 Mr. Gonzalez?  
4975 [No response.]  
4976 The {Clerk.} Ms. Baldwin?  
4977 [No response.]  
4978 The {Clerk.} Mr. Ross?  
4979 Mr. {Ross.} Aye.  
4980 The {Clerk.} Mr. Ross votes aye.  
4981 Mr. Matheson?

4982 Mr. {Matheson.} Aye.

4983 The {Clerk.} Mr. Matheson votes aye.

4984 Mr. Butterfield?

4985 Mr. {Butterfield.} No.

4986 The {Clerk.} Mr. Butterfield votes no.

4987 Mr. Barrow?

4988 Mr. {Barrow.} Aye.

4989 The {Clerk.} Mr. Barrow votes aye.

4990 Ms. Matsui?

4991 Ms. {Matsui.} No.

4992 The {Clerk.} Ms. Matsui votes no.

4993 Mrs. Christensen?

4994 Dr. {Christensen.} No.

4995 The {Clerk.} Mrs. Christensen votes no.

4996 Ms. Castor?

4997 Ms. {Castor.} No.

4998 The {Clerk.} Ms. Castor votes no.

4999 Mr. Sarbanes?

5000 Mr. {Sarbanes.} No.

5001 The {Clerk.} Mr. Sarbanes votes no.

5002 Chairman Upton?

5003 The {Chairman.} Votes aye.

5004 The {Clerk.} Chairman Upton votes aye.

5005 The {Chairman.} Mr. Sullivan?

5006 Mr. {Sullivan.} Yes.

5007 The {Clerk.} Mr. Sullivan votes aye.

5008 The {Chairman.} Are there any other Members wishing to  
5009 cast a vote? Seeing none, the clerk will report the tally.

5010 The {Clerk.} Mr. Chairman, on that vote there were 29  
5011 ayes, 19 nays.

5012 The {Chairman.} Twenty-nine ayes, nineteen nays, the  
5013 bill is passed and it is favorably reported. The bill is  
5014 favorably reported.

|

5015 H.R. 6194

5016           The {Chairman.} The Chair now calls up H.R. 6194 and  
5017 asks the clerk to report.

5018           The {Clerk.} H.R. 6194, ``To Ensure the Viability and  
5019 Competitiveness of the United States' Agriculture Sector.''

5020           [H.R. 6194 follows:]

5021 \*\*\*\*\* INSERT 15 \*\*\*\*\*

|  
5022           The {Chairman.} Without objection, the first reading of  
5023 the bill is dispensed with. So ordered.

5024           Are there any bipartisan amendments to the bill? Are  
5025 there any other amendments to the bill?

5026           The gentleman from California, Mr. Waxman, has an  
5027 amendment? Yes?

5028           Mr. {Waxman.} Mr. Chairman, I have an amendment at the  
5029 desk, D-1.

5030           The {Chairman.} The clerk will report the title of the  
5031 amendment.

5032           The {Clerk.} Amendment to H.R. 6194 offered by Mr.  
5033 Waxman of California.

5034           [The amendment follows:]

5035 \*\*\*\*\* INSERT 16 \*\*\*\*\*

|  
5036           The {Chairman.} And the amendment will be considered as  
5037 read. The staff will distribute the amendment and the  
5038 gentleman from California is recognized for 5 minutes.

5039           Mr. {Waxman.} Thank you, Mr. Chairman.

5040           Methyl bromide is a toxic fumigant that depletes the  
5041 ozone layer. It has been banned since 2005 but there is a  
5042 mechanism in the law for critical use exemptions. Since  
5043 2005, the level of critical use exemptions requested by the  
5044 United States and granted through the Montreal Protocol has  
5045 decreased dramatically. That is exactly what is supposed to  
5046 happen.

5047           The bill we are considering today turns back the  
5048 progress that has been made on methyl bromide. It has  
5049 several problematic provisions. Instead of requiring growers  
5050 to justify continued use of methyl bromide, the bill reverses  
5051 the presumption. It would require EPA to accept growers'  
5052 requests in full unless EPA can prove they are unwarranted.  
5053 The bill also creates a gaping ``emergency event'' loophole,  
5054 and the bill freezes into law for all time an outdated list  
5055 of approved critical uses. It rolls back the clock on the  
5056 list of approved critical uses to January 1, 2005, and makes  
5057 that outdated list permanent in law.

5058           The bill's definition reflects the additions to the list

5059 of approved uses since 2005 but not the subtractions from the  
5060 list. Under the bill there can't be any future additions to  
5061 or subtractions from the list. As a result, sectors that may  
5062 have a legitimate need for methyl bromide could not get it  
5063 under the Republican bill. And sectors that have completely  
5064 phased out the use of methyl bromide during the last 7 years  
5065 would be allowed to use methyl bromide again. For example,  
5066 golf courses would once again be allowed to seek critical use  
5067 exemptions for methyl bromide. It makes no sense to have the  
5068 limited amounts of methyl bromide available going to golf  
5069 courses for use on their fairways and putting greens. They  
5070 are not using methyl bromide now and golf turf can hardly be  
5071 considered a critical use.

5072         This bill would add back critical uses despite the fact  
5073 that some of those users haven't even submitted requests for  
5074 methyl bromide in years. Michigan growers haven't applied  
5075 for a critical use exemption since 2007. Tobacco growers  
5076 sought a critical use exemption in 2006 but did not seek  
5077 methyl bromide for 2007, '08, '09, '10, '11, '12, '13, or  
5078 '14. Why would we encourage them to start using it again?  
5079 This flawed provision goes well beyond the concerns the  
5080 proponents of this bill say they are trying to address.

5081         My amendment will not solve all of these problems with  
5082 this bill but it does fix the problem of freezing an outdated

5083 list of critical uses in law. Under my amendment, the bill's  
5084 list of approved critical uses is aligned with the latest  
5085 regulatory list. If that list is changed to add new uses or  
5086 take off sectors that no longer need methyl bromide, those  
5087 changes are reflected in the bill's definition. That  
5088 provides the regulatory flexibility to take into account  
5089 changing circumstances and new information and it avoids the  
5090 absurd result of reintroducing methyl bromide to sectors that  
5091 have successfully transitioned to alternatives that do not  
5092 deplete the ozone layer.

5093 This amendment will not fix all of the flaws but it will  
5094 fix a provision that clearly makes no sense. Regardless of  
5095 whether you support or oppose the bill, I hope Members will  
5096 agree that we should correct this glaring error.

5097 Yield back my time.

5098 The {Chairman.} The gentleman yields back.

5099 The Chair would recognize the gentleman from Georgia,  
5100 Dr. Gingrey.

5101 Dr. {Gingrey.} Mr. Chairman, thank you.

5102 I do claim time in opposition to the Waxman amendment  
5103 number one. This amendment would restrict eligible critical  
5104 uses to only those currently approved by the EPA, eliminating  
5105 most previously approved critical uses, something in the  
5106 neighborhood of 15 to 18 critical uses today. The EPA is

5107 essentially limiting that to four. This amendment from Mr.  
5108 Waxman essentially guts the bill. It restricts EPA's  
5109 authority to allow applications of critical use exemptions to  
5110 address future needs.

5111         The purpose of the bill is to allow applications for  
5112 critical uses that have already been approved by the EPA  
5113 consistent with the Montreal Protocol that goes back to 1991.  
5114 For example, this amendment could prohibit applications for  
5115 critical use exemptions for research purposes, for growing  
5116 crops such as Florida tomatoes, Michigan peppers, tomatoes  
5117 and cucumbers, California horticulture, and fruit and nut  
5118 crops, forest seedlings, and use in strawberry nurseries, and  
5119 by the National Pest Management Association. H.R. 6194  
5120 merely allows a farmer and food storage facilities to apply  
5121 for critical use exemptions. It does not assure that the  
5122 exemption would be granted.

5123         We should allow all approved critical uses, at least an  
5124 opportunity to apply for critical use exemption consistent  
5125 with the Montreal Protocol.

5126         Mr. Chairman, I have got at my desk a number of letters  
5127 of support for this legislation and I would like to introduce  
5128 this into the report. We have a letter of support signed by  
5129 the Georgia Farm Bureau, Agricultural Trade Services, Almond  
5130 Haulers and Processors Association, American Farm Bureau

5131 Federation, American Nursery and Landscape Association,  
5132 California Citrus Mutual, California Grape and Tree Fruit  
5133 League, Florida Fruit and Vegetable Association, Florida  
5134 Tomato Exchange, Maritime Exchange for the Delaware River and  
5135 Bay, Georgia Fruit and Vegetable Growers Association, North  
5136 American Millers Association, Northwest Horticulture Council,  
5137 Produce Market Association, Society of American Florists,  
5138 Sunkist Growers, Tri-Cal, U.S. Rice Federation, Western  
5139 Growers Associations, and Western Industries.

5140           Mr. Chairman, also we have a letter of support that has  
5141 been sent to us by 25 California strawberry growers. No  
5142 doubt that is part of the reason why a cosponsor of this bill  
5143 is Mr. Costa from California. I would like to enter a copy  
5144 of all these letters into the record, Mr. Chairman.

5145           The {Chairman.} Without objection.

5146           [The information follows:]

5147 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
5148 Dr. {Gingrey.} Let me just say--

5149 Mr. {Shimkus.} Will the gentleman yield?

5150 Dr. {Gingrey.} --in closing my remarks I urge all

5151 Members on both sides of the aisle to vote no on this gutting

5152 amendment.

5153 Mr. {Shimkus.} Would the gentleman yield?

5154 Dr. {Gingrey.} I would be happy at this point to yield

5155 to anyone on my side--

5156 Mr. {Shimkus.} Right behind you.

5157 Dr. {Gingrey.} --of the aisle. And I yield to Mr.

5158 Shimkus from Illinois.

5159 Mr. {Shimkus.} Thank you. I thank my colleague for

5160 yielding and I will be brief.

5161 You know, H.R. 6194 merely allows farmers and food  
5162 storage facilities to apply for critical use exemptions.

5163 This is very important to the milling industry as was

5164 identified by my colleague. I have a major milling operation

5165 in my district. They have no other product but this. So to

5166 keep the bugs out of the grounded wheat that makes flour,

5167 methyl bromide is it. And so we just want to ensure the

5168 opportunity and that they can apply for this. That is the

5169 intent of the bill. Amendments in opposition and of gutting

5170 the bill and for our producers in agriculture and really a

5171 good, safe food supply, this is needed legislation and I  
5172 thank my colleague.

5173 And I yield back.

5174 Mr. {Whitfield.} Will the gentleman yield his 59  
5175 seconds to me?

5176 Mr. {Shimkus.} And I will yield to the gentleman from  
5177 Kentucky, the subcommittee chair.

5178 Mr. {Whitfield.} Thank you very much.

5179 I just want to make the comment that during the hearing  
5180 in the subcommittee on this legislation and at the markup, we  
5181 had documentation from agricultural groups from around the  
5182 country who are asking Congress to assist them in having  
5183 access to methyl bromide because nothing else is readily  
5184 available. And this is an example of an international treaty  
5185 agreement the U.S. has where we are just blindly following  
5186 the tenets of that agreement to the detriment of our farming  
5187 communities. And so I think that it is essential that we try  
5188 to defeat this amendment and pass this legislation.

5189 And I would yield back the balance of my time.

5190 Dr. {Gingrey.} And I yield back my time, Mr. Chairman,  
5191 as well.

5192 The {Chairman.} Is there further discussion on the  
5193 amendment?

5194 Seeing none, the vote will occur on the amendment

5195 offered by the gentleman from California.

5196 All those in favor will say aye.

5197 Those opposed, say no.

5198 In the opinion of the Chair, the noes have it. The noes

5199 have it. The amendment is not agreed to.

5200 Are there further amendments to the bill?

5201 Seeing none, the question now occurs on favorably

5202 passing the legislation, H.R. 6194.

5203 All those in favor will say aye.

5204 All those opposed, say no.

5205 The ayes appear to have it.

5206 Roll call is asked for. The clerk will call the roll.

5207 The {Clerk.} Mr. Barton?

5208 [No response.]

5209 The {Clerk.} Mr. Stearns?

5210 [No response.]

5211 The {Clerk.} Mr. Whitfield?

5212 Mr. {Whitfield.} Aye.

5213 The {Clerk.} Mr. Whitfield votes aye.

5214 Mr. Shimkus?

5215 Mr. {Shimkus.} Aye.

5216 The {Clerk.} Mr. Shimkus votes aye.

5217 Mr. Pitts?

5218 Mr. {Pitts.} Aye.

5219 The {Clerk.} Mr. Pitts votes aye.  
5220 Mrs. Bono Mack?  
5221 [No response.]  
5222 The {Clerk.} Mr. Walden?  
5223 [No response.]  
5224 The {Clerk.} Mr. Terry?  
5225 Mr. {Terry.} Aye.  
5226 The {Clerk.} Mr. Terry votes aye.  
5227 Mr. Rogers?  
5228 [No response.]  
5229 The {Clerk.} Mrs. Myrick?  
5230 [No response.]  
5231 The {Clerk.} Mr. Sullivan?  
5232 [No response.]  
5233 The {Clerk.} Mr. Murphy?  
5234 [No response.]  
5235 The {Clerk.} Mr. Burgess?  
5236 Dr. {Burgess.} Aye.  
5237 The {Clerk.} Mr. Burgess votes aye.  
5238 Mrs. Blackburn?  
5239 [No response.]  
5240 The {Clerk.} Mr. Bilbray?  
5241 Mr. {Bilbray.} Aye.  
5242 The {Clerk.} Mr. Bilbray votes aye.

5243 Mr. Bass?

5244 Mr. {Bass.} Aye.

5245 The {Clerk.} Mr. Bass votes aye.

5246 Mr. Gingrey?

5247 Dr. {Gingrey.} Aye.

5248 The {Clerk.} Mr. Gingrey votes aye.

5249 Mr. Scalise?

5250 Mr. {Scalise.} Aye.

5251 The {Clerk.} Mr. Scalise votes aye.

5252 Mr. Latta?

5253 Mr. {Latta.} Aye.

5254 The {Clerk.} Mr. Latta votes aye.

5255 Mrs. McMorris Rodgers?

5256 Mrs. {McMorris Rodgers.} Aye.

5257 The {Clerk.} Mrs. McMorris Rodgers votes aye.

5258 Mr. Harper?

5259 Mr. {Harper.} Aye.

5260 The {Clerk.} Mr. Harper votes aye.

5261 Mr. Lance?

5262 Mr. {Lance.} Aye.

5263 The {Clerk.} Mr. Lance votes aye.

5264 Mr. Cassidy?

5265 Mr. {Cassidy.} Aye.

5266 The {Clerk.} Mr. Cassidy votes aye.

5267 Mr. Guthrie?  
5268 [No response.]  
5269 The {Clerk.} Mr. Olson?  
5270 [No response.]  
5271 The {Clerk.} Mr. McKinley?  
5272 Mr. {McKinley.} Aye.  
5273 The {Clerk.} Mr. McKinley votes aye.  
5274 Mr. Gardner?  
5275 Mr. {Gardner.} Aye.  
5276 The {Clerk.} Mr. Gardner votes aye.  
5277 Mr. Pompeo?  
5278 Mr. {Pompeo.} Aye.  
5279 The {Clerk.} Mr. Pompeo votes aye.  
5280 Mr. Kinzinger?  
5281 Mr. {Kinzinger.} Aye.  
5282 The {Clerk.} Mr. Kinzinger votes aye.  
5283 Mr. Griffith?  
5284 Mr. {Griffith.} Aye.  
5285 The {Clerk.} Mr. Griffith votes aye.  
5286 Mr. Waxman?  
5287 Mr. {Waxman.} No.  
5288 The {Clerk.} Mr. Waxman votes no.  
5289 Mr. Dingell?  
5290 Mr. {Dingell.} Votes no.

5291 The {Clerk.} Mr. Dingell votes no.  
5292 Mr. Markey?  
5293 [No response.]  
5294 The {Clerk.} Mr. Towns?  
5295 [No response.]  
5296 The {Clerk.} Mr. Pallone?  
5297 Mr. {Pallone.} No.  
5298 The {Clerk.} Mr. Pallone votes no.  
5299 Mr. Rush?  
5300 Mr. {Rush.} No.  
5301 The {Clerk.} Mr. Rush votes no.  
5302 Ms. Eshoo?  
5303 Ms. {Eshoo.} No.  
5304 The {Clerk.} Ms. Eshoo votes no.  
5305 Mr. Engel?  
5306 Mr. {Engel.} No.  
5307 The {Clerk.} Mr. Engel votes no.  
5308 Mr. Green?  
5309 Mr. {Green.} No.  
5310 The {Clerk.} Mr. Green votes no.  
5311 Ms. DeGette?  
5312 Ms. {DeGette.} No.  
5313 The {Clerk.} Ms. DeGette votes no.  
5314 Mrs. Capps?

5315 Mrs. {Capps.} No.

5316 The {Clerk.} Mrs. Capps votes no.

5317 Mr. Doyle?

5318 Mr. {Doyle.} No.

5319 The {Clerk.} Mr. Doyle votes no.

5320 Ms. Schakowsky?

5321 Ms. {Schakowsky.} No.

5322 The {Clerk.} Ms. Schakowsky votes no.

5323 Mr. Gonzalez?

5324 [No response.]

5325 The {Clerk.} Ms. Baldwin?

5326 [No response.]

5327 The {Clerk.} Mr. Ross?

5328 Mr. {Ross.} Aye.

5329 The {Clerk.} Mr. Ross votes aye.

5330 Mr. Matheson?

5331 Mr. {Matheson.} Aye.

5332 The {Clerk.} Mr. Matheson votes aye.

5333 Mr. Butterfield?

5334 Mr. {Butterfield.} No.

5335 The {Clerk.} Mr. Butterfield votes no.

5336 Mr. Barrow?

5337 Mr. {Barrow.} Aye.

5338 The {Clerk.} Mr. Barrow votes aye.

5339 Ms. Matsui?

5340 Ms. {Matsui.} No.

5341 The {Clerk.} Ms. Matsui votes no.

5342 Mrs. Christensen?

5343 Dr. {Christensen.} No.

5344 The {Clerk.} Mrs. Christensen votes no.

5345 Ms. Castor?

5346 Ms. {Castor.} No.

5347 The {Clerk.} Ms. Castor votes no.

5348 Mr. Sarbanes?

5349 [No response.]

5350 The {Clerk.} Chairman Upton?

5351 The {Chairman.} Votes aye.

5352 The {Clerk.} Chairman Upton votes aye.

5353 The {Chairman.} Other Members wishing to cast a vote?

5354 Mr. Walden?

5355 Mr. {Walden.} Aye.

5356 The {Clerk.} Mr. Walden votes aye.

5357 The {Chairman.} Mrs. Bono Mack?

5358 Mrs. {Bono Mack.} Aye.

5359 The {Clerk.} Mrs. Bono Mack votes aye.

5360 The {Chairman.} Mr. Olson?

5361 Mr. {Olson.} Aye.

5362 The {Clerk.} Mr. Olson votes aye.

5363           The {Chairman.} Mr. Guthrie?  
5364           Mr. {Guthrie.} Aye.  
5365           The {Clerk.} Mr. Guthrie votes aye.  
5366           The {Chairman.} Mrs. Blackburn?  
5367           Mrs. {Blackburn.} Aye.  
5368           The {Clerk.} Mrs. Blackburn votes aye.  
5369           The {Chairman.} Mr. Markey?  
5370           Mr. {Markey.} No.  
5371           The {Clerk.} Mr. Markey votes no.  
5372           The {Chairman.} Other Members wishing to cast a vote?  
5373    Seeing none, the clerk will report the tally.  
5374           The {Clerk.} Mr. Chairman, on that vote there were 20  
5375    eyes, 16 nays.  
5376           The {Chairman.} Twenty ayes, sixteen nays, the bill is  
5377    favorably reported.

|

5378 H.R. 6190

5379           The {Chairman.} The Chair now calls up the last bill of  
5380 the day, H.R. 6190 and asks the clerk to report.

5381           The {Clerk.} H.R. 6190, ``To Direct the Administrator  
5382 of the Environmental Protection Agency to Allow for the  
5383 Distribution, Sale, and Consumption in the United States of  
5384 Remaining Inventories of Over-the-Counter CFC Epinephrine  
5385 Inhalers.''

5386           [H.R. 6190 follows:]

5387 \*\*\*\*\* INSERT 17 \*\*\*\*\*

|  
5388           The {Chairman.} Without objection, the first reading of  
5389 the bill is dispensed with. So ordered.

5390           Are there any bipartisan amendments to the bill? Seeing  
5391 none, are there any amendments to the bill?

5392           Gentleman from New Jersey, Mr. Pallone, has an amendment  
5393 at the desk?

5394           Mr. {Pallone.} Yes, Mr. Chairman.

5395           The {Chairman.} The clerk will report the title.

5396           The {Clerk.} Amendment to H.R. 6190 offered by Mr.  
5397 Pallone of New Jersey.

5398           [The amendment follows:]

5399           \*\*\*\*\* INSERT 18 \*\*\*\*\*

|  
5400           The {Chairman.} The amendment will be considered as  
5401 read. The staff will distribute the amendment and the  
5402 gentleman is recognized for 5 minutes in support of his  
5403 amendment.

5404           Mr. {Pallone.} Thank you, Mr. Chairman.

5405           Congress gave FDA the responsibility of deciding whether  
5406 specific types of inhalers containing ozone-depleting  
5407 substances are essential uses and need to remain on the  
5408 market. FDA has established an orderly and open process for  
5409 making these determinations.

5410           Thirteen types of inhalers containing CFCs were phased  
5411 out prior to the phase-out of Primatene Mist. The remaining  
5412 two CFC-propelled inhalers are scheduled for phase-out at the  
5413 end of 2013. The FDA determined in 2008 that Primatene Mist  
5414 was not an essential use. They concluded that there are no  
5415 substantial technical barriers to developing an inhaler that  
5416 does not release ozone-depleting substances. At the request  
5417 of Armstrong, the manufacturer of Primatene Mist, FDA set its  
5418 phase-out date of December 31, 2011, 1 year longer than FDA  
5419 initially proposed.

5420           The FDA took steps to prepare the public for the phase-  
5421 out. It approved a label for Primatene Mist indicating to  
5422 consumers that Primatene Mist would not be available after

5423 December 31, 2011. And Primatene Mist was phased out on that  
5424 date. It hasn't been available for the past 7 months, yet  
5425 this bill would intervene to put Primatene Mist back on the  
5426 market. It is a legislative earmark that directly benefits  
5427 just one company, Armstrong. Armstrong already received a 1-  
5428 year extension of the transition date from the U.S. EPA to  
5429 allow its product to be sold until December 31 of last year.

5430 While other companies and products have successfully  
5431 transitioned their products providing for safe and effective  
5432 medications for people with asthma, the maker of Primatene  
5433 Mist CFC instead has repeatedly sought to be exempted. A  
5434 long list of public health groups, physician organizations,  
5435 and patient advocates oppose this bill.

5436 Yesterday, I entered one such letter into the record  
5437 noting this opposition, and in that letter that state clearly  
5438 that they do not believe that returning Primatene Mist to the  
5439 market is in the best interest of patients with asthma or the  
5440 public health. In fact, they state, ``Congress should not  
5441 make an exception for one product, especially one that is not  
5442 recommended for the treatment of asthma. Moreover,  
5443 reintroducing this product into the marketplace would only  
5444 further confuse patients and undermine efforts to transition  
5445 patients to guidelines-based care for managing their  
5446 disease.'' Some of the organizations in that letter include

5447 the American Lung Association, American Thoracic Society,  
5448 American Academy of Pediatrics, American Academy of Allergy,  
5449 Asthma, and Immunology, and Mothers of Asthmatics.

5450 I could go on, Mr. Chairman. There are nine other  
5451 public health organizations on this letter. In fact, I am  
5452 not aware of any public health organization that supports  
5453 this bill. My understanding is that the Energy and Power  
5454 Subcommittee hearing on this legislation was focused on the  
5455 question of whether Primatene Mist is a safe and recommended  
5456 treatment for asthma. FDA was not invited to testify. But  
5457 at a member briefing last week, FDA officials expressed many  
5458 of the same concerns about patient confusion and Primatene  
5459 Mist no longer being the standard of care for asthma  
5460 patients.

5461 Mr. Chairman, the Health Subcommittee has had no  
5462 involvement with this bill and I don't think that makes  
5463 sense. The Health Subcommittee should have examined these  
5464 health issues closely and heard testimony from FDA before  
5465 this bill was marked up. I did mention this yesterday to  
5466 both Mr. Pitts and to you, Mr. Chairman, but of course the  
5467 markup is continuing.

5468 I think that since we are going to markup the bill today  
5469 it needs some basic public health protections. My amendment  
5470 ensures that Primatene Mist does not go back on the shelves

5471 unless FDA finds that its temporary reintroduction won't  
5472 confuse patients and will provide a public health benefit.  
5473 That is not a high bar in my opinion. That is just common  
5474 sense. Congress shouldn't be overriding FDA's established  
5475 regulatory process if doing so would cause significant  
5476 patient confusion or undermine public health. And so I urge  
5477 Members to support my amendment.

5478 I yield back, Mr. Chairman.

5479 The {Chairman.} Gentleman yields back.

5480 Who seeks recognition on our side? Dr. Burgess is  
5481 recognized for 5 minutes.

5482 Dr. {Burgess.} Thank you, Mr. Chairman.

5483 This amendment is actually not only unnecessary, it  
5484 would further confuse people about the issue. The Food and  
5485 Drug Administration and the Environmental Protection Agency  
5486 had ample time--in fact, there were multiple requests made of  
5487 both federal agencies through various subcommittees in this  
5488 committee. EPA Administrator Gina McCarthy was asked on  
5489 October 25 of 2011 if she would provide us some additional  
5490 information. Further, she was asked again on February 8 of  
5491 2012, March 28 of 2012. EPA Administrator Lisa Jackson when  
5492 she was here before the full committee for a budgetary  
5493 hearing in February 28 of 2012 refused to address the  
5494 question. FDA Commissioner Margaret Hamburg was here

5495 February 1, 2012. She was asked the question directly. And  
5496 in fact, it took her office 2 months to respond to simple  
5497 questions from my office on this issue.

5498 I fail to see that asking the FDA to do anything in a  
5499 timely fashion would result in any action occurring at all.  
5500 They don't know how to move with dispatch. FDA Director Dr.  
5501 Janet Woodcock was further questioned about this issue  
5502 February 9 of 2012.

5503 These questions were asked not just by myself but by Mr.  
5504 Ross on the other side, legitimate questions about the issue  
5505 that was facing our asthma patients back in our district.  
5506 Quoting Mr. Ross, ``well, it is not about convenience. It is  
5507 not about trying to sell a million units that are in a  
5508 warehouse. It is about having a product that people can  
5509 afford. Too many of my folks can't afford to go to a doctor.  
5510 They can't afford the \$50 inhaler. They are having a tough  
5511 time affording a \$20 inhaler.''

5512 Look, we are not asking for a major rewrite of  
5513 environmental law. We are not asking for a major rewrite of  
5514 FDA regulations. What we are asking for is that the existing  
5515 product--the product is in the warehouse right now sitting  
5516 gathering dust. The CFC containing the propellant to deliver  
5517 epinephrine into an asthmatic's lungs when they are having an  
5518 acute attack, the expiration date on these packages is May of

5519 2013. The legislation is only directing the waiver to exist  
5520 until the expiration date on the package. If there are other  
5521 products that come online prior to then, fine. Let there be  
5522 a minimum amount of overlap so that asthma patients actually  
5523 have access to their medication.

5524       Look, we are talking about something akin to a  
5525 nightlight. For an asthmatic that wakes up at 2:00 in the  
5526 morning, didn't anticipate the attack, doesn't have other  
5527 medications at home, before January 1 of this year they could  
5528 drive down to an all-night pharmacy. They could purchase one  
5529 of these things. Actually, they come two for \$32 shrink-  
5530 wrapped together but they could purchase this. And the  
5531 problem is solved. The attack is ameliorated. Sure, they  
5532 are going to have to go to their doctor. Sure, they are  
5533 going to have to get ongoing treatment. But that immediate  
5534 relief that they seek is available to them. Why would we  
5535 deny that? Why would we put our thumb on the windpipe of the  
5536 asthmatic and say, no, you can't have that. You are not  
5537 smart enough to manage your condition. We can't allow you to  
5538 have something that would alleviate your symptoms.

5539       What we are asking for here is to have a simple rescue  
5540 inhaler available as an over-the-counter product. There is  
5541 one been on the market for the last 50 or 60 years. The Food  
5542 and Drug Administration, if they are worried about whether or

5543 not this is a dangerous medication, they have had ample  
5544 opportunity to do something about it. And they have chosen  
5545 not to. The FDA in their own circular says if you have got  
5546 this medication at home, you don't have to discard it. It  
5547 just can't be manufactured or sold after January 1 but you  
5548 are free to use it. And it says so in their own frequently  
5549 asked questions on their own website. You are free to use  
5550 it. There is no contraindication to the use of this if it  
5551 did not exist beforehand.

5552         So all we are asking is that asthmatic patients continue  
5553 to have the rescue inhaler available to them. There is  
5554 product in the warehouse. The company has agreed that it  
5555 will not profit from the sale of that. I was not aware that  
5556 there was only a single company. I have used these inhalers  
5557 for years and years.

5558         The fact of the matter is that people look at the United  
5559 States Congress and they wonder why it doesn't work. This is  
5560 one of the things they point to. We can't have our light  
5561 bulbs and now they want our asthma inhalers. What are they  
5562 coming after next? This is a sensible piece of legislation.  
5563 It needs to go forward without this amendment, which would  
5564 only delay and confuse things even further. I urge a no vote  
5565 on the amendment and an aye vote on the legislation.

5566         I will yield back.

5567           The {Chairman.} The gentleman yields back.

5568           Gentleman from California is recognized.

5569           Mr. {Waxman.} Mr. Chairman, my colleagues, Primatene  
5570 Mist is an over-the-counter epinephrine inhaler from the  
5571 1960s. It was phased out at the end of 2011 and has already  
5572 been off the shelves for 7 months. The underlying bill would  
5573 take the extraordinary action of putting Primatene Mist back  
5574 on the shelves so its manufacturer can sell off its remaining  
5575 inventory. Taking that kind of action might make sense if  
5576 the inhaler was necessary for public health, but the  
5577 Subcommittee heard expert medical testimony that Primatene  
5578 Mist is not safe or recommended for treating asthma.

5579 \       As Mr. Pallone said, a long list of reputable medical  
5580 and public health organizations oppose putting Primatene Mist  
5581 back on the counter, including the American Asthma  
5582 Association and the thoracic medical people.

5583           This is not a product without some problems. When  
5584 people want the jolt of a Primatene Mist, it will help them  
5585 for a very short period of time. If people then have another  
5586 asthma attack later, they will use it again and the  
5587 physicians that represent these organizations that treat  
5588 asthma said that it could have cardiac consequences. Well,  
5589 that is therefore not without some concern to put this  
5590 product on the market.

5591 But the amendment that is before us is over the issue of  
5592 patient confusion. Asthma patients who use Primatene Mist  
5593 were told that the product would not be available after  
5594 December 31, 2011. There was a label right on the Primatene  
5595 Mist. It was phased out on schedule. It hasn't been on the  
5596 market for the last 7 months. And according to testimony we  
5597 heard in subcommittee, many people have already transitioned  
5598 to other more effective treatments. Under this bill,  
5599 Primatene Mist would go back on the market but only for as  
5600 long as the inventory lasted. Then, it would once again  
5601 disappear from the shelves. I can understand why public  
5602 health groups and the FDA would worry that patients will have  
5603 no idea whether they will be able to continue using Primatene  
5604 Mist or should transition to an alternative.

5605 That is why I support the Pallone amendment. It simply  
5606 ensures that Primatene Mist does not go back on the market  
5607 unless FDA determines that allowing Armstrong to sell its  
5608 remaining inventory of Primatene Mist will not cause  
5609 confusion among patients and will provide a public health  
5610 benefit. That is a basic commonsense test, and the amendment  
5611 requires FDA to make a decision one way or the other within  
5612 30 days.

5613 FDA told us--they weren't allowed to testify at a  
5614 hearing but we had a private meeting where all the members of

5615 the subcommittee were invited--that they didn't want to take  
5616 the product off the market. They knew it was coming off the  
5617 market. That is what the manufacturer agreed to. Other  
5618 manufacturers of similar products agreed to their phase-out  
5619 schedule and they complied. Now, this one product wants to  
5620 be singled out with a special provision in law to allow them  
5621 notwithstanding the fact that they agreed to go off the  
5622 market after 2011 even though they were supposed to go off  
5623 2010 but they got an extension until 2011, they will be able  
5624 to come back on the market.

5625 We had earlier discussion of equity. I don't know how  
5626 that is equitable to all the manufacturers that played by the  
5627 rules, made their investment decisions, and now they are  
5628 going to find out that one of their competitors gets to go  
5629 back on the market.

5630 So I support the Pallone amendment and I want to yield  
5631 to Mr. Pallone the balance of my time.

5632 Mr. {Pallone.} Thank you, Mr. Waxman.

5633 I just want to stress that the public health officials  
5634 are saying that allowing this product to return to the  
5635 marketplace is not in the best interest of patients with  
5636 asthma or the public health. None of the expert guidelines  
5637 recommend the use of over-the-counter medications like  
5638 Primatene Mist to treat asthma. The National Asthma

5639 Education Prevention Program, an expert panel convened by the  
5640 National Institutes of Health, has issued treatment  
5641 guidelines for management of asthma, and they recommend  
5642 against the use of epinephrine for treating asthma  
5643 recognizing that it has potential for excessive cardiac  
5644 stimulation.

5645         The bottom line here, my colleagues, is that Congress  
5646 should not make an exception for one product, especially one  
5647 that is not recommended for the treatment of asthma. And  
5648 reintroducing this product into the marketplace would only  
5649 further confuse patients and undermine efforts to transition  
5650 patients to guidelines-based care for managing their disease  
5651 that all the public health experts say is better.

5652         So, you know, I understand where Mr. Burgess is coming  
5653 from but it is just not in the interest of the public or  
5654 those with asthma to do this.

5655         The {Chairman.} The gentleman's time is expired.

5656         The Chair would recognize the gentleman from  
5657 Pennsylvania, Mr. Pitts.

5658         Mr. {Pitts.} Thank you, Mr. Chairman.

5659         The Pallone amendment blocks the bill if FDA finds that  
5660 distributing Primatene Mist causes patient confusion or does  
5661 not protect public health. I would urge my colleagues to  
5662 oppose this amendment and to support the underlying bill,

5663 which I think is a commonsense, patient-friendly bill. Until  
5664 December 31, 2011, there was only one over-the-counter asthma  
5665 inhaler sold in the United States, and that is Primatene  
5666 Mist. And sales of Primatene Mist, which had been on the  
5667 market for nearly 50 years, have been banned since the 1st of  
5668 this year not because of concerns about safety or  
5669 effectiveness but because the inhaler uses CFCs,  
5670 chlorofluorocarbons, as a propellant. And CFCs are harmful  
5671 to the ozone layer. There is no substitute over-the-counter  
5672 inhaler currently on the market in the U.S. While the  
5673 Committee heard testimony that an alternative over-the-  
5674 counter inhaler is under development and that another company  
5675 is developing an over-the-counter nebulizer, it is not clear  
5676 when these over-the-counter products may be available.

5677         There is an answer for those who would like the option  
5678 of having access to over-the-counter inhalers. H.R. 6990  
5679 would allow the existing inventory of Primatene Mist  
5680 manufactured before the ban went into effect to be sold.  
5681 Now, to be clear, it does not allow the manufacture of any  
5682 additional units and the bill only allows existing inventory  
5683 to be sold until August 1 of 2013.

5684         I understand Primatene Mist only treats asthma symptoms  
5685 and that there may be newer medications that are the first  
5686 choice of doctors. I agree it is better for patients to see

5687 a doctor and obtain prescription medication for their asthma.  
5688 However, for some people, the uninsured or those who live in  
5689 rural areas or many others, seeing a doctor and filling a  
5690 prescription is simply not possible. For whatever reason, 2  
5691 to 3 million people have relied on this over-the-counter  
5692 inhaler.

5693 I would not be advocating for Primatene Mist existing  
5694 inventory to go back on the market if I thought that this was  
5695 unsafe. FDA has made no claim that its safety is in  
5696 question. FDA's consumer advisory webpage specifically says  
5697 that the cause of the ban was the product's use of CFCs and  
5698 the effect on the environment. The same webpage counsels  
5699 patients that if they had not used up their existing  
5700 Primatene Mist by the date the ban went into effect, it was  
5701 safe to continue using it as long as it had not expired.

5702 If the drug is safe and no other over-the-counter  
5703 options are available, it makes no sense to let the existing  
5704 Primatene Mist inventory sit unused in storage facilities  
5705 while we wait for a new, non-CFC, over-the-counter product to  
5706 come to market.

5707 Now, I know Mr. Pallone--I have had some discussion with  
5708 him about why H.R. 6190 was not referred to the Health  
5709 Subcommittee. I understand that health concerns are central  
5710 to the arguments that my colleagues are making both for and

5711 against the bill. However, the ban on these inhalers is in  
5712 place for environmental reasons and the ban is being enforced  
5713 by the EPA, not FDA. The text of the bill addresses the  
5714 Clean Air Act and directs the EPA administrator to allow for  
5715 the sale of the remaining inventory of these inhalers.

5716 As a practical matter, our committee has had two  
5717 briefings with FDA on this issue. Further, this issue was  
5718 raised twice before the Health Subcommittee in hearings with  
5719 two different FDA witnesses. These hearings were held on  
5720 February 1 with Commissioner Hamburg, February 9 with FDA  
5721 Director Woodcock, and both witnesses pointed to the Montreal  
5722 Protocol and environmental reasons for the ban.

5723 In terms of health concerns, FDA says on its own website  
5724 that these inhalers are safe to use until the expiration  
5725 date. Whether or not we are happy with the referral, neither  
5726 the Clean Air Act nor EPA are within the Health  
5727 Subcommittee's jurisdiction. I urge all my colleagues to  
5728 oppose the amendment and support the bill.

5729 Thank you, Mr. Chairman.

5730 The {Chairman.} Gentleman's time is expired.

5731 I think we are ready to vote on this amendment.

5732 Those in favor of the Pallone amendment will say aye.

5733 Those opposed, say no.

5734 In the opinion of the Chair, the noes have it. The

5735 amendment is not agreed to.

5736 Are there further amendments to the bill?

5737 The Chair would recognize the gentlelady from Florida,

5738 Ms. Castor.

5739 Ms. {Castor.} Thank you, Mr. Chairman. I have an

5740 amendment at the desk.

5741 The {Chairman.} The clerk will report the title of the

5742 amendment.

5743 The {Clerk.} Amendment to H.R. 6190 offered by Ms.

5744 Castor of Florida.

5745 [The amendment follows:]

5746 \*\*\*\*\* INSERT 19 \*\*\*\*\*

|  
5747           The {Chairman.} The amendment will be considered as  
5748 read. And the gentlelady has 5 minutes in support of her  
5749 amendment.

5750           Ms. {Castor.} Thank you, Mr. Chairman.

5751           My amendment is very straightforward. It simply says  
5752 that the Act will not take effect if there is an over-the-  
5753 counter inhalation treatment for asthma other than Primatene  
5754 Mist lawfully marketed in the United States because for many  
5755 months we have heard that this bill is urgently needed  
5756 because there are no over-the-counter alternatives for asthma  
5757 patients to Primatene Mist, which has been phased out over a  
5758 number of years. But right before the last subcommittee  
5759 hearing, I was contacted by a Florida company, Nephron  
5760 Pharmaceuticals Corporation. They have developed such  
5761 product and they have manufactured a device that allows  
5762 asthma patients to inhale a drug similar to the epinephrine  
5763 in Primatene Mist but without the CFCs.

5764           Lou Kennedy, the CEO of Nephron, has sent correspondence  
5765 to all of your offices to clarify a few things. Their  
5766 product is AsthmaNefrin. It has been in existence for they  
5767 say over 100 years. It is not awaited FDA approval because  
5768 it has been grandfathered in. It has been used by hospitals  
5769 for many, many years all across this country and the globe to

5770 treat children 2 years of age and up and adults who suffer  
5771 from bronchial asthma, including shortness of breath,  
5772 tightness of the chest, wheezing with fewer side effects than  
5773 Primatene Mist. They have advised me that their first  
5774 shipment will arrive at Wal-Mart across the country on August  
5775 11 and they will be in CVS stores by the end of the month.

5776 So the committee members should have that information  
5777 from Nephron Pharmaceuticals that was delivered to their  
5778 office.

5779 And I would just like to point out that this does  
5780 highlight the fact that, you know, this corporation, this  
5781 company probably like many others have made investment  
5782 decisions based upon the rules of the road and we shouldn't  
5783 complicate their investment decisions, their business  
5784 decisions by pulling the rug out from under them. I think we  
5785 want the businesses to compete in the private sector on a  
5786 level playing field and not let government pick winners and  
5787 losers here.

5788 So I urge adoption of my amendment and yield back the  
5789 balance of my time.

5790 The {Chairman.} The gentlelady yields back.

5791 Are there Members on this side--Dr. Burgess recognized  
5792 for 5 minutes.

5793 Dr. {Burgess.} Thank you, Mr. Chairman.

5794           While I appreciate the intention of this amendment, I am  
5795 going to ask for Members to oppose it as well. If this  
5796 amendment had been offered exactly 1 year ago today, 6 months  
5797 before the ban on the CFC-containing inhalers went into  
5798 effect and there could be some assurance it would be in wide  
5799 distribution and widely available when the ban occurred on  
5800 the CFC-containing inhalers, then perhaps there would be a  
5801 point to this discussion. But the fact of the matter is  
5802 there is no guarantee that this will be in wide distribution.  
5803 My understanding it is going to be available in select Wal-  
5804 Marts and select CVS pharmacies. It will be great if it is  
5805 widely available. But you know what? The overlap of time is  
5806 in fact quite small.

5807           The inhalers that are available, the ones that we are  
5808 asking to be released for sale to asthmatic patients will  
5809 expire May of 2013. Food and Drug Administration on its own  
5810 website in response to the question can I continue to use my  
5811 epinephrine inhaler? Say yes, you can use the product after  
5812 December 31 because the phase-out only applies to manufacture  
5813 and sale after December 31. If you haven't used up your  
5814 Primatene Mist, it is safe to continue to use it as long as  
5815 it hasn't expired. My understanding is all of the existing  
5816 stock expires in May of next year.

5817           So this is what we are actually discussing. If there is

5818 a little bit of overlap for the asthma patient so they have a  
5819 modicum of choice for the next 6 months, well, then fine,  
5820 good for them. But the reality is, yeah, AsthmaNefrin has  
5821 been available but it is available right now if you can't get  
5822 your CFC inhaler and you have an asthma attack and have to go  
5823 to the emergency room, that is what the ER is going to put in  
5824 the little inhaler in the ultrasonic nebulizer with which  
5825 they give you the breathing treatment.

5826 All I am saying is to avoid that trip to the emergency  
5827 room, to avoid that \$1,500 or \$2,000 charge, let us allow our  
5828 asthma patients to continue to have a product that they have  
5829 used for 50 to 60 years, that they are very comfortable with  
5830 that works well for them.

5831 And again, we are not talking about this replacing  
5832 maintenance therapy for asthmatics. We are talking about a  
5833 rescue inhaler. In the middle of the night you come across  
5834 something that cases your airways to react and constrict, it  
5835 could be something as innocent as Barney Frank's cigar in his  
5836 office when you walk by in the wee hours of the morning, but  
5837 the result is you have airway constriction and you need  
5838 relief. This provides that relief.

5839 It will be great if AsthmaNefrin is on the shelves as  
5840 early as late August, but what if it is not? The fact of the  
5841 matter remains we have a duty, we have an obligation to our

5842 asthma patients to make sure they have this product available  
5843 when they need it because that is the only time that it is  
5844 actually used or effective is when they need it.

5845 Ms. {Castor.} Would the gentleman yield?

5846 Dr. {Burgess.} I will yield back the time or I don't  
5847 see who--yes, I will yield.

5848 Ms. {Castor.} Thank you. I appreciate it.

5849 Dr. {Burgess.} And then I also want to yield a little  
5850 time to Mr. Scalise as well.

5851 Ms. {Castor.} Yeah, I just have a quick question to ask  
5852 you because you raised it and I don't know what this is.

5853 Dr. {Burgess.} Yes, Barney Frank does smoke cigars in  
5854 his office. You can smell it--

5855 Ms. {Castor.} That is not what I am asking.

5856 Dr. {Burgess.} --in the hallway. I have never been in  
5857 his office.

5858 Ms. {Castor.} Neither have I. But the question that I  
5859 wanted to ask was you made reference to emergency room visits  
5860 as a result of this not being on the market. Do we have  
5861 substantiation of that?

5862 Dr. {Burgess.} Well, what I can tell you is--reclaiming  
5863 my time--the options for the asthmatic patient right now if  
5864 they find themselves in a tight spot in the middle of the  
5865 night and they don't have a doctor's prescription handy that

5866 they can go fill, what are their options? And the option is  
5867 to either stay up all night using the accessory muscles of  
5868 breathing and being quite miserable or going to the emergency  
5869 room and seeking relief. So those are the only two options.

5870 Yes, you can go and buy the Primatene tablets over-the-  
5871 counter in the drugstore. Those are ephedrine tablets. You  
5872 have actually got to show your driver's license and register  
5873 because those can also be used for drug manufacturing as I  
5874 understand, but those also cause tachycardia. It is not like  
5875 the asthmatic patient who is using Primatene tablets is going  
5876 to avoid any of the side effects that Mr. Pallone was  
5877 referring.

5878 Ms. {Castor.} I appreciate it. I just wanted--

5879 Dr. {Burgess.} In order to get the inhaled relief--

5880 Ms. {Castor.} --to know if we had any statistics.

5881 Dr. {Burgess.} Well, I don't know that we do but I am  
5882 sure your constituents will be happy to provide you with  
5883 that.

5884 Ms. {Castor.} Thank you.

5885 Dr. {Burgess.} We had some emails submitted from  
5886 Primatene users. ``I have used Primatene for over 30 years.  
5887 I am still here to tell of it. Since its removal from the  
5888 shelves, I have been to the emergency room 11 times.'' This  
5889 was from Robert in Newport News, Virginia. ``The hospitals

5890 have now enslaved me for the rest of my life. It is all  
5891 about money. They always are all about money.' Well, he  
5892 goes on but you get the idea. Robert in Newport News,  
5893 Virginia, has been to the emergency room 11 times and it has  
5894 robbed him of his fiscal retirement.

5895 And I yield back, Mr. Chairman.

5896 The {Chairman.} Gentleman from California, Mr. Waxman,  
5897 is recognized for 5 minutes.

5898 Mr. {Waxman.} Mr. Chairman, if people have been back to  
5899 the emergency room a number of times, you would have thought  
5900 that they would get what is an appropriate treatment, which  
5901 is albuterol and they would have that available in the middle  
5902 of the night should they have an attack. That has been the  
5903 case for the last 7 months. So I would think a lot of people  
5904 have already gone to get this other drug.

5905 FDA established a clear and open process for determining  
5906 whether inhalers containing CFCs are essential. And over the  
5907 years, more than a dozen types of inhalers containing CFCs  
5908 have been phased out under this process. All of the  
5909 manufacturers knew the schedule. They knew when they needed  
5910 to transition to inhalers that do not use CFCs and the  
5911 schedules were never changed. And none of the manufacturers  
5912 were allowed to sell off their inventories after the phase-  
5913 out date. A dozen CFC inhalers were phased out prior to the

5914 phase-out of Primatene Mist. The last remaining two CFC-  
5915 propelled inhalers are scheduled for phase-out at the end of  
5916 2013.

5917 Primatene Mist was phased out at the end of 2011,  
5918 December 31. That is 1 year later than FDA originally  
5919 proposed. Armstrong asked for a 1-year extension and the FDA  
5920 granted that request. So where they were phased out December  
5921 31, 2011, that was the end of their phase-out date that they  
5922 requested. So they have been treated fairly in this process.  
5923 They were not singled out or required to do anything that  
5924 other companies weren't required to do. But the Burgess bill  
5925 would provide special treatment for Armstrong. It would  
5926 change the rules of the road so that Armstrong and Armstrong  
5927 alone could sell off its inventory Primatene Mist.

5928 This congressional intervention is going to affect the  
5929 companies who have played by the rules and made investments  
5930 based on those rules. As Ms. Castor explained, a Florida  
5931 company called Nephron has developed a handheld, battery-  
5932 operated atomizer that uses vials of a variant of  
5933 epinephrine. It would be portable, over-the-counter device,  
5934 an alternative to Primatene Mist. And according to Nephron,  
5935 their product will be available in mid- to late August at a  
5936 cost comparable to Primatene Mist.

5937 Now, I know a lot of people are concerned about whether

5938 it is over-the-counter or prescription drug. If there is no  
5939 over-the-counter drug available and that becomes an economic  
5940 barrier to people as I can imagine it might be, especially to  
5941 lower income people, not to Dr. Burgess and others of his  
5942 economic stature, but others who have a hard time getting the  
5943 money to pay for it, I would join members of this committee  
5944 urging the other drug manufacturers to make them available to  
5945 low-income people at no cost or very low cost.

5946 But Nephron is undertaking its effort at considerable  
5947 cost based on reasonable expectations about what products  
5948 would and would not be on the market. And they know that  
5949 Primatene Mist is already off the market, so they want to go  
5950 on the market to fill this niche.

5951 At last week's briefing, FDA officials explained that  
5952 under a 1986 FDA rulemaking called a monograph, simple  
5953 epinephrine-delivery mechanisms like nebulizers or atomizers  
5954 can be placed on the market without preapproval by FDA. More  
5955 complex meter-dose inhalers are required to obtain new drug  
5956 approval. Well, rather than pick winners and losers, what  
5957 Ms. Castor's amendment says is that the bill would not go  
5958 into effect unless at the time the bill is put into law there  
5959 is no other alternative over-the-counter inhalation asthma  
5960 treatment available.

5961 So if this other Primatene Mist--or I guess Primatene

5962 Mist may be a brand name--but this other product that is  
5963 going to go on the market they say within the next couple of  
5964 months, if it is on the market, then you have got an  
5965 alternative. If it is not on the market, then under the  
5966 Castor amendment, the Primatene Mist will be allowed to be on  
5967 the market. And that will be determined at the time of  
5968 enactment of the bill. We are not going to enact this bill  
5969 before September. If this company is going to get their  
5970 approval within the next month, we will have a pretty good  
5971 idea in September whether we need the bill or not or maybe  
5972 shortly thereafter.

5973         So I think the Castor amendment makes a lot of sense.  
5974 We will be assured that there will be an over-the-counter  
5975 product. If not this new one, then the bill would allow  
5976 Primatene Mist to be on the market. And I think we ought to  
5977 hope for another product because the FDA told us that the  
5978 standard of care by experts in this field is not Primatene  
5979 Mist. It may not be the other one either but at least we  
5980 won't have the problems that Primatene Mist seems to offer to  
5981 these patients.

5982         So I urge support for the Castor amendment.

5983         The {Chairman.} Gentleman's time is expired.

5984         I see one other hand that is up so let me go to Mr.  
5985 Ross.

5986 Mr. {Ross.} Thank you, Mr. Chairman.

5987 I am a cosponsor of this legislation and I agree with  
5988 everything that Dr. Burgess and Mr. Pitts has said on it  
5989 today.

5990 Look, this is not about the company, at least as far as  
5991 I am concerned. This is the fact no one else makes the  
5992 product. At least no one else has it on the shelf today.  
5993 Primatene can have it back on the shelf tomorrow. Everyone  
5994 is saying the same thing about this, but one of the things  
5995 that really hasn't been pointed out I don't believe is the  
5996 rural issue. Perhaps that is because after every  
5997 redistricting we have more urban members and fewer rural  
5998 members.

5999 But let me tell you about the district I represent where  
6000 I live. We don't have a CVS or a Wal-Mart or a doctor or a  
6001 pharmacy or a hospital in every town. I represent about 160  
6002 towns. I think there is about 20 hospitals in my district,  
6003 probably about that many Wal-Mart's. I mean these towns are  
6004 lucky if they have got a Dollar General or a convenience  
6005 store. And most of them do at least have a convenience store  
6006 and most convenience stores do--or at least until it was  
6007 pulled--had a Primatene Mist on the shelf. And it has been  
6008 called an emergency inhaler and that is what it is. I mean  
6009 some of these folks it is 30 minutes, an hour, an hour-and-a-

6010 half drive to get to the nearest hospital. It is over 30  
6011 minutes from my hometown to the nearest hospital.

6012           And so I hope people will consider the rural issue  
6013 involved here. We don't all live in big cities with  
6014 hospitals. We don't all live in towns that have a CVS or a  
6015 Wal-Mart. And I think we are missing out by at least not  
6016 acknowledging the rural issue here and the fact that this is  
6017 the only product that is available today for wide  
6018 distribution, including reaching convenience stores in these  
6019 small towns to give the folks the inhaler they need when they  
6020 are having an attack in order to get to the emergency room to  
6021 where maybe they can get albuterol or something else. But  
6022 they have got to have something in order to make the trip to  
6023 the hospital, which again can be anywhere from 30 minutes to  
6024 an hour-and-a-half away.

6025           Mr. {Waxman.} Would the gentleman yield?

6026           Dr. {Burgess.} Would the gentleman yield?

6027           Mr. {Ross.} Sure.

6028           Mr. {Waxman.} If somebody has asthma and they haven't  
6029 had this product for 7 months, rather than leave themselves  
6030 in a situation where they may have an attack and have to go  
6031 to the emergency room, maybe that would happen once but don't  
6032 you think they would get this alternative drug, the albuterol  
6033 drug and they could use that in the middle of the night?

6034 They don't have to go to the emergency room and they don't  
6035 have to have Primatene Mist. They can plan ahead because  
6036 they feel it is a real good possibility--

6037 Mr. {Ross.} Well, reclaiming my time, unfortunately, a  
6038 lot of people are not going to plan ahead. A lot of people  
6039 don't have the financial resources to plan ahead. And for a  
6040 lot of people I mean what if it is their first attack.  
6041 Everyone has to have the first attack. And I mean I haven't  
6042 gone out and bought an inhaler think I may become asthmatic  
6043 some day and I may very well, but I don't have an inhaler  
6044 because right now I am not.

6045 Dr. {Burgess.} Will the gentleman yield?

6046 Mr. {Ross.} Sure.

6047 Dr. {Burgess.} Just one issue on that point, the  
6048 albuterol inhaler lasts about 30 days. The Primatene Mist  
6049 inhaler, I have never actually used one up. I always lose it  
6050 before it runs out because they will last for months and  
6051 months and months.

6052 But I wanted to bring the Committee's attention to the  
6053 testimony of the FDA back in November of 2008 talking about  
6054 the issue of the cost. And their testimony if all OTC  
6055 epinephrine inhalers, if all of those patients were to see a  
6056 physician and not have the OTC epinephrine available, those  
6057 who do see a physician were able to increase their albuterol

6058 use, we estimate this rulemaking would result in 350 million  
6059 to \$1.1 billion in increased spending annually measured in  
6060 2007 dollars. This spending includes 300 million resulting  
6061 from increased hospitalizations and emergency department  
6062 visits and roughly 50 to \$80 million in increased spending on  
6063 the more expensive medicines. That is in answer the  
6064 gentlewoman's question.

6065         And the only thing I would like to make part of the  
6066 record, someone gave me this list of emails submitted to a  
6067 website called Topics and the reason I wanted to submit this  
6068 is because it does have some additional information about  
6069 increased emergency room usage and they also have the comment  
6070 at the end, Mr. Burgess from Texas fully rocks. So I will  
6071 submit that for the record.

6072         The {Chairman.} The gentleman yields back his time.

6073         Mr. {Ross.} Let me just, Mr. Chairman, close by just  
6074 reminding again there is no danger with the medicine. This  
6075 is more of an EPA issue. Believe me, I mean this is about  
6076 common sense. If I really believed that if we took all the  
6077 Primatene Mists that are left and squirted them in the air it  
6078 would destroy the Earth, I would be against this. But I mean  
6079 we are talking about a drug that is safe and we are talking  
6080 about another example of the bureaucracy that has gone awry,  
6081 that has gone too far, that has created a lot of the

6082 frustration the American people have with Congress and this  
6083 government of ours.

6084 I yield back.

6085 Mr. {Dingell.} Mr. Chairman?

6086 The {Chairman.} Can I go to Mrs. Christensen?

6087 Mr. {Dingell.} Go anywhere you want, Mr. Chairman.

6088 The {Chairman.} All right. She had her hand up before  
6089 you.

6090 Mr. {Dingell.} That is fine. Go.

6091 Dr. {Christensen.} I am going to be very brief and I am  
6092 not speaking for the amendment or against the amendment or  
6093 the bill, but of course you would know that I am very  
6094 sensitive to inequities and access to care and the need for  
6095 the poor, those living in our rural areas to have access to  
6096 the best of medicine, but I just wanted to say for the record  
6097 that I don't think the public health community probably  
6098 doesn't support inhalers over-the-counter period as related  
6099 to asthma. And in a couple of years with the full  
6100 implementation of the Affordable Care Act and if all of the  
6101 States accept the Medicaid expansion and implement it, we  
6102 would not be having this discussion. So everyone would have  
6103 access to the appropriate, comprehensive care that asthmatics  
6104 need.

6105 I have taken care of asthmatics. I have seen people use

6106 Primatene Mist where it works, but I have also seen them use  
6107 it where they have delayed the kind of care that they really  
6108 needed and I look forward to the day when the Affordable Care  
6109 Act gives everyone access to affordable, comprehensive,  
6110 quality care.

6111           The {Chairman.} Mr. Dingell?

6112           Mr. {Dingell.} You know, Mr. Chairman, I have got a  
6113 little personal experience with this. My dad was an old  
6114 tubercular and he was an asthmatic. He never got a good  
6115 breath during his life. And I listened to him at night  
6116 walking the floor gasping and coughing and trying to get a  
6117 little air. They didn't have Primatene Mist there and they  
6118 didn't have any of these other wonderful things. So I  
6119 listened to him gasping like a fish on a rock.

6120           Now, let us look at the situation we have here before  
6121 us. I have seen what it does to people and I have had one or  
6122 two of these attacks myself. I can tell you they are not  
6123 fun. They are terrifying. So now we have a question of  
6124 whether or not Primatene Mist can be marketed. You have got  
6125 a lot of it around and has the potential to save a lot of  
6126 money for somebody and it has the potential for being useful  
6127 for people who need it. But it also has something else. It  
6128 has availability to the ordinary citizen.

6129           Now, we got some promises from a competitor who says,

6130 well, we have got a nebulizer that is going to do wonderful.  
6131 I don't know how big this nebulizer is but it won't fit in  
6132 your pocket. And to make it work, you got to mix the  
6133 substance with water and then you got to get it up your nose.  
6134 Maybe it is going to work and maybe it ain't. They say that  
6135 Food and Drug is going to approve it. Now, everybody on this  
6136 committee has had experience with Food and Drug and we know  
6137 that when Food and Drug says they are going to do something,  
6138 they might and they might not. And they more probably won't.

6139 Now, having said these things, it has got to be said  
6140 that the maker of Primatene Mist probably cut a bad deal  
6141 because two of their competitors cut a different deal and  
6142 they get to market it for longer. So you could make the  
6143 cold-hearted statement that this is rescuing Primatene Mist's  
6144 manufacturers from a mistake they made. That is probably so.  
6145 But I don't tend to look at this from the standpoint of  
6146 Primatene Mist's manufacturers. I want to look at it from  
6147 the standpoint of the poor devil who is going to be trying in  
6148 the middle of the night to get a decent breath of air, like  
6149 my old dad used to do. And I don't want it on my soul that I  
6150 denied somebody that.

6151 Primatene Mist works or at least the people who use it  
6152 think so. And it lets them breathe. Now, whether it works  
6153 or not or it just makes them think that they can breathe I

6154 don't know. But I do know that it gives some relief. Now,  
6155 if the other manufacturers want to get the same relief that  
6156 we are giving Primatene Mist, I am willing to do it. I think  
6157 that would be fair and I am willing to listen to them. I  
6158 have asked Food and Drug and I have asked everybody else,  
6159 what evidence do you have that this is not safe? They don't  
6160 give any evidence. As a matter of fact, Food and Drug writes  
6161 me back in response to a letter and says, Dingell, we don't  
6162 have authority to give this. This is now an EPA problem.

6163         So we have got to go see EPA because the problem is that  
6164 you are going to be releasing some kind of a substance into  
6165 the atmosphere that is going to attack the ozone layer.  
6166 Well, we are not going to be releasing with this a whole lot  
6167 for a whole lot of time. So that is not really an important  
6168 consideration. But what is a consideration is that this is  
6169 something which we can make available to folks so that they  
6170 can get a breath at night or some other time and they don't  
6171 have to carry a trailer load full of stuff around behind them  
6172 or carry a great big darn handbag full of stuff so that they  
6173 can get a decent breath.

6174         And Food and Drug says, well, this has got to be a  
6175 question of permitting by EPA not by Food and Drug. And that  
6176 is a sensible position. So who are we overruling? We are  
6177 overruling EPA but we are not doing a great deal of hurt to

6178 EPA but we are helping some folks who need help.

6179           But in addition to that, we are seeing to it something  
6180 is on the market so if a guy can't get from where he is to  
6181 where he can get himself emergency room treatment or  
6182 something, he has got something so he can get a gasp of air  
6183 while he is walking the floor at night like my old dad used  
6184 to.

6185           So I think that what we should do is to pass the  
6186 legislation, reject the amendment and I say so with all  
6187 respect and affection for the author of it. But I am not of  
6188 the view when I look at the two things here that the  
6189 nebulizer is going to do the same thing that the Primatene  
6190 Mist is or that a guy can carry it around in his pocket or  
6191 that a woman can put it in her purse. And so I think that if  
6192 those are the issues before us we have something that nobody  
6193 says is unsafe, can't be marketed if it is unsafe, can't be  
6194 marketed if it exceeds its date of availability according to  
6195 Food and Drug permits, so I would say to us, let us pass the  
6196 bill, let us reject the amendment, and let us get this little  
6197 bit of help. And if somebody else comes in and says we made  
6198 a bad deal, we have got something that is valuable to the  
6199 people and we want to put it on the market again, let us take  
6200 a fresh look at that and be helpful to them if we can.

6201           I yield back the balance of my time and I thank you for

6202 your courtesy.

6203 The {Chairman.} I thank the gentleman.

6204 I think we are ready for the vote. The vote now occurs  
6205 on the Castor amendment.

6206 All those in favor will say aye.

6207 All those opposed, say no.

6208 In the opinion of the Chair, the noes have it. The noes  
6209 have it. The amendment is not agreed to.

6210 Are there further amendments to the bill? Seeing none,  
6211 the question now occurs on favorably reporting H.R. 6190 to  
6212 the House.

6213 All those in favor will say aye.

6214 All those opposed, say no.

6215 In the opinion of the Chair, the ayes have it. The ayes  
6216 have it and the bill is favorably reported.

6217 Without objection, staff is authorized to make technical  
6218 and conforming changes to all three bills approved by the  
6219 Committee today. So ordered.

6220 The Chair thanks all Members and staff. Without  
6221 objection, the Committee stands adjourned.

6222 [Whereupon, at 4:53 p.m., the Committee was adjourned.]