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4 FULL COMMITTEE MARKUP OF H.R. 3534, THE SECURITY IN BONDING
5 ACT OF 2011; H.R. 4078, THE REGULATORY FREEZE FOR JOBS ACT OF
6 2012; AND H.R. 3862, THE SUNSHINE FOR REGULATORY DECREES AND
7 SETTLEMENTS ACT OF 2012
8 Tuesday, March 20, 2012
9 House of Representatives
10 Committee on the Judiciary
11 Washington, D.C.

12 The committee met, pursuant to call, at 10:41 a.m., in
13 Room 2141, Rayburn House Office Building, Hon. Lamar Smith
14 [chairman of the committee] presiding.

15 Present: Representatives Smith, Sensenbrenner, Coble,
16 Gallegly, Goodlatte, Lungren, Chabot, Issa, Forbes, King,

17 Franks, Gohmert, Jordan, Poe, Chaffetz, Griffin, Marino,
18 Gowdy, Ross, Adams, Quayle, Amodei, Conyers, Nadler, Scott,
19 Watt, Lofgren, Jackson Lee, Waters, Cohen, Johnson,
20 Pierluisi, Quigley, Chu, Deutch, Sanchez, and Polis.

21 Staff Present: Richard Hertling, Majority Staff
22 Director and Chief Counsel; Travis Norton, Majority
23 Parliamentarian; Sarah Kish, Clerk; John Hilton, Majority
24 Counsel; Daniel Flores, Majority Counsel; Danielle Brown,
25 Minority Parliamentarian; and James Park, Minority Counsel.

26

27 Chairman Smith. The Judiciary Committee will come to
28 order.

29 Without objection, the chair is authorized to declare
30 recesses of the committee at any time. The clerk will call
31 the roll to establish a quorum.

32 Ms. Kish. Mr. Smith?

33 Chairman Smith. Present.

34 Ms. Kish. Mr. Sensenbrenner?

35 Mr. Coble?

36 Mr. Coble. Present.

37 Ms. Kish. Mr. Gallegly?

38 Mr. Goodlatte?

39 Mr. Lungren?

40 Mr. Chabot?

41 Mr. Issa?

42 Mr. Pence?

43 Mr. Forbes?

44 Mr. King?

45 Mr. Franks?

46 Mr. Franks. Present.

47 Ms. Kish. Mr. Gohmert?

48 Mr. Jordan?
49 Mr. Poe?
50 Mr. Chaffetz?
51 Mr. Griffin?
52 Mr. Griffin. Present.
53 Ms. Kish. Mr. Marino?
54 Mr. Gowdy?
55 Mr. Ross?
56 Mrs. Adams?
57 Mr. Quayle?
58 Mr. Amodei?
59 Mr. Conyers?
60 Mr. Berman?
61 Mr. Nadler?
62 Mr. Scott?
63 Mr. Watt?
64 Ms. Lofgren?
65 Ms. Jackson Lee?
66 Ms. Waters?
67 Mr. Cohen?
68 Mr. Johnson?

69 Mr. Pierluisi?

70 Mr. Quigley?

71 Ms. Chu?

72 Mr. Deutch?

73 Ms. Sanchez?

74 Mr. Polis?

75 Mr. Polis. Here.

76 Chairman Smith. The gentleman from California, Mr.

77 Lungren?

78 Mr. Lungren. Here.

79 [Pause.]

80 Chairman Smith. Okay. The gentleman from Michigan?

81 Mr. Conyers. Present.

82 Chairman Smith. The gentleman from Virginia, Mr.

83 Goodlatte?

84 Mr. Goodlatte. Present.

85 Chairman Smith. The gentleman from Wisconsin?

86 Mr. Sensenbrenner. Here.

87 [Pause.]

88 Chairman Smith. The gentleman from Tennessee --

89 Mr. Cohen. Yes.

90 Chairman Smith. -- is present and accounted for.

91 Chairman Smith. The gentleman from Puerto Rico?

92 Mr. Pierluisi. Present.

93 [Pause.]

94 Chairman Smith. And the gentleman from North Carolina?

95 Mr. Watt. Present.

96 Chairman Smith. One more?

97 [Pause.]

98 Chairman Smith. The gentleman from Ohio?

99 Ms. Kish. Mr. Jordan?

100 Mr. Jordan. Here.

101 Chairman Smith. The clerk will report.

102 Ms. Kish. Mr. Chairman, 13 Members responded present.

103 Chairman Smith. A working quorum is present.

104 Pursuant to notice, I now call up H.R. 3534 for purposes
105 of markup, and the clerk will report the bill.

106 Ms. Kish. H.R. 3534, to amend Title 31 United States
107 Code to revise requirements related --

108 Chairman Smith. Without objection, the bill is
109 considered as read and open for amendment at any point.

110 [The information follows:]

111

112 Chairman Smith. I will recognize myself and then the
113 ranking member for opening statements.

114 Today, the Judiciary Committee continues its effort to
115 restore the financial security of our country with
116 consideration of H.R. 3534, the Security in Bonding Act of
117 2011.

118 I want to thank Mr. Hanna of New York for his
119 sponsorship of this bill, and Mr. Gowdy and Mr. Polis for
120 their support and cosponsorship as well.

121 This bill protects the Federal Government from financial
122 loss as it improves the effectiveness of surety bonds
123 contractors must post when they perform construction
124 projects for the United States. Also, this bill protects
125 small business subcontractors and enhances the financial
126 security of the United States.

127 The bill amends Federal acquisition law to require
128 individual sureties to post only low-risk collateral to back
129 up their bonds. If the prime contractor defaults, the
130 Government and subcontractors will have recourse to real,
131 stable, and valuable assets to make them whole.

132 The Federal Government cannot afford to be left in the

133 lurch because an individual surety bond proved to be
134 worthless. American taxpayers deserve a government that
135 acts carefully and with fiscal responsibility when it spends
136 their money on construction projects.

137 I urge my colleagues to support the bill. And without
138 objection, my entire opening statement will be made a part
139 of the record.

140 [The statement of Chairman Smith follows:]

141

142 Chairman Smith. And the gentleman from Michigan, the
143 ranking member of the committee, is recognized.

144 Mr. Conyers. Thank you, Mr. Chairman.

145 I will put my statement in the record and thank the
146 members of the committee that have been working mutually on
147 this important measure. I want to celebrate the
148 cooperativeness and the interchange of ideas that have taken
149 place on Judiciary Committee with regard to the bill.

150 And I just want to add that this is a pro-regulation
151 bill. I hope I don't lose any conservative support by
152 making that observation.

153 And I yield back.

154 [The statement of Mr. Conyers follows:]

155

156 Chairman Smith. Thank you, Mr. Conyers.

157 The gentleman from North Carolina, Mr. Coble, the
158 chairman of the Courts, Commercial, and Administrative Law
159 Subcommittee, is recognized.

160 Mr. Coble. Thank you, Mr. Chairman.

161 I will give a brief opening statement. The Federal
162 Government regularly contracts with privately owned
163 businesses and requires contractors to obtain surety bonds
164 to assure performance and payment. There are currently
165 three options to satisfy this requirement.

166 First, a contractor can obtain a bond from a corporate
167 surety approved by the Treasury Department, which is vetted
168 by the Treasury ensure there is adequate capital to make
169 good on the bond if necessary. Second, the contractor can
170 give the United States a possessory security interest in
171 low-risk liquid assets, or the contractor may secure a bond
172 from the individual surety.

173 Under the Federal acquisition regulation, individual
174 sureties are only required to pledge assets. Also,
175 individual sureties can use assets such as stocks and bonds
176 or rights in real property as collateral or security for

177 their bonds. H.R. 3534 allows Federal contracting officials
178 to require that individual sureties provide a bond from the
179 Treasury-regulated surety.

180 The Subcommittee on Courts, Commercial, and
181 Administrative Law conducted a hearing on this legislation.
182 It was clear from the witnesses' testimony that this
183 legislation will help improve surety bonds, and while it may
184 not address every problem in the building market, it is a
185 step in the right direction.

186 I urge members of the committee to support H.R. 3534,
187 and I yield back the balance of my time.

188 Chairman Smith. Thank you, Mr. Coble.

189 Are there any amendments to this bill? The gentleman
190 from Tennessee, Mr. Cohen, is recognized.

191 Mr. Cohen. Thank you, Mr. Chairman.

192 I have an amendment at the desk.

193 Chairman Smith. The clerk will report the amendment.

194 Ms. Kish. Amendment to H.R. 3534, offered by Mr. Cohen
195 of Tennessee and Ms. Waters --

196 Chairman Smith. Without objection, the amendment will
197 be considered as read.

198 [The amendment of Mr. Cohen follows:]

199

200 Chairman Smith. And the gentleman is recognized to
201 explain his amendment.

202 Mr. Cohen. Thank you, Mr. Chairman.

203 My amendment strikes the provision in H.R. 3534 that
204 gives Federal contracting officers the discretion to require
205 that contractors obtain surety bonds from corporate
206 sureties. The amendment would add a GAO study provision as
207 well. It would examine several things.

208 First, the GAO must survey all instances during the 10-
209 year period prior to the bill's date of enactment in which a
210 surety bond proposed or issued by a surety in connection
211 with a Federal project was either rejected by a Federal
212 contracting officer or accepted but later found to have been
213 backed by insufficient collateral or otherwise found deficit
214 with respect to which any surety did not perform. The study
215 would also assess the consequences to the Federal Government
216 subcontractors and suppliers in such instances.

217 Finally, the GAO would be required to compare the
218 percentages of all Federal contracts that were awarded to
219 small disadvantaged business and disadvantaged business
220 enterprises as prime contractors in the 2-year period prior

221 to and the 2-year period after enactment of the bill. It
222 would also have to include an assessment of the bill's
223 impact upon such percentages.

224 In my statement for the legislative hearing on the bill
225 2 weeks ago, I noted I could support the premise of its
226 proponents that good underwriting standards for individual
227 surety bonds and Federal contracting protects the Federal
228 Government, taxpayers, downstream subcontractors, and
229 suppliers on Federal projects, many of which are small
230 businesses owned by members of historically disadvantaged
231 groups.

232 I also raised a few issues. And first, I wanted to know
233 the scope of the problem that this bill sought to address.
234 Several witnesses offered examples of individual sureties
235 that have issued bonds that are backed by insufficient or
236 nonexistent assets, and I was curious to learn whether there
237 was any macroscopic study of this particular problem.

238 Another thing that struck me about H.R. 3534 was its
239 repeal of the current prohibition on contracting officers
240 requiring contractors to use a corporate surety. This
241 provision would seem to have the effect of simply

242 eliminating the use of individual sureties in Federal
243 contracting and, as a result, a result I could not support.

244 Finally, I raised some concern about any efforts that
245 may result in fewer opportunities for emerging contractors
246 and particularly those that could be categorized as
247 disadvantaged business enterprises, DBEs. Emerging
248 contractors rely very heavily on individual sureties in
249 order to be able to bid for Federal contracts.

250 Any move that threatens to reduce the availability of
251 bonding from individual sureties should also take into
252 account the potential impact on these emerging businesses.
253 Perhaps once the GAO has had a chance to study this bill's
254 potential impact on emerging contractors, we could revisit
255 whether this provision needs to be amended or added to in
256 some ways.

257 I am cognizant of the dangers of lax financial
258 regulation and certainly bad underwriting practices, as we
259 have seen in the form of poorly underwritten mortgages and
260 private student loans, the consequences of which our economy
261 will continue to suffer from for years to come. But it
262 would be difficult and, frankly, a bit hypocritical of me if

263 I did not support better regulation of financial actors.

264 With this amendment, however, some potential concerns
265 will be addressed in H.R. 3534.

266 I thank the chairman and the chairman of Courts,
267 Administrative Law, and Courts Subcommittee, Mr. Coble, for
268 listening to our concerns and working with us on this
269 amendment, and I urge everyone to support it.

270 I yield back the balance of my time.

271 Chairman Smith. Thank you, Mr. Cohen.

272 The gentleman from North Carolina, Mr. Coble, is
273 recognized.

274 Mr. Coble. Thank you, Mr. Chairman.

275 I think the gentleman from Tennessee offers a sound
276 proposal. As I mentioned in my opening statement, H.R. 3534
277 does not cure all the ills in the security bond market, but
278 a GAO study, in my opinion, will help track the impact of
279 H.R. 3534.

280 And you know, much has been said about regulations,
281 folks. I don't think anybody on this side of the aisle or
282 podium is averse to good regulations. I think it is bad
283 regulations that cause the problem.

284 And with that, I yield back.

285 Chairman Smith. Thank you, Mr. Coble.

286 The question is on the amendment. All in favor, say
287 aye.

288 [A chorus of ayes.]

289 Chairman Smith. Opposed, no.

290 [No response.]

291 Chairman Smith. In the opinion of the chair, the ayes
292 have it, and the amendment is agreed to.

293 Are there any other amendments?

294 [No response.]

295 Chairman Smith. If not, a reporting quorum being
296 present, the question is on reporting the bill, as amended,
297 favorably to the House. Those in favor, say aye.

298 [A chorus of ayes.]

299 Chairman Smith. Opposed, no.

300 [No response.]

301 Chairman Smith. The ayes have it, and the bill, as
302 amended, is ordered reported favorably.

303 Without objection, the bill will be reported as a single
304 amendment in the nature of a substitute, incorporating the

305 amendment adopted. Staff is authorized to make technical
306 and conforming changes. Members will have 2 days to submit
307 their views.

308 Now pursuant to notice, I now call up H.R. 4078 for
309 purposes of markup, and the clerk will report the bill.

310 Ms. Kish. H.R. 4078, to provide that no agency may take
311 any significant regulatory action until the unemployment
312 rate is equal to or less than 6.0 percent.

313 In the House of Representatives, February 17, 2012, Mr.
314 Griffin of Arkansas for himself, Mr. Smith of Texas, Mr.
315 Coble, Mr. Gallegly, Mr. Chabot, Mr. Franks of Arizona, Mr.
316 Poe of Texas, Mr. Chaffetz, Mr. Marino, Mr. Gowdy, Mr. Ross
317 of Florida, Mrs. Adams --

318 Chairman Smith. Without objection, the bill will be
319 considered as read and open for amendment at any point.

320 [The information follows:]

321

322 Chairman Smith. I will begin by recognizing myself and
323 the ranking member for opening statements.

324 First of all, I want to thank Mr. Griffin, a member of
325 this committee, for his sponsorship of the Freeze Act and
326 Mr. Coble and his subcommittee for their consideration of
327 it.

328 The Obama administration has quickly turned the United
329 States into a regulation nation. This administration has
330 adopted an unprecedented amount of costly new regulations,
331 which hinder small business growth and stall job creation.

332 In his most recent State of the Union, President Obama
333 claimed to have "approved fewer regulations" than President
334 Bush did in his first 3 years in office. But according to a
335 new study by the Heritage Foundation, President Obama has
336 adopted 106 major rules that impose \$46 billion in
337 additional annual regulatory cost on the private sector.

338 By contrast, in his first 3 years in office, President
339 Bush adopted 28 such major regulations, with \$8 billion in
340 additional annual cost. That is about a fourth of the
341 number of major regulations the Obama administration imposed
342 on the private sector in a similar period, at a fifth the

343 cost.

344 We need to encourage small businesses to expand, not tie
345 them up with red tape. In 2011, more than one third of
346 these major rules were made to implement Dodd-Frank, an
347 overreaching law that over-regulates the financial services
348 sector. The most expensive were from the Environmental
349 Protection Agency, which issued five major regulations that
350 cost more than \$4 billion annually.

351 The number of economically significant regulations also
352 has increased. Under President Bush, the Office of
353 Information and Regulatory Affairs biannual regulatory
354 agenda contained an average of 77 economically significant
355 regulations in their proposed and final stages. The
356 biannual average under President Obama is 124, almost twice
357 the number.

358 The threat of even more regulations discourages
359 investment in economic growth. In 2011, the Obama
360 administration's agenda had over 200 economically
361 significant new rules, each of which typically affect the
362 American economy \$100 million or more each year.

363 The President repeatedly harps on job creation, but he

364 can't have it both ways. He cannot continue to impose
365 excessive regulations on small businesses and still expect
366 new jobs and economic growth. It is one or the other.

367 That is why we need Mr. Griffin's bill, H.R. 4078, the
368 Regulatory Freeze for Jobs Act. The Freeze Act gives small
369 businesses a much-needed break from new significant Federal
370 regulations until the unemployment rate stabilizes at 6
371 percent.

372 Over-regulation hinders job creation and hampers
373 economic recovery, as Professors Allan Meltzer of Carnegie
374 Mellon University and John Taylor of Stanford University
375 explained to the Subcommittee on Courts, Commercial, and
376 Administrative Law last month.

377 Fortunately, you don't need a Ph.D. in economics to
378 understand this. A recent Gallup poll found that among the
379 85 percent of U.S. small business owners who aren't hiring,
380 nearly half of these cited being worried about new
381 Government regulations as a reason they are not hiring, and
382 63 percent of respondents to a poll conducted by the
383 National Federation of Independent Business said that rules
384 issued over the last 5 years have done more to hurt than to

385 help small businesses.

386 Even President Obama recognizes that over-regulation
387 kills jobs. In a January 2011 Wall Street Journal op-ed,
388 the President acknowledged that over-regulation has stifled
389 innovation and has had a chilling effect on growth and jobs.

390 The Freeze Act is narrowly tailored only to stop
391 unnecessary regulations. The bill contains reasonable
392 exceptions for significant regulations that are necessary to
393 protect health and safety, for national security, to enforce
394 criminal laws, or to implement trade agreements.

395 According to a study by the Small Business
396 Administration, regulations cost the American economy \$1.75
397 trillion annually. Unfortunately, rather than add much-
398 needed jobs to the economy, the Obama administration has
399 only added job-killing regulations that burden businesses
400 and stifle economic growth.

401 The Freeze Act encourages job creators to make the kinds
402 of investments that will jump-start our economy and gives
403 them confidence about future regulatory actions. We need to
404 lift the burden on small businesses and free them up to
405 spend more, invest more, and produce more in order to create

406 more jobs for American workers.

407 That concludes my opening statement.

408 And the gentleman from Michigan, Mr. Conyers, is
409 recognized for his.

410 Mr. Conyers. Thank you, Chairman Smith.

411 This is a great exercise in illogic sometimes. We just
412 passed a regulation bill unanimously by almost everybody in
413 the committee, and now we take up a bill that would prevent
414 it from being implemented. Well, congratulations.

415 I don't understand why we would want to do this to good
416 regulations. As Subcommittee Chairman Coble said, we don't
417 have anything against good regulations, and I agree with
418 him. It is the regulations that are bad that we want to
419 eliminate or modify as much as we can.

420 So I bring to the attention of the Members a report that
421 came out what day this week? Last week. The draft report
422 to Congress on the benefits and costs of Federal regulations
423 that is from the Office of Management and Budget -- I am
424 saving it for individual distribution tomorrow -- that show
425 that the benefits of regulation far outweigh the costs.

426 And it concluded that the net benefits of regulations

427 promulgated through the third fiscal year of the Obama
428 administration have exceeded \$91 billion. The benefits have
429 so far for 3 years exceeded \$91 billion, including not only
430 monetary savings, but lives saved, injuries prevented, and
431 is more than 25 times the net benefits through the third
432 fiscal year of the previous administration.

433 So I am going to try to work on a resolution perhaps
434 before recess that we all -- everybody supports good
435 regulations, and everybody is against bad regulations. I
436 mean, let us get to the bottom of this. We are not against
437 all regulations, and we are not for all regulations. And
438 that is the distinction that somehow we are trying to make
439 here today.

440 And so, I think that this latest release from OMB will
441 help us agree to the fact that some regulations are good and
442 necessary, and some regulations are less efficacious and
443 should be modified or removed. And I think that might give
444 us a better way to get around it.

445 Now I would like to suggest that there isn't evidence
446 that regulations, per se, stifle job creation. This should
447 not be a revolutionary point. If anything, regulations can

448 promote job growth and put Americans back to work.

449 And boy, do I have some conservative quotes to back me
450 up on this. Bruce Bartlett, a senior policy analyst in both
451 the Reagan and the George H.W. Bush regulations, Professor
452 Sidney Shapiro, and Cass Sunstein, to name a few.

453 And what I am going to do instead of advance some of
454 these notions as my own, which might be subject to more
455 debate than I would like, I am going to quote some people
456 who may not be as progressive as I am and that side with my
457 conservative friends from time to time so that we can
458 gradually get fixed into our thinking processes the fact
459 that there are good and necessary regulations, like the one
460 we just voted on unanimously, and that there are some that
461 need attention.

462 And with that, Mr. Chairman, I will put the rest of my
463 statement in the record. And thank you very much.

464 [The statement of Mr. Conyers follows:]

465

466 Chairman Smith. Thank you, Mr. Conyers, for those
467 comments.

468 The gentleman from North Carolina, Mr. Coble, is
469 recognized for a unanimous consent request.

470 Mr. Coble. I will be very brief, Mr. Chairman.

471 I think the bill we just passed amends Federal law, not
472 regulations. And I think whether a bill is a good bill or a
473 bad bill oftentimes depends upon personal interpretation.
474 So we will get -- that will be for another day.

475 But I ask unanimous consent, Mr. Chairman, to have my
476 statement made a part of the record.

477 Chairman Smith. Without objection, the gentleman's
478 entire opening statement will be made a part of the record.

479 [The statement of Mr. Coble follows:]

480

481 Chairman Smith. And the gentleman from Arkansas, Mr.
482 Griffin, is recognized for the purposes of offering an
483 amendment in the nature of a substitute.

484 Mr. Griffin. Thank you, Mr. Chairman.

485 I have an amendment at the desk.

486 Chairman Smith. The clerk will report the amendment.

487 Ms. Kish. Amendment to H.R. 4078, offered by Mr.
488 Griffin of Arkansas. Strike all that follows after the
489 enacting clause and insert the following: "Section 1.
490 Short Title. This act may be cited as the Regulatory Freeze
491 for Jobs Act of 2012.

492 "Section 2. Definitions. In this act, 1, terms
493 "agency" and "rule" have the meanings given such terms under
494 Section 551 of Title 5 United States Code.

495 "2, the term 'regulatory' --"

496 Chairman Smith. Without objection, the amendment will
497 be considered as read and will be considered as base text
498 for the purposes of amendment.

499 [The amendment of Mr. Griffin follows:]

500

501 Chairman Smith. And I just want to call to Members'
502 attention that they have a copy of this manager's amendment
503 in their materials on their desk.

504 And the gentleman from Arkansas is recognized to explain
505 the amendment.

506 Mr. Griffin. The amendment actually considers the
507 testimony that was presented here in a hearing and modifies
508 the original bill in accordance with some of the testimony
509 presented.

510 The Regulatory Freeze for Jobs Act, or the Freeze Act,
511 is about setting priorities. While American job creators
512 are struggling to get by, Congress should enact policies
513 that strengthen the ability of employers to invest, hire,
514 and grow.

515 By enacting a freeze on certain significant regulations
516 until unemployment drops to 6 percent or below, the Freeze
517 Act injects certainty into the economy, giving job creators
518 a break at a time when they need it most.

519 The Freeze Act doesn't outlaw regulations. It simply
520 ensures that only the truly necessary significant
521 regulations are implemented. The data shows that the Obama

522 administration has issued far more major regulations than
523 the previous administration. And the burden of these rules
524 falls on job creators themselves.

525 Through its first 3 years in office, this administration
526 has finalized 106 major regulations that have added more
527 than \$46 billion per year in new costs for Americans.
528 According to agency data, this is almost four times the
529 number and more than five times the cost of these kinds of
530 major regulations finalized under the previous
531 administration. These rules are hurting growth in Arkansas
532 and across the United States.

533 I recently convened a jobs conference at the Clinton
534 Library in my district at which over 60 community and
535 business leaders discussed Federal policies as they relate
536 to job creation. The economic uncertainty created by over-
537 regulation -- not regulation, but over-regulation, excessive
538 regulation -- was a constant refrain among participants.

539 John Burkhalter, commissioner of the Arkansas Highway
540 and Transportation Commission and former chairman of the
541 Arkansas Economic Development Commission, said, "Every
542 project I look at now I have got to wonder if I am going to

543 get to build it because are the regulations going to stop
544 me? I have got to admit that I pass on over 50 percent of
545 the projects that I would like to do because of the burden,
546 the hurdle of the regulations."

547 Critics of reform say that regulations are not tied to
548 employment. But America's small business owners disagree.
549 According to a January 2012 Gallup survey, 85 percent of
550 American small business owners aren't hiring. Among this
551 group, 46 percent of small business owners say they aren't
552 hiring due to worry about new Government regulations.

553 While this bill freezes the largest and most costly
554 rules that aren't necessary, we need some reasonable rules.
555 The underlying bill provides exemptions for rules that
556 protect against imminent threats to health and safety,
557 enforcing criminal laws, providing for the national security
558 of the United States, or that are necessary to implement
559 international trade agreement.

560 Out of an abundance of caution, listening to the
561 witnesses at the hearing that this committee had, the
562 subcommittee had, the amendment in the nature of a
563 substitute adds a congressional waiver by which the

564 President would submit to Congress a regulatory action that
565 would not fall into one of the other exemptions in the
566 underlying bill. Congress could then take appropriate
567 legislative action on any submission made by the President.

568 This provision ensures that certain reasonable rules,
569 such as stop-loss pay for members of the Armed Forces, are
570 eligible to be exempt. This amendment also makes technical
571 changes to clarify the time period of the freeze, as well as
572 to strengthen eligibility for judicial review.

573 The Freeze Act is a priority-setting bill, and our
574 priority is clear. We must enact policies that help job
575 creators to invest and grow in America. The underlying bill
576 and the amendment in the nature of a substitute are endorsed
577 by the U.S. Chamber of Commerce.

578 Mr. Chairman, I have three items I would like to submit
579 for the record. First, a letter of support for this
580 amendment from the Chamber.

581 Also, I am including two letters from key constituents
582 regarding compliance costs for certain EPA regulations. One
583 is from Green Bay Packaging of Morrilton concerning
584 compliance cost on the Boiler MACT, and the other is a

585 letter from three major Arkansas electricity providers --
586 the Arkansas Electric Cooperative, Southwest Power Pool, and
587 Entergy Arkansas -- regarding compliance costs for a host of
588 EPA rules and their impact on the price of electricity.

589 I ask that these letters be made a part of the record.

590 Chairman Smith. Without objection, the letters will be
591 made a part of the record.

592 [The information follows:]

593

594 Chairman Smith. Does the gentleman yield back his time?

595 Mr. Griffin. Yes, I yield back. Thank you, Mr.

596 Chairman.

597 Chairman Smith. Thank you, Mr. Griffin.

598 Are there other Members who wish to be heard on the
599 manager's amendment? If not, we will go to amendments to
600 the manager's amendment.

601 And are there any amendments to the manager's amendment?

602 The gentleman --

603 Mr. Conyers. I do have one.

604 Chairman Smith. The gentleman from Michigan, Mr.

605 Conyers, is recognized.

606 Mr. Conyers. I have an amendment at the desk.

607 Chairman Smith. The clerk will report the amendment.

608 Ms. Kish. Amendment to the Griffin amendment, offered
609 by Mr. Conyers. Page 1, line 18, insert after "rule or
610 guidance" the following: "Other than a rule or guidance
611 intended to protect --"

612 Chairman Smith. Without objection, the amendment will
613 be considered as read.

614 [The amendment of Mr. Conyers follows:]

615

616 Chairman Smith. And the gentleman from Michigan is
617 recognized to explain his amendment.

618 Mr. Conyers. All right. This is very brief. Insert
619 after "rule or guidance" the following, and here is the
620 following. "Other than a rule or guidance intended to
621 protect the privacy of Americans."

622 It is my hope that this simple, but important change
623 will improve the bill somewhat. The amendment would amend
624 the bill's definition of significant regulatory action to
625 exclude any regulation that is intended to protect the
626 privacy of Americans. Who could be against that?

627 With the increasing opportunities for governmental and
628 private organizations to maintain private information of
629 citizens, it is critical that we do not prevent or delay the
630 implementation of Government regulations designed to protect
631 the privacy of this information.

632 And that is why this caveat consisting of 1, 2, 3, 4, 5,
633 6, 7, 8, 9, 10, 11, 12, 13 words is so important. The
634 concern is that such information has itself become a
635 commodity with financial value, subject to abuse by those
636 who seek to sell it for gain or use for other purposes, some

637 illegal.

638 Unfortunately, several Federal agencies, and I have to
639 name the Veterans Administration, have lost the personal
640 information of millions of our citizens. For example, it
641 was discovered in 2006 that the personal information for
642 more than 26 million veterans and 2 million current military
643 service members was stolen from the residence of a
644 Department of Veterans Affairs employee who had taken data
645 home without authorization.

646 So this amendment speaks for itself. All we want to do
647 here to improve a measure is to insert after "rule or
648 guidance" that "other than a rule or guidance intended to
649 protect the privacy of Americans." I would like everybody
650 that can to join me in support of my amendment.

651 And I thank the chairman for the time.

652 Chairman Smith. Thank you, Mr. Conyers.

653 The gentleman from Arkansas, Mr. Griffin, is recognized.

654 Mr. Griffin. Thank you, Mr. Chairman.

655 Thank the gentleman from Michigan for his amendment.

656 I agree with the spirit of the amendment. I know it is
657 well-intentioned. But in light of my amendment to the

658 original bill, it is unnecessary, and I opposed it.

659 The underlying bill has four categories of exemptions
660 for rules that are necessary because of an imminent threat
661 to health or safety, necessary for the enforcement of
662 criminal laws, necessary for the national security of the
663 United States, or necessary to implement a trade agreement.

664 Now, after the hearing that was held at the
665 subcommittee, I amended the bill, today introduced an
666 amendment that would create a huge exception for things like
667 privacy. And if a significant rule does not fall under one
668 of the four waivers that were in the original bill, then
669 there is this new broad waiver where the President can
670 request that Congress provide a waiver in an expeditious
671 manner through appropriate legislative action.

672 If the rule is reasonable and addresses a real need
673 without overly burdening job creators, gladly vote for it.
674 So this amendment is unnecessary. It is covered. The
675 situation proposed by the gentleman from Michigan is
676 covered.

677 And I oppose the amendment.

678 Mr. Conyers. Would the gentleman from Arkansas yield,

679 please?

680 Mr. Griffin. I yield back.

681 Chairman Smith. The gentleman yields back.

682 Without objection, the gentleman from Michigan is
683 recognized for an additional minute.

684 Mr. Conyers. Thank you very much.

685 I want to thank you for the compliment, but if it is
686 repetitive, that shouldn't bother anybody on the Judiciary
687 Committee. We deal with lots of repetition, and I thank you
688 for the compliment, and I wish you had yielded to me instead
689 of the chairman.

690 Thank you very much.

691 Chairman Smith. Thank you, Mr. Conyers.

692 Are there other Members who wish to be heard? The
693 gentleman from New York, Mr. Nadler?

694 Mr. Nadler. Thank you, Mr. Chairman.

695 I want to express my support for the amendment offered
696 by the gentleman from Michigan, but I also want to use this
697 opportunity to just say that this whole bill is nonsense and
698 is based on nonsense. The claim that regulatory uncertainty
699 creates a disincentive for business to add jobs is, frankly,

700 nonsense.

701 Bruce Bartlett, who was referred to before, who was a
702 senior policy analyst in the Reagan and Bush
703 administrations, observed, "Regulatory uncertainty is a
704 canard invented by Republicans that allows them to use
705 current economic problems to pursue an agenda supported by
706 the business community year in and year out. In other
707 words, it is a simple case of political opportunism, not a
708 serious effort to deal with high United States."

709 Professor Sidney Shapiro testified last year, "All of
710 the available evidence contradicts the claim that regulatory
711 uncertainty is deterring business investment."

712 A July 2011 Wall Street Journal survey of business
713 economists found that, "The main reason U.S. companies are
714 reluctant to step up hiring is scant demand, rather than
715 uncertainty over Government policies."

716 A recent National Federation of Independent Business
717 survey, an NFIB survey of its members, of its small business
718 members found that, "Poor sales, not regulation, is the
719 biggest problem."

720 The Main Street Alliance, a small business organization,

721 observes, "In survey after survey and interview after
722 interview, main street small business owners confirm that
723 what we really need is more customers, more demand, not
724 deregulation. Policies that restore our consumer base are
725 what we need now, not policies that shift more risk and more
726 costs onto us from big corporate actors."

727 All this nonsense about deregulation is saying let us
728 make this country less safe. Let us kill more people in
729 accidents. Let us kill more people by air pollution. Let
730 us have more people burn up in exploding cars. Let us have
731 more people poisoned by uninspected food, all in the name of
732 making life more lucrative for big business, but with the
733 excuse of jobs.

734 Nonsense, nonsense, nonsense.

735 I yield back.

736 Chairman Smith. Thank you, Mr. Nadler.

737 Are there other Members who wish to be heard on the
738 Conyers amendment?

739 Mr. Lungren. Mr. Chairman? Mr. Chairman?

740 Chairman Smith. The gentleman from California, Mr.

741 Lungren, is recognized.

742 Mr. Lungren. Mr. Chairman, I don't spend a lot of time
743 talking to economists. I do occasionally. I spend a lot of
744 time at home talking to business people of all sizes. I
745 have had town hall meetings, tele-town hall meetings,
746 individual meetings over the last number of weeks when I
747 have been home. And I have been told by them that the
748 uncertainty of Government action going forward is a major
749 factor in their reluctance to commit themselves to new
750 employment and to expanding their businesses.

751 Now, not a single one of them told me he wanted to kill
752 anybody. Didn't want anybody to unsafe. Now I understand
753 these folks don't have degrees in economics. They are just
754 merely out there trying to make a living and create jobs in
755 my district.

756 California has one of the highest unemployment
757 percentages in the country. My particular area has a higher
758 unemployment rate than the State of California. We are
759 acutely aware of the difficulties expressed in the lack of
760 jobs that currently faces America, and they tell me that
761 regulatory uncertainty is a major factor in their
762 difficulties. Perhaps they don't understand.

763 Now, I am shocked, frankly, shocked by the report
764 mentioned by ranking member that OMB, the executive agency
765 that is responsible for regulation in the Federal Government
766 would do a study and say that regulation is good. I am
767 shocked that they would conclude that their work is good and
768 positive in almost all circumstances. And frankly, I look
769 forward to reading that report because it is so
770 counterintuitive that someone who is responsible for
771 regulation would then conclude that their work is good.

772 What this bill does, with the exceptions that are now in
773 the bill, is provide that the benefit of the doubt goes
774 towards less regulation rather than more regulation. Not no
775 regulation, not with the exceptions that are in this bill.
776 And that is all this bill does.

777 It attempts to say we resolve doubt towards less
778 regulation, not more regulation in the context of an
779 administration that appears to be hell-bent on regulating
780 just about everything, including whether or not you have a
781 right to remain an American citizen under legal status
782 dependent upon you purchasing a healthcare product as
783 approved by the Federal Government. You can't get much more

784 than that.

785 Mr. Nadler. Would the gentleman yield for a second?

786 Would the gentleman for a second?

787 Mr. Lungren. I would be happy to yield. And I know
788 that is not regulation. That is by statute --

789 Mr. Nadler. That was my point.

790 Mr. Lungren. That the gentleman passed. But of course,
791 as I recall, the former Speaker of the House told us when
792 you voted for that bill that we didn't know what was in it
793 and wouldn't know what was in it until it passed, much like
794 the former Senator from Connecticut Mr. Dodd told us when we
795 passed Dodd-Frank we wouldn't know what was in that until
796 the regulations had been determined.

797 All we are saying here is we have gone overboard on
798 giving the bureaucracy almost unconstricted discretion. And
799 frankly, if we need more laws, the Congress can pass those
800 laws. We ought not to punt it over to the regulators to
801 make the decisions that we are not making ourselves.

802 So let us not -- let us put this in the proper context.
803 We are not against all regulation. We believe that this is
804 administration that is heavily weighted toward regulation in

805 virtually every aspect of our life, and we are saying that
806 there ought to be a slight tilt towards less regulation
807 rather than more regulation.

808 And if, in fact, we have the concerns expressed by those
809 on the other side, they are, in fact, dealt with by the
810 exceptions that the gentleman has in his amendment that is
811 before us.

812 And so -- oh, and by the way, The Economist, which is
813 not a Republican rag, as far as I can see, has, I believe,
814 on its cover story on February 18th, "United States Economy:
815 Over-Regulated America."

816 Mr. Nadler. Would the gentleman yield?

817 Mr. Lungren. I would be happy to. Would you like the
818 article? I would be happy to pass it to you.

819 Mr. Nadler. I would like the article. I would point
820 out that the gentleman is correct. The Economist is not a
821 Republican publication. It is a conservative British
822 publication. A conservative British publication with a
823 small "c," not the Conservative Party.

824 I would agree with the gentleman that it might be a good
825 idea if Congress, in legislating, were more specific

826 sometimes rather than leaving too much up to regulators. I
827 don't disagree with that. Obviously, you have to do that
828 bill by bill as to how you do that.

829 But I do think that this bill is far more than giving,
830 what do you say, the benefit of the doubt. This bill says
831 no regulation may take effect, with a few exceptions, until
832 the unemployment rate is below 6 percent, and it draws a
833 completely unestablished, except by political propaganda,
834 connection with regulations --

835 Mr. Lungren. Well, I will take my time back. I did not
836 articulate political propaganda. I articulated the message
837 that I received from my constituents at home, both Democrat
838 and Republican. No one came to me as a political
839 propagandist to make those statements that I have just
840 revealed to you.

841 And secondly, I am surprised the gentleman would not
842 recognize The Economist, the British publication, as one of
843 the stalwart supporters of the Democratic Party's philosophy
844 for years and years.

845 Mr. Nadler. Let me ask a question --

846 Chairman Smith. The gentleman's time has expired. The

847 gentleman's time has expired.

848 Mr. Watt. Mr. Chairman?

849 Mr. Nadler. Mr. Chairman, could you --

850 Chairman Smith. The gentleman's time has expired.

851 The gentleman from North Carolina, Mr. Watt, is
852 recognized.

853 Mr. Watt. Thank you, Mr. Chairman.

854 I want to express some agreement with my good friend Mr.
855 Lungren. He spent a week in his district. I spent a week
856 in my district. I heard from my constituents, too. And
857 what my constituents were saying was consistent with him
858 that uncertainty is a major concern.

859 My concern with this bill is that it adds to the level
860 of uncertainty because what most of my constituents are
861 saying is we need to get on with adopting and finalizing the
862 regulations under Dodd-Frank so that we know what the rules
863 of the road are going forward.

864 And it is that uncertainty that is causing us not to be
865 able to plan and not to be able to adapt our business plans
866 to what is necessary going forward so that we don't have
867 another economic, financial services meltdown like we had in

868 the past. We know that we need to make adjustments, but we
869 need to have the final regulations in place to be able to do
870 that.

871 The problem I have with this bill is that it does not
872 add to the level of certainty that businesses have because,
873 apparently, whatever those regulations are that are in
874 process under Dodd-Frank will be put on hold now, waiting
875 for the unemployment rate to drop below 6 percent. If it
876 drops below 6 percent for a little while, maybe they can
877 gear up again and start writing the regulations again and
878 publishing them.

879 But if it happens to go back over 6 percent during that
880 period, unemployment rate happens to go back over 6 percent,
881 then they have to suspend again, apparently, under this
882 bill. So we may never get to a degree of certainty that Mr.
883 Lungren's and my constituents are demanding so that they can
884 plan and move forward. I don't see how this bill -- I mean,
885 it is not a debate about whether regulations are good or
886 bad. I think we all agree that some regulations are good
887 and some regulations are bad.

888 This is a debate, should be a debate about how do you

889 provide certainty for people going forward so that they can
890 plan and play out a business model in the business world so
891 that they can get on with their lives? And this bill does
892 absolutely nothing other than provide multiple levels of
893 uncertainty in people's lives and for the business
894 community.

895 I don't see how anybody can say that this bill is going
896 to do anything to provide any level of certainty to anybody.
897 So I don't want to get into a debate about whether
898 regulations -- some regulations are good. Some regulations
899 are bad.

900 My colleague from North Carolina Howard Coble, I am
901 sure, has heard the same messages in North Carolina that I
902 am hearing in North Carolina. Let us provide some
903 certainty. Let us get on with it. So somebody tell me how
904 this bill is supposed to help us do that when even the rules
905 under Dodd-Frank or no regulations can be adopted for any
906 period of time, and then all of a sudden, you get to 6
907 percent, then you can have the regulations adopted.

908 How does it provide any certainty if you have got to
909 come to a divided Congress, where you can't get the House or

910 the Senate to agree on anything, to get a waiver from a
911 rule? How does that provide any certainty to anybody?

912 It is just beyond me how any of this bill is going to
913 provide any positive impact in our economy. I just don't
914 understand it.

915 I yield back.

916 Chairman Smith. Thank you, Mr. Watt.

917 Are there other Members who wish to be heard on the
918 amendment? The gentleman from Virginia, Mr. Scott.

919 Mr. Scott. I yield to Mr. Conyers.

920 Mr. Conyers. I thank the gentleman for yielding to me.

921 I would like to wait for just a minute because I have
922 some -- I want to examine the hearing we are going to have
923 tomorrow and the witnesses that we are going to have because
924 this legislation is coming up in front of them. And I think
925 I don't want to say that we should have had it in just the
926 reverse, but what we are doing now is going to be reviewed
927 by witnesses tomorrow, and I would like to hold off, if I
928 can.

929 Mr. Scott, I thank you for yielding.

930 Chairman Smith. The gentleman yields back?

931 Mr. Conyers. We could hold off on the hearing, too.

932 Chairman Smith. The gentleman yields back his time.

933 The question is on the Conyers amendment to the

934 manager's amendment. All in favor, say aye.

935 [A chorus of ayes.]

936 Chairman Smith. Opposed, say no.

937 [A chorus of nays.]

938 Chairman Smith. In the opinion of the chair, the nays

939 have it, and the amendment is not agreed to.

940 Mr. Conyers. Record vote, please?

941 Chairman Smith. A recorded vote has been requested.

942 The clerk will call the roll.

943 Ms. Kish. Mr. Smith?

944 Chairman Smith. No.

945 Ms. Kish. Mr. Smith votes no.

946 Mr. Sensenbrenner?

947 Mr. Sensenbrenner. No.

948 Ms. Kish. Mr. Sensenbrenner votes no.

949 Mr. Coble?

950 Mr. Coble. No.

951 Ms. Kish. Mr. Coble votes no.

952 Mr. Gallegly?

953 [No response.]

954 Ms. Kish. Mr. Goodlatte?

955 [No response.]

956 Ms. Kish. Mr. Lungren?

957 Mr. Lungren. No.

958 Ms. Kish. Mr. Lungren votes no.

959 Mr. Chabot?

960 Mr. Chabot. No.

961 Ms. Kish. Mr. Chabot votes no.

962 Mr. Issa?

963 [No response.]

964 Ms. Kish. Mr. Pence?

965 [No response.]

966 Ms. Kish. Mr. Forbes?

967 Mr. Forbes. No.

968 Ms. Kish. Mr. Forbes votes no.

969 Mr. King?

970 Mr. King. No.

971 Ms. Kish. Mr. King votes no.

972 Mr. Franks?

973 [No response.]

974 Ms. Kish. Mr. Gohmert?

975 [No response.]

976 Ms. Kish. Mr. Jordan?

977 Mr. Jordan. No.

978 Ms. Kish. Mr. Jordan votes no.

979 Mr. Poe?

980 [No response.]

981 Ms. Kish. Mr. Chaffetz?

982 Mr. Chaffetz. No.

983 Ms. Kish. Mr. Chaffetz votes no.

984 Mr. Griffin?

985 Mr. Griffin. No.

986 Ms. Kish. Mr. Griffin votes no.

987 Mr. Marino?

988 [No response.]

989 Ms. Kish. Mr. Gowdy?

990 [No response.]

991 Ms. Kish. Mr. Ross?

992 [No response.]

993 Ms. Kish. Mrs. Adams?

994 Mrs. Adams. No.

995 Ms. Kish. Mrs. Adams votes no.

996 Mr. Quayle?

997 Mr. Quayle. No.

998 Ms. Kish. Mr. Quayle votes no.

999 Mr. Amodei?

1000 [No response.]

1001 Ms. Kish. Mr. Conyers?

1002 Mr. Conyers. Aye.

1003 Ms. Kish. Mr. Conyers votes aye.

1004 Mr. Berman?

1005 [No response.]

1006 Ms. Kish. Mr. Nadler?

1007 Mr. Nadler. Aye.

1008 Ms. Kish. Mr. Nadler votes aye.

1009 Mr. Scott?

1010 Mr. Scott. Aye.

1011 Ms. Kish. Mr. Scott votes aye.

1012 Mr. Watt?

1013 Mr. Watt. Aye.

1014 Ms. Kish. Mr. Watt votes aye.

1015 Ms. Lofgren?

1016 Ms. Lofgren. Aye.

1017 Ms. Kish. Ms. Lofgren votes aye.

1018 Ms. Jackson Lee?

1019 [No response.]

1020 Ms. Kish. Ms. Waters?

1021 Ms. Waters. Aye.

1022 Ms. Kish. Ms. Waters votes aye.

1023 Mr. Cohen?

1024 [No response.]

1025 Ms. Kish. Mr. Johnson?

1026 [No response.]

1027 Ms. Kish. Mr. Pierluisi?

1028 Mr. Pierluisi. Aye.

1029 Ms. Kish. Mr. Pierluisi votes aye.

1030 Mr. Quigley?

1031 Mr. Quigley. Aye.

1032 Ms. Kish. Mr. Quigley votes aye.

1033 Ms. Chu?

1034 Ms. Chu. Aye.

1035 Ms. Kish. Ms. Chu votes aye.

1036 Mr. Deutch?

1037 Mr. Deutch. Aye.

1038 Ms. Kish. Mr. Deutch votes aye.

1039 Ms. Sanchez?

1040 Ms. Sanchez. Aye.

1041 Ms. Kish. Ms. Sanchez votes aye.

1042 Mr. Polis?

1043 Mr. Polis. Aye.

1044 Ms. Kish. Mr. Polis votes aye.

1045 Chairman Smith. The gentleman from South Carolina?

1046 Mr. Gowdy. No.

1047 Ms. Kish. Mr. Gowdy votes no.

1048 Chairman Smith. The gentleman from Florida?

1049 Mr. Ross. No.

1050 Chairman Smith. The gentleman from California to my

1051 right?

1052 Mr. Gallegly. No.

1053 Ms. Kish. Mr. Gallegly votes no.

1054 Chairman Smith. The gentleman from Virginia?

1055 Mr. Goodlatte. No.

1056 Ms. Kish. Mr. Goodlatte votes no.

1057 Chairman Smith. The gentleman from Texas?

1058 Mr. Gohmert. No.

1059 Ms. Kish. Mr. Gohmert votes no.

1060 Chairman Smith. The clerk will report.

1061 Ms. Kish. Mr. Chairman, 12 Members voted aye; 17

1062 Members voted nay.

1063 Chairman Smith. A majority having voted against the

1064 amendment, the amendment is not agreed to.

1065 Are there other amendments? The gentleman from New

1066 York, Mr. Nadler, is recognized.

1067 Mr. Nadler. Thank you, Mr. Chairman.

1068 I have an amendment at the desk.

1069 Chairman Smith. The clerk will report the amendment.

1070 Ms. Kish. Amendment to the Griffin amendment, offered

1071 by Mr. Nadler. Page 1, line 18, insert after "rule or

1072 guidance" the following: "Other than a rule or guidance

1073 pertaining to nuclear reactor safety standards."

1074 [The amendment of Mr. Nadler follows:]

1075

1076 Chairman Smith. The gentleman from New York is
1077 recognized to explain the amendment.

1078 Mr. Nadler. Thank you.

1079 Mr. Chairman, as has been discussed, the bill we are
1080 marking up today would place a moratorium on any significant
1081 regulatory action until unemployment drops below 6 percent.
1082 My amendment would exempt from this blanket moratorium
1083 Government regulatory actions taken to protect us from a
1084 nuclear disaster, a worthwhile goal I think we will agree.

1085 This bill is again blaming our high unemployment rate on
1086 Government regulations, an ideologically motivated view
1087 which has no basis in fact. Just focusing on the
1088 unemployment rate for a moment, when our previous President,
1089 George W. Bush, took office in January 2001, the
1090 unemployment rate was 4.2 percent. When he left office 8
1091 years later, the unemployment rate was 7.8 percent.

1092 I would be happy to hear from any Member on the other
1093 side of the aisle who can explain to me how the numerous and
1094 onerous rules imposed by the Bush administration caused the
1095 unemployment rate to almost double during his time in
1096 office. I highly doubt that any Member of the majority will

1097 step up to the plate and will argue that rules established
1098 or enforced by President Bush led to the doubling of
1099 unemployment.

1100 At the same time, while unemployment did increase
1101 initially under President Obama to as high as 10 percent
1102 soon after he took office, it has now declined to 8.3
1103 percent. If President Obama's Government run amok with all
1104 these new regulations is to blame for high unemployment,
1105 what explains this almost 20 percent decline in
1106 unemployment?

1107 The bottom line is that despite whatever facts are
1108 presented or reality exists, there are some people who won't
1109 listen and won't yield. So I suspect we will continue to
1110 hear the same canard over and over and over again that
1111 somehow Government regulation is to blame for high
1112 unemployment and slow economic growth.

1113 Beyond the absurdity that this bill represents, if
1114 enacted, something like it could have serious negative
1115 consequences. Take, for example, nuclear power. All
1116 Americans recognize the catastrophe that could occur as a
1117 result of damage at a nuclear power plant, be that damage

1118 caused by nature or by man.

1119 We just marked the 1-year anniversary of the Japanese
1120 tsunami, and everyone remembers the worry over its effect
1121 and the real effect of the disaster at the Fukushima nuclear
1122 power plant. My constituents and I have particular reason
1123 to be concerned.

1124 As I said during our last debate on a similar anti-
1125 regulatory bill when I brought up this nuclear issue, my
1126 district lies less than 40 miles from an old nuclear power
1127 plant at Indian Point. There are 20 million people living
1128 within a 50-mile radius of the plant, the same radius used
1129 by the Nuclear Regulatory Commission as the basis for the
1130 evacuation zone recommended after the Fukushima disaster.

1131 Indian Point also sits near two fault lines and,
1132 according to the NRC, is the most likely nuclear power plant
1133 in the country to experience core damage because of an
1134 earthquake. Fortunately, officials at the NRC examined what
1135 happened in Japan and have developed recommendations to
1136 prevent such a disaster from happening in this country.
1137 Just a few weeks ago, the NRC adopted three orders to
1138 effectuate some of those recommendations.

1139 As summarized by the Associated Press, these new
1140 policies would require nuclear power plants here to, "One,
1141 install or improve venting systems to limit core damage in a
1142 serious accident; two, install sophisticated equipment to
1143 monitor water levels in pools of spent nuclear fuel; and
1144 three, improve protection of safety equipment installed
1145 after the 2001 terrorist attacks and make sure it can handle
1146 damage to multiple reactors at the same time."

1147 The NRC continues to work on implementing the remainder
1148 of the recommendations developed after Fukushima. If this
1149 bill were in place, many rules imposing changes similar to
1150 those just imposed by the NRC would be delayed until
1151 unemployment drops below some arbitrary number, in this case
1152 6 percent.

1153 Critical safety measures would be blocked until there
1154 was a decline in unemployment, despite the fact that such
1155 rules have nothing to do with unemployment being high in the
1156 first place. Such a policy would be beyond bizarre.

1157 Additionally, it is hard to understand how delaying
1158 nuclear safety rules until some arbitrary date in the future
1159 is in the public interest. Peoples' lives and physical

1160 safety are not surprisingly of prime importance, and I doubt
1161 they would be happy to learn there was a nuclear disaster
1162 because the high unemployment rate blocked the
1163 implementation of safety rules.

1164 This amendment would avoid forcing this tradeoff by
1165 exempting from the bill rules designed to prevent nuclear
1166 disasters. If we don't pass this amendment, we at least
1167 ought to change the name of the bill to the Nuclear Death
1168 and Destruction Act of 2012 because that is what the bill's
1169 enactment could result in.

1170 I urge all Members to support the amendment, and I yield
1171 back the balance of my time.

1172 Chairman Smith. Thank you, Mr. Nadler.

1173 The gentleman from Arkansas, Mr. Griffin, is recognized.

1174 Mr. Griffin. Thank you, Mr. Chairman.

1175 The gentleman's hyperbole notwithstanding, there are a
1176 couple of areas in the bill where nuclear -- regulations
1177 relating to nuclear reactors would fall. First of all,
1178 under the Section 4 waiver, entitled Waiver, there is a
1179 provision that allows for regulatory action dealing with
1180 imminent threat to health or safety or other emergency.

1181 But if the threat is not imminent, then under the
1182 Congressional Waivers section that was added after the
1183 subcommittee hearing on this bill, any of the regulations
1184 that the gentleman from New York might believe is necessary
1185 could be suggested under Section C. And it specifically
1186 allows the President to submit to Congress the reason for
1187 significant regulatory action, the scope of the waiver, and
1188 Congress can certainly act.

1189 So the idea that critical regulation or critical rules
1190 could not be adopted is just not true.

1191 I yield back.

1192 Chairman Smith. Thank you, Mr. Griffin.

1193 Are there other Members who wish to be heard?

1194 Ms. Jackson Lee. Mr. Chairman?

1195 Chairman Smith. The gentlewoman from Texas, Ms. Jackson
1196 Lee, is recognized.

1197 Ms. Jackson Lee. Mr. Chairman, thank you very much for
1198 your courtesies.

1199 First, it baffles me, as I read the underlying premise
1200 of this bill, and before I discuss the gentleman's
1201 amendment, Mr. Chairman, I don't know if there was a roll

1202 call vote on H.R. 3534, but if there was, I would like
1203 unanimous consent to place my vote in the record as "aye"
1204 and also an "aye" for the Cohen-Waters amendment under H.R.
1205 3534. I ask unanimous consent to place my vote in the
1206 record.

1207 Chairman Smith. Without objection.

1208 Ms. Jackson Lee. And indicate this is a desperately
1209 needed legislative initiative to help minority businesses
1210 and small businesses.

1211 Additionally, I would like to ask unanimous consent to
1212 place an "aye" in the record for the Conyers amendment under
1213 H.R. 4078. I would like to place -- I was detained at a
1214 meeting -- place my "aye" in the record for the Conyers
1215 amendment under H.R. 4078. I ask unanimous consent.

1216 Chairman Smith. Without objection, so ordered.

1217 Ms. Jackson Lee. As I said, the premise of H.R. 4078
1218 baffles me because it, in essence, stops Government in its
1219 tracks, and all of us have been working steadfastly to
1220 assure that Americans are employed. We have efforts that I
1221 believe are successful, Make It In America. We believe it
1222 is even a bipartisan effort.

1223 Many of us are challenging Apple to make its components
1224 in the United States or at least find a percentage of the
1225 production of iPads to be made in the United States. That
1226 alone, having sold some 3 million over the last 3 days, I
1227 believe, of the new iPad 3, I think, would be very, very
1228 helpful. So all of us are supporting increased jobs.

1229 But to suggest that the Government cannot function and
1230 provide and to implement its regulatory authority seems, at
1231 best, calling for a dysfunctional government.

1232 Nuclear reactors are in many parts of the United States.
1233 Some communities have come to live comfortably with nuclear
1234 reactors and deal with the presence. But certainly I think
1235 they would be aghast if the gentleman's amendment was not
1236 passed, which suggests that if we were trying to improve on
1237 safety standards because of the necessity of the industry
1238 and that we are being blocked by providing safety standards,
1239 ones that the industry itself has welcomed after tragic
1240 incidents that have occurred in America's lifetime.
1241 Everybody begins to talk about improved safety requirements,
1242 but I have not seen the industry balk against improved
1243 safety requirements.

1244 And the gentleman is trying to suggest that you exclude
1245 the simple act of improving the safety of nuclear reactors
1246 that are, by and large, in the midst of neighborhoods and
1247 communities. So, again, because I am baffled by the
1248 significance of this legislation and the premise of how this
1249 improves jobs, I just -- I don't even know how we track
1250 significant --

1251 Mr. Griffin. Will the gentlelady yield?

1252 Ms. Jackson Lee. I will be happy to yield for a moment.

1253 Mr. Griffin. Have you reviewed the Congressional
1254 Waivers section of the bill?

1255 Ms. Jackson Lee. I have reviewed it, but if the
1256 gentleman wants to recount what he thinks it says?

1257 Mr. Griffin. Well, if you have reviewed it, I won't
1258 review it again. But it is Section C. I would just -- I
1259 think that every amendment that has been offered today falls
1260 under congressional waiver. And if you have confidence in
1261 this President, then the President would certainly submit --

1262 Ms. Jackson Lee. Recapturing my time.

1263 Mr. Griffin. Okay.

1264 Ms. Jackson Lee. Thank you.

1265 Mr. Griffin. Thank you, gentlelady.

1266 Ms. Jackson Lee. I would be happy to yield in just a
1267 moment and ask for an additional 1 minute just so that I
1268 could yield.

1269 But let me just say this. If we are talking about
1270 intervention of Congress and the President to be able to do
1271 safety standards, then we really are in trouble. This is a
1272 regulatory process, and you are asking for a congressional
1273 action.

1274 I would be happy to yield to the gentleman, and yield to
1275 the gentleman from New York, and yield to the gentleman from
1276 North Carolina.

1277 Mr. Nadler. Thank you.

1278 The congressional waiver that the gentleman has referred
1279 to in opposition to my amendment and again just now says
1280 that the President may submit a written request to Congress
1281 for waiver of the application. And then it says Congress
1282 shall give expeditious consideration and take appropriate
1283 legislative action with respect to any submission by the
1284 President under this subsection.

1285 All this says really is that the President can submit

1286 and Congress can act on a waiver, which means Congress, by
1287 both houses, subject to the Senate filibuster, can act on
1288 this as it can act on anything else. It is not an answer.

1289 If you have got a safety concern, you don't want the
1290 Senate Republican filibusters possibly holding it up.

1291 Chairman Smith. The gentlewoman's time has expired.

1292 Ms. Jackson Lee. Ask for an additional 1 minute to
1293 yield to the gentleman from North Carolina.

1294 Chairman Smith. Without objection, the gentlewoman is
1295 recognized for an additional minute.

1296 Ms. Jackson Lee. The gentleman from North Carolina, I
1297 yield to you.

1298 Mr. Watt. I think Mr. Nadler has made the exact point
1299 that I was going to make. In fact, as this debate was going
1300 on, we were reading just in today's Hill magazine, newspaper
1301 almost unanimous approval of a stock act by the House,
1302 almost unanimous approval of a stock act by the Senate, and
1303 the bills still haven't passed, right?

1304 To put the safety of the American people in a
1305 dysfunctional situation where Congress has to act to protect
1306 their safety is just not a tenable position. And to

1307 reiterate the point that I made before, adds, heightens the
1308 uncertainty that exists out there around the regulatory
1309 framework. What we need is a process to make the outcomes
1310 of regulation more certain quicker, so that people can know
1311 what the rules of the road are.

1312 I thank the gentlelady for yielding. I yield back.

1313 Chairman Smith. The gentlewoman's time has expired.

1314 The question is on the --

1315 Mr. Lungren. Mr. Chairman? Mr. Chairman?

1316 Chairman Smith. Are there other Members who wish to be
1317 recognized? The gentleman from California, Mr. Lungren?

1318 Mr. Lungren. Mr. Chairman, I will just refer Members to
1319 the original waivers in the bill, which include B1, which is
1320 subject to Subsection (a). Applies to a determination made
1321 by the President. That is a presidential waiver. By
1322 Executive Order that an agency should take the significant
1323 regulatory action because such significant regulatory action
1324 is, one, necessary because of an imminent threat to health
1325 or safety or any other emergency.

1326 So if there is, in fact, a concern about the safety of
1327 nuclear reactor or reactors, I would think that would be

1328 covered in the exception already allowed that does not
1329 require concomitant action by the Congress.

1330 I yield back.

1331 Mr. Watt. Would the gentleman yield?

1332 Mr. Lungren. Oh, yes. Sure.

1333 Mr. Watt. So the President makes a determination that
1334 there is an imminent threat, and then the next response is,
1335 no, it is not imminent. That is really where we are in our
1336 politics at this point. So then you have got a big public
1337 folderol about whether Mr. Nadler's amendment dealing with
1338 nuclear reactors represents an imminent threat or does not.

1339 This is a dysfunctional bill is where you are putting us
1340 because nobody knows what the definition is here. And then
1341 you get all this folderol about that, and then it gets
1342 kicked over to Congress. And then you are right back in the
1343 political --

1344 Mr. Nadler. Would the gentleman yield? Would the
1345 gentleman yield?

1346 Mr. Lungren. No, no. It is my time.

1347 Mr. Nadler. Oh, sorry.

1348 Mr. Lungren. I will be happy to take back my time to

1349 say this is a different section than the exception that the
1350 gentleman referred to earlier that requires congressional
1351 action. This is the waiver that is allowed by the President
1352 if he finds it necessary because of imminent threat of
1353 health or safety or other emergency.

1354 Mr. Nadler. Would the gentleman yield? Would the
1355 gentleman from California yield?

1356 Mr. Lungren. Sure.

1357 Mr. Nadler. Well, I would point out that for this
1358 section then, let us assume you have the nuclear power plant
1359 that we are talking about. An imminent threat presumably
1360 would mean when you have earthquake temblors. In the
1361 absence of shocks that suggest an imminent large earthquake,
1362 there would be no imminent threat.

1363 Mr. Lungren. Well, that is the gentleman's -- that is
1364 the gentleman's interpretation. I don't share that
1365 interpretation, even though I do come from a State that has
1366 earthquakes and rather regularly.

1367 So I would just point out that the gentleman from
1368 Arkansas has expanded his definition beyond those four
1369 waivers. But those four waivers remain, and those waivers

1370 are waivers determined by the President. It is in then that
1371 fifth area which requires action by the Congress. But in
1372 the four articulated, that is a determination to be made by
1373 the President.

1374 And I yield back the balance of my time.

1375 Mr. Conyers. Mr. Chairman?

1376 Chairman Smith. The gentleman yields back his time.

1377 Mr. Conyers. Mr. Chairman?

1378 Chairman Smith. The gentleman from Michigan, Mr.

1379 Conyers?

1380 Mr. Conyers. Thank you, Mr. Chairman.

1381 I want to commend the gentleman from New York for
1382 raising this whole question about nuclear risk, and the part
1383 of it that has provoked me to make a comment is where, how
1384 we deal with the problem of disposing of the waste of
1385 nuclear, which is highly unresolved.

1386 I just read recently that Fermi splitting the atom in
1387 the '40s still hasn't found a safe repository to put it or
1388 any of the other nuclear waste. And this comes in the face
1389 of an increasing drumbeat for the use of nuclear energy,
1390 period.

1391 And so, I would like to put in the record from The New
1392 Yorker, ironically, the nuclear risk report of Elizabeth
1393 Kolbert.

1394 Chairman Smith. Without objection, the article will be
1395 made a part of the record.

1396 [The information follows:]

1397

1398 Chairman Smith. Thank you, Chairman Smith.

1399 Mr. Watt. Mr. Conyers, would you yield?

1400 Mr. Conyers. Yes, of course.

1401 Mr. Watt. Let me go back to -- just for a second to the
1402 point that Mr. Lungren and I were debating here.

1403 Either this bill is meaningless, or it is not. And if
1404 you just read the exception here that the President can
1405 waive this, anything that is necessary because of an
1406 imminent threat to health or safety or other emergency.
1407 Okay.

1408 So if you read this the way Mr. Lungren is saying, the
1409 President can determine what an imminent threat to health or
1410 safety is or other emergency, in which case the bill has no
1411 meaning anyway. Because I would take it that the President
1412 would determine that all of the regulations under Dodd-Frank
1413 would be necessary because to avert another emergency of the
1414 kind that we had and have already experienced.

1415 Now then you will come back and you will have a debate
1416 about that in the political context, but it basically
1417 renders the effect of this bill as a meaningless bill if you
1418 are reading it the way you would suggest that it be read

1419 because then you are saying the President has the authority
1420 to make these determinations. It is not reviewable. So the
1421 bill is meaningless from that context if you read it in a
1422 way that makes sense, right?

1423 [Laughter.]

1424 Mr. Watt. Then you basically have gotten to a point
1425 where you have stopped anything from happening because then
1426 you have got to go through all of these review processes.
1427 This is a -- well, I don't want to demean anybody, but this
1428 is just a nonfunctional bill I guess is the point I am
1429 making.

1430 Mr. Nadler. Would the gentleman yield?

1431 Mr. Watt. It is Mr. Conyers' time. I will yield back
1432 to Mr. Conyers.

1433 Mr. Conyers. Thank you.

1434 Could I ask my good friend Tim Griffin, the author of
1435 the bill, what was it that provoked you to put the 6 percent
1436 unemployment figure into your legislation, sir?

1437 Mr. Griffin. That was the result of discussions with a
1438 number of other Members. And obviously, I actually wanted
1439 it at 6. Some wanted a little higher. I wanted it lower

1440 because I wanted to make sure that the economy demonstrated
1441 it was back on its feet.

1442 You know, all of this really originated at the Clinton
1443 Library in Little Rock. I had a --

1444 Mr. Conyers. Well, you Arkansans always come up with
1445 these kinds of ideas --

1446 Mr. Griffin. Thank you.

1447 Mr. Conyers. -- Democratic and Republican.

1448 Mr. Griffin. I yield back to my friend.

1449 [Laughter.]

1450 Mr. Conyers. Okay. I am sorry. I didn't mean to be
1451 offensive.

1452 Okay. Now let me get back to the point that makes me
1453 think this is an important amendment is the nuclear, the
1454 disposal of nuclear waste, which could be military or for
1455 nonmilitary purposes. And what I am saying to you that in
1456 the half century since --

1457 Chairman Smith. The gentleman's time has expired. And
1458 without objection, the gentleman will be recognized for an
1459 additional minute.

1460 Mr. Conyers. Well, thank you.

1461 In the half century since nuclear power has been used,
1462 we have to go back and carefully with Democratic and
1463 Republican Members from Arkansas and outside, the
1464 examination of the partial meltdown at Three Mile Island
1465 outside Harrisburg, the Chernobyl disaster in 1986, and the
1466 fact that there is now a proposal calling for a \$36 billion
1467 guarantee for new reactors.

1468 Members of the committee, we don't have anywhere -- we
1469 haven't figured out a safe way to deal with the waste of
1470 nuclear, and it is because of that that this becomes an
1471 exceedingly important amendment. And I hope that the author
1472 receives some bipartisan support for this amendment.

1473 And I yield back my time and thank the chairman.

1474 Chairman Smith. Thank you. Thank you, Mr. Conyers.

1475 The question is on the Nadler amendment. All in favor,
1476 say aye.

1477 [A chorus of ayes.]

1478 Chairman Smith. Opposed, nay.

1479 [A chorus of nays.]

1480 Chairman Smith. In the opinion of the chair, the nays
1481 have it. The clerk will call the roll.

1482 Mr. Watt. Aw, come on, Mr. Chairman.

1483 [Laughter.]

1484 Ms. Kish. Mr. Smith?

1485 Chairman Smith. No.

1486 Ms. Kish. Mr. Smith votes no.

1487 Mr. Sensenbrenner?

1488 [No response.]

1489 Ms. Kish. Mr. Coble?

1490 Mr. Coble. No.

1491 Ms. Kish. Mr. Coble votes no.

1492 Mr. Gallegly?

1493 [No response.]

1494 Ms. Kish. Mr. Goodlatte?

1495 [No response.]

1496 Ms. Kish. Mr. Lungren?

1497 Mr. Lungren. No.

1498 Ms. Kish. Mr. Lungren votes no.

1499 Mr. Chabot?

1500 Mr. Chabot. No.

1501 Ms. Kish. Mr. Chabot votes no.

1502 Mr. Issa?

1503 [No response.]

1504 Ms. Kish. Mr. Pence?

1505 [No response.]

1506 Ms. Kish. Mr. Forbes?

1507 Mr. Forbes. No.

1508 Ms. Kish. Mr. Forbes votes no.

1509 Mr. King?

1510 Mr. King. No.

1511 Ms. Kish. Mr. King votes no.

1512 Mr. Franks?

1513 Mr. Franks. No.

1514 Ms. Kish. Mr. Franks votes no.

1515 Mr. Gohmert?

1516 [No response.]

1517 Ms. Kish. Mr. Jordan?

1518 Mr. Jordan. No.

1519 Ms. Kish. Mr. Jordan votes no.

1520 Mr. Poe?

1521 [No response.]

1522 Ms. Kish. Mr. Chaffetz?

1523 [No response.]

1524 Ms. Kish. Mr. Griffin?
1525 Mr. Griffin. No.
1526 Ms. Kish. Mr. Griffin votes no.
1527 Mr. Marino?
1528 [No response.]
1529 Ms. Kish. Mr. Gowdy?
1530 [No response.]
1531 Ms. Kish. Mr. Ross?
1532 Mr. Ross. No.
1533 Ms. Kish. Mr. Ross votes no.
1534 Mrs. Adams?
1535 Mrs. Adams. No.
1536 Ms. Kish. Mrs. Adams votes no.
1537 Mr. Quayle?
1538 Mr. Quayle. No.
1539 Ms. Kish. Mr. Quayle votes no.
1540 Mr. Amodei?
1541 Mr. Amodei. No.
1542 Ms. Kish. Mr. Amodei votes no.
1543 Mr. Conyers?
1544 Mr. Conyers. Aye.

1545 Ms. Kish. Mr. Conyers votes aye.

1546 Mr. Berman?

1547 [No response.]

1548 Ms. Kish. Mr. Nadler?

1549 Mr. Nadler. Aye.

1550 Ms. Kish. Mr. Nadler votes aye.

1551 Mr. Scott?

1552 Mr. Scott. Aye.

1553 Ms. Kish. Mr. Scott votes aye.

1554 Mr. Watt?

1555 Mr. Watt. Aye.

1556 Ms. Kish. Mr. Watt votes aye.

1557 Ms. Lofgren?

1558 Ms. Lofgren. Aye.

1559 Ms. Kish. Ms. Lofgren votes aye.

1560 Ms. Jackson Lee?

1561 Ms. Jackson Lee. Aye.

1562 Ms. Kish. Ms. Jackson Lee votes aye.

1563 Ms. Waters?

1564 Ms. Waters. Aye.

1565 Ms. Kish. Ms. Waters votes aye.

1566 Mr. Cohen?

1567 [No response.]

1568 Ms. Kish. Mr. Johnson?

1569 [No response.]

1570 Ms. Kish. Mr. Pierluisi?

1571 Mr. Pierluisi. Aye.

1572 Ms. Kish. Mr. Pierluisi votes aye.

1573 Mr. Quigley?

1574 Mr. Quigley. Aye.

1575 Ms. Kish. Mr. Quigley votes aye.

1576 Ms. Chu?

1577 Ms. Chu. Aye.

1578 Ms. Kish. Ms. Chu votes aye.

1579 Mr. Deutch?

1580 Mr. Deutch. Aye.

1581 Ms. Kish. Mr. Deutch votes aye.

1582 Ms. Sanchez?

1583 Ms. Sanchez. Aye.

1584 Ms. Kish. Ms. Sanchez votes aye.

1585 Mr. Polis?

1586 Mr. Polis. Aye.

1587 Ms. Kish. Mr. Polis votes aye.

1588 Mr. Sensenbrenner. Mr. Chairman?

1589 Chairman Smith. The gentleman from Wisconsin?

1590 Mr. Sensenbrenner. No.

1591 Ms. Kish. Mr. Sensenbrenner votes no.

1592 Chairman Smith. The gentleman from Iowa?

1593 Mr. King. No.

1594 Chairman Smith. The gentleman from California, Mr.

1595 Gallegly?

1596 Mr. Gallegly. No.

1597 Ms. Kish. Mr. Gallegly votes no.

1598 Chairman Smith. The gentleman from Texas, Mr. Gohmert?

1599 Mr. Gohmert. No.

1600 Ms. Kish. Mr. Gohmert votes no.

1601 Chairman Smith. The gentleman from South Carolina, Mr.

1602 Gowdy?

1603 Mr. Gowdy. No.

1604 Ms. Kish. Mr. Gowdy votes no.

1605 Chairman Smith. The clerk will report.

1606 Ms. Kish. Mr. Chairman, 13 Members voted aye; 17

1607 Members voted nay.

1608 Chairman Smith. A majority having voted against the
1609 amendment, the amendment is not agreed to.

1610 Let me say to Members that my intention is to work
1611 through the noon hour and continue this markup. But Members
1612 on both sides will find that we are providing lunch for them
1613 in their respective conference rooms in case they want to
1614 get a bite.

1615 We will proceed. Are there other amendments?

1616 Ms. Jackson Lee. Mr. Chairman?

1617 Chairman Smith. The gentlewoman from Texas, Ms. Jackson
1618 Lee, is recognized.

1619 Ms. Jackson Lee. I have an amendment at the desk, and
1620 the amendment number is 25 -- on the roster, it is Number 5.

1621 Chairman Smith. Okay. The clerk will report the
1622 amendment to the amendment.

1623 Ms. Kish. Amendment to the Griffin amendment, offered
1624 by Ms. Jackson Lee. Page 1, line 18, insert after "rule or
1625 guidance" the following: "Other than a rule or guidance
1626 issued by the Secretary of Homeland Security."

1627 [The amendment of Ms. Jackson Lee follows:]

1628

1629 Chairman Smith. The gentlewomen is recognized to
1630 explain her amendment.

1631 Ms. Jackson Lee. I thank the gentleman.

1632 I need not remind my colleagues of the horrific day of
1633 9/11 and the first initial organizing of the Select
1634 Committee on Homeland Security, which then devised the
1635 Homeland Security Department. And since that time, many of
1636 us who serve dually on the Judiciary Committee and the
1637 Homeland Security Committee recognize the rising and falling
1638 of the attempt to secure the homeland.

1639 We have been fortunate not to have an attack on our
1640 soil, but we have had many attempts. It is well known that
1641 aviation and transportation modes from mass transit to
1642 aviation are serious, viable sites and targets for those
1643 interested in terrorist acts.

1644 I believe the urgency of securing the homeland requires
1645 that there be a significant reflection that the significant
1646 regulatory action exclude a rule or guidance issued by the
1647 Secretary of Homeland Security. I would make the argument
1648 that that could be assumed that it would not be frivolous.
1649 It would not be unnecessary.

1650 According to a study conducted by the Economic Policy
1651 Institute, public protection regulations do not tend to
1652 significantly impede job creation. But more importantly, we
1653 are well aware of the devastating effect that the 9/11
1654 incident had on the economy of this Nation.

1655 How long it took for New York to recover. How long it
1656 took for the aviation industry to recover. So much so that
1657 that was probably the first and most effective or one of the
1658 most effective bailouts, and that was to help the airline
1659 industry after 9/11. People simply were afraid to fly.

1660 And so, I believe that it is important because of the
1661 convoluted process in this legislation of requiring either
1662 congressional intervention or requiring presidential
1663 intervention that to protect the homeland, it is crucial
1664 that we provide an exclusion to the significant regulatory
1665 action to exclude any rule or guidance issued by the
1666 Secretary of Homeland Security.

1667 There are constant threats. In addition to aviation and
1668 mass transit, we are well aware of the vulnerabilities of
1669 cybersecurity. We are well aware to the vulnerabilities of
1670 the Nation's electric grid. And to act immediate and

1671 forceful, regulations may have to be put in place.

1672 We are also aware of the need of first responders to
1673 have a regulatory scheme that they can rely upon. Border
1674 security is a constant angst for many not only in the
1675 Congress, but also those who live on the border. And the
1676 regulatory structure of providing additional support to
1677 those who are confronting these issues on the northern and
1678 southern border is crucial.

1679 I can't imagine that we would be obstructed by
1680 legislation that could not see the value of excluding
1681 issuance from the Secretary of Homeland Security a rule
1682 under significant regulatory action, and I ask my colleagues
1683 to support the amendment.

1684 Chairman Smith. Thank you, Ms. Jackson Lee.

1685 The gentleman from Arkansas, Mr. Griffin?

1686 Mr. Griffin. Thank you, Mr. Chairman.

1687 I also can't imagine how we would obstruct such rules,
1688 and that is why we have the presidential waiver, Subsection
1689 3, that allows for the President to continue regulating and
1690 issuing significant regulatory action that is necessary for
1691 the national security of the United States.

1692 This amendment is unnecessary, and I oppose it.

1693 Chairman Smith. The gentleman yields back his time.

1694 Are there other Members who wish to be heard on the
1695 amendment? The gentleman from Michigan, Mr. Conyers?

1696 Mr. Conyers. Thank you, Mr. Chairman.

1697 I think if we are going to rely on this exception that
1698 is briefly quoted, the presidential waiver, Tim Griffin
1699 knows, is subject to congressional review or judicial
1700 review. If it is subject to judicial review, then we are
1701 back in the same problem that we always have had.

1702 And by the way, Mr. Author of the Bill from Arkansas,
1703 when you told me that you had a 6 percent -- is he here?

1704 Ms. Jackson Lee. Eating.

1705 Mr. Conyers. Well, I will defer the rest of this
1706 comment --

1707 Ms. Jackson Lee. Will the gentleman yield?

1708 Mr. Conyers. -- until he gets back. And I yield to the
1709 gentlelady from Texas.

1710 Ms. Jackson Lee. Well, I would just like to thank the
1711 gentleman for bringing up the judicial review because that
1712 then adds another measure of intervention on a security

1713 issue and the need of the American people to be secure.

1714 And a last point that I would make in separating the
1715 congressional process from the presidential process, the
1716 President may have instructed or may have, because of the
1717 nature of the crisis or need for regulatory response by
1718 Homeland Security, be, in fact, wishing and encouraging that
1719 this move quickly because we have an issue of cybersecurity
1720 or port security or border security or the need for
1721 additional resources -- or not resources, but regulatory
1722 structure for protecting the American people.

1723 So I would make an argument that this is prime for being
1724 excluded under this legislation. I yield back to the
1725 gentleman.

1726 Mr. Conyers. The amendment that we are considering is
1727 designed to highlight real-world consequences. The
1728 Department of Homeland Security can't wait for a judicial
1729 support of a presidential exception.

1730 Effective rulemaking is critical, Members, for the
1731 Department of Homeland Security to protect the country from
1732 any acts of terrorism, to help communities recover from
1733 natural disasters. And this 6 percent unemployment would

1734 jeopardize the whole purpose of having a Department of
1735 Homeland Security.

1736 And now I will turn to the distinguished gentleman from
1737 Arkansas to ask him about -- to just elaborate briefly on
1738 the answer he gave me earlier about how he got the 6
1739 percent. He talked with other Members. Well, that is
1740 wonderful. I talked with other Members, too.

1741 But the question, were these Members particularly expert
1742 about what the unemployment number percentage should be in
1743 your bill? And by the way, did you talk to one economist,
1744 Tim, in the course of your putting this bill together?

1745 And I yield to the gentleman.

1746 Mr. Griffin. Thank you.

1747 My number-one focus in drafting this bill has been, and
1748 if you give me a few minutes, I will tell you all about it,
1749 the job creators in my district.

1750 We had a jobs conference, where I invited big job
1751 creators like Caterpillar and very, very small job creators.
1752 And we had about five panels. It was an 8-hour conference
1753 at the Clinton Library.

1754 We had folks from all different political persuasions,

1755 and the theme that emerged from a day of having these people
1756 talk was that we needed to do something with overly
1757 burdensome regulations. That was part of the genesis of
1758 this.

1759 Mr. Conyers. But they never mentioned 6 percent?

1760 Mr. Griffin. Well, 6 percent is a vast improvement over
1761 what we see under this President now, and I think we can all
1762 agree upon that.

1763 So if you wanted it to be 7 percent, I would certainly
1764 be happy to meet with you about that. But I think it will
1765 probably be too late. There were a variety of opinions on
1766 what the number ought to be, and we settled on 6 percent.

1767 Mr. Conyers. Tim, is there anything in writing about
1768 the nature of these discussions that would make me feel more
1769 comfortable in my sleep at night?

1770 Mr. Griffin. I am sure I can get you all sorts of
1771 things, but I have already cited to The Economist. And I
1772 don't take it you put a lot of stock in some of the sources
1773 that we cite. So I doubt you would sleep any better than
1774 you currently do.

1775 [Laughter.]

1776 Mr. Conyers. Well, on that note, I yield back, Mr.
1777 Chairman.

1778 Chairman Smith. The gentleman yields back.

1779 The gentleman from Virginia, Mr. Scott, is recognized.

1780 Mr. Scott. Thank you, Mr. Chairman.

1781 I support the amendment, and maybe somebody can help me
1782 on this. The bill on page 3, Section 3, says no agency may
1783 take any significant regulatory action as long as the
1784 unemployment rate is over 6 percent. But it defines
1785 "significant regulatory action" on page 3, line 5, as
1786 "anything that might raise novel legal or policy issues."

1787 Can somebody help me with what that means? If a
1788 regulation raises novel legal or policy issues. Not just
1789 those that have \$100 million or more in expenses because
1790 page 3, line 4 says "or." So if you raise novel legal or
1791 policy issues, no agency in the Federal Government can take,
1792 can issue any regulation that raises novel legal as long as
1793 the rate is over 6 percent.

1794 Mr. Griffin. Will the gentleman yield?

1795 Mr. Scott. Yes.

1796 Mr. Griffin. Not to cite the Clintons again, but that

1797 is directly taken -- that is taken directly from a Clinton-
1798 era Executive Order 12866, and it is all well-defined there.
1799 President Clinton, in that Executive Order, defined what a
1800 significant regulation is, and that is where that comes
1801 from.

1802 I would be happy to discuss it in more detail.

1803 Mr. Scott. Reclaiming my time. But that is an
1804 Executive Order that can be changed by another Executive
1805 Order. All of this is statutory, subject to judicial review
1806 as to whether or not a regulatory action has -- I guess
1807 novel applies to policy, too, right? Just novel legal or
1808 novel policy. It is just not any policy. Whatever "novel"
1809 means.

1810 Mr. Griffin. Yes. It --

1811 Mr. Scott. But it is one thing to put it in an
1812 Executive Order that you can change. It is another thing to
1813 put it in statute, subject to judicial review, that if
1814 somebody thinks that it has policy implications, they are in
1815 the court gumming up the works, and you can't do any kind of
1816 regulations to implement legislation.

1817 Mr. Griffin. You know, I would be happy to look into it

1818 for you. But I would just tell you that Executive Orders
1819 are also subject to interpretation, not just statutory
1820 language. And so --

1821 Mr. Scott. Yes, but you can change them overnight. You
1822 don't have to wait for the House and the Senate to get a
1823 conference committee.

1824 Mr. Griffin. I certainly understand that. But I don't
1825 think that takes away from the validity of the language, the
1826 fact that it takes a little longer. I mean, we pass
1827 thousands of pages of language. I mean, that is what we do
1828 here.

1829 So I hear you, but -- I hear you.

1830 Mr. Scott. Well, reclaiming my time. If you are going
1831 to subject everything that may have novel legal or policy
1832 issues, I would hope we would support the amendment so that
1833 you would at least exempt the Homeland Security Department.

1834 Chairman Smith. Thank you, Mr. Scott.

1835 The question is on the Jackson Lee amendment. All in
1836 favor, say aye.

1837 [A chorus of ayes.]

1838 Chairman Smith. Opposed, no.

1839 [A chorus of nays.]

1840 Chairman Smith. In the opinion of the chair, the nays
1841 have it.

1842 Ms. Jackson Lee. Roll call?

1843 Chairman Smith. The amendment is not agreed to.

1844 Ms. Jackson Lee. Roll call?

1845 Chairman Smith. A roll call vote has been requested,
1846 and the clerk will call the roll.

1847 Ms. Kish. Mr. Smith?

1848 Chairman Smith. No.

1849 Ms. Kish. Mr. Smith votes no.

1850 Mr. Sensenbrenner?

1851 Mr. Sensenbrenner. No.

1852 Ms. Kish. Mr. Sensenbrenner votes no.

1853 Mr. Coble?

1854 [No response.]

1855 Ms. Kish. Mr. Gallegly?

1856 [No response.]

1857 Ms. Kish. Mr. Goodlatte?

1858 [No response.]

1859 Ms. Kish. Mr. Lungren?

1860 Mr. Lungren. No.

1861 Ms. Kish. Mr. Lungren votes no.

1862 Mr. Chabot?

1863 Mr. Chabot. No.

1864 Ms. Kish. Mr. Chabot votes no.

1865 Mr. Issa?

1866 [No response.]

1867 Ms. Kish. Mr. Pence?

1868 [No response.]

1869 Ms. Kish. Mr. Forbes?

1870 Mr. Forbes. No.

1871 Ms. Kish. Mr. Forbes votes no.

1872 Mr. King?

1873 [No response.]

1874 Ms. Kish. Mr. Franks?

1875 [No response.]

1876 Ms. Kish. Mr. Gohmert?

1877 [No response.]

1878 Ms. Kish. Mr. Jordan?

1879 [No response.]

1880 Ms. Kish. Mr. Poe?

1881 [No response.]

1882 Ms. Kish. Mr. Chaffetz?

1883 [No response.]

1884 Ms. Kish. Mr. Griffin?

1885 Mr. Griffin. No.

1886 Ms. Kish. Mr. Griffin votes no.

1887 Mr. Marino?

1888 [No response.]

1889 Ms. Kish. Mr. Gowdy?

1890 [No response.]

1891 Ms. Kish. Mr. Ross?

1892 Mr. Ross. No.

1893 Ms. Kish. Mr. Ross votes no.

1894 Mrs. Adams?

1895 Mrs. Adams. No.

1896 Ms. Kish. Mrs. Adams votes no.

1897 Mr. Quayle?

1898 Mr. Quayle. No.

1899 Ms. Kish. Mr. Quayle votes no.

1900 Mr. Amodei?

1901 Mr. Amodei. No.

1902 Ms. Kish. Mr. Amodei votes no.

1903 Mr. Conyers?

1904 Mr. Conyers. Aye.

1905 Ms. Kish. Mr. Conyers votes aye.

1906 Mr. Berman?

1907 [No response.]

1908 Ms. Kish. Mr. Nadler?

1909 [No response.]

1910 Ms. Kish. Mr. Scott?

1911 Mr. Scott. Aye.

1912 Ms. Kish. Mr. Scott votes aye.

1913 Mr. Watt?

1914 [No response.]

1915 Ms. Kish. Ms. Lofgren?

1916 Ms. Lofgren. Aye.

1917 Ms. Kish. Ms. Lofgren votes aye.

1918 Ms. Jackson Lee?

1919 Ms. Jackson Lee. Aye.

1920 Ms. Kish. Ms. Jackson Lee votes aye.

1921 Ms. Waters? Ms. Waters?

1922 Ms. Waters. Aye.

1923 Ms. Kish. Ms. Waters votes aye.

1924 Mr. Cohen?

1925 [No response.]

1926 Ms. Kish. Mr. Johnson?

1927 [No response.]

1928 Ms. Kish. Mr. Pierluisi?

1929 Mr. Pierluisi. Aye.

1930 Ms. Kish. Mr. Pierluisi votes aye.

1931 Mr. Quigley?

1932 [No response.]

1933 Ms. Kish. Ms. Chu?

1934 Ms. Chu. Aye.

1935 Ms. Kish. Ms. Chu votes aye.

1936 Mr. Deutch?

1937 Mr. Deutch. Aye.

1938 Ms. Kish. Mr. Deutch votes aye.

1939 Ms. Sanchez?

1940 Ms. Sanchez. Aye.

1941 Ms. Kish. Ms. Sanchez votes aye.

1942 Mr. Polis?

1943 Mr. Polis. Aye.

1944 Ms. Kish. Mr. Polis votes aye.

1945 Mr. Watt. Mr. Chairman?

1946 Chairman Smith. The gentleman from North Carolina?

1947 Mr. Watt. Aye.

1948 Chairman Smith. The gentleman from New York?

1949 Mr. Nadler. Aye.

1950 Chairman Smith. The gentleman from Arizona?

1951 Mr. Franks. No.

1952 Ms. Kish. Mr. Franks votes no.

1953 Chairman Smith. The gentleman from California?

1954 Mr. Gallegly. No.

1955 Ms. Kish. Mr. Gallegly votes no.

1956 Chairman Smith. The gentleman from North Carolina?

1957 Mr. Coble. No.

1958 Ms. Kish. Mr. Coble votes no.

1959 Chairman Smith. The gentleman from Texas?

1960 Mr. Gohmert. No.

1961 Chairman Smith. The gentleman from Iowa?

1962 Mr. King. No.

1963 Ms. Kish. Mr. King votes no.

1964 Chairman Smith. And clerk will report.

1965 Ms. Kish. Mr. Chairman, 12 Members voted aye; 15
1966 Members voted nay.
1967 Chairman Smith. A majority having voted against the
1968 amendment, the amendment is not agreed to.
1969 Ms. Jackson Lee. Mr. Chairman?
1970 Chairman Smith. The gentlewoman from Texas?
1971 Ms. Jackson Lee. I have an amendment at the desk.
1972 Chairman Smith. The clerk will report the amendment.
1973 Ms. Jackson Lee. Number 3.
1974 Ms. Kish. Amendment to the Griffin amendment, offered
1975 by Ms. Jackson Lee. Page 1, line 18, insert after "rule or
1976 guidance" the following" "Other than a rule or guidance
1977 made under the Dodd-Frank Wall Street Reform and Consumer
1978 Protection Act."
1979 [The amendment of Ms. Jackson Lee follows:]
1980

1981 Chairman Smith. The gentlewoman from Texas is
1982 recognized to explain her amendment.

1983 Ms. Jackson Lee. This is a simple adherence to I think
1984 our duty to provide protection to the American people
1985 through consumer protection, and certainly everyone will
1986 concede the fact that no matter what your political
1987 preference has been, you have been damaged by the
1988 inappropriate behavior of many who have been unregulated in
1989 our financial industry. Dodd-Frank worked very hard to
1990 correct that.

1991 This legislation again puts in jeopardy, for example,
1992 the coal mining industry, where, for example, the Massey
1993 coal mine explosion in West Virginia which took the lives of
1994 29 miners. In fact, next month will mark the 1-year
1995 anniversary of that explosion.

1996 In my own industry that I represent, the Deepwater
1997 Horizon explosion on April 20th, needing more regulatory
1998 processing, and even the industry recognized that by
1999 developing a committee to deal with direct -- to deal with
2000 best practices.

2001 The Dodd-Frank reforms that were intended to again

2002 address what has been one of the greater recessions by way
2003 of the fact of inappropriate behavior. And so, I believe
2004 that the protection of the consumers here in this Nation are
2005 important, and I believe consumer protection cannot be again
2006 stifled by judicial review, which takes a long period of
2007 time, presidential intervention that will be caught up in a
2008 maze of, if you will, conflicting political perspectives in
2009 the Congress.

2010 And then, of course, the Congress, which we have so
2011 noted, as much respect as we have for the institution, has
2012 been very difficult in passing legislation in a timely
2013 fashion. We need to ensure that consumers are protected,
2014 protected swiftly, correctly, and appropriately and
2015 promptly. And this legislation stifles that.

2016 And I respect the gentleman from Arkansas. Great State.
2017 It is a neighbor to Texas. And the Clinton Library is
2018 exacting in its recounting of history and its beauty, and I
2019 respect the opportunity to hold a meeting in the Clinton
2020 Library on this issue.

2021 And we are all sensitive to providing an ease of our
2022 small businesses. I just don't think that this generates,

2023 if you will, the right answer to protecting small businesses
2024 while taking away the protections for our consumers who need
2025 a swifter response than the process which has been
2026 articulated in this legislation.

2027 I ask my colleagues to support the amendment. I yield
2028 back.

2029 Chairman Smith. Thank you, Ms. Jackson Lee.

2030 The gentleman from Arkansas, Mr. Griffin?

2031 Mr. Griffin. Thank you, Mr. Chairman.

2032 I oppose this amendment. If there are particular
2033 regulations that the President wants to see issued in this
2034 area, then he certainly can submit that to Congress. But I
2035 believe that as well-intentioned as it may be, I believe the
2036 Dodd-Frank law has been a disaster. In fact, I know it has
2037 for community banks, who were not part of the problem.

2038 The problem was Fannie and Freddie in large part, and
2039 they weren't regulated or governed by or changed by,
2040 reformed by Dodd-Frank. The community banks, who were not
2041 part of the problem and upon which the communities in
2042 Arkansas rely heavily, have been crushed by the Dodd-Frank
2043 law.

2044 In fact, I had conversations with a number of community
2045 bankers last week when I was in the district, and I believe
2046 that the Dodd-Frank law has reduced access to credit in
2047 communities all over Arkansas, has increased compliance
2048 costs, and has just been a general nightmare for a lot of
2049 the banks who were following the rules in the first place.

2050 So, in any event, I oppose this amendment.

2051 Chairman Smith. The gentleman yields back his time.

2052 The question is on the amendment. All in favor, say
2053 aye.

2054 [A chorus of ayes.]

2055 Chairman Smith. Opposed, nay.

2056 [A chorus of nays.]

2057 Chairman Smith. In the opinion of the chair, the nays
2058 have it.

2059 Ms. Jackson Lee. The ayes, Mr. Chairman.

2060 Chairman Smith. The clerk will call the roll.

2061 Ms. Kish. Mr. Smith?

2062 Chairman Smith. No.

2063 Ms. Kish. Mr. Smith votes no.

2064 Mr. Sensenbrenner?

2065 [No response.]

2066 Ms. Kish. Mr. Coble?

2067 [No response.]

2068 Ms. Kish. Mr. Gallegly?

2069 [No response.]

2070 Ms. Kish. Mr. Goodlatte?

2071 [No response.]

2072 Ms. Kish. Mr. Lungren? Mr. Lungren?

2073 Mr. Lungren. No.

2074 Ms. Kish. Mr. Lungren votes no.

2075 Mr. Chabot?

2076 [No response.]

2077 Ms. Kish. Mr. Issa?

2078 [No response.]

2079 Ms. Kish. Mr. Pence?

2080 [No response.]

2081 Ms. Kish. Mr. Forbes?

2082 Mr. Forbes. No.

2083 Ms. Kish. Mr. Forbes votes no.

2084 Mr. King?

2085 Mr. King. No.

2086 Ms. Kish. Mr. King votes no.

2087 Mr. Franks?

2088 [No response.]

2089 Ms. Kish. Mr. Gohmert?

2090 [No response.]

2091 Ms. Kish. Mr. Jordan?

2092 [No response.]

2093 Ms. Kish. Mr. Poe?

2094 [No response.]

2095 Ms. Kish. Mr. Chaffetz?

2096 [No response.]

2097 Ms. Kish. Mr. Griffin? Mr. Griffin?

2098 Mr. Griffin. No.

2099 Ms. Kish. Mr. Griffin votes no.

2100 Mr. Marino?

2101 [No response.]

2102 Ms. Kish. Mr. Gowdy?

2103 [No response.]

2104 Ms. Kish. Mr. Ross?

2105 [No response.]

2106 Ms. Kish. Mrs. Adams?

2107 Mrs. Adams. No.

2108 Ms. Kish. Mrs. Adams votes no.

2109 Mr. Quayle?

2110 Mr. Quayle. No.

2111 Ms. Kish. Mr. Quayle votes no.

2112 Mr. Amodei?

2113 Mr. Amodei. No.

2114 Ms. Kish. Mr. Amodei votes no.

2115 Mr. Conyers?

2116 Mr. Conyers. Aye.

2117 Ms. Kish. Mr. Conyers votes aye.

2118 Mr. Berman?

2119 [No response.]

2120 Ms. Kish. Mr. Nadler?

2121 Mr. Nadler. Aye.

2122 Ms. Kish. Mr. Nadler votes aye.

2123 Mr. Scott?

2124 Mr. Scott. Aye.

2125 Ms. Kish. Mr. Scott votes aye.

2126 Mr. Watt?

2127 Mr. Watt. Aye.

2128 Ms. Kish. Mr. Watt votes aye.

2129 Ms. Lofgren?

2130 [No response.]

2131 Ms. Kish. Ms. Jackson Lee?

2132 [No response.]

2133 Ms. Kish. Ms. Waters?

2134 Ms. Waters. Aye.

2135 Ms. Kish. Ms. Waters votes aye.

2136 Mr. Cohen?

2137 [No response.]

2138 Ms. Kish. Mr. Johnson?

2139 [No response.]

2140 Ms. Kish. Mr. Pierluisi?

2141 Mr. Pierluisi. Aye.

2142 Ms. Kish. Mr. Pierluisi votes aye.

2143 Mr. Quigley?

2144 [No response.]

2145 Ms. Kish. Ms. Chu?

2146 Ms. Chu. Aye.

2147 Ms. Kish. Ms. Chu votes aye.

2148 Mr. Deutch?

2149 Mr. Deutch. Aye.

2150 Ms. Kish. Mr. Deutch votes aye.

2151 Ms. Sanchez?

2152 Ms. Sanchez. Aye.

2153 Ms. Kish. Ms. Sanchez votes aye.

2154 Mr. Polis?

2155 Mr. Polis. Aye.

2156 Ms. Kish. Mr. Polis votes aye.

2157 Mr. Gowdy. Mr. Chairman?

2158 Chairman Smith. The gentleman from South Carolina?

2159 Mr. Gowdy. No.

2160 Ms. Kish. Mr. Gowdy votes no.

2161 Chairman Smith. The gentleman from Wisconsin?

2162 Mr. Sensenbrenner. No.

2163 Ms. Kish. Mr. Sensenbrenner votes no.

2164 Chairman Smith. The gentleman from California?

2165 Mr. Gallegly. No.

2166 Ms. Kish. Mr. Gallegly votes no.

2167 Chairman Smith. The gentleman from North Carolina?

2168 Mr. Coble. No.

2169 Ms. Kish. Mr. Coble votes no.

2170 Chairman Smith. The gentleman from Ohio?

2171 Mr. Chabot. No.

2172 Ms. Kish. Chabot, no.

2173 Chairman Smith. The gentleman from Texas?

2174 Mr. Gohmert. No.

2175 Ms. Kish. Mr. Gohmert votes no.

2176 Ms. Jackson Lee. Mr. Chairman?

2177 Chairman Smith. The gentlewoman from Texas?

2178 Ms. Jackson Lee. Aye.

2179 Ms. Kish. Ms. Jackson Lee votes aye.

2180 Chairman Smith. The clerk will report.

2181 Ms. Kish. Mr. Chairman, 11 Members voted aye; 14

2182 Members voted nay.

2183 Chairman Smith. A majority having voted against the

2184 amendment, the amendment is not agreed to.

2185 Are there any other amendments?

2186 [No response.]

2187 Chairman Smith. If not, the question is on the

2188 manager's amendment. Those in favor, say aye.

2189 [A chorus of ayes.]

2190 Chairman Smith. Opposed, no.

2191 [A chorus of nays.]

2192 Chairman Smith. The clerk will call the roll.

2193 [Laughter.]

2194 Ms. Kish. Mr. Smith?

2195 Chairman Smith. Aye.

2196 Ms. Kish. Mr. Smith votes aye.

2197 Mr. Sensenbrenner?

2198 [No response.]

2199 Ms. Kish. Mr. Coble?

2200 [No response.]

2201 Ms. Kish. Mr. Gallegly?

2202 [No response.]

2203 Ms. Kish. Mr. Goodlatte?

2204 [No response.]

2205 Ms. Kish. Mr. Lungren?

2206 [No response.]

2207 Ms. Kish. Mr. Chabot?

2208 [No response.]

2209 Ms. Kish. Mr. Issa?

2210 [No response.]

2211 Ms. Kish. Mr. Pence?

2212 [No response.]

2213 Ms. Kish. Mr. Forbes?

2214 Mr. Forbes. Yes.

2215 Ms. Kish. Mr. Forbes votes aye.

2216 Mr. King?

2217 Mr. King. Aye.

2218 Ms. Kish. Mr. King votes aye.

2219 Mr. Franks?

2220 Mr. Franks. Aye.

2221 Ms. Kish. Mr. Franks votes aye.

2222 Mr. Gohmert?

2223 [No response.]

2224 Ms. Kish. Mr. Jordan?

2225 [No response.]

2226 Ms. Kish. Mr. Poe?

2227 [No response.]

2228 Ms. Kish. Mr. Chaffetz?

2229 [No response.]

2230 Ms. Kish. Mr. Griffin?

2231 Mr. Griffin. Aye.

2232 Ms. Kish. Mr. Griffin votes aye.

2233 Mr. Marino?

2234 [No response.]

2235 Ms. Kish. Mr. Gowdy?

2236 [No response.]

2237 Ms. Kish. Mr. Ross?

2238 [No response.]

2239 Ms. Kish. Mrs. Adams?

2240 Mrs. Adams. Aye.

2241 Ms. Kish. Mrs. Adams votes aye.

2242 Mr. Quayle?

2243 Mr. Quayle. Aye.

2244 Ms. Kish. Mr. Quayle votes aye.

2245 Mr. Amodei?

2246 Mr. Amodei. Aye.

2247 Ms. Kish. Mr. Amodei votes aye.

2248 Mr. Conyers?

2249 Mr. Conyers. No.

2250 Ms. Kish. Mr. Conyers votes no.

2251 Mr. Berman?

2252 [No response.]

2253 Ms. Kish. Mr. Nadler?

2254 Mr. Nadler. No.

2255 Ms. Kish. Mr. Nadler votes no.

2256 Mr. Scott?

2257 Mr. Scott. No.

2258 Ms. Kish. Mr. Scott votes no.

2259 Mr. Watt?

2260 [No response.]

2261 Ms. Kish. Ms. Lofgren?

2262 [No response.]

2263 Ms. Kish. Ms. Jackson Lee?

2264 Ms. Jackson Lee. No.

2265 Ms. Kish. Ms. Jackson Lee votes no.

2266 Ms. Waters?

2267 Ms. Waters. No.

2268 Ms. Kish. Ms. Waters votes no.

2269 Mr. Cohen?

2270 [No response.]

2271 Ms. Kish. Mr. Johnson?

2272 [No response.]

2273 Ms. Kish. Mr. Pierluisi?

2274 Mr. Pierluisi. No.

2275 Ms. Kish. Mr. Pierluisi votes no.
2276 Mr. Quigley?
2277 [No response.]
2278 Ms. Kish. Ms. Chu?
2279 Ms. Chu. No.
2280 Ms. Kish. Ms. Chu votes no.
2281 Mr. Deutch?
2282 Mr. Deutch. No.
2283 Ms. Kish. Mr. Deutch votes no.
2284 Ms. Sanchez?
2285 Ms. Sanchez. No.
2286 Ms. Kish. Ms. Sanchez votes no.
2287 Mr. Polis?
2288 Mr. Polis. No.
2289 Ms. Kish. Mr. Polis votes no.
2290 Chairman Smith. The gentleman from California?
2291 Mr. Lungren. Aye.
2292 Ms. Kish. Mr. Lungren votes aye.
2293 Chairman Smith. The other gentleman from California?
2294 Mr. Gallegly. Aye.
2295 Ms. Kish. Mr. Gallegly votes aye.

2296 Chairman Smith. The gentleman from North Carolina?

2297 Mr. Coble. Aye.

2298 Ms. Kish. Mr. Coble votes aye.

2299 Chairman Smith. The gentleman from Ohio?

2300 Mr. Chabot. Aye.

2301 Ms. Kish. Mr. Chabot votes aye.

2302 Chairman Smith. The gentleman from North Carolina?

2303 Ms. Kish. Mr. Watt?

2304 Mr. Watt. I thought you already called me?

2305 Chairman Smith. How is the gentleman from North

2306 Carolina recorded?

2307 Ms. Kish. Not recorded, sir.

2308 Mr. Watt. No.

2309 Ms. Kish. Mr. Watt votes no.

2310 Chairman Smith. The gentlewoman from California, Ms.

2311 Lofgren?

2312 Ms. Lofgren. No.

2313 Ms. Kish. Ms. Lofgren votes no.

2314 Chairman Smith. The gentlewoman from California, Ms.

2315 Waters, has voted?

2316 Ms. Waters. Yes.

2317 Chairman Smith. Okay. The gentleman from Texas?

2318 Mr. Gohmert. Yes.

2319 Ms. Kish. Mr. Gohmert votes yes.

2320 Chairman Smith. The gentleman from North Carolina? I

2321 think he has voted.

2322 Mr. Coble. How am I recorded?

2323 Ms. Kish. Mr. Coble is recorded as aye.

2324 Chairman Smith. Okay. The clerk will report.

2325 Ms. Kish. Mr. Chairman, 13 Members voted aye; 12

2326 Members voted nay.

2327 A majority having voted in favor of the manager's

2328 amendment, the manager's amendment is agreed to.

2329 A reporting quorum being present, the question is now on

2330 reporting the bill, as amended, favorably to the House.

2331 Those in favor, say aye.

2332 [A chorus of ayes.]

2333 Chairman Smith. Opposed, no.

2334 [A chorus of nays.]

2335 The clerk will call the roll.

2336 Ms. Kish. Mr. Smith?

2337 Chairman Smith. Aye.

2338 Ms. Kish. Mr. Smith votes aye.

2339 Mr. Sensenbrenner?

2340 [No response.]

2341 Ms. Kish. Mr. Coble?

2342 Mr. Coble. Aye.

2343 Ms. Kish. Mr. Coble votes aye.

2344 Mr. Gallegly?

2345 Mr. Gallegly. Aye.

2346 Ms. Kish. Mr. Gallegly votes aye.

2347 Mr. Goodlatte?

2348 [No response.]

2349 Ms. Kish. Mr. Lungren?

2350 Mr. Lungren. Aye.

2351 Ms. Kish. Mr. Lungren votes aye.

2352 Mr. Chabot?

2353 Mr. Chabot. Aye.

2354 Ms. Kish. Mr. Chabot votes aye.

2355 Mr. Issa?

2356 [No response.]

2357 Ms. Kish. Mr. Pence?

2358 [No response.]

2359 Ms. Kish. Mr. Forbes?

2360 Mr. Forbes. Aye.

2361 Ms. Kish. Mr. Forbes votes aye.

2362 Mr. King?

2363 Mr. King. Aye.

2364 Ms. Kish. Mr. King votes aye.

2365 Mr. Franks?

2366 Mr. Franks. Aye.

2367 Ms. Kish. Mr. Franks votes aye.

2368 Mr. Gohmert?

2369 Mr. Gohmert. Aye.

2370 Ms. Kish. Mr. Gohmert votes aye.

2371 Mr. Jordan?

2372 [No response.]

2373 Ms. Kish. Mr. Poe?

2374 [No response.]

2375 Ms. Kish. Mr. Chaffetz?

2376 [No response.]

2377 Ms. Kish. Mr. Griffin?

2378 Mr. Griffin. Aye.

2379 Ms. Kish. Mr. Griffin votes aye.

2380 Mr. Marino?

2381 [No response.]

2382 Ms. Kish. Mr. Gowdy?

2383 [No response.]

2384 Ms. Kish. Mr. Ross?

2385 [No response.]

2386 Ms. Kish. Mrs. Adams?

2387 Mrs. Adams. Aye.

2388 Ms. Kish. Mrs. Adams votes aye.

2389 Mr. Quayle?

2390 Mr. Quayle. Aye.

2391 Ms. Kish. Mr. Quayle votes aye.

2392 Mr. Amodei?

2393 Mr. Amodei. Aye.

2394 Ms. Kish. Mr. Amodei votes aye.

2395 Mr. Conyers?

2396 Mr. Conyers. No.

2397 Ms. Kish. Mr. Conyers votes no.

2398 Mr. Berman?

2399 [No response.]

2400 Ms. Kish. Mr. Nadler?

2401 Mr. Nadler. No.

2402 Ms. Kish. Mr. Nadler votes no.

2403 Mr. Scott?

2404 Mr. Scott. No.

2405 Ms. Kish. Mr. Scott votes no.

2406 Mr. Watt?

2407 Mr. Watt. No.

2408 Ms. Kish. Mr. Watt votes no.

2409 Ms. Lofgren?

2410 Ms. Lofgren. No.

2411 Ms. Kish. Ms. Lofgren votes no.

2412 Ms. Jackson Lee?

2413 Ms. Jackson Lee. No.

2414 Ms. Kish. Ms. Jackson Lee votes no.

2415 Ms. Waters?

2416 Ms. Waters. No.

2417 Ms. Kish. Ms. Waters votes no.

2418 Mr. Cohen?

2419 [No response.]

2420 Ms. Kish. Mr. Johnson?

2421 [No response.]

2422 Ms. Kish. Mr. Pierluisi?

2423 Mr. Pierluisi. No.

2424 Ms. Kish. Mr. Pierluisi votes no.

2425 Mr. Quigley?

2426 [No response.]

2427 Ms. Kish. Ms. Chu?

2428 Ms. Chu. No.

2429 Ms. Kish. Ms. Chu votes no.

2430 Mr. Deutch?

2431 Mr. Deutch. No.

2432 Ms. Kish. Mr. Deutch votes no.

2433 Ms. Sanchez?

2434 Ms. Sanchez. No.

2435 Ms. Kish. Ms. Sanchez votes no.

2436 Mr. Polis?

2437 Mr. Polis. No.

2438 Ms. Kish. Mr. Polis votes no.

2439 Chairman Smith. The gentleman from South Carolina?

2440 Mr. Gowdy. Yes.

2441 Ms. Kish. Mr. Gowdy votes yes.

2442 Chairman Smith. Let me say to Members I know a number

2443 of Judiciary Committee members are at other committee
2444 meetings, hearings, and markups. So I would like to hold
2445 the vote open for just a couple of minutes in case they want
2446 to be recorded.

2447 [Pause.]

2448 Chairman Smith. The gentleman from North Carolina?

2449 Ms. Kish. Mr. Coble is recorded as aye.

2450 Chairman Smith. The gentleman from Florida, Mr. Ross?

2451 Mr. Ross. Aye.

2452 Ms. Kish. Mr. Ross votes aye.

2453 [Pause.]

2454 Mr. Scott. Mr. Chairman?

2455 Chairman Smith. The gentleman from Virginia?

2456 Mr. Scott. Is it the policy to allow people who are not
2457 recorded to record after the fact if it doesn't change the
2458 outcome of the --

2459 Chairman Smith. That is a parliamentary question. We
2460 will try to find an answer. They can ask to be referenced
2461 as to how they would have voted, but they can't actually be
2462 recorded as having voted.

2463 Mr. Scott. Even with unanimous consent?

2464 Chairman Smith. Yes and no. In other words, just
2465 because one would get unanimous consent does not mean that
2466 they could be recorded. Apparently, it is a House rule.

2467 Did someone else -- the gentleman from Illinois, Mr.
2468 Quigley?

2469 Mr. Quigley. No.

2470 Ms. Kish. Mr. Quigley votes no.

2471 Chairman Smith. Okay. The clerk will report.

2472 Ms. Kish. Mr. Chairman, 15 Members votes aye; 13
2473 Members voted nay.

2474 Ms. Jackson Lee. Excuse me. How was I recorded?

2475 Ms. Kish. Ms. Jackson Lee is recorded as voting no.

2476 Chairman Smith. The ayes have it, and the bill, as
2477 amended, is ordered reported favorably.

2478 Without objection, the bill will be reported as a single
2479 amendment in the nature of a substitute, incorporating
2480 amendments adopted. Staff is authorized to make technical
2481 and conforming changes. Members will have 2 days to submit
2482 views.

2483 We will now move on to the last bill that we will
2484 consider today. And that is pursuant to notice, I now call

2485 up H.R. 3862 for purposes of markup. The clerk will report
2486 the bill.

2487 Ms. Kish. H.R. 3862, to impose certain limitations on
2488 consent decrees --

2489 Chairman Smith. Without objection, the bill will be
2490 considered as read and open for amendment at any point.

2491 [The information follows:]

2492

2493 Chairman Smith. I will begin by recognizing myself and
2494 then the ranking member for opening statements.

2495 First of all, I want to thank Mr. Quayle, a member of
2496 this committee, for his introduction of this bill and Mr.
2497 Coble and his subcommittee for their prompt and careful
2498 consideration of it.

2499 America's small businesses and job creators need relief
2500 from the flood of new regulations and red tape made in
2501 Washington. Small business owners cite Government
2502 regulations as the single most important problem they face
2503 today. Americans now work an estimated 77 days per year
2504 just to cover the cost of the Federal regulatory burden.

2505 The Obama administration's response is not to put the
2506 brakes on new regulations, but to step on the accelerator.
2507 In just 3 years, it has imposed 106 new major regulations on
2508 the private sector. These regulations cost \$46 billion
2509 annually and impose almost \$11 billion in initial
2510 implementation cost.

2511 That is four times the number of major regulations the
2512 Bush administration imposed in a similar period at more than
2513 five times the cost. It is the opposite of what America

2514 needs to recover from its economic distress.

2515 A heavy contributor to the burden of new regulation is
2516 the use of consent decrees and settlement agreements to
2517 force Federal agencies to issue new rules. Regulators often
2518 cooperate with pro-regulatory organizations to advance their
2519 mutual agendas in this way.

2520 The scheme agencies use is simple. An organization that
2521 wants new regulations alleges that an agency has violated a
2522 duty to declare new rules. The agency and the plaintiff
2523 work out a deal under the cover of litigation. The deal
2524 puts the agency under judicially backed deadlines to issue
2525 the rules. These deadlines often give the public little
2526 opportunity to comment on proposed rules.

2527 Deals can even require agencies to specific regulatory
2528 language negotiated by the agency and its regulation-
2529 friendly plaintiff. Those to be regulated typically do not
2530 know about these deals until the plaintiffs' complaints and
2531 the proposed decrees or settlements are filed in court. By
2532 then, it is too late.

2533 Regulated businesses and individuals are unlikely to be
2534 able to intervene in the litigation. The court usually

2535 approves the deals before regulated parties have an
2536 opportunity affect whether new regulatory costs will be
2537 imposed on them.

2538 The Obama administration has entered into numerous
2539 consent decrees and settlement agreements like this.
2540 Examples include a consent decree that requires new
2541 performance standards for greenhouse gas emissions under the
2542 Clean Air Act. They also include settlement agreements that
2543 require the Fish and Wildlife Service to take actions
2544 involving hundreds of species under the Endangered Species
2545 Act. Deadlines set in these and other decrees and
2546 settlements may be used to bind the hands of future
2547 administrations.

2548 The Sunshine for Regulatory Consent Decrees and
2549 Settlements Act of 2012 puts an end to the abuse of this
2550 practice. It assures that those to be regulated have a fair
2551 opportunity to participate in the resolution of litigation
2552 that affects them. It ensures that courts have all the
2553 information they need before they approve proposed decrees
2554 and settlements, and it provides needed transparency on the
2555 ways agencies conduct their business.

2556 Also, the bill respects the basic rights of plaintiffs
2557 and defendants to manage litigation between them. As a
2558 result, the bill offers an effective and balanced remedy.

2559 I will yield back the balance of my time and recognize
2560 the gentleman from Michigan, the ranking member of the full
2561 committee, for his opening statement.

2562 Mr. Conyers. Thank you, Chairman Smith.

2563 H.R. 3862 would do something I have never heard of
2564 before by excluding -- would make it almost impossible for
2565 us to have any agreements or protections that have come out
2566 of differences between the Government by so-called shining
2567 sunshine on regulatory decrees and settlements. And I have
2568 to ask the committee do we really want to do this, and do we
2569 understand the significance of what it is that we are doing?

2570 This would mean that Federal civil rights laws,
2571 environmental laws designed to protect citizens, victims of
2572 voter intimidation, police abuse, toxic pollution, racial
2573 discrimination, any of these consent decrees and settlements
2574 are generally used to settle public law by reducing time-
2575 consuming legislation would now allow nearly anybody to
2576 intervene to make these matters public.

2577 Now, why on earth would we want to challenge these kinds
2578 of agreements and make it -- well, I guess that is the
2579 object of H.R. 3862, to make it more difficult to enter into
2580 these kinds of agreements and to generally discourage their
2581 use.

2582 Now I just hope my colleagues will think carefully about
2583 this because this is another way of keeping regulations from
2584 being implemented, and I guess that is the purpose of it.
2585 And so, I have an amendment that would exclude from this
2586 bill any consent decree or settlement that is intended to
2587 protect the privacy of citizens.

2588 And so, when you think about the incredible number of --
2589 amount of information that is gathered on people that
2590 shining a light on these agreements that are supposed to
2591 expedite things would be a terrible, terrible result. And
2592 so, I hope that we will move very carefully on this matter.

2593 And I should let you know that I would like to put the
2594 statements of the Natural Resources Defense Council into the
2595 record, the American Civil Liberties Union comments against
2596 this bill into the record, the National Association for the
2597 Advancement of Colored People into the record, the Sierra

2598 Club statement into the record, and Earthjustice, all of
2599 whom strenuously oppose the bill.

2600 Chairman Smith. Without objection, those letters will
2601 be made a part of the record.

2602 [The information follows:]

2603

2604 Mr. Conyers. All right. These consent decrees and
2605 lawsuits are usually seeking some sort of action to ensure
2606 that the agency meets its statutory violations. So it is
2607 not clear to me at all why we need to do what we are doing,
2608 including codifying the Justice Department guidelines issued
2609 by former Attorney General Edwin Meese nearly 30 years ago.

2610 Why do we need to codify them? And I hope that this
2611 discussion will come up.

2612 Finally, the bill will discourage the use of consent
2613 decrees and settlements, which will, therefore, result in
2614 increased expenditure of American tax dollars because of the
2615 protracted litigation that is certain to result.

2616 For example, a consent decree resolving a dispute under
2617 the Clean Air Act. In light of the fact that the bill would
2618 allow any private party whose rights are affected by such a
2619 decree to intervene, this could stifle the Clean Air Act in
2620 its entirety.

2621 Now this is beyond being a liberal or a conservative
2622 position or a Republican or a Democratic position. I think
2623 that we have a constitutional question here that leads me to
2624 urge us to move very carefully on a bill that would have

2625 such a chilling effect on the centuries-old use of consent
2626 decrees and settlement agreements in our governmental
2627 system.

2628 So I thank the gentleman for his time, and I yield back.
2629 Chairman Smith. Thank you, Mr. Conyers.

2630 The gentleman from North Carolina, Mr. Coble, the
2631 chairman of the Courts, Commercial, and Administrative Law
2632 Subcommittee, is recognized.

2633 Mr. Coble. Thank you, Mr. Chairman.

2634 Mr. Chairman, I yield my time to the distinguished
2635 gentleman from Arizona, the sponsor of the bill.

2636 Mr. Quayle. I thank the gentleman for yielding, and I
2637 thank the chairman for his leadership on regulatory reform
2638 issues and for including the Sunshine for Regulatory Decrees
2639 and Settlements Act in the markup today.

2640 We are all familiar with the Boiler MACTs and the Cement
2641 MACTs rules that the EPA released within this last year.
2642 Here in the House, we voted on legislation on the floor that
2643 provides businesses relief from these regulations and
2644 requires the reproposal of new and less harmful rules.

2645 However, what many people may not be aware of is that

2646 these rules resulted from sue and settlement agreements.
2647 H.R. 3862 is an important bill that will provide
2648 transparency and necessary modifications to sue and
2649 settlement agreements entered into by the Justice
2650 Department. These settlements are often made behind closed
2651 doors and are the result of activist, pro-regulatory parties
2652 suing the Federal Government when an agency misses a
2653 statutory deadline.

2654 The result can have tremendous economic impacts
2655 affecting States, tribes, businesses, and families, and can
2656 also be contrary to statutory intent. Environmental groups
2657 have effectively and craftily used sue and settle litigation
2658 to advance their agenda, paid for by taxpayers using either
2659 funds from the Equal Access to Justice Act or using funds
2660 from the Judgment Fund.

2661 In the subcommittee hearing early last month, witnesses
2662 testified about the abuse of these agreements in proscribing
2663 the terms of rules by pro-regulatory parties conspiring in
2664 secret with agencies prior to formally initiating litigation
2665 and then proposing a settlement agreement and filing suit
2666 concurrently. This closed-door process can effectively make

2667 public participation meaningless from regulatory process
2668 statutes, resulting in dramatically costly consequences to
2669 American families and businesses.

2670 In my home State of Arizona, the EPA entered into a
2671 proposed consent decree with nine environmental groups,
2672 including the Sierra Club and the Environmental Defense
2673 Fund, regarding the emission control technology at the
2674 Navajo generating station. The effect of this agreement
2675 could mean either the cost of \$1.1 billion to the Navajo
2676 generating station and a 20 percent increase in energy cost
2677 to all Arizonans or the loss of hundreds of jobs and
2678 economic devastation to the Navajo Nation and Hopi Tribe.

2679 At a time of record high unemployment, losing jobs or
2680 increasing energy costs for aesthetics is unfathomable. In
2681 the past decade, the number of major regulations which have
2682 economic impact over \$100 million annually has increased 137
2683 percent, and the current administration has imposed over \$46
2684 billion in new regulatory costs.

2685 The President's administration recently released its
2686 2011 information collection budget, which reported that U.S.
2687 businesses spent over 8.8 billion hours complying with

2688 Federal paperwork requirements. To put this into
2689 perspective, this is equal to 1 million years of filling out
2690 Government paperwork.

2691 Regulations have costly and job-killing implications,
2692 and it is important that the rulemaking process is not
2693 written behind closed doors by activist groups and
2694 regulatory agencies. H.R. 3862 includes necessary
2695 transparency provisions and allows for public input when the
2696 Department of Justice enters into a settlement agreement.
2697 This is increasingly necessary as more statutory deadlines
2698 slip due to the large number of rulemakings that were
2699 mandated during the previous Congress, and the abuse of sue
2700 and settlement agreements is expected to increase.

2701 H.R. 3862 does not eliminate the DOJ's ability to enter
2702 into settlement agreements and consent decrees. Rather, it
2703 provides important reforms that will provide transparency
2704 and ensures the opportunity for public participation.

2705 A number of organizations support this legislation, and
2706 I ask unanimous consent that a letter from the U.S. Chamber
2707 and those organizations, dated March 19, 2012, be included
2708 in the record.

2709 Chairman Smith. Without objection.

2710 [The information follows:]

2711

2712 Mr. Quayle. Once again, I want to thank the chairman
2713 for including this bill in the markup today.

2714 And I yield back the balance of my time.

2715 Mr. Coble. I reclaim and yield back.

2716 Chairman Smith. Thank you, Mr. Coble.

2717 Thank you, Mr. Quayle.

2718 The gentleman from Arizona is now recognized for the
2719 purposes of offering a manager's amendment.

2720 Mr. Quayle. I have an amendment at the desk.

2721 Chairman Smith. And the clerk will report the
2722 amendment.

2723 Ms. Kish. Amendment in the nature of a substitute to
2724 H.R. 3862, offered by Mr. Quayle of Arizona. Strike all
2725 that follows after the enacting clause and insert the
2726 following: "Section 1 --"

2727 Chairman Smith. Without objection, the amendment is
2728 considered as read and will be considered as base text for
2729 the purposes of amendment.

2730 [The amendment of Mr. Quayle follows:]

2731

2732 Chairman Smith. And the gentleman is recognized to
2733 explain his manager's amendment.

2734 Mr. Quayle. Thank you, Mr. Chairman.

2735 This amendment in the nature of a substitute implements
2736 changes that greatly improve the bill. The amendment
2737 requires courts to consider the impacts to States and
2738 tribes.

2739 As I mentioned earlier, a recent proposed consent decree
2740 was entered into that could greatly impact my home State of
2741 Arizona and two of the tribes in the northeast corner of the
2742 State. It only makes sense that considerations regarding
2743 States and tribes are made before the DOJ enters into a
2744 settlement agreement.

2745 In addition, the amendment enhances public participation
2746 by requiring agencies to publish notices of hearings in the
2747 Federal Register so that the public may comment and ensures
2748 that the public will have at least 60 days to comment on any
2749 proposed settlement agreement or consent decree. The
2750 underlying bill provides transparency, and these changes
2751 help to achieve that goal.

2752 In addition, in an effort to try to curb the abuse of

2753 artfully using settlement agreements and consent decrees to
2754 achieve politically motivated agendas, this amendment
2755 ensures that statutory intent is maintained by requiring
2756 agencies to include the statutory basis in the settlement
2757 agreement or consent decree.

2758 Lastly, the amendment makes clarifications that courts
2759 are not limited when managing settlement discussions. This
2760 change is important so that we do not hamstring the courts
2761 during this process.

2762 Mr. Chairman, these changes enhance the bill, and I urge
2763 my colleagues to support the amendment in the nature of a
2764 substitute, and I yield back.

2765 Mr. Lungren. [Presiding] The gentleman yields back.

2766 Are there any amendments to the amendment?

2767 Mr. Conyers. Mr. Chairman, I have an amendment at the
2768 desk.

2769 Mr. Lungren. The gentleman from Michigan is recognized
2770 to offer his amendment. The clerk will report.

2771 Ms. Kish. Amendment to the Quayle amendment, offered by
2772 Mr. Conyers. Page 1, line 5, strike "the provisions" and
2773 insert "except as provided in Subsection (d), the

2774 provisions." Page 8, insert after line 21 --

2775 Mr. Lungren. Without objection, the amendment to the

2776 amendment is considered as read.

2777 [The amendment of Mr. Conyers follows:]

2778

2779 Mr. Lungren. And the gentleman is recognized in support
2780 of his amendment.

2781 Mr. Conyers. Thank you, Chairman Lungren.

2782 Ladies and gentlemen, my amendment would exclude from
2783 this bill, the Sunshine Act, any consent decree or
2784 settlement agreement that is intended to protect the privacy
2785 of American citizens.

2786 With increasing opportunities for the dissemination of
2787 sensitive private information of citizens, I view this whole
2788 idea of letting everybody in on decrees and settlements to
2789 be contrary to the rights of privacy of American citizens.
2790 And I am very interested in what makes this bill so
2791 important now except to slow down the regulatory process.

2792 Now I would like to ask Mr. Quayle, the author of the
2793 bill, this question, sir. You said that there were others
2794 that support your bill, and I would like to find out, if you
2795 can, identify who the others are.

2796 I named about four or five organizations that oppose the
2797 bill. You named the Chamber of Commerce. Are there any
2798 others that support the bill besides the Chamber? And I
2799 yield to the gentleman.

2800 Mr. Quayle. Yes, there are a large number of people and
2801 organizations. We have the -- I will start alphabetically.

2802 Mr. Conyers. Well, just give me the number.

2803 Mr. Quayle. This looks to be about 60 or so groups,
2804 give or take.

2805 Mr. Conyers. Okay. Could you make that a part of the
2806 record as well?

2807 Mr. Quayle. Yes. It is within the letter that I put in
2808 the record.

2809 Mr. Conyers. All right. I thank the gentleman.

2810 That destroys my hope that it was only the Chamber of
2811 Commerce that was supporting this measure. I am very
2812 dismayed, and I will not raise this issue again with you.

2813 But ladies and gentlemen, to maintain this kind of a
2814 public notice against private citizens I think is very
2815 disturbing. I hope others are, too. Take Social Security
2816 numbers alone, the availability of other identifiable
2817 information through technological advances, where is our
2818 sense of privacy?

2819 I mean, what right is it for anybody to be able to
2820 intervene in these cases, into these decrees, into these

2821 consent agreements? And so, I think this provision is a
2822 very dangerous one, and therefore, my amendment to -- and
2823 this is all it would do -- is exclude from the bill any
2824 consent decree or settlement that is intended to protect the
2825 privacy of our citizens.

2826 And if anybody would like to complain about that, I
2827 would be willing to yield to them briefly at this time. If
2828 not, I turn back my time, Mr. Chairman.

2829 Mr. Lungren. The gentleman's time is returned.

2830 And the gentleman from Arizona is recognized for 5
2831 minutes.

2832 Mr. Quayle. Thank you, Mr. Chairman.

2833 And although I do believe that the ranking member's
2834 intention is very well-meaning, the problem is that this
2835 bill is strictly to provide transparency, public
2836 participation, and judicial review to consent decrees in sue
2837 and settlement agreements. I think that it is important
2838 that we do have the participation of those that will be
2839 regulated by these consent decrees and these sue and
2840 settlement agreements so that we can have differing points
2841 of views on which way the regulation should go.

2842 I think that the process that the regulatory framework
2843 that is in place to allow for public comment, to get that
2844 through the process so that we can have the best regulations
2845 on the books rather than something that is overly broad,
2846 overly burdensome, that doesn't have the input of those who
2847 actually are the stakeholders in these sectors, I think that
2848 that is important.

2849 And just to let everybody know is that this bill does
2850 not get rid or forbid sue and settlement agreements or
2851 consent decrees. It merely provides for the transparency
2852 and the public participation for those that will be
2853 regulated by these rules.

2854 And so, I think that I oppose this amendment. I think
2855 that this should be applied to all consent decrees and such
2856 sue and settlement agreements without any caveats, without
2857 any carve-outs, because all this does is to provide
2858 transparency. And I think that that is good for the
2859 American people.

2860 And I yield back.

2861 Mr. Conyers. You got me, Quayle.

2862 Mr. Lungren. The gentleman yields back.

2863 Is there further discussion on this amendment? Any
2864 Members seek recognition?
2865 [No response.]
2866 Mr. Lungren. If not, the question is on the amendment
2867 to the amendment.
2868 Those in favor, say aye.
2869 [A chorus of ayes.]
2870 Mr. Lungren. Those opposed, say no.
2871 [A chorus of nays.]
2872 Mr. Lungren. In the opinion of the chair, the audible
2873 nays have it. Does the gentleman ask for a recorded vote?
2874 Mr. Conyers. By all means.
2875 Mr. Lungren. A recorded vote is asked for. The clerk
2876 will call the roll.
2877 Ms. Kish. Mr. Smith?
2878 [No response.]
2879 Ms. Kish. Mr. Sensenbrenner?
2880 [No response.]
2881 Ms. Kish. Mr. Coble?
2882 [No response.]
2883 Ms. Kish. Mr. Gallegly?

2884 [No response.]

2885 Ms. Kish. Mr. Goodlatte?

2886 [No response.]

2887 Ms. Kish. Mr. Lungren?

2888 Mr. Lungren. No.

2889 Ms. Kish. Mr. Lungren votes no.

2890 Mr. Chabot?

2891 [No response.]

2892 Ms. Kish. Mr. Issa?

2893 [No response.]

2894 Ms. Kish. Mr. Pence?

2895 [No response.]

2896 Ms. Kish. Mr. Forbes?

2897 [No response.]

2898 Ms. Kish. Mr. King?

2899 [No response.]

2900 Ms. Kish. Mr. Franks?

2901 Mr. Franks. No.

2902 Ms. Kish. Mr. Franks votes no.

2903 Mr. Gohmert?

2904 [No response.]

2905 Ms. Kish. Mr. Jordan?

2906 [No response.]

2907 Ms. Kish. Mr. Poe?

2908 [No response.]

2909 Ms. Kish. Mr. Chaffetz?

2910 [No response.]

2911 Ms. Kish. Mr. Griffin?

2912 Mr. Griffin. No.

2913 Ms. Kish. Mr. Griffin votes no.

2914 Mr. Marino?

2915 [No response.]

2916 Ms. Kish. Mr. Gowdy?

2917 [No response.]

2918 Ms. Kish. Mr. Ross?

2919 Mr. Ross. No.

2920 Ms. Kish. Mr. Ross votes no.

2921 Mrs. Adams?

2922 Mrs. Adams. No.

2923 Ms. Kish. Mrs. Adams votes no.

2924 Mr. Quayle?

2925 Mr. Quayle. No.

2926 Ms. Kish. Mr. Quayle votes no.

2927 Mr. Amodei?

2928 Mr. Amodei. No.

2929 Ms. Kish. Mr. Amodei votes no.

2930 Mr. Conyers?

2931 Mr. Conyers. Aye.

2932 Ms. Kish. Mr. Conyers votes aye.

2933 Mr. Berman?

2934 [No response.]

2935 Ms. Kish. Mr. Nadler?

2936 Mr. Nadler. Aye.

2937 Ms. Kish. Mr. Nadler votes aye.

2938 Mr. Scott?

2939 Mr. Scott. Aye.

2940 Ms. Kish. Mr. Scott votes aye.

2941 Mr. Watt?

2942 Mr. Watt. Aye.

2943 Ms. Kish. Mr. Watt votes aye.

2944 Ms. Lofgren?

2945 [No response.]

2946 Ms. Kish. Ms. Jackson Lee?

2947 [No response.]

2948 Ms. Kish. Ms. Waters?

2949 Ms. Waters. Aye.

2950 Ms. Kish. Ms. Waters votes aye.

2951 Mr. Cohen?

2952 [No response.]

2953 Ms. Kish. Mr. Johnson?

2954 Mr. Johnson. Aye.

2955 Ms. Kish. Mr. Johnson votes aye.

2956 Mr. Pierluisi?

2957 Mr. Pierluisi. Aye.

2958 Ms. Kish. Mr. Pierluisi votes aye.

2959 Mr. Quigley?

2960 Mr. Quigley. Aye.

2961 Ms. Kish. Mr. Quigley votes aye.

2962 Ms. Chu?

2963 [No response.]

2964 Ms. Kish. Mr. Deutch?

2965 Mr. Deutch. Aye.

2966 Ms. Kish. Mr. Deutch votes aye.

2967 Ms. Sanchez?

2968 Ms. Sanchez. Aye.

2969 Ms. Kish. Ms. Sanchez votes aye.

2970 Mr. Polis?

2971 Mr. Polis. Aye.

2972 Ms. Kish. Mr. Polis votes aye.

2973 Chairman Smith. [Presiding] I will vote no.

2974 Ms. Kish. Mr. Smith votes no.

2975 Chairman Smith. And the gentlewoman from California,

2976 Ms. Lofgren?

2977 Ms. Lofgren. Aye.

2978 Ms. Kish. Ms. Lofgren votes aye.

2979 Chairman Smith. And the gentleman from California?

2980 Mr. Gallegly. No.

2981 Ms. Kish. Mr. Gallegly votes no.

2982 Chairman Smith. The gentleman from North Carolina?

2983 Mr. Coble. No.

2984 Ms. Kish. Mr. Coble votes no.

2985 Chairman Smith. The gentleman from South Carolina?

2986 Mr. Gowdy. No.

2987 Ms. Kish. Mr. Gowdy votes no.

2988 Chairman Smith. The gentleman from Ohio?

2989 Mr. Chabot. No.

2990 Ms. Kish. Mr. Chabot votes no.

2991 Chairman Smith. The gentleman from Texas?

2992 Mr. Gohmert. No.

2993 Ms. Kish. Mr. Gohmert votes no.

2994 Chairman Smith. The gentleman from Iowa?

2995 Mr. King. No.

2996 Ms. Kish. Mr. King votes no.

2997 Chairman Smith. The gentleman from Virginia?

2998 Mr. Forbes. No.

2999 Ms. Kish. Mr. Forbes votes no.

3000 Chairman Smith. The clerk will report.

3001 Ms. Kish. Mr. Chairman, 12 Members --

3002 Mr. Chaffetz. Mr. Chairman?

3003 Chairman Smith. The clerk will suspend. The gentleman

3004 from Utah?

3005 Mr. Chaffetz. No.

3006 Ms. Kish. Mr. Chaffetz votes no.

3007 Chairman Smith. Are there other Members who wish to be

3008 recorded? The clerk will report.

3009 Ms. Kish. Mr. Chairman, 12 Members voted aye; 16

3010 Members voted nay.

3011 Chairman Smith. A majority having voted against the
3012 amendment, the amendment is not agreed to.

3013 Are there other amendments? The gentleman from New
3014 York, Mr. Nadler?

3015 Mr. Nadler. Mr. Chairman, I have an amendment at the
3016 desk.

3017 Chairman Smith. The clerk will report the amendment.

3018 Ms. Kish. Amendment to the Quayle amendment, offered by
3019 Mr. Nadler. Page 1, line 5, strike "the provisions" and
3020 insert "except as provided in Subsection (d), the
3021 provisions." Page 8, insert after line 21 the following:
3022 "(d) Exception. The provisions of this act shall not apply
3023 in the case of consent decree or settlement agreement
3024 pertaining to nuclear reactor safety."

3025 [The amendment of Mr. Nadler follows:]

3026

3027 Chairman Smith. The gentleman from New York is
3028 recognized to explain his amendment.

3029 Mr. Nadler. Thank you, Mr. Chairman.

3030 Under the guise of transparency and fairness, this bill
3031 has been brought up today. Its real purpose is to make it
3032 harder for the Federal Government to settle cases and enter
3033 consent decrees.

3034 My amendment would exempt settlements and consent
3035 decrees regarding nuclear power from the onerous new
3036 requirements the bill would impose. I am mystified by the
3037 majority's decision to call up this particular bill for
3038 markup. With all of the tremendous economic challenges
3039 facing our country, the Judiciary Committee is marking up
3040 something which represents a solution in search of a
3041 problem.

3042 The alleged problem the bill seeks to address is a vast
3043 conspiracy in which private parties sue the Government, and
3044 the Government happily either settles or enters into a
3045 consent decree, supposedly allowing it to impose obligations
3046 or rules beyond what it could otherwise do.

3047 I'd like to think of myself as part of the left wing.

3048 And since I am not aware of any such conspiracy, the other
3049 members of the left either didn't tell me, which would be
3050 disappointing, or no such conspiracy exists at all. There
3051 is no evidence of such a conspiracy and, outside of maybe a
3052 few anecdotes, no evidence of any problem. Once again, we
3053 are legislating based on ideology and anecdote alone.

3054 It is not clear why current rules and practices are not
3055 adequate to address any problems. Specifically, there is
3056 nothing to stop injured parties from challenging agency
3057 actions resulting from settlement agreements or consent
3058 decrees. To solve this nonexistent problem, the bill before
3059 us adds numerous procedural requirements before a settlement
3060 or consent decree can be entered into.

3061 The effect of these requirements will be to decrease the
3062 likelihood of settlements and make any settlements or
3063 consent decrees more difficult to enter into and, of course,
3064 increase the likelihood of protracted litigation, which the
3065 majority should love. Both consequences will increase
3066 litigation cost, which is a surprising result for a bill
3067 from a majority party that supposedly wants to reduce
3068 Government spending.

3069 Most troubling, the bill would create a special and more
3070 permissive rule for parties to involve themselves in a case
3071 between a third party and the Government. It would make it
3072 easier for "any party that would be affected by the agency
3073 action in question" to intervene in a lawsuit. Once such a
3074 party is allowed to intervene, the court would have to
3075 involve that intervener in the settlement discussions, too.

3076 To again highlight the dangers of this approach, I would
3077 like to focus on nuclear power. As I mentioned earlier
3078 today, Americans rightfully are wary of nuclear power and
3079 want to make sure rules are in place to keep it at least
3080 somewhat safe.

3081 The need for strict safety rules is all the more
3082 apparent after the disaster we saw in Japan last year. If
3083 the NRC is failing to take actions required by a law passed
3084 by Congress, it is certainly possible, and I would hope
3085 likely, that some affected person or group would take it to
3086 court to see that the law is faithfully executed. Such laws
3087 could be ones which would require new rules on safety or
3088 security, for example.

3089 At some point, the parties may want to settle or enter

3090 into a consent decree. Presumably, such a settlement or
3091 consent decree would move the NRC more into compliance with
3092 the congressionally mandated safety and security
3093 requirements and would negate the necessity for protracted
3094 litigation.

3095 This bill would make agreeing to such a settlement or
3096 entering into a consent decree that much harder. The
3097 additional procedural requirements would cause delays,
3098 possibly jeopardizing safety and certainly costing money.

3099 Most frightening, the liberalized intervening rule would
3100 make it easier for anyone adversely affected by the rule,
3101 which could be a nuclear power plant, the entire nuclear
3102 power industry, or even an individual libertarian who might
3103 want to protest possibly higher electricity rates, to
3104 involve themselves in the case.

3105 These interveners would do their best to ruin, block, or
3106 delay any settlement, including during what should be
3107 private negotiations. This would put everyone's safety at
3108 risk. The risk is unnecessary, of course, because, as I
3109 said previously, anyone who is really adversely affected
3110 already can sue the agency after it acts if they have a

3111 colorable claim.

3112 The amendment is very simple. Like the ones I have
3113 offered before, it would just exempt nuclear power issues
3114 from the requirements of this bill. Failure to support this
3115 amendment says that you want the nuclear power industry to
3116 have greater power to thwart actions designed to increase
3117 safety and security for nuclear power plants. That does not
3118 sound like a common sense position to me.

3119 I urge all Members to support the amendment, and I yield
3120 back the balance of my time.

3121 Chairman Smith. Thank you, Mr. Nadler.

3122 The gentleman from Arizona, Mr. Quayle, is recognized.

3123 Mr. Quayle. Thank you, Mr. Chairman.

3124 And I oppose this amendment. Being from Phoenix, we
3125 have the largest nuclear power plant just outside my
3126 district. I see it every day when I drive down I-10 to the
3127 west, and I know the importance of having safety compliance
3128 within the nuclear regulatory agencies.

3129 But this bill does not in any way eliminate the ability
3130 for the DOJ to enter into sue and settlement agreements or
3131 get consent decrees. What it does do is that it allows

3132 those that will be regulated and will be affected by these
3133 different agreements to have a seat at the table, to be able
3134 to get their thoughts out there to make sure that we are not
3135 going to have overly onerous regulations and actually make
3136 sure that the stakeholders have a voice.

3137 I think that opening up this process, making sure that
3138 there is some transparency, rather than the effect that
3139 current happens is when you have an agreement that is agreed
3140 to behind closed doors, and the agreement is put down the
3141 same day that the complaint is filed. And so, the vast
3142 majority of people who would be affected by this don't even
3143 know about the agreement or the complaint because they
3144 haven't filed the complaint, and this is both filed on the
3145 same day.

3146 This bill does not stop anybody from entering into
3147 settlement agreements, sue and settlement agreements. It
3148 doesn't forbid any consent decrees. What it does is opens
3149 up the process, gets people involved, and makes sure that
3150 there is actual transparency and letting people be a part of
3151 the process, which is what the regulatory process is
3152 supposed to be with the public comment. But this is going

3153 to make sure that that actually stays in place.

3154 And I think that is the right thing to do, and I oppose
3155 the --

3156 Mr. Conyers. Would the gentleman yield?

3157 Mr. Quayle. Yes. I will yield.

3158 Mr. Conyers. Do you think that this would delay the
3159 process of consent decrees and settlements?

3160 Mr. Quayle. I believe that what it does is it actually
3161 gets more people involved in the process.

3162 Mr. Conyers. I know that. That is why I asked the
3163 question. Now that we get more people involved in the
3164 process, would that delay the process?

3165 Mr. Quayle. Well, it will make the process more
3166 efficient going forward because you are actually getting
3167 more stakeholders involved. And I believe that you will see
3168 better support for the regulation, better compliance with
3169 the regulation. So you won't see filings of claims by
3170 people who are affected by these regulations and these sue
3171 and settlement agreements because they would have had a seat
3172 at the table.

3173 So you are actually reducing the costs because you will

3174 be reducing the chances of actually having further
3175 litigation going down the road. Because you actually will
3176 have a process in place that allows stakeholders who are
3177 going to be affected by this regulation and these sue and
3178 settlement agreements to have a voice, to make sure that it
3179 is the proper type of regulation to go forward, rather than
3180 something behind closed doors.

3181 And that is why I don't think we should have any carve-
3182 outs for different industries because this is the best way
3183 to go forward to address a problem that is really affecting
3184 American businesses. And I think it is the right thing to
3185 do.

3186 Mr. Conyers. So the gentleman --

3187 Mr. Quayle. Yes, I will yield once more.

3188 Mr. Conyers. The gentleman then believes that by
3189 allowing other parties to come in, that that would reduce
3190 costs, not increase costs?

3191 Mr. Quayle. Over the course of -- yes. Actually, over
3192 the course because you won't have people actually coming
3193 back and trying to sue going forward after the sue and
3194 settlement agreement is actually put into place.

3195 And I do believe that when you open up the process and
3196 get more voices in there, that is a good thing, rather than
3197 just having something that has been drafted behind closed
3198 doors and slammed down at the same time that the complaint
3199 is filed.

3200 Mr. Conyers. I thank the gentleman.

3201 Mr. Quayle. I think that is the right way to go.

3202 Mr. Conyers. Could I ask you this final question, sir?

3203 Mr. Quayle. Yes.

3204 Mr. Conyers. Why is it that this proposal, to my
3205 knowledge, has never been introduced before, even when your
3206 father was a Member of this body?

3207 Mr. Quayle. Well, that is because we actually had an
3208 administration that abided by the Meese memo, which was
3209 actually taken up by the Clinton administration as well.
3210 Unfortunately, the current administration is not abiding by
3211 the Meese memo, and it is really abusing sue and settlement
3212 agreements and that process in order to further their pro-
3213 regulatory environment.

3214 Mr. Conyers. Well, that is a serious finding against
3215 the administration. Could you help us satisfy my

3216 credibility about that by sometimes after the hearing, send
3217 me something about it?

3218 Mr. Quayle. We had a very interesting hearing on this,
3219 and we had a number of stakeholders and people involved in
3220 the process. And the people were calling that this
3221 administration is using sue and settlement agreements and
3222 consent decrees as an off-ramp to the normal regulatory
3223 process, which is basically taking it from a very
3224 transparent process to a very closed doors process.

3225 And that will -- we can send you the transcripts from
3226 that.

3227 Mr. Conyers. Well, my staff just whispered to me that
3228 there were accusations made at the hearing, but there was
3229 very little evidence. And I don't know if that is accurate
3230 or not?

3231 Mr. Quayle. I was at the hearing. I believe there was
3232 valid points and valid evidence that was made by our
3233 witnesses. And they provided very good background of how
3234 this process was being abused right now and how that the
3235 Meese memo, when it was in place at the Department of
3236 Justice, that it actually served as guideposts which are now

3237 no longer being adhered to.

3238 Mr. Conyers. I thank the gentleman.

3239 Mr. Quayle. I yield back. Thank you.

3240 Chairman Smith. The gentleman's time has expired.

3241 The vote occurs on the Nadler amendment. All in favor,

3242 say aye.

3243 [A chorus of ayes.]

3244 Chairman Smith. All opposed, no.

3245 [A chorus of nays.]

3246 Chairman Smith. In the opinion of the chair, the nays

3247 have it.

3248 Mr. Nadler. I ask for a roll call.

3249 Chairman Smith. And the gentleman requested -- I should

3250 have called it that to begin with. The clerk will call the

3251 roll.

3252 Ms. Kish. Mr. Smith?

3253 Chairman Smith. No.

3254 Ms. Kish. Mr. Smith votes no.

3255 Mr. Sensenbrenner?

3256 [No response.]

3257 Ms. Kish. Mr. Coble?

3258 [No response.]

3259 Ms. Kish. Mr. Gallegly?

3260 [No response.]

3261 Ms. Kish. Mr. Goodlatte?

3262 [No response.]

3263 Ms. Kish. Mr. Lungren?

3264 [No response.]

3265 Ms. Kish. Mr. Chabot?

3266 [No response.]

3267 Ms. Kish. Mr. Issa?

3268 [No response.]

3269 Ms. Kish. Mr. Pence?

3270 [No response.]

3271 Ms. Kish. Mr. Forbes?

3272 [No response.]

3273 Ms. Kish. Mr. King?

3274 [No response.]

3275 Ms. Kish. Mr. Franks?

3276 Mr. Franks. No.

3277 Ms. Kish. Mr. Franks votes no.

3278 Mr. Gohmert?

3279 [No response.]

3280 Ms. Kish. Mr. Jordan?

3281 [No response.]

3282 Ms. Kish. Mr. Poe?

3283 Mr. Poe. No.

3284 Ms. Kish. Mr. Poe votes no.

3285 Mr. Chaffetz?

3286 Mr. Chaffetz. No.

3287 Ms. Kish. Mr. Chaffetz votes no.

3288 Mr. Griffin?

3289 Mr. Griffin. No.

3290 Ms. Kish. Mr. Griffin votes no.

3291 Mr. Marino?

3292 [No response.]

3293 Ms. Kish. Mr. Gowdy?

3294 Mr. Gowdy. No.

3295 Ms. Kish. Mr. Gowdy votes no.

3296 Mr. Ross?

3297 Mr. Ross. No.

3298 Ms. Kish. Mr. Ross votes no.

3299 Mrs. Adams?

3300 Mrs. Adams. No.

3301 Ms. Kish. Mrs. Adams votes no.

3302 Mr. Quayle?

3303 Mr. Quayle. No.

3304 Ms. Kish. Mr. Quayle votes no.

3305 Mr. Amodei?

3306 Mr. Amodei. No.

3307 Ms. Kish. Mr. Amodei votes no.

3308 Mr. Conyers?

3309 Mr. Conyers. Aye.

3310 Ms. Kish. Mr. Conyers votes aye.

3311 Mr. Berman?

3312 [No response.]

3313 Ms. Kish. Mr. Nadler?

3314 [No response.]

3315 Ms. Kish. Mr. Scott?

3316 Mr. Scott. Aye.

3317 Ms. Kish. Mr. Scott votes aye.

3318 Mr. Watt?

3319 Mr. Watt. Aye.

3320 Ms. Kish. Mr. Watt votes aye.

3321 Ms. Lofgren?

3322 Ms. Lofgren. Aye.

3323 Ms. Kish. Ms. Lofgren votes aye.

3324 Ms. Jackson Lee?

3325 [No response.]

3326 Ms. Kish. Ms. Waters?

3327 Ms. Waters. Aye.

3328 Ms. Kish. Ms. Waters votes aye.

3329 Mr. Cohen?

3330 [No response.]

3331 Ms. Kish. Mr. Johnson?

3332 Mr. Johnson. Aye.

3333 Ms. Kish. Mr. Johnson votes aye.

3334 Mr. Pierluisi? Mr. Pierluisi?

3335 Mr. Pierluisi. Aye.

3336 Ms. Kish. Mr. Pierluisi votes aye.

3337 Mr. Quigley?

3338 Mr. Quigley. Aye.

3339 Ms. Kish. Mr. Quigley votes aye.

3340 Ms. Chu?

3341 Ms. Chu. Aye.

3342 Ms. Kish. Ms. Chu votes aye.

3343 Mr. Deutch?

3344 Mr. Deutch. Aye.

3345 Ms. Kish. Mr. Deutch votes aye.

3346 Ms. Sanchez?

3347 Ms. Sanchez. Aye.

3348 Ms. Kish. Ms. Sanchez votes aye.

3349 Mr. Polis?

3350 Mr. Polis. Aye.

3351 Ms. Kish. Mr. Polis votes aye.

3352 Chairman Smith. The gentleman from Ohio?

3353 Mr. Jordan. No.

3354 Ms. Kish. No. Mr. Jordan votes no.

3355 Chairman Smith. The gentleman from Virginia, Mr.

3356 Forbes?

3357 Mr. Forbes. No.

3358 Ms. Kish. Mr. Forbes votes no.

3359 Chairman Smith. The gentleman from California?

3360 Mr. Gallegly. No.

3361 Ms. Kish. Mr. Gallegly votes no.

3362 Chairman Smith. The gentleman from North Carolina?

3363 Mr. Coble. No.

3364 Ms. Kish. Mr. Coble votes no.

3365 Chairman Smith. The gentleman from California?

3366 Mr. Lungren. No.

3367 Ms. Kish. Mr. Lungren votes no.

3368 Chairman Smith. The gentleman from Iowa?

3369 Mr. King. No.

3370 Ms. Kish. Mr. King votes no.

3371 Chairman Smith. The gentleman from Ohio?

3372 Mr. Chabot. No.

3373 Ms. Kish. Mr. Chabot votes no.

3374 Chairman Smith. The gentleman from New York, Mr.

3375 Nadler?

3376 Mr. Nadler. Aye.

3377 Ms. Kish. Mr. Nadler votes aye.

3378 Chairman Smith. And the gentleman from Texas?

3379 Mr. Gohmert. No.

3380 Ms. Kish. Mr. Gohmert votes no.

3381 Chairman Smith. Okay. The clerk will report.

3382 Ms. Kish. Mr. Chairman, 13 Members voted aye; 18

3383 Members voted nay.

3384 Chairman Smith. A majority having voted against the
3385 amendment, the amendment is not agreed to.

3386 Are there other amendments? The gentlewoman from
3387 California, Ms. Waters, is recognized.

3388 Ms. Waters. Thank you very much, Mr. Chairman.

3389 I have an amendment at the desk.

3390 Chairman Smith. The clerk will report the amendment.

3391 Ms. Kish. Amendment to the Quayle amendment, offered by
3392 Ms. Waters of California. Page 1, line 5, strike "the
3393 provisions" and insert the following" "Except as provided
3394 in Subsection (d), the provisions." Page 8, insert after
3395 line 21 the following: "(d) Exception. The provisions of
3396 this --"

3397 Chairman Smith. Without objection, the amendment will
3398 be considered as read.

3399 [The amendment of Ms. Waters follows:]

3400

3401 Chairman Smith. And the gentlewoman is recognized to
3402 explain her amendment.

3403 Ms. Waters. Thank you very much, Mr. Chairman.

3404 My amendment would exclude from H.R. 3862 a consent
3405 decree or settlement agreement to reduce illness, chronic
3406 disease, death from exposure to toxic substances or
3407 hazardous waste in communities that are protected by
3408 Executive Order 12898. That is Federal actions to address
3409 environmental justice in minority populations and low-income
3410 populations.

3411 Today, low-income neighborhoods face disproportionately
3412 higher levels of air and water pollution, exposure to toxic
3413 waste, and other health hazards because Federal
3414 environmental laws are not always fairly implemented or
3415 enforced. Numerous governmental, academic, and
3416 nongovernmental organizations have documented this problem
3417 over the last three decades.

3418 Minority and low-income neighborhoods are more likely
3419 than more affluent communities to have environmental health
3420 hazards in their vicinity, including landfills,
3421 petrochemical plants, waste incinerators, and contaminated

3422 sites. Accordingly, Executive Order 12898, issued in 1994
3423 by President Clinton, directs Federal agencies to develop
3424 agency-wide environmental justice strategies that identify
3425 and address disproportionately high and adverse human health
3426 or environmental effects of its programs, policies, or
3427 activities on minority populations and low-income
3428 populations.

3429 Further, the order requires Federal agencies to provide
3430 minority populations and low-income populations the
3431 opportunity to comment on the development and design of
3432 research strategies undertaken pursuant to this order. In
3433 the years since Executive Order 12898 was issued, Federal
3434 agencies, including the EPA, have adopted commitments to
3435 integrate environmental justice concerns into their
3436 operations.

3437 Unfortunately, numerous studies have concluded that
3438 these commitments have not been fulfilled, and significant
3439 action is needed to meaningfully engage Federal agencies in
3440 general and EPA in particular in effective actions to end
3441 this form of unequal treatment under the law.

3442 A 1999 Institute of Medicine study toward environmental

3443 injustice research education and health policy needs
3444 concluded that people of color and low-income communities
3445 are exposed to higher levels of pollution than the rest of
3446 the Nation and that these same populations experience
3447 certain diseases in greater number than more affluent white
3448 communities.

3449 A 2000 study by the Dallas Morning News and the
3450 University of Texas-Dallas found that 870,000 of the 1.9
3451 million, that is 46 percent, housing units for the poor,
3452 mostly minorities, sit within about a mile of factories that
3453 reported toxic emissions to the EPA.

3454 Further, the U.S. Commission on Civil Rights 2002 study
3455 and report on the implementation of Executive Order 12898
3456 found that four Federal agencies, including EPA, have failed
3457 to incorporate environmental justice into their core
3458 missions, have not established accountability and
3459 performance outcomes for programs and activities, and that a
3460 commitment to environmental justice issues is often lacking
3461 from agency leadership.

3462 In addition to urban communities, rural low-income
3463 communities could also be adversely impacted by H.R. 3862.

3464 Mountaintop removal surface coal mining in central
3465 Appalachia, some of the poorest towns and counties in the
3466 United States in terms of income, has been associated with
3467 increased incidence of birth defects, cancer, and numerous
3468 other acute and chronic health impacts, including death
3469 caused by such illnesses.

3470 Yet when Federal agencies acknowledge to a consent
3471 decree or settlement that they have unlawfully denied or
3472 unreasonably denied regulations needed to prevent sickness
3473 and death caused by discriminatory treatment --

3474 Mr. Conyers. Could the gentlelady yield for a question?

3475 Ms. Waters. Unanimous consent for 30 more seconds to
3476 complete the statement.

3477 Chairman Smith. Without objection, the gentlewoman is
3478 recognized for an additional minute.

3479 Ms. Waters. H.R. 3862 could make that agency jump
3480 through more legal hoops before it can finally do this job.
3481 The bill requires settlements already negotiated to go to
3482 mediation of a third party like a polluting factory
3483 intervened. H.R. 3862 could prove disastrous to effective
3484 and efficient environmental regulations, and I am especially

3485 concerned with the impact this legislation would have on our
3486 Nation's most vulnerable and underserved communities.

3487 I urge my colleagues to consider the hazards coal mining
3488 communities face, as well as the health hazards that exist
3489 for other low-income neighborhoods that are near toxic
3490 conditions, and vote no on H.R. 3862.

3491 I yield back the balance of my time.

3492 Mr. Conyers. Could the gentlelady yield briefly?

3493 Ms. Waters. I yield to the gentleman from Michigan.

3494 Mr. Conyers. Isn't the basis of this exemption that a
3495 lot of companies could pile in on these pollution issues and
3496 make the cost of litigation beyond the reach of the people
3497 in the communities that are suffering proportionately more?

3498 Ms. Waters. Absolutely.

3499 Mr. Conyers. I thank the gentlelady.

3500 Chairman Smith. The gentlewoman yields back her time.

3501 The gentleman from Arizona, Mr. Quayle, is recognized.

3502 Mr. Quayle. Thank you, Mr. Chairman.

3503 And I thank the gentlelady for her amendment, although I
3504 do oppose the amendment.

3505 I just want to reiterate, excuse me, that the underlying

3506 -- that the bill or the amendment in the nature of a
3507 substitute in this regard does not block access for people
3508 to get consent decrees or sue and settlement agreements.
3509 All that it does is that it brings in transparency and
3510 public participation into the process so that we actually --
3511 all the stakeholders and all those that would be affected by
3512 the regulation and by the agreement, by the decree will have
3513 the ability to understand what is going to be implemented
3514 and then have a voice in this.

3515 So I urge my colleagues to reject the amendment because
3516 they still have the ability to get involved with the sue and
3517 settlement or consent decrees. This merely brings
3518 transparency and public participation into the process.

3519 And I yield back.

3520 Chairman Smith. I thank Mr. Quayle.

3521 Are there other Members who wish to be recognized?

3522 Mr. Watt. Mr. Chairman?

3523 Chairman Smith. The gentleman from North Carolina, Mr.
3524 Watt?

3525 Mr. Watt. Thank you, Mr. Chairman.

3526 I move to strike the last word.

3527 Chairman Smith. The gentleman is recognized for 5
3528 minutes.

3529 Mr. Watt. I rise in support of Ms. Waters' amendment,
3530 and I was going to take separate time on the bill itself,
3531 but I think this is as good an amendment as any to make the
3532 points that I want to make.

3533 First of all, I support her amendment and think that it
3534 is a good amendment. But my real concerns with this bill
3535 are that I think even the supporters of the bill are going
3536 to find that it has some substantial impacts that they have
3537 not anticipated and would not want.

3538 In the context as Ms. Waters has raised, you are setting
3539 -- the Government is setting a standard for environmental
3540 and hazardous waste and toxic substances that perhaps a
3541 community would welcome. But the bill also allows for the
3542 opposite of that to bring people into the process.

3543 Suppose the environmental standard is not as high as my
3544 community would like. Suppose the prison reform that is
3545 done under a rule or a settlement or a consent decree is not
3546 to the liking of the prison population. This bill gives the
3547 right of any private party who is affected, either adversely

3548 or positively, the right to come in, and it does it in a
3549 whole range of cases -- antitrust cases, civil rights case,
3550 prison reform cases, disability rights cases, employment
3551 discrimination cases, voting rights cases. And in effect,
3552 you are opening up the entire process.

3553 Now I am sure you will -- if this bill were to become
3554 law, you would quickly realize how devastating the
3555 consequences are of what you are doing because something
3556 that affects the rights of private parties affects those
3557 rights both positively or negatively and opens up the
3558 process to do exactly what you want, which is to stop bad
3559 settlements and consent decrees from going into effect. But
3560 it also stops the things that you would want to go into
3561 effect from going into effect by basically allowing anybody
3562 at the end of the process, after the case has been settled
3563 or tried, a settlement is reached. A consent decree is
3564 often reached at the end of the trial.

3565 You then go back and give the opportunity for somebody
3566 to intervene in a case that has already been tried and upset
3567 the outcome of that case. This is -- next to the bill we
3568 just considered and passed out of this committee, this is

3569 about the second-worst idea that we have had today.

3570 I mean, it is just I don't think you understand the
3571 consequences of what you are doing here. This is a major,
3572 major interruption in the legal process that -- and then you
3573 give people the right, the presumptive right to file amicus
3574 briefs, the presumptive rights to intervene in cases after
3575 they have already been tried, mind you, resulting in delay
3576 of any kind of action, good or bad, resulting in protracted
3577 litigation, which is contrary to everything that I have
3578 heard in this committee your side of the aisle stands for.
3579 You don't want any protracted litigation.

3580 And here we are in this bill, just inviting the
3581 protraction of litigation, inviting delay, inviting more
3582 expenditure of funds by parties who really can just rope a
3583 dope and game the system for as long as the courts will
3584 allow them to do that, and you have given them the license
3585 to do it in this bill.

3586 I just don't understand. I mean, you know, you all get
3587 caught up in your philosophical beliefs about government and
3588 things, and then you go overboard and react in ways that are
3589 just stupid. I don't know how else to characterize this.

3590 I don't think you have thought through the implications
3591 of what this bill does.

3592 Chairman Smith. The gentleman's time has expired.

3593 Mr. Watt. All right. I have said enough. I yield
3594 back.

3595 [Laughter.]

3596 Chairman Smith. Thank you, Mr. Watt.

3597 Are there other Members who wish to be heard on Ms.
3598 Waters' bill, or amendment?

3599 If not, all in favor of the Waters amendment, say aye.

3600 [A chorus of ayes.]

3601 Chairman Smith. Opposed, say no.

3602 [A chorus of nays.]

3603 Chairman Smith. And the clerk will call the roll.

3604 Ms. Kish. Mr. Smith?

3605 Chairman Smith. No.

3606 Ms. Kish. Mr. Smith votes no.

3607 Mr. Sensenbrenner?

3608 [No response.]

3609 Ms. Kish. Mr. Coble?

3610 [No response.]

3611 Ms. Kish. Mr. Gallegly?

3612 Mr. Gallegly. No.

3613 Ms. Kish. Mr. Gallegly votes no.

3614 Mr. Goodlatte?

3615 [No response.]

3616 Ms. Kish. Mr. Lungren?

3617 Mr. Lungren. No.

3618 Ms. Kish. Mr. Lungren votes no.

3619 Mr. Chabot?

3620 [No response.]

3621 Ms. Kish. Mr. Issa?

3622 [No response.]

3623 Ms. Kish. Mr. Pence?

3624 [No response.]

3625 Ms. Kish. Mr. Forbes?

3626 [No response.]

3627 Ms. Kish. Mr. King?

3628 [No response.]

3629 Ms. Kish. Mr. Franks?

3630 Mr. Franks. No.

3631 Ms. Kish. Mr. Franks votes no.

3632 Mr. Gohmert?

3633 [No response.]

3634 Ms. Kish. Mr. Jordan?

3635 [No response.]

3636 Ms. Kish. Mr. Poe?

3637 Mr. Poe. No.

3638 Ms. Kish. Mr. Poe votes no.

3639 Mr. Chaffetz?

3640 [No response.]

3641 Ms. Kish. Mr. Griffin?

3642 Mr. Griffin. No.

3643 Ms. Kish. Mr. Griffin votes no.

3644 Mr. Marino?

3645 [No response.]

3646 Ms. Kish. Mr. Gowdy?

3647 Mr. Gowdy. No.

3648 Ms. Kish. Mr. Gowdy votes no.

3649 Mr. Ross?

3650 Mr. Ross. No.

3651 Ms. Kish. Mr. Ross votes no.

3652 Mrs. Adams?

3653 Mrs. Adams. No.

3654 Ms. Kish. Mrs. Adams votes no.

3655 Mr. Quayle?

3656 Mr. Quayle. No.

3657 Ms. Kish. Mr. Quayle votes no.

3658 Mr. Amodei?

3659 Mr. Amodei. No.

3660 Ms. Kish. Mr. Amodei votes no.

3661 Mr. Conyers?

3662 Mr. Conyers. Aye.

3663 Ms. Kish. Mr. Conyers votes aye.

3664 Mr. Berman?

3665 [No response.]

3666 Ms. Kish. Mr. Nadler?

3667 Mr. Nadler. Aye.

3668 Ms. Kish. Mr. Nadler votes aye.

3669 Mr. Scott?

3670 Mr. Scott. Aye.

3671 Ms. Kish. Mr. Scott votes aye.

3672 Mr. Watt?

3673 Mr. Watt. Aye.

3674 Ms. Kish. Mr. Watt votes aye.

3675 Ms. Lofgren?

3676 Ms. Lofgren. Aye.

3677 Ms. Kish. Ms. Lofgren votes aye.

3678 Ms. Jackson Lee?

3679 Ms. Jackson Lee. Aye.

3680 Ms. Kish. Ms. Jackson Lee votes aye.

3681 Ms. Waters?

3682 Ms. Waters. Aye.

3683 Ms. Kish. Ms. Waters votes aye.

3684 Mr. Cohen?

3685 [No response.]

3686 Ms. Kish. Mr. Johnson?

3687 [No response.]

3688 Ms. Kish. Mr. Pierluisi?

3689 Mr. Pierluisi. Aye.

3690 Ms. Kish. Mr. Pierluisi votes aye.

3691 Mr. Quigley?

3692 Mr. Quigley. Aye.

3693 Ms. Kish. Mr. Quigley votes aye.

3694 Ms. Chu?

3695 Ms. Chu. Aye.

3696 Ms. Kish. Ms. Chu votes aye.

3697 Mr. Deutch?

3698 Mr. Deutch. Aye.

3699 Ms. Kish. Mr. Deutch votes aye.

3700 Ms. Sanchez?

3701 Ms. Sanchez. Aye.

3702 Ms. Kish. Ms. Sanchez votes aye.

3703 Mr. Polis?

3704 Mr. Polis. Aye.

3705 Ms. Kish. Mr. Polis votes aye.

3706 Chairman Smith. The gentleman from North Carolina?

3707 Mr. Coble. No.

3708 Ms. Kish. Mr. Coble votes no.

3709 Chairman Smith. The gentleman from Ohio?

3710 Mr. Chabot. No.

3711 Ms. Kish. Mr. Chabot votes no.

3712 Chairman Smith. The gentleman from Iowa?

3713 Mr. King. No.

3714 Ms. Kish. Mr. King votes no.

3715 Chairman Smith. The gentleman from Texas?

3716 Mr. Gohmert. No.

3717 Ms. Kish. Mr. Gohmert votes no.

3718 Chairman Smith. The clerk will report.

3719 The clerk will suspend.

3720 I thought there was somebody on the way. No?

3721 Okay, the clerk will report.

3722 Ms. Kish. Mr. Chairman, 13 Members voted aye; 15

3723 Members voted nay.

3724 Chairman Smith. A majority having voted against the

3725 amendment, the amendment is not agreed to.

3726 Are there other amendments --

3727 Ms. Jackson Lee. Mr. Chairman?

3728 Chairman Smith. -- to the manager's amendment?

3729 The gentlewoman from Texas, Ms. Jackson Lee?

3730 Ms. Jackson Lee. I have an amendment at the desk. It

3731 is amendment No. 23, and listed as number three on the

3732 roster.

3733 Chairman Smith. The clerk will report the amendment.

3734 Ms. Kish. Amendment to the Quayle amendment offered by

3735 Ms. Jackson Lee. Page 1, line 5, strike "The provisions,"

3736 and insert "Except as provided in subsection (d), the

3737 provisions." Page 8, insert after line 21 the following:

3738 (d) Exception. The provisions of this Act shall not apply
3739 in the case of a consent decree or settlement agreement that
3740 prevents or is intended to prevent birth defects in infants.

3741 [The amendment of Ms. Jackson Lee follows:]

3742

3743 Chairman Smith. The gentlewoman from Texas is
3744 recognized to explain her amendment.

3745 Ms. Jackson Lee. I join a number of Members that I have
3746 heard discuss this particular legislation with an
3747 inquisitive eye. And if you will attempt to try to
3748 understand, when you look at the legal system, consent
3749 decrees and settlements are what we call efficiencies of
3750 scale that mean that you have reached a settlement to end
3751 long-winded litigation. You have brought about the best
3752 solution possible, in some instances, for all parties
3753 concerned. And you have stopped the devastation or the
3754 dastardly circumstances that have caused you to enter into
3755 this particular disagreement and attempt to resolve.

3756 So my amendment will prevent this act from applying to
3757 any decree or agreement that prevents or is intended to
3758 prevent birth defects in infants.

3759 If one would like to know what are birth defects, birth
3760 defects are structural or functional abnormalities present
3761 at birth that cause physical or mental disability. Some are
3762 fatal. Researchers have identified thousands of different
3763 birth defects. Currently, birth defects are the leading

3764 cause of death for infants during the first year of life.

3765 Birth defects can be caused by a number of factors, many
3766 of which can be reduced or prevented, including exposure to
3767 environmental pollutants or to disease, such as rubella and
3768 strep infections.

3769 For example, preventable causes of birth defects recent
3770 peer-reviewed scientific research reports have associated
3771 mountaintop removal with elevated levels of six of seven
3772 categories of birth defects studied: respiratory, central
3773 nervous center, circulatory, musculoskeletal,
3774 gastrointestinal, urogenital, and other effects.

3775 Other examples include prenatal exposure to mercury from
3776 industrial sources; exposures to lead, which causes
3777 developmental learning disabilities, as well as other health
3778 problems when pregnant women are exposed to lead in their
3779 drinking water or lead paint in their homes; or toxics in
3780 household products; unsafe drugs used during pregnancy.

3781 These are a few of the impacts of birth defects. And if
3782 there is a consent decree, if there is a settlement, I don't
3783 know why we would want to delay implementation. It is
3784 important for Federal agencies responsible for protecting

3785 babies from birth defects to be allowed to adopt common-
3786 sense regulations without the roadblocks thrown at them by
3787 this bill. And this includes such agencies as HHS doing
3788 research on birth defects or the research of birth defects
3789 done by the National Institutes of Health, the U.S. Surgeon
3790 General, the National Institute of Environmental Health
3791 Sciences, as well as agencies like the EPA and the Consumer
3792 Product Safety Commission.

3793 What is it about consent decrees and settlements? As a
3794 lawyer, I thought that that was a way of resolving, as I
3795 said, onerous, long-protracted litigation that stops the
3796 helping of people who need help.

3797 My amendment is simple. To protect babies from birth
3798 defects, we will not intervene with this legislation as it
3799 relates to consent decrees and settlements.

3800 How simple a request could I offer? And I would ask my
3801 colleagues to join me in this common-sense amendment.

3802 Birth defects can cause fatalities, but it can also
3803 cause a life that is impacted forever and ever. I would ask
3804 my colleagues to join me, again, in the amendment, the
3805 Jackson Lee amendment, that exempts birth -- preventing or

3806 is intended to prevent birth defects, to this legislation.

3807 Chairman Smith. Thank you, Ms. Jackson Lee.

3808 The gentleman from Arizona, Mr. Quayle, is recognized.

3809 Mr. Quayle. Thank you, Mr. Chairman.

3810 I thank the gentlelady for her amendment, although I do
3811 oppose the amendment.

3812 I just want to make it very clear that the problem with
3813 what is occurring now with settlements, or sue and
3814 settlement agreements, isn't that they are a part of a
3815 protracted litigation or process. It is the fact that, many
3816 times, there is a complaint and a settlement agreement filed
3817 on the same day, so that those that will be regulated by
3818 this rule, by this agreement, didn't even know that the
3819 complaint was filed, because it hadn't been filed, and they
3820 have the agreement that is put in place on the same day that
3821 the complaint was filed; therefore, just basically getting
3822 rid of any ability for them to have a voice to make sure
3823 that their concerns are well-known.

3824 I think that this bill actually takes care of that,
3825 brings them into the process, brings transparency to the
3826 process. And I believe that Ms. Jackson Lee's well-intended

3827 amendment is overly broad in this sense, because any
3828 environmental settlement agreement, all it would have to say
3829 is that it is intended to prevent birth defects and then it
3830 would get out of the transparency compliance and getting
3831 people involved in the process.

3832 I believe that that would just be getting a carve-out
3833 that is unnecessary. Once again, this does not get rid of
3834 the ability for people to get consent decrees or sue and
3835 settlement agreements. It is merely to provide transparency
3836 and participation, and I urge my colleagues to --

3837 Ms. Jackson Lee. Will the gentleman yield?

3838 Mr. Quayle. I am just going to yield back. Thank you.

3839 Chairman Smith. The gentleman yields back his time.

3840 Are there other Members who wish to be heard on the
3841 amendment?

3842 Mr. Conyers. Mr. Chairman?

3843 Chairman Smith. The gentleman Michigan, Mr. Conyers?

3844 Mr. Conyers. I would yield to gentlelady before I begin
3845 my comments.

3846 Ms. Jackson Lee. Just a simple point, Mr. Conyers.

3847 Thank you very much for yielding.

3848 Once you have an agreement and it translates into a
3849 regulatory process, there is all manner of ability for those
3850 who oppose that regulatory response to challenge it as it
3851 impacts them or causes irreparable harm.

3852 The consent decree comes because someone has been
3853 injured or damaged, or there is a worthiness to the
3854 settlement of it. In this instance, I have argued that
3855 birth defects rise above our simple inconvenience that it
3856 may be too broad. This has to be to do with living babies;
3857 this has to do with saving lives; this has to do with
3858 protecting the quality of life of our babies. And I am
3859 shocked by the opposition that always claims that they have
3860 the large banner that wants to protect the lives of newborn
3861 babies.

3862 I yield back to the gentleman.

3863 Mr. Conyers. I thank the gentlelady.

3864 May I point out that Ben Quayle's observation that many
3865 times the complaint and the settlement agreement occur
3866 sometimes on the same day, and that may be true, but if we
3867 don't make the exception that the gentlelady from Texas has
3868 recommended, we are going to see others get into this, and

3869 it is not going to be settled on the same day. You are not
3870 going to have parties that are now going to be permitted to
3871 join in consent agreements all settling on the same day. I
3872 think there would be less likelihood of that happening.

3873 Mr. Quayle. Would the --

3874 Mr. Conyers. Yes, of course.

3875 Mr. Quayle. Yes, that is correct.

3876 Mr. Conyers. Well, the fact of the matter is, I thought
3877 that it would be good that we settled as quickly as we can.
3878 I don't think that the pharmaceutical companies are going to
3879 be trying to settle on the same day. They are going to be
3880 trying to stretch it out. How many expectant mothers are
3881 prepared to sue a couple of one or two or more of pharmacy
3882 companies, which are pretty large size?

3883 Mr. Quayle. Will the gentleman yield?

3884 Mr. Conyers. Of course.

3885 Mr. Quayle. This would not affect any individual right
3886 of action against a pharmaceutical company. They could have
3887 a private right of action for damages for any sort of --

3888 Mr. Conyers. No, the pharmacy companies would be coming
3889 in to stifle the consent agreement itself. They wouldn't be

3890 trying to cooperate.

3891 Well, here is what I am saying, is that this is a very
3892 sensitive matter, and I don't think it is accidental that a
3893 female member of the committee brought this up. This is
3894 something that we should all be concerned about. I am
3895 looking at a New York Times report that doctors have begun
3896 to see more kinds of cases in which bones of arms fail to
3897 develop, and legs fail to develop, and that since 50 years
3898 ago have become more familiar because pregnant women were
3899 taking Thalidomide for morning sickness. And they found out
3900 that this was necessary.

3901 So, Ben, I am very doubtful that the pharmaceutical
3902 companies will be coming in anxious to settle. As a matter
3903 of fact, they could keep a mother in court for much longer
3904 than she ever intended when she just wanted to bring someone
3905 else into the world.

3906 And I will yield to you again, if you like.

3907 Mr. Quayle. Yes, I just want to make the point that
3908 this does not apply to anybody who has a private right of
3909 action against a pharmaceutical company for damages based on
3910 either negligence or actual issues with that.

3911 This is in terms of the regulatory process. This is not
3912 involved with a private right of action. So if a mother had
3913 a claim against some corporation, they can have that.

3914 Mr. Conyers. I quite agree with you. But when the
3915 pharmaceutical company comes in on a case like this, Mr.
3916 Quayle, they are not cutting off somebody's right to sue.
3917 They are going to interfere with the consent agreement
3918 between the Government and the mother. You are thinking
3919 about it from the wrong perspective.

3920 We are not giving her a right to sue later on. She
3921 wants fewer people in on a settlement, not more rights to
3922 sue.

3923 Mr. Gowdy. Will the gentleman yield?

3924 Chairman Smith. The gentleman's time has expired. But
3925 without objection, the gentleman is yielded an additional
3926 minute.

3927 Mr. Conyers. Yes, sir? Mr. Gowdy.

3928 Mr. Gowdy. What fact pattern have you created where the
3929 mother would be suing the Government?

3930 Mr. Conyers. To enforce the Government's statutory -- a
3931 violation if it is a consent decree.

3932 Mr. Gowdy. You know what, I am trying to imagine the
3933 scenario under which the mother of a child born with a birth
3934 defect is suing the United States Government, and a
3935 pharmaceutical company wants to come in and object to the
3936 settlement.

3937 Ms. Jackson Lee. Will the gentleman yield?

3938 Mr. Gowdy. Sure.

3939 Ms. Jackson Lee. It could be a class action.

3940 Mr. Gowdy. Well, why would you sue the United States
3941 Government in a class action? It is two private litigants.

3942 Mr. Conyers. Well, look --

3943 Mr. Johnson. Will the gentleman yield?

3944 Mr. Conyers. Without trying to describe a case for you
3945 --

3946 Ms. Jackson Lee. Right.

3947 Mr. Johnson. Well, I can describe one.

3948 Mr. Conyers. If there aren't any disagreements, if
3949 there is no reason for a consent decree, fine. But I am
3950 thinking that somewhere along the line, with all of our
3951 hospitals, medical systems, Medicare, Medicaid, et cetera,
3952 that there could easily be a suit between an expectant

3953 mother and some form of Government that would require a
3954 consent decree.

3955 Chairman Smith. Okay, the gentleman's time has expired.

3956 Any other Member wish to be recognized?

3957 The gentleman from Georgia, Mr. Johnson?

3958 Mr. Johnson. Thank you, Mr. Chairman. I ask to strike
3959 the last word.

3960 Chairman Smith. The gentleman is recognized for 5
3961 minutes.

3962 Mr. Johnson. Thank you.

3963 I can offer an example. It could be a case against a
3964 Federal agency, Food and Drug Administration, that had
3965 evidence of a drug that was approved, could be a sole-source
3966 type of drug that was approved for use exclusively by a
3967 Medicare recipient, or by a Medicaid recipient, let's say.
3968 And the drug had some problems with it that resulted in
3969 damages to the unborn child, and the mother sues under a
3970 products liability situation, and also sues the Government
3971 for withholding information in its files under the Freedom
3972 of Information Act that would have or should have caused the
3973 Government to withdraw funding for that drug.

3974 And so the Freedom of Information Act request has gone
3975 in; it was not responded to. And the consent decree with
3976 the Government may provide that these Freedom of Information
3977 Act requests will be dealt with according to law in the
3978 future.

3979 And I will yield to --

3980 Mr. Conyers. Let me just point out that Thalidomide was
3981 one of the drugs that got involved in litigation, whether it
3982 was misused or abused; I don't know what the issue could be.
3983 But they started finding out that there was a big problem.

3984 So that is just one example of an infinite number.

3985 Mr. Gowdy. But how would passing this bill have kept
3986 that from happening? How would passing this bill have
3987 impacted that settlement at all?

3988 Mr. Conyers. It would have protected the privacy of the
3989 parties, sir.

3990 Mr. Gowdy. But you can do that anyway with settlement
3991 agreements. You can protect the privacy of everyone. You
3992 can protect the terms of the settlement.

3993 Mr. Conyers. Not with this bill.

3994 Mr. Johnson. I will reclaim my time and point out that

3995 this is a bill that is on a fast track. It is straight to
3996 the bottom, as far as regulatory actions that help make life
3997 better for Americans.

3998 And with that, I will yield back.

3999 Chairman Smith. The gentleman yields back.

4000 The question is on the Jackson Lee amendment.

4001 All in favor, say aye.

4002 [A chorus of ayes.]

4003 Chairman Smith. Opposed, no.

4004 [A chorus of nays.]

4005 Chairman Smith. In the opinion of the Chair -- the
4006 clerk will call the roll.

4007 Ms. Kish. Mr. Smith?

4008 Chairman Smith. No.

4009 Ms. Kish. Mr. Smith votes no.

4010 Mr. Sensenbrenner?

4011 [No response.]

4012 Ms. Kish. Mr. Coble?

4013 [No response.]

4014 Ms. Kish. Mr. Gallegly?

4015 [No response.]

4016 Ms. Kish. Mr. Goodlatte?
4017 [No response.]
4018 Ms. Kish. Mr. Lungren?
4019 Mr. Lungren. No.
4020 Ms. Kish. Mr. Lungren votes no.
4021 Mr. Chabot?
4022 [No response.]
4023 Ms. Kish. Mr. Issa?
4024 [No response.]
4025 Ms. Kish. Mr. Pence?
4026 [No response.]
4027 Ms. Kish. Mr. Forbes?
4028 [No response.]
4029 Ms. Kish. Mr. King?
4030 [No response.]
4031 Ms. Kish. Mr. Franks?
4032 Mr. Franks. No.
4033 Ms. Kish. Mr. Franks votes no.
4034 Mr. Gohmert?
4035 [No response.]
4036 Ms. Kish. Mr. Jordan?

4037 [No response.]

4038 Mr. Jordan. No.

4039 Ms. Kish. Mr. Jordan votes no.

4040 Mr. Poe?

4041 Mr. Poe. No.

4042 Ms. Kish. Mr. Poe votes no.

4043 Mr. Chaffetz?

4044 Mr. Chaffetz. No.

4045 Ms. Kish. Mr. Chaffetz votes no.

4046 Mr. Griffin?

4047 [No response.]

4048 Ms. Kish. Mr. Marino?

4049 [No response.]

4050 Ms. Kish. Mr. Gowdy?

4051 Mr. Gowdy. No.

4052 Ms. Kish. Mr. Gowdy votes no.

4053 Mr. Ross?

4054 Mr. Ross. No.

4055 Ms. Kish. Mr. Ross votes no.

4056 Mrs. Adams?

4057 Mrs. Adams. No.

4058 Ms. Kish. Mrs. Adams votes no.
4059 Mr. Quayle?
4060 Mr. Quayle. No.
4061 Ms. Kish. Mr. Quayle votes no.
4062 Mr. Amodei.
4063 [No response.]
4064 Ms. Kish. Mr. Conyers?
4065 Mr. Conyers. Aye.
4066 Ms. Kish. Mr. Conyers votes aye.
4067 Mr. Berman?
4068 [No response.]
4069 Ms. Kish. Mr. Nadler?
4070 Mr. Nadler. Aye.
4071 Ms. Kish. Mr. Nadler votes aye.
4072 Mr. Scott?
4073 Mr. Scott. Aye.
4074 Ms. Kish. Mr. Scott votes aye.
4075 Mr. Watt?
4076 Mr. Watt. Aye.
4077 Ms. Kish. Mr. Watt votes aye.
4078 Ms. Lofgren?

4079 Ms. Lofgren. Aye.

4080 Ms. Kish. Ms. Lofgren votes aye.

4081 Ms. Jackson Lee?

4082 Ms. Jackson Lee. Aye.

4083 Ms. Kish. Ms. Jackson Lee votes aye.

4084 Ms. Waters?

4085 Ms. Waters. Aye.

4086 Ms. Kish. Ms. Waters votes aye.

4087 Mr. Cohen?

4088 [No response.]

4089 Ms. Kish. Mr. Johnson?

4090 Mr. Johnson. Aye.

4091 Ms. Kish. Mr. Johnson votes aye.

4092 Mr. Pierluisi?

4093 Mr. Pierluisi. Aye.

4094 Ms. Kish. Mr. Pierluisi votes aye.

4095 Mr. Quigley?

4096 Mr. Quigley. Aye.

4097 Ms. Kish. Mr. Quigley votes aye.

4098 Ms. Chu?

4099 Ms. Chu. Aye.

4100 Ms. Kish. Ms. Chu votes aye.

4101 Mr. Deutch?

4102 Mr. Deutch. Aye.

4103 Ms. Kish. Mr. Deutch votes aye.

4104 Ms. Sanchez?

4105 Ms. Sanchez. Aye.

4106 Ms. Kish. Ms. Sanchez votes aye.

4107 Mr. Polis?

4108 Mr. Polis. Aye.

4109 Ms. Kish. Mr. Polis votes aye.

4110 Chairman Smith. The gentleman from North Carolina?

4111 Mr. Coble. No.

4112 Ms. Kish. Mr. Coble votes no.

4113 Chairman Smith. The gentleman from California?

4114 Mr. Gallegly. No.

4115 Ms. Kish. Mr. Gallegly votes no.

4116 Chairman Smith. The gentleman from Ohio?

4117 Mr. Chabot. No.

4118 Ms. Kish. Mr. Chabot votes no.

4119 Chairman Smith. The gentleman from Iowa?

4120 Mr. King. No.

4121 Ms. Kish. Mr. King votes no.

4122 Chairman Smith. The gentleman from Texas, Mr. Gohmert?

4123 Mr. Gohmert. No.

4124 Ms. Kish. Mr. Gohmert votes no.

4125 Chairman Smith. And the gentleman from Arkansas?

4126 Mr. Griffin. No.

4127 Ms. Kish. Mr. Griffin votes no.

4128 Chairman Smith. The clerk will report.

4129 Ms. Jackson Lee. How am I recorded?

4130 Chairman Smith. The clerk will suspend.

4131 How is the gentlewoman from Texas recorded?

4132 Ms. Kish. Ms. Jackson Lee is recorded as aye.

4133 Chairman Smith. The clerk will report.

4134 Ms. Kish. Mr. Chairman, 14 Members voted aye; 16

4135 Members voted no.

4136 Chairman Smith. A majority having voted against the

4137 amendment, the amendment is not agreed to.

4138 The Judiciary Committee is going to stand in recess

4139 until we take this one vote, and then we will resume markup

4140 immediately after this vote. And I would expect us to have

4141 about an hour to continue the consideration of this bill.

4142 [Recess.]

4143 Chairman Smith. The Judiciary Committee will reconvene,

4144 and the clerk will call the roll.

4145 Ms. Kish. Mr. Smith?

4146 Chairman Smith. Present.

4147 Mr. Sensenbrenner?

4148 Mr. Coble?

4149 Mr. Gallegly?

4150 Mr. Goodlatte?

4151 Mr. Lungren?

4152 Mr. Chabot?

4153 Mr. Issa?

4154 Mr. Pence?

4155 Mr. Forbes?

4156 Mr. King?

4157 Mr. Franks?

4158 Mr. Franks. Here.

4159 Ms. Kish. Mr. Gohmert?

4160 Mr. Jordan?

4161 Mr. Poe?

4162 Mr. Poe. Here.

4163 Ms. Kish. Mr. Chaffetz?
4164 Mr. Griffin?
4165 Mr. Griffin. Here.
4166 Ms. Kish. Mr. Marino?
4167 Mr. Gowdy?
4168 Mr. Ross?
4169 Mrs. Adams?
4170 Mrs. Adams. Here.
4171 Ms. Kish. Mr. Quayle?
4172 Mr. Quayle. Here.
4173 Ms. Kish. Mr. Amodei?
4174 Mr. Conyers?
4175 Mr. Berman?
4176 Mr. Nadler?
4177 Mr. Scott?
4178 Mr. Watt?
4179 Mr. Watt. Here.
4180 Ms. Kish. Ms. Lofgren?
4181 Ms. Lofgren. Here.
4182 Ms. Kish. Ms. Jackson Lee?
4183 Ms. Waters?

4184 Mr. Cohen?

4185 Mr. Johnson?

4186 Mr. Johnson. Present.

4187 Ms. Kish. Mr. Pierluisi?

4188 Mr. Pierluisi. Here.

4189 Ms. Kish. Mr. Quigley?

4190 Ms. Chu?

4191 Mr. Deutch?

4192 Ms. Sanchez?

4193 Mr. Polis?

4194 Chairman Smith. The gentleman from Virginia?

4195 Mr. Scott. Here.

4196 Chairman Smith. The gentleman from California?

4197 Mr. Lungren. Here.

4198 Chairman Smith. The gentleman from North Carolina?

4199 Mr. Coble. Here.

4200 Chairman Smith. The gentleman from North Carolina?

4201 Ms. Kish. Mr. Watt?

4202 Mr. Watt. Present.

4203 Chairman Smith. The gentlewoman from California, Ms.

4204 Chu?

4205 Ms. Chu. Here.

4206 Chairman Smith. The clerk will report.

4207 Ms. Kish. Mr. Chairman, 14 Members responded present.

4208 Chairman Smith. A working quorum is present. We will
4209 proceed with consideration of amendments to Mr. Quayle's
4210 manager's amendment.

4211 Are there any amendments?

4212 The gentleman from Georgia, Mr. Johnson?

4213 Mr. Johnson. I have an amendment at the desk.

4214 Chairman Smith. The clerk will report the amendment.

4215 Ms. Kish. Amendment to the Quayle amendment offered by
4216 Mr. Johnson. Page 1, line 5, strike "The provisions" and
4217 insert "Except as provided in subsection (d), the
4218 provisions." Page 8, insert after line 21 the following:
4219 (d) Exception. The provisions of this Act shall not apply
4220 in the case of consent decree or settlement agreement that
4221 would create jobs.

4222 [The amendment of Mr. Johnson follows:]

4223

4224 Chairman Smith. The gentleman is recognized to explain
4225 his amendment.

4226 Mr. Johnson. Thank you, Mr. Chairman.

4227 My amendment would make an exception for a consent
4228 decree or settlement agreement that would create jobs. I
4229 would hope that my friends on both sides of the aisle would
4230 have a desire to improve the economy and take actions to
4231 foster job growth.

4232 Consent decrees and settlement agreements help ensure
4233 that agencies take necessary action by a certain date. This
4234 bill would slow down the process by which such consent
4235 decrees and settlement agreements are entered.

4236 I have serious issues with this bill. It has the
4237 ability to prevent Federal regulatory actions from being
4238 implemented, even when they may create jobs. There is no
4239 need to fast-track a bill that could have such a detrimental
4240 effect on our economy.

4241 Again, I would like to reiterate that regulations do not
4242 inherently kill jobs. To the contrary, they save lives and
4243 even promote job growth. I would urge all of my colleagues
4244 to support this amendment.

4245 Thank you, Mr. Chairman. And I yield back the balance
4246 of my time.

4247 Chairman Smith. Thank you, Mr. Johnson.

4248 The gentleman from Arizona, Mr. Quayle?

4249 Mr. Quayle. Thank you, Mr. Chairman.

4250 And I think we all are very cognizant of the fact that
4251 we need more job creation. However, I don't think this
4252 amendment does that. And that is why I oppose the
4253 amendment.

4254 This amendment seeks less transparency, public
4255 participation, and judicial review for consent decrees and
4256 settlement agreements for regulations that will help to
4257 create jobs, supposedly.

4258 That is precisely backwards. More transparency, public
4259 input, and judicial scrutiny will only help to produce
4260 regulations that will create more jobs, not less. I will
4261 just give one anecdotal piece of evidence to this fact, was
4262 that one of the consent decrees with the utility MACT
4263 revisions that came out recently has a negative effect on my
4264 home State of Arizona on the Navajo Generating Station.
4265 That, if fully implemented, could result in the loss of

4266 hundreds of jobs in the tribal regions in northeast Arizona.

4267 This is just one reason why we need to make sure that we
4268 are having a transparent process, a process with public
4269 participation, and further judicial review.

4270 I urge my colleagues to oppose this amendment, and I
4271 yield back.

4272 Chairman Smith. Thank you, Mr. Quayle.

4273 Are there other Members who wish to speak on Mr.
4274 Johnson's amendment?

4275 If not, the question is on the amendment.

4276 All in favor, say aye.

4277 [A chorus of ayes.]

4278 Chairman Smith. Opposed, nay.

4279 [A chorus of nays.]

4280 Chairman Smith. In the opinion of the Chair, the nays
4281 have it. The amendment is not agreed to.

4282 Are there other amendments to this manager's amendment?

4283 The clerk will report Mr. Johnson's amendment number --
4284 I think it is 18? Number seven on our schedule.

4285 Ms. Kish. Amendment to the Quayle amendment offered by
4286 Mr. Johnson. Page 1, line 5, strike "The provisions" and

4287 insert "Except as provided in subsection (d), the
4288 provisions." Page 8, insert after line 21 the following:
4289 (d) Exception. The provisions of this Act shall not apply
4290 in case of consent decree or settlement agreement pertaining
4291 to the Patient Protection and Affordable Care Act.

4292 [The amendment of Mr. Johnson follows:]

4293

4294 Chairman Smith. The gentleman is recognized to speak in
4295 favor of his amendment.

4296 Mr. Johnson. Thank you, Mr. Chairman.

4297 My amendment excepts a consent decree or settlement
4298 agreement pertaining to the Affordable Care Act from the
4299 provisions of the bill.

4300 The problem with this bill is that it could lead to a
4301 series of harmful consequences. The most tragic aspect of
4302 this bill is that it would interfere with Federal agencies'
4303 legal duties to adopt regulations to ensure that the law is
4304 followed when justice has been denied or unreasonably
4305 delayed.

4306 Again, I want to stress that we should not play politics
4307 when it comes to the health and well-being of the American
4308 public. We should take special care to ensure that no one's
4309 access to health care is interrupted because of a stalled
4310 consent decree or settlement agreement that could be
4311 prolonged into costly litigation under this bill. At the
4312 very least, consent decrees and settlement agreements
4313 pertaining to the Affordable Care Act should not be held
4314 hostage.

4315 If you take the health and welfare of the American
4316 people seriously, you should vote yes on this amendment.

4317 Thank you, Mr. Chairman. And I yield back the balance
4318 of my time.

4319 Chairman Smith. The gentleman yields back his time.

4320 The gentleman from Arizona, Mr. Quayle, is recognized.

4321 Mr. Quayle. Thank you, Mr. Chairman.

4322 The fact that so many of the different regulations have
4323 lapsed with regard to the Affordable Care Act is precisely
4324 why this bill is needed, and that is why I oppose the
4325 amendment.

4326 The amendment seeks less transparency, public
4327 participation, and judicial review for consent decrees and
4328 settlement agreements for regulations that implement the
4329 Patient Protection and Affordable Care Act. The American
4330 public remains opposed to the Patient Protection and
4331 Affordable Care Act, in part because of the backroom deals,
4332 lack of transparency, and disregard for public opinion that
4333 led to its enactment.

4334 What is needed now is more transparency, public input,
4335 and judicial review, not less.

4336 I urge my colleagues to oppose this amendment, and I
4337 yield back.

4338 Chairman Smith. Okay. Thank you, Mr. Quayle.

4339 Are there other Members who wish to be heard on this
4340 amendment?

4341 If not, all those in favor of the amendment, say aye.

4342 [A chorus of ayes.]

4343 Chairman Smith. All opposed to the amendment, say no.

4344 [A chorus of nays.]

4345 Chairman Smith. The clerk will call the roll.

4346 Ms. Kish. Mr. Smith?

4347 Chairman Smith. No.

4348 Ms. Kish. Mr. Smith votes no.

4349 Mr. Sensenbrenner?

4350 [No response.]

4351 Ms. Kish. Mr. Coble?

4352 [No response.]

4353 Ms. Kish. Mr. Gallegly?

4354 Mr. Gallegly. No.

4355 Ms. Kish. Mr. Gallegly votes no.

4356 Mr. Goodlatte?

4357 [No response.]

4358 Ms. Kish. Mr. Lungren?

4359 Mr. Lungren. No.

4360 Ms. Kish. Mr. Lungren votes no.

4361 Mr. Chabot?

4362 [No response.]

4363 Ms. Kish. Mr. Issa?

4364 [No response.]

4365 Ms. Kish. Mr. Pence?

4366 [No response.]

4367 Ms. Kish. Mr. Forbes?

4368 [No response.]

4369 Ms. Kish. Mr. King?

4370 [No response.]

4371 Ms. Kish. Mr. Franks?

4372 Mr. Franks. No.

4373 Ms. Kish. Mr. Franks votes no.

4374 Mr. Gohmert?

4375 [No response.]

4376 Ms. Kish. Mr. Jordan?

4377 [No response.]

4378 Ms. Kish. Mr. Poe?

4379 Mr. Poe. No.

4380 Ms. Kish. Mr. Poe votes no.

4381 Mr. Chaffetz?

4382 [No response.]

4383 Ms. Kish. Mr. Griffin?

4384 [No response.]

4385 Ms. Kish. Mr. Marino?

4386 [No response.]

4387 Ms. Kish. Mr. Gowdy?

4388 [No response.]

4389 Ms. Kish. Mr. Ross?

4390 [No response.]

4391 Ms. Kish. Mrs. Adams?

4392 Mrs. Adams. No.

4393 Ms. Kish. Mrs. Adams votes no.

4394 Mr. Quayle?

4395 Mr. Quayle. No.

4396 Ms. Kish. Mr. Quayle votes no.

4397 Ms. Kish. Mr. Amodei?

4398 [No response.]

4399 Ms. Kish. Mr. Conyers?
4400 [No response.]
4401 Ms. Kish. Mr. Berman?
4402 [No response.]
4403 Ms. Kish. Mr. Nadler?
4404 [No response.]
4405 Ms. Kish. Mr. Scott?
4406 Mr. Scott. Aye.
4407 Ms. Kish. Mr. Scott votes aye.
4408 Mr. Watt?
4409 Mr. Watt. Aye.
4410 Ms. Kish. Mr. Watt votes aye.
4411 Ms. Lofgren?
4412 Ms. Lofgren. Aye.
4413 Ms. Kish. Ms. Lofgren votes aye.
4414 Ms. Jackson Lee?
4415 [No response.]
4416 Ms. Kish. Ms. Waters?
4417 [No response.]
4418 Ms. Kish. Mr. Cohen?
4419 [No response.]

4420 Ms. Kish. Mr. Johnson?

4421 Mr. Johnson. Aye.

4422 Ms. Kish. Mr. Johnson votes aye.

4423 Mr. Pierluisi?

4424 Mr. Pierluisi. Aye.

4425 Ms. Kish. Mr. Pierluisi votes aye.

4426 Mr. Quigley?

4427 Mr. Quigley. Aye.

4428 [No response.]

4429 Ms. Kish. Ms. Chu?

4430 Ms. Chu. Aye.

4431 Ms. Kish. Ms. Chu votes aye.

4432 Mr. Deutch?

4433 Mr. Deutch. Aye.

4434 [No response.]

4435 Ms. Kish. Ms. Sanchez?

4436 [No response.]

4437 Ms. Kish. Mr. Polis?

4438 [No response.]

4439 Chairman Smith. Mr. Forbes?

4440 Mr. Forbes. No.

4441 Ms. Kish. Mr. Forbes votes no.

4442 Chairman Smith. Ms. Sanchez?

4443 Ms. Sanchez. Aye.

4444 Ms. Kish. Ms. Sanchez votes aye.

4445 Chairman Smith. Mr. Griffin?

4446 Mr. Griffin. No.

4447 Ms. Kish. Mr. Griffin votes no.

4448 Chairman Smith. Mr. Coble?

4449 Mr. Coble. No.

4450 Ms. Kish. Mr. Coble votes no.

4451 Chairman Smith. Mr. King?

4452 Mr. King. No.

4453 Ms. Kish. Mr. King votes no.

4454 Chairman Smith. Okay, the clerk will report.

4455 Ms. Kish. Mr. Chairman, 7 Members voted aye; 11 Members

4456 voted nay.

4457 Chairman Smith. A majority having voted against the

4458 amendment, the amendment is not agreed to.

4459 Does the gentleman have another amendment?

4460 Mr. Johnson. I do. It is amendment eight at the desk,

4461 Mr. Chairman.

4462 Chairman Smith. Would the gentleman consider offering
4463 both amendments en bloc that he has remaining?

4464 Mr. Johnson. They both are -- they are not similar.

4465 Chairman Smith. Okay, if they are not compatible, the
4466 clerk will report the amendment.

4467 Ms. Kish. Amendment to the Quayle amendment offered by
4468 Mr. Johnson. Page 1, line 5, strike "The provisions" and
4469 insert --

4470 Chairman Smith. Without objection, the amendment will
4471 be considered as read.

4472 [The amendment of Mr. Johnson follows:]

4473

4474 Chairman Smith. And the gentleman is recognized to
4475 explain his amendment.

4476 Mr. Johnson. Mr. Chairman, my amendment would exempt
4477 consent decrees and settlement agreements from the bill's
4478 delay tactics that would slow down the settlement process
4479 for Federal agencies that have conceded that they have
4480 unlawfully denied or unreasonably delayed civil rights
4481 regulations.

4482 Protecting the rights of all people to be free from
4483 discrimination is one of the basic tenets of this country.
4484 No one should be treated adversely on account of their race,
4485 sex, religion, national origin, age, or disability. Many
4486 Federal agencies have specific responsibilities to protect
4487 people and communities from discrimination.

4488 For example, the Equal Employment Opportunity Commission
4489 adopts regulations to protect people with disabilities,
4490 women, and racial and ethnic minorities from discrimination
4491 in the workplace. Consent decrees, specifically, have been
4492 instrumental in enforcing various civil rights statutes
4493 ranging from voting rights to law enforcement misconduct.
4494 This amendment would ensure that those Federal agencies

4495 responsible for preventing discrimination could do so
4496 pursuant to a consent decree or settlement agreement without
4497 undue burden or unnecessary delay.

4498 Thank you, Mr. Chairman. And I yield back the balance
4499 of my time.

4500 Chairman Smith. Thank you, Mr. Johnson.

4501 Mr. Quayle?

4502 Mr. Quayle. Thank you, Mr. Chairman.

4503 I oppose the amendment. This amendment carves consent
4504 decrees and settlement agreements for antidiscrimination
4505 regulations out of the bill's protections for transparency,
4506 public participation, and judicial review.

4507 Increased sunlight, greater public input, and stronger
4508 judicial review only assure more effective regulations to
4509 prevent unlawful discrimination. Backroom deals that
4510 elevate secrecy and attorneys' fees to favor special
4511 interest advocacy groups do not.

4512 I urge my colleagues to oppose this amendment, and I
4513 yield back.

4514 Chairman Smith. Thank you, Mr. Quayle.

4515 The question is on the gentleman from Georgia's

4516 amendment.

4517 All in favor, say aye.

4518 [A chorus of ayes.]

4519 Chairman Smith. Opposed, no.

4520 [A chorus of nays.]

4521 Chairman Smith. In the opinion of the Chair, the nays
4522 have it.

4523 Mr. Johnson. I ask for a recorded vote.

4524 Chairman Smith. A recorded vote has been requested.

4525 Ms. Kish. Mr. Smith?

4526 Chairman Smith. No.

4527 Ms. Kish. Mr. Smith votes no.

4528 Mr. Sensenbrenner?

4529 [No response.]

4530 Ms. Kish. Mr. Coble?

4531 [No response.]

4532 Ms. Kish. Mr. Gallegly?

4533 [No response.]

4534 Ms. Kish. Mr. Goodlatte?

4535 [No response.]

4536 Ms. Kish. Mr. Lungren?

4537 Mr. Lungren. No.

4538 Ms. Kish. Mr. Lungren votes no.

4539 Mr. Chabot?

4540 [No response.]

4541 Ms. Kish. Mr. Issa?

4542 [No response.]

4543 Ms. Kish. Mr. Pence?

4544 [No response.]

4545 Ms. Kish. Mr. Forbes?

4546 [No response.]

4547 Ms. Kish. Mr. King?

4548 [No response.]

4549 Ms. Kish. Mr. Franks?

4550 [No response.]

4551 Ms. Kish. Mr. Gohmert?

4552 [No response.]

4553 Ms. Kish. Mr. Jordan?

4554 [No response.]

4555 Ms. Kish. Mr. Poe?

4556 Mr. Poe. No.

4557 Ms. Kish. Mr. Poe votes no.

4558 Mr. Chaffetz?
4559 [No response.]
4560 Ms. Kish. Mr. Griffin?
4561 [No response.]
4562 Ms. Kish. Mr. Marino?
4563 [No response.]
4564 Ms. Kish. Mr. Gowdy?
4565 [No response.]
4566 Ms. Kish. Mr. Ross?
4567 Mr. Ross. No.
4568 Ms. Kish. Mr. Ross votes no.
4569 Mrs. Adams?
4570 Mrs. Adams. No.
4571 Ms. Kish. Mrs. Adams votes no.
4572 Mr. Quayle?
4573 Mr. Quayle. No.
4574 Ms. Kish. Mr. Quayle votes no.
4575 Ms. Kish. Mr. Amodei?
4576 [No response.]
4577 Ms. Kish. Mr. Conyers?
4578 Mr. Conyers. Aye.

4579 Ms. Kish. Mr. Conyers votes aye.
4580 Mr. Berman?
4581 [No response.]
4582 Ms. Kish. Mr. Nadler?
4583 [No response.]
4584 Ms. Kish. Mr. Scott?
4585 Mr. Scott. Aye.
4586 Ms. Kish. Mr. Scott votes aye.
4587 Mr. Watt?
4588 Mr. Watt. Aye.
4589 Ms. Kish. Mr. Watt votes aye.
4590 Ms. Lofgren?
4591 Ms. Lofgren. Aye.
4592 Ms. Kish. Ms. Lofgren votes aye.
4593 Ms. Jackson Lee?
4594 [No response.]
4595 Ms. Kish. Ms. Waters?
4596 [No response.]
4597 Ms. Kish. Mr. Cohen?
4598 [No response.]
4599 Ms. Kish. Mr. Johnson?

4600 Mr. Johnson. Aye.

4601 Ms. Kish. Mr. Johnson votes aye.

4602 Mr. Pierluisi?

4603 Mr. Pierluisi. Aye.

4604 Ms. Kish. Mr. Pierluisi votes aye.

4605 Mr. Quigley?

4606 [No response.]

4607 Ms. Kish. Ms. Chu?

4608 Ms. Chu. Aye.

4609 Ms. Kish. Ms. Chu votes aye.

4610 Mr. Deutch?

4611 Mr. Deutch. Aye.

4612 Ms. Kish. Mr. Deutch votes aye.

4613 Ms. Sanchez?

4614 Ms. Sanchez. Aye.

4615 Ms. Kish. Ms. Sanchez votes aye.

4616 Mr. Polis?

4617 [No response.]

4618 Chairman Smith. The gentleman from Arkansas?

4619 Mr. Griffin. No.

4620 Ms. Kish. Mr. Griffin votes no.

4621 Chairman Smith. The gentleman from North Carolina?

4622 Mr. Coble. No.

4623 Ms. Kish. Mr. Coble votes no.

4624 Chairman Smith. The gentleman from Texas?

4625 Mr. Gohmert. No.

4626 Ms. Kish. Mr. Gohmert votes no.

4627 Chairman Smith. The gentleman from Virginia?

4628 Mr. Goodlatte. No.

4629 Ms. Kish. Mr. Goodlatte votes no.

4630 Chairman Smith. The clerk will report.

4631 Ms. Kish. Mr. Chairman, 9 Members voted aye; 10 Members

4632 voted nay.

4633 Chairman Smith. A majority having voted -- the vote has

4634 concluded, but please stay around.

4635 A majority having voted against the amendment, it is not

4636 agreed to.

4637 Let me say to Members, we have one more amendment to

4638 consider by the gentleman from Georgia. Then I would like

4639 to go to a vote on the manager's amendment, but not have a

4640 vote on final passage today, just because I am not sure we

4641 have that many people present.

4642 But I would like to get through this amendment as
4643 quickly as we can and have a vote on the manager's
4644 amendment, and then conclude for the week.

4645 The gentleman from Georgia?

4646 Mr. Johnson. Thank you, Mr. Chairman.

4647 I have an amendment at the desk.

4648 Chairman Smith. The clerk will report the amendment.

4649 Ms. Kish. Amendment to the Quayle amendment offered by
4650 Mr. Johnson of Georgia.

4651 Chairman Smith. Without objection, the amendment will
4652 be considered as read.

4653 [The amendment of Mr. Johnson follows:]

4654

4655 Chairman Smith. The gentleman is recognized to explain
4656 his amendment.

4657 Mr. Johnson. Thank you, Mr. Chairman.

4658 According to the Centers for Disease Control and
4659 Prevention, drowning remains the second leading cause of
4660 unintentional injury-related death for children ages 1
4661 through 14-years-old. Virginia Baker was a 7-year-old girl
4662 who drowned after she was trapped underwater by the powerful
4663 suction of a hot-tub drain. This little girl died as a
4664 result of a faulty drain cover.

4665 After Virginia's tragic death, Congress passed and
4666 President Bush signed into law the Virginia Baker Pool and
4667 Spa Safety Act of 2008. This law requires lifesaving anti-
4668 entrapment drain covers and other safety features for pools
4669 and spas.

4670 I hope that Virginia's story will demonstrate the need
4671 for my amendment. It would exempt from this harmful bill
4672 consent decrees and settlement agreements in cases where an
4673 agency has unlawfully denied or unreasonably delayed
4674 regulations to protect children from dangerous or defective
4675 products, products just like the faulty drain cover that

4676 tragically took the life of 7-year-old Virginia Baker.

4677 Are members of this committee really willing to turn
4678 their backs on critically needed protections for children?

4679 I sincerely hope not.

4680 Even those who support H.R. 3862 ought to be able to
4681 agree that we should remove impediments to ensuring that
4682 agencies do what Congress has charged them with doing when
4683 it comes to protecting children.

4684 Please join me in voting yes on this amendment.

4685 Thank you, and I yield back the balance of my time.

4686 Chairman Smith. Thank you, Mr. Johnson.

4687 And the gentleman from Arizona, Mr. Quayle, is
4688 recognized briefly.

4689 Mr. Quayle. Thank you, Mr. Chairman.

4690 I oppose the amendment. America's children deserve
4691 effective child product safety regulations. Increased
4692 public input, transparency, and judicial review help to
4693 achieve that goal.

4694 I urge my colleagues to oppose the amendment. And I
4695 yield back.

4696 Chairman Smith. Thank you, Mr. Quayle

4697 The question is on the amendment --

4698 Mr. Watt. Mr. Chairman?

4699 Chairman Smith. The gentleman from North Carolina, Mr.
4700 Watt, is recognized.

4701 Mr. Watt. Since you are going to follow the procedures
4702 you outlined, I just wanted to make one final appeal to the
4703 sponsors of this bill to address the concerns that I raised
4704 in the Waters amendment.

4705 This bill is so broadly drawn right now, you are
4706 inviting every prisoner, every citizen in voting rights
4707 cases, to intervene in these cases. And I think if you
4708 don't address that, you are going to be very sorry.
4709 Anything that affects the rights of private parties in any
4710 respect, other than the plaintiff, has standing under this
4711 bill.

4712 So I yield back -- I will yield to the gentleman if he
4713 wants me to yield, but I am just appealing to you to look at
4714 it and address --

4715 Mr. Quayle. I understand what you are saying, but it is
4716 addressed within the underlying -- within the bill.

4717 I mean, the judge actually has discretion on when an

4718 intervener can actually have the --

4719 Mr. Watt. But that is after the fact. That is the
4720 problem. And right now, the way you have it drafted, you
4721 can't keep any prisoner out; you can't keep any voter out;
4722 you can't keep any citizen out.

4723 Mr. Quayle. The judge has the discretion to not allow
4724 the person to intervene.

4725 Chairman Smith. The gentleman from Arizona takes the
4726 gentleman's appeal under consideration.

4727 Mr. Watt. I hope he will. And don't get defensive
4728 about it. I am just trying to help.

4729 I don't support the bill. I don't care if you correct
4730 it; I won't support the bill. But the way it is drawn now,
4731 it is so broad that you will, if this bill were to pass in
4732 this form, you would be very, very sorry with the results
4733 you got.

4734 Chairman Smith. Thank you, Mr. Watt.

4735 The question is on the amendment.

4736 All in favor, say aye.

4737 [A chorus of ayes.]

4738 Chairman Smith. Opposed, no.

4739 [A chorus of nays.]

4740 Chairman Smith. In the opinion of the Chair, the nays
4741 have it, and the amendment is not agreed to.

4742 Mr. Johnson. I request a recorded vote.

4743 Chairman Smith. A recorded vote has been requested, and
4744 the clerk will call the roll.

4745 Ms. Kish. Mr. Smith?

4746 Chairman Smith. No.

4747 Ms. Kish. Mr. Smith votes no.

4748 Mr. Sensenbrenner?

4749 [No response.]

4750 Ms. Kish. Mr. Coble?

4751 Mr. Coble. No.

4752 Ms. Kish. Mr. Coble votes no.

4753 Mr. Gallegly?

4754 [No response.]

4755 Ms. Kish. Mr. Goodlatte?

4756 Mr. Goodlatte. No.

4757 Ms. Kish. Mr. Goodlatte votes no.

4758 Mr. Lungren?

4759 [No response.]

4760 Ms. Kish. Mr. Chabot?
4761 [No response.]
4762 Ms. Kish. Mr. Issa?
4763 [No response.]
4764 Ms. Kish. Mr. Pence?
4765 [No response.]
4766 Ms. Kish. Mr. Forbes?
4767 Mr. Forbes. No.
4768 Ms. Kish. Mr. Forbes votes no.
4769 Mr. King?
4770 Mr. King. No.
4771 Ms. Kish. Mr. King votes no.
4772 Mr. Franks?
4773 [No response.]
4774 Ms. Kish. Mr. Gohmert?
4775 [No response.]
4776 Ms. Kish. Mr. Jordan?
4777 [No response.]
4778 Ms. Kish. Mr. Poe?
4779 [No response.]
4780 Ms. Kish. Mr. Chaffetz?

4781 [No response.]

4782 Ms. Kish. Mr. Griffin?

4783 [No response.]

4784 Ms. Kish. Mr. Marino?

4785 [No response.]

4786 Ms. Kish. Mr. Gowdy?

4787 [No response.]

4788 Ms. Kish. Mr. Ross?

4789 Mr. Ross. No.

4790 Ms. Kish. Mr. Ross votes no.

4791 Mrs. Adams?

4792 Mrs. Adams. No.

4793 Ms. Kish. Mrs. Adams votes no.

4794 Mr. Quayle?

4795 Mr. Quayle. No.

4796 Ms. Kish. Mr. Quayle votes no.

4797 Ms. Kish. Mr. Amodei?

4798 [No response.]

4799 Ms. Kish. Mr. Conyers?

4800 Mr. Conyers. Aye.

4801 Ms. Kish. Mr. Conyers votes aye.

4802 Mr. Berman?

4803 [No response.]

4804 Ms. Kish. Mr. Nadler?

4805 [No response.]

4806 Ms. Kish. Mr. Scott?

4807 Mr. Scott. No.

4808 Ms. Kish. No. Mr. Scott votes no.

4809 Mr. Watt?

4810 Mr. Scott. Aye.

4811 Ms. Kish. Mr. Scott votes aye.

4812 Mr. Watt?

4813 Mr. Watt. Aye.

4814 Ms. Kish. Mr. Watt votes aye.

4815 Ms. Lofgren?

4816 Ms. Lofgren. Aye.

4817 Ms. Kish. Ms. Lofgren votes aye.

4818 Ms. Jackson Lee?

4819 Ms. Jackson Lee. Aye.

4820 Ms. Kish. Ms. Jackson Lee votes aye.

4821 Ms. Waters?

4822 [No response.]

4823 Ms. Kish. Mr. Cohen?
4824 [No response.]
4825 Ms. Kish. Mr. Johnson?
4826 Mr. Johnson. Aye.
4827 Ms. Kish. Mr. Johnson votes aye.
4828 Mr. Pierluisi?
4829 Mr. Pierluisi. Aye.
4830 Ms. Kish. Mr. Pierluisi votes aye.
4831 Mr. Quigley?
4832 [No response.]
4833 Ms. Kish. Ms. Chu?
4834 Ms. Chu. Aye.
4835 Ms. Kish. Ms. Chu votes aye.
4836 Mr. Deutch?
4837 Mr. Deutch. Aye.
4838 Ms. Kish. Mr. Deutch votes aye.
4839 Ms. Sanchez?
4840 Ms. Sanchez. Aye.
4841 Ms. Kish. Ms. Sanchez votes aye.
4842 Mr. Polis?
4843 [No response.]

4844 Chairman Smith. The gentleman from California?

4845 Mr. Gallegly. No.

4846 Ms. Kish. Mr. Gallegly votes no.

4847 Chairman Smith. The gentleman from Arkansas?

4848 Mr. Griffin. No.

4849 Ms. Kish. Mr. Griffin votes no.

4850 Chairman Smith. The gentleman from Texas?

4851 Mr. Poe. No.

4852 Chairman Smith. The gentleman from California?

4853 Mr. Issa. No.

4854 Mr. Lungren. No.

4855 Chairman Smith. Both gentlemen from California, I

4856 think, voted no.

4857 Ms. Kish. Mr. Lungren and Mr. Issa.

4858 Chairman Smith. The gentleman from -- are there any

4859 other Members who wish to be recorded?

4860 The gentleman from Texas?

4861 Mr. Gohmert. No.

4862 Ms. Kish. Mr. Gohmert votes no.

4863 Chairman Smith. The clerk will report.

4864 Ms. Kish. Mr. Chairman, 10 Members voted aye; 14

4865 Members voted nay.

4866 Chairman Smith. A majority having voted against the
4867 amendment, the amendment is not agreed to.

4868 The next vote will be the last vote of the week until we
4869 resume our markup next week.

4870 Ms. Jackson Lee. Mr. Chairman, I would like to strike
4871 the last word.

4872 Chairman Smith. The gentlewoman from California is
4873 recognized.

4874 Ms. Jackson Lee. I am from Texas.

4875 Chairman Smith. Oh, I am sorry. The gentlewoman from
4876 Texas.

4877 Ms. Jackson Lee. Mr. Chairman, I had an amendment, No.
4878 24, dealing with the rights of airline passengers and their
4879 safety. I will reserve introducing this amendment with the
4880 acknowledgment of the comments that Mr. Watt said, that is a
4881 far-reaching bill and, certainly, airline passengers that
4882 are in the eye of the storm, dealing with their safety,
4883 their rights or benefits, deserve protection from this
4884 legislation.

4885 I will seek to add this amendment at a later time, and I

4886 will not offer the amendment at this time.

4887 I thank the gentleman for yielding.

4888 Chairman Smith. The question is on the manager's
4889 amendment.

4890 Those in favor, say aye.

4891 [A chorus of ayes.]

4892 Chairman Smith. Opposed, no.

4893 [A chorus of nays.]

4894 Chairman Smith. In the opinion of the Chair, the ayes
4895 have it, and the amendment is agreed to.

4896 Okay, I thank the gentleman from Georgia.

4897 A reporting quorum -- let's see, the question is --
4898 where was I?

4899 A majority having voted in favor, the amendment is
4900 agreed to. And we will stand adjourned until next week.

4901 [Whereupon, at 3:05 p.m., the committee was adjourned.]