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4 MARKUP OF:

5 H.R. 4377, THE RESPONSIBLY AND PROFESSIONALLY INVIGORATING  
6 DEVELOPMENT (RAPID) ACT OF 2012;

7 H.R. 4018, THE PUBLIC SAFETY OFFICERS' BENEFITS IMPROVEMENTS  
8 ACT OF 2012;

9 H.R. 3668, THE COUNTERFEIT DRUG PENALTY ENHANCEMENT ACT OF  
10 2011;

11 H.R. 4223, THE SAFE DOSES ACT;

12 H.R. 4369, THE FURTHERING ASBESTOS CLAIM TRANSPARENCY (FACT)  
13 ACT OF 2012; AND

14 H.R. 5889, THE NUCLEAR TERRORISM CONVENTIONS IMPLEMENTATION  
15 AND SAFETY OF MARITIME NAVIGATION ACT OF 2012

16 Wednesday, June 6, 2012

17 House of Representatives

18 Committee on the Judiciary

19 Washington, D.C.

20           The committee met, pursuant to call, at 11:08 a.m., in  
21 Room 2141, Rayburn House Office Building, Hon. Lamar Smith  
22 [chairman of the committee] presiding.

23           Present: Representatives Smith, Sensenbrenner,  
24 Gallegly, Goodlatte, Lungren, Chabot, Forbes, King, Franks,  
25 Gohmert, Jordan, Poe, Chaffetz, Griffin, Marino, Gowdy,  
26 Ross, Adams, Quayle, Amodei, Conyers, Nadler, Scott, Watt,  
27 Jackson Lee, Waters, Cohen, Johnson, Pierluisi, Quigley,  
28 Deutch, Sanchez, and Polis.

29           Staff Present: Richard Hertling, Majority Staff  
30 Director and Chief Counsel; Travis Norton, Majority  
31 Parliamentarian; Sarah Kish, Clerk; Sam Ramer, Majority  
32 Counsel; Art Baker, Majority Counsel; John Hilton, Majority  
33 Counsel; Perry Apelbaum, Minority Staff Director; Danielle  
34 Brown, Minority Parliamentarian; Ron LeGrand, Minority  
35 Counsel; and James Park, Minority Counsel.

36

37 Chairman Smith. The Judiciary Committee will come to  
38 order.

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

42 Ms. Kish. Mr. Smith?

43 Chairman Smith. Present.

44 Ms. Kish. Mr. Sensenbrenner?

45 Mr. Coble?

46 Mr. Gallegly?

47 Mr. Goodlatte?

48 Mr. Lungren?

49 Mr. Lungren. Present.

50 Ms. Kish. Mr. Chabot?

51 Mr. Issa?

52 Mr. Pence?

53 Mr. Forbes?

54 Mr. King?

55 Mr. Franks?

56 Mr. Gohmert?

57 Mr. Jordan?

58 Mr. Poe?

59 Mr. Chaffetz?

60 Mr. Chaffetz. Here.

61 Ms. Kish. Mr. Griffin?

62 Mr. Marino?

63 Mr. Marino. Present.

64 Ms. Kish. Mr. Gowdy?

65 Mr. Gowdy. Present.

66 Ms. Kish. Mr. Ross?

67 Mrs. Adams?

68 Mrs. Adams. Present.

69 Ms. Kish. Mr. Quayle?

70 Mr. Amodei?

71 Mr. Conyers?

72 Mr. Berman?

73 Mr. Nadler?

74 Mr. Scott?

75 Mr. Scott. Here.

76 Ms. Kish. Mr. Watt?

77 Ms. Lofgren?

78 Ms. Jackson Lee?

79 Ms. Waters?

80 Mr. Cohen?

81 Mr. Johnson?

82 Mr. Johnson. Present.

83 Ms. Kish. Mr. Pierluisi?

84 Mr. Quigley?

85 Ms. Chu?

86 Mr. Deutch?

87 Ms. Sanchez?

88 Ms. Sanchez. Present.

89 Ms. Kish. Mr. Polis?

90 Chairman Smith. Mr. Ross?

91 Mr. Ross. Present.

92 [Pause.]

93 Chairman Smith. The gentleman from Michigan?

94 Mr. Conyers. Present, sir. Greetings.

95 [Pause.]

96 Chairman Smith. The gentleman from Wisconsin?

97 Mr. Sensenbrenner. Here.

98 [Pause.]

99 Chairman Smith. The indispensable person has arrived.

100 The gentleman from Arizona is present. The clerk will  
101 report.

102 The gentleman from Virginia?

103 Ms. Kish. Mr. Goodlatte?

104 Mr. Goodlatte. Present.

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

106 Chairman Smith. Okay. Working quorum is present. We  
107 will proceed.

108 And now, pursuant to notice, I call up H.R. 5889 for  
109 purposes of markup, and the clerk will report the bill.

110 Ms. Kish. H.R. 5889, to amend Title 18 United States  
111 Code to provide --

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

114 [The information follows:]

115

116 Chairman Smith. I am going to recognize myself for an  
117 opening statement, then the ranking member.

118 I introduced this legislation to implement certain  
119 provisions of four multilateral counterterrorism treaties.  
120 These treaties are important tools in the fight against  
121 terrorism, and each one builds on an existing treaty to  
122 which the United States is a party.

123 Full implementation of these treaties will enhance the  
124 national security of the United States. They will modernize  
125 and strengthen the international counterterrorism and  
126 counterproliferation legal framework.

127 The treaties in this legislation complement important  
128 U.S. priorities, such as the Global Initiative to Combat  
129 Nuclear Terrorism, the Washington Nuclear Security Summit,  
130 and the Proliferation Security Initiative. They also  
131 advance a common sense obligation and duty of the Congress  
132 and of those that serve and protect the United States in  
133 other ways to keep America safe.

134 Acceptance of these treaties will reinforce the United  
135 States leadership role in promoting these and other  
136 counterterrorism treaties and will likely prompt other

137 countries to join. The treaties are widely supported by the  
138 U.S. Departments of State, Justice, and Defense.

139 This legislation addresses gaps in current law and  
140 inadequacies in jurisdictional provisions. Acceptance of  
141 the underlying treaties benefits the United States in many  
142 ways. For example, parties are required to criminalize  
143 certain acts committed by persons who possess or use  
144 radioactive material or a nuclear device. Proactive  
145 measures have been taken to prevent relevant offenses, and  
146 parties are obligated to extradite or prosecute alleged  
147 offenders.

148 As they relate to maritime terrorism, the underlying  
149 treaties would treat vessels and platforms as a potential  
150 means of conducting terrorism activity and not just as  
151 objects of terrorist activity.

152 The previous administration strongly supported approval  
153 of these agreements, which have already received Senate  
154 advice and consent. The current administration aspires to  
155 advance this legislation so that the United States maintains  
156 its leadership role in counter nuclear proliferation efforts  
157 and in terrorism prevention.

158 Advancing this legislation is also a step towards better  
159 international cooperation and information sharing as it  
160 relates to international terrorism and proliferation of  
161 weapons of mass destruction. This bill has been drafted in  
162 a bipartisan manner with both majority and minority staff  
163 involved at every point. Technical advice was also provided  
164 by both the Departments of State and Justice.

165 The Subcommittee on Crime, Terrorism, and Homeland  
166 Security held a hearing on this issue in October 2011. At  
167 that hearing, testimony was heard about the importance of  
168 this legislation. There has also been interest from outside  
169 observers that these treaties be fully implemented with  
170 passage of this legislation.

171 I urge my colleagues to support the bill and recognize  
172 the gentleman from Michigan, the ranking member of the  
173 Judiciary Committee, Mr. Conyers.

174 Mr. Conyers. Chairman Smith, I thank you, and I will be  
175 brief because I think there is -- there has been so much  
176 cooperation between the subcommittee leaders, Messrs.  
177 Sensenbrenner and Scott, that our work at the full committee  
178 level has been made quite easy.

179           The treaties, the four treaties mentioned are important,  
180 and we have the administrative responsibility in Judiciary  
181 to amend the criminal code to be in compliance with our  
182 treaty obligations. In other words, our job is not to  
183 accept or reject the treaties, but to make it possible for  
184 our Federal criminal code to be able to be in compliance  
185 with the treaty obligations.

186           We secure nuclear materials in one of the treaties. We  
187 criminalize certain acts of terrorism inviting the use of  
188 nuclear materials. We criminalize acts of terrorism on  
189 ships, and as the chairman mentioned, we prevent escaping  
190 terrorist suspects at sea.

191           It is a great bill. The work of the subcommittee and  
192 the cooperation therein is very clearly reflected, and I  
193 join the chairman in supporting the passage of this measure,  
194 and I yield back the balance of my time.

195           Chairman Smith. Thank you, Mr. Conyers.

196           The gentleman from Wisconsin, the chairman of the Crime  
197 Subcommittee, Mr. Sensenbrenner, is recognized.

198           Mr. Sensenbrenner. For once, I agree with everything  
199 the gentleman from Michigan has said, and I yield back the

200 balance of my time.

201 Chairman Smith. Thank you, Mr. Sensenbrenner.

202 Mr. Sensenbrenner. Assuming it does not create a  
203 precedent.

204 [Laughter.]

205 Chairman Smith. The gentleman from Virginia, Mr. Scott,  
206 the ranking member of the Crime Subcommittee, is recognized.

207 Mr. Scott. Thank you, Mr. Chairman.

208 I think a precedence has been set. I would point out  
209 that the bills are what is required to implement the  
210 treaties. The original version had additional matters that  
211 were controversial. Those have been dealt with, and the  
212 bill, I think, will properly enact the treaties. That was  
213 never controversial.

214 And I am pleased to join in support of the bill. Yield  
215 back.

216 Chairman Smith. Thank you, Mr. Scott.

217 Are there any amendments?

218 [No response.]

219 Chairman Smith. If not, a reporting quorum being  
220 present, the question is on reporting the bill favorably to

221 the House.

222 All in favor, say aye.

223 Opposed, no.

224 The ayes have it, and the bill is ordered reported  
225 favorably.

226 Without objection, the bill will be reported. Members  
227 have 2 days to submit their views.

228 We will now, pursuant to notice, I call up H.R. 4018 for  
229 purposes of markup, and the clerk will report that bill.

230 Ms. Kish. H.R. 4018, to improve the Public Safety  
231 Officers' Benefits Program. In the House of  
232 Representatives, February 14, 2012, Mr. Fitzpatrick, for  
233 himself and Mr. Smith of Texas --

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

236 [The information follows:]

237

238 Chairman Smith. I will recognize myself for an opening  
239 statement. H.R. 4018, the Public Safety Officers' Benefits  
240 Improvements Act of 2012, amends an existing program within  
241 the Justice Department that administers benefits to certain  
242 public safety officers killed or disabled in the line of  
243 duty.

244 I want to thank Representative Michael Fitzpatrick for  
245 his introduction of this legislation, which makes common  
246 sense cost-saving reforms to the program. Congress passed  
247 the Public Safety Officers' Benefits Act in 1976.  
248 Originally, the PSOB Program provided only death benefits to  
249 the survivors of officers killed in the line of duty. It  
250 was later expanded to provide benefits to officers disabled  
251 in the line of duty and educational benefits to the spouses  
252 and children of officers killed or disabled in the line of  
253 duty.

254 Congress has amended the PSOB Program numerous times  
255 over the last 36 years to add additional beneficiaries or  
256 make modifications to the program. Unfortunately, some of  
257 these changes have resulted in inconsistencies within the  
258 law or have unintentionally delayed the PSOB benefit

259 process.

260 For instance, since each claimant must be examined by an  
261 impartial medical examiner who advises the Justice  
262 Department's decision to award benefits, but the statute and  
263 its regulations require that the medical examiner be hired  
264 from the city where the officer was killed or injured. This  
265 has caused significant delays in processing claims.

266 The department must expend significant time and  
267 resources to find a medical professional who is familiar  
268 with the program and its requirements. The department must  
269 then convince them to perform the necessary medical exam.  
270 This process can take weeks, if not months, to complete.

271 The solution is to allow the department to pull from a  
272 pool of trusted qualified medical professionals and send  
273 them across the country to perform the necessary  
274 examinations. The program already authorizes this for  
275 hearing examiners. This simple change saves valuable time  
276 and taxpayer dollars. It also ensures that the public  
277 safety officers and their families receive these much-needed  
278 benefits more quickly.

279 H.R. 4018 also clarifies who are eligible beneficiaries

280 when an officer is killed in the line of duty. The payment  
281 of benefits is often postponed, sometimes for years, while  
282 the issue of who is the proper beneficiary is litigated.

283 The program currently identifies the primary  
284 beneficiaries as a deceased officer's minor children and  
285 spouse. This bill creates a new category of beneficiaries,  
286 adult children of deceased public safety officers, to  
287 clarify eligible beneficiaries in certain cases where there  
288 are none. These cases include when a public safety  
289 officer's children are all adults, there is no surviving  
290 spouse, no applicable designation of beneficiaries on file  
291 with the public agency, and the officer's parents are  
292 deceased.

293 The benefits can currently be awarded to police  
294 officers, firefighters, chaplains, or certain members of a  
295 rescue squad or ambulance crew who serve a public agency,  
296 but benefits are not authorized for volunteer emergency  
297 medical personnel.

298 This bill fixes this inequity in a narrow way that, when  
299 combined with savings from other efficiencies made by the  
300 bill, does not result in additional expense to the taxpayer.

301 In fact, the Congressional Budget Office has given this bill  
302 a score of zero.

303 I urge my colleagues to support this bill.

304 I now recognize the gentleman from Michigan, Mr.  
305 Conyers.

306 Mr. Conyers. Mr. Chairman, this measure comes from the  
307 same subcommittee that produced our first bill, and I  
308 support it. The Public Safety Officers' Benefit Act  
309 provides death and educational benefits to the families of  
310 public safety officers killed in the line of duty and  
311 disability benefits to those who suffer disabling injuries  
312 in the line of duty, and it expands the eligibility to  
313 members of nonprofit rescue squads and ambulance crews.

314 This is very important, and I am enthusiastically in  
315 favor of it. I close by suggesting three other  
316 recommendations that we may want to consider at a later  
317 date.

318 One is the COPS program, started under the Clinton  
319 administration, needs better support. Yet last month, we  
320 needed to fight for an amendment on the House floor to  
321 provide \$126 million in additional funding just to get the

322 COPS hiring program back to the level it was appropriated at  
323 last year.

324 Secondly, the Shield Our Streets Act, a measure of my  
325 own that provides even greater assistance to law enforcement  
326 and public programs for high-crime areas facing budget cuts  
327 to hire police officers and to fund public safety programs.

328 And finally, we need to do more to protect our law  
329 enforcement officers from being outgunned on the streets by  
330 gangsters, thugs, by reenacting the ban on large-capacity  
331 ammunition magazines. This measure was introduced by the  
332 gentlelady from California -- Carolyn McCarthy of New York,  
333 Carolyn McCarthy of New York. And it reflects immediately  
334 on the Gabrielle Gifford tragedy in which high-capacity  
335 ammunition was used.

336 This is a good bill. I support it, and I yield back the  
337 balance of my time.

338 Chairman Smith. Thank you, Mr. Conyers.

339 Do either the chairman or the ranking member of the  
340 Crime Subcommittee wish to be recognized?

341 Mr. Sensenbrenner. No.

342 Mr. Scott. Move to strike the last word.

343 Chairman Smith. The gentleman is recognized for 5  
344 minutes.

345 Mr. Scott. Mr. Chairman, thank you.

346 I think the bill appropriately expands the scope of the  
347 important program, the Public Safety Officers' Benefits Act,  
348 and I support it and yield back.

349 Chairman Smith. Okay. Thank you, Mr. Scott.

350 Are there any amendments? If not, a reporting quorum  
351 being present, the question is --

352 The gentleman from New York, Mr. Nadler, is recognized.

353 Mr. Nadler. I have an amendment at the desk.

354 Chairman Smith. The clerk will report the amendment.

355 Ms. Kish. Amendment to H.R. 4018, offered by Mr. Nadler  
356 of New York. Page 1, lines 7 through 8, strike "and certain  
357 trainees."

358 Page 9, strike lines 20 through 22 and insert the  
359 following --

360 Chairman Smith. Without objection, the amendment will  
361 be considered as read.

362 [The amendment of Mr. Nadler follows:]

363

364 Chairman Smith. And the gentleman from New York is  
365 recognized to explain his amendment.

366 Mr. Nadler. Thank you, Mr. Chairman.

367 Mr. Chairman, I want to thank the majority and minority  
368 and their staffs for working with me and my staff to develop  
369 consensus on an amendment to make improvements to the bill.  
370 My amendment does that, making a number of small, but  
371 important changes.

372 I expect the amendment to be accepted. And assuming it  
373 is, I would strongly support --

374 Mr. Sensenbrenner. Will the gentleman yield?

375 Mr. Nadler. I will.

376 Mr. Sensenbrenner. I am happy to accept it.

377 Mr. Nadler. Then I will take the better part of valor  
378 and yield back the balance of my time with thanks.

379 But I ask unanimous consent to place a statement in the  
380 record, Mr. Chairman.

381 Chairman Smith. Without objection, the gentleman's  
382 opening statement will be made a part of the record.

383 [The information follows:]

384

385 Mr. Nadler. Then I yield back.

386 Chairman Smith. Thank you, Mr. Nadler.

387 The question is on the amendment.

388 All in favor, say aye.

389 Opposed, no.

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

391 Are there any other amendments?

392 [No response.]

393 Chairman Smith. If not, a reporting quorum being  
394 present, the question is on reporting the bill, as amended,  
395 favorably to the House.

396 Those in favor, say aye.

397 Opposed, no.

398 The ayes have it, and the bill, as amended, is ordered  
399 reported favorably.

400 Without objection, the bill will be reported as a single  
401 amendment in the nature of a substitute, incorporating  
402 amendments adopted. Staff is authorized to make technical  
403 and conforming changes. Members will have 2 days to submit  
404 their views.

405 We will now consider the third bill of the day, and this

406 is H.R. 3668. Pursuant to notice, I now call up H.R. 3668  
407 for purposes of markup, and the clerk will report the bill.

408 Ms. Kish. H.R. 3668, to prevent trafficking in  
409 counterfeit drugs. In the House of Representatives,  
410 December 14, 2011, Mr. Meehan, for himself and Ms. Linda T.  
411 Sanchez --

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

414 [The information follows:]

415

416 Chairman Smith. And I will recognize myself for an  
417 opening statement.

418 First of all, I want to thank Mr. Meehan of Pennsylvania  
419 and Ms. Sanchez of California for their work on this issue.  
420 This is a bipartisan, bicameral bill. Similar legislation  
421 sponsored by Senator Leahy was passed by the Senate in March  
422 by a voice vote. Similar language is also contained in the  
423 House and Senate versions of the Prescription Drug User Fee  
424 Act, which passed both chambers last month.

425 Counterfeit drugs are fake drugs. They may be  
426 contaminated, contain the wrong ingredient or no active  
427 ingredient, or have the right active ingredient but at the  
428 wrong dose. Counterfeit drugs are illegal, may be harmful  
429 to a person's health, and can be deadly.

430 Current law prohibits trafficking in counterfeit goods  
431 and is primarily concerned with goods that are trafficked  
432 using counterfeit marks or labels. However, counterfeit  
433 drugs are more serious.

434 Counterfeit drugs present not only a financial loss to  
435 the manufacturer or mark holder, but also a real health risk  
436 to consumers. While current law technically includes

437 counterfeit drugs, the law does not expressly prohibit  
438 trafficking in counterfeit drugs and carries a maximum  
439 penalty of only 10 years.

440 Just last week, the U.S. Food and Drug Administration  
441 warned consumers and healthcare professionals about a  
442 counterfeit version of Adderall that is available for sale  
443 on the Internet. Adderall, an approved treatment for  
444 Attention Deficit Hyperactivity Disorders and narcolepsy, is  
445 a prescription drug classified as a controlled substance, a  
446 class of drugs for which special controls are required for  
447 dispensing by pharmacists.

448 The FDA's preliminary laboratory tests reveal that the  
449 counterfeit version of Adderall contained the wrong active  
450 ingredients. The counterfeit product contained none of the  
451 four active ingredients found in genuine Adderall. In fact,  
452 it contained two different drugs found in medicines used to  
453 treat acute pain.

454 Adderall is currently on the FDA's drug shortage list.  
455 Rogue Web sites and corrupt distributors now prey on the  
456 fears of Americans in counterfeit medicines that are in  
457 short supply.

458           Last February, the FDA warned healthcare professionals  
459           and patients about a counterfeit version of Avastin, a  
460           cancer treatment administered to patients in clinics,  
461           hospitals, and doctors' offices. Tests revealed that the  
462           counterfeit drug did not contain the medicine's active  
463           ingredient, which may have resulted in patients not  
464           receiving needed cancer therapy.

465           Nineteen medical practices in the United States may have  
466           purchased the counterfeit drug from a foreign supplier. The  
467           FDA requested that the medical practices stop the use of any  
468           remaining product from the supplier.

469           Unfortunately, in this case alone there are dozens of  
470           cancer patients who may never know that they did not receive  
471           lifesaving cancer drug. Instead, they got a useless  
472           counterfeit drug, a drug counterfeited and sold only for the  
473           selfish purpose of financial gain.

474           Last month, Abbott Laboratories warned consumers and  
475           healthcare professionals about two separate instances of  
476           counterfeit Vicodin being available on the Internet. This  
477           is a strong pain relief medication sold in the United States  
478           through secured drug supply channels to reach consumers.

479           The genuine drug contains hydrocodone and other drugs.  
480   The counterfeit tablets were relabeled with the counterfeit  
481   Vicodin label and actually contained another drug, a  
482   completely different active ingredient used to treat pain  
483   and fever. It is not known how many Americans purchased or  
484   were injured from this counterfeit drug being sold over the  
485   Internet.

486           These recent situations prove that those who traffic in  
487   counterfeit drugs should be subject to enhanced penalties.  
488   This bill sends a strong message that judges and the  
489   criminal justice system must differentiate between  
490   counterfeit drugs that harm manufacturers and mark holders  
491   and counterfeit drugs that injure and kill Americans.

492           I urge my colleagues to support the bill.

493           And the gentleman from Michigan, Mr. Conyers, is  
494   recognized for his opening statement.

495           Mr. Conyers. Thank you, Chairman Smith.

496           The Counterfeit Drug Penalty Enhancement Act increases  
497   penalties for trafficking in counterfeit drugs. This is the  
498   result of hearings in the Subcommittee on Crime, and also  
499   the U.S. intellectual property enforcement coordinator has

500 called for this act in her recent annual report to Congress.

501       The Food and Drug Administration is working on this  
502 threat, and it is not hard to see how the proliferation of  
503 counterfeit drugs is not just unhealthy, but sometimes fatal  
504 to those who are using drugs, not knowing that they are  
505 counterfeit medications.

506       I also support the anticipated amendment of  
507 Congresswoman Linda Sanchez and Congressman Tom Marino, who  
508 plan to make this bill even stronger.

509       And so, I ask unanimous consent to include my statement  
510 in the record and yield back the balance of my time.

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

513       [The information follows:]

514

515 Chairman Smith. Thank you, Mr. Conyers.

516 The chairman of the Crime Subcommittee, Mr.

517 Sensenbrenner, is recognized.

518 Mr. Sensenbrenner. Mr. Chairman, I ask unanimous

519 consent that my opening statement be made a part of the

520 record. Yield back the balance of my time.

521 Chairman Smith. Without objection, the gentleman's

522 opening statement will be made a part of the record.

523 [The information follows:]

524

525 Chairman Smith. And the gentleman from Virginia, Mr.  
526 Scott, is recognized.

527 Mr. Scott. Thank you, Mr. Chairman.

528 Mr. Chairman, I thank you for bringing this bill before  
529 us, which is intended to deal with the very real problem of  
530 trafficking in counterfeit drugs. At the recent hearing of  
531 the Crime Subcommittee, we heard testimony from witnesses  
532 representing the Food and Drug Administration and the  
533 pharmaceutical industry detailing the ways in which  
534 counterfeit drugs can harm consumers.

535 We must do all we can do to stop the flow of these drugs  
536 to consumers, who need legitimate medicine to treat their  
537 illnesses and who need to be protected from possible harmful  
538 ingredients in drugs that are counterfeit.

539 The bill before us and the substitute amendment, which  
540 we will consider, takes the approach of increasing penalties  
541 specifically for the trafficking in counterfeit drugs. I am  
542 concerned that this approach may divert our focus from what  
543 we would really need to do to achieve our goals, and that is  
544 in response to questioning the rationale for increased  
545 trafficking, we heard from the committee that severity of

546 sentences does not generally create a strong deterrent.  
547 What does create a deterrent is the likelihood of  
548 apprehension and conviction.

549 Now I am pleased that the FDA is doing more to secure  
550 our Nation's drug supply. But ultimately, steps to improve  
551 detection and enforcement efforts will be the most effective  
552 way to protect the consumers.

553 While we consider legislation that is intended to make  
554 us safer, I hope we will strengthen our resolve to do the  
555 things that will actually accomplish that. That is why I  
556 will offer an amendment to provide additional focus and  
557 resources to investigate and prosecute trafficking of  
558 counterfeit drugs.

559 And I commend our colleague, the gentlelady from  
560 California, for her work on this and the gentleman from  
561 Pennsylvania, and look forward to working with her and other  
562 Members to identify ways to actually address the problem.

563 Yield back.

564 Chairman Smith. Thank you, Mr. Scott.

565 The gentleman from Pennsylvania, Mr. Marino, is  
566 recognized to offer a substitute amendment.

567 Mr. Marino. Mr. Chairman, I have an amendment at the  
568 desk.

569 Chairman Smith. The clerk will report the amendment.

570 Ms. Kish. Amendment in the nature of a substitute to  
571 H.R. 3668, offered by Mr. Marino of Pennsylvania --

572 Chairman Smith. Without objection, the amendment will  
573 be considered as read.

574 [The amendment of Mr. Marino follows:]

575

576 Chairman Smith. And the gentleman from Pennsylvania is  
577 recognized to explain his amendment.

578 Mr. Marino. Thank you.

579 Chairman Smith, Ranking Member Conyers, and members of  
580 the committee, thank you for the consideration of H.R. 3668,  
581 the Counterfeit Drug Penalty Enhancement Act of 2011,  
582 introduced by Representative Pat Meehan.

583 Counterfeit drugs are a growing problem in the United  
584 States, and not only do they threaten the health and welfare  
585 of many Americans, but they also adversely impact our  
586 fragile economy. Counterfeit drugs are produced without the  
587 strict controls and oversight needed to ensure the safety  
588 and efficacy of medication. And people who are dealing with  
589 counterfeit drugs have no concern for the patient.

590 Examples of counterfeit drugs making their way into the  
591 United States are too numerous to note in my several  
592 minutes. However, in one current example, the FDA is  
593 investigating batches of fake Avastin, a cancer-fighting  
594 drug, which reached the United States earlier this year  
595 through Europe's supply chain from the Middle East.

596 Reports indicate that the fake Avastin was made of salt,

597 starch, and other chemicals. As a three-time cancer  
598 survivor, I have relied on lifesaving prescription drugs.  
599 And the fact that fake drugs consisting of nothing more than  
600 salt are reaching patients is unacceptable.

601 Unfortunately, the penalties for introducing counterfeit  
602 drugs into interstate commerce do not reflect the severity  
603 of the crime, and they are not an adequate deterrent. In  
604 fact, the penalties are no different than those assessed for  
605 trafficking other counterfeit products, such as DVDs or  
606 clothing.

607 My amendment in the nature of a substitute, cosponsored  
608 by Representative Sanchez -- and I would like to thank her  
609 very much for her support -- would increase the maximum  
610 penalties for persons who traffic in counterfeit drugs. My  
611 amendment and the underlying legislation introduced by my  
612 colleague from Pennsylvania will send a message to criminals  
613 who are putting the lives of millions of Americans at risk  
614 by trafficking counterfeit drugs.

615 I urge all of my colleagues to support my amendment and  
616 join me in supporting the underlying legislation.

617 Thank you, and I yield back the balance of my time.

618 Chairman Smith. Thank you, Mr. Marino.

619 Mr. Marino, I want to thank you for your leadership and  
620 for taking the lead on this legislation and also for  
621 offering this bipartisan amendment with the gentlewoman from  
622 California, who is now recognized.

623 Ms. Sanchez. Thank you, Mr. Chairman.

624 I am pleased to join my colleagues of both parties,  
625 particularly Mr. Meehan of Pennsylvania, in cosponsoring  
626 H.R. 3668 and to join my colleague Mr. Marino in sponsoring  
627 the amendment in the nature of a substitute. H.R. 3668 will  
628 raise the penalties for counterfeit medicines, a unique  
629 consumer health and safety problem.

630 This legislation is needed. It is bipartisan, and it is  
631 noncontroversial. Quite simply, counterfeit drug  
632 enterprises jeopardize the public safety, and I believe that  
633 they should be held accountable. Most importantly, this  
634 amendment will help protect seniors and children who are  
635 particularly vulnerable and anyone who could be harmed by  
636 counterfeit medicines.

637 Unlike other consumer goods, counterfeit medicines pose  
638 a significant public health and safety threat to the

639 innocent, sick patients who receive them. Counterfeit drugs  
640 account for an estimated \$75 billion in annual revenue.

641 Why are these criminals so bold? It is because  
642 currently the penalty for selling a counterfeit drug is the  
643 same as selling a bootleg DVD. A DVD will not cause you  
644 bodily harm, but each year, counterfeit drugs result in  
645 100,000 fatalities worldwide.

646 We should have penalties in place that reflect the  
647 serious health dangers posed by these phony medications.  
648 Counterfeit medications include products that may lack the  
649 active ingredient, contain an insufficient or excessive  
650 quantity of the active ingredient, contain the wrong active  
651 ingredient, and/or involve fake packaging.

652 Dangerous health consequences, including unexpected side  
653 effects, allergic reactions, or worsening of their medical  
654 condition, can result when an individual receives a  
655 counterfeit prescription medication. Arsenic, pesticides,  
656 rat poison, and brick dust are just a few of the toxic  
657 substances that have been found in counterfeit medicines.

658 Vaccines, as well as drugs that treat cancer,  
659 Alzheimer's disease, ulcers, high blood pressure, and high

660 cholesterol, are among the many, many drugs that have been  
661 and continue to be counterfeited.

662 To deter these criminals from putting the public's  
663 health at risk, the penalties for counterfeiting must  
664 outweigh profits. I encourage my colleagues to support this  
665 straightforward, reasonable approach, and I yield back the  
666 balance of my time.

667 Chairman Smith. Thank you, Ms. Sanchez.

668 Are there any amendments to the substitute amendment?

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

670 Mr. Scott. Mr. Chairman, I have an amendment at the  
671 desk.

672 Chairman Smith. The clerk will report the amendment.

673 Ms. Kish. Amendment to the Marino amendment, offered by  
674 Mr. Scott of Virginia. Add at the end of the bill the  
675 following: "D. Priority given to certain investigations  
676 and prosecutions. The Attorney General shall give increased  
677 priority to --"

678 Mr. Scott. Mr. Chairman, I ask unanimous consent that  
679 the amendment be considered as read.

680 Chairman Smith. Without objection, the amendment will

681 be considered as read.

682 [The amendment of Mr. Scott follows:]

683

684 Chairman Smith. And the gentleman from Virginia is  
685 recognized to explain his amendment.

686 Mr. Scott. Thank you.

687 Mr. Chairman, I appreciate the concerns about the  
688 dangers posed by consumers from counterfeit drugs. However,  
689 as I said in my statement, just raising penalties is  
690 generally an ineffective way to deter crime. The likelihood  
691 of being caught and punished is what effectively deters  
692 criminals, and that is why this amendment will direct the  
693 Department of Justice to increase its focus and priority on  
694 investigating and prosecuting this type of crime.

695 I yield back.

696 Chairman Smith. Thank you, Mr. Scott.

697 The gentleman from Pennsylvania, Mr. Marino, is  
698 recognized.

699 Mr. Marino. Thank you, Mr. Chairman.

700 I rise to support my colleague's amendment. Being in  
701 law enforcement for most of my life, I have firsthand  
702 experience about chief law enforcement officers, whether  
703 that is at the Federal, State, or even at the local level,  
704 sit down with their staff and determine the priorities.

705           And in addition with the increase in penalties, I think  
706   increasing a staffing or increasing the way the prosecutors  
707   go after this is just going to be a benefit to all of the  
708   people of the United States.

709           So I urge my colleagues to support this.

710           Thank you. Yield back.

711           Chairman Smith. Thank you, Mr. Marino.

712           The question is on the amendment.

713           All in favor, say aye.

714           All opposed, no.

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

716           Are there any other amendments?

717           [No response.]

718           Chairman Smith. If not, a reporting quorum being  
719   present, we will vote on the substitute amendment, as  
720   amended, first.

721           All in favor of the substitute amendment, as amended,  
722   say aye.

723           Opposed, no.

724           The amendment is agreed to.

725           A reporting quorum being present, the question is on

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

727 Those in favor, say aye.

728 Opposed, no.

729 The ayes have it, and the bill, as amended, is ordered  
730 reported favorably.

731 Without objection, the bill will be reported as a single  
732 amendment in the nature of a substitute, incorporating  
733 amendments adopted. And staff is authorized to make  
734 technical and conforming changes. Members will have 2 days  
735 to submit their views.

736 We will now go to H.R. 4223, the Safe Doses Act.

737 Pursuant to notice, I now call up H.R. 4223 for purposes of  
738 markup. The clerk will report the bill.

739 Ms. Kish. H.R. 4223, to amend Title 18 United States  
740 Code to prohibit theft of medical --

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

743 [The information follows:]

744

745 Chairman Smith. And I will recognize myself for an  
746 opening statement.

747 Large-scale medical product theft is a significant  
748 problem in today's society. Medical products require  
749 special care and maintenance. For example, many of them  
750 must have temperature controls. When medical products are  
751 stolen, thieves resell them into the black and gray markets.  
752 This could result in the injury of those who are sick.

753 Current law does not recognize the added importance of  
754 such lifesaving cargo. Right now, under Federal law, theft  
755 of insulin intended for diabetics would be sentenced to the  
756 same extent as theft of a truck full of car tires.

757 The Safe Doses Act modernizes and strengthens the  
758 criminal code in order to deter and punish medical product  
759 cargo theft. Higher possible sentences not only make people  
760 think twice before they steal medical cargo, but also  
761 provide law enforcement agencies with the tools they need to  
762 obtain cooperation in bringing down criminal organizations.

763 The Safe Doses Act enables authorities to better target  
764 the multidimensional enterprises that carry out these crimes  
765 and recognizes the health risk created by the improper care

766 and handling of sensitive medical products.

767       Senators Schumer and Kyl are the sponsors of S. 1002,  
768 the corresponding version of our bill. As of today, the  
769 Senate bill has over 30 cosponsors.

770       This bipartisan bill helps to ensure that lifesaving  
771 drugs do not continue to pose a threat to public safety. I  
772 thank Crime Subcommittee Chairman Sensenbrenner for his work  
773 on this legislation and urge my colleagues to join me in  
774 support of the bill.

775       That concludes my opening statement, and the gentleman  
776 from Michigan, Mr. Conyers, is recognized for his.

777       Mr. Conyers. Thank you, Chairman.

778       Members of the committee, the pre-retail theft of  
779 prescription drugs is a serious problem. It has become more  
780 serious and has ramifications for all of us. The real and  
781 immediate threat that these crimes present to the public's  
782 health and safety deserve a comprehensive response, and that  
783 is what H.R. 4223 tries to do, and we may have to do even  
784 more.

785       And here is why I say that. First of all, we are faced  
786 with the fact that there is very little evidence that

787 increasing penalties for criminal conduct alone will deter  
788 those who might engage in this kind of misbehavior. And  
789 this was made by Professor Lucian Dervan at the hearing on  
790 this bill, who said that studies demonstrate there is little  
791 evidence establishing that enhanced penalties discourage  
792 thieves from engaging in lucrative criminal activity.

793 In other words, do they check the criminal code about  
794 possible increases in maximum sentences before they commit a  
795 crime? Well, I think you know the answer to that. And so,  
796 we need to ensure our law enforcement officers and  
797 prosecutors have resources to effectively investigate and  
798 prosecute offenders.

799 To be honest, members of the committee, I put this over  
800 and above increasing penalties for the offenses. The fear  
801 of detection is a significantly greater deterrent than  
802 simply increasing the severity of the sentences.

803 And so, I hope that we will take this into  
804 consideration. I hope maybe the ranking subcommittee  
805 member, Mr. Scott, has some remedy for this, maybe an  
806 amendment.

807 And I also think it incumbent upon the pharmaceutical

808 industry themselves to actively combat and aim to eliminate  
809 medical product theft. That means investigating the funds  
810 to update their security systems and doing anything else  
811 necessary to protect their merchandise to stay ahead of this  
812 increasing criminal problem.

813 Thank you, Mr. Chairman. I yield back my time.

814 Chairman Smith. Thank you, Mr. Conyers.

815 The gentleman from Wisconsin, Mr. Sensenbrenner, the  
816 chairman of the Crime Subcommittee, is recognized.

817 Mr. Sensenbrenner. Thank you, Mr. Chairman.

818 I am going to make my opening statement this time  
819 because I have some specific instances that shows why this  
820 bill is necessary.

821 I introduced the Safe Doses Act to address the problem  
822 of medical cargo theft across the U.S. The bill will  
823 increase criminal penalties for medical product cargo theft,  
824 a crime that is now posing significant health risk to  
825 patients who have no reason to know that their medicines  
826 have been stolen and improperly cared for before being sold  
827 back into the legitimate supply chain.

828 Sophisticated and enterprising criminal organizations

829 are stealing large quantities of medical products and  
830 selling them via the wholesale market into legitimate  
831 pharmacies and hospitals. They are putting patient safety  
832 at risk because improperly cared for medical products can be  
833 ineffective or harmful, and such damaged products are often  
834 impossible for healthcare professionals to identify.

835 High-value pharmaceuticals, including treatments for  
836 serious diseases, are frequent targets. Unfortunately,  
837 these high-value items are the very type of sensitive  
838 products that need the most careful handling and temperature  
839 control.

840 Many medical products can become ineffective if stored  
841 at the wrong temperature, even for a brief time. Yet under  
842 current law, the theft of lifesaving medical supplies is  
843 treated the same as the theft of stereo equipment or  
844 clothing.

845 The criminal organizations hijack tractor trailers at  
846 rest stops, break into warehouses and evade alarm systems,  
847 forge shipping documents, produce high-quality counterfeit  
848 labels with altered expiration dates and lot numbers, and  
849 otherwise thwart the intense security measures used by the

850 industry. Some employ sophisticated surveillance equipment  
851 and techniques in order to learn exactly when and where they  
852 can steal the particular shipments they want.

853 For example, authorities made arrests in the 2010 theft  
854 of about \$80 million worth of prescription drugs from a  
855 Connecticut warehouse, a robbery described by the Justice  
856 Department as one of the biggest pharmaceutical heists in  
857 history. The thieves broke into the Enfield warehouse of  
858 pharmaceutical giant Eli Lilly and Company in March 2010 and  
859 stole enough pills to fill a tractor trailer.

860 After cutting a hole in the roof of the industrial park  
861 warehouse, they lowered themselves to the floor, disabled  
862 the alarms, and spent at least an hour loading pallets of  
863 antidepressants and other drugs into a vehicle at the  
864 loading dock, authorities said.

865 Experts have said that the heist shared many traits with  
866 warehouse thefts of pharmaceuticals last year in Richmond,  
867 Virginia; Memphis, Tennessee; and Olive Branch, Mississippi.  
868 Those thieves also cut through ceilings and sometimes used  
869 trapeze-style rigging to get inside and disable the main and  
870 backup alarms.

871 In some cases, they sprayed dark paint on the lenses of  
872 the security cameras. In other cases, they stole disks in  
873 the security recording devices.

874 In 2009, thieves stole 129,000 vials of insulin worth  
875 approximately \$11 million in North Carolina. A few months  
876 later in June, the FDA received a report that some of the  
877 vials had been reintroduced into the supply chain when a  
878 diabetic patient reported to a medical center in Houston  
879 with an adverse reaction after using insulin from the stolen  
880 lot.

881 The spoiled product was ultimately found in pharmacies  
882 in 17 States, with at least 2 additional patients  
883 experiencing adverse reactions. An investigation linked the  
884 theft to an organized crime ring. And while some arrests  
885 have been made, over 125,000 vials of insulin remain  
886 unaccounted for.

887 The bill would increase sentences for the theft,  
888 transportation, and storage of medical product cargo;  
889 enhance penalties for the fences who knowingly obtain stolen  
890 medical products for resale into the supply chain; increase  
891 sentences when harm occurs or trust is broken -- in other

892 words, where injury and death results from ingestion of a  
893 stolen substance or where the defendant is employed by an  
894 organization in the supply chain -- provide law enforcement  
895 tools such as wiretaps; and provide restitution to victims  
896 injured by stolen medical products.

897 The legislation is supported by the Coalition for  
898 Patient Safety and Medicine Integrity, a group of  
899 pharmaceutical medical device and medical products companies  
900 whose purpose is to protect patients from the risks posed by  
901 stolen and inappropriately handled medical products  
902 reentering the legitimate supply chain.

903 The members of the coalition include Abbott, Eli Lilly,  
904 GlaxoSmithKline, Johnson & Johnson, Novartis, Novo Nordisk,  
905 Sanofi, and PhRMA. The bill is supported by the Association  
906 of Community Cancer Centers and the Healthcare Distribution  
907 Management Association.

908 The companion bill in the Senate, S. 1002, was passed  
909 unanimously by a voice vote in the Senate Judiciary  
910 Committee on March 8th. It was the Schumer-Kyl bill that  
911 had 33 cosponsors.

912 I encourage my colleagues to support this bill and to

913 give law enforcement the tools they need to protect the  
914 public. And I thank you.

915 Chairman Smith. Thank you, Mr. Sensenbrenner.

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

917 Mr. Scott. Thank you, Mr. Chairman.

918 Mr. Chairman, large-scale medical product theft poses  
919 substantial risk to the public. We have heard previously  
920 about the case in North Carolina in 2009 where over 120,000  
921 vials of insulin were stolen and subsequently reintroduced  
922 back into the supply chain to be used by unsuspecting  
923 patients.

924 Patients should be able to rely on their medications to  
925 be safe, effective, and unadulterated, and we certainly need  
926 to treat it as a significant crime when criminals steal  
927 large shipments of drugs. Large-scale medical product theft  
928 is a serious problem that merits a serious solution.

929 I support the bill, but would like to briefly discuss  
930 the mens rea requirement in H.R. 4223. A cornerstone of  
931 American criminal justice system is an idea that one must  
932 have a guilty mind to be convicted of a crime, and I believe  
933 that sponsors of the bill intend for it to only reach

934 conduct where the perpetrators know that the product is  
935 involved in medical -- is a medical product that is stolen,  
936 expired, or not yet released to the public.

937 And I also believe that the correct reading of the bill,  
938 consistent with the general presumption of mens rea in a  
939 statute applies to other nonjurisdictional -- all other  
940 nonjurisdictional elements that is that the defendant would  
941 have to know that the product is a pre-retail medical  
942 product --

943 Mr. Sensenbrenner. Will the gentleman yield?

944 Mr. Scott. I yield.

945 Mr. Sensenbrenner. I am happy to work with the  
946 gentleman from Virginia to address the concern that he has  
947 expressed in the committee report. I think he makes a valid  
948 point, and the way to deal with it is with proper committee  
949 report language.

950 Mr. Scott. Reclaiming my time, and I thank the  
951 gentleman.

952 I think that would be the appropriate way to deal with  
953 it to make sure that that is clear.

954 Also, Mr. Chairman, I want to express some concern about

955 our continuing to increase penalties every time we identify  
956 a criminal problem. Stealing cargo from a warehouse is  
957 already illegal. The penalty is a fine and prison time up  
958 to 10 years.

959 H.R. 4223 creates a new crime for theft of pre-retail  
960 medical products and a new code section. That section would  
961 increase penalties up to 30 years in prison in some cases if  
962 the goods stolen are pre-retail medical products.

963 I can support the bill, however, because of the  
964 increased danger to the public posed by the large warehouse  
965 thefts and because there are no mandatory minimums and that,  
966 therefore, there will be an intelligent deliberative process  
967 to set sentencing guidelines through the Sentencing  
968 Commission.

969 We heard from witnesses at the hearing on 4223 in March  
970 that increased investigation and enforcement would have a  
971 greater deterrent effect than increased penalties and,  
972 therefore, will offer an amendment similar to the one on the  
973 last bill to increase the priority to investigate and  
974 prosecute these cases.

975 Finally, we have to work together with the private

976 sector. The Fortune magazine in April of last year had an  
977 article that reports that, as we have heard, widespread  
978 thefts and the security -- lax security that made these  
979 thefts possible, while none of this shields or excuses the  
980 perpetrators, we clearly have to point to better security.

981 And I believe that the Government and industry are  
982 working together, and I would hope that they would continue  
983 to work together to deal with this lax security.

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

985 Chairman Smith. Thank you, Mr. Scott.

986 The gentleman from Wisconsin, Mr. Sensenbrenner, is  
987 recognized for purposes of offering a manager's amendment.

988 Mr. Sensenbrenner. Mr. Chairman, I have an amendment at  
989 the desk.

990 Chairman Smith. The clerk will report.

991 Ms. Kish. Amendment to H.R. 4223, offered by Mr.  
992 Sensenbrenner.

993 Mr. Sensenbrenner. Mr. Chairman, I ask unanimous  
994 consent the amendment be considered as read.

995 Chairman Smith. Without objection, the amendment is  
996 considered as read.

997 [The amendment of Mr. Sensenbrenner follows:]

998

999 Chairman Smith. And the gentleman is recognized to  
1000 explain his amendment.

1001 Mr. Sensenbrenner. Mr. Chairman, this amendment makes  
1002 small changes in the language of the House version that  
1003 tracks language in the Senate version, making it easier for  
1004 Congress to reach agreement on the bill. For instance, the  
1005 amendment adds expressed mens rea language to the  
1006 prohibitive conduct, making it impossible for someone to be  
1007 convicted unless they know it is a medical cargo they are  
1008 trafficking.

1009 It also adds a specific intent requirement, ensuring  
1010 that someone who mistakenly takes medical cargo would not be  
1011 guilty of violating the statute. The amendment also makes a  
1012 minor jurisdictional adjustment. The amendment also  
1013 corrects a minor technical issue that existed, making clear  
1014 that the new higher sentences would apply to those who  
1015 commit the crime under aggravated circumstances.

1016 I urge the Members to support the amendment and yield  
1017 back the balance of my time.

1018 Chairman Smith. Thank you, Mr. Sensenbrenner.

1019 Are there any amendments to the manager's amendment?

1020 Mr. Scott. Parliamentary inquiry?

1021 Chairman Smith. The gentleman from Virginia states his  
1022 parliamentary inquiry.

1023 Mr. Scott. I understand that the amendment is not a  
1024 substitute?

1025 Mr. Sensenbrenner. If the gentleman will yield? The  
1026 amendment is not a substitute.

1027 Chairman Smith. The gentleman is correct. We will vote  
1028 on this amendment and then entertain other amendments as  
1029 well.

1030 Does the gentleman from Virginia have any comment on the  
1031 Sensenbrenner manager's amendment?

1032 Mr. Scott. No, Mr. Chairman. I think the majority and  
1033 minority have discussed this, and I think the substitute --  
1034 the amendment deals with a lot of problems that occurred  
1035 and, I think, solves them.

1036 Chairman Smith. Okay. Thank you, Mr. Scott.

1037 The question is on the Sensenbrenner amendment.

1038 All in favor, say aye.

1039 Opposed, no.

1040 The majority having voted in favor, the amendment is

1041 agreed to.

1042 Are there are other amendments?

1043 Mr. Polis. Mr. Chairman?

1044 Chairman Smith. The gentleman from Virginia, Mr. Scott,  
1045 is recognized for the purpose of offering an amendment.

1046 Mr. Scott. Thank you, Mr. Chairman.

1047 Similar to the last, I have an amendment at the desk.

1048 Chairman Smith. The clerk will report the amendment.

1049 Ms. Kish. Amendment to H.R. 4223, offered by Mr. Scott  
1050 of Virginia.

1051 Chairman Smith. Without objection, the amendment will  
1052 be considered as read.

1053 [The amendment of Mr. Scott follows:]

1054

1055 Chairman Smith. And the gentleman is recognized to  
1056 explain his amendment.

1057 Mr. Scott. Thank you.

1058 It indicates that the Attorney General should give  
1059 increased priority to investigate and prosecute crimes in  
1060 this nature for the reasons that --

1061 Mr. Sensenbrenner. Chairman, will the gentleman yield?

1062 Mr. Scott. I yield.

1063 Mr. Sensenbrenner. The gentleman has a very good  
1064 amendment. I am pleased to support it.

1065 Mr. Scott. I yield back.

1066 Chairman Smith. The gentleman yields back his time.

1067 The vote is on the Scott amendment.

1068 All in favor, say aye.

1069 Opposed, no.

1070 A majority having agreed, the amendment is agreed to.

1071 Are there other amendments? The gentleman from

1072 Colorado, Mr. Polis, is recognized.

1073 Mr. Polis. Mr. Chairman, I have an amendment at the  
1074 desk.

1075 Chairman Smith. The clerk will report the amendment.

1076 Ms. Kish. Amendment to H.R. 4223, offered by Mr. Polis  
1077 of Colorado. Page 4, line 13, insert after "drug," the  
1078 following: "Including marijuana that is being produced,  
1079 processed, distributed for health or medical purposes in  
1080 accordance with applicable State law."

1081 [The amendment of Mr. Polis follows:]

1082

1083 Chairman Smith. The gentleman from Colorado is  
1084 recognized to explain his amendment.

1085 Mr. Polis. Thank you, Mr. Chairman.

1086 This amendment will clarify that these enhanced  
1087 penalties also apply to the theft or fraudulently obtaining  
1088 or selling medical marijuana in the States that have that  
1089 where applicable under State law. Now, it is my  
1090 understanding there are 16 States and the District of  
1091 Columbia that have various regulatory schemes for medical  
1092 marijuana.

1093 Obviously, these enhanced penalties would not be used in  
1094 States that do not have that particular language. But the  
1095 way this would affect and why it is needed in my home State  
1096 as a law enforcement tool that would be helpful is while  
1097 having a regulatory system for medical marijuana has  
1098 certainly reduced the access of minors to marijuana, what  
1099 can occur is marijuana can be fraudulently obtained from a  
1100 dispensary by somebody who intends to resell it.

1101 And I think it would be very helpful to have this set of  
1102 enhanced penalties to help make sure that this type of  
1103 behavior is not sanctioned. It is a real problem,

1104 particularly with the fact that there is an established  
1105 black market for marijuana. It is a cash crop, if you will.  
1106 So the ability of somebody to steal it and then fence or  
1107 sell what they have stolen is even more pronounced than it  
1108 is with some of the other drugs and food-related products  
1109 that we are dealing with.

1110       Again, and while our State has a regulatory system that  
1111 allows for -- requires video cameras at dispensaries, Mr.  
1112 Sensenbrenner gave a good description of how those can be  
1113 evaded -- people painting over, et cetera. And having these  
1114 enhanced penalties for those who would steal or fraudulently  
1115 obtain medical marijuana as defined by the various State  
1116 statutes would be very helpful in preventing access for  
1117 minors to marijuana, also preventing marijuana from entering  
1118 the black market and going to people for whom it is contrary  
1119 for State law for them to consume it as well.

1120       Also looking at the penalty section in Section 4, it  
1121 talks about the interstate shipment of medical marijuana,  
1122 and I think that there is some fear from States that  
1123 neighbor medical marijuana States. States that border, for  
1124 instance, Colorado or California, some of the other States,

1125 that the product could be fraudulently obtained in a State  
1126 and then brought across the State border.

1127 Again, Colorado also regulates growing facilities for  
1128 marijuana, and that represents another part of the supply  
1129 chain where even larger-scale thefts can occur than at the  
1130 dispensary level. And once the product leaves the regulated  
1131 supply chain, it can be sold to minors. It can be sold in  
1132 the black market. It can cross State lines, and these  
1133 enhanced penalties will help ensure that we are able to  
1134 strongly discourage and penalize those who would engage in  
1135 this sort of theft or fraudulent obtainment of these  
1136 products and using them in methods other than -- contrary to  
1137 State law and, of course, contrary to Federal law.

1138 So I think that this is, again, a common sense  
1139 amendment. I understand that some of the States' Members  
1140 might not have a regulatory system for medical marijuana,  
1141 but just keep in mind it could be brought into your State  
1142 from a neighboring State that does, and this amendment will  
1143 help ensure that there are sufficient penalties in place to  
1144 prevent that from occurring.

1145 I encourage my colleagues to support this amendment, and

1146 I yield back the balance of my time.

1147 Mr. Sensenbrenner. Mr. Chairman?

1148 Chairman Smith. Thank you, Mr. Polis.

1149 The gentleman from Wisconsin, Mr. Sensenbrenner, is  
1150 recognized.

1151 Mr. Sensenbrenner. Mr. Chairman, I rise in opposition  
1152 to the amendment.

1153 Chairman Smith. The gentleman is recognized for 5  
1154 minutes.

1155 Mr. Sensenbrenner. Mr. Chairman, claiming marijuana as  
1156 a pre-retail medical product deserving of Federal protection  
1157 would be to invalidate the purpose of this legislation. The  
1158 bill seeks to protect legitimate medicine from theft and  
1159 tampering that could risk the health of American citizens.

1160 By comparison, marijuana is listed as a Schedule I drug  
1161 under the Controlled Substances Act, which the amendment  
1162 does not propose to amend. The amendment is an attempt to  
1163 legitimize marijuana as a prescription drug, such as insulin  
1164 or a lifesaving antibiotic, thus changing the way the law  
1165 treats marijuana.

1166 However, the amendment would not have that effect

1167 because marijuana would still remain a Schedule I drug on  
1168 the controlled substances list and, thus, would still remain  
1169 illegal. The amendment only confuses the issue.

1170 Medical cargo theft is a serious problem, and this bill  
1171 should not be used as a vehicle by those whose agenda is to  
1172 legalize the sale and possession of marijuana. By making  
1173 the theft of marijuana illegal, it would suggest by  
1174 inference that possession of marijuana is lawful throughout  
1175 the country. We are not here to debate that proposition  
1176 today. That would be counterproductive to addressing the  
1177 real problem -- the black and gray markets for altered and  
1178 improperly maintained medicines that sick people need to get  
1179 better.

1180 I would point out that the Supreme Court case of  
1181 *Gonzales v. Raich* involved a marijuana distribution  
1182 operation in California, and the court held that Federal law  
1183 preempts State law. The adoption of this amendment would  
1184 confuse the issue.

1185 For that reason alone, I believe that the amendment  
1186 should be rejected, and I yield back the balance of my time.

1187 Chairman Smith. Thank you, Mr. Sensenbrenner.

1188 Are there other Members who wish to be heard?

1189 The gentleman from Tennessee, Mr. Cohen, is recognized.

1190 Mr. Cohen. Thank you, Mr. Chairman.

1191 You know, I don't think it confuses the issue at all. I  
1192 think what it shows is just the fact that certain States  
1193 have taken the opportunity to, as in Justice Brandeis'  
1194 opinion, that they are the laboratories of democracy to give  
1195 other States the opportunity to see does this work? Is it  
1196 efficacious?

1197 If people have cancer or glaucoma or multiple sclerosis  
1198 or what other illnesses that are affected in a positive  
1199 manner by the use of this drug, that the other States should  
1200 be able to learn from it. And if they are stealing the  
1201 drugs, that should be illegal in the same way.

1202 I mean, it does show that there is a demand for the  
1203 drug, which is one that we should probably not be putting  
1204 people in jail to take their opportunities to have a  
1205 livelihood later for, and there should be another way to  
1206 deal with that. But I think this is a really valid  
1207 amendment.

1208 And if you believe in States rights and only affects

1209 those States that have taken that action, that you ought to  
1210 support it and be consistent. I think it makes a lot of  
1211 sense.

1212 I thank the gentleman from Colorado for bringing the  
1213 amendment, and I am against crime in all quarters.

1214 Mr. Polis. Will the gentleman yield?

1215 Mr. Cohen. Yes.

1216 Mr. Polis. Thank you.

1217 And again, I mean, very simply, this amendment would  
1218 prevent marijuana from exiting the supply chain in States  
1219 that do regulate it and being sold to minors or kids or  
1220 others by having enhanced sentencing around that.

1221 And while Mr. Cohen and I may agree and do agree on  
1222 where we should be going with regard to our drug laws  
1223 nationally, I would say that I don't think that Mr.  
1224 Sensenbrenner's point that somehow this piece would go any  
1225 way towards legalizing marijuana has any validity. In fact,  
1226 this is all about enhanced penalties for those who would  
1227 transport it across State borders, for those who would take  
1228 it from dispensaries, for those who would take it from  
1229 growing facilities and exit that State-regulated supply

1230 chain and sell it on the black market.

1231 It is very consistent with the goals of the bill. It in  
1232 no way, shape, or form legalizes marijuana. We are only  
1233 talking about extra penalties -- enhanced jail time,  
1234 enhanced civil liability, enhanced wiretapping -- for those  
1235 who would steal or fraudulently obtain marijuana. And  
1236 again, it frequently winds up being sold to minors or kids,  
1237 and my amendment would help prevent that.

1238 And I yield back to the gentleman from Tennessee.

1239 Mr. Cohen. Thank you.

1240 And I would yield back the balance of my time.

1241 Chairman Smith. Thank you, Mr. Cohen.

1242 The gentleman from --

1243 Mr. Cohen. Ms. Jackson Lee, I yield to you.

1244 Ms. Jackson Lee. The gentlemen, both gentlemen make  
1245 good points. Both gentlemen make points -- I thank you for  
1246 yielding.

1247 Mr. Polis makes a very good point. It is well known  
1248 that it is not federally legal from a Federal perspective,  
1249 but there are States where there are laws dealing with  
1250 marijuana, medical marijuana, medicinal marijuana. In those

1251 instances, your amendment fits because it gives protection  
1252 that now is taken away under the structure of this  
1253 legislation.

1254       So I think what you are providing is a safety net in  
1255 places where medical marijuana, medicinal marijuana, and the  
1256 uses of marijuana are legal in that State.

1257       And so, I would make the argument that this is a  
1258 thoughtful amendment for that reason and that we owe those  
1259 individuals using it legally under that prospect that  
1260 protection.

1261       I yield back to the gentleman from Tennessee.

1262       Mr. Cohen. Thank you, ma'am.

1263       I just think we shouldn't get caught up in the weeds.  
1264 We should proceed in an appropriate manner and be  
1265 consistent.

1266       Thank you.

1267       Chairman Smith. Thank you, Mr. Cohen.

1268       The gentleman from Georgia, Mr. Johnson, is recognized.

1269       Mr. Johnson. Thank you, Mr. Chairman.

1270       I would point out that while the theft of medicine is  
1271 already illegal, while the cargo theft of medicine is

1272 already illegal, this bill increases the maximum penalties  
1273 from 10 years to 15, 20, and 25 years based on certain  
1274 predicates. Now let us put that aside for a minute.

1275 I would say that in my career as a criminal defense  
1276 lawyer, doing some work on the Federal level, I was  
1277 impressed with the fact that the people who get the maximum  
1278 sentences tend to be the sellers who are on the lowest  
1279 level, street level and perhaps one level up. Those are the  
1280 ones who are the recipients of the increased or the maximum  
1281 penalties that are already in place now.

1282 The reason why those traffickers, those who set up the  
1283 organizations don't get the time is because they have  
1284 bargaining power with prosecutors, who have the power to  
1285 charge them with something less onerous than one of these --  
1286 one of these bills that have high penalties.

1287 So, in other words, if a prosecutor decides to plea  
1288 bargain with some trafficker who can identify people up line  
1289 from him or her as well as people down line, that means they  
1290 can -- the person on a high level, they have leverage with  
1291 prosecutors to get a -- to get the ability to plead to a  
1292 charge that does not bring into play the maximum penalties.

1293 And they also have the best lawyers, and they can work out  
1294 deals for themselves. But the poor folks on the bottom end  
1295 up getting the maximum time.

1296 So, in the absence of increasing resources for law  
1297 enforcement, Department of Justice to hire more  
1298 investigators to -- for FBI, law enforcement, DEA, if we  
1299 continue to cut those budgets, and we cut the ability to  
1300 investigate and take these things to the highest level and  
1301 get at those folks who are trafficking in the drugs, then  
1302 what we are doing is just simply setting up a situation  
1303 where when it comes down to enforcement, it is going to be  
1304 the guys out there standing on the street corner and perhaps  
1305 the guy who is in the apartment upstairs who is supplying  
1306 them.

1307 And that will be the extent of those punished with these  
1308 enhanced penalties. Already 10 years, it is against the  
1309 law. I would also say that I support what Congressman Scott  
1310 has said, which is that it is not the penalty that -- or the  
1311 range of punishment that deters crime. It is the actual  
1312 investigation and conviction of those who do the crime that  
1313 is the deterrent.

1314           And I would also like to know what impact does this  
1315   enhanced, do these enhanced penalties have in terms of the  
1316   Federal sentencing guidelines, which are not mandatory?  
1317   They are discretionary, but some judges across the Nation  
1318   apply them as without any discretion. What impact does this  
1319   legislation have on the Federal sentencing guidelines?

1320           And I guess if I had to say whether or not I was in  
1321   support of this amendment, I would say perhaps yes, perhaps  
1322   no. Can anyone answer that question for me? I will yield  
1323   to anyone who can answer that question for me.

1324           I think it is an important question. How does this  
1325   relate to the sentencing guidelines? How will the  
1326   sentencing guidelines be affected by us increasing the  
1327   punishment?

1328           I suspect what is going to happen is that Federal judges  
1329   will start to impose the higher sentences once the  
1330   predicates are reached, and we are going to have a lot of  
1331   people -- it is like crack cocaine all over again, where we  
1332   imprison people disproportionately minorities.

1333           Chairman Smith. The gentleman's time has expired.

1334           The question is on the Polis amendment.

1335 All in favor, say aye.

1336 Opposed, nay.

1337 In the opinion of the chair, the nays have it, and the  
1338 amendment is not agreed to.

1339 Mr. Polis. Mr. Chair, on that, I request the roll call  
1340 vote.

1341 Chairman Smith. A recorded vote has been requested, and  
1342 the clerk will call the roll.

1343 Ms. Kish. Mr. Smith?

1344 Chairman Smith. No.

1345 Ms. Kish. Mr. Smith votes no.

1346 Mr. Sensenbrenner?

1347 Mr. Sensenbrenner. No.

1348 Ms. Kish. Mr. Sensenbrenner votes no.

1349 Mr. Coble?

1350 [No response.]

1351 Ms. Kish. Mr. Gallegly?

1352 [No response.]

1353 Ms. Kish. Mr. Goodlatte?

1354 [No response.]

1355 Ms. Kish. Mr. Lungren?

1356 [No response.]

1357 Ms. Kish. Mr. Chabot?

1358 Mr. Chabot. No.

1359 Ms. Kish. Mr. Chabot votes no.

1360 Mr. Issa?

1361 [No response.]

1362 Ms. Kish. Mr. Pence?

1363 [No response.]

1364 Ms. Kish. Mr. Forbes?

1365 [No response.]

1366 Ms. Kish. Mr. King?

1367 Mr. King. No.

1368 Ms. Kish. Mr. King votes no.

1369 Mr. Franks?

1370 Mr. Franks. No.

1371 Ms. Kish. Mr. Franks votes no.

1372 Mr. Gohmert?

1373 [No response.]

1374 Ms. Kish. Mr. Jordan?

1375 [No response.]

1376 Ms. Kish. Mr. Poe?

1377 [No response.]

1378 Ms. Kish. Mr. Chaffetz?

1379 Mr. Chaffetz. No.

1380 Ms. Kish. Mr. Chaffetz votes no.

1381 Mr. Griffin?

1382 Mr. Griffin. No.

1383 Ms. Kish. Mr. Griffin votes no.

1384 Mr. Marino?

1385 Mr. Marino. No.

1386 Ms. Kish. Mr. Marino votes no.

1387 Mr. Gowdy?

1388 Mr. Gowdy. No.

1389 Ms. Kish. Mr. Gowdy votes no.

1390 Mr. Ross?

1391 Mr. Ross. No.

1392 Ms. Kish. Mr. Ross votes no.

1393 Mrs. Adams?

1394 Mrs. Adams. No.

1395 Ms. Kish. Mrs. Adams votes no.

1396 Mr. Quayle?

1397 Mr. Quayle. No.

1398 Ms. Kish. Mr. Quayle votes no.  
1399 Mr. Amodei?  
1400 Mr. Amodei. No.  
1401 Ms. Kish. Mr. Amodei votes no.  
1402 Mr. Conyers?  
1403 Mr. Conyers. Aye.  
1404 Ms. Kish. Mr. Conyers votes aye.  
1405 Mr. Berman?  
1406 [No response.]  
1407 Ms. Kish. Mr. Nadler?  
1408 Mr. Nadler. Aye.  
1409 Ms. Kish. Mr. Nadler votes aye.  
1410 Mr. Scott?  
1411 Mr. Scott. Aye.  
1412 Ms. Kish. Mr. Scott votes aye.  
1413 Mr. Watt?  
1414 Mr. Watt. Aye.  
1415 Ms. Kish. Mr. Watt votes aye.  
1416 Ms. Lofgren?  
1417 [No response.]  
1418 Ms. Kish. Ms. Jackson Lee?

1419 Ms. Jackson Lee. Aye.

1420 Ms. Kish. Ms. Jackson Lee votes aye.

1421 Ms. Waters?

1422 [No response.]

1423 Ms. Kish. Mr. Cohen?

1424 Mr. Cohen. Aye.

1425 Ms. Kish. Mr. Cohen votes aye.

1426 Mr. Johnson?

1427 Mr. Johnson. No.

1428 Ms. Kish. Mr. Johnson votes no.

1429 Mr. Pierluisi?

1430 Mr. Pierluisi. Aye.

1431 Ms. Kish. Mr. Pierluisi votes aye.

1432 Mr. Quigley?

1433 [No response.]

1434 Ms. Kish. Ms. Chu?

1435 [No response.]

1436 Ms. Kish. Mr. Deutch?

1437 Mr. Deutch. Aye.

1438 Ms. Kish. Mr. Deutch votes aye.

1439 Ms. Sanchez?

1440 Ms. Sanchez. Aye.

1441 Ms. Kish. Ms. Sanchez votes aye.

1442 Mr. Polis?

1443 Mr. Polis. Aye.

1444 Ms. Kish. Mr. Polis votes aye.

1445 Chairman Smith. The gentleman from Virginia, Mr.

1446 Forbes?

1447 Mr. Forbes. No.

1448 Ms. Kish. Mr. Forbes votes no.

1449 [Pause.]

1450 Chairman Smith. The clerk will report.

1451 Ms. Kish. Mr. Chairman, 10 Members voted aye; 15

1452 Members voted nay.

1453 Chairman Smith. A majority having voted against the

1454 amendment, the amendment is not agreed to.

1455 Are there any other amendments?

1456 [No response.]

1457 Chairman Smith. If not, a reporting quorum being

1458 present, the question is on reporting the bill, as amended,

1459 favorably to the House.

1460 Those in favor, say aye.

1461 Opposed, no.

1462 The ayes have it, and the bill, as amended, is ordered  
1463 reported favorably.

1464 Without objection, the bill will be reported as a single  
1465 amendment in the nature of a substitute, incorporating  
1466 amendments adopted, and the staff is authorized to make  
1467 technical and conforming changes. Members will have 2 days  
1468 to submit their views.

1469 [Pause.]

1470 Chairman Smith. Pursuant to notice, I now call up H.R.  
1471 4377 for purposes of markup, and the clerk will report the  
1472 bill.

1473 Ms. Kish. H.R. 4377, to provide for improved  
1474 coordination of agency actions in the preparation and  
1475 adoption of environmental documents for --

1476 Chairman Smith. Without objection, the bill will be  
1477 considered as read and open for amendment at any point.

1478 [The information follows:]

1479

1480 Chairman Smith. And I will recognize myself for an  
1481 opening statement.

1482 Over the past 3 years, the President has tried several  
1483 strategies to create jobs. But the American economy is  
1484 still struggling, and people are still suffering. Since  
1485 President Obama took office, 1 million more Americans are  
1486 out of work, and we have run up the three largest deficits  
1487 in U.S. history.

1488 The Federal regulatory process remains an obstacle to  
1489 job creation and business expansion. For example, our  
1490 outdated and overly burdensome environmental review process  
1491 keeps jobs and workers waiting for approval from Government  
1492 agencies in Washington. Employers and investors can't move  
1493 forward without the necessary permits and without confidence  
1494 in the process.

1495 I want to thank Mr. Ross for introducing the RAPID Act,  
1496 which helps put American workers back on the job and gets  
1497 the economy moving again. A recent study by the U.S.  
1498 Chamber of Commerce identified 351 proposed energy projects  
1499 that, if approved, could generate up to 2 million jobs  
1500 annually.

1501           The National Environmental Policy Act, NEPA, of 1969  
1502 serves important goals, which should be preserved. But as  
1503 the Subcommittee on Courts, Commercial, and Administrative  
1504 Law learned at its April 25th hearing on the RAPID Act, the  
1505 NEPA process today does not resemble what its authors  
1506 envisioned.

1507           The environmental review process typically takes years,  
1508 sometimes more than a decade, producing environmental  
1509 documents thousands of pages long that only a specialist  
1510 could comprehend. Because there are no mandatory deadlines,  
1511 capital is tied up indefinitely while the review process  
1512 grinds on.

1513           A 2008 study found that Federal agencies take nearly 3.5  
1514 years on average to complete an Environmental Impact  
1515 Statement and that this length of time is actually  
1516 increasing. Navigating this process can cost job creators  
1517 millions of dollars when they need to hire consultants and  
1518 lawyers, but the cost to the economy is exponentially  
1519 greater.

1520           The key is finding the right balance between economic  
1521 progress and the proper level of analysis. The RAPID Act

1522 does not force agencies to approve or deny any projects.  
1523 The bill simply ensures that the process agencies use to  
1524 make permit decisions is transparent and logical.

1525 The RAPID Act draws upon established definitions and  
1526 concepts from existing NEPA regulations and common sense  
1527 suggestions from across the political spectrum, including  
1528 from this administration's own Council on Environmental  
1529 Quality and Jobs Council to make the Federal environmental  
1530 review and permit process more efficient and transparent.

1531 In many respects, the bill is modeled on the permit  
1532 streamlining section of a transportation bill that passed  
1533 the 109th Congress with nearly unanimous support from  
1534 Republicans and Democrats alike. The vote was 412 to 8.

1535 A study by the Federal Highway Administration found that  
1536 this legislation has cut the time for completing an  
1537 environmental impact study nearly in half. So this is a  
1538 good bill.

1539 I thank the gentleman from Florida for offering it, and  
1540 I urge my colleagues to support it.

1541 The gentleman from Michigan, Mr. Conyers, is recognized  
1542 for his statement.

1543 Mr. Conyers. Thank you.

1544 Chairman Smith, it is with great regret that I have a  
1545 different view of this measure before us, 4377. It purports  
1546 to streamline the environmental review process required by  
1547 the National Environmental Policy Act by reducing  
1548 opportunities for agencies to acquire relevant input and  
1549 imposing rigid and sometimes unworkable deadlines.

1550 Now this is -- I don't mean to be disrespectful, but  
1551 this is just another anti-regulatory act that this committee  
1552 has imposed upon the judiciary. I think it is about eight  
1553 of them so far. We have got a count.

1554 It is a bill in search of a problem. An anti-regulatory  
1555 measure that purports to address an unarticulated problem.  
1556 It is simply not necessary. At the hearing, we heard  
1557 testimony outlining the fact that most of the delays in the  
1558 permitting process have nothing to do with the NEPA review,  
1559 which vary from project to project or from agency to agency.

1560 So you have got to figure out which viewpoint you are  
1561 going to adopt, members of this committee. The real problem  
1562 is like the lack of resources we give to agencies. An  
1563 agency can move only so quickly to review project proposals

1564 when it has ever-shrinking appropriations to obtain  
1565 competent staff and other resources. And yet I am willing  
1566 to bet some of the proponents of this bill would also  
1567 strenuously oppose increasing funding for agencies, which  
1568 would certainly help to speed up the review process.

1569 Now while the NEPA environmental review process may not  
1570 be perfect, it still remains a model for other countries  
1571 throughout the world for establishing a systemic foundation  
1572 for facilitating interagency collaboration, integrated  
1573 decision-making. And this may explain why the President's  
1574 Council on Environmental Quality, as well as 25 respected  
1575 environmental groups, strenuously oppose this legislation,  
1576 including the Audubon Society, the League of Conservation  
1577 Voters, and the Natural Resources Defense Council, the  
1578 Sierra Club, and many others.

1579 So, please, Members, let us be careful about how we  
1580 approach this measure because I think it is misnamed and  
1581 misdescribed and is just some more anti-regulation hearing,  
1582 which we have had far too much of in the Committee on the  
1583 Judiciary.

1584 I thank you for this opportunity, Mr. Chairman. I ask

1585 unanimous consent to put the rest of my statement in the  
1586 record and return the balance of my time.

1587 Chairman Smith. Without objection, the gentleman's full  
1588 opening statement will be made a part of the record.

1589 [The information follows:]

1590

1591 Chairman Smith. And thank you for your comments, Mr.  
1592 Conyers.

1593 The chairman of the Administrative Law Subcommittee, Mr.  
1594 Coble, could not be here. Without objection, his opening  
1595 statement will be made a part of the record.

1596 [The information follows:]

1597

1598 Chairman Smith. And instead of recognizing Mr. Coble, I  
1599 recognize the sponsor of the bill, the gentleman from  
1600 Florida, Mr. Ross, for an opening statement.

1601 Mr. Ross. Thank you, Mr. Chairman.

1602 My opening remarks will be brief. I will address the  
1603 manager's amendment at greater length and detail.

1604 The road to economic recovery runs through a streamlined  
1605 permitting process. A rational, transparent permitting  
1606 process will encourage economic growth by encouraging job  
1607 creators and investors to move forward with critical  
1608 construction and infrastructure projects.

1609 Thanks to Chairman Coble for calling a hearing on the  
1610 RAPID Act in April, the subcommittee benefited from the  
1611 expertise each witness brought to the hearing. The  
1612 minority's witness also suggested a number of ways to  
1613 improve the RAPID Act, many of which were well taken and  
1614 made part of the manager's amendment.

1615 Thank you, Mr. Chairman, for bringing this important  
1616 bipartisan legislation for markup. I am honored to have you  
1617 as an original cosponsor, along with Chairman Coble and Mr.  
1618 Peterson, who is the ranking member on the Agriculture

1619 Committee. I am also thankful for the support of many of my  
1620 colleagues.

1621 With that, I reserve the balance of my time.

1622 Thank you.

1623 Chairman Smith. Thank you, Mr. Ross.

1624 The gentleman yields back the remainder of his time, and  
1625 I don't see the ranking member.

1626 The gentleman from Florida is recognized to offer an  
1627 amendment in the nature of a substitute. If the gentleman  
1628 will suspend, I was looking for Mr. Cohen, but I think Mr.  
1629 Johnson might want to speak for him. Is that accurate?

1630 Mr. Johnson. No. I did have a question I wanted to  
1631 ask.

1632 Chairman Smith. Okay. Could we get the amendment in  
1633 the nature of a substitute in play, and then the gentleman  
1634 will be recognized to ask a question.

1635 The gentleman from Florida, Mr. Ross, is recognized for  
1636 the purpose of offering an amendment in the nature of a  
1637 substitute.

1638 Mr. Ross. Mr. Chairman, I do have an amendment at the  
1639 desk.

1640 Chairman Smith. And the clerk will report the  
1641 amendment.

1642 Ms. Kish. Amendment to H.R. 4377, offered by Mr. Ross  
1643 of Florida. Strike all that follows after the --

1644 Mr. Ross. Mr. Chairman, I move that the amendment --

1645 Chairman Smith. Without objection, the amendment will  
1646 be considered as read.

1647 [The amendment of Mr. Ross follows:]

1648

1649 Chairman Smith. And the gentleman from Florida is  
1650 recognized to explain his amendment.

1651 Mr. Ross. Thank you, Mr. Chairman.

1652 As I indicated in my opening remarks, the subcommittee's  
1653 hearing on the RAPID Act was very productive. The witnesses  
1654 agreed that the Federal permitting and review process does  
1655 not work as it should.

1656 For example, one of the witnesses who is an engineer  
1657 from Orange County, California, has been trying for 15 years  
1658 to build a 16-mile road. At one point, he was close to  
1659 getting the permits he needed to build the road, which would  
1660 put more than 17,000 people to work in California.

1661 But then two of the Federal agencies that had been  
1662 involved in the environmental review backed out in the face  
1663 of renewed opposition by project opponents. The road still  
1664 isn't built, and meanwhile, many thousands of Californians  
1665 who would be building that road are unemployed. And I dare  
1666 say the traffic in Orange County isn't getting any better.

1667 The National Environmental Policy Act of 1969 serves  
1668 important goals. But as often happens with Federal laws and  
1669 bureaucracies over the years, it has become distracted from

1670 these goals and focused instead on analysis for its own  
1671 sake. When conducting environmental reviews, it seems like  
1672 agencies have lost sight of the forest for the trees.

1673 It is not uncommon that the environmental review for a  
1674 big construction project takes a decade or longer. And  
1675 because there are no mandatory deadlines for the NEPA  
1676 process, it is never certain when a decision will be made.  
1677 Job creators flee from this sort of unpredictability,  
1678 leaving American workers idle amid a crumbling national  
1679 infrastructure.

1680 The RAPID Act would ensure that environmental reviews  
1681 proceed as they should under NEPA on a timeline that allows  
1682 ample time for the review while still requiring agencies to  
1683 make a decision one way or another with no longer than 4.5  
1684 years. This is not too much to ask of Federal agencies.

1685 When the reviews are finished and the permit  
1686 applications have been decided, the 6-month clock on the  
1687 statute of limitations begins to run. And in order to bring  
1688 suit, a party must have participated in the environmental  
1689 review. Litigants should not be able to "rest on their  
1690 rights" without giving agencies fair notice of their

1691 concerns during the public notice and comment period and  
1692 then sue years later.

1693 Permit streamlining should not be a partisan issue, and  
1694 that is why I have been glad to take any and all good ideas  
1695 for this bill. At the subcommittee's hearing in April, Ms.  
1696 Bear, the minority's witness who served as general counsel  
1697 to the Council on Environmental Quality for 20 years,  
1698 pointed out a number of ways that the RAPID Act could be  
1699 improved.

1700 In addition to some technical and drafting issues, which  
1701 my manager's amendment addresses, Ms. Bear raised several  
1702 more substantive concerns about the bill. For example, the  
1703 bill had allowed project sponsors to make voluntary  
1704 contributions of funds to the lead agency to support the  
1705 review.

1706 Ms. Bear testified that although agencies are  
1707 understaffed and lack the resources to perform adequate  
1708 environmental reviews efficiently, this raised a conflict of  
1709 interest issue. It has been removed from the manager's  
1710 amendment, and that conflict of interest will no longer  
1711 exist.

1712           The manager's amendment also gives lead agencies the  
1713 discretion as opposed to a mandate to use existing  
1714 environmental study documents prepared by project sponsors  
1715 under State law or for similar recent projects nearby.  
1716 Following Ms. Bear's suggestion, the manager's amendment  
1717 extends the period of time allowed for commenting on  
1718 supplements to the State environmental documents from 30 to  
1719 45 days.

1720           The manager's amendment clarifies that tribal and local  
1721 governments may be participating agencies in the review  
1722 process, and it clarifies that supplemental NEPA documents  
1723 and documents prepared under court order do not count toward  
1724 the limit on the total number of environmental study  
1725 documents an agency may prepare for a particular project.

1726           The RAPID Act requires agencies to act upon permit  
1727 applications within a certain period of time, 90 days or 180  
1728 days, depending on the circumstances. Ms. Bear pointed out  
1729 that the bill could be interpreted to require an agency to  
1730 decide a permit application before all relevant review was  
1731 finished. The manager's amendment corrects this.

1732           In conclusion, Mr. Chairman, I am pleased to bring this

1733 bipartisan legislation to markup. Drawing upon permit  
1734 streamlining language from a bipartisan bill that easily  
1735 passed the 109th Congress, this administration's own  
1736 rhetoric and recommendations from the Jobs Council and from  
1737 the Council on Environmental quality, and on suggestions  
1738 made by the minority witness and members of the subcommittee  
1739 hearing, I believe the RAPID Act makes great strides toward  
1740 improving the Federal environmental review process.

1741 American workers and our national economic recovery  
1742 should not be held back by agency review and analysis for  
1743 its own sake. In closing, Mr. Chairman, I wish to offer for  
1744 our record a letter signed by 68 groups and organizations  
1745 from a variety of industries endorsing the RAPID Act.

1746 I look forward to the committee's input, and I reserve  
1747 the balance of my time.

1748 Chairman Smith. Thank you, Mr. Ross.

1749 Without objection, the amendment is considered as read  
1750 and will be considered as base text for purposes of  
1751 amendment.

1752 [The information follows:]

1753

1754 Chairman Smith. And are there any other amendments?

1755 Now the gentleman from Georgia, Mr. Johnson, is  
1756 recognized for 5 minutes.

1757 Mr. Johnson. Mr. Chairman, I do have an amendment at  
1758 the desk.

1759 Chairman Smith. Could the clerk report?

1760 Mr. Johnson. Yes, I do. I have an amendment.

1761 Chairman Smith. The clerk will report the amendment.

1762 Ms. Kish. Amendment to the Ross amendment, offered by  
1763 Mr. Johnson. Page 30, line 10, strike this subchapter and  
1764 insert "Subject to Subsection --"

1765 Mr. Johnson. I would ask that it be considered read.

1766 Chairman Smith. Without objection, the amendment will  
1767 considered as read.

1768 [The amendment of Mr. Johnson follows:]

1769

1770 Chairman Smith. And the gentleman is recognized to  
1771 explain his amendment.

1772 Mr. Johnson. Mr. Chairman, my amendment would exempt  
1773 any projects from the bill that the Council on Environmental  
1774 Equality determines would have a detrimental impact on human  
1775 health. This bill would severely undermine the National  
1776 Environmental Policy Act and ultimately the quality of  
1777 Federal agency decisions.

1778 NEPA plays a vital role by ensuring that Federal  
1779 agencies assess the environmental impacts of proposals,  
1780 solicit the input of all affected stakeholders and disclose  
1781 their findings publicly before undertaking projects that may  
1782 significantly affect the environment. This provides a  
1783 degree of certainty in ensuring that all necessary  
1784 considerations about a project are fully completed before  
1785 moving forward, primarily with a construction project.

1786 NEPA's environmental impact review process, which  
1787 incorporates 40 years of practice implementing regulations  
1788 and court decisions, ensures that Federal actions will not  
1789 have an unduly harmful impact on the air that we breathe,  
1790 the water that we drink, or the land upon which our food is

1791 grown. This so-called RAPID Act is nothing more than a game  
1792 of Russian roulette with American lives.

1793 First, we cut the budgets of these regulatory agencies.  
1794 Then that causes them to lay off workers. Then we accuse  
1795 the regulatory authority of inefficiency, and then we  
1796 introduce legislation to streamline and coordinate agency  
1797 action. And then we pass the legislation, and big business,  
1798 multinationals, they get to run roughshod over our  
1799 environment with no rules, no adequate rules in place and no  
1800 enforcement of the rules.

1801 And so, this seems to be that kind of a situation, and  
1802 it, indeed, plays Russian roulette with American lives. By  
1803 attempting to short circuit the existing NEPA process, the  
1804 RAPID Act places NEPA -- places NEPA's goal of protecting  
1805 public health through assessments of environmental impacts  
1806 at unnecessary risk. The Council on Environmental Quality,  
1807 as the executive branch's central clearinghouse for the  
1808 implementation of NEPA, is the appropriate entity for making  
1809 the determination of whether a project should be subject to  
1810 the normal NEPA review process rather than this rigidly  
1811 truncated one under the RAPID Act that has been rushed

1812 through this committee.

1813 I strongly urge those who truly care about the health  
1814 and safety of Americans to vote this amendment out  
1815 favorably. I would yield any time to anyone who can answer  
1816 this question. Is this bill a -- is this modeled after an  
1817 American Legislative Exchange Council piece of legislation?  
1818 I would yield to any of my colleagues who --

1819 Mr. Ross. If I might just respond to that? I don't  
1820 have any idea whether it is modeled after that. I am  
1821 totally unfamiliar with that. But I will tell you that the  
1822 safety loop program that was enacted by the 109th Congress  
1823 with a vote of about I want to say 418 to -- 412 to 8 has  
1824 been providing this same type of procedure that we are  
1825 requesting in highway construction, which has been a  
1826 phenomenal response to the creation of infrastructure jobs  
1827 in this country and has reduced the permitting process from  
1828 36.8 months -- I mean, from 73 months to 36.8 months.

1829 So it is an accepted practice and procedure --

1830 Mr. Johnson. Well, reclaiming my time. Reclaiming my  
1831 time, I just simply wanted to know whether or not this has  
1832 anything to do with the American Legislative Exchange

1833 Council, whether or not this bill had been proposed by one  
1834 of the members on that council.

1835 And I thank the gentleman for his response, and I yield  
1836 back.

1837 Chairman Smith. Thank you, Mr. Johnson.

1838 Does the gentleman from Florida wish to be recognized?

1839 Mr. Ross. Yes, sir. Mr. Chairman, I wish to speak in  
1840 opposition to the amendment.

1841 The purpose of this bill is to create a procedure by  
1842 which the permitting process can be streamlined so that we  
1843 might create or spur the creation of jobs in this country.  
1844 By creating exclusions and carve-outs, we undercut the very  
1845 intent of this bill.

1846 There is nothing in this bill that requires the agencies  
1847 who are performing the review to do anything short of their  
1848 regular review. In fact, this helps because it allows for  
1849 concurrent review by agencies, as opposed to sequential  
1850 review.

1851 The Federal Government should review all these projects  
1852 in a timely and efficient manner. This bill allows that to  
1853 happen. This bill does not change or negate any agency

1854 review. It simply requires that they do it in a timely  
1855 manner, and for that reason, I oppose this bill -- this  
1856 amendment.

1857 Thank you.

1858 Mr. Conyers. Mr. Chairman?

1859 Chairman Smith. Thank you, Mr. Ross.

1860 The gentleman from Michigan, Mr. Conyers, is recognized.

1861 Mr. Conyers. Thank you, Chairman Smith.

1862 I rise in support of the Johnson amendment, and what  
1863 this amendment does is exempt from the bill any project that  
1864 the Council on Environmental Quality determines would have a  
1865 detrimental impact on human health.

1866 Now this accordingly ensures that the appropriate entity  
1867 for making the determination of whether a project should be  
1868 subject to the normal NEPA review process rather than this  
1869 new ambiguously worded measure before us would happen. And  
1870 I think that CEQ has long served as the executive branch's  
1871 central clearinghouse for the implementation of NEPA.

1872 So for that simple reason, I support this amendment and  
1873 hope it is given careful consideration. And I yield back  
1874 the balance of my time.

1875 Chairman Smith. Thank you, Mr. Conyers.

1876 The question is on the amendment.

1877 All in favor of the Johnson amendment, say aye.

1878 Opposed, no.

1879 The clerk will call the roll. The chair is undecided.

1880 Ms. Kish. Mr. Smith?

1881 Chairman Smith. No.

1882 Ms. Kish. Mr. Smith votes no.

1883 Mr. Sensenbrenner?

1884 [No response.]

1885 Ms. Kish. Mr. Coble?

1886 [No response.]

1887 Ms. Kish. Mr. Gallegly?

1888 [No response.]

1889 Ms. Kish. Mr. Goodlatte?

1890 [No response.]

1891 Ms. Kish. Mr. Lungren?

1892 [No response.]

1893 Ms. Kish. Mr. Chabot?

1894 [No response.]

1895 Ms. Kish. Mr. Issa?

1896 [No response.]

1897 Ms. Kish. Mr. Pence?

1898 [No response.]

1899 Ms. Kish. Mr. Forbes? Mr. Forbes?

1900 Mr. Forbes. No.

1901 Ms. Kish. Mr. Forbes votes no.

1902 Mr. King?

1903 [No response.]

1904 Ms. Kish. Mr. Franks?

1905 Mr. Franks. No.

1906 Ms. Kish. Mr. Franks votes no.

1907 Mr. Gohmert?

1908 [No response.]

1909 Ms. Kish. Mr. Jordan?

1910 [No response.]

1911 Ms. Kish. Mr. Poe?

1912 [No response.]

1913 Ms. Kish. Mr. Chaffetz?

1914 Mr. Chaffetz. No.

1915 Ms. Kish. Mr. Chaffetz votes no.

1916 Mr. Griffin?

1917 Mr. Griffin. No.

1918 Ms. Kish. Mr. Griffin votes no.

1919 Mr. Marino?

1920 Mr. Marino. No.

1921 Ms. Kish. Mr. Marino votes no.

1922 Mr. Gowdy?

1923 Mr. Gowdy. No.

1924 Ms. Kish. Mr. Gowdy votes no.

1925 Mr. Ross?

1926 Mr. Ross. No.

1927 Ms. Kish. Mr. Ross votes no.

1928 Mrs. Adams?

1929 Mrs. Adams. No.

1930 Ms. Kish. Mrs. Adams votes no.

1931 Mr. Quayle?

1932 Mr. Quayle. No.

1933 Ms. Kish. Mr. Quayle votes no.

1934 Mr. Aodei?

1935 Mr. Aodei. No.

1936 Ms. Kish. Mr. Aodei votes no.

1937 Mr. Conyers?

1938 Mr. Conyers. Aye.

1939 Ms. Kish. Mr. Conyers votes aye.

1940 Mr. Berman?

1941 [No response.]

1942 Ms. Kish. Mr. Nadler?

1943 [No response.]

1944 Ms. Kish. Mr. Scott?

1945 Mr. Scott. Aye.

1946 Ms. Kish. Mr. Scott votes aye.

1947 Mr. Watt?

1948 Mr. Watt. Aye.

1949 Ms. Kish. Mr. Watt votes aye.

1950 Ms. Lofgren?

1951 [No response.]

1952 Ms. Kish. Ms. Jackson Lee?

1953 [No response.]

1954 Ms. Kish. Ms. Waters?

1955 [No response.]

1956 Ms. Kish. Mr. Cohen?

1957 Mr. Cohen. Aye.

1958 Ms. Kish. Mr. Cohen votes aye.

1959 Mr. Johnson?

1960 Mr. Johnson. Aye.

1961 Ms. Kish. Mr. Johnson votes aye.

1962 Mr. Pierluisi?

1963 Mr. Pierluisi. Aye.

1964 Ms. Kish. Mr. Pierluisi votes aye.

1965 Mr. Quigley?

1966 [No response.]

1967 Ms. Kish. Ms. Chu?

1968 [No response.]

1969 Ms. Kish. Mr. Deutch?

1970 Mr. Deutch. Aye.

1971 Ms. Kish. Mr. Deutch votes aye.

1972 Ms. Sanchez?

1973 Ms. Sanchez. Aye.

1974 Ms. Kish. Ms. Sanchez votes aye.

1975 Mr. Polis?

1976 Mr. Polis. Aye.

1977 Ms. Kish. Mr. Polis votes aye.

1978 Chairman Smith. The gentleman from Wisconsin?

1979 Mr. Sensenbrenner. No.

1980 Ms. Kish. Mr. Sensenbrenner votes no.

1981 Chairman Smith. The gentleman from Iowa?

1982 Mr. King. No.

1983 Ms. Kish. Mr. King votes no.

1984 Chairman Smith. The gentlewoman from Texas?

1985 Ms. Jackson Lee. How am I recorded?

1986 Ms. Kish. Not recorded, ma'am.

1987 Ms. Jackson Lee. Aye.

1988 Ms. Kish. Ms. Jackson Lee votes aye.

1989 Chairman Smith. Okay. The clerk will report.

1990 Ms. Kish. Mr. Chairman, 10 Members voted aye; 13

1991 Members voted nay.

1992 Chairman Smith. A majority having voted against the

1993 amendment, the amendment is not agreed to.

1994 Mr. Conyers. Mr. Chairman?

1995 Chairman Smith. Are there other amendments?

1996 Mr. Conyers. Mr. Chairman?

1997 Chairman Smith. The gentleman from Michigan, Mr.

1998 Conyers, is recognized.

1999 Mr. Conyers. I have an amendment at the desk.

2000 Chairman Smith. The clerk will report the amendment.

2001           Ms. Kish. Amendment to the Ross amendment, H.R. 4377,  
2002 offered by Mr. Conyers. Page 31, insert after line 16 the  
2003 following --

2004           Mr. Conyers. I ask unanimous consent the amendment be  
2005 considered as read.

2006           Chairman Smith. Without objection, the amendment will  
2007 be considered as read.

2008           [The amendment of Mr. Conyers follows:]

2009

2010 Chairman Smith. And the gentleman is recognized for the  
2011 purpose of explaining his amendment.

2012 Mr. Conyers. Thank you, Chairman Smith.

2013 Here is what the amendment does, members of the  
2014 committee. It ensures that the right of the public to  
2015 comment on construction projects that may have an  
2016 environmental impact is not in any way adversely impacted by  
2017 any provisions of this bill. That is the law as it exists  
2018 right now, and all I am doing is making darned sure that it  
2019 doesn't get changed.

2020 And so, what I would like to have us do here is simply  
2021 ensure that the bill will not cut off the rights of the  
2022 public to comment on any construction project that may have  
2023 environmental consequences. And so, I hope this bill might  
2024 even be considered to be accepted by our leadership. But if  
2025 not, let us have a vote in support of it.

2026 I ask unanimous consent to put the rest of my statement  
2027 in the record, and I yield back the balance of my time and  
2028 ask for a favorable consideration.

2029 Chairman Smith. Thank you, Mr. Conyers.

2030 Without objection, your entire statement will be made a

2031 part of the record.

2032 [The information follows:]

2033

2034 Chairman Smith. And the gentleman from Florida, Mr.  
2035 Ross, is recognized.

2036 Mr. Ross. Thank you, Mr. Chairman.

2037 Mr. Chairman, I oppose this amendment because it is  
2038 unnecessary and could undermine the carefully targeted  
2039 reforms made by this bill. The RAPID Act creates jobs as it  
2040 ensures that the Federal environmental review and permitting  
2041 process works like it should. The RAPID Act is drafted to  
2042 make agencies operate efficiently and transparently. It  
2043 does not prevent citizens from participation in this  
2044 process.

2045 For example, NEPA regulations only require agencies to  
2046 allow 45 days for public comments on draft Environmental  
2047 Impact Statements and 30 days for public comments on final  
2048 Environmental Impact Statements. The RAPID Act sets 60-day  
2049 and 30-day comment periods, respectively, and also allows  
2050 the lead agency to extend them for good cause.

2051 This is more than fair, and it is perfectly reasonable  
2052 to require a person to comment on an environmental document  
2053 before they challenge it in court and to bring suit within 6  
2054 months, as opposed to 6 years. Environmental activists and

2055 groups who routinely sue to block construction projects  
2056 should not have the added benefit of being able to delay a  
2057 project indefinitely by playing hide the ball with agencies  
2058 or by resting on their rights.

2059 For these reasons, I oppose the amendment and yield  
2060 back.

2061 Mr. Conyers. Would the distinguished gentleman from  
2062 Florida yield for a quick question?

2063 Mr. Ross. Yes, sir.

2064 Mr. Conyers. Thank you very much.

2065 It sounds like you agree that the public should have a  
2066 right to comment?

2067 Mr. Ross. Oh, there is no question. That is why we put  
2068 it in the bill and in the manager's amendment.

2069 Mr. Conyers. Well, that is all I am saying. That is  
2070 what the amendment says. It ensures the right of the public  
2071 to comment on construction projects, and I don't mean to  
2072 stall or delay them any more than you do.

2073 Mr. Ross. And I think what -- if I might? I think what  
2074 the important thing here is to remember that we are  
2075 providing a framework by which a timeline may be pursued in

2076 order to complete the permitting process.

2077 The RAPID Act, as it is provided in the manager's  
2078 amendment, gives more than adequate time, in fact, greater  
2079 time for public comment and input during the review process.  
2080 And therefore, I find, in my opinion, that your amendment is  
2081 unnecessary.

2082 Mr. Conyers. Yes, sir. Well, I am not asking for any  
2083 additional time. I want this time to be exactly the same as  
2084 is provided now and I hope is provided in your measure, and  
2085 that is all I am asking for. No more, no less. No  
2086 favorites, no stalling, no delays.

2087 Mr. Ross. Then I would encourage you to support my  
2088 manager's amendment.

2089 Mr. Conyers. Well, I will. Will you support my  
2090 amendment?

2091 Mr. Ross. It is not necessary.

2092 [Laughter.]

2093 Mr. Conyers. Wait a minute. There is something a  
2094 little bit wrong here. I support yours. You don't -- mine  
2095 is unnecessary?

2096 Mr. Ross. I appreciate that. I will reclaim my time

2097 and yield back.

2098 Thank you.

2099 Chairman Smith. Thank you, Mr. Ross.

2100 The question is on the Conyers amendment to the  
2101 amendment.

2102 All in favor, say aye.

2103 Opposed, nay.

2104 The clerk will call the roll.

2105 Ms. Kish. Mr. Smith?

2106 Chairman Smith. No.

2107 Ms. Kish. Mr. Smith votes no.

2108 Mr. Sensenbrenner?

2109 [No response.]

2110 Ms. Kish. Mr. Coble?

2111 [No response.]

2112 Ms. Kish. Mr. Gallegly?

2113 [No response.]

2114 Ms. Kish. Mr. Goodlatte?

2115 [No response.]

2116 Ms. Kish. Mr. Lungren?

2117 [No response.]

2118 Ms. Kish. Mr. Chabot?

2119 [No response.]

2120 Ms. Kish. Mr. Issa?

2121 [No response.]

2122 Ms. Kish. Mr. Pence?

2123 [No response.]

2124 Ms. Kish. Mr. Forbes?

2125 Mr. Forbes. No.

2126 Ms. Kish. Mr. Forbes votes no.

2127 Mr. King?

2128 Mr. King. No.

2129 Ms. Kish. Mr. King votes no.

2130 Mr. Franks?

2131 Mr. Franks. No.

2132 Ms. Kish. Mr. Franks votes no.

2133 Mr. Gohmert?

2134 [No response.]

2135 Ms. Kish. Mr. Jordan?

2136 [No response.]

2137 Ms. Kish. Mr. Poe?

2138 [No response.]

2139 Ms. Kish. Mr. Chaffetz?

2140 Mr. Chaffetz. No.

2141 Ms. Kish. Mr. Chaffetz votes no.

2142 Mr. Griffin?

2143 Mr. Griffin. No.

2144 Ms. Kish. Mr. Griffin votes no.

2145 Mr. Marino?

2146 Mr. Marino. No.

2147 Ms. Kish. Mr. Marino votes no.

2148 Mr. Gowdy?

2149 Mr. Gowdy. No.

2150 Ms. Kish. Mr. Gowdy votes no.

2151 Mr. Ross?

2152 Mr. Ross. No.

2153 Ms. Kish. Mr. Ross votes no.

2154 Mrs. Adams?

2155 Mrs. Adams. No.

2156 Ms. Kish. Mrs. Adams votes no.

2157 Mr. Quayle?

2158 Mr. Quayle. No.

2159 Ms. Kish. Mr. Quayle votes no.

2160 Mr. Amodei?

2161 Mr. Amodei. No.

2162 Ms. Kish. Mr. Amodei votes no.

2163 Mr. Conyers?

2164 Mr. Conyers. Aye.

2165 Ms. Kish. Mr. Conyers votes aye.

2166 Mr. Berman?

2167 [No response.]

2168 Ms. Kish. Mr. Nadler?

2169 Mr. Nadler. Aye.

2170 Ms. Kish. Mr. Nadler votes aye.

2171 Mr. Scott?

2172 Mr. Scott. Aye.

2173 Ms. Kish. Mr. Scott votes aye.

2174 Mr. Watt?

2175 Mr. Watt. Aye.

2176 Ms. Kish. Mr. Watt votes aye.

2177 Ms. Lofgren?

2178 [No response.]

2179 Ms. Kish. Ms. Jackson Lee?

2180 Ms. Jackson Lee. Aye.

2181 Ms. Kish. Ms. Jackson Lee votes aye.

2182 Ms. Waters?

2183 [No response.]

2184 Ms. Kish. Mr. Cohen?

2185 Mr. Cohen. Aye.

2186 Ms. Kish. Mr. Cohen votes aye.

2187 Mr. Johnson?

2188 Mr. Johnson. Aye.

2189 Ms. Kish. Mr. Johnson votes aye.

2190 Mr. Pierluisi?

2191 Mr. Pierluisi. Aye.

2192 Ms. Kish. Mr. Pierluisi votes aye.

2193 Mr. Quigley?

2194 Mr. Quigley. Aye.

2195 Ms. Kish. Mr. Quigley votes aye.

2196 Ms. Chu?

2197 [No response.]

2198 Ms. Kish. Mr. Deutch?

2199 Mr. Deutch. Aye.

2200 Ms. Kish. Mr. Deutch votes aye.

2201 Ms. Sanchez?

2202 Ms. Sanchez. Aye.

2203 Ms. Kish. Ms. Sanchez votes aye.

2204 Mr. Polis?

2205 Mr. Polis. Aye.

2206 Ms. Kish. Mr. Polis votes aye.

2207 Chairman Smith. The gentleman from Wisconsin?

2208 Mr. Sensenbrenner. No.

2209 Ms. Kish. Mr. Sensenbrenner votes no.

2210 [Pause.]

2211 Chairman Smith. The clerk will report.

2212 Ms. Kish. Mr. Chairman, 12 Members voted aye; 13

2213 Members voted nay.

2214 Chairman Smith. A majority having voted against the

2215 amendment, the amendment is not agreed to.

2216 Are there other amendments? The gentleman from New

2217 York, Mr. Nadler, is recognized.

2218 Mr. Nadler. Mr. Chairman, I have an amendment at the

2219 desk.

2220 Chairman Smith. The clerk will report the amendment.

2221 Ms. Kish. Amendment to the Ross amendment, offered by

2222 Mr. Nadler of New York. Page 30, line 10, strike this

2223 subchapter and insert "except as provided in Subsection P,"  
2224 no subchapter. Page 30, line 15, insert after  
2225 "environmental review," the following: "P. Exception for  
2226 certain projects. This subchapter does not apply in the  
2227 case of any project that pertains to the safety of a nuclear  
2228 reactor or that pertains to nuclear safety."

2229 [The amendment of Mr. Nadler follows:]

2230

2231 Chairman Smith. The gentleman from New York is  
2232 recognized to explain his amendment.

2233 Mr. Nadler. Thank you.

2234 Mr. Chairman, my amendment would exclude projects  
2235 regarding nuclear power safety from the new rules imposed by  
2236 the underlying bill. A few weeks ago was the great New York  
2237 Yankee Yogi Berra's 87th birthday, and only he could  
2238 probably describe this markup today. Deja vu all over  
2239 again.

2240 Again, we hear it is the Federal Government that is the  
2241 cause of our high unemployment rate. Again, the only  
2242 solution is to attack the manner in which the Federal  
2243 Government regulates or otherwise makes decisions. Again,  
2244 the Judiciary Committee is going to pass a bill that will go  
2245 nowhere and, if enacted, would do nothing to solve our  
2246 economic problems.

2247 Today's regulatory solution du jour is a bill to undo  
2248 the National Environmental Policy Act through changes to the  
2249 Administrative Procedure Act. NEPA is designed to ensure  
2250 that the Federal Government understands and considers the  
2251 impact on the environment when taking actions or making

2252 decisions. It doesn't dictate those decisions, but it  
2253 simply says that before you take the decisions, the deciders  
2254 have to know the environmental impacts pro and con.

2255 Most reviews under NEPA are timely. Are there some that  
2256 may take some time? Sure. But it makes no sense to upend  
2257 an entire scheme of review which works very well to address  
2258 problems in a few cases.

2259 H.R. 4377 attempts to solve the alleged problem by  
2260 imposing a series of deadlines by which aspects of the  
2261 environmental review have to be completed. What happens if  
2262 these deadlines cannot be met?

2263 What happens if people or agencies need more time to  
2264 submit comments, or critical environmental analysis requires  
2265 more time, for example? Under this bill, too bad for the  
2266 environment.

2267 Most pernicious is that under the bill, the agency has a  
2268 90- or 180-day time limit, depending on the circumstance, to  
2269 act on a permit license or similar application after the  
2270 environmental analysis is complete. If that time limit is  
2271 exceeded, approval is automatically granted.

2272 Even in the most complicated and significant cases,

2273 which are the ones that take the most time, this bill would  
2274 default to allowing the project in question to proceed.  
2275 This upends the very idea that the Federal Government is  
2276 really trying to protect the environment.

2277       Even if you thought that the deadlines and other  
2278 policies in this bill were a good idea, which I do not, this  
2279 bill is a terrible way of adopting them. Instead of  
2280 changing NEPA directly, the bill adopts a parallel system of  
2281 review for a subset of issues, construction projects, by  
2282 changing the Administrative Procedure Act, APA.

2283       It strains credulity to believe that a rational system  
2284 would have one set of rules for the environmental review of  
2285 construction projects and one set of rules for the  
2286 environmental review of everything else. Even within a  
2287 single project, this means you could have one set of rules  
2288 for the construction part and one set of rules for the rest.  
2289 In fact, it may mean there have to be two reviews. And that  
2290 is exactly the system this bill would set up.

2291       Furthermore, adopting a whole new parallel scheme  
2292 invites litigation as people argue about what terms mean and  
2293 how new rules should apply. This bill invites the very

2294 delay the bill's sponsor is trying to reduce.

2295 My amendment would exclude nuclear power safety projects  
2296 from the bizarre and anti-environmental process under H.R.  
2297 4377. I have mentioned before, my New York City district is  
2298 less than 40 miles away from an old nuclear power plant at  
2299 Indian Point. There are 20 million people living within a  
2300 50-mile radius around the plant, the same radius used by the  
2301 Nuclear Regulatory Commission as the basis for the  
2302 evacuation zone recommended after the Fukushima disaster.

2303 Indian Point also sits near two fault lines, earthquake  
2304 fault lines, and, according to the NRC, is the most likely  
2305 nuclear power plant in the country to experience core damage  
2306 due to an earthquake. The meltdown of the nuclear reactors  
2307 at Fukushima in the aftermath of a devastating earthquake  
2308 and tsunami highlights the danger of regulatory failure when  
2309 it comes to ensuring the safe operation of nuclear reactors.

2310 The tens of millions of people who live near Indian  
2311 Point want the Government to be able to move quickly while  
2312 still protecting the environment to protect their safety.  
2313 H.R. 4377 would create uncertainty and litigation. This  
2314 could delay safety measures, putting millions of lives at

2315 risk.

2316 That is why we need to pass my amendment to exclude  
2317 nuclear power from the bill. Moreover, my constituents and  
2318 I suspect anyone living near a nuclear power plant know what  
2319 kind of environmental damage they can cause. By drawing  
2320 from and releasing water into the Hudson River, for example,  
2321 Indian Point kills billions of fish and other organisms and  
2322 causes a disruption to the entire ecosystem. It has also  
2323 leaked radioactive materials into groundwater.

2324 Just recently, the operators of Indian Point paid \$1.2  
2325 million fines for an explosion 2 years ago that caused oil  
2326 to spill into the Hudson. The operator of Indian Point is  
2327 trying to extend its licenses for operation, which currently  
2328 expires in 2013, 2015. The NRC should be able to consider  
2329 the environmental impact of renewing these licenses without  
2330 some artificial timetable.

2331 And by the way, with the cuts that are being made in the  
2332 budgets of these agencies, it is going to take longer for  
2333 them to do a proper environmental review, and to put an  
2334 artificial timeline on it simply says don't do a review at  
2335 all. With the potential for environmental damage to be

2336 caused by plants like Indian Point, we should not force the  
2337 NRC to make decisions about nuclear plant construction too  
2338 quickly and then have such permit requests automatically  
2339 approved if deadlines are not met.

2340 Such a policy embodied in this bill clearly shows a lack  
2341 of concern for the environment and for public safety. H.R.  
2342 4377 risks the health of our environment under the misguided  
2343 premise that the slow regulatory review under NEPA is the  
2344 cause for slow economic growth and high unemployment. At  
2345 least if we pass my amendment, we will not have to fear that  
2346 nuclear power safety will be harmed by this bill and that  
2347 millions of lives would be further put at risk.

2348 I ask all Members to support the amendment, and I yield  
2349 back the balance of my time.

2350 Chairman Smith. The gentleman yields back his time.

2351 The gentleman from Florida, Mr. Ross, is recognized.

2352 Mr. Ross. Thank you, Mr. Chairman.

2353 I wish to speak in opposition to the amendment.

2354 Unemployment is stuck, stuck above 8 percent, and millions  
2355 of Americans are looking for work. The March 2011 Project  
2356 No Project study identified 351 energy projects, including

2357 nuclear projects, that, if approved, could generate \$1.1  
2358 trillion for the economy and create 1.9 million jobs  
2359 annually.

2360 For example, in the Detroit area, where Mr. Conyers is  
2361 from, Detroit Edison submitted an energy application in 2008  
2362 to build a reactor at Enrico Fermi Nuclear Engineering  
2363 Station in Monroe County, Michigan. The permitting process  
2364 is well over a year behind schedule, but the benefits from  
2365 this project, the total economic output is \$39.4 million.  
2366 The employment earnings in present day value is \$13.1  
2367 million. Average annual jobs, 56,700.

2368 This is not about changing the substantive process  
2369 within NEPA. It doesn't do that at all. What this does is  
2370 put into effect a timeline so that those who make their  
2371 investment in this economy, that those who make their  
2372 investment domestically receive an adequate and appropriate  
2373 return on their investment and that we get jobs going in  
2374 this country.

2375 This amendment would do nothing more than continue to  
2376 delay not only those nuclear power projects that we have out  
2377 there, but once we start the carve-out, it then would bleed

2378 down and delay into green energy projects and who knows what  
2379 other energy projects.

2380 So, for those reasons, Mr. Chairman, I oppose this  
2381 amendment.

2382 Chairman Smith. Thank you, Mr. Ross.

2383 Are there other Members? The gentleman from Nevada, Mr.  
2384 Amodei, is recognized.

2385 Mr. Amodei. Thank you, Mr. Chairman.

2386 I move to strike the last word.

2387 Chairman Smith. The gentleman is recognized for 5  
2388 minutes.

2389 Mr. Amodei. Thank you.

2390 You know, I think the job stuff is obviously one of the  
2391 points. But as I look at the amendment before us from my  
2392 colleague from New York, I am at a loss for what  
2393 jurisdiction the Environmental Protection Agency has under  
2394 existing law for nuclear safety?

2395 He mentioned the Nuclear Regulatory Commission. I  
2396 believe that is in their bailiwick. It may be in others. I  
2397 am at a loss for why in an EPA-related bill, we are talking,  
2398 attempting to give nuclear safety exemptions to the

2399 Environmental Protection Agency when they don't have the  
2400 jurisdiction to begin with.

2401 So, with that in mind, I would oppose the amendment  
2402 because the Environmental Protection Agency --

2403 Mr. Nadler. Would the gentleman yield for a moment?

2404 Mr. Amodei. Yes, I will. As soon as I finish my  
2405 sentence.

2406 Mr. Nadler. The EPA --

2407 Mr. Amodei. As soon as I finish my sentence, please.

2408 So the Environmental Protection Agency rightfully needs  
2409 to talk about the environment and safeguard the environment,  
2410 but nuclear safety is a mission I am unaware that they have.

2411 With that, Mr. Chairman, I will yield to my colleague  
2412 from the Empire State.

2413 Mr. Conyers. He yielded to you.

2414 Mr. Nadler. Thank you, Mr. Amodei.

2415 The answer to your question is that NEPA, which this  
2416 would supersede, in effect, applies to all projects under  
2417 whatever agency there is. And I think that it is supervised  
2418 not by EPA, as a matter of fact, but by the Council on  
2419 Environmental Quality. But it applies therefore.

2420 Mr. Amodei. Well, and I appreciate that. And  
2421 reclaiming my time, I think the beginning of the bill talks  
2422 about the need to coordinate amongst agencies who have  
2423 jurisdictions, and I assume that that would, in fact, be  
2424 done under any process where you applied for a permit to  
2425 build a nuclear power plant that the appropriate folks would  
2426 be contacted.

2427 And I am unaware of anything in this that changes the  
2428 existing nuclear safety commissions stuff. This is the NEPA  
2429 provision of it does not change the need to coordinate it,  
2430 and by somehow placing in an EPA reg or statute some sort of  
2431 exemption for nuclear safety I think crosses jurisdictions  
2432 lines in an entirely confusing way.

2433 I yield back. Thank you, Mr. Chairman.

2434 Mr. Conyers. Mr. Chairman?

2435 Chairman Smith. Thank you, Mr. Amodei.

2436 Are there other Members who wish to be heard? The  
2437 gentleman from Michigan, Mr. Conyers, is recognized.

2438 Mr. Conyers. Chairman Smith, I think this discussion  
2439 points out the problem. The Nadler amendment is trying to -  
2440 - is legislation that is trying -- without this Nadler

2441 amendment, the legislation would substantially delay effort,  
2442 am I right? I ask the gentleman from New York.

2443 Mr. Nadler. Without my amendment, the legislation would  
2444 put an artificial deadline on environmental review by  
2445 whoever does it.

2446 Mr. Conyers. And that would delay.

2447 Mr. Nadler. I don't know, in some cases, it might  
2448 delay. But what it would do is that it would give an  
2449 automatic approval before the environmental review was  
2450 completed.

2451 Mr. Conyers. Well --

2452 Mr. Nadler. My amendment would say but not when you are  
2453 dealing with nuclear power plants.

2454 Mr. Conyers. So such a result, what I am thinking about  
2455 is the safety of people not just in the New York area or  
2456 your area, but anywhere in the country that nuclear reactors  
2457 could be built. And what I am thinking is that this  
2458 amendment, the Nadler amendment, exempts from the bill any  
2459 project relating to nuclear energy safety and will cause us  
2460 to put the safety of millions of Americans at a higher  
2461 standard of examination so that --

2462 Mr. Nadler. Would the gentleman yield?

2463 Mr. Conyers. -- we would be safer.

2464 Mr. Nadler. Would the gentleman yield?

2465 Mr. Conyers. Of course.

2466 Mr. Nadler. Yes. What the amendment would do is not to  
2467 put nuclear safety at a higher level than it is, it would  
2468 prevent the bill from eliminating safeguards.

2469 Right now, if you want to build a nuclear reactor or do  
2470 a lot of other things, you have to get an environmental  
2471 review. And the environmental review tells you, well, this  
2472 will destroy the fish or this will give you a high  
2473 likelihood of an explosion that will destroy the city or  
2474 whatever. Or this is fine, whatever it will tell you.

2475 But that is what you have the review for, to tell the  
2476 decision-makers here are the environmental upsides, here are  
2477 the environmental downsides, and you go make a decision.  
2478 Because maybe a change in something is worth somewhat of an  
2479 environmental risk. But -- in a minute.

2480 But what the bill says is before -- you only have a  
2481 certain amount of time. You, the agency that is making this  
2482 analysis has a certain amount of time and a deadline. And

2483 if you don't meet that deadline, the review is not  
2484 completed, then it is automatically assumed that everything  
2485 is safe and hunky-dory, and the approval is granted.

2486 What my amendment says is not for nuclear power. For  
2487 nuclear power, we will keep the -- we will not have these  
2488 new artificial deadlines because what the artificial  
2489 deadline does is put people and the environment and people  
2490 and safety at risk by automatically giving approval to the  
2491 project by saying, in effect, there is no environmental or  
2492 safety danger whether there is or not simply because you  
2493 haven't had time to finish the review.

2494 Mr. Conyers. That clarifies it. It makes it -- it  
2495 makes it more important than ever that we have this kind of  
2496 provision for nuclear projects. I mean, nuclear reactors,  
2497 we have had so many problems with it. Look at the meltdowns  
2498 that have occurred in this country and even around Detroit  
2499 now that my area has been brought up -- Fermi.

2500 So I support this amendment. I consider it very sound,  
2501 very safe, and I think millions of Americans not just in  
2502 Detroit or New York are going to be made much safer, and  
2503 public health and safety will be given much better

2504 consideration with this amendment.

2505 I support it, and I urge my Members on both sides of the  
2506 aisle to carefully consider what we are doing here. This is  
2507 not just whether you are for a Democratic amendment or a  
2508 Republican amendment. This is a matter of national safety  
2509 for all of our citizens.

2510 And I yield back the balance of my time.

2511 Chairman Smith. Thank you, Mr. Conyers.

2512 The gentleman from South Carolina, Mr. Gowdy, is  
2513 recognized.

2514 Mr. Gowdy. Thank you, Mr. Chairman.

2515 I would like to yield to the gentleman from Florida, Mr.  
2516 Ross.

2517 Mr. Ross. Thank you, Mr. Gowdy.

2518 I want to clarify this. I want to make sure that there  
2519 is an accurate understanding here. Just because the  
2520 permitting process is not completed within the time period  
2521 does not give the presumption that the permit should be  
2522 issued.

2523 I think what is important here is that there is no  
2524 automatic running of the clock that allows for the issuance

2525 of a permit. All this does, this bill does is to place  
2526 parameters by way of procedure under an existing process  
2527 which substantively is not changed by this bill, and that is  
2528 the process under NEPA.

2529 So my concern is, is that if there is a review agency  
2530 out there that does not complete it, then the permit is not  
2531 issued. And so, there is no automatic issuance of a permit  
2532 if the review is not completed.

2533 Mr. Gowdy. I yield back.

2534 Chairman Smith. The gentleman from South Carolina  
2535 yields back his time.

2536 Now the question is on the Nadler amendment to the  
2537 amendment.

2538 All in favor, say aye.

2539 Opposed, no.

2540 The clerk will call the roll. Does the gentleman want a  
2541 recorded vote?

2542 Ms. Kish. Mr. Smith?

2543 Chairman Smith. No.

2544 Ms. Kish. Mr. Smith votes no.

2545 Mr. Sensenbrenner?

2546 Mr. Sensenbrenner. No.

2547 Ms. Kish. Mr. Sensenbrenner votes no.

2548 Mr. Coble?

2549 [No response.]

2550 Ms. Kish. Mr. Gallegly?

2551 [No response.]

2552 Ms. Kish. Mr. Goodlatte?

2553 [No response.]

2554 Ms. Kish. Mr. Lungren?

2555 [No response.]

2556 Ms. Kish. Mr. Chabot?

2557 [No response.]

2558 Ms. Kish. Mr. Issa?

2559 [No response.]

2560 Ms. Kish. Mr. Pence?

2561 [No response.]

2562 Ms. Kish. Mr. Forbes?

2563 [No response.]

2564 Ms. Kish. Mr. King?

2565 Mr. King. No.

2566 Ms. Kish. Mr. King votes no.

2567 Mr. Franks?

2568 Mr. Franks. No.

2569 Ms. Kish. Mr. Franks votes no.

2570 Mr. Gohmert?

2571 [No response.]

2572 Ms. Kish. Mr. Jordan?

2573 [No response.]

2574 Ms. Kish. Mr. Poe?

2575 [No response.]

2576 Ms. Kish. Mr. Chaffetz?

2577 Mr. Chaffetz. No.

2578 Ms. Kish. Mr. Chaffetz votes no.

2579 Mr. Griffin?

2580 Mr. Griffin. No.

2581 Ms. Kish. Mr. Griffin votes no.

2582 Mr. Marino?

2583 Mr. Marino. No.

2584 Ms. Kish. Mr. Marino votes no.

2585 Mr. Gowdy?

2586 Mr. Gowdy. No.

2587 Ms. Kish. Mr. Gowdy votes no.

2588 Mr. Ross?

2589 Mr. Ross. No.

2590 Ms. Kish. Mr. Ross votes no.

2591 Mrs. Adams?

2592 Mrs. Adams. No.

2593 Ms. Kish. Mrs. Adams votes no.

2594 Mr. Quayle?

2595 Mr. Quayle. No.

2596 Ms. Kish. Mr. Quayle votes no.

2597 Mr. Amodei?

2598 Mr. Amodei. No.

2599 Ms. Kish. Mr. Amodei votes no.

2600 Mr. Conyers?

2601 Mr. Conyers. Aye.

2602 Ms. Kish. Mr. Conyers votes aye.

2603 Mr. Berman?

2604 [No response.]

2605 Ms. Kish. Mr. Nadler?

2606 Mr. Nadler. Aye.

2607 Ms. Kish. Mr. Nadler votes aye.

2608 Mr. Scott?

2609 Mr. Scott. Aye.

2610 Ms. Kish. Mr. Scott votes aye.

2611 Mr. Watt?

2612 Mr. Watt. Aye.

2613 Ms. Kish. Mr. Watt votes aye.

2614 Ms. Lofgren?

2615 [No response.]

2616 Ms. Kish. Ms. Jackson Lee?

2617 Ms. Jackson Lee. Aye.

2618 Ms. Kish. Ms. Jackson Lee votes aye.

2619 Ms. Waters?

2620 [No response.]

2621 Ms. Kish. Mr. Cohen?

2622 Mr. Cohen. Aye.

2623 Ms. Kish. Mr. Cohen votes aye.

2624 Mr. Johnson?

2625 Mr. Johnson. Aye.

2626 Ms. Kish. Mr. Johnson votes aye.

2627 Mr. Pierluisi?

2628 Mr. Pierluisi. Aye.

2629 Ms. Kish. Mr. Pierluisi votes aye.

2630 Mr. Quigley?

2631 Mr. Quigley. Aye.

2632 Ms. Kish. Mr. Quigley votes aye.

2633 Ms. Chu?

2634 [No response.]

2635 Ms. Kish. Mr. Deutch?

2636 Mr. Deutch. Aye.

2637 Ms. Kish. Mr. Deutch votes aye.

2638 Ms. Sanchez?

2639 Ms. Sanchez. Aye.

2640 Ms. Kish. Ms. Sanchez votes aye.

2641 Mr. Polis?

2642 Mr. Polis. Aye.

2643 Ms. Kish. Mr. Polis votes aye.

2644 Chairman Smith. The gentleman from Virginia, Mr.

2645 Forbes?

2646 Mr. Forbes. No.

2647 Ms. Kish. Mr. Forbes votes no.

2648 Chairman Smith. The clerk will report.

2649 Ms. Kish. Mr. Chairman, 12 Members voted aye; 13

2650 Members voted nay.

2651 Chairman Smith. A majority having voted against the  
2652 amendment, the amendment is not agreed to.

2653 Are there other amendments? The gentlewoman from Texas,  
2654 Ms. Jackson Lee, is recognized.

2655 Ms. Jackson Lee. I have an amendment at the desk,  
2656 Number 9.

2657 Chairman Smith. The clerk will report the amendment.

2658 Ms. Kish. Amendment to the Ross amendment, offered by  
2659 Ms. Jackson Lee. Page 31, insert after line 16 the  
2660 following: "D. GAO study --"

2661 Ms. Jackson Lee. Mr. Chairman, I ask the amendment to  
2662 be considered as read.

2663 Chairman Smith. Without objection, the amendment will  
2664 be considered as read.

2665 [The amendment of Ms. Jackson Lee follows:]

2666

2667 Chairman Smith. And the gentlewoman is recognized to  
2668 explain her amendment.

2669 Ms. Jackson Lee. I thank you very much.

2670 Mr. Chairman and to the proponent of the legislation,  
2671 Members of Congress are always more effective when they are  
2672 informed. And my amendment simply provides for a complete  
2673 study and report to Congress on the amount of time required  
2674 for projects that required approval by a permit or  
2675 regulatory division by a Federal agency to complete an  
2676 environmental review under the National Environmental Policy  
2677 Act during the 4 calendar years prior to the date of  
2678 enactment of this particular act.

2679 The comparison I think would be vital. It is important  
2680 that we maintain the regulatory scheme or structure to  
2681 protect the environment and the American people. We all see  
2682 legislation in different perspectives and from different  
2683 colored eyeglasses.

2684 In this instance, I would make the point that  
2685 information is not undermining. It gives us the guideposts  
2686 to correct, improve, or to see the impact of the present  
2687 pending legislation.

2688 I would ask my colleagues to support this amendment.

2689 With that, I yield back.

2690 Chairman Smith. Thank you, Ms. Jackson Lee.

2691 The gentleman from Florida, Mr. Ross, is recognized.

2692 Mr. Ross. Thank you, Mr. Chairman.

2693 Mr. Chairman, I do oppose this amendment because it  
2694 would result in more unnecessary studies and analysis. We  
2695 already know the NEPA process does not work as it should.  
2696 The RAPID Act corrects these issues and includes a forward-  
2697 looking reporting requirement that will hold agencies  
2698 accountable to Congress.

2699 I don't believe that the best evidence would be a GAO  
2700 study. I submit that the best evidence would be outcomes  
2701 that will be assessed through lower unemployment and a more  
2702 productive economy several years after the RAPID Act is  
2703 passed.

2704 And for these reasons, I oppose this amendment.

2705 Chairman Smith. Thank you, Mr. Ross.

2706 Are there other Members who wish to be heard? The  
2707 gentleman from Tennessee, Mr. Cohen?

2708 Mr. Cohen. Thank you, Mr. Chairman.

2709 I have got a question about this GAO study and would  
2710 like to yield to Ms. Lee to respond and tell us why we need  
2711 to do this.

2712 Ms. Jackson Lee. I am glad you asked that question and  
2713 allow me to use the research that was generated or the  
2714 testimony that was generated in answer to your question by  
2715 the former General Counsel to the Council on Environmental  
2716 Quality Dinah Bear offered this testimony in the  
2717 Subcommittee on Courts, Commercial, and Administrative Law  
2718 on the RAPID Act.

2719 And she worked for the Reagan administration, and  
2720 specifically, her point was while the causes of project  
2721 delay have not been systematically documented throughout the  
2722 Government for all actions, the body of information  
2723 available has improved greatly since GAO noted in 1994 that  
2724 there was no repository of information on highway projects  
2725 and their environmental reviews.

2726 In particular, some valuable analysis has been done on  
2727 this issue in the context of highway construction. Since at  
2728 least the mid 1990s, two congressional agencies, the GAO and  
2729 the -- General Accounting Office, General Accountability

2730 Office and the Congressional Research Service, have prepared  
2731 a series of reports that are remarkably consistent in their  
2732 findings regarding the construction of highway projects and  
2733 the relationship with environmental laws generally and NEPA  
2734 specifically to decision-making. Some of this research,  
2735 relevant research for construction and other Federal  
2736 contexts, but certainly this type of research is needed more  
2737 broadly if agencies and/or legislators are going to be able  
2738 to formulate successful approaches.

2739 This legislation is being passed without research and  
2740 understanding. We don't have any documentation that NEPA  
2741 has delayed, and so now we have legislation that really puts  
2742 the private sector in control. The private sector may  
2743 themselves take -- under the APA take this process to court.  
2744 We may be filled with court proceedings.

2745 And so, if testimony suggests that research is  
2746 important, this is what this amendment and this study would  
2747 do, research necessary to be able to discern what this  
2748 legislation's impact will have and how, in fact, in my  
2749 belief that NEPA does not intrude upon construction  
2750 projects.

2751           So I would ask my -- I thank you for that question. I  
2752 don't know why we didn't listen to a Republican witness  
2753 that, Mr. Ranking Member, you called, that the committee  
2754 called, that indicated that research would be crucial in  
2755 this effort. My amendment speaks to research. It is a  
2756 study and report to Congress, and I would ask my colleagues  
2757 to support the amendment.

2758           I yield back my time.

2759           Mr. Conyers. Would the gentleman from Tennessee yield?

2760           Mr. Cohen. With pleasure.

2761           Mr. Conyers. Thank you, sir.

2762           What we are asking for is a GAO study. I don't see why  
2763 we can get too exercised about that.

2764           We want the Comptroller General to complete a study and  
2765 report to Congress on the amount of time required for  
2766 projects that required approval by a permit or regulatory  
2767 decision. I can't, for the life of me, understand why that  
2768 would be opposed by any Member, Republican or Democrat or  
2769 anything else. And so, I am enthusiastically in support of  
2770 the Jackson Lee amendment.

2771           And I thank the gentleman for yielding.

2772 Mr. Cohen. Thank you.

2773 And I now proudly and gracious yield back to the chair  
2774 of the committee.

2775 Chairman Smith. Appreciate the gentleman yielding back  
2776 his time. Let me say that after we vote on this amendment,  
2777 we will recess until after this series of votes, and then we  
2778 will return, resume markup. And I believe we have two  
2779 amendments remaining.

2780 The question is on the Jackson Lee amendment to the  
2781 amendment.

2782 All in favor, say aye.

2783 All opposed, no.

2784 In the opinion of the chair, the nays have it, and the  
2785 amendment is not agreed to.

2786 Ms. Jackson Lee. Mr. Chairman, roll call vote, please.

2787 Chairman Smith. Roll call vote has been requested, and  
2788 the clerk will call the roll.

2789 Ms. Kish. Mr. Smith?

2790 Chairman Smith. No.

2791 Ms. Kish. Mr. Smith votes no.

2792 Mr. Sensenbrenner?

2793 [No response.]

2794 Ms. Kish. Mr. Coble?

2795 [No response.]

2796 Ms. Kish. Mr. Gallegly?

2797 [No response.]

2798 Ms. Kish. Mr. Goodlatte?

2799 [No response.]

2800 Ms. Kish. Mr. Lungren?

2801 [No response.]

2802 Ms. Kish. Mr. Chabot?

2803 [No response.]

2804 Ms. Kish. Mr. Issa?

2805 [No response.]

2806 Ms. Kish. Mr. Pence?

2807 [No response.]

2808 Ms. Kish. Mr. Forbes?

2809 Mr. Forbes. No.

2810 Ms. Kish. Mr. Forbes votes no.

2811 Mr. King?

2812 Mr. King. No.

2813 Ms. Kish. Mr. King votes no.

2814 Mr. Franks?

2815 [No response.]

2816 Ms. Kish. Mr. Gohmert?

2817 [No response.]

2818 Ms. Kish. Mr. Jordan?

2819 [No response.]

2820 Ms. Kish. Mr. Poe?

2821 [No response.]

2822 Ms. Kish. Mr. Chaffetz?

2823 Mr. Chaffetz. No.

2824 Ms. Kish. Mr. Chaffetz votes no.

2825 Mr. Griffin?

2826 [No response.]

2827 Ms. Kish. Mr. Marino?

2828 Mr. Marino. No.

2829 Ms. Kish. Mr. Marino votes no.

2830 Mr. Gowdy?

2831 Mr. Gowdy. No.

2832 Ms. Kish. Mr. Gowdy votes no.

2833 Mr. Ross?

2834 Mr. Ross. No.

2835 Ms. Kish. Mr. Ross votes no.

2836 Mrs. Adams?

2837 Mrs. Adams. No.

2838 Ms. Kish. Mrs. Adams votes no.

2839 Mr. Quayle?

2840 Mr. Quayle. No.

2841 Ms. Kish. Mr. Quayle votes no.

2842 Mr. Amodei?

2843 Mr. Amodei. No.

2844 Ms. Kish. Mr. Amodei votes no.

2845 Mr. Conyers?

2846 Mr. Conyers. Aye.

2847 Ms. Kish. Mr. Conyers votes aye.

2848 Mr. Berman?

2849 [No response.]

2850 Ms. Kish. Mr. Nadler?

2851 [No response.]

2852 Ms. Kish. Mr. Scott?

2853 Mr. Scott. Aye.

2854 Ms. Kish. Mr. Scott votes aye.

2855 Mr. Watt?

2856 Mr. Watt. Aye.

2857 Ms. Kish. Mr. Watt votes aye.

2858 Ms. Lofgren?

2859 [No response.]

2860 Ms. Kish. Ms. Jackson Lee?

2861 Ms. Jackson Lee. Aye.

2862 Ms. Kish. Ms. Jackson Lee votes aye.

2863 Ms. Waters?

2864 [No response.]

2865 Ms. Kish. Mr. Cohen?

2866 Mr. Cohen. Aye.

2867 Ms. Kish. Mr. Cohen votes aye.

2868 Mr. Johnson?

2869 Mr. Johnson. Aye.

2870 Ms. Kish. Mr. Johnson votes aye.

2871 Mr. Pierluisi?

2872 Mr. Pierluisi. Aye.

2873 Ms. Kish. Mr. Pierluisi votes aye.

2874 Mr. Quigley?

2875 Mr. Quigley. Aye.

2876 Ms. Kish. Mr. Quigley votes no.

2877 Mr. Quigley. Aye.

2878 Ms. Kish. You vote aye? Mr. Quigley votes aye.

2879 Ms. Chu?

2880 [No response.]

2881 Ms. Kish. Mr. Deutch?

2882 Mr. Deutch. Aye.

2883 Ms. Kish. Mr. Deutch votes aye.

2884 Ms. Sanchez?

2885 Ms. Sanchez. Aye.

2886 Ms. Kish. Ms. Sanchez votes aye.

2887 Mr. Polis?

2888 Mr. Polis. Aye.

2889 Ms. Kish. Mr. Polis votes aye.

2890 Chairman Smith. The gentleman from Arizona, Mr. Franks?

2891 Mr. Franks. No.

2892 Ms. Kish. Mr. Franks votes no.

2893 Chairman Smith. The gentleman from Arkansas, Mr.

2894 Griffin?

2895 Mr. Griffin. No.

2896 Ms. Kish. Mr. Griffin votes no.

2897 Chairman Smith. The clerk will report.

2898 Ms. Kish. Mr. Chairman, 11 Members voted aye; 12  
2899 Members voted nay.

2900 Chairman Smith. A majority having voted against the  
2901 amendment, the amendment is not agreed to.

2902 We will recess until immediately after this series of  
2903 votes. I thank the Members for their presence today.

2904 Mr. Johnson. Mr. Chairman, can I ask a question?

2905 Chairman Smith. We stand in recess, but I would be  
2906 happy to entertain a question from the gentleman from North  
2907 Carolina.

2908 Mr. Johnson. I am just trying to figure out what the  
2909 rest of your schedule is after this bill today. Are you  
2910 planning to go forward with the other bills or --

2911 Chairman Smith. Yes, we do plan --

2912 Mr. Johnson. Today?

2913 Chairman Smith. That is correct.

2914 Mr. Johnson. Okay.

2915 Chairman Smith. I expect us to probably -- we have our  
2916 series of votes at 4:00 p.m. That will probably be the end  
2917 of the markup today.

2918 [Whereupon, at 1:24 p.m., the committee recessed, to

2919 reconvene at 2:20 p.m., the same day.]

2920 Chairman Smith. The Judiciary Committee will resume its  
2921 markup, and the clerk will call the roll so that we can  
2922 determine whether we have a working majority here.

2923 Ms. Kish. Mr. Smith?

2924 Chairman Smith. Present.

2925 Ms. Kish. Mr. Sensenbrenner?

2926 Mr. Coble?

2927 Mr. Gallegly?

2928 Mr. Goodlatte?

2929 Mr. Lungren?

2930 Mr. Chabot?

2931 Mr. Issa?

2932 Mr. Pence?

2933 Mr. Forbes?

2934 Mr. King?

2935 Mr. King. Here.

2936 Ms. Kish. Mr. Franks?

2937 Mr. Gohmert?

2938 Mr. Jordan?

2939 Mr. Poe?

2940 Mr. Chaffetz?  
2941 Mr. Griffin?  
2942 Mr. Marino?  
2943 Mr. Marino. Present.  
2944 Ms. Kish. Mr. Gowdy?  
2945 Mr. Ross?  
2946 Mr. Ross. Present.  
2947 Mrs. Adams?  
2948 Mrs. Adams. Present.  
2949 Ms. Kish. Mr. Quayle?  
2950 Mr. Amodei?  
2951 Mr. Conyers?  
2952 Mr. Berman?  
2953 Mr. Nadler?  
2954 Mr. Scott?  
2955 Mr. Scott. Present.  
2956 Ms. Kish. Mr. Watt?  
2957 Ms. Lofgren?  
2958 Ms. Jackson Lee?  
2959 Ms. Waters?  
2960 Mr. Cohen?

2961 Mr. Cohen. Present.

2962 Ms. Kish. Mr. Johnson?

2963 Mr. Johnson. Present.

2964 Ms. Kish. Mr. Pierluisi?

2965 Mr. Quigley?

2966 Ms. Chu?

2967 Mr. Deutch?

2968 Ms. Sanchez?

2969 Mr. Polis?

2970 Mr. Polis. Present.

2971 Chairman Smith. The gentleman from North Carolina?

2972 Mr. Watt. Present.

2973 Ms. Kish. Mr. Watt.

2974 Chairman Smith. The gentleman from Michigan?

2975 Mr. Conyers. Here.

2976 Chairman Smith. The gentleman from Virginia, Mr. Scott.

2977 Mr. Scott. I have already voted.

2978 Chairman Smith. How is the gentleman from Virginia

2979 recorded, present?

2980 Ms. Kish. Present.

2981 Chairman Smith. Okay. The gentleman from Arizona?

2982 Mr. Quayle. Here.

2983 Ms. Kish. Mr. Quayle.

2984 Voice. Mr. Chairman?

2985 Chairman Smith. Yes?

2986 Voice. I would like to know what is going to happen in  
2987 the basketball game tonight.

2988 [Laughter.]

2989 Chairman Smith. San Antonio over Boston by --

2990 Voice. San Antonio over Oklahoma City --

2991 Chairman Smith. Oklahoma, yes.

2992 Voice. You are getting ahead of yourself.

2993 [Laughter.]

2994 Chairman Smith. I do not know. With the Spurs, I think  
2995 it is warranted.

2996 Voice. They hope so.

2997 Chairman Smith. The gentleman from Puerto Rico?

2998 Ms. Kish. Mr. Pierluisi?

2999 Mr. Pierluisi. Present.

3000 Ms. Kish. Mr. Forbes.

3001 Mr. Forbes. Present.

3002 Chairman Smith. The clerk will report.

3003 Ms. Kish. Mr. Chairman, 14 members responded present.

3004 Chairman Smith. A working quorum being present, we will  
3005 resume the markup and go to additional amendments. And are  
3006 there any further amendments? The gentleman from Tennessee,  
3007 Mr. Cohen.

3008 Mr. Cohen. Thank you, Mr. Chairman. I have an  
3009 amendment at the proverbial desk.

3010 Chairman Smith. The clerk will report the amendment.

3011 Ms. Kish. Amendment to the Ross amendment, offered by  
3012 Mr. Cohen, page 1, strike line 7 --

3013 Mr. Cohen. I would request unanimous consent that the  
3014 amendment be considered as read.

3015 Chairman Smith. Without objection, the amendment will  
3016 be considered as read.

3017 [The amendment of Mr. Cohen follows:]

3018

3019 Chairman Smith. And the gentleman is recognized to  
3020 explain his, looks like a substitute amendment.

3021 Mr. Cohen. Yes, sir. This amendment strikes the  
3022 creation of a new subchapter under the Administrative  
3023 Procedure Act, and redrafts the substantive portions of the  
3024 bill as freestanding legislative language.

3025 H.R. 4377, RAPID, creates a new subchapter of the APA to  
3026 prescribe how environmental reviews required by NEPA should  
3027 be conducted for federal construction projects. It is  
3028 confusing, and it was confusing in the subcommittee as to  
3029 why the changes to or the codifications of NEPA practice  
3030 contemplated in the RAPID bill belonged in the APA.

3031 It would seem that if the proponents would like to amend  
3032 or add to NEPA's environmental review requirements, they  
3033 would simply go ahead and amend NEPA, which they have not  
3034 done. So I am concerned about using the APA, which is  
3035 something we hold dear, as a backdoor way of amending  
3036 possibly other statutes or substantive law.

3037 The APA is our administrative constitution, and our  
3038 committee holds it sacred. So just like the actual  
3039 Constitution, the one given us many years ago by such great

3040 people as Jefferson, Madison, and others whose names are  
3041 enshrined in colleges today, we should be very careful in  
3042 tinkering with that Constitution, which we support. So I am  
3043 concerned that we are setting a precedent, a bad precedent,  
3044 by amending other statutes or substantive law by simply  
3045 adding a subchapter to the APA.

3046 This is not the purpose or the function of the APA. We  
3047 ought to guard against it. So it is a very simple, easy,  
3048 non-controversial, bipartisan amendment. So and with that,  
3049 I do not think I need to explain anymore. We can just move  
3050 right ahead, and I would ask all of us to support this  
3051 amendment.

3052 Chairman Smith. Thank you, Mr. Cohen.

3053 The gentleman from Florida, Mr. Ross, is recognized.

3054 Mr. Ross. Thank you, Mr. Chairman. I oppose the  
3055 amendment, but before I get into the substance of my  
3056 opposition, I just do wish to acknowledge Mr. Cohen's  
3057 background as a distinguished alumnus of Vanderbilt  
3058 University, which is part of the SEC, where I, as a graduate  
3059 of Auburn, am from, and we do have a spirit of cooperation  
3060 between us. And just believe that will carry over into what

3061 we do here. And note that even though your amendment has  
3062 been prepared since May 15th, this is the first time I have  
3063 seen it, and I look forward to continuing to work with you  
3064 on this particular issue.

3065 But I must oppose the amendment. The RAPID Act, and  
3066 particular the manager's amendment, was drafted with careful  
3067 consideration and included most of the input provided by Mr.  
3068 Baer, the minority witness at the subcommittee hearing.

3069 Mr. Cohen's amendment essentially guts the key  
3070 provisions of the bill and would undercut the entire point  
3071 of its careful drafting. The bipartisan bill includes many  
3072 of the processes codified in SAFETEA-LU, which was, again,  
3073 passed by the 109th Congress with a vote of 412 to 8, as the  
3074 substantive contributions provided by the minority's witness  
3075 during the hearing indicated.

3076 For these reasons I oppose the amendment, and I yield  
3077 back.

3078 Chairman Smith. Thank you, Mr. Ross. Anyone else want  
3079 to be heard on Mr. Cohen's amendment?

3080 [No response.]

3081 Chairman Smith. If not, the question is on the Cohen

3082 amendment to the amendment.

3083 All in favor, say aye.

3084 All opposed, say no.

3085 In the opinion of the Chair, the noes have it. And the  
3086 gentleman requests a recorded vote, and the clerk will call  
3087 the roll.

3088 Ms. Kish. Mr. Smith?

3089 Chairman Smith. No.

3090 Ms. Kish. Mr. Smith votes no.

3091 Mr. Sensenbrenner?

3092 [No response.]

3093 Ms. Kish. Mr. Coble?

3094 [No response.]

3095 Ms. Kish. Mr. Gallegly?

3096 Mr. Gallegly. No.

3097 Ms. Kish. Mr. Gallegly votes no.

3098 Mr. Goodlatte?

3099 [No response.]

3100 Ms. Kish. Mr. Lungren?

3101 [No response.]

3102 Ms. Kish. Mr. Chabot?

3103 [No response.]

3104 Ms. Kish. Mr. Issa?

3105 [No response.]

3106 Ms. Kish. Mr. Pence?

3107 [No response.]

3108 Ms. Kish. Mr. Forbes?

3109 [No response.]

3110 Ms. Kish. Mr. King?

3111 Mr. King. No.

3112 Ms. Kish. Mr. King votes no.

3113 Mr. Franks?

3114 Mr. Franks. No.

3115 Ms. Kish. Mr. Franks votes no.

3116 Mr. Gohmert?

3117 [No response.]

3118 Ms. Kish. Mr. Jordan?

3119 [No response.]

3120 Ms. Kish. Mr. Poe?

3121 [No response.]

3122 Mr. Chaffetz?

3123 [No response.]

3124 Ms. Kish. Mr. Griffin?  
3125 [No response.]  
3126 Ms. Kish. Mr. Marino?  
3127 Mr. Marino. No.  
3128 Ms. Kish. Mr. Marino votes no.  
3129 Mr. Gowdy?  
3130 Mr. Gowdy. No.  
3131 Ms. Kish. Mr. Gowdy votes no.  
3132 Mr. Ross?  
3133 Mr. Ross. No.  
3134 Ms. Kish. Mr. Ross votes no.  
3135 Mrs. Adams?  
3136 Mrs. Adams. No.  
3137 Ms. Kish. Mrs. Adams votes no.  
3138 Mr. Quayle?  
3139 Mr. Quayle. No.  
3140 Ms. Kish. Mr. Quayle votes no.  
3141 Mr. Amodei?  
3142 [No response.]  
3143 Ms. Kish. Mr. Conyers?  
3144 Mr. Conyers. Aye.

3145 Ms. Kish. Mr. Conyers votes aye.

3146 Mr. Berman?

3147 [No response.]

3148 Ms. Kish. Mr. Nadler?

3149 [No response.]

3150 Ms. Kish. Mr. Scott?

3151 Mr. Scott. Aye.

3152 Ms. Kish. Mr. Scott votes aye.

3153 Mr. Watt?

3154 Mr. Watt. Aye.

3155 Ms. Kish. Mr. Watt votes aye.

3156 Ms. Lofgren?

3157 [No response.]

3158 Ms. Kish. Ms. Jackson Lee?

3159 Ms. Jackson Lee. Aye.

3160 Ms. Kish. Ms. Jackson Lee votes aye.

3161 Ms. Waters?

3162 [No response.]

3163 Ms. Kish. Mr. Cohen?

3164 Mr. Cohen. Aye.

3165 Ms. Kish. Mr. Cohen votes aye.

3166 Mr. Johnson?

3167 Mr. Johnson. Aye.

3168 Ms. Kish. Mr. Johnson votes aye.

3169 Mr. Pierluisi?

3170 Mr. Pierluisi. Aye.

3171 Ms. Kish. Mr. Pierluisi votes aye.

3172 Mr. Quigley?

3173 Mr. Quigley. Aye.

3174 Ms. Kish. Mr. Quigley votes aye.

3175 Ms. Chu?

3176 [No response.]

3177 Ms. Kish. Mr. Deutch?

3178 [No response.]

3179 Ms. Kish. Ms. Sanchez?

3180 [No response.]

3181 Ms. Kish. Mr. Polis?

3182 Mr. Polis. Aye.

3183 Ms. Kish. Mr. Polis votes aye.

3184 Chairman Smith. The gentleman from Virginia, Mr.

3185 Forbes?

3186 Mr. Forbes. No.

3187 Ms. Kish. Mr. Forbes votes no.

3188 Chairman Smith. The clerk will report.

3189 Ms. Kish. Mr. Chairman, 9 members voted aye, 10 members  
3190 voted nay.

3191 Chairman Smith. The majority having voted against the  
3192 amendment, the amendment is not agreed to.

3193 The gentleman from Colorado, Mr. Polis, is recognized  
3194 for the purpose of offering an amendment.

3195 Mr. Polis. Mr. Chair, I have an amendment at the desk.

3196 Chairman Smith. The clerk will report the amendment.

3197 Ms. Kish. Amendment --

3198 Mr. Polis. Mr. Chairman, I ask for unanimous consent to  
3199 dispense with the reading of the amendment.

3200 Chairman Smith. Without objection, the amendment will  
3201 be considered as read.

3202 [The amendment of Mr. Polis follows:]

3203

3204 Chairman Smith. And the gentleman is recognized to  
3205 explain his amendment.

3206 Mr. Polis. Thank you. You know, the RAPID Act, in my  
3207 opinion, has an important goal. And, frankly, I share the  
3208 frustrations that have been vented by many members of this  
3209 committee with the NEPA process. And I show those  
3210 frustrations as both an environmentalist, as well as a  
3211 former businessman.

3212 It seems like there is something wrong with the system  
3213 in which citing a wind farm can take years in an extensive  
3214 process, and yet several fracking regs can go in a few  
3215 hundred feet from somebody's home with no community  
3216 oversight process within a few months. Something is wrong  
3217 with this picture.

3218 Now in this particular case, the bill in its current  
3219 form, I believe, is an example of a medicine that is worse  
3220 than a disease. I think there is a major problem with the  
3221 section that my amendment addresses, namely the automatic  
3222 approval after a period of time, or disapproval. It is  
3223 problematic in a number of ways, and I refer to on page 25,  
3224 Sections A, B, and C of the original bill text in which if a

3225 Federal agency fails to approve or disapprove the project or  
3226 make the required finding of the termination within the  
3227 applicable deadline, which is either 90 days or 180 days,  
3228 depending on the situation, then the project is  
3229 automatically deemed approved, deemed approved by such  
3230 agency.

3231 Now this sets up a perverse incentive in two ways. One  
3232 as an agency is up against that deadline and legitimate work  
3233 is yet to be completed, they are like to not approve the  
3234 project simply because the issues have not been vetted. It  
3235 could lead to worthwhile projects being denied by the  
3236 regulatory agencies. And, two, there are frequent times  
3237 when there will simply be issues that need to be worked on  
3238 that will take longer than a rather arbitrary limit. It  
3239 would be nice if they could all be done by 180 days, but  
3240 what if takes 190 days or 200 days?

3241 What my amendment does is it sets up a trigger after a  
3242 period of time for a process, which is not automatic  
3243 approval, but is rather a convening of the stakeholders  
3244 around figuring out what is standing in the way of the NEPA  
3245 decision. If you want to expedite project delivery, simply

3246 expediting the NEPA process alone and automatic approval  
3247 does not meet that goal. In fact, it can lead to denials.

3248 My amendment would allow the lead agency to identify the  
3249 source of the delay, address those concerns, and allow the  
3250 project to move forward instead of imposing arbitrary  
3251 deadlines, which can, in fact, lead to denial. My amendment  
3252 would allow for project-specific solutions rather than a  
3253 one-size-fits-all solution.

3254 Now I have heard from many businesses, as I mentioned,  
3255 as an environmentalist, in particular solar and wind  
3256 projects, but highway projects, many other projects in my  
3257 district. And the uncertainty around the project delays  
3258 hurts business and causes people to pay more and have to  
3259 invest more. My amendment would resolve these issues by  
3260 increasing transparency, bringing stakeholders to the table,  
3261 and identifying the problems, communicating remedies to the  
3262 problems to stakeholders and ensuring that these projects  
3263 are shovel ready and ready to go as quickly as possible, and  
3264 not subject to incorrect denial, which can occur under a  
3265 forced timeline, and getting the issues that are around any  
3266 impediments on the table, along with their remedies on the

3267 table. And that is what I think our approach should be  
3268 with regard to a NEPA process that I would agree with my  
3269 colleagues, sometimes spirals out of control and leads to  
3270 intermittent delays.

3271 Now it also works a lot of the time, and I think both  
3272 sides do need to acknowledge that, that every project does  
3273 not meet undue delay. But too often that occurs. That is  
3274 the reason for the bill. I sympathize with the goals of the  
3275 bill, but I think we can go about it better. I encourage my  
3276 colleagues on both sides of the aisle to support my  
3277 amendment, and I yield back.

3278 Chairman Smith. Thank you, Mr. Polis.

3279 And the gentleman from Florida, Mr. Ross, is recognized.

3280 Mr. Ross. Thank you, Mr. Chairman.

3281 Mr. Chairman, I oppose this amendment. A key provision  
3282 of the RAPID Act is that it requires agencies to conduct  
3283 environmental reviews in a timely fashion, and then to make  
3284 permitting decisions accordingly. The bill does not put a  
3285 thumb on the scale either way or require agencies to approve  
3286 or deny any permits. Rather, it simply ensures that the  
3287 agencies will make permitting decisions on a predictable

3288 timeline. To have the confidence to invest in their  
3289 project, job creators need to be able to see the light at  
3290 the end of the tunnel.

3291 At the subcommittee's hearing in April, the minority's  
3292 witness suggested how to improve the language in the bill  
3293 that this amendment would delete. I clarified that language  
3294 in the manager's amendment. But, more importantly, what the  
3295 bill is about and what this amendment would take away is  
3296 certainty. The American entrepreneur, the American  
3297 businessman, the American innovator wants to have certainty  
3298 whether it be in tax policy or regulatory policy. And when  
3299 it comes to investing their capital to create jobs, they  
3300 want to have certainty that there is going to be some period  
3301 of time in which they can receive a return off that  
3302 investment.

3303 This bill gives that timeline. It is not an arbitrary  
3304 timeline. It is a procedure within a process that would  
3305 allow for the investment of capital to create jobs by  
3306 expediting the permit process. It does not affect the  
3307 review process whatsoever, and for that reason I would  
3308 oppose the amendment.

3309 Chairman Smith. Thank you, Mr. Ross.

3310 Are there other members who wish to be heard on this  
3311 amendment?

3312 [No response.]

3313 Chairman Smith. If not, the question is on the  
3314 amendment to the amendment.

3315 All in favor, say aye?

3316 Opposed, no?

3317 In the opinion of the chair, the noes have it, and the  
3318 amendment is not agreed to.

3319 Are there other amendments?

3320 [No response.]

3321 Chairman Smith. If not, the question is on the  
3322 manager's amendment. Those in favor, say aye.

3323 Those opposed, no.

3324 In the opinion of the chair, the ayes have it, and the  
3325 amendment is agreed to.

3326 A reporting quorum being present, the question is on  
3327 reporting the bill, as amended, favorably to the House.

3328 Those in favor, say aye.

3329 Opposed, no.

3330 The ayes have it, and the bill, as amended, is ordered  
3331 reported favorably.

3332 Without objection, the bill will be reported as a single  
3333 amendment in the nature of a --

3334 Voice. Recorded vote.

3335 A recorded vote has been requested. The clerk will call  
3336 the roll.

3337 Ms. Kish. Mr. Smith?

3338 Chairman Smith. Aye.

3339 Ms. Kish. Mr. Smith votes aye.

3340 Mr. Sensenbrenner?

3341 [No response.]

3342 Ms. Kish. Mr. Coble?

3343 [No response.]

3344 Ms. Kish. Mr. Gallegly?

3345 [No response.]

3346 Ms. Kish. Mr. Goodlatte?

3347 [No response.]

3348 Ms. Kish. Mr. Lungren?

3349 [No response.]

3350 Ms. Kish. Mr. Chabot?

3351 Mr. Chabot. Aye.

3352 Ms. Kish. Mr. Chabot votes aye.

3353 Mr. Issa?

3354 [No response.]

3355 Ms. Kish. Mr. Pence?

3356 [No response.]

3357 Ms. Kish. Mr. Forbes?

3358 Mr. Forbes. Aye.

3359 Ms. Kish. Mr. Forbes votes aye.

3360 Mr. King?

3361 Mr. King. Aye.

3362 Ms. Kish. Mr. King votes aye.

3363 Mr. Franks?

3364 Mr. Franks. Aye.

3365 Ms. Kish. Mr. Franks votes aye.

3366 Mr. Gohmert?

3367 [No response.]

3368 Ms. Kish. Mr. Jordan?

3369 [No response.]

3370 Ms. Kish. Mr. Poe?

3371 [No response.]

3372 Ms. Kish. Mr. Chaffetz?

3373 Mr. Chaffetz. Aye.

3374 Ms. Kish. Mr. Chaffetz votes aye.

3375 Mr. Griffin?

3376 [No response.]

3377 Ms. Kish. Mr. Marino?

3378 Mr. Marino. Aye.

3379 Ms. Kish. Mr. Marino votes aye.

3380 Mr. Gowdy?

3381 Mr. Gowdy. Aye.

3382 Ms. Kish. Mr. Gowdy votes yes.

3383 Mr. Ross?

3384 Mr. Ross. Aye.

3385 Ms. Kish. Mr. Ross votes aye.

3386 Mrs. Adams?

3387 Mrs. Adams. Aye.

3388 Ms. Kish. Mrs. Adams votes aye.

3389 Mr. Quayle?

3390 Mr. Quayle. Aye.

3391 Ms. Kish. Mr. Quayle votes aye.

3392 Mr. Amodei?

3393 [No response.]

3394 Ms. Kish. Mr. Conyers?

3395 Mr. Conyers. No.

3396 Ms. Kish. Mr. Conyers votes no.

3397 Mr. Berman?

3398 [No response.]

3399 Ms. Kish. Mr. Nadler?

3400 [No response.]

3401 Ms. Kish. Mr. Scott?

3402 Mr. Scott. No.

3403 Ms. Kish. Mr. Scott votes no.

3404 Mr. Watt?

3405 Mr. Watt. No.

3406 Ms. Kish. Mr. Watt votes no.

3407 Ms. Lofgren?

3408 [No response.]

3409 Ms. Kish. Ms. Jackson Lee?

3410 Ms. Jackson Lee. No.

3411 Ms. Kish. Ms. Jackson Lee votes no.

3412 Ms. Waters?

3413 [No response.]

3414 Ms. Kish. Mr. Cohen?

3415 Mr. Cohen. No.

3416 Ms. Kish. Mr. Cohen votes no.

3417 Mr. Johnson?

3418 Mr. Johnson. No.

3419 Ms. Kish. Mr. Johnson votes no.

3420 Mr. Pierluisi?

3421 Mr. Pierluisi. No.

3422 Ms. Kish. Mr. Pierluisi votes no.

3423 Mr. Quigley?

3424 Mr. Quigley. No.

3425 Ms. Kish. Mr. Quigley votes no.

3426 Ms. Chu?

3427 [No response.]

3428 Ms. Kish. Mr. Deutch?

3429 [No response.]

3430 Ms. Kish. Ms. Sanchez?

3431 [No response.]

3432 Ms. Kish. Mr. Polis?

3433 [No response.]

3434 Chairman Smith. The gentleman from California, Mr.

3435 Gallegly?

3436 Mr. Gallegly. Aye.

3437 Ms. Kish. Mr. Gallegly votes aye.

3438 Chairman Smith. The gentleman from California, Mr.

3439 Lungren?

3440 Mr. Lungren. Aye.

3441 Ms. Kish. Mr. Lungren votes aye.

3442 Chairman Smith. And the gentleman from Arkansas, Mr.

3443 Griffin.

3444 Mr. Griffin. Aye.

3445 Ms. Kish. Mr. Griffin votes aye.

3446 Chairman Smith. The clerk will report.

3447 Ms. Kish. Mr. Chairman, 14 members voted aye, 8 members

3448 voted nay.

3449 Chairman Smith. The ayes have it, and the bill, as

3450 amended, is ordered reported favorably.

3451 Without objection, the bill will be reported as a single

3452 amendment in the nature of a substitute incorporating

3453 amendments adopted, and staff is authorized to make

3454 technical and conforming changes. Members will have 2 days

3455 to submit their views.

3456 Chairman Smith. We will proceed to H.R. 4369, the  
3457 Furthering Asbestos Claim Transparency Act of 2012.

3458 Pursuant to notice, I now call up H.R. 4369 for purposes  
3459 of markup, and the clerk will report the bill.

3460 Ms. Kish. H.R. 4369, to amend Title 11 of the United  
3461 States Code to require the public disclosure by trust  
3462 established under Section 524 --

3463 Chairman Smith. Without objection, the bill will be  
3464 considered as read and open for amendment at any point.

3465 [The information follows:]

3466

3467 Chairman Smith. And I will recognize myself for an  
3468 opening statement.

3469 Asbestos was once labeled the "miracle product" because  
3470 of its versatility and low cost. But since its invention,  
3471 research has shown asbestos to be the cause of serious  
3472 respiratory illnesses and even certain types of cancer.

3473 The thousands of American workers who are exposed to  
3474 asbestos in shipyards, on the floor of manufacturing plants,  
3475 and in other trades, have a right to be compensated for  
3476 their asbestos-related injuries under applicable Federal and  
3477 States laws. But they do not have a right to exploit the  
3478 compensation system and make fraudulent or duplicative  
3479 claims.

3480 In 1994, Congress responded to the increase in volume of  
3481 asbestos litigation lawsuits and enacted Section 524(b) of  
3482 the Bankruptcy Code. That section allows a Chapter 11  
3483 debtor to create a trust to handle future asbestos liability  
3484 in its plan of reorganization. 524(g) strikes a fair deal.  
3485 The debtor promises to adequately fund the trust with enough  
3486 cash to pay future asbestos claims, and the court enters a  
3487 injunction that prohibits future asbestos plaintiffs from

3488 suing the reorganized debtor after bankruptcy.

3489       Since that time, trial lawyers have turned asbestos  
3490 litigation into a full-scale industry. They have  
3491 aggressively expanded the scope of defendants to include  
3492 employers who exposed employees to asbestos, manufacturers,  
3493 and distributors. One can barely watch a TV program without  
3494 seeing a paid advertisement about trial lawyers looking for  
3495 new asbestos plaintiffs.

3496       The addition of new defendants to the asbestos liability  
3497 pool has caused a dual track compensation system to emerge.  
3498 Plaintiffs file State law tort claims in State court and  
3499 also file for compensation from 524(g) trusts. The State  
3500 tort system is transparent. Anyone can walk into the  
3501 courthouse and ask the clerk for copies of the pleadings.  
3502 But asbestos trusts are managed in secret. The lack of  
3503 disclosure from 524(g) trusts has allowed fraud to be  
3504 perpetrated by claimants who file a claim with the trust and  
3505 use facts completely different from their State court  
3506 pleadings. And when fraud is perpetrated by a trust  
3507 claimant today, that means less money is in the pot for a  
3508 valid trust claim tomorrow.

3509           Ironically, fraud in the asbestos trust system actually  
3510 causes harm to those whose benefit it was constructed. H.R.  
3511 4369, the Furthering Asbestos Claims Transparency, or FACT,  
3512 Act brings asbestos trust claim procedures into the light of  
3513 day. The bill introduced by the gentleman from Arizona, Mr.  
3514 Quayle, simply requires these trusts to disclose who gets  
3515 paid and on what basis.

3516           The trust will have to disclose no more than is public  
3517 when a plaintiff files pleadings in a tort suit in State  
3518 court. The FACT Act is about transparency, not about  
3519 denying those who are ill because of asbestos exposure just  
3520 compensation.

3521           If claimants and the trusts have nothing to hide, they  
3522 should not fear transparency. But if there is fraud in the  
3523 system, transparency will help root it out and preserve  
3524 trust funds for future claimants with valid claims. I  
3525 support the bill and encourage my colleagues to support it  
3526 as well.

3527           And now I will recognize the gentleman from Michigan,  
3528 Mr. Conyers, for his opening statement.

3529           Mr. Conyers. Thank you, Chairman Smith.

3530           This Furthering Asbestos Claims Transparency Act is a  
3531 bill that would require a trust to submit quarterly reports  
3532 through the bankruptcy court, which would be posted on the  
3533 court's public case docket, and to respond to virtually  
3534 unlimited discovery demands by any party to litigation  
3535 concerning asbestos exposure. And this legislation is  
3536 seriously problematic.

3537           The only beneficiaries of this measure will be the very  
3538 entities that knowingly produce the toxic substance that  
3539 killed or seriously injured unsuspecting consumers or  
3540 workers. In addition, 4369 would diminish the available  
3541 pool of money to compensate the victims of asbestos  
3542 defendants by ultimately shifting the discovery away from  
3543 solvent asbestos defendants to the bankruptcy trust. This  
3544 is a very serious departure from our stated objectives.

3545           Further, the measure before us now would allow  
3546 unsuspecting asbestos victims to be further victimized by  
3547 requiring information about their illness be made publicly  
3548 available to anyone who has access to the Internet.

3549           Now, ladies and gentlemen, I think you see the problems  
3550 that are facing us in this kind of a measure. Asbestos, a

3551 lethal substance, nevertheless widely used, and as a direct  
3552 result of exposure, and its victims develop mesothelioma,  
3553 the fatal cancer, and in addition can develop lung, stomach  
3554 cancer as well as other ailments.

3555       And so the asbestos manufacturers use every trick in the  
3556 book to avoid responsibility, including suppressing the  
3557 evidence of its mortal dangers, then fighting the  
3558 government's efforts to ban its use when the deadly effects  
3559 were indisputable. And basically, they hid the truth of  
3560 just how lethal this material was for their victims, which,  
3561 at the minimum, appears to have resulted from a severe lack  
3562 of transparency.

3563       And so I close with this other concern that I have about  
3564 the bill, as if we do not have enough already. In addition  
3565 to filing detailed quarterly reports, the trust under this  
3566 bill would have to provide any information related to  
3567 payment from or demands for payments from such trust to any  
3568 party in a lawsuit based on asbestos exposure upon written  
3569 request in a timely manner.

3570       And so 4369 effectively shifts the costs of discovery  
3571 away from solvent asbestos defendants to bankruptcy trusts,

3572 ultimately diminishing the available pool of money to  
3573 compensate the victims, bankrupt asbestos defendants.  
3574 Please join with me and others in seeking fairness for these  
3575 asbestos victims by rejecting the measure before us.

3576 I yield back the balance of my time.

3577 Chairman Smith. Thank you, Mr. Conyers.

3578 Mr. Coble, who is the chairman of the Administrative Law  
3579 Subcommittee, is not here right now. And in his place, we  
3580 will recognize the sponsor of the bill, the gentleman from  
3581 Arizona, Mr. Quayle.

3582 Mr. Quayle. Thank you, Mr. Chairman, and thank you for  
3583 marking up H.R. 4369, the Furthering Asbestos Claim  
3584 Transparency Act, the FACT Act, today. This is a bipartisan  
3585 bill that in I introduced, along with my colleagues,  
3586 Congressman Matheson from Utah and our fellow colleague on  
3587 the committee, Congressman Ross from Florida.

3588 This bill simply ensures that individuals who become  
3589 sick due to previous exposure to asbestos are able receive  
3590 just compensation from trust funds. To alleviate some of  
3591 the fears from the ranking member, the trust funds right now  
3592 are being depleted by filing of fraudulent claims, and this

3593 is going to bring much needed transparency so those that  
3594 were negatively affected and got the illness from asbestos  
3595 exposure will still have the ability to get those funds and  
3596 get just compensation.

3597 Abuse of the asbestos trust, which have worked in  
3598 secret, has been well documented. An example of this abuse  
3599 occurred in the Ohio court, in which a claimant claimed  
3600 smoking cigarettes were the sole cause of his development of  
3601 mesothelioma, while simultaneously claiming hundreds of  
3602 thousands of dollars from asbestos trusts by alleging that  
3603 exposure to products from companies with trusts caused his  
3604 illness.

3605 This is an isolated case, and double dipping into  
3606 multiple trusts is growing. In fact, the GAO reported that  
3607 in the U.S., 27 million to 100 million individuals have been  
3608 exposed to asbestos, and that a claimant could file the same  
3609 medical evidence and altered work histories with different  
3610 trusts. The FACT Act provides transparency to the asbestos  
3611 compensation system. It requires the trust to publish  
3612 quarterly reports detailing the identify of claimants, the  
3613 amount they are paid, and the basis for the payment. This

3614 disclosure will provide no more information than is  
3615 currently available in the claimant's pleadings in the State  
3616 tort system from the local courthouse.

3617 Mr. Chairman, as you know, this committee has held  
3618 hearings on this issue both in the Constitution Subcommittee  
3619 and in the Courts, Commercial, and Administrative Law  
3620 Subcommittee. During the committee hearings, we heard from  
3621 the witnesses about ways to improve the bill, and are  
3622 reflected in the manager's amendment, which I will go into  
3623 further detail when I offer the amendment.

3624 Although opponents of the bill may argue that this will  
3625 deny plaintiffs from receiving compensation, this bill  
3626 actually does the exact opposite. It will ensure that funds  
3627 have not been depleted for future claimants by providing  
3628 necessary transparency to a system that is replete with  
3629 abuse.

3630 I urge my colleagues to support this bill, and I yield  
3631 back the balance of my time.

3632 Chairman Smith. Thank you, Mr. Quayle. Are there other  
3633 members who wish to be heard on the amendment?

3634 Voice. Mr. Chairman?

3635 Chairman Smith. I do not mean wish to be heard. I want  
3636 to recognize Mr. Cohen. Is Mr. Cohen here? Okay. Does the  
3637 gentleman from Georgia wish to speak instead of Mr. Cohen as  
3638 a member of the subcommittee?

3639 Mr. Johnson. No, I am not speaking for Mr. Cohen or in  
3640 collaboration with him, although he is a great friend of  
3641 mine.

3642 [Laughter.]

3643 Chairman Smith. I hear the gentleman from Tennessee has  
3644 arrived, and the gentleman is recognized if he wants to be  
3645 recognized.

3646 Mr. Cohen. Thank you, Mr. Chairman. I do appreciate  
3647 the recognition, and I just want to take this as a time to  
3648 make a correction of something I said at the subcommittee.  
3649 I was reflecting on the loss of a dear friend who died from  
3650 mesothelioma, and I made a comment concerning an attorney  
3651 who had called me at a very sensitive time. It has been  
3652 seized upon by the chamber of commerce to send out a lot of  
3653 repetitions of what I said, re-tweeting things on Twitter,  
3654 which causes me just to go through and have to have my  
3655 Twitter box filled with people from Canada and other places,

3656 some in the United States, with repeating the same twit, and  
3657 have me block them so I will not have to see their garbage  
3658 in the future.

3659 I regret that I reflected the spirit that I took the  
3660 phone call in at the time because it was a very sensitive  
3661 moment with my friend dying and somebody calling for a  
3662 particular purpose. But I think that trial lawyers are part  
3663 of the American Bar, are outstanding people who make sure  
3664 that our laws are argued in court to give people opportunity  
3665 for redress of grievances and for defenses. And without  
3666 attorneys, we would not have the country that we have, which  
3667 is good. People have a right to an attorney, and you need  
3668 legal representation, and attorneys are much maligned. The  
3669 fact that my displeasure gave any group that does not  
3670 understand the need for lawyers and for just country any  
3671 opportunity to seize upon that and play against lawyers, I  
3672 regret.

3673 And so with that, as my public mea culpa, I yield back  
3674 the remainder and the balance of my time.

3675 Chairman Smith. Thank you, Mr. Cohen.

3676 The gentleman from Arizona is recognized to offer a

3677 manager's amendment.

3678 Mr. Quayle. Mr. Chairman, I have an amendment at the  
3679 desk.

3680 Chairman Smith. The clerk will report the amendment.

3681 Ms. Kish. Amendment to H.R. 4369, offered by Mr. Quayle  
3682 of Arizona.

3683 Chairman Smith. Without objection, the amendment will  
3684 be considered as read.

3685 [The amendment of Mr. Quayle follows:]

3686

3687 Chairman Smith. And the gentleman from Arizona is  
3688 recognized to explain the amendment.

3689 Mr. Quayle. Thank you, Mr. Chairman. This amendment  
3690 makes changes to the underlying bill in response to concerns  
3691 with the FACT Act that were raised last month in the Courts,  
3692 Commercial, and Administrative Law Subcommittee hearing on  
3693 the bill.

3694 The FACT Act requires a trust to disclose the names of  
3695 claimants who seek compensation from the trust, the basis  
3696 for the compensation request, and the claimant's exposure  
3697 history. It also requires 524(g) trusts to comply with  
3698 third party discovery.

3699 My amendment clarifies that the section of the  
3700 Bankruptcy Code, Section 107, that governs the privacy of  
3701 documents filed with the court applies with equal force to  
3702 the new duties the bill imposes on these trusts. Section  
3703 107 contains important protections when the court finds that  
3704 disclosure would result in an undue risk of identity theft  
3705 or other unlawful injury to an individual. While I believe  
3706 this section would have applied to the new subsection of 524  
3707 added by my bill, I included this language in this amendment

3708 to make it very clear that the privacy standards in  
3709 bankruptcy cases should not change as a result of the  
3710 trust's new duties.

3711       Additionally, this amendment responds to the concern  
3712 that imposing third party discovery obligations on the trust  
3713 will result in a cost to the trust, which will inure to the  
3714 detriment of the trust claimants. My amendment provides  
3715 that the trust may elect to charge reasonable costs to the  
3716 party seeking discovery. Thus, the discovery obligation  
3717 should cost the trust absolutely nothing.

3718       Finally, my amendment removes the obligation of the  
3719 trust to file the quarterly reports with the United States  
3720 trustee. The U.S. trustee will still have access to the  
3721 information contained in the reports because they will be  
3722 filed on the court's public docket. The U.S. trustee will  
3723 receive electronic notification of the filing of the report  
3724 through the electronic case filing system, and, therefore,  
3725 receipt of a separate hard copy would be duplicative.

3726       I encourage my colleagues to support this amendment, and  
3727 I yield back the balance of my time.

3728       Chairman Smith. Thank you, Mr. Quayle.

3729 The vote is on the manager's amendment.

3730 All in favor, say aye?

3731 Opposed, no?

3732 In the opinion of the chair, the ayes have it, and the  
3733 amendment is agreed to.

3734 Are there other amendments?

3735 Mr. Johnson. Yes, I have one at the desk.

3736 Chairman Smith. Okay. The gentleman from Georgia is  
3737 recognized.

3738 Mr. Johnson. Thank you, Mr. Chairman. I have an  
3739 amendment at the desk.

3740 Chairman Smith. The clerk will report the amendment.

3741 Ms. Kish. Amendment to H.R. 4369, offered by Mr.  
3742 Johnson, page 2, strike lines 7 through 26 and enter the  
3743 following: 8(a), a trust described in paragraph 2 shall  
3744 file with the bankruptcy court not later than 60 days after  
3745 the end of every quarter a report that respect to each such  
3746 reporting period that, one, describes each demand the  
3747 trust --

3748 Chairman Smith. Without objection, the amendment will  
3749 be considered as read.

3750 [The amendment of Mr. Johnson follows:]

3751

3752 Chairman Smith. The gentleman from Georgia is  
3753 recognized to explain his amendment.

3754 Mr. Johnson. Thank you, Mr. Chairman.

3755 Mr. Chairman, my amendment would give the court  
3756 authority to make the determination of whether asbestos  
3757 defendants' request for information from the bankruptcy  
3758 trusts is appropriate, and whether to keep the trust report  
3759 under seal or otherwise limit the use of the information in  
3760 a particular case.

3761 This legislation requires trusts to file reports with  
3762 the court that would be made a part of the public docket.  
3763 The court should have discretion to determine if the request  
3764 for the report is relevant to the pending claim. As a  
3765 former magistrate court judge, I know firsthand that one of  
3766 the essential duties of a judge is to make the determination  
3767 about whether a document should be made available to the  
3768 public or remain under seal.

3769 Reports required by H.R. 4369 should be confidential.  
3770 And if my friends on the other side of the aisle are truly  
3771 concerned about privacy, they should have no problem with  
3772 accepting this amendment.

3773           If asbestos defendants need the trust report for  
3774 purposes of a particular case, the report should not be  
3775 shared with any other defendant. There is no legitimate  
3776 reason individual information on asbestos victims should be  
3777 available beyond a particular case, other than to delay,  
3778 hinder, or deny asbestos victims justice in seeking to hold  
3779 them accountable.

3780           This bill is not about helping asbestos victims or  
3781 preventing fraud. To say that this bill actually help  
3782 asbestos victims is like saying that the fox is correct in  
3783 his desire to change the locks on the henhouse. It just  
3784 does not add up, and it is not true.

3785           It looks like this bill is an attempt to help asbestos  
3786 defendants shift the blame and avoid accountability. And,  
3787 in fact, this bill has ALEC written all over it. In case  
3788 anybody does not know about ALEC, that is the organization  
3789 called ALEC, which is a very secretive organization that in  
3790 addition to producing and having State legislators voting  
3791 suppression legislation in the State legislatures around the  
3792 country, they also introduce legislation such as this. And  
3793 in 2007, ALEC's board adopted the Asbestos Claims

3794 Transparency Act.

3795       This bill has been introduced in Ohio, Oklahoma,  
3796 Louisiana, Texas, and West Virginia. Now the bill has made  
3797 its way to Congress. Voila. We have the so-called  
3798 Furthering Asbestos Claim Transparency Act of 2012, the FACT  
3799 Act.

3800       This amendment, Mr. Chairman, would ensure that asbestos  
3801 defendants can uncover fraud on the part of claimants when  
3802 and if it occurs without giving asbestos defendants  
3803 unfettered access to information irrelevant to a particular  
3804 case. Let us not give the fox a key to the henhouse.

3805       If the majority is truly concerned about protecting  
3806 asbestos victims and not the pockets of their corporate  
3807 cronies, they will, at the very least, accept this  
3808 amendment.

3809       Thank you, Mr. Chairman, and I will yield back the  
3810 balance of my time.

3811       Chairman Smith. Thank you, Mr. Johnson.

3812       The gentleman from Arizona, Mr. Quayle, is recognized.

3813       Mr. Quayle. Thank you, Mr. Chairman. I rise in  
3814 opposition to this amendment.

3815 I am trying to figure out the fox and the henhouse  
3816 reference because who is the fox? Is it the trial lawyers  
3817 that are trying to get at the hens, which is actually the  
3818 asbestos trust assets, because this bill actually protects  
3819 those assets and protects the hens because you are actually  
3820 going to be able to have the transparency that is put in  
3821 place so that those that are fraudulently applying for these  
3822 claims will not be able to get around that, so we can have  
3823 those assets for people who have legitimate claims.

3824 Mr. Johnson. Would the gentleman yield?

3825 Mr. Quayle. Yeah, absolutely.

3826 Mr. Johnson. Well, yeah, the victims in this case are  
3827 those who have suffered the damages from exposure to  
3828 asbestos.

3829 Mr. Quayle. Reclaiming my time, this bill does not do  
3830 anything. This bill actually is protecting the assets for  
3831 people who have the legitimate claims for asbestos-related  
3832 injuries.

3833 Mr. Johnson. Would the gentleman yield?

3834 Mr. Quayle. Well, I just got to keep going because I  
3835 want to keep going against --

3836 Mr. Johnson. You interrupted when I was trying to --

3837 Mr. Quayle. Well, this is my time, so I am reclaiming  
3838 my time. And in terms of the ALEC organization, I have no  
3839 idea what that is.

3840 To give you a background on why this came about, it  
3841 actually came about my father-in-law was battling lung  
3842 cancer just last year, and my mother-in-law was seeing these  
3843 commercials on TV about mesothelioma. And she was going and  
3844 saying, well, maybe he has mesothelioma. And you are seeing  
3845 these ads going back, and back, and back and forth on TV.  
3846 And so she was wasting a lot of time on the research on that  
3847 because he did not have that. He ended up passing away.

3848 So I wanted to get to the bottom of why were these  
3849 different law firms spending so much money to try to get  
3850 different clients. Now I want anybody who has actually had  
3851 legitimate exposure to asbestos to have the ability to find  
3852 the assets and get their rightful due time in court, and be  
3853 able to get the damages that they deserve. But what I do  
3854 not want and what I did see was that there is rampant fraud  
3855 that is going on in the system. And by providing this  
3856 transparency, we are going to actually have people to be

3857 able to keep those assets going forward.

3858 Now this amendment limits access to information  
3859 contained in the quarterly report. Those reports contain  
3860 only cursory information about the claimant's claim to the  
3861 trust. Discovery requests often go deeper and relate to the  
3862 particulars of the case in which the discovery request is  
3863 being made.

3864 Now the manager's amendment makes clear that all reports  
3865 and discovery requests must comply with the Bankruptcy  
3866 Code's existing privacy protections built into Section 107.  
3867 If there undue risk of unlawful injury to an individual, the  
3868 court may redact or prohibit disclosure of the information  
3869 that causes that risk. So the bankruptcy protections for  
3870 privacy are in place with the manager's amendment, and so  
3871 there is no undue risk, I believe, to having private  
3872 information being divulged to the public.

3873 This is a good bill. This is going to be saving the  
3874 trust for future claimants, and I urge my colleagues to  
3875 oppose this amendment. And I yield back.

3876 Chairman Smith. Thank you, Mr. Quayle.

3877 The gentleman from Illinois, Mr. Quigley, is recognized.

3878 Mr. Quigley. Thank you, Mr. Chairman.

3879 In response to the assertion just now that there is  
3880 widespread fraud, first, I agree that is extraordinarily  
3881 important to protect these assets that are in these trusts  
3882 because there is no big payday out there. These trusts are  
3883 often very limited.

3884 According to a RAND study, most trusts do not have the  
3885 sufficient funds to pay every claim in full, and, thus, set  
3886 a payment percentage that is used to determine the actual  
3887 payment a claimant will be offered.

3888 The median payment percentage is 25 percent, but some  
3889 trusts pay as low as 1.1 percent of the value of the claim.  
3890 So when we talk about commercials that are spending a lot of  
3891 money because there is a big payday for a lot of folks,  
3892 unfortunately people are not getting the resources they need  
3893 to deal with this extraordinary ailment.

3894 And as to the assertion that there is widespread fraud,  
3895 just remember the GAO examined these asbestos trust funds  
3896 and found no evidence of systematic, systemic, or purposeful  
3897 fraud. These trusts are audited. They use a number of  
3898 quality assurance measures to ensure no fraud occurs. There

3899 had been a case or two in isolation which were remedied in  
3900 State courts involving inconsistent trust claims paid by a  
3901 single claimant. But let us remember, millions of other  
3902 victims are asserting valid claims to asbestos trusts and  
3903 deserve compensation.

3904 Mr. Chairman, I yield the balance of my time to the  
3905 sponsor of this amendment.

3906 Mr. Johnson. Thank you, Mr. Quigley.

3907 I am puzzled how my friend from Arizona is not aware of  
3908 the organization ALEC -- what is it, gosh, Associative  
3909 Legislative Exchange Council. It is getting late in the  
3910 afternoon. I am forgetting what that name is, but I know  
3911 what they do, and that is propose legislation that helps out  
3912 their corporate sponsors, who are then linked with State  
3913 legislators and also some Federal legislators around the  
3914 country, who then introduce model legislation that ALEC has  
3915 written. And it just seems kind of strange to me that in  
3916 2007, ALEC's board adopted the Asbestos Claims Transparency  
3917 Act, and the Furthering Asbestos Claims Transparency Act  
3918 appears to be modeled after the 2007 legislation, so I am  
3919 kind of concerned about that.

3920 But as far as the fox and the henhouse, the assertion  
3921 has been made that this legislation is going to be benefit  
3922 claimants, and that is just ridiculous. This does not help  
3923 claimants in any way, and, in fact, the gentleman exposes  
3924 his predisposition to condemn the plaintiff's bar for even  
3925 bringing these suits. After seeing an ad on TV and then  
3926 deciding that based on that that must be rampant fraud,  
3927 which then produces this legislation unconnected to the ALEC  
3928 legislation, that arouses my curiosity.

3929 But this does not advance the cause of helping people  
3930 who have been injured and who have died as a result of  
3931 exposure to asbestos. And so I just wanted to respond to  
3932 those claims that are being made. And I will yield back to  
3933 Mr. Quigley.

3934 Mr. Quigley. I yield back, Mr. Chairman.

3935 Chairman Smith. Thank you, Mr. Quigley.

3936 The question is on the Johnson amendment.

3937 All in favor, say aye?

3938 Opposed, no?

3939 Chairman Smith. In the opinion of the chair, the noes  
3940 have it, and the amendment is not agreed to.

3941 Are there other --

3942 Mr. Johnson. I ask for a recorded vote.

3943 Chairman Smith. A recorded vote has been requested, and

3944 the clerk will call the roll.

3945 Ms. Kish. Mr. Smith?

3946 Chairman Smith. No.

3947 Ms. Kish. Mr. Smith votes no.

3948 Mr. Sensenbrenner?

3949 [No response.]

3950 Ms. Kish. Mr. Coble?

3951 [No response.]

3952 Ms. Kish. Mr. Gallegly?

3953 Mr. Gallegly. No.

3954 Ms. Kish. Mr. Gallegly votes no.

3955 Mr. Goodlatte?

3956 [No response.]

3957 Ms. Kish. Mr. Lungren?

3958 [No response.]

3959 Ms. Kish. Mr. Chabot?

3960 [No response.]

3961 Ms. Kish. Mr. Issa?

3962 [No response.]

3963 Ms. Kish. Mr. Pence?

3964 [No response.]

3965 Ms. Kish. Mr. Forbes?

3966 [No response.]

3967 Ms. Kish. Mr. King?

3968 Mr. King. No.

3969 Ms. Kish. Mr. King votes no.

3970 Mr. Franks?

3971 Mr. Franks. No.

3972 Ms. Kish. Mr. Franks votes no.

3973 Mr. Gohmert?

3974 [No response.]

3975 Ms. Kish. Mr. Jordan?

3976 [No response.]

3977 Ms. Kish. Mr. Poe?

3978 [No response.]

3979 Mr. Chaffetz?

3980 Mr. Chaffetz. No.

3981 Ms. Kish. Mr. Chaffetz votes no.

3982 Mr. Griffin?

3983 [No response.]

3984 Ms. Kish. Mr. Marino?

3985 Mr. Marino. No.

3986 Ms. Kish. Mr. Marino votes no.

3987 Mr. Gowdy?

3988 Mr. Gowdy. No.

3989 Ms. Kish. Mr. Gowdy votes no.

3990 Mr. Ross?

3991 [No response.]

3992 Ms. Kish. Mrs. Adams?

3993 Mrs. Adams. No.

3994 Ms. Kish. Mrs. Adams votes no.

3995 Mr. Quayle?

3996 Mr. Quayle. No.

3997 Ms. Kish. Mr. Quayle votes no.

3998 Mr. Amodei?

3999 Mr. Amodei. No.

4000 Ms. Kish. Mr. Amodei votes no.

4001 Mr. Conyers?

4002 Mr. Conyers. Aye.

4003 Ms. Kish. Mr. Conyers votes aye.

4004 Mr. Berman?

4005 [No response.]

4006 Ms. Kish. Mr. Nadler?

4007 [No response.]

4008 Ms. Kish. Mr. Scott?

4009 Mr. Scott. Aye.

4010 Ms. Kish. Mr. Scott votes aye.

4011 Mr. Watt?

4012 Mr. Watt. Aye.

4013 Ms. Kish. Mr. Watt votes aye.

4014 Ms. Lofgren?

4015 [No response.]

4016 Ms. Kish. Ms. Jackson Lee?

4017 Ms. Jackson Lee. Aye.

4018 Ms. Kish. Ms. Jackson Lee votes aye.

4019 Ms. Waters?

4020 [No response.]

4021 Ms. Kish. Mr. Cohen?

4022 [No response.]

4023 Ms. Kish. Mr. Johnson?

4024 Mr. Johnson. Aye.

4025 Ms. Kish. Mr. Johnson votes aye.

4026 Mr. Pierluisi?

4027 Mr. Pierluisi. Aye.

4028 Ms. Kish. Mr. Pierluisi votes aye.

4029 Mr. Quigley?

4030 Mr. Quigley. Aye.

4031 Ms. Kish. Mr. Quigley votes aye.

4032 Ms. Chu?

4033 [No response.]

4034 Ms. Kish. Mr. Deutch?

4035 [No response.]

4036 Ms. Kish. Ms. Sanchez?

4037 Ms. Sanchez. Aye.

4038 Ms. Kish. Ms. Sanchez votes aye.

4039 Mr. Polis?

4040 [No response.]

4041 Chairman Smith. The gentleman from Virginia, Mr.

4042 Forbes?

4043 Mr. Forbes. No.

4044 Ms. Kish. Mr. Forbes votes no.

4045 Chairman Smith. The gentleman from California, Mr.

4046 Lungren?

4047 Mr. Lungren. No.

4048 Ms. Kish. Mr. Lungren votes no.

4049 Chairman Smith. The gentlewoman from California, Ms.

4050 Waters?

4051 Ms. Waters. Aye.

4052 Ms. Kish. Ms. Waters votes aye.

4053 Mr. Cohen. Mr. Chairman, how am I recorded?

4054 Ms. Kish. Not recorded, sir.

4055 Mr. Cohen. Thank you. I just had not done in my six

4056 years, so it was time to do that proverbial statement. I

4057 want to vote aye.

4058 Ms. Kish. Mr. Cohen votes aye.

4059 Chairman Smith. Okay. The clerk will report.

4060 Ms. Kish. Mr. Chairman, 10 members voted aye, 12

4061 members voted nay.

4062 Chairman Smith. The majority having voted against the

4063 amendment, the amendment is not agreed to.

4064 And the gentleman from Michigan, Mr. Conyers.

4065 Mr. Conyers. Mr. Chairman, I have an amendment at the

4066 desk.

4067 Chairman Smith. The clerk will report the amendment.

4068 Ms. Kish. Amendment to H.R. 4369, offered by Mr.

4069 Conyers, page 2, strike line 7 through 26 and insert the

4070 following: 8, a trust described in paragraph 2 shall file

4071 with the bankruptcy court and the United States trustee, not

4072 later than 60 days after the end of every quarter, a report

4073 that shall be made available on the --

4074 Mr. Conyers. I ask unanimous consent that the amendment

4075 be considered as read.

4076 Chairman Smith. And without objection, the amendment

4077 will be considered as read.

4078 [The amendment of Mr. Conyers follows:]

4079

4080 Chairman Smith. And the gentleman is recognized to  
4081 explain his amendment.

4082 Mr. Conyers. Thank you. What this amendment does is to  
4083 protect the privacy of asbestos victims by amending the bill  
4084 to ensure that quarterly reports contain only aggregate  
4085 information, and deletes the bill's burdensome discovery  
4086 requirement. There is no legitimate reason that defendants  
4087 need individual asbestos victim information from the trust.

4088 Further, the defendants already have the right to obtain  
4089 information relevant to individuals' bankruptcy trust  
4090 filings. And further, the true purpose in guaranteeing  
4091 asbestos defendants' unrestrained access to individual  
4092 information is to bury the bankruptcy trust in paperwork.  
4093 And finally, the ultimate goal of asbestos defendants, from  
4094 my point of view is, to add significant time and delay to  
4095 the trust process.

4096 And for these reasons, members of the committee, I hope  
4097 you will support my amendment to make information available  
4098 only in the aggregate, and relieve many of the plaintiffs of  
4099 the burdensome discovery requirement.

4100 And with that note, Mr. Chairman, I will return the

4101 balance of my time. Thank you.

4102 Chairman Smith. Thank you, Mr. Chairman.

4103 The gentleman from Arizona, Mr. Quayle, is recognized.

4104 Mr. Quayle. Thank you, Mr. Chairman.

4105 I rise in opposition to the amendment. I appreciate the  
4106 gentleman's amendment, but it strikes the requirement that  
4107 524(g) trusts publish the very data that would be necessary  
4108 to detect fraud between the trust and State tort  
4109 compensation systems.

4110 The amendment calls for the quarterly reports under the  
4111 bill to publish an aggregate list of demands received and an  
4112 aggregate list of payments made by the trust. Simple  
4113 aggregation of demands and payments by the trust is  
4114 insufficient to allow State court parties to make meaningful  
4115 inquiry into whether they are being defrauded.

4116 Just as a claimant needs to put his or her name in the  
4117 caption box on a public State court pleading, claimants'  
4118 names should be made public when they request compensation  
4119 from a trust. There is no principle basis for a different  
4120 treatment.

4121 I encourage my colleagues to oppose this amendment, and

4122 I yield back the balance of my time.

4123 Chairman Smith. Thank you, Mr. Quayle.

4124 The question is on the Conyers amendment.

4125 All in favor, say aye?

4126 Opposed, say no.

4127 In the opinion of the chair, the noes have it, and the  
4128 amendment is not agreed to.

4129 Mr. Conyers. I seek a record vote.

4130 Chairman Smith. The gentleman requests a recorded vote,  
4131 and the clerk will call the roll.

4132 Ms. Kish. Mr. Smith?

4133 Chairman Smith. No.

4134 Ms. Kish. Mr. Smith votes no.

4135 Mr. Sensenbrenner?

4136 [No response.]

4137 Ms. Kish. Mr. Coble?

4138 [No response.]

4139 Ms. Kish. Mr. Gallegly?

4140 Mr. Gallegly. No.

4141 Ms. Kish. Mr. Gallegly votes no.

4142 Mr. Goodlatte?

4143 [No response.]

4144 Ms. Kish. Mr. Lungren?

4145 [No response.]

4146 Ms. Kish. Mr. Chabot?

4147 [No response.]

4148 Ms. Kish. Mr. Issa?

4149 [No response.]

4150 Ms. Kish. Mr. Pence?

4151 [No response.]

4152 Ms. Kish. Mr. Forbes?

4153 Mr. Forbes. No.

4154 Ms. Kish. Mr. Forbes votes no.

4155 Mr. King?

4156 Mr. King. No.

4157 Ms. Kish. Mr. King votes no.

4158 Mr. Franks?

4159 Mr. Franks. No.

4160 Ms. Kish. Mr. Franks votes no.

4161 Mr. Gohmert?

4162 [No response.]

4163 Ms. Kish. Mr. Jordan?

4164 [No response.]

4165 Ms. Kish. Mr. Poe?

4166 [No response.]

4167 Mr. Chaffetz?

4168 Mr. Chaffetz. No.

4169 Ms. Kish. Mr. Chaffetz votes no.

4170 Mr. Griffin?

4171 [No response.]

4172 Ms. Kish. Mr. Marino?

4173 Mr. Marino. No.

4174 Ms. Kish. Mr. Marino votes no.

4175 Mr. Gowdy?

4176 Mr. Gowdy. No.

4177 Ms. Kish. Mr. Gowdy votes no.

4178 Mr. Ross?

4179 [No response.]

4180 Ms. Kish. Mrs. Adams?

4181 [No response.]

4182 Ms. Kish. Mr. Quayle?

4183 Mr. Quayle. No.

4184 Ms. Kish. Mr. Quayle votes no.

4185 Ms. Kish. Mr. Amodei?

4186 Mr. Amodei. No.

4187 Ms. Kish. Mr. Amodei votes no.

4188 Mr. Conyers?

4189 Mr. Conyers. Aye.

4190 Ms. Kish. Mr. Conyers votes aye.

4191 Mr. Berman?

4192 [No response.]

4193 Ms. Kish. Mr. Nadler?

4194 [No response.]

4195 Ms. Kish. Mr. Scott?

4196 Mr. Scott. Aye.

4197 Ms. Kish. Mr. Scott votes aye.

4198 Mr. Watt?

4199 Mr. Watt. Aye.

4200 Ms. Kish. Mr. Watt votes aye.

4201 Ms. Lofgren?

4202 [No response.]

4203 Ms. Kish. Ms. Jackson Lee?

4204 Ms. Jackson Lee. Aye.

4205 Ms. Kish. Ms. Jackson Lee votes aye.

4206 Ms. Waters?

4207 Ms. Waters. Aye.

4208 Ms. Kish. Ms. Waters votes aye.

4209 Mr. Cohen?

4210 Mr. Cohen. Aye.

4211 Ms. Kish. Mr. Cohen votes aye.

4212 Mr. Johnson?

4213 [No response.]

4214 Ms. Kish. Mr. Pierluisi?

4215 Mr. Pierluisi. Aye.

4216 Ms. Kish. Mr. Pierluisi votes aye.

4217 Mr. Quigley?

4218 Mr. Quigley. Aye.

4219 Ms. Kish. Mr. Quigley votes aye.

4220 Ms. Chu?

4221 [No response.]

4222 Ms. Kish. Mr. Deutch?

4223 Mr. Deutch. Aye.

4224 Ms. Kish. Mr. Deutch votes aye.

4225 Ms. Sanchez?

4226 Ms. Sanchez. Aye.

4227 Ms. Kish. Ms. Sanchez votes aye.

4228 Mr. Polis?

4229 [No response.]

4230 Chairman Smith. The gentleman from California, Mr.

4231 Lungren?

4232 Mr. Lungren. No.

4233 Ms. Kish. Mr. Lungren votes no.

4234 Chairman Smith. The clerk will report.

4235 Ms. Kish. Mr. Chairman, 10 members voted aye, 11

4236 members voted nay.

4237 Chairman Smith. The majority having voted against the  
4238 amendment, the amendment is not agreed to.

4239 Are there other amendments? The gentleman from  
4240 Virginia, Mr. Scott, is recognized.

4241 Mr. Scott. Thank you, Mr. Chairman. I have an  
4242 amendment at the desk.

4243 Chairman Smith. The clerk will report the amendment.

4244 Ms. Kish. Amendment to H.R. 4369, offered by Mr. Scott,  
4245 page 2, line 14, strike "name and," page 2, strike lines 21  
4246 through 26 and enter the following: (b) treat any such  
4247 information as protected health information under health

4248 insurance affordability and accountability --

4249 [The amendment of Mr. Scott follows:]

4250

4251 Chairman Smith. The gentleman from Virginia is  
4252 recognized to explain his amendment.

4253 Mr. Scott. Thank you, Mr. Chairman. Mr. Chairman, let  
4254 me start off by saying that I am acutely aware of the  
4255 devastating impact that asbestos exposure has had on working  
4256 men and women in this country. In my district alone over  
4257 the past few decades, several thousand local shipyard  
4258 workers have developed asbestosis, lung cancer, and  
4259 mesothelioma from asbestos exposure that occurred from the  
4260 1940s through the 1970s. Hundreds of these workers have  
4261 died after suffering excruciating pain, and asbestos deaths  
4262 and disabilities are continuing due to the long latency  
4263 period associated with these illnesses.

4264 I think it is worthwhile, Mr. Chairman, as we talk about  
4265 how this bill might promote transparency, it might be  
4266 helpful to review the transparency exercised by the asbestos  
4267 industry.

4268 The Supreme Court of New Jersey in 1986 talked about  
4269 that when it said, "It is indeed appalling to us that the  
4270 company had so much information on the hazards to asbestos  
4271 workers as early as the mid-1930s, and that it not only

4272 failed to use that information to protect those workers, but  
4273 more egregiously, it also attempted to withhold this  
4274 information from the public."

4275       The Superior Court in New Jersey held, "The jury here  
4276 was justified in concluding that both defendants, fully  
4277 appreciating the nature, extent, and gravity of the risk in  
4278 exposing plaintiffs to asbestos, nevertheless made a  
4279 conscious and cold-blooded business decision in flagrant  
4280 disregard to the rights of others, to take no protective or  
4281 remedial action."

4282       A Florida Supreme Court said that "clear and convincing  
4283 evidence in this case reveal that for more than 30 years,  
4284 the company concealed what it knew about the dangers of  
4285 asbestos. In fact, the company's conduct was even worse  
4286 than concealment. It also included intentional and knowing  
4287 misrepresentations concerning the danger of its asbestos-  
4288 containing products."

4289       Now although this bill seeks to promote transparency in  
4290 the bankruptcy trust, we need to make sure that that  
4291 transparency does not compromise the privacy of asbestos  
4292 claimants.

4293           The bill would do two things. It would require that the  
4294 trust publicly disclose extensive individual and personal  
4295 claim information, including information about a victim's  
4296 exposure and work history, and it would allow asbestos  
4297 defendants to demand any additional information from the  
4298 trust at any time and for virtually any reason. This bill  
4299 forces a trust to reveal personally identifiable  
4300 information, including medical, work history, and asbestos  
4301 exposure information in violation of the Health Insurance  
4302 Affordability and Accountability Act, known as HIPPA.

4303           Under HIPPA, privacy protections prohibit the disclosure  
4304 of protected information, including demographic data which  
4305 identifies an individual and that individual's physical  
4306 health condition. Such data may be disclosed for research  
4307 purposes only if individually identifiable health  
4308 information is not included.

4309           As it is currently written, the bill would not be  
4310 covered by HIPPA. Without the privacy rule, an individual's  
4311 health status can be used to deny credit, health, life, or  
4312 disability insurance, and employment. And individuals who  
4313 seek compensation for the trust should have the same privacy

4314 protections so that they are not penalized for having filed  
4315 a claim. Now if a claim has been filed with a solvent  
4316 defendant, there would be no public disclosure of the  
4317 individual's health status. And if the claim has been filed  
4318 in court, a judge could protect the individual's health  
4319 status from disclosure.

4320 Claimants should not lose these protections just because  
4321 they were forced to file a claim with the asbestos trust.  
4322 The information the defendants want or disclose health  
4323 status because the amount paid to an individual by the trust  
4324 is dependent on their health condition, with each condition  
4325 having a different payout amount. Under HIPPA privacy  
4326 rules, if there is reasonable basis to believe that  
4327 information can be used to individually identify an  
4328 individual, their physical or mental health condition, that  
4329 information is protected. My amendment would require that  
4330 information contained here would be subject to the same  
4331 HIPPA protections.

4332 I would hope that we would adopt the amendment. And I  
4333 yield back.

4334 Chairman Smith. Thank you, Mr. Scott.

4335 The gentleman from Arizona, Mr. Quayle.

4336 Mr. Quayle. Thank you, Mr. Chairman. I oppose this  
4337 amendment.

4338 The amendment treats information in the reports as  
4339 protected health information under HIPPA, but there is  
4340 already a protection in the base bill. Confidential medical  
4341 information may not be disclosed in the reports.

4342 Furthermore, the manager's amendment clarifies that  
4343 existing privacy protections in the Bankruptcy Code apply to  
4344 the reports. Section 107 in Rule 9(b)(37) of the Federal  
4345 Rules of Bankruptcy Procedure apply to all filings made in  
4346 bankruptcy court. If disclosures made in the report would  
4347 violate HIPPA, and the court concludes that such disclosure  
4348 poses an undue risk of unlawful injury to an individual, the  
4349 court can redact or prohibit such disclosure.

4350 I urge my colleagues to oppose this amendment, and I  
4351 yield back the balance of my time.

4352 Chairman Smith. Thank you, Mr. Quayle.

4353 The gentleman from North Carolina, Mr. Watt.

4354 Mr. Watt. I move to strike the last word.

4355 Chairman Smith. The gentleman is recognized for five

4356 minutes.

4357 Mr. Watt. Mr. Chairman, I will be brief.

4358 I want to invoke what I refer to as the Barney Frank  
4359 rule. All the years he served on this committee, his theory  
4360 was if something is redundant, it does not hurt to say it  
4361 again. And I think that is what Mr. Quayle just said. This  
4362 is redundant of what is in the bill, so if it is redundant  
4363 of what is in the bill, there is no problem with the  
4364 amendment. And I think that we should make it absolutely  
4365 clear, and make it redundant, and put in the bill again.

4366 So he is not it is inconsistent with what is in the  
4367 bill. He says it is redundant. So let us apply the  
4368 longstanding rule of our colleague, who served for many  
4369 years on this Judiciary Committee and adopt Mr. Scott's  
4370 amendment.

4371 Chairman Smith. Thank you, Mr. Watt.

4372 The question is on the Scott amendment.

4373 All in favor, say aye?

4374 Chairman Smith. Opposed, no?

4375 In the opinion of the chair, the clerk will call the  
4376 roll.

4377 [Laughter.]

4378 Ms. Kish. Mr. Smith?

4379 Chairman Smith. No.

4380 Ms. Kish. Mr. Smith votes no.

4381 Mr. Sensenbrenner?

4382 [No response.]

4383 Ms. Kish. Mr. Coble?

4384 [No response.]

4385 Ms. Kish. Mr. Gallegly?

4386 Mr. Gallegly. No.

4387 Ms. Kish. Mr. Gallegly votes no.

4388 Mr. Goodlatte?

4389 [No response.]

4390 Ms. Kish. Mr. Lungren?

4391 Mr. Lungren. No.

4392 Ms. Kish. Mr. Lungren votes no.

4393 Mr. Chabot?

4394 [No response.]

4395 Ms. Kish. Mr. Issa?

4396 [No response.]

4397 Ms. Kish. Mr. Pence?

4398 [No response.]

4399 Ms. Kish. Mr. Forbes?

4400 [No response.]

4401 Ms. Kish. Mr. King?

4402 Mr. King. No.

4403 Ms. Kish. Mr. King votes no.

4404 Mr. Franks?

4405 [No response.]

4406 Ms. Kish. Mr. Gohmert?

4407 [No response.]

4408 Ms. Kish. Mr. Jordan?

4409 [No response.]

4410 Ms. Kish. Mr. Poe?

4411 [No response.]

4412 Mr. Chaffetz?

4413 Mr. Chaffetz. No.

4414 Ms. Kish. Mr. Chaffetz votes no.

4415 Mr. Griffin?

4416 [No response.]

4417 Ms. Kish. Mr. Marino?

4418 Mr. Marino. No.

4419 Ms. Kish. Mr. Marino votes no.  
4420 Mr. Gowdy?  
4421 Mr. Gowdy. No.  
4422 Ms. Kish. Mr. Gowdy votes no.  
4423 Mr. Ross?  
4424 [No response.]  
4425 Ms. Kish. Mrs. Adams?  
4426 [No response.]  
4427 Ms. Kish. Mr. Quayle?  
4428 Mr. Quayle. No.  
4429 Ms. Kish. Mr. Quayle votes no.  
4430 Mr. Amodei?  
4431 Mr. Amodei. No.  
4432 Ms. Kish. Mr. Amodei votes no.  
4433 Mr. Conyers?  
4434 Mr. Conyers. Aye.  
4435 Ms. Kish. Mr. Conyers votes aye.  
4436 Mr. Berman?  
4437 [No response.]  
4438 Ms. Kish. Mr. Nadler?  
4439 [No response.]

4440 Ms. Kish. Mr. Scott?

4441 Mr. Scott. Aye.

4442 Ms. Kish. Mr. Scott votes aye.

4443 Mr. Watt?

4444 Mr. Watt. Aye.

4445 Ms. Kish. Mr. Watt votes aye.

4446 Ms. Lofgren?

4447 [No response.]

4448 Ms. Kish. Ms. Jackson Lee?

4449 Ms. Jackson Lee. Aye.

4450 Ms. Kish. Ms. Jackson Lee votes aye.

4451 Ms. Waters?

4452 Ms. Waters. Aye.

4453 Ms. Kish. Ms. Waters votes aye.

4454 Mr. Cohen?

4455 Mr. Cohen. Aye.

4456 Ms. Kish. Mr. Cohen votes aye.

4457 Mr. Johnson?

4458 [No response.]

4459 Ms. Kish. Mr. Pierluisi?

4460 Mr. Pierluisi. Aye.

4461 Ms. Kish. Mr. Pierluisi votes aye.

4462 Mr. Quigley?

4463 Mr. Quigley. Aye.

4464 Ms. Kish. Mr. Quigley votes aye.

4465 Ms. Chu?

4466 [No response.]

4467 Ms. Kish. Mr. Deutch?

4468 Mr. Deutch. Aye.

4469 Ms. Kish. Mr. Deutch votes aye.

4470 Ms. Sanchez?

4471 Ms. Sanchez. Aye.

4472 Ms. Kish. Ms. Sanchez votes aye.

4473 Mr. Polis?

4474 [No response.]

4475 Chairman Smith. The gentleman from Virginia, Mr.

4476 Forbes?

4477 Mr. Forbes. No.

4478 Ms. Kish. Mr. Forbes votes no.

4479 Chairman Smith. The gentleman from Arizona, Mr. Franks?

4480 Mr. Franks. No.

4481 Ms. Kish. Mr. Franks votes no.

4482 Chairman Smith. Okay. The clerk will report.

4483 Ms. Kish. Mr. Chairman, 10 members voted aye, 11  
4484 members voted nay.

4485 Chairman Smith. Okay. A majority having voted against  
4486 the amendment, the amendment is not agreed to.

4487 Are there other amendments? The gentleman from North  
4488 Carolina, Mr. Watt, is recognized.

4489 Mr. Watt. Mr. Chairman, I have an amendment at the  
4490 desk. It is Watt 002.

4491 Chairman Smith. The clerk will report the amendment.

4492 Mr. Watt. Watt 002. I think I have more than one down  
4493 there.

4494 Ms. Kish. Amendment to H.R. 4369, offered by Mr. Watt  
4495 of North Carolina, strike sections 2 and 3, and insert the  
4496 following.

4497 Mr. Watt. I ask unanimous consent the amendment be  
4498 considered as read.

4499 Chairman Smith. Without objection, the amendment will  
4500 be considered as read.

4501 [The amendment of Mr. Watt follows:]

4502

4503 Chairman Smith. And the gentleman is recognized to  
4504 explain his amendment.

4505 Mr. Watt. Thank you, Mr. Chairman. As best I can  
4506 determine, the real controversy here is about whether there  
4507 is rampant fraud in the trust system that is in place. And  
4508 as best I am able to determine, the evidence that we have of  
4509 the rampant fraud is Mr. Quayle having seen some commercials  
4510 on television that suggest that lawyers were interested in  
4511 processing these cases for clients.

4512 I actually do not dispute that there is probably some  
4513 fraud related to asbestos injury compensation in the tort  
4514 system. In most areas of the tort system, there is some  
4515 evidence periodically of fraud. But I do not think we can  
4516 make a legislative decision about that without a record, or  
4517 should make a legislative decision about it without  
4518 establishing whether the fraud is there or is not there.

4519 And recent studies by the U.S. Government Accountability  
4520 Office and by the RAND Institute for Civil Justice focused  
4521 primarily on aspects of the asbestos personal injury trust  
4522 system were unable to find the rampant fraud that proponents  
4523 of this bill cite as a central justification. And we have

4524 had discussion about that during the course of this markup.

4525       One person seeking to defraud a solvent defendant or an  
4526 insolvent defendant certainly does not result in a finding  
4527 of rampant fraud. Although neither the 2011 GAO study nor  
4528 the 2011 RAND Institute for Civil Justice study specifically  
4529 examine fraud within the asbestos personal injury trust  
4530 system, neither study was able to find evidence to support  
4531 the claims of rampant fraud that proponents of this bill  
4532 adamantly insist exist.

4533       It seems that if there were evidence of rampant fraud in  
4534 the asbestos personal injury trust system, that it would  
4535 have been revealed by the GAO's analysis of 44 of the 60  
4536 existing trust agreements, 47 of the existing 60 trust  
4537 annual reports, and 52 of the existing 60 trust deposition  
4538 procedures or by its interviews with bankruptcy court  
4539 judges, and trustees, and counsel, and trust directors.

4540       The trust officials interviewed by the GAO, none  
4541 indicated that their internal audits had identified cases of  
4542 fraud. It may be that the fraud found in the compensation  
4543 of asbestos injuries within the tort system may also exist  
4544 in the asbestos personal injury trust system, but I am

4545 inclined to agree with the 2011 RAND Institute for Civil  
4546 Justice study, which concluded that data simply was "not  
4547 available on trends and total plaintiff compensation or on  
4548 payment by defendants that remain solvent."

4549 My amendment attempts to remedy this lack of information  
4550 by replacing Sections 2 and 3 of the bill with language  
4551 directing the GAO to complete a study and report to Congress  
4552 on the extent to which fraudulent claims are made against  
4553 asbestos, bankruptcy trust, and satisfied by such trust. I  
4554 think we have the ability to audit this and get the  
4555 information we need. And if this study were to determine  
4556 that there is rampant fraud, then I would probably join Mr.  
4557 Quayle in his bill if we were basing it on some kind of  
4558 legislative record other than his happening to see a  
4559 commercial on television.

4560 I just think that it is not a responsible thing for us  
4561 to be proceeding to legislate simply based on a lack of  
4562 information. And while it might be politically advantageous  
4563 to some members of the committee to do that, I just do not  
4564 think that is what I signed on to this committee to do. And  
4565 I think we should responsibly evaluate this, and my

4566 amendment basically just substitutes a GAO study.

4567 Now you all are going to say that I am taking up where  
4568 Sheila Jackson Lee usually does. I actually GAO studies are  
4569 important when you need information on which to legislate,  
4570 and this one of those situations that cries out for more  
4571 information, not just anecdotal information or somebody  
4572 having seen a commercial own television that --

4573 Chairman Smith. Would the gentleman yield?

4574 Mr. Watt. Yes, sir.

4575 Chairman Smith. Is this not jeopardy since there has  
4576 already been a GAO report?

4577 Mr. Watt. Well, they investigated the general tort  
4578 system. They did not investigate the trust system itself.  
4579 And they did not investigate fraud specifically is the point  
4580 I am making. I am sorry.

4581 Chairman Smith. Okay.

4582 Mr. Watt. It is getting late, Mr. Johnson is right. So  
4583 this is not double jeopardy, no. Just single jeopardy in  
4584 the pursuit of our business and the way that we should be  
4585 pursuing it rather than by the seat of our pants.

4586 Chairman Smith. Thank you, Mr. Watt.

4587 Mr. Watt. I yield back.

4588 Chairman Smith. Thank you, Mr. Watt.

4589 The gentleman from Arizona, Mr. Quayle.

4590 Mr. Quayle. Thank you, Mr. Chairman. I rise in  
4591 opposition to the amendment. And before I get into why I  
4592 oppose this amendment, because the gentleman from North  
4593 Carolina keeps bringing up the commercial and seeing a  
4594 commercial. I was actually just telling a story about how  
4595 many of these law firms are utilizing ads to get additional  
4596 plaintiffs. And when people are in vulnerable positions,  
4597 just like my mother-in-law was when she was dealing with my  
4598 father-in-law's dying, that is what I was talking about.  
4599 And it piqued my interest on why, and that is when I started  
4600 investigating what was going on with these trusts.

4601 So to continue to bring up that I just brought this out  
4602 just because I saw a commercial, it was very specific facts  
4603 of something that I was dealing with in a personal way. And  
4604 I think that diminishing that is just really I think  
4605 uncalled for.

4606 Mr. Watt. Will the gentleman yield?

4607 Mr. Quayle. Yes, I would be happy to yield.

4608 Mr. Watt. If I misread what you were saying, I  
4609 apologize. Actually I am as adamantly opposed to law firms  
4610 that advertise as you are. I came out of a law firm that  
4611 had a very strict policy of not advertising, and I think it  
4612 is unseemly, although it does allow people to exercise their  
4613 rights. It is kind of like the United Citizens Trust case  
4614 or whatever that thing is.

4615 Mr. Quayle. But we do not want to go down that route.

4616 [Laughter.]

4617 Mr. Quayle. Well, reclaiming my time. The reason that  
4618 I do oppose this amendment is because it replaces the bill  
4619 with a call for yet another GAO study on this topic. There  
4620 are probably few issues less in need of further study than  
4621 this one.

4622 In April 2010, the current chairman of this committee  
4623 asked the GAO to study the operation of 524(g) trusts. That  
4624 report was published last fall. And I want to just  
4625 highlight a few of the findings.

4626 The GAO acknowledged that a claimant could file the same  
4627 medical evidence of work histories with different trusts.  
4628 The GAO also confirmed that the trust focuses on ensuring

4629 that claims meet their individual criteria. Their  
4630 individual criteria. It is clear that trusts make little,  
4631 if any, effort to confirm that claimants' present consistent  
4632 exposure histories to other trusts and/or in the tort  
4633 system. And then the GAO study also found that given the  
4634 long history of fraud and asbestos-related litigation, the  
4635 discovery of fraudulent and inconsistent claims in the tort  
4636 cases and the indisputable fact of fraudulent claims have  
4637 been filed with adversarial compensation funds is evidence  
4638 of the woeful state of trust anti-fraud efforts.

4639 Now one of the other things of the GAO study, they  
4640 recognize that the trust advisory committee, when the RAND  
4641 report have shown have been dominated by a small group of  
4642 plaintiffs firms and have exercised considerable control  
4643 over their trust. The report specifically notes that the  
4644 trust advisory committees requires approval to set payment  
4645 percentages, modified payment percentages, and approve the  
4646 audit methods. These are the internal audits that the  
4647 trusts have gone through.

4648 So this issue has been studied time and time again.

4649 Mr. Watt. Will the gentleman yield?

4650 Mr. Quayle. Yes.

4651 Mr. Watt. Are you saying that the GAO study was focused  
4652 on fraud or was not focused on fraud? And is not a fact  
4653 that the GAO study really did not deal with fraud

4654 Mr. Quayle. Well, reclaiming my time, the GAO study did  
4655 note that there is the ability.

4656 Mr. Watt. It was not focused on fraud is the point I am  
4657 making.

4658 Mr. Quayle. But it did note that the ability was there  
4659 and that the structure was there for fraud to take place and  
4660 very easily take place. And so this type of transparency  
4661 that would actually just change the structure so that more  
4662 fraud does not take place and that we can save the system  
4663 from being depleted for future claimants.

4664 So I would also point out, what I just said just  
4665 requires transparency. The data that will be made available  
4666 by the bill will probably encourage further study. And I  
4667 encourage my colleagues to oppose this amendment, and I  
4668 yield back the balance of my time.

4669 Chairman Smith. Okay. Thank you, Mr. Quayle.

4670 The gentleman from Michigan, Mr. Conyers, is recognized.

4671 Mr. Conyers. Mr. Chairman, I would just like to ask the  
4672 members of the committee as they consider this amendment to  
4673 suspend any anti-GAO bias that they may have, and let GAO do  
4674 its work. I mean, I cannot for the life of me understand  
4675 why there is such resistance in the committee today about  
4676 GAO studies.

4677 And I think since GAO has not found evidence of endemic  
4678 fraud, but have not specifically studied the fraud in  
4679 trusts, I would urge support for the amendment, and return  
4680 the balance of my time.

4681 Chairman Smith. Okay, thank you, Mr. Conyers.

4682 The question is on the Watt amendment.

4683 All in favor, say aye?

4684 Opposed, no?

4685 Chairman Smith. In the opinion of the chair, the noes  
4686 have it, and the amendment is not agreed to.

4687 Mr. Watt. Recorded vote.

4688 Chairman Smith. The gentleman requests a recorded vote,  
4689 and the clerk will call the roll.

4690 Ms. Kish. Mr. Smith?

4691 Chairman Smith. No.

4692 Ms. Kish. Mr. Smith votes no.  
4693 Mr. Sensenbrenner?  
4694 [No response.]  
4695 Ms. Kish. Mr. Coble?  
4696 [No response.]  
4697 Ms. Kish. Mr. Gallegly?  
4698 Mr. Gallegly. No.  
4699 Ms. Kish. Mr. Gallegly votes no.  
4700 Mr. Goodlatte?  
4701 [No response.]  
4702 Ms. Kish. Mr. Lungren?  
4703 Mr. Lungren. No.  
4704 Ms. Kish. Mr. Lungren votes no.  
4705 Mr. Chabot?  
4706 [No response.]  
4707 Ms. Kish. Mr. Issa?  
4708 [No response.]  
4709 Ms. Kish. Mr. Pence?  
4710 [No response.]  
4711 Ms. Kish. Mr. Forbes?  
4712 Mr. Forbes. No.

4713 Ms. Kish. Mr. Forbes votes no.  
4714 Mr. King?  
4715 Mr. King. No.  
4716 Ms. Kish. Mr. King votes no.  
4717 Mr. Franks?  
4718 Mr. Franks. No.  
4719 Ms. Kish. Mr. Franks votes no.  
4720 Mr. Gohmert?  
4721 [No response.]  
4722 Ms. Kish. Mr. Jordan?  
4723 [No response.]  
4724 Ms. Kish. Mr. Poe?  
4725 Mr. Poe. No.  
4726 Ms. Kish. Mr. Poe votes no.  
4727 Mr. Chaffetz?  
4728 [No response.]  
4729 Ms. Kish. Mr. Griffin?  
4730 [No response.]  
4731 Ms. Kish. Mr. Marino?  
4732 Mr. Marino. No.  
4733 Ms. Kish. Mr. Marino votes no.

4734 Mr. Gowdy?

4735 Mr. Gowdy. No.

4736 Ms. Kish. Mr. Gowdy votes no.

4737 Mr. Ross?

4738 [No response.]

4739 Ms. Kish. Mrs. Adams?

4740 [No response.]

4741 Ms. Kish. Mr. Quayle?

4742 Mr. Quayle. No.

4743 Ms. Kish. Mr. Quayle votes no.

4744 Mr. Amodei?

4745 Mr. Amodei. No.

4746 Ms. Kish. Mr. Amodei votes no.

4747 Mr. Conyers?

4748 [No response.]

4749 Ms. Kish. Mr. Berman?

4750 [No response.]

4751 Ms. Kish. Mr. Nadler?

4752 [No response.]

4753 Ms. Kish. Mr. Scott?

4754 Mr. Scott. Aye.

4755 Ms. Kish. Mr. Scott votes aye.

4756 Mr. Watt?

4757 Mr. Watt. Aye.

4758 Ms. Kish. Mr. Watt votes aye.

4759 Ms. Lofgren?

4760 [No response.]

4761 Ms. Kish. Ms. Jackson Lee?

4762 Ms. Jackson Lee. Aye.

4763 Ms. Kish. Ms. Jackson Lee votes aye.

4764 Ms. Waters?

4765 Ms. Waters. Aye.

4766 Ms. Kish. Ms. Waters votes aye.

4767 Mr. Cohen?

4768 Mr. Cohen. Aye.

4769 Ms. Kish. Mr. Cohen votes aye.

4770 Mr. Johnson?

4771 [No response.]

4772 Ms. Kish. Mr. Pierluisi?

4773 Mr. Pierluisi. Aye.

4774 Ms. Kish. Mr. Pierluisi votes aye.

4775 Mr. Quigley?

4776 Mr. Quigley. Aye.

4777 Ms. Kish. Mr. Quigley votes aye.

4778 Ms. Chu?

4779 [No response.]

4780 Ms. Kish. Mr. Deutch?

4781 Mr. Deutch. Aye.

4782 Ms. Kish. Mr. Deutch votes aye.

4783 Ms. Sanchez?

4784 Ms. Sanchez. Aye.

4785 Ms. Kish. Ms. Sanchez votes aye.

4786 Mr. Polis?

4787 [No response.]

4788 Chairman Smith. The gentleman from Arkansas?

4789 Mr. Griffin. No.

4790 Ms. Kish. Mr. Griffin votes no.

4791 Chairman Smith. The gentleman from Texas?

4792 Mr. Gohmert. No.

4793 Ms. Kish. Mr. Gohmert votes no.

4794 Chairman Smith. The gentleman from Michigan?

4795 Mr. Conyers. Aye.

4796 Ms. Kish. Mr. Conyers votes aye.

4797 Chairman Smith. The clerk will report.

4798 Ms. Kish. Mr. Chairman, 10 members voted aye, 13

4799 members voted nay.

4800 Chairman Smith. The majority having voted against the

4801 amendment, the amendment is not agreed to.

4802 Are there other amendments?

4803 Ms. Jackson Lee. Mr. Chairman?

4804 Chairman Smith. The gentlewoman from Texas, Mr. Jackson

4805 Lee.

4806 Ms. Jackson Lee. I have an amendment at the desk, which

4807 is number 001.

4808 Chairman Smith. The clerk will report the amendment.

4809 Ms. Kish. Amendment to H.R. 4369, offered by Ms.

4810 Jackson Lee of Texas, page 2, strike line 7 through 26 and

4811 insert the following: 8(a) a trust described in paragraph 2

4812 shall file with the bankruptcy court --

4813 Ms. Jackson Lee. Mr. Chairman, I ask unanimous

4814 consent that the amendment be considered as read.

4815 Chairman Smith. Without objection, the amendment will

4816 be considered as read.

4817 [The amendment of Ms. Jackson Lee follows:]

4818

4819 Chairman Smith. And the gentlewoman is recognized to  
4820 explain her amendment.

4821 Ms. Jackson Lee. I was listening to the discussion of  
4822 the two gentleman, one from Arizona and one from North  
4823 Carolina, on the legislation. And as I read the  
4824 legislation, the emphasis seems to be on information. And  
4825 unless I have misread what I have been voting on, it seemed  
4826 that all the amendments that have been offered has been to  
4827 expand that information.

4828 I have seen that the bill, H.R. 4369, requires from the  
4829 trustee, who, I guess, is the individual who, one, makes a  
4830 lot of money, but is in the mix between the court and the  
4831 particular petitioner, or the individuals of which the  
4832 trustee is holding the trust, to file a quarterly report  
4833 with the bankruptcy court and the United States trustee.  
4834 The trust would have to file that must be available on the  
4835 court's public document -- docket, excuse me. And that  
4836 report would set forth certain information concerning such  
4837 claimants, their names, and exposure histories. The second  
4838 would be the trust would have to provide any information  
4839 related to the payment from and demands for payment from

4840 each trust to any party to any action in law or equity if  
4841 such action concerns liability for asbestos exposure.

4842       So I can appreciate that there may be a basis for that  
4843 detail. My amendment then is simple, and I ask my  
4844 colleagues to support it because what it does is to provide  
4845 additional information on the number of claims made against  
4846 each such party for injuries related to asbestos exposure,  
4847 the name of the State in which each such claim arose, the  
4848 condition for which the claim for injury is alleged in such  
4849 action, the amount of the payment sought in such action, and  
4850 the history of the exposure and occupation of the claimants  
4851 in such action, and not include in such certification  
4852 personally identifiable information.

4853       But I believe that it provides a balance to the  
4854 information in the underlying legislation, and a balance is  
4855 important. We need to balance the demand for specific and  
4856 detailed information from the plaintiff, and we must  
4857 maintain information necessary from the defense if the trust  
4858 is going to be balanced. And I would hope that my  
4859 colleagues would support this information gathering  
4860 amendment and move this amendment forward in order to

4861 provide the balance of information that can be useful to the  
4862 trust itself in the recordkeeping of the bankruptcy court.

4863 With that, I ask my colleagues to support the amendment,  
4864 and I yield back.

4865 Mr. Gallegly. [Presiding] Mr. Quayle is recognized for 5  
4866 minutes.

4867 Mr. Quayle. Thank you, Mr. Chairman. Mr. Chairman, I  
4868 rise in opposition to the amendment.

4869 One of the biggest problems that is occurring right now  
4870 is that State court judges oftentimes do not even believe  
4871 that they have the ability to require a Federal bankruptcy  
4872 court to give up this information during the discovery  
4873 process. And so by changing the rules to allow the  
4874 transparency to occur, that gives claimants and those that  
4875 are litigants the ability to have that information at the  
4876 ready because they currently do not have.

4877 And this amendment imposes some extra conditions on to a  
4878 party to a litigation in order to access discovery rights.

4879 I have never heard of that being put on somebody before. I  
4880 do not know if there is any other discovery practice that  
4881 this type of condition would be imposed on a litigant.

4882           The whole purpose of this bill is to actually streamline  
4883 the discovery process and to make sure that parties to  
4884 litigation can actually have the information that is needed  
4885 to protect the trust. And I think that this amendment goes  
4886 to an extent where if they wanted that information, they  
4887 could get it via discovery. They can get it that way. But  
4888 the problem is that other litigants cannot get this  
4889 information via normal discovery procedures.

4890           So I urge my colleagues to oppose this amendment.

4891           Mr. Gallegly. Anyone else wish to be heard? The  
4892 gentlelady from Texas. The gentlelady has already been  
4893 recognized.

4894           Ms. Jackson Lee. The gentleman from Florida, would you  
4895 yield me some time?

4896           Mr. Gallegly. The gentleman from Florida, Mr. Deutch.

4897           Mr. Deutch. Thank you. Move to strike the last word.

4898           Mr. Gallegly. The gentleman is recognized for 5  
4899 minutes.

4900           Mr. Deutch. I yield to my friend from Texas, Ms.  
4901 Jackson Lee.

4902           Ms. Jackson Lee. Thank you very much. I am concerned

4903 about the gentleman from Arizona's explanation. And I would  
4904 simply say that the goal in many instances for asbestos  
4905 defendants to add significant time delay to the trust  
4906 process. This bill helps asbestos defendants do just that  
4907 by putting burdensome and costly reporting requirements on  
4908 the trust in addition to those that already exist.

4909 I want people to be paid. The trust will have to spend  
4910 time and resources in complying with these requirements and  
4911 responding to asbestos defendants' demand for information.  
4912 I think the court needs to also have the information that my  
4913 amendment helps to generate, and that is the issue of the  
4914 settlement, how many people were injured, States where this  
4915 occurred. And this bill will cause the trust recoveries to  
4916 be reduced and will add a significant amount of time to the  
4917 trust process.

4918 Let us have a light on all aspects of it and add this  
4919 additional information necessary to provide the balance in  
4920 what is requested. And with that, I yield back to the  
4921 gentleman.

4922 Mr. Gallegly. The gentlelady yields back. Mr. Gowdy.

4923 Mr. Gowdy. Thank you, Mr. Chairman. I would yield to

4924 the gentleman from Arizona, Mr. Quayle.

4925 Mr. Quayle. Thank you, Mr. Gowdy, for yielding. Just  
4926 to verify, the manager's amendment actually makes it so that  
4927 there are not going to be any costs to the trusts for  
4928 providing this information. They can actually charge other  
4929 parties who want this information, so there are going to be  
4930 absolutely zero costs to the trusts. And I yield back to  
4931 the gentleman.

4932 Mr. Gallegly. The question occurs on the amendment.

4933 All those in favor, say aye?

4934 Those opposed?

4935 Mr. Gallegly. In the opinion of the chair, the noes  
4936 have it.

4937 Ms. Jackson Lee. Roll call, Mr. Chairman.

4938 Mr. Gallegly. There is a requested roll call. The  
4939 clerk will call the roll, please.

4940 Ms. Kish. Mr. Smith?

4941 [No response.]

4942 Ms. Kish. Mr. Sensenbrenner?

4943 [No response.]

4944 Ms. Kish. Mr. Coble?

4945 [No response.]

4946 Ms. Kish. Mr. Gallegly?

4947 Mr. Gallegly. No.

4948 Ms. Kish. Mr. Gallegly votes no.

4949 Mr. Goodlatte?

4950 [No response.]

4951 Ms. Kish. Mr. Lungren?

4952 Mr. Lungren. No.

4953 Ms. Kish. Mr. Lungren votes no.

4954 Mr. Chabot?

4955 [No response.]

4956 Ms. Kish. Mr. Issa?

4957 [No response.]

4958 Ms. Kish. Mr. Pence?

4959 [No response.]

4960 Ms. Kish. Mr. Forbes?

4961 Mr. Forbes. No.

4962 Ms. Kish. Mr. Forbes votes no.

4963 Mr. King?

4964 Mr. King. No.

4965 Ms. Kish. Mr. King votes no.

4966 Mr. Franks?

4967 [No response.]

4968 Ms. Kish. Mr. Gohmert?

4969 [No response.]

4970 Ms. Kish. Mr. Jordan?

4971 [No response.]

4972 Ms. Kish. Mr. Poe?

4973 [No response.]

4974 Ms. Kish. Mr. Chaffetz?

4975 [No response.]

4976 Ms. Kish. Mr. Griffin?

4977 Mr. Griffin. No.

4978 Ms. Kish. Mr. Griffin votes no.

4979 Mr. Marino?

4980 Mr. Marino. No.

4981 Ms. Kish. Mr. Marino votes no.

4982 Mr. Gowdy?

4983 Mr. Gowdy. No.

4984 Ms. Kish. Mr. Gowdy votes no.

4985 Mr. Ross?

4986 [No response.]

4987 Ms. Kish. Mrs. Adams?  
4988 [No response.]  
4989 Ms. Kish. Mr. Quayle?  
4990 Mr. Quayle. No.  
4991 Ms. Kish. Mr. Quayle votes no.  
4992 Mr. Amodei?  
4993 [No response.]  
4994 Ms. Kish. Mr. Conyers?  
4995 [No response.]  
4996 Ms. Kish. Mr. Berman?  
4997 [No response.]  
4998 Ms. Kish. Mr. Nadler?  
4999 [No response.]  
5000 Ms. Kish. Mr. Scott?  
5001 Mr. Scott. Aye.  
5002 Ms. Kish. Mr. Scott votes aye.  
5003 Mr. Watt?  
5004 Mr. Watt. Aye.  
5005 Ms. Kish. Mr. Watt votes aye.  
5006 Ms. Lofgren?  
5007 [No response.]

5008 Ms. Kish. Ms. Jackson Lee?

5009 Ms. Jackson Lee. Aye.

5010 Ms. Kish. Ms. Jackson Lee votes aye.

5011 Ms. Waters?

5012 Ms. Waters. Aye.

5013 Ms. Kish. Ms. Waters votes aye.

5014 Mr. Cohen?

5015 Mr. Cohen. Aye.

5016 Ms. Kish. Mr. Cohen votes aye.

5017 Mr. Johnson?

5018 [No response.]

5019 Ms. Kish. Mr. Pierluisi?

5020 Mr. Pierluisi. Aye.

5021 Ms. Kish. Mr. Pierluisi votes aye.

5022 Mr. Quigley?

5023 Mr. Quigley. Aye.

5024 Ms. Kish. Mr. Quigley votes aye.

5025 Ms. Chu?

5026 [No response.]

5027 Ms. Kish. Mr. Deutch?

5028 Mr. Deutch. Aye.

5029 Ms. Kish. Mr. Deutch votes aye.

5030 Ms. Sanchez?

5031 Ms. Sanchez. Aye.

5032 Ms. Kish. Ms. Sanchez votes aye.

5033 Mr. Polis?

5034 [No response.]

5035 Chairman Smith. [Presiding] The gentleman from Michigan?

5036 Mr. Conyers. Aye.

5037 Ms. Kish. Mr. Conyers votes aye.

5038 Chairman Smith. The gentleman from Texas, Mr. Poe?

5039 Mr. Poe. No.

5040 Ms. Kish. Mr. Poe votes no.

5041 Chairman Smith. The other gentleman from Texas.

5042 Mr. Gohmert. No.

5043 Ms. Kish. Mr. Gohmert votes no.

5044 Chairman Smith. And I vote no as well.

5045 Ms. Kish. Mr. Smith votes no.

5046 Chairman Smith. And the clerk will report.

5047 Ms. Kish. Mr. Chairman, 10 members voted aye, 11

5048 members voted nay.

5049 Chairman Smith. A majority having voted against the

5050 amendment, the amendment is not agreed to.

5051 Are there any other amendments?

5052 Ms. Jackson Lee. Mr. Chairman?

5053 Chairman Smith. Let me ask the gentlewoman from Texas,  
5054 is this her last amendment?

5055 Ms. Jackson Lee. Yes, it is.

5056 Chairman Smith. Okay. The clerk will report the  
5057 amendment.

5058 Ms. Kish. Amendment to H.R. 4369, offered by Ms.  
5059 Jackson Lee of Texas, page 2, strike line 7 through 26, and  
5060 insert the following.

5061 Ms. Jackson Lee. I ask unanimous consent that the  
5062 amendment be considered as read.

5063 Chairman Smith. Without objection, the amendment will  
5064 be considered as read.

5065 [The amendment of Ms. Jackson Lee follows:]

5066

5067 Chairman Smith. And the gentlewoman is recognized to  
5068 explain her amendment.

5069 Ms. Jackson Lee. The good news is that the gentleman  
5070 from Arizona indicated there will be no cost, and so I would  
5071 hope that this amendment, as it is amending the ANS, would  
5072 be no cost as well.

5073 In this instance, we would be asking the defendants,  
5074 again in the spirit of equality on what the trust is being  
5075 required to be report, to be able to provide the names of  
5076 the asbestos containing products, the party at any point in  
5077 the time manufactured, sold, purchased, or mined, the  
5078 locations where those products were sold or in use, the  
5079 estimate of the number of individuals living in the United  
5080 States who are exposed, each identified asbestos-containing  
5081 product, and the product identification affidavit for every  
5082 case ever settled by such party. And, of course, not to  
5083 include personal data that would negatively impact on the  
5084 submitter of the information.

5085 This has to be, in essence, a two-way street. We know  
5086 that asbestos litigation is both expansive. It is  
5087 devastating for the families. There are people who are

5088 living with asbestos disease who are probably not even aware  
5089 that products have been subject to such a settlement  
5090 process. If the trust must be fair to the plaintiffs, which  
5091 I certainly agree, meaning that the requirements through the  
5092 trust are to protect those who are petitioning for resources  
5093 because they have been injured, then I think expanded  
5094 information is also necessary as it relates to the product  
5095 line and the information that my amendment requires.

5096 So I would ask my colleagues to support the amendment  
5097 and provide the light and the fairness, transparency, that I  
5098 think this legislation is trying to produce. With that, I  
5099 ask my colleagues to support the amendment and yield back.

5100 Chairman Smith. Thank you, Ms. Jackson Lee.

5101 The gentleman from Arizona, Mr. Quayle, is recognized.

5102 Mr. Quayle. Thank you, Mr. Chairman. I rise in  
5103 opposition to this amendment. It is very similar to the  
5104 gentlelady's amendment that was just previously offered.  
5105 And the reason that this underlying bill is necessarily with  
5106 the manager's amendment is because right now it is just a  
5107 one-way street. Defendants cannot get the access to the  
5108 information that are contained within the trusts at this

5109 moment. And so having the transparency actually does make  
5110 it a two-way street.

5111 Putting these sorts of burdens in order to get this  
5112 discovery material can already be received by plaintiffs.  
5113 But putting this additional burden is actually making it a  
5114 two to one way street. And right now, I do not think that  
5115 that is the right way to go.

5116 Again, I do not know any discovery practice that this  
5117 condition is imposed on a litigant. This bill, the  
5118 underlying bill, actually streamlines this process. And I  
5119 think amendment imposes new road blocks on those who are  
5120 trying to have their day in court.

5121 Ms. Jackson Lee. Would the gentleman yield?

5122 Mr. Quayle. So I urge my colleagues to oppose this  
5123 amendment.

5124 Ms. Jackson Lee. Would the gentleman yield?

5125 Mr. Quayle. No, I am going to yield back.

5126 Chairman Smith. The gentleman yields back his time.

5127 Mr. Quigley. Mr. Chairman?

5128 Chairman Smith. The gentleman from Illinois, Mr.

5129 Quigley.

5130 Mr. Quigley. I yield to the sponsor of the amendment.

5131 Ms. Jackson Lee. Thank the gentleman from Illinois.

5132 And it is interesting to have Mr. Quayle make my argument,

5133 and the argument that he is making is certainly not a

5134 balanced argument. He is suggesting, I think, the burden is

5135 on the defendants, and I am suggesting that there are

5136 plaintiffs that require simple information. This is simple

5137 information. This is information about the asbestos-

5138 containing product that is at the party of the trust -- I

5139 mean, at the crux of the trust, and information about its

5140 manufactured processes, when it was sold and purchased.

5141 And certainly these are information that lawyers have in

5142 the preparation of the case, the location of where the

5143 products were sold, an estimate of the number of individuals

5144 living in the United States who were exposed. You cannot

5145 have the idea that this particular legislation eliminates

5146 burden. It creates burden. In fact, it is a mountain of

5147 burden, if you will, by adding these elements to the trust

5148 reporting under the pretense that individuals are not

5149 getting information.

5150 Well, I think if we are going to open the doors of

5151 creating a pathway of information, let us make sure the  
5152 information is inclusive. This amendment makes it  
5153 inclusive. I ask my colleagues to support the amendment.  
5154 And I think the distinguished gentleman from Illinois for  
5155 yielding, and I yield back my time. I ask for support for  
5156 the amendment.

5157 Mr. Quigley. I yield back.

5158 Chairman Smith. The gentleman from Illinois yields back  
5159 his time.

5160 The question is on the Jackson Lee amendment.

5161 All in favor, say aye?

5162 Opposed, no?

5163 Chairman Smith. The clerk will call the roll.

5164 Ms. Jackson Lee. Thank you, Mr. Chairman.

5165 Ms. Kish. Mr. Smith?

5166 Chairman Smith. No.

5167 Ms. Kish. Mr. Smith votes no.

5168 Mr. Sensenbrenner?

5169 [No response.]

5170 Ms. Kish. Mr. Coble?

5171 [No response.]

5172 Ms. Kish. Mr. Gallegly?

5173 Mr. Gallegly. No.

5174 Ms. Kish. Mr. Gallegly votes no.

5175 Mr. Goodlatte?

5176 [No response.]

5177 Ms. Kish. Mr. Lungren?

5178 Mr. Lungren. No.

5179 Ms. Kish. Mr. Lungren votes no.

5180 Mr. Chabot?

5181 [No response.]

5182 Ms. Kish. Mr. Issa?

5183 [No response.]

5184 Ms. Kish. Mr. Pence?

5185 [No response.]

5186 Ms. Kish. Mr. Forbes?

5187 [No response.]

5188 Ms. Kish. Mr. King?

5189 Mr. King. No.

5190 Ms. Kish. Mr. King votes no.

5191 Mr. Franks?

5192 Mr. Franks. No.

5193 Ms. Kish. Mr. Franks votes no.  
5194 Mr. Gohmert?  
5195 Mr. Gohmert. No.  
5196 Ms. Kish. Mr. Gohmert votes no.  
5197 Mr. Jordan?  
5198 [No response.]  
5199 Ms. Kish. Mr. Poe?  
5200 Mr. Poe. No.  
5201 Ms. Kish. Mr. Poe votes no.  
5202 Mr. Chaffetz?  
5203 [No response.]  
5204 Ms. Kish. Mr. Griffin?  
5205 Mr. Griffin. No.  
5206 Ms. Kish. Mr. Griffin votes no.  
5207 Mr. Marino?  
5208 Mr. Marino. No.  
5209 Ms. Kish. Mr. Marino votes no.  
5210 Mr. Gowdy?  
5211 Mr. Gowdy. No.  
5212 Ms. Kish. Mr. Gowdy votes no.  
5213 Mr. Ross?

5214 [No response.]

5215 Ms. Kish. Mrs. Adams?

5216 [No response.]

5217 Ms. Kish. Mr. Quayle?

5218 Mr. Quayle. No.

5219 Ms. Kish. Mr. Quayle votes no.

5220 Mr. Amodei?

5221 [No response.]

5222 Ms. Kish. Mr. Conyers?

5223 Mr. Conyers. Aye.

5224 Ms. Kish. Mr. Conyers votes aye.

5225 Mr. Berman?

5226 [No response.]

5227 Ms. Kish. Mr. Nadler?

5228 [No response.]

5229 Ms. Kish. Mr. Scott?

5230 [No response.]

5231 Ms. Kish. Mr. Watt?

5232 Mr. Watt. No.

5233 Ms. Kish. Mr. Watt votes no.

5234 Ms. Lofgren?

5235 [No response.]

5236 Ms. Kish. Ms. Jackson Lee?

5237 Ms. Jackson Lee. Aye.

5238 Ms. Kish. Ms. Jackson Lee votes aye.

5239 Ms. Waters?

5240 Ms. Waters. Aye.

5241 Ms. Kish. Ms. Waters votes aye.

5242 Mr. Cohen?

5243 Mr. Cohen. Aye.

5244 Ms. Kish. Mr. Cohen votes aye.

5245 Mr. Johnson?

5246 [No response.]

5247 Ms. Kish. Mr. Pierluisi?

5248 Mr. Pierluisi. Aye.

5249 Ms. Kish. Mr. Pierluisi votes aye.

5250 Mr. Quigley?

5251 Mr. Quigley. Aye.

5252 Ms. Kish. Mr. Quigley votes aye.

5253 Ms. Chu?

5254 [No response.]

5255 Ms. Kish. Mr. Deutch?

5256 Mr. Deutch. Aye.

5257 Ms. Kish. Mr. Deutch votes aye.

5258 Ms. Sanchez?

5259 Ms. Sanchez. Aye.

5260 Ms. Kish. Ms. Sanchez votes aye.

5261 Mr. Polis?

5262 [No response.]

5263 Chairman Smith. The gentleman from Virginia, Mr.

5264 Forbes?

5265 Mr. Forbes. No.

5266 Ms. Kish. Mr. Forbes votes no.

5267 Chairman Smith. The other gentleman from Virginia, Mr.

5268 Scott.

5269 Mr. Scott. No.

5270 Ms. Kish. Mr. Scott votes no.

5271 Chairman Smith. Okay. The clerk will report.

5272 Ms. Kish. Mr. Chairman, 8 members voted aye, 14 members

5273 voted nay.

5274 Chairman Smith. The majority having voted against the

5275 amendment, the amendment is not agreed to.

5276 I am going to recognize the gentleman from Tennessee,

5277 Mr. Cohen. I believe this might be the last amendment of  
5278 the day. And the gentleman is recognized.

5279 Mr. Cohen. Thank you, Mr. Chairman. I have an  
5280 amendment at the desk.

5281 Chairman Smith. The clerk will report the amendment.

5282 Ms. Kish. Amendment to H.R. 4369 --

5283 Mr. Cohen. I ask unanimous consent the amendment be  
5284 considered as read.

5285 Chairman Smith. Without objection, the amendment will  
5286 be considered as read.

5287 [The amendment of Mr. Cohen follows:]

5288

5289 Chairman Smith. And the gentleman is recognized to  
5290 explain his amendment.

5291 Mr. Cohen. Thank you, Mr. Chairman. My amendment  
5292 ensures that H.R. 4369 will not apply to trusts that have an  
5293 internal claims audit program to ensure that claims are  
5294 valid and supported.

5295 Proponents of H.R. 4369 ask and argue that its reporting  
5296 and other information sharing requirements are necessary to  
5297 ensure that asbestos victims are not committing fraud by  
5298 recovering money from trusts through the tort system, double  
5299 dipping, both trusts and the tort system.

5300 While proponents of the bill have yet to point to any  
5301 empirical evidence of systemic fraud within the asbestos  
5302 trust claims process, H.R. 4369, if enacted, will impose  
5303 unnecessary burdens and costs on trusts and will expose  
5304 claimants' private information and unnecessary risk of  
5305 inappropriate exposure. Not that they have not had  
5306 inappropriate exposure before, which has put them in the  
5307 difficult condition that they are in. This causes them to  
5308 file a lawsuit.

5309 H.R. 4369's additional requirements on trusts will raise

5310 their administrative costs significantly. Money used to pay  
5311 these costs ultimately means less money to compensate  
5312 asbestos victims, which is something we obviously we do not  
5313 want. This is particularly problematic in light of the fact  
5314 that defendants can already obtain the information they want  
5315 using discovery tools that exist today without undermining  
5316 compensation for legitimate claims.

5317       The reporting requirement in 4369 also raises privacy  
5318 concerns. While I recognize the bill specifically prohibits  
5319 trusts from making public any medical records or full social  
5320 security numbers, the bill still would require trusts to  
5321 make public a claimant's name and exposure history. I also  
5322 recognize the limited additional privacy protection  
5323 available under Rule 107 of the Bankruptcy Code.

5324       Nonetheless, these measures are insufficient to fully  
5325 protect claimants' privacy. As noted by my colleagues, once  
5326 out in public, such information can be used for any purpose.  
5327 Potential employers, insurance companies, lenders, and even  
5328 those who may seek to harm an asbestos victim in some way  
5329 can have access to this information without the victim's  
5330 permission or knowledge.

5331           In light of these concerns, and notwithstanding the lack  
5332 of any evidence of systemic fraud, my amendment ensures that  
5333 the trust already has measures in place to ferret out  
5334 potential fraudulent claims. It should not bear the cost  
5335 burdens and privacy risks presented by H.R. 4369's  
5336 requirements.

5337           If, in fact, the proponents of H.R. 4369 are primarily  
5338 concerned, which I feel confident they are, about potential  
5339 fraud in the asbestos trust claims process, then they should  
5340 not have any problem supporting this amendment which is  
5341 surgically tailored to simply take a limited number of cases  
5342 and recognize that the process is already in place in those  
5343 cases to address fraud so that it will not affect the  
5344 others. And it addresses some of the concerns of those who  
5345 oppose the bill at the same time.

5346           So hopefully the last amendment will be the amendment  
5347 and the first one to pass. I look forward to that. And I  
5348 yield to the gentleman from Michigan.

5349           Mr. Conyers. Thank you. I wanted to thank you for your  
5350 candor in asserting that there is no empirical evidence of  
5351 systematic fraud. There may be problems, but I appreciate

5352 you making that conditional assertion.

5353 Mr. Cohen. And I appreciate the recognition and the  
5354 compliment, especially from the source. Thank you, Mr.  
5355 Ranking Member.

5356 With that, Mr. Chairman, I said that this is a  
5357 surgically drawn limited exception that will not hurt the  
5358 bill and will save claimants money. So I am sure that the  
5359 last amendment, that who is last shall be first. So I am  
5360 sure it will pass.

5361 [Laughter.]

5362 Mr. Cohen. I would ask for your support.

5363 Chairman Smith. Thank you, Mr. Cohen.

5364 And the gentleman from Arizona, Mr. Quayle, is  
5365 recognized.

5366 Mr. Quayle. Thank you, Mr. Chairman. I rise in  
5367 opposition to the bill.

5368 The problem the bill addresses is not about valid versus  
5369 invalid claims. It is fraud committed on State court  
5370 litigants by the failure of tort claimants to report their  
5371 tort claims in State litigation and the different facts  
5372 provided as the basis for tort suit versus a trust claim.

5373 Further, the GAO report concluded that the audit  
5374 processes of trusts are designed to ensure compliance with  
5375 internal trust procedures, not to remedy the fraud that the  
5376 bill seeks to address.

5377 I urge my colleagues to oppose this amendment, and I  
5378 yield back the balance of my time.

5379 Chairman Smith. Thank you, Mr. Quayle.

5380 The question is on the Cohen amendment.

5381 All in favor, say aye?

5382 Opposed, no?

5383 In the opinion of the chair, the noes have it, and the  
5384 amendment is not agreed to.

5385 Mr. Cohen. Proverbial roll call.

5386 Chairman Smith. Lots of proverbs today. The clerk will  
5387 call the roll.

5388 Ms. Kish. Mr. Smith?

5389 Chairman Smith. No.

5390 Ms. Kish. Mr. Smith votes no.

5391 Mr. Sensenbrenner?

5392 [No response.]

5393 Ms. Kish. Mr. Coble?

5394 [No response.]

5395 Ms. Kish. Mr. Gallegly?

5396 Mr. Gallegly. No.

5397 Ms. Kish. Mr. Gallegly votes no.

5398 Mr. Goodlatte?

5399 [No response.]

5400 Ms. Kish. Mr. Lungren?

5401 Mr. Lungren. No.

5402 Ms. Kish. Mr. Lungren votes no.

5403 Mr. Chabot?

5404 [No response.]

5405 Ms. Kish. Mr. Issa?

5406 [No response.]

5407 Ms. Kish. Mr. Pence?

5408 [No response.]

5409 Ms. Kish. Mr. Forbes?

5410 Mr. Forbes. No.

5411 Ms. Kish. Mr. Forbes votes no.

5412 Mr. King?

5413 Mr. King. No.

5414 Ms. Kish. Mr. King votes no.

5415 Mr. Franks?

5416 Mr. Franks. No.

5417 Ms. Kish. Mr. Franks votes no.

5418 Mr. Gohmert?

5419 Mr. Gohmert. Proverbial no.

5420 Ms. Kish. Mr. Gohmert votes no.

5421 Mr. Jordan?

5422 [No response.]

5423 Ms. Kish. Mr. Poe?

5424 [No response.]

5425 Mr. Chaffetz?

5426 [No response.]

5427 Ms. Kish. Mr. Griffin?

5428 Mr. Griffin. No.

5429 Ms. Kish. Mr. Griffin votes no.

5430 Mr. Marino?

5431 Mr. Marino. No.

5432 Ms. Kish. Mr. Marino votes no.

5433 Mr. Gowdy?

5434 Mr. Gowdy. No.

5435 Ms. Kish. Mr. Gowdy votes no.

5436 Mr. Ross?

5437 [No response.]

5438 Ms. Kish. Mrs. Adams?

5439 [No response.]

5440 Ms. Kish. Mr. Quayle?

5441 Mr. Quayle. No.

5442 Ms. Kish. Mr. Quayle votes no.

5443 Mr. Amodei?

5444 [No response.]

5445 Ms. Kish. Mr. Conyers?

5446 Mr. Conyers. Aye.

5447 Ms. Kish. Mr. Conyers votes aye.

5448 Mr. Berman?

5449 [No response.]

5450 Ms. Kish. Mr. Nadler?

5451 Mr. Nadler. Aye.

5452 Ms. Kish. Mr. Nadler votes aye.

5453 Mr. Scott?

5454 Mr. Scott. Aye.

5455 Ms. Kish. Mr. Scott votes aye.

5456 Mr. Watt?

5457 Mr. Watt. Aye.

5458 Ms. Kish. Mr. Watt votes aye.

5459 Ms. Lofgren?

5460 [No response.]

5461 Ms. Kish. Ms. Jackson Lee?

5462 [No response.]

5463 Ms. Kish. Ms. Waters?

5464 Ms. Waters. Aye.

5465 Ms. Kish. Ms. Waters votes aye.

5466 Mr. Cohen?

5467 Mr. Cohen. Aye.

5468 Ms. Kish. Mr. Cohen votes aye.

5469 Mr. Johnson?

5470 [No response.]

5471 Ms. Kish. Mr. Pierluisi?

5472 Mr. Pierluisi. Aye.

5473 Ms. Kish. Mr. Pierluisi votes aye.

5474 Mr. Quigley?

5475 Mr. Quigley. Aye.

5476 Ms. Kish. Mr. Quigley votes aye.

5477 Ms. Chu?

5478 [No response.]

5479 Ms. Kish. Mr. Deutch?

5480 Mr. Deutch. Aye.

5481 Ms. Kish. Mr. Deutch votes aye.

5482 Ms. Sanchez?

5483 Ms. Sanchez. Aye.

5484 Ms. Kish. Ms. Sanchez votes aye.

5485 Mr. Polis?

5486 [No response.]

5487 Chairman Smith. The gentlewoman from Texas?

5488 Ms. Kish. Not recorded, ma'am.

5489 Ms. Jackson Lee. Aye.

5490 Ms. Kish. Ms. Jackson Lee votes aye.

5491 Chairman Smith. And the clerk will report.

5492 Ms. Kish. Mr. Chairman, 11 members voted aye, 11

5493 members voted nay.

5494 Chairman Smith. A majority not having agreed to the

5495 amendment, the amendment is not agreed to.

5496 Are there any other amendments?

5497 Before I recognize the gentleman from New York, are

5498 there any other members who expect to offer amendments other

5499 than the gentleman from New York?

5500 [No response.]

5501 Chairman Smith. The gentleman from New York, Mr.

5502 Nadler, is recognized.

5503 Mr. Nadler. Thank you, Mr. Chairman. I have an

5504 amendment at the desk.

5505 Chairman Smith. The clerk will report the amendment.

5506 Ms. Kish. Amendment to H.R. 4369, offered by Mr. Nadler

5507 of New York, page 2, beginning on line 25, strike "if" and

5508 all that follows through "exposure," and insert the

5509 following: if (1) the subject of such actions concerns

5510 liability for asbestos exposure, and (2) such party agrees

5511 to make available upon written request information relevant

5512 to such action that pertains to the protection of public

5513 health or safety to any other person or to any Federal or

5514 State entity that has authority to enforce a law regulating

5515 an activity relating to such information.

5516 [The amendment of Mr. Nadler follows:]

5517

5518 Chairman Smith. The gentleman from New York is  
5519 recognized to explain his amendment.

5520 Mr. Nadler. Thank you, Mr. Chairman. My amendment  
5521 would add a modicum of fairness to the bill by requiring  
5522 parties involved in asbestos cases who seek information from  
5523 the asbestos trusts to make available public health and  
5524 safety information they have relating to asbestos upon  
5525 written request.

5526 Even considering all the bills that the Judiciary  
5527 Committee has considered this Congress, I am surprised by  
5528 this one. I understand what the sponsor of the bill has  
5529 said, but let us be clear. The effect of H.R. 4369 will be  
5530 to make it harder for victims of asbestos exposure to be  
5531 compensated and easier for asbestos defendants to avoid  
5532 having to pay.

5533 This is shocking, even for the majority, considering it  
5534 was President Reagan's Occupational Safety and Health and  
5535 Administration which said "that it was aware of no instance  
5536 in which exposure to a toxic substance has more clearly  
5537 demonstrated detrimental health effects on humans than has  
5538 asbestos exposure."

5539           Once again, the hook for this bill is root out fraud,  
5540 and once again, even though the majority has failed to offer  
5541 a scintilla of evidence of systematic fraud, they are  
5542 charging ahead with solutions to fix a nonexistent problem.

5543           As Mr. Watt said, the GAO looked at these asbestos  
5544 trusts found no evidence of endemic or overt fraud. These  
5545 trusts use audits and other quality assurance measures to  
5546 make sure no fraud occurs. Further, it is not fraudulent to  
5547 make claims on the trust and pursue defendants in court.  
5548 People are injured by asbestos over a period of years, and  
5549 during that time it is possible multiple companies  
5550 contributed to exposure. And under the principle of joint  
5551 and several liability, multiple defendants are obligated to  
5552 pay the claims of victims. It is up to the defendants to  
5553 apportion liability and compensation that should be paid  
5554 among themselves.

5555           To solve a nonexistent problem, this bill would hurt  
5556 innocent victims dying of asbestos exposure. It would  
5557 obligate a trust to spend time and money to respond to  
5558 requests for information instead of using that time and  
5559 money for paying claims.

5560           It would allow defendants in court cases to obtain  
5561 information from trusts they can then use to delay cases and  
5562 deny payment. Lastly, it would require trusts to reveal  
5563 confidential personal and medical information about victims.  
5564 Not only is this a violation of privacy, but it may dissuade  
5565 victims from coming forward.

5566           But assuming the supporters of the bill intend to press  
5567 forward, the least they can do is somewhat balance the  
5568 playing field. My amendment seeks to do that. It would  
5569 require any litigant in an asbestos case who wants to obtain  
5570 information from an asbestos trust to provide upon written  
5571 request information that it has regarding public health and  
5572 safety information relating to asbestos.

5573           I am sure asbestos defendants have a voluminous amount  
5574 of material which could be relevant to public health and  
5575 safety. Such materials can include what types of asbestos  
5576 they use, when it was used, what methods the manufacturer  
5577 would use, how many unwitting victims were exposed to their  
5578 asbestos, how much have they paid out previously in claims,  
5579 what sorts of studies they have on their employees, and so  
5580 forth.

5581           And since asbestos manufacturers have a history of  
5582 withholding information, as Mr. Scott said, my amendment  
5583 would provide a meaningful way to pierce that cloud of  
5584 asbestos secrecy.

5585           The bottom line is that what is good for the asbestos  
5586 goose should be good for the asbestos gander. If the  
5587 supporters of H.R. 4369 think we need more transparency in  
5588 asbestos cases, then we should have more transparency across  
5589 the board from asbestos trusts and from defendants.

5590           I ask all members to support the amendments, and I yield  
5591 back the balance --

5592           Mr. Conyers. Would the gentleman yield?

5593           Mr. Nadler. I do not yield back the balance of my time.  
5594 I will yield to the gentleman from Michigan.

5595           Mr. Conyers. I just wanted to suggest that the Nadler  
5596 amendment is evenhanded and demands of the wrongdoers the  
5597 same transparency that this bill demands of their victims.  
5598 And I thank the gentleman.

5599           Mr. Nadler. I thank the gentleman, and I yield back.

5600           Chairman Smith. Thank you, Mr. Nadler.

5601           The gentleman from Arizona, Mr. Quayle, is recognized.

5602 Mr. Quayle. Thank you, Mr. Chairman. I rise in  
5603 opposition to the amendment.

5604 As has been stated before to the previous amendments  
5605 that we are trying to put more burdens on litigants that is  
5606 really outside the scope of this bill.

5607 The normal discovery process can be used to get a lot of  
5608 this information, if not all of it. The problem that we  
5609 have is that the trustees and the trusts have been able to  
5610 keep the claimants' names, what their claims are, a secret,  
5611 and State courts do not have the ability, and some say do  
5612 not even have the authority, to require any disclosure to  
5613 make sure that the claimants are not double dipping or  
5614 making fraudulent claims on the trust when they are also  
5615 having tort claims in the State court.

5616 Now this bill only addresses asbestos fraud. I think  
5617 that this amendment is much, much broader. This amendment  
5618 imposes conditions upon a party of the litigation in order  
5619 to access its discovery rights. If litigants have to jump  
5620 through hoops to get discovery by complying with various  
5621 unrelated requests from unknown parties, their defense will  
5622 be impaired. Nowhere else in discovery practice is this

5623 type of condition imposed on a litigant.

5624 The bill streamlines discovery. This amendment imposes  
5625 new roadblocks on those who are trying to have their day in  
5626 court. I urge my colleagues to oppose this amendment, and I  
5627 yield back the balance of my time.

5628 Chairman Smith. Thank you, Mr. Quayle. Are there other  
5629 members who wish to be heard on the amendment?

5630 [No response.]

5631 Chairman Smith. If not, the committee is going to stand  
5632 in recess until the call of the chair, which will likely be  
5633 tomorrow afternoon.

5634 Mr. Nadler. Mr. Chairman?

5635 Chairman Smith. Just a reminder that we have the AG  
5636 appearing before the committee for an oversight hearing at  
5637 9:30 in the morning.

5638 Mr. Nadler. Mr. Chairman?

5639 Chairman Smith. And so we stand --

5640 Mr. Nadler. You are not going to take on the amendment?

5641 Chairman Smith. We are not. We stand in recess until  
5642 the call of the chair. Again, likely to be tomorrow  
5643 afternoon.

5644 [Whereupon, at 4:23 p.m., the committee adjourned  
5645 subject to the call of the Chair.]