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4 MARKUP OF H.R. 3012, THE FAIRNESS FOR HIGH-SKILLED

5 IMMIGRANTS ACT; AND H.R. 1254, THE SYNTHETIC DRUG CONTROL

6 ACT OF 2011

7 Thursday, October 27, 2011

8 House of Representatives

9 Committee on the Judiciary

10 Washington, D.C.

11 The committee met, pursuant to call, at 9:04 a.m., in
12 Room 2141, Rayburn Office Building, Hon. Lamar Smith,
13 [chairman of the committee] presiding.

14 Present: Representatives Smith, Sensenbrenner, Coble,
15 Gallegly, Lungren, Chabot, Issa, King, Franks, Gohmert,
16 Jordan, Poe, Chaffetz, Griffin, Ross, Adams, Quayle, Amodei,

17 Conyers, Nadler, Scott, Watt, Lofgren, Waters, Cohen,
18 Johnson, Quigley, Chu and Sanchez.

19 Staff present: Sean McLaughlin, Chief of Staff;
20 Allison Halatei, Deputy Chief of Staff/Parliamentarian;
21 Sarah Kish, Clerk; George Fishman, Counsel; Tony Angeli;
22 Perry Apelbaum, Minority Staff Director; David Shaharian,
23 Counsel; and Liliana Coronado.

24

25 Chairman Smith. The Judiciary Committee will come to
26 order.

27 Without objection, the chair is authorized to declare
28 recesses of the committee at any time.

29 The clerk will call the roll to establish a quorum.

30 Ms. Kish. Mr. Smith?

31 Chairman Smith. Present.

32 Ms. Kish. Mr. Sensenbrenner?

33 Mr. Coble?

34 Mr. Gallegly?

35 Mr. Goodlatte?

36 Mr. Lungren?

37 Mr. Chabot?

38 Mr. Chabot.

39 Mr. Issa?

40 Mr. Pence?

41 Mr. Pence.

42 Mr. Forbes?

43 Ms. Kish. Mr. King?

44 Mr. King. Here.

45 Ms. Kish. Mr. Franks?

46 Mr. Franks. Here.

47 Ms. Kish. Mr. Gohmert?

48 Mr. Jordan?

49 Mr. Poe?

50 Mr. Poe.

51 Ms. Kish. Mr. Chaffetz?

52 Mr. Chaffetz. Here.

53 Ms. Kish. Mr. Griffin?

54 Mr. Marino?

55 Mr. Gowdy?

56 Mr. Ross?

57 Ms. Kish. Mrs. Adams?

58 Mrs. Adams. Present.

59 Ms. Kish. Mr. Quayle?

60 Mr. Amodei?

61 Mr. Amodei. Here.

62 Ms. Kish. Mr. Conyers?

63 Mr. Berman?

64 Mr. Nadler?

65 Mr. Scott?

66 Ms. Kish. Mr. Watt?

67 Ms. Lofgren?

68 Ms. Lofgren. Present.

69 Ms. Kish. Ms. Jackson Lee?

70 Ms. Waters?

71 Ms. Waters.

72 Mr. Cohen?

73 Mr. Johnson?

74 Mr. Pierluisi?

75 Mr. Quigley?

76 Ms. Chu?

77 Mr. Deutch?

78 Ms. Sanchez?

79 Chairman Smith. The gentleman from Wisconsin?

80 Mr. Sensenbrenner. Here.

81 Ms. Kish. Mr. Marino?

82 Mr. Marino. Present.

83 Chairman Smith. The gentleman from North Carolina?

84 Mr. Coble. Present.

85 Chairman Smith. The gentleman from Michigan?

86 Mr. Conyers. Present.

87 Chairman Smith. The gentleman from Virginia?

88 Mr. Scott. Here.

89 Chairman Smith. The gentleman from Nevada?

90 Ms. Kish. Mr. Amodei?

91 Mr. Amodei. Present.

92 Chairman Smith. The indispensable gentleman from
93 Arkansas?

94 Mr. Griffin. Here.

95 Chairman Smith. The clerk will report.

96 Ms. Kish. Mr. Chairman, 13 members responded present.

97 Chairman Smith. A working quorum is present and we
98 will proceed to consider H.R. 3012, the Fairness for High-
99 Skilled Immigrants Act.

100 Pursuant to notice, I now call up H.R. 3012 for
101 purposes of markup, and the clerk will report the bill.

102 Ms. Kish. "H.R. 3012, to amend the Immigration and
103 Nationality Act to eliminate the per-country" --

104 Chairman Smith. Without objection, the bill will be
105 considered as read.

106 [The information follows:]

107

108 Chairman Smith. And I will recognize myself for an
109 opening statement and then the ranking member.

110 Our immigration system should be designed to benefit
111 Americans and our economy. The Immigration and Nationality
112 Act generally provides that the total number of families
113 sponsored and employment-based green cards available to
114 natives of any one country cannot exceed 7 percent of the
115 total number of green cards available each year. Because of
116 these annual numerical caps on green cards and the fact that
117 some countries have more of the skilled workers that
118 American employers want, natives of these countries must
119 often wait years longer for green cards than natives of
120 other countries.

121 In the employment-based second preference category for
122 professionals with advanced degrees and aliens of
123 exceptional ability, green cards are now immediately
124 available to approved applicants from most countries.
125 However, because employers seek so many workers from India
126 and China, the per-country caps result in green cards only
127 being available to those natives who first applied on or
128 before November 2007, 4 years ago.

129 In the employment-based third preference category for
130 professionals with bachelor's degrees and skilled workers,
131 green cards are now available to applicants from most
132 countries who first applied on or before December 2005.
133 However, because employers seek so many workers from India
134 and China, the per-country caps result in green cards only
135 being available to natives of China who first applied on or
136 before August 2004 and for natives of India on or before
137 2002.

138 Similar per-country caps exist in the family-sponsored
139 green card categories. That is why natives of most
140 countries who are siblings of U.S. citizens have green cards
141 available if they first applied on or before June 2000.
142 However, siblings from the Philippines have had to wait
143 since 1988.

144 H.R. 3012, the Fairness for High-Skilled Immigrants
145 Act was introduced by Jason Chaffetz and is appreciated by
146 many in the business community as well. The bill eliminates
147 the employment-based per-country cap entirely by fiscal year
148 2013. It also raises the family-sponsored per-country cap
149 from 7 percent to 15 percent.

150 This legislation makes sense. Why should American
151 employers who seek green cards for skilled foreign workers
152 have to wait longer just because the workers are from India
153 or China? American business and employers have already
154 proven to the U.S. Government that they need these workers,
155 that qualified Americans are not available, and that
156 American workers will not be harmed. It makes sense to
157 repeal the employment-based per-country caps.

158 I also understand that many members would like to
159 increase the family-sponsored green card per-country caps
160 from 7 to 15 percent. This bill does that too.

161 I urge my colleagues to support H.R. 3012 and now
162 recognize the ranking member, Mr. Conyers, the gentleman
163 from Michigan.

164 Mr. Conyers. Thank you, Mr. Chairman.

165 I would like Zoe Lofgren of California to make the
166 statement for members on our side, and I yield to her now.

167 Ms. Lofgren. Thank you, Mr. Chairman and thank you,
168 Mr. Conyers.

169 I think the road forward on this bill has taken some
170 twists and turns but I think we are on track now. I have

171 been happy to work with Mr. Chaffetz in a collaborative way
172 to make sure that this bill does a good thing for our
173 country.

174 I actually have been working to eliminate the per-
175 country cap issue for a number of years. When I chaired the
176 subcommittee, I had a bill to change the per-country cap and
177 Mr. Goodlatte was the primary cosponsor. But we had a
178 companion bill that recovered the visas that should have
179 been awarded and were not. That was cosponsored by Mr.
180 Sensenbrenner, and the two together really accomplished what
181 we needed to do.

182 Today, although I am happy to be a cosponsor of this
183 bill, we will not fully accomplish the fix that I think the
184 system needs. We all know that the immigration system is
185 broken with huge backlogs. And one of the phenomena that is
186 quite interesting is that under existing law, the per-
187 country caps are done not only without regard to who is an
188 able person but really without regard to population.
189 Consequently, the country of India with a population of 1.1
190 billion people has the same number of visas allocated as the
191 country of Iceland with 350,000 people. So that does not

192 make a lot of sense.

193 And so we have got these insane backlogs for somebody
194 who has been approved who was born in India for an EB-3, as
195 the chairman has said, I mean, this is an arduous process
196 where the employer has to prove up that they cannot find
197 somebody in America to do this specific job. The wait to
198 get the visa after that approval is 70 years -- 7, 0. That
199 is not competitive. It is 20 years if the person was born
200 in India.

201 So this will improve that situation. On the other
202 hand, because of the lack of visa recapture, everybody in
203 the world will be backlogged 12 years, also not a
204 competitive advantage for our country.

205 Nevertheless, I think it is an improvement. I think
206 it is fairer. As I say, I am happy to cosponsor the measure
207 and again want to say that it has been a good thing working
208 with Congressman Chaffetz from Utah and I look forward to
209 working with him in the future on many important measures.

210 And with that, I would yield back, Mr. Chairman.

211 Chairman Smith. Thank you, Ms. Lofgren.

212 The gentleman from Utah, the sponsor of the Chaffetz-

213 Smith bill, is recognized for an opening statement.

214 Mr. Chaffetz. Well, thank you. And first, let me
215 thank Chairman Smith for your leadership and insight on this
216 bill in crafting this and putting this together. I do
217 appreciate it.

218 And I also appreciate the collaborative nature in
219 working with Zoe Lofgren. She is passionate about this
220 issue, an expert in many ways in understanding the issue,
221 and I appreciate her leadership and passion on this issue as
222 well and proud to have her cosponsoring this bill as well.

223 I have always taken the notion that we need to fix
224 legal immigration. If we do not fix legal immigration, we
225 will never, ever solve this problem. And admittedly while
226 this bill does not solve all the woes in immigration, this
227 does take an important step forward in helping our economy,
228 in helping the immigration backlogs, and most importantly,
229 helping us with jobs that will grow jobs here in the United
230 States of America.

231 This is something that our employers are asking for.
232 If they are going to grow and expand their businesses, there
233 are certain talents and skills that they need to develop in

234 order to expand their businesses right here in the United
235 States of America.

236 So H.R. 3012, this immigration bill, I think takes us
237 an important step forward, and I appreciate members on both
238 sides considering it.

239 The Immigration and Nationality Act generally provides
240 that the total number of employment-based immigrant visas
241 made available to natives of any single foreign country in a
242 year cannot exceed 7 percent of the total number of such
243 visas made available in a year.

244 What is important in the consideration of this bill is
245 we are not increasing the total number of available visas.
246 What you are tackling here are the per-country caps.

247 The per-country limits make no sense in the context of
248 employment-based immigration. American companies view all
249 high-skilled immigrants as the same regardless of where they
250 are from, and our immigration policy should do the same.

251 H.R. 3012 creates a fair and equitable, first-
252 come/first-served system, and under this system, U.S.
253 companies will be able to focus on what they do best, hiring
254 smart people to create products, services, and jobs for

255 Americans.

256 The bill also raises the similar 7 percent per-country
257 cap on family-based visas to 15 percent per country.

258 Current law prohibits U.S. employers from hiring
259 foreign workers to fill these jobs unless there are not
260 sufficient U.S. workers who are able, willing, qualified,
261 and available. The bill does not change this, but it does
262 encourage high-skilled immigrants who are educated in the
263 U.S. to stay and contribute to our economy rather than
264 taking skills they learned and aiding our competitive
265 nations. Per-country caps are the antithesis of the free
266 market. Companies recruit employees based on their talent
267 not where they are from. Hiring and keeping the best
268 people, whether from America or around the world is a
269 primary objective of American companies and this bill will
270 help accomplish that.

271 H.R. 3012 is supported by the U.S. Chamber of
272 Commerce, Compete America, which is a coalition of high-tech
273 companies and trade groups including Microsoft, Google,
274 Intel, Business Software Alliance, the Semi-Conductor
275 Industry Association, and Immigration Voice. The bill is

276 also supported by Tech America, the U.S. technology
277 industry's largest advocacy organization representing over
278 1,000 leading innovative companies, and the Information
279 Technology Industry Council.

280 I would like to ask unanimous consent that the letters
281 from these two organizations indicating their support for
282 the bill be admitted to the record.

283 Chairman Smith. Without objection, it will be made a
284 part of the record.

285 [The information follows:]

286

287 Mr. Chaffetz. I view this piece of legislation as
288 pro-growth, pro-jobs, and pro-family. And I thank the
289 chairman for bringing up this bill and urging it forward,
290 and I urge my colleagues to support to support this bill.

291 I yield back the balance of my time.

292 Chairman Smith. Thank you, Mr. Chaffetz.

293 Are there any amendments? The gentlewoman from
294 California, Ms. Lofgren?

295 Ms. Lofgren. I have an amendment at the desk, Lofgren
296 44.

297 Chairman Smith. The clerk will report amendment
298 number 46.

299 Mr. Chaffetz. Mr. Chairman, I reserve a point of
300 order.

301 Chairman Smith. The gentleman from Utah raises a
302 point of order.

303 Ms. Kish. "Amendment to H.R. 3012, offered by Ms. Zoe
304 Lofren of California. Page 6, after line 10, add the
305 following. Section 3, special provisions in cases of
306 lengthy adjudication."

307 Ms. Lofgren. I would ask unanimous consent that the

308 amendment be considered as read.

309 Chairman Smith. We want to make sure that the right
310 amendment is being passed out. It is Lofgren number 46.

311 Ms. Lofgren. No, no. It is Lofgren number 44.

312 Chairman Smith. I am sorry. I thought it was 44. My
313 mistake. Lofgren amendment 44, and a point of order is
314 reserved.

315 [The information follows:]

316

317 Ms. Lofgren. Mr. Chairman, this amendment would allow
318 certain non-immigrants to remain in the United States in the
319 H1B-L or F status if an employer files an immigrant visa
320 petition. It also provides for dual intent for non-
321 immigrant students. It creates a new W non-immigrant visa
322 for spouses and minor children of lawful permanent residents
323 with approved I-130 family-based immigrant visa petitions
324 who cannot immediately immigrate due to backlogs in the
325 family-based second preference category.

326 Here is the reason why. We now have protections for
327 H1B workers where, if there is a visa petition filed for
328 them, but a backlog, they can be in a status in the U.S. and
329 wait here while that that backlog is cleared. We do not
330 have those same protections for inter-company transfers
331 which is the L visa, or student visas. And so you have the
332 phenomenon where somebody gets their Ph.D. in electrical
333 engineering from MIT and they either have to leave or else
334 they have to somehow get on an H1B visa. Right now, that
335 might be possible because we have an excess of H1B visas,
336 but as we know, in many years when the economy heats up,
337 there are not any visas. And so you end up in a very

338 dysfunctional situation.

339 It also would provide for dual intent for non-
340 immigrant students. Right now, there is a dual intent
341 provision on H1B so that if you apply for an H1B visa, it is
342 okay that you want to permanently become an American. We do
343 not have that same dual intent for students. And so you
344 have some of the brightest students in the world coming over
345 to get their Ph.D. in physics from Stanford and they have to
346 tell the consular officers they really do not want to become
347 an American. They want to go back to Upper Volta or
348 wherever they are from. That does not serve American
349 economic interests. And so this would change that as well.

350 Finally, it would create a new W non-immigrant visa
351 for spouses and minor children of lawful permanent residents
352 with approved immigrant visa petitions. As the chairman has
353 noted, there is a backlog for the husbands and wives and
354 minor children of legal permanent residents, and the current
355 situation means that husbands and wives, parents and
356 children must be separated from each other for many, many
357 years even though eventually they will be reunited. I do
358 not think that serves American interests or American values.

359 This would not create any additional visas. It would simply
360 allow the American spouses and minor children to wait with
361 their husband or wife in the United States instead of
362 another country while the backlog is cleared and their
363 number comes up.

364 I think these are important improvements to the bill.
365 I understand that a point of order has been lodged. It is
366 possible that they may not be germane, and if so, I would
367 not ask for a recorded vote.

368 Chairman Smith. Thank you, Ms. Lofgren.

369 Does the gentleman from Utah insist on his point of
370 order?

371 Mr. Chaffetz. Yes, Mr. Chairman, I do.

372 I do not necessarily disagree or agree with Ms.
373 Lofgren, the gentlewoman from California. But this bill
374 before us is a very narrow bill. Its fundamental purpose is
375 to simply remove and adjust per-country caps currently
376 imposed under the INA. It does not create any new
377 immigration benefits. The gentlewoman's amendment, by
378 contrast, creates new immigration benefits by allowing for
379 individuals who are on other types of visas to extend their

380 stay and even creates a brand new W category of visas. This
381 amendment clearly goes beyond the scope and subject matter
382 of the underlying bill. I, therefore, insist on my point of
383 order that this amendment is non-germane.

384 Chairman Smith. Thank you, Mr. Chaffetz.

385 Does the gentlewoman from California want to speak on
386 the point of order?

387 Ms. Lofgren. No. I accept Mr. Chaffetz's analysis
388 and I am ready for my second amendment.

389 Chairman Smith. The chair is prepared to rule on the
390 point of order. In the opinion of the chair, the amendment
391 is not germane.

392 Does the gentlewoman from California have another
393 amendment?

394 Ms. Lofgren. Yes, Mr. Chairman. I have Lofgren
395 number 45.

396 Chairman Smith. The clerk will report.

397 Ms. Kish. "Amendment to H.R. 3012" --

398 Mr. Chaffetz. Mr. Chairman, I reserve a point of
399 order.

400 Chairman Smith. A point of ordered has been reserved.

401 Without objection, the clerk will report the
402 amendment.

403 Ms. Kish. "Amendment to H.R. 3012, offered by Ms. Zoe
404 Lofgren of California. Page 6, after line 10, add the
405 following."

406 Chairman Smith. Without objection, the amendment is
407 considered as read.

408 [The information follows:]

409

410 Chairman Smith. And the gentlewoman is recognized to
411 explain the amendment.

412 Ms. Lofgren. Thank you, Mr. Chairman.

413 As I mentioned in the opening statement, in past years
414 we have had a bill -- I was the author and Mr. Sensenbrenner
415 was the cosponsor -- that recaptured immigrant visas that
416 went unused between 1992 and 2011 and makes them available.
417 Now, this amendment would add a new section that recaptures
418 the employment- and family-based green cards that were
419 authorized by Congress during those years that were unused
420 because of bureaucratic delay. Under current law, if that
421 happens, if the visa number is unused by the end of the
422 year, it is lost for all time. And according to the
423 Homeland Security Department and the State Department,
424 hundreds of thousands of family- and employment-based green
425 cards that Congress intended to be awarded have actually
426 been lost through bureaucratic delay. And this would allow
427 them to be recaptured on a one-time basis.

428 We all agree that the backlogs are really not good for
429 our system, and as I mentioned in the opening statement,
430 right now individuals with an improved employment petition

431 in the EB3 category wait for 70 years to get a visa, which
432 is preposterous. If our per-country bill passes, people
433 from every country will wait 12 years. That is not a good
434 situation either. It is more fair than the situation we
435 have today, but it is not an optimal situation.

436 This visa recapture proposal would allow that to be
437 current moving forward, which I think would greatly improve
438 the bill. I understand that it is possible that the matter
439 may not, in fact, be germane, but I did think it was
440 important to raise this issue and to offer the amendment.

441 And I yield back.

442 Chairman Smith. Thank you, Ms. Lofgren.

443 Does the gentleman from Utah insist on his point of
444 order?

445 Mr. Chaffetz. Yes, Mr. Chairman, I do insist on my
446 point of order.

447 Again, I do not necessarily disagree or agree with the
448 gentlewoman's point. It is just that the bill before is a
449 very narrow bill. Its fundamental purpose is to simply
450 adjust the per-country caps currently imposed under the INA.
451 It does not create any new immigration benefits. The

452 gentlewoman's amendment, however, would create a new
453 immigration benefit by recapturing unused green cards of the
454 past, and therefore, I insist on my point of order that the
455 amendment is not germane.

456 Chairman Smith. Thank you, Mr. Chaffetz.

457 Does the gentlewoman from California want to speak on
458 the point of order?

459 Ms. Lofgren. No. I think the gentleman has
460 adequately covered it.

461 Chairman Smith. Thank you, Ms. Lofgren.

462 The chair is prepared to rule on the point of order.
463 In the opinion of the chair, the amendment is not germane.

464 Does the gentlewoman from California have another
465 amendment?

466 Ms. Lofgren. Yes, Mr. Chairman. Lofgren number 47.

467 Chairman Smith. The clerk will report the amendment.

468 Ms. Kish. "Amendment to H.R. 3012, offered by Ms. Zoe
469 Lofgren."

470 Chairman Smith. Without objection, the amendment will
471 be considered as read.

472 [The information follows:]

473

474 Chairman Smith. And the gentlewoman from California
475 is recognized to explain the amendment.

476 Ms. Lofgren. Mr. Chairman, this amendment, developed
477 in conjunction with Mr. Chaffetz, would fix what I believe
478 are problems with the transition rules as currently written
479 in the bill. Prior to the bill's introduction, Mr.
480 Chaffetz, Chairman Smith, and myself worked for some months
481 to make sure that we got the bill right. However, the bill
482 was introduced before all of the bells and whistles were
483 included.

484 And here is the problem. Because of the visa
485 backlogs, there needs to be some transition time for the
486 business world to react. Simply eliminating the limits, for
487 example, would cut some countries out of the system
488 entirely. The employer-based third preference countries,
489 other than India and China, would have seen very few visas
490 and probably no visas for at least 3 to 4 years. For
491 companies that were surprised and didn't see this coming,
492 that would have led to all sorts of unforeseen consequences.
493 People and companies need a chance to prepare for what we
494 are doing.

495 So we have got a short transition period to make sure
496 that the per-country limits are eliminated over a 3-year
497 period. The phase-in gives employers and employees time to
498 prepare.

499 However, the way the bill was drafted led to a weird
500 and adverse consequence. As read, it would establish cut-
501 off dates in the employment-based first preference, which
502 has never happened while prioritizing immigrants in the
503 third preference. Essentially what that would mean is that
504 skilled immigrants with bachelor's degrees, who we agree are
505 necessary for our economy, would be prioritized over
506 immigrants in the extraordinary ability category. And so
507 you would have bachelor degree immigrants standing ahead of
508 Nobel Prize winners, CEO's of multi-national corporations
509 who employ thousands of workers, outstanding scientists and
510 researchers, and other immigrants of international acclaim.
511 That was not something that we intended to do.

512 This amendment, thus, limits the transition period to
513 the employment-based second and third preferences only,
514 leaving the first preference as is. This would ensure that
515 immigrants with extraordinary ability are not prejudiced

516 while we work through the backlogs in other preference
517 categories. And the provision also would ensure that visas
518 would not be lost if the USCIS is unable to get approved
519 cases to the State Department in a timely fashion.

520 I believe that all of us are in agreement on this, Mr.
521 Chaffetz, I know the staff of the chairman, and myself. It
522 is sensible. It is bipartisan, and I think it gets us to
523 where we need to be on the bill.

524 And with that, I would yield back.

525 Chairman Smith. Thank you, Ms. Lofgren. I support
526 this amendment and recognize the gentleman from Utah, Mr.
527 Chaffetz, for his comments.

528 Mr. Chaffetz. Thank you, Mr. Chairman. I certainly
529 appreciate the diligence from my colleague from California.
530 I think she is right. I think this amendment is a necessary
531 technical correction. I appreciate working and getting some
532 information from the State Department. I think she is
533 absolutely right and I am prepared to accept this amendment.

534 I yield back.

535 Chairman Smith. Thank you, Mr. Chaffetz.

536 All those in favor of the amendment, say aye.

537 [Chorus of ayes.]

538 Chairman Smith. All those opposed, say no.

539 [No response.]

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

542 Are there other amendments? The gentleman from Iowa,
543 Mr. King, is recognized.

544 Mr. King. Mr. Chairman, I would offer amendment
545 number 4, King 4.

546 Chairman Smith. The clerk will report the King
547 amendment.

548 Ms. Kish. "Amendment to H.R. 3012" --

549 Mr. Chaffetz. Mr. Chairman, I reserve a point of
550 order.

551 Chairman Smith. A point of order has been reserved,
552 and the clerk will report the amendment.

553 Ms. Kish. "Amendment to H.R. 3012, offered by Mr.
554 King of Iowa. Page 6, after line 10" --

555 Chairman Smith. Without objection, the amendment will
556 be considered as read.

557 [The information follows:]

558

559 Chairman Smith. And the gentleman from Iowa is
560 recognized to explain the amendment.

561 Mr. King. Thank you, Mr. Chairman.

562 In looking at the underlying bill and what I think is
563 the motivation of this legislation, it is to find a way to
564 get more high-skilled workers into this economy. It is the
565 gentleman's stated for purpose.

566 When we hold hearings here in the Immigration
567 Committee, which we have, of course, for a lot of years
568 together and looked at the unemployment ratings in unskilled
569 workers in this country and seen that the highest
570 unemployment ratings are in the unskilled categories in the
571 United States and the most disenfranchised American citizens
572 are those with that lowest skill levels because they have to
573 compete with newly arriving immigrants both legal and
574 illegal. So there are 10,000 unskilled in this category
575 that would be advanced forward by the gentleman's bill.

576 And I would point out also that the legal immigrants
577 brought into this country in the decade prior to the 2008
578 economic downward spiral, when we had economic growth, we
579 saw our labor force increase in the United States not just

580 in direct proportion but almost exactly in the same
581 numerical numbers of the legal immigration that we brought
582 into the United States. Today we have about 14 million
583 drawing unemployment benefits, and when you add that to the
584 numbers of Americans who are of working age and simply not
585 in the workforce, we are at over 100 million Americans not
586 in the workforce. And I do not believe that this committee
587 nor this Congress nor very many of the American people have
588 examined that we are bringing in legal immigrants a lot
589 faster than we can bring them in to assimilate them into our
590 economy, let alone our society. And so if we are going to
591 make a step in the right direction, which is to eliminate
592 illegal immigration and to slow down the legal immigration
593 in categories where we have an oversupply, this is directly
594 the category where we have the most oversupply is in the
595 unskilled labor.

596 So what this does is it strikes that component of the
597 underlying bill. That is 10,000. It is the category for
598 unskilled labor. And it strikes that component of it and
599 leaves the rest of the bill intact.

600 So I would urge the adoption of my amendment, and I

601 would yield back the balance of my time.

602 Chairman Smith. Thank you, Mr. King.

603 Does the gentleman from Utah insist on his point of
604 order?

605 Mr. Chaffetz. Yes, I do insist on my point of order,
606 Mr. Chairman.

607 And I appreciate the gentleman from Iowa's passion as
608 well on this issue. He cares deeply about it and I know he
609 speaks from his heart.

610 But the bill before us is a very narrow bill. Its
611 fundamental purpose is to simply remove and adjust the per-
612 country caps currently imposed under the INA. It does not
613 deal with the creation or removal of available immigration
614 benefits. The amendment would reduce the number of
615 employment-based immigrant visas, and adjusting the overall
616 level of immigrant visas is not something that this bill
617 addresses. Therefore, I insist on my point of order that
618 the amendment is not germane.

619 Chairman Smith. Thank you, Mr. Chaffetz.

620 In recognizing the gentleman from Iowa, Mr. King, to
621 ask if he wants to speak on the point of order, let me say

622 that if the amendment were germane, I would be voting for
623 it. However, I do believe -- well, I will wait to rule
624 until after the gentleman has spoken. Does the gentleman
625 wish to speak on the point order?

626 Mr. King. Thank you, Mr. Chairman. I appreciate that
627 and I expect to make such a compelling argument that we will
628 be able to reverse the trend that I am feeling here, and it
629 is this.

630 This bill does open up this title and it opens up this
631 subject matter. It opens up these categories, and we are
632 talking about a change in all of these numbers as a result
633 of the gentleman's underlying bill. When we have a
634 discussion about what we anticipate by eliminating the caps,
635 there will be a rearrangement. And if my amendment is not
636 adopted, I will predict that you will see a change in the
637 unskilled and you will see a change in the volume of all of
638 these categories, the five categories of skills that are
639 part of this bill, because the result will be we will get a
640 different flow of people from different countries by taking
641 the cap off. So whether it is directly addressed or whether
642 it is indirectly addressed, the result is changed by the

643 gentleman from Utah's bill, and if that is not a compelling
644 argument with regard to the amendment being in order, then I
645 would add this argument.

646 I would plead with the gentleman from Utah, and I
647 understand your head and your heart. And I would think that
648 if you would withdraw your objection and this committee
649 could go forward, we could do a good thing for the United
650 States of America together.

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

652 Chairman Smith. Thank you, Mr. King.

653 The chair is prepared to rule on the point of order.
654 In the opinion of the chair, the amendment is not germane.

655 Does the gentleman from Iowa, Mr. King, have another
656 amendment?

657 Mr. King. Yes, Mr. Chairman, amendment number 5, King
658 5.

659 Chairman Smith. The clerk will report the amendment.

660 Ms. Kish. "Amendment to H.R. 3012, offered by Mr.
661 King of Iowa. Page 6, after line 10 add the following.

662 Section 3, elimination of certain employment-based" --

663 Chairman Smith. Without objection, the amendment is

664 considered as read.

665 [The information follows:]

666

667 Ms. Lofgren. Mr. Chairman, I reserve a point of
668 order.

669 Chairman Smith. A point of order has been reserved.

670 The gentleman from Iowa is recognized to explain his
671 amendment.

672 Mr. King. Thank you, Mr. Chairman.

673 My amendment would eliminate the third employment-
674 based preference. That is visas for workers who have merely
675 baccalaureate degrees and who perform skilled and unskilled
676 labor.

677 An increase in the number of visas for the first and
678 second preference category, which are persons of
679 extraordinary ability and members of the profession holding
680 advanced degrees -- so what it does is it eliminates on the
681 third preference -- there are two components to third
682 preference. The unskilled is the one that I addressed in
683 the previous amendment, but the preference for professional
684 and skilled, which is titled skilled shortage workers with
685 at least 2 years training or experience and professionals
686 with baccalaureate degrees -- we know that that definition
687 has been expanded and stretched significantly. And because

688 it has been abused and because we have a lot of Americans
689 that have training in these categories, sometimes we have to
690 move them around the country a little bit, but we still have
691 100 million Americans that are not working, and a lot of
692 them should be.

693 The result of this, though, helps the gentleman from
694 Utah's underlying bill because it increases -- by a result
695 of eliminating the third employment category, we actually
696 reduce the overall number by 40,000. So 100,000 is the net
697 result. The level in the bill is 140,000 under all these
698 categories in the aggregate. We reduce them by 40,000, but
699 by eliminating the balance of the third preference, we
700 actually roll numbers up into the high quality categories
701 that the gentleman from Utah is seeking to enhance.

702 So we would go from -- let us see. The first
703 preference category, which are extraordinary ability people,
704 would go from 28 percent of the worldwide limit to 42
705 percent of the worldwide limit. And the number then, as a
706 result of the amendment, would go from 37,520 highly
707 skilled, extraordinary ability science, education,
708 athletics, those people that are really the kind of people

709 we want to recruit -- that number would go from 37,520 to
710 42,000. And I would think that the result of this amendment
711 would be very attractive to the people who are seeking to
712 find high-skilled people. The numbers go up. It reduces
713 the overall number of legal immigrants consistent with the
714 philosophy that we have 14 million unemployed, 100 million
715 not working. We have plenty of people that are unskilled
716 that should be working. We have now also 47 percent our
717 households do not have income tax liability, and we have an
718 additional 51 percent of the wage earners that do not have a
719 Federal income tax liability. I want more people pulling in
720 the harness and fewer of them riding in the wagon, to quote
721 a Texan of a previous presence here in -- in the Senate.

722 And I would urge adoption of this amendment, and I
723 would yield back the balance of my time.

724 Chairman Smith. Thank you, Mr. King.

725 Ms. Lofgren. Does the gentlewoman from California
726 insist on her point of order?

727 Ms. Lofgren. Yes, I do, Mr. Chairman.

728 This amendment contains provisions that are outside
729 the scope of the underlying bill and therefore is not

730 germane.

731 The bill amends only section 202 of the Immigration
732 and Nationality Act worded just only how green cards are
733 distributed to individuals from different countries. It
734 does not amend other sections of the INA, nor does it
735 increase or decrease the number of green cards provided in
736 the act. The amendment seeks to amend section 203 of the
737 INA to eliminate an immigration preference category and to
738 reduce overall employment-based immigrant visas from 140,000
739 to 100,000. Because the amendment seeks to modify another
740 section of the INA and to reduce the overall numbers of
741 green cards provided in the act, its changes are outside the
742 scope of the underlying bill. And so I insist on my point
743 of order.

744 Chairman Smith. Thank you, Ms. Lofgren.

745 Does the gentleman from Iowa wish to speak on the
746 point of order?

747 Mr. King. Mr. Chairman, it is the same points that I
748 made in the previous amendment. And so I could push replay
749 or just yield to the chairman's judgment.

750 Chairman Smith. Thank you, Mr. King.

751 The chair is prepared to rule on the point of order.

752 In the opinion of the chair, the amendment is not germane.

753 Does the gentleman from Iowa have another amendment?

754 Mr. King. Mr. Chairman, I would offer King number 6.

755 Chairman Smith. The clerk will report the amendment.

756 Ms. Kish. "Amendment to H.R. 3012" --

757 Mr. Chaffetz. Mr. Chairman, I reserve a point of

758 order.

759 Chairman Smith. A point of order has been reserved.

760 Ms. Kish. "Amendment to preference, offered by Mr.

761 King of Iowa."

762 Chairman Smith. Without objection, the amendment will

763 be considered as read.

764 [The information follows:]

765

766 Chairman Smith. The gentleman from Iowa is recognized
767 to explain his amendment.

768 Mr. King. Thank you, Mr. Chairman.

769 This amendment is an amendment that strikes the family
770 category components for reunification for brothers and
771 sisters that are part of the category under this bill, the
772 family members. What it does is it just seeks to reduce the
773 number that are brought in on family reunification.

774 We have done some spreadsheet charts on this to see
775 what really happens when one person comes into the United
776 States and begins to bring their family in. There really is
777 no limit. You run out of room on the spreadsheet before you
778 can actually get to a sum total. But we ran them out once
779 in a practical way with some reasonable assumptions, and it
780 came to 357 people could be brought in by a single
781 individual. I am sure it could be far more than that. And
782 if you want to extrapolate what happens if you have a family
783 of, let's say, 12 or 14. And maybe the Speaker's family,
784 for example, 12 kids in that family? And if one of them
785 came in, one with similar demographics, then you would see
786 this geometrically go beyond the scope of what the intent of

787 this is. We tried to narrow this down so you get to the
788 lineal descendents going up and down the family tree so that
789 you end up with grandparents, parents, children, but when
790 you go into brothers and sisters, it just is out of control.

791 We have also had data before this committee and
792 testimony before this committee that showed us that if you
793 look at merits and if you take the philosophy -- and this is
794 mine, and I think it is shared by many members of this
795 committee -- that we should have an immigration policy
796 designed to enhance the economic, the social, and the
797 cultural well-being of the United States of America, this
798 immigration is not for any other country to benefit from.
799 It is for the United States to benefit from the richness and
800 the vitality that comes from legal immigrants coming into
801 this country.

802 When it is out of control, when we put in a category
803 that we can no longer limit, you will get testimony before
804 the committee that would inform the folks that weren't here
805 on that day that if you measure the categories where
806 actually the legal immigrants have merit -- and we have some
807 of them in this bill, the highly qualified, highly skilled,

808 those people who have extraordinary ability -- they will add
809 to the overall gross domestic product of the United States
810 of America and our cultural well-being.

811 But when it is not in our control, when we have a
812 category that can go to an unlimited expansion like the
813 family category with siblings that go on and on -- and that
814 is just the first generation. You can go into the second or
815 third -- you find testimony that shows us that between only
816 7 and 11 percent of the legal immigration coming into the
817 United States of America is based upon merit, and the rest
818 of it is out of our control. The rest of it is in the hands
819 of somebody else, and it might be somebody who came in here
820 and was able to have an anchor baby that started to bring
821 their family in, their brothers and sisters in, and it is
822 out of our control.

823 So what we need to do is narrow the family category,
824 take care of the linear descendents but not the expanded
825 siblings which is the basis of this amendment. And again,
826 it starts us down the right path to convert this immigration
827 policy so that we can bring in the highest quality legal
828 immigrants that will contribute to our economy before they

829 go on their retirement and Medicare plan. That is the basis
830 of this philosophy.

831 Again, I think that this is an amendment that would
832 have strong support on this committee, and I would urge its
833 adoption and yield back the balance of my time.

834 Chairman Smith. Thank you, Mr. King.

835 Does the gentleman from Utah insist on his point of
836 order?

837 Mr. Chaffetz. Yes, Mr. Chairman, I do insist on the
838 point of order.

839 The bill before us is a very narrow bill. Its
840 fundamental purpose is to simply remove and adjust the per-
841 country caps currently imposed under the INA. It does not
842 deal with the creation or removal of available immigration
843 benefits. The amendment would eliminate the availability of
844 family-based immigrant visas for brothers and sisters of
845 U.S. citizens and reduce the number of family-based
846 immigrants permitted each year. These subjects are beyond
847 the narrow scope of this bill and therefore I insist on the
848 point of order. This amendment is non-germane.

849 Chairman Smith. Thank you, Mr. Chaffetz.

850 Does the gentleman from Iowa wish to speak on the
851 point of order?

852 Mr. King. Mr. Chairman, same argument only I thought
853 I might get to the heart of the gentleman from Utah in my
854 presentation of the amendment. I think he is leaning
855 towards joining me on a bill that writes in all of these
856 amendments and perhaps a separate one. So I would urge that
857 this be considered germane. I would yield back the balance
858 of my time.

859 Chairman Smith. Thank you, Mr. King.

860 The chair is prepared to rule on the germaneness of
861 the amendment. The chair will say while I think the
862 amendment may well be a good idea, I do not think it is
863 germane.

864 Does the gentleman from Iowa have another amendment?

865 Mr. King. Yes, Mr. Chairman. I would call up
866 amendment King number 7, please.

867 Chairman Smith. The clerk will report the amendment.

868 Ms. Kish. "Amendment to H.R. 3012, offered by
869 Mr. King of Iowa. Page 2, line 11 add 'and' at the end.
870 Page 2, strike line 12. Amend the title so as to read a

871 bill to" --

872 Chairman Smith. Without objection, the amendment will

873 be considered as read.

874 [The information follows:]

875

876 Chairman Smith. The gentleman from Iowa is recognized
877 to explain his amendment.

878 Mr. King. Thank you, Mr. Chairman.

879 This amendment would strike H.R. 3012 changes to the
880 Immigration and Nationality Act that would raise the per-
881 country cap on family-based immigration. Under H.R. 3012,
882 per-country ceilings for family-based admissions would go
883 from 7 percent to 15 percent over several years. This would
884 have the effect of increasing the numbers of immigrants
885 coming from certain countries and reducing the overall
886 diversity of family-based green card recipients.

887 If the goal is to bring in workers who are uniquely
888 qualified to fill the jobs that Americans cannot do, then it
889 does not make sense to add a provision that changes family-
890 based admissions. A change to the cap for family-based
891 green cards does not help any shortage of skilled workers
892 that proponents of this bill say we have. It only satisfies
893 liberals who want to open our already porous borders.

894 The data indicates that the countries that will
895 immediately benefit from removing per-country caps on
896 employment-based applications are India, China, and the

897 Philippines. Yet, changes to family-based admission caps
898 would overwhelmingly benefit applicants from Mexico and the
899 Philippines. Currently, Mexico accounts for 29.5 percent of
900 all family-based visa petitions pending, and the Philippines
901 accounts for 11.4. India and China are only 7.2 and 5.9
902 respectively. So no country other than Mexico, the
903 Philippines, and India has more than 7 percent of the
904 approved family-based visa petitions that are pending. So
905 these are the only countries that this change will benefit.

906 We have enough immigrants from these countries and we
907 are looking for more diversity. And we look for skill from
908 any country that we can find it in. But it was none other
909 than Teddy Kennedy who felt that diversity was the key
910 principle in immigration policy. The family component of
911 this bill works against that diversity, and I actually
912 believe the underlying bill works against that diversity
913 too. And it is the intent of the underlying bill in some
914 sense because there is a focus of high-skilled people that
915 come from China and India in particular. But if we walk
916 away from that and we allow it to apply itself to the family
917 reunification component, the effect of that is going to be

918 negative on the overall balance that we would like to have
919 in this country.

920 I would reiterate that I, as I think every Republican
921 I know, am for legal immigration. I think we have -- and I
922 will say it -- a stupid immigration policy. I think it has
923 been a long, long time since we have examined the overall
924 effect in the big picture. I am always reluctant to address
925 the immigration issue from a narrow focus because it takes
926 away some of our reason to put the whole thing out on the
927 table and fix it and fix it right.

928 So we can talk about sealing the border and shutting
929 off the jobs magnet and all of those things that are
930 enforcement, but on the legal side of this, we need to be
931 looking at what is the right thing to do for our economy.
932 And here we are with these high unemployment, stagnate
933 growth, a little bit of growth -- I will give the President
934 some credit for 1 and a half percent growth of something,
935 but we are a long, long ways from where we need to be. And
936 part of it is our immigration policy.

937 When you see data that comes from Robert Rector of the
938 Heritage Foundation that shows that a household headed by a

939 high school dropout, a family of four -- this is legal or
940 illegal -- puts a burden on the taxpayer of annual average
941 of \$22,449 a year. They will draw down \$32,000 a year in
942 benefits, and they will pay \$9,000 a year in taxes,
943 including sales tax and the property tax as a share of the
944 rent that they will pay, even though it will be oftentimes
945 rent subsidy that is paying that. \$22,449 a year. And the
946 duration of that household he calculates at 50 years. So
947 that is \$1.5 million per household. If they are a high
948 school dropout, we are going to call that a definition of
949 unskilled.

950 And we need to get a lot smarter about this. We have
951 generations of families that no one has worked. There are
952 whole neighborhoods where there is not a single employed
953 male head of household in vast neighborhoods, 36 square
954 blocks in Milwaukee, for example, that I can cite. We need
955 to get America back to work, and we are not going to get
956 America back to work if we do not put this smart immigration
957 policy in place, and that means, I think, a scoring system
958 that will score a number of categories, skills, education,
959 assimilation ability, and a number of things. And I am

960 hopeful we will be able to work together on these changes
961 that are going to be smart for the big picture of America.

962 So I would urge the adoption of this amendment and
963 yield back the balance of my time.

964 Chairman Smith. Thank you, Mr. King.

965 Mr. Conyers. Mr. Chairman?

966 Chairman Smith. The gentleman from Michigan, Mr.
967 Conyers?

968 Mr. Conyers. I would like to commend the gentleman,
969 the author of this amendment, for one of his observations,
970 namely that the immigration laws and policies in the country
971 need to be reexamined.

972 The only thing I did not hear him say, which is a main
973 concern of mine, is about the backlog. When we are talking
974 in broad daylight about a 70-year backlog or a 30-year
975 backlog or a 12-year backlog, what we are doing is conceding
976 that the immigration policies of this country, of which the
977 Judiciary Committee has the initial determination of what it
978 should be, needs overhauling.

979 Could I ask the gentleman if he agrees with me?

980 Mr. King. Well, I would think of it this way. A 70-

981 year backlog is beyond the life expectancy of a lot of the
982 people that are coming here and the overall balance in their
983 society.

984 Also, though, I think the gentleman from Michigan
985 should consider that there are 50 million people in line
986 waiting to come into the United States when you calculate
987 all of the visa categories that they are lined up in. We
988 should first address the question what should the population
989 of the United States be in a generation or two or three, and
990 what should be the makeup of that population? I would start
991 with that question and then we have got a long ways to go
992 before we would get down to a solution. But I think those
993 are big questions that should start the dialogue.

994 Mr. Conyers. Well, I would like to invite Steve King
995 and other members of this committee to begin some
996 discussions because I have noticed that Chairman Goodlatte,
997 Chairman Sensenbrenner, and of course our colleague, Mr.
998 Chaffetz, have all been working on parts of this problem.
999 And it seems to me that what we need is a larger look at
1000 this to see if we can come to something beyond the good but
1001 very minute improvement that is embodied in the bill that

1002 the committee is taking up today. So I would invite further
1003 discussion with any members of the committee in the future
1004 about this important subject matter.

1005 Thank you, Mr. Chairman.

1006 Chairman Smith. Thank you, Mr. Conyers.

1007 The gentleman from Utah is recognized.

1008 Mr. Chaffetz. Thank you, Mr. Chairman.

1009 And I thank the gentleman from Iowa for offering this
1010 amendment.

1011 I want to be crystal clear with my colleagues about
1012 what this bill does and does not do. We are simply talking
1013 about the per-country caps. There is not a single new green
1014 card that will be added to the system. There is not a
1015 single green card that would be eliminated from the system.
1016 Even with this amendment, Mr. Chairman, there won't be any
1017 new green cards added and there won't be any subtracted.
1018 All we are simply saying is a recognition that we are going
1019 to adjust from the 7 percent per-country cap up to 15
1020 percent. We are not adding a single new green card to the
1021 system. There is no trick. There is no compromise involved
1022 here.

1023 We brought this bill to Numbers USA and to FAIR to get
1024 their assessment of it. They took a neutral position. They
1025 are not opposed to it; they are not in favor of it because
1026 it doesn't adjust the overall number of visas that are out
1027 there.

1028 We are sending a message, though, by increasing this
1029 cap from 7 to 15 percent that we want people to come to the
1030 United States of America legally. And we are sending a
1031 message that we are going to try to do something about that
1032 now. This is one small step in the right direction.

1033 Those that benefit the most by this bill are
1034 Americans. They are Americans because we are talking about
1035 their kids. We are talking about their immediate family
1036 members here. There are extremely long waiting lines for
1037 people particularly from Mexico and the Philippines who want
1038 to migrate to this country legally.

1039 For an example, unmarried Mexican sons and daughters
1040 of U.S. citizens that will receive green cards in November,
1041 this November, have been waiting since April of 1993. That
1042 is an 18-and-a-half year wait. And they are trying to do it
1043 legally and lawfully.

1044 So what we are saying is without adding a single new
1045 visa to it, we are going to simply raise that per-country
1046 cap from 7 percent to 15 percent, but no additional net new
1047 number that is added. I think that is a reasonable approach
1048 to this.

1049 Again, I appreciate the passion of my colleague from
1050 Iowa. But even with this amendment, Mr. Chairman, there is
1051 no additional visas out there and there are no less visas
1052 out there. The number remains the same.

1053 I yield back.

1054 Chairman Smith. Thank you, Mr. Chaffetz.

1055 Are there other members who wish to be heard on the
1056 amendment?

1057 [No response.]

1058 Chairman Smith. If not, the question is on the
1059 amendment. All in favor, say aye.

1060 [Chorus of ayes.]

1061 Chairman Smith. All opposed, no?

1062 [Chorus of nays.]

1063 Chairman Smith. In the opinion of the chair, the noes
1064 have it and the amendment is not agreed to.

1065 Mr. King. Mr. Chairman, I ask for a recorded vote.
1066 Chairman Smith. The gentleman from Iowa requests a
1067 recorded vote. The clerk will call the roll.
1068 Ms. Kish. Mr. Smith?
1069 Chairman Smith. A hesitant no.
1070 Ms. Kish. Mr. Smith votes no.
1071 Mr. Sensenbrenner?
1072 [No response.]
1073 Ms. Kish. Mr. Coble?
1074 [No response.]
1075 Ms. Kish. Mr. Gallegly?
1076 Mr. Gallegly. Pass.
1077 Ms. Kish. Mr. Goodlatte?
1078 Mr. Goodlatte. Pass.
1079 Ms. Kish. Mr. Lungren?
1080 Mr. Lungren. Pass.
1081 Ms. Kish. Mr. Chabot?
1082 [No response.]
1083 Ms. Kish. Mr. Issa?
1084 [No response.]
1085 Ms. Kish. Mr. Pence?

1086 [No response.]

1087 Ms. Kish. Mr. Forbes?

1088 [No response.]

1089 Ms. Kish. Mr. King?

1090 Mr. King. No. I mean yes.

1091 [Laughter.]

1092 Ms. Kish. Mr. King votes yes.

1093 Mr. Franks?

1094 Mr. Franks. Yes.

1095 Ms. Kish. Mr. Franks votes yes.

1096 Mr. Gohmert?

1097 [No response.]

1098 Ms. Kish. Mr. Jordan?

1099 Mr. Jordan. No.

1100 Ms. Kish. Mr. Jordan votes no.

1101 Mr. Poe?

1102 [No response.]

1103 Ms. Kish. Mr. Chaffetz?

1104 Mr. Chaffetz. No.

1105 Ms. Kish. Mr. Chaffetz votes no.

1106 Mr. Griffin?

1107 [No response.]

1108 Ms. Kish. Mr. Marino?

1109 Mr. Marino. No.

1110 Ms. Kish. Mr. Marino votes no.

1111 Mr. Gowdy?

1112 [No response.]

1113 Ms. Kish. Mr. Ross?

1114 Mr. Ross. No.

1115 Ms. Kish. Mr. Ross votes no.

1116 Mrs. Adams?

1117 Mrs. Adams. No.

1118 Ms. Kish. Ms. Adams votes no.

1119 Mr. Quayle?

1120 Mr. Quayle. Aye.

1121 Ms. Kish. Mr. Quayle votes aye.

1122 Mr. Amodei?

1123 Mr. Amodei. No.

1124 Ms. Kish. Mr. Amodei votes no.

1125 Mr. Conyers?

1126 Mr. Conyers. No.

1127 Ms. Kish. Mr. Conyers votes no.

1128 Mr. Berman?

1129 [No response.]

1130 Ms. Kish. Mr. Nadler?

1131 Mr. Nadler. No

1132 Ms. Kish. Mr. Nadler votes no.

1133 Mr. Scott?

1134 Mr. Scott. No.

1135 Ms. Kish. Mr. Scott votes no.

1136 Mr. Watt?

1137 Mr. Watt. No.

1138 Ms. Kish. Mr. Watt votes no.

1139 Ms. Lofgren?

1140 Ms. Lofgren. No.

1141 Ms. Kish. Ms. Lofgren votes no.

1142 Ms. Jackson Lee?

1143 [No response.]

1144 Ms. Kish. Ms. Waters?

1145 Ms. Waters. No.

1146 Ms. Kish. Ms. Waters votes no.

1147 Mr. Cohen?

1148 [No response.]

1149 Ms. Kish. Mr. Johnson?
1150 [No response.]
1151 Ms. Kish. Mr. Pierluisi?
1152 [No response.]
1153 Ms. Kish. Mr. Quigley?
1154 Mr. Quigley. No.
1155 Ms. Kish. Mr. Quigley votes no.
1156 Ms. Chu?
1157 Ms. Chu. No.
1158 Ms. Kish. Ms. Chu votes no.
1159 Mr. Deutch?
1160 [No response.]
1161 Ms. Kish. Ms. Sanchez?
1162 Ms. Sanchez. No.
1163 Ms. Kish. Ms. Sanchez votes no.
1164 Chairman Smith. The gentleman from Arkansas?
1165 Are there members who wish to record their vote or
1166 change their vote? The gentleman from California, Mr.
1167 Gallegly?
1168 Ms. Kish. Mr. Gallegly?
1169 Mr. Gallegly. How am I recorded?

1170 Ms. Kish. Pass.

1171 Mr. Gallegly. Aye.

1172 Ms. Kish. Mr. Gallegly votes aye.

1173 Chairman Smith. The gentleman from North Carolina,

1174 Mr. Coble?

1175 Mr. Coble. No.

1176 Ms. Kish. Mr. Coble votes no.

1177 Chairman Smith. The gentleman from California, Mr.

1178 Lungren?

1179 Mr. Lungren. No.

1180 Ms. Kish. Mr. Lungren votes no.

1181 Chairman Smith. The gentleman from Arkansas, Mr.

1182 Griffin?

1183 Mr. Griffin. No.

1184 Ms. Kish. Mr. Griffin votes no.

1185 Chairman Smith. The gentleman from Wisconsin, Mr.

1186 Sensenbrenner?

1187 Mr. Sensenbrenner. No.

1188 Chairman Smith. The gentleman from Texas, Mr.

1189 Gohmert?

1190 Ms. Kish. Mr. Gohmert votes no.

1191 Chairman Smith. The gentleman from California, Mr. --
1192 Mr. Gohmert. Aye.
1193 Ms. Kish. Mr. Gohmert votes aye.
1194 Chairman Smith. The gentleman from California, Mr.
1195 Issa?
1196 Mr. Issa. No.
1197 Ms. Kish. Mr. Issa votes no.
1198 Chairman Smith. The gentleman from Georgia?
1199 Mr. Johnson. No.
1200 Ms. Kish. Mr. Johnson votes no.
1201 Chairman Smith. The gentleman from Tennessee, Mr.
1202 Cohen?
1203 Mr. Cohen. How am I recorded?
1204 Ms. Kish. Not recorded, sir.
1205 Mr. Cohen. I vote no.
1206 Ms. Kish. Mr. Cohen votes no.
1207 Chairman Smith. The gentleman from Virginia, Mr.
1208 Goodlatte?
1209 Mr. Goodlatte. Aye.
1210 Ms. Kish. Mr. Goodlatte votes aye.
1211 Chairman Smith. The clerk will report.

1212 Ms. Kish. Mr. Chairman, 6 members voted aye; 23
1213 members voted nay.

1214 Chairman Smith. The majority having voted against the
1215 amendment, the amendment is not agreed to.

1216 A reporting quorum being present, the question is on
1217 reporting the bill as amended favorably to the House. Those
1218 in favor, say aye.

1219 [Chorus of ayes.]

1220 Chairman Smith. Those opposed, no.

1221 [Chorus of nays.]

1222 Chairman Smith. In the opinion of the chair, the ayes
1223 have it and the bill, as amended, is ordered reported
1224 favorably.

1225 Without objection, the bill be reported as a single
1226 amendment in the nature of a substitute incorporating the
1227 amendment adopted, and staff is authorized to make technical
1228 and conforming changes. Members will have 2 days to submit
1229 their views.

1230 We will now proceed to considering H.R. 1254, the
1231 Synthetic Drug Control Act of 2011. Pursuant to notice, I
1232 now call up H.R. 1254 for purposes of markup, and the clerk

1233 will report the bill.

1234 Ms. Kish. "H.R. 1254, to amend the Controlled
1235 Substances Act to place synthetic drugs in Schedule I."

1236 Chairman Smith. Without objection, the bill will be
1237 considered as read.

1238 [The information follows:]

1239

1240 Chairman Smith. I will recognize myself for an
1241 opening statement and then the ranking member.

1242 H.R. 1254, the Synthetic Drug Control Act of 2011,
1243 addresses the threat posed by two classes of synthetic
1244 drugs. These drugs have no medical benefit, are abused by
1245 adolescents and adults on an increasing and sometimes deadly
1246 scale, and are manufactured and distributed without
1247 adherence to any safety standards. This bill places the two
1248 classes of synthetic drugs on Schedule I of the Controlled
1249 Substances Act.

1250 All controlled drugs are placed in one of five
1251 different schedules based on their potential for abuse, no
1252 medical uses, and safety standards for manufacture.
1253 Schedule I is reserved for those drugs that have a high
1254 potential for abuse, no known medical use, and poor or
1255 nonexistent manufacturing safety standards.

1256 Drug deaths now outnumber traffic fatalities in the
1257 United States. According to the most recent data from the
1258 U.S. Centers for Disease Control and Prevention, drugs
1259 killed almost 40,000 people nationwide in 2011. This
1260 problem is no longer limited to drugs like marijuana,

1261 cocaine, meth, and heroin. Prescription and synthetic drug
1262 abuse is increasingly prevalent in the U.S. This bill helps
1263 curb the threat to America's public health and safety posed
1264 by synthetic drugs.

1265 On October 21st, 2011, the Drug Enforcement
1266 Administration classified three of the most abused synthetic
1267 stimulants on the market today on Schedule I. These bath
1268 salts compounds are now under temporary Federal control and
1269 regulation.

1270 Synthetic stimulants are substitutes for cocaine,
1271 meth, and the club drug ecstasy. These drugs are
1272 intentionally mislabeled by their manufacturers as bath
1273 salts or plant food to trick the purchaser into thinking the
1274 drugs are mild or harmless. They are labeled "not for human
1275 consumption" to circumvent Federal law. In fact, they are
1276 neither bath salts nor plant food. Their only known purpose
1277 is consumption as a recreational drug.

1278 Synthetic stimulants are illegal in many States. As
1279 of September 15th, 2011, 37 States have enacted legislation
1280 prohibiting synthetic stimulants and 41 States have enacted
1281 legislation prohibiting synthetic cannabinoids which are

1282 manmade marijuana.

1283 Without a Federal ban, we cannot seize these synthetic
1284 drugs as they enter the U.S. and are limited in our ability
1285 to investigate interstate trafficking of the drugs.

1286 Congressional action will focus the resources of Federal
1287 drug law agencies on this escalating public health hazard.

1288 This bill is a recipe for safer communities. It helps
1289 protect Americans from the dangerous and deadly toll of
1290 synthetic drugs. For good reason, the Obama administration
1291 fully supports this legislation.

1292 I commend Ms. Adams for introducing her own drug bill
1293 to ban bath salts, of which I am a cosponsor. And I urge my
1294 colleagues to support this bill.

1295 The gentleman from Michigan, Mr. Conyers, is
1296 recognized for his statement.

1297 Mr. Conyers. Thank you, Mr. Chairman.

1298 I would yield to Bobby Scott, the former subcommittee
1299 chairman of this subject matter, and yield him our time on
1300 our side.

1301 Mr. Scott. Thank you, Mr. Chairman.

1302 Mr. Chairman, this bill will place over 30 chemical

1303 compounds on Schedule I of the Controlled Substances Act
1304 with no science behind it and with only eight of these
1305 substances actually present in the United States. Yet, the
1306 implications of all of this -- yet, none of the implications
1307 of this have been examined by us because we have not held
1308 any hearings regarding the matter on which we are taking
1309 action.

1310 Despite all of the misgivings about the clearly failed
1311 so-called "war on drugs" we have waged at a great expense to
1312 taxpayers and the people affected, we are again risking
1313 making the same mistakes by criminalizing a host of
1314 substances we know very little about. And we are short-
1315 circuiting the thoughtful process we set out in existing
1316 statutes for learning something about what we are going to
1317 do in order to rush headlong down the same dubious path we
1318 have gone with other drugs. Now, we know nothing about the
1319 relative harm or lack thereof of the drugs we are scheduling
1320 compared to those already scheduled.

1321 There are a myriad of problems with this bill, and I
1322 will be offering a series of amendments to hopefully address
1323 some of them.

1324 As noted, one of the biggest problems with the bill is
1325 it circumvents the normal scheduling process in
1326 criminalizing numerous substances without any scientific or
1327 medical evidence which is most troubling because with the
1328 harsh criminal penalties it can trigger, including a
1329 mandatory minimum sentence, if this bill passes, anyone who
1330 is in possession of these compounds can be charged with a
1331 Federal felony. The DEA and the bill's supporters claim to
1332 be concerned about young people who are experimenting with
1333 these substances, but these are the same young people who
1334 would be prosecuted once this bill passes. Given the harsh
1335 consequences of a Federal felony drug sentence and the
1336 criminal record in today's consequence, such youth might
1337 well wonder whether the cure creates a greater problem than
1338 the disease.

1339 There is simply no need to proceed in this fashion.
1340 In emergency situations, the Attorney General has the
1341 mechanism under 21 U.S.C. 812(h) to temporarily schedule
1342 substances to avoid imminent hazard to public safety. It
1343 has only been done in eight of these compounds and yet
1344 Congress is considering scheduling over 30 compounds. Now,

1345 perhaps this is because the rest of them have not even made
1346 it in the United States.

1347 This temporary scheduling provides the Attorney
1348 General with the time needed to conduct the research
1349 required by statute in order to permanently place the
1350 substance on Schedule I. This is an appropriate and
1351 reasonable way to proceed pending completion of a full
1352 process that is contemplated. Circumventing that process
1353 and running to Congress to schedule substances to avoid
1354 doing the research is not only a poorly supported policy but
1355 poor precedent as well.

1356 Now, Mr. Chairman, in your opening statement, you
1357 indicated that there are no constructive uses for these
1358 drugs, but if we had held hearings, we would have heard
1359 numerous concerns that have been expressed by knowledgeable
1360 individuals regarding premature scheduling of these
1361 substances, including those by researchers at the University
1362 of California at Irvine. They have indicated that doing so
1363 will significantly hinder research regarding these
1364 substances. The chair of the chemistry department there
1365 believes that, quote, classifying a broad list of chemicals

1366 as Schedule I would be an outright disaster for biochemical
1367 research. He goes on to note that the same structural
1368 components that make very potent drugs of abuse are also
1369 found in leading medications and new drug leads for a
1370 variety of important diseases such as Parkinson's disease
1371 and other neurological disorders.

1372 Another professor said that the problem with the sort
1373 of blanket coverage in the proposed legislation is that all
1374 of the compounds on the list have many potential uses as
1375 building blocks for other organic molecules with absolutely
1376 no relationship to cannabinoid receptors or hallucinogens.

1377 His concerns were echoed by another professor who
1378 indicated that he and his colleagues have been repeatedly
1379 hampered by restrictive treatment of mundane compounds such
1380 as perpedine and described the numerous hoops they must jump
1381 through to study them.

1382 For these reasons, Mr. Chairman, I believe that having
1383 Congress short-circuit its own thoughtful process to rush to
1384 criminalize substances we know little about, some of which
1385 are not even present in the United States at this point, is
1386 bad form and bad policy. We should not report the bill

1387 today.

1388 And I yield back the balance of my time.

1389 Chairman Smith. Thank you, Mr. Scott.

1390 The gentlewoman from Florida, Ms. Adams, is recognized
1391 for the purpose of offering an amendment in the nature of a
1392 substitute.

1393 Mrs. Adams. Thank you, Mr. Chairman.

1394 My amendment in the nature of a substitute would add
1395 nine substances --

1396 Chairman Smith. The clerk will report the amendment.

1397 Ms. Kish. "Amendment in the nature of a substitute to
1398 H.R. 1254, offered by Mrs. Adams."

1399 Chairman Smith. Without objection, the amendment will
1400 be considered as read.

1401 [The information follows:]

1402

1403 Chairman Smith. The gentlewoman is recognized to
1404 explain the amendment.

1405 Mrs. Adams. It would add nine substances to --

1406 Mr. Nadler. Mr. Chairman, we cannot hear the
1407 gentlelady.

1408 Mrs. Adams. It would add nine substances to H.R. 1254
1409 and would have the effect of placing them in Schedule I of
1410 the Controlled Substances Act, as well as reflect technical
1411 changes to the bill as reported out of the Energy and
1412 Commerce Committee.

1413 Substance abuse is a serious problem and every day new
1414 drugs pose deadly risks to our teenagers and other abusers.
1415 I have heard from my constituents at home in Florida and
1416 from my former colleagues at the sheriff's office that there
1417 has been increased abuse of snorting, injecting, or smoking
1418 chemicals known as "bath salts" by teenagers in the United
1419 States. These bath salts contain MDPV and mephedrone, two
1420 designer drugs sold on websites for as little as \$20 for a
1421 500-milligram packet. Increasingly, law enforcement agents
1422 and poison control centers are documenting cases where users
1423 end their own lives, the lives others, or participate in

1424 self-mutilation and assault as a result of these drugs.

1425 Bath salts, as they are commonly known, first appeared
1426 in Florida in Bay County last fall, according to narcotics
1427 experts, with several highly publicized incidents last
1428 winter. One case included a grown woman high on bath salts
1429 who attacked her mother with a machete.

1430 Another case took six deputies and several EMT's to
1431 subdue a man who had snorted two packages of bath salts as
1432 authorities took him to a local hospital for emergency
1433 treatment. During transport in a patrol car, the man ripped
1434 a radar detector from the interior of the car with his
1435 teeth.

1436 In light of these and other stories like these,
1437 several States have taken action to ban the substances,
1438 including Florida, where Governor Scott signed into law
1439 legislation that bans these synthetic stimulus from the
1440 State. However, these chemicals are not currently regulated
1441 under the Controlled Substances Act.

1442 That is why in April I introduced H.R. 1571 to amend
1443 the Controlled Substances Act to place two chemicals found
1444 in manufacturing bath salts on Schedule I. With 40

1445 cosponsors, H.R. 1571 has enjoyed bipartisan support
1446 including the esteemed ranking member of this committee,
1447 Representative John Conyers.

1448 My colleague from Pennsylvania, Representative Charles
1449 Dent, for whom I have great respect and have enjoyed working
1450 with on this issue, also introduced H.R. 1254, placing MDPV
1451 and mephedrone, as well as synthetic cannabinoids, in
1452 Schedule I. I applaud Representative Dent for introducing
1453 this legislation and am pleased the committee is considering
1454 it today.

1455 It is my hope this will provide law enforcement with
1456 the tools necessary to take the dangerous substances off the
1457 shelves, and I urge my colleagues on the committee to vote
1458 in favor of the legislation, as well as the amendment in the
1459 nature of a substitute. I am offering to add to Schedule I
1460 nine psychoactive substances commonly known as 2C substances
1461 which can cause hallucinations, nausea, anxiety, panic
1462 attacks, and paranoid ideation when ingested. The 2C class
1463 contains a number of substances already controlled in
1464 Schedule I of the Federal Controlled Substances Act that
1465 have resulted in serious health and safety issues. Schedule

1466 I substances have long chemical names but go by 2C-B and 2C-
1467 T-7 and were placed in Schedule I because they have no
1468 approved use in medicine and have a high potential for
1469 abuse.

1470 My amendment seeks to move additional substances in
1471 the 2C class to Schedule I, which is supported by law
1472 enforcement. In particular, 2C-E was determined to be the
1473 cause of death of a teenager in Blaine, Minnesota this
1474 March. Trevor Robinson, aged 19, and other teens ranging
1475 from 16 to 21 sought medical attention after ingesting too
1476 much of the substance at a spring break party. Trevor
1477 Robinson ingested 2C-E purchased by 21-year-old Timothy
1478 Lamere and died at the hospital after being removed from
1479 life support. Timothy Lamere was charged with third degree
1480 felony murder in the death of Trevor Robinson.

1481 According to data collected from State and local law
1482 enforcement nationwide, encounters with 2C-E and 2C-I were
1483 collectively just as prevalent as encounters with the
1484 Schedule I controlled substances 2C-B in 2010. In fact,
1485 State and local law enforcement have seen a 300 percent
1486 increase in encounters with these dangerous poisons over the

1487 last 5 years. These encounters have occurred in 33 of our
1488 50 States, including my home State of Florida.

1489 I strongly believe these nine substances need to be
1490 placed in Schedule I of the Controlled Substances Act for
1491 the safety of our teenagers and to aid law enforcement in
1492 apprehending traffickers and sellers of these drugs. I ask
1493 for your support of the amendment in the nature of a
1494 substitute and --

1495 Mr. Nadler. Would the gentlelady yield for a
1496 question?

1497 Mr. Issa. Would the gentlelady yield?

1498 Mrs. Adams. It will only be just one moment.

1499 And I would ask for unanimous consent to place into
1500 the record the AMA and DOJ letters of support.

1501 Chairman Smith. And without objection, the letters
1502 will be made a part of the record.

1503 [The information follows:]

1504

1505 Chairman Smith. And who wishes --

1506 Mr. Issa. If the gentlelady would yield.

1507 Chairman Smith. The gentleman from California, Mr.

1508 Issa.

1509 Mr. Issa. It is up to the gentlelady.

1510 Mrs. Adams. Yes.

1511 Mr. Issa. I just wanted to speak in support without
1512 taking a full 5 minutes. I think so many will argue here
1513 today that somehow this is going to lead to criminalization
1514 by the user rather than understanding that your work and the
1515 work of your colleagues is going to lead to these products
1516 coming off the shelves at gas stations and other places
1517 where they are being bought on an impulse.

1518 And I thank the gentlelady for yielding.

1519 Mr. Nadler. Will the gentlelady yield now?

1520 Mrs. Adams. And I yield back.

1521 Mr. Nadler. Will the gentlelady yield now? Mr.
1522 Chairman? I ask unanimous consent to grant the gentlelady
1523 an additional minute.

1524 Chairman Smith. The gentlewoman's time has expired.

1525 Who seeks recognition?

1526 Mr. Nadler. I asked unanimous consent she could have
1527 an additional minute to yield.

1528 Chairman Smith. Okay. Without objection, the
1529 gentlewoman is recognized for an additional minute.

1530 Mr. Nadler. Would the gentlelady yield?

1531 Mrs. Adams. Yes.

1532 Mr. Nadler. Thank you.

1533 You have given this very interesting account of the
1534 harm that these nine, I think you said, drugs can do, and
1535 therefore, you want to put them on Schedule I. Have you
1536 investigated or do we know that they have no medical use or
1537 no possible medical use? Maybe they should be put on
1538 Schedule II or III. I mean, how do we know it should be
1539 Schedule I?

1540 Mrs. Adams. Based on our information, there has been
1541 -- and the information and research we have done, there is
1542 no medical use at this time for these drugs.

1543 Mr. Nadler. At this time. How about research?

1544 Mrs. Adams. Well, here is the research we have. The
1545 Department of Justice, DEA has done multiple research, and
1546 if you would like, I would --

1547 Mr. Nadler. In other words, there is no ongoing
1548 research or --

1549 Mrs. Adams. This is the research --

1550 Mr. Nadler. In effect, when you put a drug on
1551 Schedule I, you are, for all practical purposes, eliminating
1552 the research possibilities because it makes it very
1553 difficult for research. Do we know that these drugs should
1554 not have research done on them?

1555 Mrs. Adams. You can always research Schedule I.

1556 Mr. Nadler. Well, you cannot always research Schedule
1557 I drugs.

1558 Mrs. Adams. Certainly today there is no medical use
1559 for it.

1560 Mr. Nadler. Thank you.

1561 Chairman Smith. Would the gentlewoman yield before
1562 she yields back her time?

1563 I also just wanted to add that the Office of National
1564 Drug Control Policy, the Drug Enforcement Administration,
1565 the Food and Drug Administration, and the American College
1566 of Emergency Physicians all have said that there is no known
1567 medical use for these drugs.

1568 The gentlewoman's time has expired.

1569 The gentleman from New York is recognized.

1570 Mr. Nadler. Thank you, Mr. Chairman.

1571 First of all, let me ask the chairman one question.

1572 As I understand the statute, under current statute, the DEA
1573 places a drug on a schedule, for instance, Schedule I, and
1574 if subsequent research or subsequent changes indicate, the
1575 DEA can take that drug off Schedule I at its discretion.

1576 Under this bill, we are placing a certain number of
1577 drugs on Schedule I. If this bill passes, will those drugs,
1578 as opposed to other drugs on Schedule I, be on Schedule I
1579 until Congress acts to take them off or does DEA have the
1580 ability to take them off if the facts should indicate in the
1581 future that they should be taken off?

1582 Chairman Smith. If the gentleman will yield.

1583 Mr. Nadler. I will.

1584 Chairman Smith. The quick answer is no.

1585 Mr. Nadler. No what?

1586 Chairman Smith. They will not automatically be taken
1587 off.

1588 Mr. Nadler. No, excuse me.

1589 Chairman Smith. The larger point I do want to make
1590 once again is that we have a rare alliance here where you
1591 have the administration and the Department of Justice
1592 supporting putting all these drugs --

1593 Mr. Nadler. Reclaiming my time, my question is, if
1594 the administration in the future, some administration,
1595 decides that the scientific evidence is that drug A should
1596 no longer be on Schedule I, will they have the authority to
1597 take it off as they do for all other drugs under this bill
1598 or will it be there until Congress acts again?

1599 Chairman Smith. If the gentleman will yield.

1600 Mr. Nadler. Yes.

1601 Chairman Smith. Yes, they can be put on a different
1602 schedule if evidence --

1603 Mr. Nadler. Without Congress or by the
1604 administration?

1605 Chairman Smith. Without Congress.

1606 Mr. Nadler. Thank you.

1607 Now, reclaiming my time, I would like to speak to this
1608 bill.

1609 Let me just say that I am told there are no controlled

1610 studies on these drugs that show that they should be on
1611 Schedule I. If there would be, then the administration
1612 would do it.

1613 Now, the administration may support a short circuit of
1614 the process, but I think that is a mistake. I think that
1615 the process that was set up years ago under which, after due
1616 research and due findings, the DEA can decide that a given
1617 drug should be on Schedule I or Schedule II should be
1618 followed. And we should not simply come along and by an
1619 amendment -- I mean, we just had an amendment to add nine
1620 more drugs. What do we really know about those nine drugs
1621 as opposed to other drugs? We don't.

1622 Mr. Marino. Will the gentleman yield?

1623 Mr. Nadler. Not yet.

1624 We are going to vote because it sounds good, because
1625 we are told that these drugs are terrible, and they may very
1626 well be terrible. But we are not the DEA. We are not a
1627 research agency. We do not have the facts before us. We
1628 are not a pharmacology department. I just think it is very
1629 wrong for Congress to put a drug on Schedule I or any other
1630 schedule. There is a process that was set up. Let the

1631 process work. If the administration thinks that these drugs
1632 ought to be on Schedule I, presumably they will wind up on
1633 Schedule I pretty soon. So why do we have to short-circuit
1634 the process?

1635 Now I will yield.

1636 Mr. Marino. May I ask the gentleman are you opposed
1637 to this drug being taken off the market?

1638 Mr. Nadler. I have no idea about these drugs. If the
1639 administration, if the DEA thinks that these various drugs
1640 -- I have no idea what they are -- if the DEA, after the
1641 normal process, thinks that these are dangerous that ought
1642 to be taken off the market, take them off the market. What
1643 I am opposed to is not taking them off the market. What I
1644 am opposed to --

1645 Mr. Marino. Will the gentleman yield again?

1646 Mr. Nadler. In a moment.

1647 -- is our making the decision without the facts and
1648 without the process. We have set up a process. We ought to
1649 use the process.

1650 I will yield.

1651 Mr. Marino. I see that my question, which I am

1652 getting to, my point here, drew some laughs from the other
1653 side. But as being a prosecutor for 18 years and one of the
1654 emphasis personally was taking dangerous drugs off the
1655 market.

1656 And it is very clear that the poison control centers
1657 are getting inundated with calls about this drug. Not only
1658 are people dying from it, they are becoming most violent.

1659 Mr. Nadler. Reclaiming my time --

1660 Mr. Marino. Overdoses have increased.

1661 Mr. Nadler. Reclaiming my time, assuming the accuracy
1662 of what you are saying -- and I have no reason to doubt it
1663 -- then the DEA will take it off the market and put it on
1664 the appropriate schedule.

1665 Mr. Marino. Will the gentleman yield again, please?

1666 Mr. Nadler. Yes.

1667 Mr. Marino. But don't you think we have a
1668 responsibility to save lives, and if this, by its being
1669 taken off the market at this point -- and you are going to
1670 have the research that you want down the road -- it is going
1671 to save lives. It is going to save --

1672 Mr. Nadler. Reclaiming my time. Your question is

1673 obvious.

1674 The answer is --

1675 Mr. Marino. I am sorry. I did not hear that. My
1676 question is what?

1677 Mr. Nadler. Obvious. I understand the question.

1678 38 States have already acted on these and more are
1679 pending, and the DEA can act expeditiously if the facts
1680 indicate that they should.

1681 What I am objecting to is not taking these drugs off
1682 the market. Maybe they all should be taken off. What I am
1683 objecting to is that we really, sitting here, have no idea.
1684 Congress is not a pharmacology agent. We do not have our
1685 laboratories, nor should we. We have set up a process. We
1686 have said the DEA should do this kind of thing. They do it.
1687 No one has come here and said that they are not doing it
1688 properly, that they are terribly dangerous drugs. No one
1689 has said that the DEA is insisting that these drugs remain
1690 on the market.

1691 Mr. Marino. Will the gentleman yield?

1692 Mr. Nadler. In a moment.

1693 My only thing is the process works. No one has come

1694 and said it doesn't work. Let it work. And if these are
1695 such dangerous drugs that the 38 States that have acted
1696 aren't sufficient, the DEA will do it. We shouldn't be the
1697 judges of that.

1698 Yes, I will yield.

1699 Mr. Marino. Two points, sir. Yes, 38 States have
1700 acted on this, but if the Federal Government acts on it, we
1701 have more leverage. We have more --

1702 Mr. Nadler. Then let the DEA do that.

1703 Mr. Marino. But why wait? Why wait for one more
1704 death to occur when all indicators are pointing --

1705 Mr. Nadler. Reclaiming my time.

1706 Mr. Marino. -- this drug is not a bath salt.

1707 Mr. Nadler. Reclaiming my time, first of all, it is
1708 not at all clear --

1709 Chairman Smith. The gentleman's time has expired.
1710 Without objection, the gentleman is recognized for an
1711 additional minute.

1712 Mr. Nadler. I thank the chairman.

1713 First of all, it is not clear that we can pass the
1714 legislation faster than the DEA would act. So it is not

1715 necessarily a question of time.

1716 Chairman Smith. Would the gentleman yield on that
1717 point to me?

1718 Mr. Nadler. Yes.

1719 Chairman Smith. The reason that the administration
1720 supports this bill and the reason we don't want to wait for
1721 the DEA or others to issue regulations is because the
1722 regulatory process takes so much longer. The administration
1723 wants us -- and I agree -- to get out in front of these
1724 drugs, to put them on Schedule I as quickly as we possibly
1725 can to prevent deaths, to prevent --

1726 Mr. Nadler. Reclaiming my time, I appreciate what the
1727 chairman just said, and it might very well make sense for us
1728 to have a bill here and pass a bill to give the DEA
1729 emergency power to act quickly and short-circuit the process
1730 as long as the process is followed up afterward.

1731 What I object to is not quick action. It may be that
1732 we should have quick action. I do not know anything about
1733 these drugs. What I object to is Congress sitting as a
1734 judge. We are not qualified to do that.

1735 Mrs. Adams. Will the gentleman yield?

1736 Mr. Nadler. Wait. We have set up an agency. They
1737 should act. If they need the ability to act more quickly,
1738 give them the ability to act more quickly. If they need the
1739 ability to act instantly and follow up with the evidence
1740 later, give them that ability. I wouldn't object to that.
1741 But we should have a process where this can be looked at
1742 rationally. I mean, how many people here are pharmacology
1743 experts --

1744 Chairman Smith. The gentleman's time has expired.

1745 Mr. Nadler. -- and know whether any of these drugs
1746 what we are being told about is accurate or not? None of us
1747 do.

1748 Chairman Smith. The gentleman's time has expired.

1749 Does the gentleman from Pennsylvania seek to be
1750 recognized?

1751 Mr. Marino. Yes, sir.

1752 Chairman Smith. All right. The gentleman from
1753 Pennsylvania is so recognized.

1754 Mr. Marino. Thank you.

1755 My friend, I agree with you that there is a system and
1756 the process will take effect. But also, I am not an expert,

1757 a pharmacological expert. Here is where I am expert, in
1758 seeing what these types of drugs do to our kids, do to the
1759 families, and how much they create violence.

1760 My question -- not so much a question -- the statement
1761 is why not -- let's be safe on both sides. Let's let the
1762 process take the necessary steps, but at the same time
1763 simultaneously, let's take it off the market because, with
1764 all due respect, I know how this is going to come back from
1765 DEA. It is going to come back as --

1766 Mr. Nadler. Will the gentleman yield?

1767 Mr. Marino. Excuse me?

1768 Mr. Nadler. Will the gentleman yield?

1769 Mr. Marino. Yes, sir.

1770 Mr. Nadler. So give the DEA the authority to act
1771 instantly for a certain period of time and then confirm or
1772 undo what they have done after a certain period of time. By
1773 all means, there should a way to act immediately, but it
1774 should be done by people who know what they are doing, not
1775 by, frankly, politicians sitting here who do not know what
1776 we are doing.

1777 Mr. Marino. Reclaiming my time, with all due respect,

1778 I think we know what we are doing. I know what I am doing.
1779 I know the experiences that I have. So why not let's just
1780 prevent someone else from dying, another child from dying
1781 because of these drugs?

1782 Mr. Cohen. Will the gentleman yield?

1783 Mr. Marino. Yes.

1784 Mr. Cohen. Thank you, sir.

1785 I understand. You are saying that we should save
1786 another life, that we will lose another life if we don't do
1787 this, and that these drugs cause family disturbance, they
1788 cause violence. It sounds like you are talking about
1789 alcohol. Amy Winehouse died because of alcohol poisoning.
1790 32,000 people die or more in DUI accidents, which I know you
1791 prosecuted. Should we not make alcohol illegal since it
1792 causes the death of people and --

1793 Mr. Marino. Reclaiming my time, unfortunately or
1794 fortunately, however you look at it, I am not a drinker.

1795 So --

1796 Mr. Cohen. You don't have to be a drinker.

1797 Mr. Marino. Excuse me?

1798 Mr. Cohen. You don't have to be a drinker to save

1799 lives.

1800 Mr. Marino. Well, that is the point I am trying to
1801 make. I am not a drinker. So why let one evil go on
1802 because of your feeling or my feeling about something else?

1803 Mr. Cohen. I am saying we should judge which drugs
1804 cause the most damage to society, kill the most people,
1805 break up the most families, and cause the most violence.
1806 And without question, it is alcohol.

1807 Mr. Marino. Reclaiming my time, I do not disagree
1808 with you, but that is not before us today. What is before
1809 us today is the designer drug that has been established that
1810 it is killing our children.

1811 Mr. Nadler. Would the gentleman yield? Thank you.

1812 I am told -- in fact, I was just pointed to page 1393
1813 of the drug abuse, prevention, and control law, and let me
1814 read one sentence. If the Attorney General finds that the
1815 scheduling of a substance in Schedule I on a temporary basis
1816 is necessary to avoid an imminent hazard to the public
1817 safety, he may by order and without regard to the
1818 requirements of section B schedule such substance right away
1819 in effect. In other words, the Attorney General has the

1820 authority today, if he wants to, to put any of these on
1821 Schedule I pending further investigation. He has got that
1822 authority. I don't understand why the administration --

1823 Mr. Marino. Reclaiming my time, I am not going to get
1824 into what the Attorney General is thinking or what he should
1825 be doing or not doing at this point. Again, clearly, that
1826 is not the issue.

1827 I do not understand -- I clearly do not understand
1828 where the opposition is here based on the fact that the
1829 evidence that has been shown to us, the calls that I have
1830 received from law enforcement in my district and across this
1831 country what this drug is doing. Does the gentleman realize
1832 that this is not even a bath crystal? It was a designer
1833 drug by drug pushers, drug dealers, individuals who will
1834 make money off this --

1835 Mr. Nadler. Which one? Aren't we talking about 39
1836 drugs?

1837 Mr. Marino. The bath crystal. The entity in and of
1838 itself with a combination of drugs. You are starting to
1839 pick this apart --

1840 Ms. Lofgren. Would the gentleman yield?

1841 Mr. Marino. -- drug by drug. In a moment.

1842 But we know what the ultimate end is here. And I just
1843 cannot for the sake of me understand why you would not want
1844 to stop this immediately, knowing that we are going to do
1845 the research and continue to do the research.

1846 Ms. Lofgren. Would the gentleman yield for a
1847 question?

1848 Mr. Marino. Yes, ma'am.

1849 Ms. Lofgren. I actually agree with you on this bath
1850 salt issue. I mean, it is very dangerous. I have a son and
1851 a daughter. I don't think there is a disagreement.

1852 The question is the unintended consequences. I would
1853 like unanimous consent to put into the record the responses
1854 from the UC-Irvine faculty to a question posed by a
1855 Republican lawmaker on what is the impact.

1856 If this is on Schedule I, it is precursor chemicals.
1857 Scientists cannot even study this. And so the question is
1858 why I instead of II? Because then you would control it.
1859 You would have law enforcement control, but you also have
1860 the opportunity for scientists to do the -- here is what one
1861 of the scientists Professor Rykovski said. I think the

1862 classifying of broad lists of chemicals as Schedule I would
1863 be an outright disaster for biomedical research. And they
1864 go on talking about --

1865 Mr. Conyers. The gentleman's time has expired. The
1866 gentleman from Pennsylvania is recognized for an additional
1867 minute without objection.

1868 Mrs. Adams. Will the gentleman yield?

1869 Mr. Marino. Yes, I will yield. I want to go back to
1870 your issue.

1871 Mrs. Adams. In answer to that, the Controlled
1872 Substances Act does not preclude research with schedule I
1873 controlled substances. Instead, CSA requires that a
1874 researcher apply for and obtain a registration from the
1875 DEA --

1876 Ms. Lofgren. He will never get it.

1877 Mrs. Adams. -- in order to perform such research.

1878 And I yield back.

1879 Mr. Marino. It is my understanding that the DEA can
1880 authorize further research on this and I would support that.

1881 Ms. Lofgren. If the gentleman would yield. Name me
1882 one time they ever have. They have never --

1883 Chairman Smith. The gentleman from Pennsylvania has
1884 the time and has not yielded at this point.

1885 Mr. Marino. I am sorry.

1886 Chairman Smith. You have the time.

1887 Mr. Marino. We can go on with the statistics and
1888 numbers. And researchers have identified this as a deadly
1889 drug. Let's err on the side of caution. Let's err on the
1890 side of caution and do this, allow for the research. We
1891 know how it is going to turn out. If there are any benefits
1892 from this, I am going to be the first to support you saying
1893 DEA allowing this and research be able to look into this.
1894 But it is going to save lives now.

1895 Chairman Smith. The gentleman's time has expired.

1896 We are going to adjourn for the day and then resume
1897 markup of this legislation next week.

1898 We stand adjourned.

1899 [Whereupon, at 10:37 a.m., the committee was
1900 adjourned.]