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4 MARKUP OF H.R. 1996, THE GOVERNMENT LITIGATION SAVINGS ACT;

5 H.R. 1864, THE MOBILE WORKFORCE STATE INCOME TAX

6 SIMPLIFICATION ACT OF 2011; H.R. 2815, TO REVISE THE

7 FEDERAL CHARTER FOR THE BLUE STAR MOTHERS OF AMERICA, INC.,

8 TO REFLECT A CHANGE IN ELIGIBILITY REQUIREMENTS FOR

9 MEMBERSHIP; AND H.R. 3256, THE DEPORT CONVICTED FOREIGN

10 CRIMINALS ACT OF 2011

11 Thursday, November 17, 2011

12 House of Representatives

13 Committee on the Judiciary

14 Washington, D.C.

15 The committee met, pursuant to call, at 10:04 a.m., in

16 Room 2141, Rayburn Office Building, Hon. Lamar Smith,

17 [chairman of the committee] presiding.

18 Present: Representatives Smith, Sensenbrenner, Coble,
19 Gallegly, Lungren, Chabot, Forbes, King, Franks, Gohmert,
20 Jordan, Poe, Chaffetz, Griffin, Marino, Gowdy, Ross, Adams,
21 Quayle, Amodei, Conyers, Berman, Nadler, Scott, Watt,
22 Lofgren, Jackson Lee, Waters, Cohen, Johnson, Pierluisi,
23 Quigley, Chu, Deutch, and Sanchez.

24 Staff present: Sean McLaughlin, Chief of Staff;
25 Allison Halatei, Deputy Chief of Staff/Parliamentarian;
26 Sarah Kish, Clerk; John Hilton, Counsel; Travis Norton,
27 Counsel; Dan Huff, Counsel; Perry Apelbaum, Minority Staff
28 Director; Norbeto Salina, Counsel; and David Shahrlian,
29 Counsel.

30

31 Chairman Smith. The Judiciary Committee will come to
32 order.

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

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

36 Ms. Kish. Mr. Smith?

37 Chairman Smith. Present.

38 Ms. Kish. Mr. Sensenbrenner?

39 Ms. Kish. Mr. Coble?

40 Mr. Coble. Present.

41 Ms. Kish. Mr. Gallegly?

42 Ms. Kish. Mr. Goodlatte?

43 Mr. Goodlatte. Present.

44 Ms. Kish. Mr. Lungren?

45 Ms. Kish. Mr. Chabot?

46 Ms. Kish. Mr. Issa?

47 Ms. Kish. Mr. Pence?

48 Ms. Kish. Mr. Forbes?

49 Mr. Forbes. Present.

50 Ms. Kish. Mr. King?

51 Ms. Kish. Mr. Franks?

52 Mr. Franks. Here.

53 Ms. Kish. Mr. Gohmert?

54 Ms. Kish. Mr. Jordan?

55 Ms. Kish. Mr. Poe?

56 Ms. Kish. Mr. Chaffetz?

57 Mr. Chaffetz. Present.

58 Ms. Kish. Mr. Griffin?

59 Ms. Kish. Mr. Marino?

60 Mr. Marino. Present.

61 Ms. Kish. Mr. Gowdy?

62 Ms. Kish. Mr. Ross?

63 Ms. Kish. Ms. Adams?

64 Ms. Adams. Present.

65 Ms. Kish. Mr. Quayle?

66 Mr. Quayle. Present.

67 Ms. Kish. Mr. Amodei?

68 Mr. Amodei. Present.

69 Ms. Kish. Mr. Conyers?

70 Mr. Conyers. Present.

71 Ms. Kish. Mr. Berman?

72 Ms. Kish. Mr. Nadler?

73 Ms. Kish. Mr. Scott?

74 Ms. Kish. Mr. Watt?

75 Ms. Kish. Ms. Lofgren?

76 Ms. Kish. Ms. Jackson Lee?

77 Ms. Kish. Ms. Waters?

78 Ms. Kish. Mr. Cohen?

79 Ms. Kish. Mr. Johnson?

80 Ms. Kish. Mr. Pierluisi?

81 Ms. Kish. Mr. Quigley?

82 Ms. Kish. Ms. Chu?

83 Ms. Kish. Mr. Deutch?

84 Ms. Kish. Ms. Sanchez?

85 Chairman Smith. The gentleman from Virginia, Mr.

86 Scott?

87 Mr. Scott. Present.

88 Chairman Smith. While we are waiting for a couple
89 more members to arrive so that we will have a working
90 quorum, I am going to use this time to talk a little bit
91 about the history of the House Judiciary Committee, and the
92 members of the committee who are not here are simply going
93 to be at a disadvantage and miss some valuable information.

94 One of the perks of being chairman of this committee
95 is that you get to determine what portraits are hung in
96 this room. And we are going to unveil a --

97 Mr. Conyers. Mr. Chairman, if the gentleman would
98 yield.

99 Chairman Smith. I will be happy to yield.

100 Mr. Conyers. I had agreed with my staff that the
101 picture that is covered up -- I guess we are getting ready
102 to talk about it now. That is a portrait of myself that
103 has been hanging there. And the only reason I had not
104 uncovered it, I was going to wait until the very next
105 election where I could then more appropriately unveil it.

106 [Laughter.]

107 Mr. Conyers. And what you are doing today may be
108 upsetting that plan completely.

109 Chairman Smith. Well, I have a solution to that I
110 will mention in a minute as well.

111 Before we get to the portrait in the back of the room,
112 first let me mention some brief facts about the individuals
113 who are represented here today by their portraits.

114 We will start to my immediate right on the wall there.

115 That is Hatton Sumners who actually was the first chairman
116 of the Judiciary Committee to be from Texas. He served
117 from 1913 to 1947 34 years and served as chairman of this
118 committee for 16 years.

119 To Hatton Sumners left is a relatively unknown figure,
120 George Graham from Pennsylvania, and he was a predecessor
121 to Hatton Sumners. He served from 1912 to 1931 and was
122 chairman of the committee for 8 years.

123 In the corner to the right of the exit door there is
124 Emmanuel Celler from New York. He served in Congress for
125 49 years and chairman as 20 years and, while he was
126 chairman, helped pass three significant civil rights bills
127 and actually did overlap, I believe, with the ranking
128 member, John Conyers.

129 Let's see. To my immediate left over here is Peter
130 Rodino from New Jersey. He served in Congress for 40
131 years, from 1948 to 1989, and served as chairman for 16
132 years.

133 By the way, too bad that we don't enjoy the good old
134 times. He served as 16 years, Emmanuel Celler 20 years as
135 chairman of this committee, Hatton Sumners at 16 years. I

136 am afraid those days are gone.

137 In any case, Peter Rodino, of course, was known for
138 many things but they would include the impeachment of
139 Richard Nixon.

140 To my left on the corner there, of course,
141 recognizable to many of us is Henry Hyde from Illinois. He
142 was elected in 1974, served 6 years as chairman of the
143 Judiciary Committee, known primarily for the Hyde Amendment
144 which restricted funding of abortions and for the
145 impeachment of Bill Clinton.

146 Behind us to my left here is Jack Brooks who was the
147 second chairman of this committee to be from Texas. He
148 served for 42 years, from 1952 to 1994, and as chairman of
149 the committee for 4 years.

150 Behind me on this side is Jim Sensenbrenner who was
151 the chairman from 2001 to 2007. I just saw Jim in the
152 hallway and he will be with us shortly. He had a medical
153 procedure but he still will be here momentarily.

154 Now, for the newest portrait in the back, I am going
155 to ask those of you all who don't already know and didn't
156 get an earlier hot tip who you think this might be on the

157 basis of my description. This individual in the back of
158 the room served 10 years in the House, served 19 years as a
159 Senator, and served as Secretary of State under three
160 different Presidents. This was in the 1800's. Do we have
161 anyone --

162 Voice. Webster.

163 Chairman Smith. There is an alert member of the
164 committee who must have gotten a tip. It is in fact Daniel
165 Webster.

166 Now, before we unveil Daniel Webster, I hope sometime
167 in the next 12 months or so we will be unveiling another
168 portrait, that of John Conyers, and I have just encouraged
169 him to get his portrait done. He claims that this is his
170 portrait, but I am hoping that there will be a subsequent
171 portrait. And frankly, I am afraid our friend, George
172 Graham, over here who nobody knows or recognizes, might be
173 disappearing and John Conyers might be appearing.

174 All right. Now that everybody knows who it is -- oh,
175 by the way, one more fact before we get to unveil Daniel
176 Webster, there is another well-known former chairman of the
177 House Judiciary Committee whose portrait we don't have and

178 whose portrait we may never have because of his
179 unpopularity, but he actually became President of the
180 United States. He was from Pennsylvania, the only bachelor
181 President. Does anybody want to guess who that is?

182 Voice. Buchanan.

183 Chairman Smith. James Buchanan it was. He was, like
184 I said, preceded Abraham Lincoln, was particularly
185 unpopular, so we voted, I am afraid, for Daniel Webster
186 over James Buchanan. Sean McLaughlin, I think, is going to
187 pull that, and we will see what it looks like. Yes, don't
188 pull the whole portrait down.

189 [Laughter.]

190 Chairman Smith. While Sean is doing this --

191 [Applause.]

192 Chairman Smith. I am not really sure Mr. Conyers
193 wants to claim that that is his likeness after all.

194 Mr. Conyers. Somebody switched pictures.

195 Mr. Gallegly. Mr. Chairman?

196 Chairman Smith. The gentleman from California, Mr.

197 Gallegly?

198 Mr. Gallegly. Mr. Chairman, I would ask that our good

199 friend Sean check, but that picture is certainly not level.

200 Chairman Smith. Well, we want to level off the man
201 who wrote the dictionary there.

202 Let me recognize some additional members, and then I
203 do believe we will have a working quorum.

204 The gentleman from Arizona?

205 Mr. Franks. Present.

206 Chairman Smith. The gentlewoman from California, Ms.
207 Lofgren?

208 Ms. Lofgren. Present.

209 Chairman Smith. The gentleman from Illinois?

210 Mr. Quigley. Here.

211 Chairman Smith. The gentleman from Utah?

212 Mr. Chaffetz. Here.

213 Chairman Smith. And the gentleman from California who
214 just made the comment on the portrait, Mr. Gallegly?

215 Mr. Gallegly. Present.

216 Chairman Smith. And the gentleman from Texas, Mr.
217 Gohmert, is here.

218 Mr. Gohmert. Here.

219 Chairman Smith. Is there anyone else who seeks to

220 record their presence? The gentleman from Florida, Mr.
221 Ross?

222 Mr. Ross. Present.

223 Chairman Smith. Pursuant to notice, I now call up
224 H.R. 1996 for purposes of markup, and the clerk will report
225 the bill.

226 Ms. Kish. "H.R. 1996, to amend title 5 and 28, United
227 States Code with respect to the" --

228 Chairman Smith. Without objection, the bill will be
229 considered as read.

230 [The information follows:]

231

232 Chairman Smith. And I will recognize myself for an
233 opening statement.

234 In an ideal situation, parties in civil litigation
235 would follow the Golden Rule, treating one another as they
236 would like to be treated. In the United States, each party
237 must bear its own attorney's fees and costs. This can
238 allow a party with weak legal claims but deep pockets to
239 give a significant advantage by dragging out the case.
240 When this happens, rather than the Golden Rule, it may be
241 that he who has the gold makes the rules.

242 And nobody has more gold than the Federal Government.
243 If it runs out of money, it just prints more. The Federal
244 Government has thousands of lawyers on staff, none of whom
245 bill by the hour. No person or corporation could ever hope
246 to compete with such overwhelming resources.

247 To prevent the Federal Government from abusing its
248 vastly superior litigation resources, Congress adopted the
249 Equal Access to Justice Act. When the Government loses in
250 court, the act allows a court to order the Government to
251 pay the other side's attorney's fees and costs if the
252 Government's position was unreasonable. The act was meant

253 to be an anti-bully law to help small businesses and
254 ordinary American taxpayers defend their rights in
255 litigation against the Federal Government.

256 For some time now, Ms. Lummis, our colleague from
257 Wyoming, has been investigating whether the act is working
258 as it should, and I want to acknowledge her efforts in this
259 regard. I also want to thank Mr. Coble for his
260 subcommittee's diligent consideration of Ms. Lummis' bill,
261 H.R. 1996, the Government Litigation Savings Act, on
262 October 11th.

263 One issue that I hope we can all agree upon is the
264 need for transparency. American taxpayers have a right to
265 know how much money the Federal Government is paying out
266 every year in attorney's fees and costs under the act. But
267 no annual reports have been made since fiscal year 1994.
268 This bill restores the reporting requirement and requires
269 an audit of payments since 1995. The annual reports filed
270 from 1980 to 1994 showed that most awards under the act
271 were modest sums paid to veterans and Social Security
272 recipients. This was as it should be.

273 But whether the act is still mainly serving its

274 original legitimate purpose is in doubt. Certain frequent
275 litigants, particularly 501(c)(3) corporations that enjoy
276 the additional benefit of being exempt from the act's net
277 worth limitation, are financing their lawsuits with large
278 awards of attorney's fees paid under the act. These awards
279 often are made in ideologically driven lawsuits where the
280 organization is trying to advance its policy preference
281 through litigation. American taxpayers should not be
282 forced to pay attorney's fees and costs in some of these
283 circumstances.

284 The act originally capped attorney's fees at \$75 per
285 hour. This was raised to \$125 per hour in 1996. Times
286 have changed since 1996, and Congress once again should
287 raise the act's hourly cap on attorney's fees. The act
288 does allow courts to award attorney's fees greater than
289 \$125 per hour if a special factor justifies a higher hourly
290 rate, but courts appear to be interpreting this exception
291 very loosely by routinely awarding attorney's fees at much
292 higher rates.

293 To prevent the exception from swallowing the rule, the
294 bill raises the cap on hourly rates in exchange for

295 eliminating the exemption. The bill also creates a
296 mandatory annual inflation adjustment mechanism to keep the
297 cap current as the cost of living increases.

298 In closing, I want to thank our colleague, Ms. Lummis,
299 for her dedication to this issue and to thank Mr. Coble and
300 the subcommittee for their consideration of H.R. 1996.

301 That concludes my opening statement.

302 The gentleman from Michigan, the ranking member, is
303 recognized for his.

304 Mr. Conyers. Thank you, Chairman Smith.

305 Sometimes you begin to wonder who is against the bill
306 and then you begin to ask yourself why. There are many
307 groups and organizations that do not support H.R. 1996:
308 the American Civil Liberties Union, the American
309 Association for Justice, the Center for Food Safety, the
310 Defenders of Wildlife, Earth Justice, the Endangered
311 Species Coalition, the Law Foundation of Silicon Valley,
312 the Oregon Wild, People for the American Way, the National
313 Consumer Law Center, the National Legal Aid and Defender
314 Association, the Sierra Club, Public Citizen, and at least
315 a half dozen others.

316 The opposition is that this bill would prohibit those
317 seeking to enforce important rights and interests like food
318 safety, highway safety, pollution protection from
319 recovering attorney fees under the so-called Equal Access
320 to Justice Act, and in doing so, it would harm all
321 Americans and could serve as a de facto bar to the
322 courthouse door for low-income citizens and other parties
323 that do not have access to free legal counsel. And so what
324 starts off as a perfectly good idea is now explained that
325 beneath this is a very harmful way to have people and
326 organizations of lesser means from being able to have their
327 day in court.

328 So I ask unanimous consent that the opposition
329 organizations to Government Litigation Savings Act, H.R.
330 1996, be included in the record with my statement.

331 Chairman Smith. Without objection, so order.

332 [The information follows:]

333

334 Mr. Conyers. May I find out if Joe Nadler or Bobby
335 Scott would like to use any of this time? Okay. Then I
336 will yield to Steve Cohen the remainder of my time.

337 Mr. Cohen. Thank you. Thank you, Mr. Ranking Member.

338 In preparing for the markup, I was ready to restate
339 all the critiques of the bill that I had laid out in the
340 subcommittee. The bill, as introduced, would have made it
341 very difficult for veterans, seniors, et cetera. And it
342 appears I kind of jumped the gun trying to work with our
343 wonderful chairman. We hoped we had some opportunity to
344 work together and try to see that the attorney's fees were
345 set at some reasonable level, but I understand that that
346 has kind of fallen apart. It is what I have been told by
347 staff. And if that is the case, then I will be offering
348 the amendment.

349 I would hope that we could come up with something in a
350 manager's amendment that would address the attorney's fees.
351 Representative Lummis and I talked and we hoped that we
352 could do this, and I thought we were coming into the
353 meeting. And the same thing for the chairman. Obviously,
354 the law fee amounts would be sufficient at some level. But

355 I think there should be something reasonable placed in the
356 bill and not necessarily eliminating the opportunity for
357 people to get attorneys to take them to challenge what they
358 need to challenge. So with that in mind, I still hope
359 there is an opportunity for discussion, and I yield back
360 the balance of my time.

361 Mr. Conyers. I yield back.

362 Chairman Smith. Thank you, Mr. Conyers.

363 The gentleman from North Carolina, Mr. Coble, the
364 chairman of the Courts, Commercial and Administrative Law
365 Subcommittee, is recognized.

366 Mr. Coble. I thank the chairman. Mr. Chairman, like
367 you, I want to thank the gentlelady from Wyoming as well
368 and the members of our subcommittee and the very productive
369 hearing that was conducted last month on this bill.

370 In short, the amendment builds on the bill's framework
371 of carefully tailored reforms to the Equal Access to
372 Justice Act so the act continues to serve those who truly
373 need it. Unlike a private party, the doctrine of sovereign
374 immunity prevents a court from ordering the Federal
375 Government to pay anyone's attorney's fees. Absent a

376 specific fee-shifting statute, of which there are more than
377 200 currently on the books, American taxpayers would never
378 have to pay a dime in attorney's fees to a private party.
379 Congress recognized the potential for Government lawyers to
380 abuse this privilege, especially in litigation against non-
381 wealthy citizens and small businesses. These are the
382 people who the Equal Access to Justice Act should protect.

383 But now it looks like the abuse is running the other
384 way. Certain ideologically oriented 501(c)(3) corps which,
385 in addition to being tax-free, also are exempt from the
386 act's means testing, have used the act to finance
387 ideological oftentimes and policy-driven litigation against
388 the Federal Government. The amendment would put a stop to
389 this -- the manager's amendment. Like the bill, the
390 amendment eliminates the means testing exemption for
391 501(c)(3) corporations. Of course, they can still file
392 suit and small groups may still qualify for attorney's fees
393 under the act, but taxpayers should not be required to
394 finance well-endowed 501(c)(3)'s lawsuits against the
395 Government. The amendment also prevents these groups from
396 creating shell affiliates to continue benefitting from the

397 act.

398 The act currently caps attorney's fees at \$125 per
399 hour. At the subcommittee's hearing, the minority witness
400 testified that his amount is around \$180 when adjusted for
401 inflation. The amendment raises the cap of hourly fees to
402 \$200 and eliminates the special factor exemption which the
403 subcommittee learned courts are interpreting very loosely.

404 The amendment contains the added protection of
405 requiring agencies to notify the defendant in an
406 adjudication of the act so someone without counsel could
407 know his or her rights. Like the bill, the amendment
408 requires courts and agencies to reduce attorney's fees when
409 a party runs up the tab by dragging out the litigation,
410 which I am told happens from time to time. The bill allows
411 the Director of OMB to raise the hourly fee cap annually to
412 account for inflation. At the hearing, the minority
413 witness argued that this should be mandatory, so the
414 amendment replaces the word "may" with the word "shall" and
415 requires the Director to make this adjustment every year
416 following the Consumer Price Index.

417 The amendment also clarifies the requirement that a

418 party must have a direct and personal interest in a case in
419 order to collect attorney's fees under the act. This is to
420 ensure that the Government is not spending taxpayer dollars
421 on lawsuits attacking a minor or technical oversight in the
422 Government's decision-making process. Groups may still
423 bring these kinds of suits, of course, but not on the
424 taxpayer's dime. The act should protect people and
425 organizations whose substantive rights have been violated
426 by an unreasonable Government policy or decision. And I
427 hope the amendment satisfies any concerns in this regard.

428 Finally, the amendment strengthens the bill's
429 reporting requirements. Unfortunately for the past 15
430 years, no annual reports were filed under the act. The
431 amendment corrects this so taxpayers can now know the
432 amount of money that the act costs and who is getting paid.

433 Looking forward, the Administrative Conference of the
434 United States will be responsible for making annual reports
435 to the Congress, and the agencies and the Attorney General
436 must give the conference all the information it needs.

437 Looking back, the amendment directs the Government
438 Accountability Office to audit awards under the act since

439 the last annual report was made, which was fiscal year
440 1994.

441 In closing, Mr. Chairman, the amendment improves the
442 bill by maintaining its core reforms to the act while
443 addressing several points raised at the subcommittee's
444 hearing. The amendment restores transparency, protects
445 taxpayer dollars, and ensures that the act will serve those
446 small businesses and ordinary Americans who truly need its
447 protection.

448 Without objection, Mr. Chairman, I would like to
449 submit for the record some letters of endorsement,
450 including one from the Farm Bureau and one from the
451 National Cattlemen's Beef Association.

452 [The information follows:]

453

454 Mr. Coble. I apologize for the detailed statement to
455 my colleagues and the chairman, but I felt that details
456 were necessary to fully apprise the members of what this
457 bill does.

458 And I yield back.

459 Chairman Smith. Thank you, Mr. Coble.

460 You jumped ahead of me a little bit on this, and as I
461 understand it, you just made the statement on the amendment
462 in the nature of a substitute. I need to first ask the
463 clerk to report the amendment.

464 Mr. Coble. I apologize for having done that, Mr.
465 Chairman.

466 Chairman Smith. We will consider that done. And
467 without objection, the amendment will be considered as
468 read.

469 [The information follows:]

470

471 Chairman Smith. The gentleman has just given his
472 statement on the amendment in the nature of a substitute.

473 Are there other members who wish to be heard on the
474 amendment in the nature of a substitute?

475 [No response.]

476 Chairman Smith. If not, we will go to amendments to
477 the amendment in the nature of a substitute. Are there
478 members who wish to offer amendments?

479 If not --

480 Mr. Cohen. Mr. Chairman?

481 Chairman Smith. The gentleman from Tennessee, Mr.
482 Cohen?

483 Mr. Cohen. I am not going to offer my amendment on
484 two bases: number one, in the hopes that we will be able
485 to work out something appropriate on the attorney's fees
486 and not have a cap of \$200; and secondly, on the fact that
487 I did do better in math than Governors in Texas.

488 I yield back the balance of my time.

489 Chairman Smith. Thank you, Mr. Cohen.

490 If there are no members who wish to offer amendments,
491 the question is on the --

492 Mr. Scott. Mr. Chairman?

493 Chairman Smith. The gentleman from Virginia, Mr.
494 Scott?

495 Mr. Scott. I understood that Mr. Johnson was going to
496 introduce an amendment, and if he is not here to introduce
497 it, I would like to introduce it.

498 Chairman Smith. Okay. The gentleman from Virginia is
499 recognized to offer the amendment that would have been
500 offered by Mr. Johnson. And the clerk will report the
501 amendment.

502 Ms. Kish. "Amendment to the amendment in the nature
503 of a substitute to H.R. 1996 offered by Mr. Scott."

504 Chairman Smith. Without objection, the amendment will
505 be considered as read.

506 [The information follows:]

507

508 Chairman Smith. And the gentleman from Virginia is
509 recognized to explain the amendment.

510 Mr. Scott. Mr. Chairman, this amendment is fairly
511 straightforward. It would strike the cap of attorney's
512 fees, the monetary cap, and replace it with reasonable
513 attorney's fees. Some of these cases may be complex and
514 the judge can determine what a reasonable fee is without
515 the monetary cap. So I would hope that we would adopt the
516 amendment. I mean, a judge knows what is reasonable and
517 what is not reasonable under the circumstances. And you
518 could have the anomaly of one side being able to afford an
519 attorney at the going rate for that kind of case, and the
520 other side is stuck with this arbitrary limit.

521 I yield back.

522 Mr. Conyers. Will the gentleman yield?

523 I would just like to compliment him on introducing the
524 Johnson amendment and explain it in this way.

525 This amendment would replace the \$200 capped attorney
526 fee rate with a reasonable attorney fee so that in the end,
527 the attorney's compensation would be determined by a judge
528 rather than to have a fixed cap that would be unchangeable.

529 And this is sometimes necessary for complicated cases which
530 require members of the bar that possess special knowledge
531 or in some jurisdictions where legal fees are higher than
532 they are in other locales.

533 So I support this amendment and hope that we can
534 prevail on modifying the substitute bill in this way.

535 And I yield back.

536 Chairman Smith. Thank you, Mr. Conyers.

537 Before you yield back, without objection we will yield
538 the gentleman from Virginia an additional 3 minutes in case
539 he wants to yield to the gentleman from Georgia, Mr.
540 Johnson.

541 Mr. Scott. I will yield to the gentleman from Georgia
542 or he can get his own time. I would yield 3 minutes to the
543 gentleman from Georgia.

544 Mr. Johnson. Thank you, Chairman and also Congressman
545 Scott.

546 This amendment would strike language and replace it
547 with a reasonable attorney's fees standard. Under the
548 Equal Access to Justice Act, the individuals, small
549 businesses, and certain nonprofits are awarded attorney's

550 fees when they successfully sue the Government for an
551 illegal action. Seniors, veterans, and groups representing
552 consumers or environmental interests have used the EAJA to
553 bring claims against the Government that otherwise would
554 not have been brought because litigants lack the resources
555 to pay attorneys. EAJA has been instrumental in helping
556 individuals obtain veterans, Social Security benefits and
557 other benefits.

558 Currently EAJA limits attorney's fees to \$125 an hour,
559 but courts have discretion to determine that higher fees
560 are justified. This bill seeks to limit attorney's fees to
561 \$175 an hour, and the manager's amendment seeks to cap
562 attorney's at \$200 per hours.

563 At first blush, this may look like an improvement, but
564 it is actually not. Both the original bill and the
565 manager's amendment cap attorney's fees and fail to allow
566 the court to exercise discretion to increase fees if
567 necessary. Veterans, seniors, and disabled have relied on
568 EAJA to challenge the Government on illegal actions. This
569 bill does not help them. This is not fair to our veterans
570 and senior citizens who may not be able to bring an action

571 to collect benefits because they cannot find an attorney
572 willing to take their case with such a cap.

573 In many instances, those who have been harmed by
574 Government bring class action litigation against or under
575 EAJA. It is unreasonable to expect that class action
576 litigation on behalf of thousands of individuals can be
577 completed for less than \$200 per hour. Attorney fee awards
578 are earned for the work done in litigation and judges
579 should be able to use their discretion to determine
580 reasonable attorney fee awards.

581 My amendment is simple. It strikes the arbitrary cap
582 of \$200 per hour and allows for reasonable attorney's fees.
583 I urge my colleagues to support this amendment.

584 And I yield back the balance of my time.

585 Chairman Smith. The gentleman from Virginia yields
586 back his time.

587 The gentleman from North Carolina, Mr. Coble, is
588 recognized.

589 Mr. Coble. Mr. Chairman, I apologize to you and my
590 colleagues for my previous procedural faux pas. I was just
591 trying to accelerate the process.

592 I oppose the amendment of the gentleman from Georgia.

593 There are more than 200 Federal statutes with fee-
594 shifting provisions, one of which is the Equal Access to
595 Justice Act. The act is intended to be a safety net to
596 protect the little guy, ordinary Americans and small
597 businesses, where the jobs are, from unreasonable
598 Government regulations and policies when no other fee-
599 shifting statute is available. You start with the primary
600 awardees under the act that have been Social Security
601 claimants and veterans.

602 The act also has capped attorney's fees below the top
603 national market rate. Originally in 1980, the act capped
604 the attorney's fees at \$75 per hour. This was increased to
605 \$125 an hour in 1996. At our subcommittee hearing, the
606 minority witness testified that this amount is around \$180
607 today accounting for inflation. The amendment generously
608 increases it to \$200 per hour and requires OMB to adjust it
609 annually. I say "generous" not only because this more than
610 accounts for the inflation process, but also because \$200
611 per hour is a good deal to most Americans or to many
612 Americans, especially in the current dismal climate, maybe

613 not to lawyers in top-notch firms in D.C. or New York, but
614 most Americans would be pleased to work for \$200 an hour,
615 it seems. And we should not forget that these awards are
616 paid with taxpayer dollars.

617 In conclusion, I have been given no reason to believe
618 that \$200 per hour is insufficient for legitimate
619 beneficiaries to obtain adequate legal representation.
620 Going forward with the actual reporting requirement fully
621 restored, I would not object to having the Administrative
622 Conference of the United States to study this question, but
623 at this juncture, I oppose the amendment because it
624 overturns the act's established structure of capping hourly
625 attorney's fees.

626 And I yield back.

627 Mr. Nadler. Mr. Chairman?

628 Chairman Smith. Thank you, Mr. Coble.

629 The gentleman from New York, Mr. Nadler?

630 Mr. Nadler. Mr. Chairman, I rise in support of the
631 amendment. It is true that \$200 an hour for most people is
632 a lot of money, but in certain markets it is not a lot of
633 money as a legal fee. And in certain markets, it is not

634 adequate to get good legal representation depending on the
635 kind of case and what you need. Of the 200-plus fee-
636 shifting statutes, between 150 and 160 of them use
637 reasonable attorney's fees as their standard, as the
638 amendment would seek to do.

639 I think we can trust the Federal judge to set a
640 reasonable fee. I don't think we have a record of Federal
641 judges setting huge fees. But you do want, if you believe
642 in the statute, the ability of people to get attorneys or
643 organizations to get attorneys in the field in which the
644 suit is. It may be a standard Social Security claim. It
645 may be more esoteric claim that demands different expertise
646 and commands a higher fee. Who knows? We should certainly
647 allow the judges the discretion to awards these fees and
648 the appellate courts can lower them if that is necessary.
649 But to have an arbitrary limit in law which would be eroded
650 by inflation because we have not -- maybe that should be
651 the next amendment, have an inflator based on the Consumer
652 Price Index or the index of legal fee increases, if such an
653 index.

654 But the fact is an arbitrary limit that we might set

655 here that sounds good to us -- but we have not undertaken a
656 survey of what the prevailing fees are in different markets
657 and different localities and different areas of expertise.
658 And any arbitrary fee would, unless we make it exorbitant,
659 make it very difficult getting competent legal
660 representation in certain situations that we cannot now
661 foresee.

662 So I support the amendment.

663 Chairman Smith. Thank you, Mr. Nadler.

664 The gentleman from Tennessee, Mr. Cohen.

665 Mr. Cohen. Thank you, Mr. Chairman.

666 I concur with Mr. Nadler that we can trust the Federal
667 judge, but I am going to put my trust in the chairman to
668 work with the ranking member and Mr. Coble and myself to
669 try to come up with something reasonable before we go to
670 the floor. And even though I will support this amendment,
671 because \$200 is not even sufficient in Memphis, Tennessee,
672 I put my trust in the chairman.

673 And I yield back the balance of my time of which I
674 have a lot of time because I didn't bring my amendment, and
675 that goes to the black in my time slot.

676 Chairman Smith. Thank you, Mr. Cohen.

677 Are there any members who wish to speak?

678 [No response.]

679 Chairman Smith. If not, the question is on the
680 amendment to the amendment. All in favor, say aye.

681 [A chorus of ayes.]

682 Chairman Smith. All opposed, no?

683 [A chorus of nays.]

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

686 A recorded vote has been requested, and the clerk will
687 call the roll.

688 Ms. Kish. Mr. Smith?

689 Chairman Smith. No.

690 Ms. Kish. Mr. Smith votes no.

691 Mr. Sensenbrenner?

692 Mr. Sensenbrenner. No.

693 Ms. Kish. Mr. Sensenbrenner votes no.

694 Mr. Coble?

695 Mr. Coble. No.

696 Ms. Kish. Mr. Coble votes no.

697 Mr. Gallegly?

698 [No response.]

699 Ms. Kish. Mr. Goodlatte?

700 Mr. Goodlatte. No.

701 Ms. Kish. Mr. Goodlatte votes no.

702 Mr. Lungren?

703 [No response.]

704 Ms. Kish. Mr. Chabot?

705 Mr. Chabot. No.

706 Ms. Kish. Mr. Chabot votes no.

707 Mr. Issa?

708 [No response.]

709 Ms. Kish. Mr. Pence?

710 [No response.]

711 Ms. Kish. Mr. Forbes?

712 Mr. Forbes. No.

713 Ms. Kish. Mr. Forbes votes no.

714 Mr. King?

715 Mr. King. No.

716 Ms. Kish. Mr. King votes no.

717 Mr. Franks?

718 Mr. Franks. No.

719 Ms. Kish. Mr. Franks votes no.

720 Mr. Gohmert?

721 Mr. Gohmert. No.

722 Ms. Kish. Mr. Gohmert votes no.

723 Mr. Jordan?

724 Mr. Jordan. No.

725 Ms. Kish. Mr. Jordan votes no.

726 Mr. Poe?

727 [No response.]

728 Ms. Kish. Mr. Chaffetz?

729 Mr. Chaffetz. No.

730 Ms. Kish. Mr. Chafettz votes no.

731 Mr. Griffin?

732 [No response.]

733 Ms. Kish. Mr. Marino?

734 Mr. Marino. No.

735 Ms. Kish. Mr. Marino votes no.

736 Mr. Gowdy?

737 [No response.]

738 Ms. Kish. Mr. Ross?

739 Mr. Ross. No.

740 Ms. Kish. Mr. Ross votes no.

741 Ms. Adams?

742 Ms. Adams. No.

743 Ms. Kish. Ms. Adams votes no.

744 Mr. Quayle?

745 Mr. Quayle. No.

746 Ms. Kish. Mr. Quayle votes no.

747 Mr. Amodei?

748 Mr. Amodei. No.

749 Ms. Kish. Mr. Amodei votes no.

750 Mr. Conyers?

751 Mr. Conyers. Aye.

752 Ms. Kish. Mr. Conyers votes aye.

753 Mr. Berman?

754 [No response.]

755 Ms. Kish. Mr. Nadler?

756 Mr. Nadler. Aye.

757 Ms. Kish. Mr. Nadler votes aye.

758 Mr. Scott?

759 Mr. Scott. Aye.

760 Ms. Kish. Mr. Scott votes aye.

761 Mr. Watt?

762 Mr. Watt. Aye.

763 Ms. Kish. Mr. Watt votes aye.

764 Ms. Lofgren?

765 Ms. Lofgren. Aye.

766 Ms. Kish. Ms. Lofgren votes aye.

767 Ms. Jackson Lee?

768 Ms. Jackson Lee. Aye.

769 Ms. Kish. Ms. Jackson Lee votes aye.

770 Ms. Waters?

771 [No response.]

772 Ms. Kish. Mr. Cohen?

773 Mr. Cohen. Aye.

774 Ms. Kish. Mr. Cohen votes aye.

775 Mr. Johnson?

776 Mr. Johnson. Aye.

777 Ms. Kish. Mr. Johnson votes aye.

778 Mr. Pierluisi?

779 Mr. Pierluisi. Aye.

780 Ms. Kish. Mr. Pierluisi votes aye.

781 Mr. Quigley?

782 Mr. Quigley. Aye.

783 Ms. Kish. Mr. Quigley votes aye.

784 Ms. Chu?

785 Ms. Chu. Aye.

786 Ms. Kish. Ms. Chu votes aye.

787 Mr. Deutch?

788 Mr. Deutch. Aye.

789 Ms. Kish. Mr. Deutch votes aye.

790 Ms. Sanchez?

791 Ms. Sanchez. Aye.

792 Ms. Kish. Ms. Sanchez votes aye.

793 Chairman Smith. The gentleman from California, Mr.

794 Gallegly?

795 Mr. Gallegly. How am I recorded?

796 Ms. Kish. Not recorded, sir.

797 Mr. Gallegly. No.

798 Ms. Kish. Mr. Gallegly votes no.

799 Chairman Smith. The gentleman from Arkansas?

800 Mr. Griffin. No.

801 Ms. Kish. Mr. Griffin votes no.

802 Chairman Smith. The gentleman from California, Mr.
803 Berman?

804 Mr. Berman. Aye.

805 Ms. Kish. Mr. Berman votes aye.

806 Chairman Smith. The clerk will report.

807 Ms. Kish. Mr. Chairman, 14 members voted aye; 18
808 members voted nay.

809 Chairman Smith. The majority having voted against the
810 amendment, the amendment is not agreed to.

811 Are there other amendments?

812 [No response.]

813 Chairman Smith. If not, the question is on the Coble
814 substitute. Those in favor, say aye.

815 [A chorus of ayes.]

816 Chairman Smith. Opposed, no?

817 [A chorus of nays.]

818 Chairman Smith. In the opinion of the chair, the ayes
819 have it and the substitute amendment is agreed to.

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

822 Those in favor --

823 Ms. Jackson Lee. Excuse me. Mr. Chairman, I have an
824 amendment at the desk.

825 Chairman Smith. I am sorry. The gentlewoman has
826 waited too late to offer the amendment.

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

829 Those in favor --

830 Mr. Chairman?

831 Chairman Smith. Those in favor, say aye.

832 Mr. Chairman?

833 [A chorus of ayes.]

834 Ms. Jackson Lee. Mr. Chairman?

835 Chairman Smith. Opposed, no?

836 [A chorus of nays.]

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

839 Mr. Nadler. Mr. Chairman, first of all, before the
840 point of order, you did not ask for the nays on it. Did
841 you ask for the nays on that bill? Well, we asked for a
842 recorded vote.

843 Chairman Smith. We have had one recorded vote on --

844 Mr. Nadler. On the substitute.

845 Chairman Smith. On the substitute. We have now just
846 voted on --

847 Mr. Nadler. Then I will ask for a recorded vote.

848 Chairman Smith. -- to report H.R. 1996 --

849 Mr. Nadler. Mr. Chairman, there are two things
850 pending. Number one --

851 Chairman Smith. No. There is no --

852 Mr. Nadler. Well, first of all, I asked for a
853 recorded --

854 Chairman Smith. The gentleman is recognized.

855 Mr. Nadler. I asked for a recorded vote.

856 Mr. Sensenbrenner. Mr. Chairman, a point of order.
857 The gentleman has not been recognized for anything and he
858 is talking.

859 Mr. Nadler. I was recognized. I was recognized, Mr.
860 Sensenbrenner.

861 Chairman Smith. The gentleman from New York is
862 recognized.

863 Mr. Nadler. I asked for a recorded vote on the bill.

864 Chairman Smith. The clerk will call the roll.

865 Ms. Jackson Lee. But, Mr. Chairman, parliamentary
866 inquiry please?

867 Chairman Smith. The gentlewoman will state her
868 parliamentary inquiry.

869 Ms. Jackson Lee. What is the basis of ruling out the
870 offering of an amendment when you were in the middle of
871 calling but had not completed the calling of the final
872 vote? And I indicated I had an amendment at the desk.

873 Chairman Smith. The substitute amendment had already
874 passed and therefore the gentlewoman was not able to offer
875 an amendment to the substitute.

876 Mr. Scott. Mr. Chairman?

877 Ms. Jackson Lee. If it passed, you have an
878 opportunity to -- I will yield to the gentleman.

879 Mr. Scott. Mr. Chairman, although the substitute
880 amendment had passed, can't she still amend the bill?

881 Chairman Smith. No. She would not be able to amend
882 the bill at that point.

883 Ms. Jackson Lee. That is not correct.

884 Chairman Smith. The amendment would be to the
885 substitute amendment.

886 Ms. Jackson Lee. Right and that is what I am
887 offering, an amendment to the substitute.

888 Chairman Smith. Yes, but the substitute had already
889 passed.

890 Ms. Jackson Lee. Well, that is how you amend the
891 substitute.

892 Chairman Smith. Therefore, the gentlewoman's
893 amendment is not timely.

894 Mr. Nadler. Point of order, Mr. Chairman.

895 Chairman Smith. The gentleman from New York will
896 state his point of order.

897 Mr. Nadler. Although it may be correct that once the
898 substitute amendment had been adopted, an amendment to the
899 substitute amendment would not be in order, an amendment to
900 the underlying bill would be in order. An amendment to the
901 underlying bill is in order after the substitute is
902 adopted.

903 Mr. Sensenbrenner. Parliamentary inquiry, Mr.
904 Chairman?

905 Mr. Nadler. Excuse me. He hasn't ruled on my point
906 of order yet.

907 Chairman Smith. The gentleman is incorrect. The
908 gentlewoman waited too long to offer her amendment.

909 And the gentleman from Wisconsin will state his --

910 Mr. Sensenbrenner. My parliamentary inquiry is do not
911 the rules state that once an amendment in the nature of
912 substitute to a bill is adopted, that makes the bill non-
913 amendable and the question to final passage comes
914 immediately?

915 Chairman Smith. Thank you, Mr. Sensenbrenner, and I
916 agree with that.

917 Ms. Jackson Lee. Excuse me, Mr. Chairman.

918 Chairman Smith. For what purpose does the gentlewoman
919 from Texas seek to be recognized?

920 Ms. Jackson Lee. With a parliamentary inquiry.

921 I challenge that interpretation. But is the chair
922 making a ruling that the bill is not open whether it is
923 open under the underlying bill or the substitute for
924 amendment?

925 Chairman Smith. The bill is no longer open for
926 amendment.

927 Ms. Jackson Lee. Is that the ruling of the char?

928 Chairman Smith. It is the ruling of the chair?

929 Ms. Jackson Lee. Then I appeal the ruling of the
930 chair.

931 Mr. Sensenbrenner. Mr. Chairman, I move to table the
932 appeal.

933 Chairman Smith. A motion has been made to table.

934 Ms. Jackson Lee. I call for a roll call.

935 Chairman Smith. A roll call vote has been requested
936 to table. The clerk will call the roll.

937 Ms. Kish. Mr. Smith?

938 Chairman Smith. Aye.

939 Ms. Kish. Mr. Smith votes aye.

940 Mr. Sensenbrenner?

941 Mr. Sensenbrenner. Aye.

942 Ms. Kish. Mr. Sensenbrenner votes aye.

943 Mr. Coble?

944 Mr. Coble. Aye.

945 Ms. Kish. Mr. Coble votes aye.

946 Mr. Gallegly?

947 [No response.]

948 Ms. Kish. Mr. Goodlatte?

949 Mr. Goodlatte. Aye.

950 Ms. Kish. Mr. Goodlatte votes aye.

951 Mr. Lungren?

952 [No response.]

953 Ms. Kish. Mr. Chabot?

954 Mr. Chabot. Aye.

955 Ms. Kish. Mr. Chabot votes aye.

956 Mr. Issa?

957 [No response.]

958 Ms. Kish. Mr. Pence?

959 [No response.]

960 Ms. Kish. Mr. Forbes?

961 Mr. Forbes. Aye.

962 Ms. Kish. Mr. Forbes votes aye.

963 Mr. King?

964 Mr. King. Aye.

965 Ms. Kish. Mr. King votes aye.

966 Mr. Franks?

967 Mr. Franks. Aye.

968 Ms. Kish. Mr. Franks votes aye.

969 Mr. Gohmert?

970 Mr. Gohmert. Aye.

971 Ms. Kish. Mr. Gohmert votes aye.

972 Mr. Jordan?

973 Mr. Jordan. Aye.

974 Ms. Kish. Mr. Jordan votes aye.

975 Mr. Poe?

976 [No response.]

977 Ms. Kish. Mr. Chaffetz?

978 Mr. Chaffetz. Aye.

979 Ms. Kish. Mr. Chafettz votes aye.

980 Mr. Griffin?

981 [No response.]

982 Ms. Kish. Mr. Marino?

983 Mr. Marino. Aye.

984 Ms. Kish. Mr. Marino votes aye.

985 Mr. Gowdy?

986 [No response.]

987 Ms. Kish. Mr. Ross?

988 Mr. Ross. Aye.

989 Ms. Kish. Mr. Ross votes aye.

990 Ms. Adams?

991 [No response.]

992 Ms. Kish. Mr. Quayle?

993 Mr. Quayle. Aye.

994 Ms. Kish. Mr. Quayle votes aye.

995 Mr. Amodei?

996 Mr. Amodei. Aye.

997 Ms. Kish. Mr. Amodei votes aye.

998 Mr. Conyers?

999 Mr. Conyers. No.

1000 Ms. Kish. Mr. Conyers votes no.

1001 Mr. Berman?

1002 [No response.]

1003 Ms. Kish. Mr. Nadler?

1004 Mr. Nadler. No.

1005 Ms. Kish. Mr. Nadler votes no.

1006 Mr. Scott?

1007 Mr. Scott. No.

1008 Ms. Kish. Mr. Scott votes no.

1009 Mr. Watt?

1010 Mr. Watt. No.

1011 Ms. Kish. Mr. Watt votes no.

1012 Ms. Lofgren?

1013 Ms. Lofgren. No.

1014 Ms. Kish. Ms. Lofgren votes no.

1015 Ms. Jackson Lee?

1016 Ms. Jackson Lee. No.

1017 Ms. Kish. Ms. Jackson Lee votes no.

1018 Ms. Waters?

1019 Ms. Waters. No.

1020 Ms. Kish. Ms. Waters votes no.

1021 Mr. Cohen?

1022 Mr. Cohen. No.

1023 Ms. Kish. Mr. Cohen votes no.

1024 Mr. Johnson?

1025 Mr. Johnson. No.

1026 Ms. Kish. Mr. Johnson votes no.

1027 Mr. Pierluisi?

1028 Mr. Pierluisi. No.

1029 Ms. Kish. Mr. Pierluisi votes no.

1030 Mr. Quigley?

1031 [No response.]

1032 Ms. Kish. Ms. Chu?

1033 Ms. Chu. No.

1034 Ms. Kish. Ms. Chu votes no.

1035 Mr. Deutch?

1036 Mr. Deutch. No.

1037 Ms. Kish. Mr. Deutch votes no.

1038 Ms. Sanchez?

1039 Ms. Sanchez. No.

1040 Ms. Kish. Ms. Sanchez votes no.

1041 Chairman Smith. The gentlewoman from Florida?

1042 Ms. Adams. Yes.

1043 Ms. Kish. Ms. Adams votes yes.

1044 Chairman Smith. The gentleman from California?

1045 Mr. Gallegly. Aye.

1046 Ms. Kish. Mr. Gallegly votes aye.

1047 Chairman Smith. And the gentleman from Texas?

1048 Mr. Poe. Yes.

1049 Ms. Kish. Mr. Poe votes yes.

1050 Chairman Smith. The gentleman from Arkansas?

1051 Mr. Griffin. Aye.

1052 Ms. Kish. Mr. Griffin votes aye.

1053 Chairman Smith. The clerk will report.

1054 Ms. Kish. Mr. Chairman, 19 members voted aye; 13
1055 members voted nay.

1056 Chairman Smith. A majority having voted in favor of
1057 the motion to table the appeal of the ruling of the chair,
1058 the motion carries.

1059 The clerk will call the roll on final passage --

1060 Mr. Conyers. Mr. Chairman?

1061 Chairman Smith. The clerk will suspend.

1062 For what purpose does the gentleman from Michigan wish
1063 to be recognized?

1064 Mr. Conyers. For a unanimous consent request, sir. I
1065 would ask unanimous consent that the gentlelady's amendment
1066 of Sheila Jackson Lee of Texas be allowed before the final
1067 vote.

1068 Chairman Smith. The unanimous consent request has
1069 been made. Is there any --

1070 Mr. Sensenbrenner. I object.

1071 Chairman Smith. An objection has been heard.

1072 The clerk will now call the roll on passage of H.R.
1073 1996.

1074 Mr. Watt. Mr. Chairman?

1075 Chairman Smith. The gentleman from North Carolina.

1076 For what purpose does he wish to be recognized?

1077 Mr. Watt. I move that the gentlelady's amendment be
1078 made in order --

1079 Mr. Sensenbrenner. Mr. Chairman, a point of order.
1080 This effectively is a motion to suspend the rules and is
1081 not in order.

1082 Chairman Smith. The gentleman from Wisconsin is
1083 correct. It can only be a unanimous consent request which
1084 has already been made and objected to.

1085 The clerk will call the roll on the final passage.

1086 Ms. Waters. Mr. Chairman?

1087 Chairman Smith. For what purpose does the gentlewoman
1088 from California wish to be recognized?

1089 Ms. Waters. Unanimous consent to suspend the rules.

1090 Chairman Smith. Well, a unanimous consent request has
1091 already been requested --

1092 Ms. Waters. Not the same one. This is a different
1093 unanimous consent request.

1094 Mr. Sensenbrenner. Well, Mr. Chairman, I object to
1095 that.

1096 Chairman Smith. There is an objection to that
1097 unanimous consent request.

1098 The clerk will call the roll on final passage of H.R.
1099 1996.

1100 Chairman Smith. Aye.

1101 Ms. Kish. Mr. Smith votes aye.

1102 Mr. Sensenbrenner?

1103 Mr. Sensenbrenner. Aye.

1104 Ms. Kish. Mr. Sensenbrenner votes aye.

1105 Mr. Coble?

1106 Mr. Coble. Aye.

1107 Ms. Kish. Mr. Coble votes aye.

1108 Mr. Gallegly?

1109 Mr. Gallegly. Aye.

1110 Ms. Kish. Mr. Gallegly votes aye.

1111 Mr. Goodlatte?

1112 [No response.]

1113 Ms. Kish. Mr. Lungren?

1114 [No response.]

1115 Ms. Kish. Mr. Chabot?

1116 Mr. Chabot. Aye.

1117 Ms. Kish. Mr. Chabot votes aye.

1118 Mr. Issa?

1119 [No response.]

1120 Ms. Kish. Mr. Pence?

1121 [No response.]

1122 Ms. Kish. Mr. Forbes?

1123 Mr. Forbes. Aye.

1124 Ms. Kish. Mr. Forbes votes aye.

1125 Mr. King?

1126 Mr. King. Aye.

1127 Ms. Kish. Mr. King votes aye.

1128 Mr. Franks?

1129 Mr. Franks. Aye.

1130 Ms. Kish. Mr. Franks votes aye.

1131 Mr. Gohmert?

1132 Mr. Gohmert. Aye.

1133 Ms. Kish. Mr. Gohmert votes aye.

1134 Mr. Jordan?

1135 Mr. Jordan. Aye.

1136 Ms. Kish. Mr. Jordan votes aye.

1137 Mr. Poe?

1138 Mr. Poe. Yes.

1139 Ms. Kish. Mr. Poe votes yes.

1140 Mr. Chaffetz?

1141 Mr. Chaffetz. Aye.

1142 Ms. Kish. Mr. Chafettz votes aye.

1143 Mr. Griffin?

1144 [No response.]

1145 Ms. Kish. Mr. Marino?

1146 Mr. Marino. Aye.

1147 Ms. Kish. Mr. Marino votes aye.

1148 Mr. Gowdy?

1149 [No response.]

1150 Ms. Kish. Mr. Ross?

1151 Mr. Ross. Aye.

1152 Ms. Kish. Mr. Ross votes aye.

1153 Ms. Adams?

1154 Ms. Adams. Aye.

1155 Ms. Kish. Ms. Adams votes aye.

1156 Mr. Quayle?

1157 Mr. Quayle. Aye.

1158 Ms. Kish. Mr. Quayle votes aye.

1159 Mr. Amodei?

1160 Mr. Amodei. Aye.

1161 Ms. Kish. Mr. Amodei votes aye.

1162 Mr. Conyers?

1163 Mr. Conyers. No.

1164 Ms. Kish. Mr. Conyers votes no.

1165 Mr. Berman?

1166 [No response.]

1167 Ms. Kish. Mr. Nadler?

1168 Mr. Nadler. No.

1169 Ms. Kish. Mr. Nadler votes no.

1170 Mr. Scott?

1171 Mr. Scott. No.

1172 Ms. Kish. Mr. Scott votes no.

1173 Mr. Watt?

1174 Mr. Watt. No.

1175 Ms. Kish. Mr. Watt votes no.

1176 Ms. Lofgren?

1177 Ms. Lofgren. No.

1178 Ms. Kish. Ms. Lofgren votes no.

1179 Ms. Jackson Lee?

1180 Ms. Jackson Lee. No.

1181 Ms. Kish. Ms. Jackson Lee votes no.

1182 Ms. Waters?

1183 Ms. Waters. No.

1184 Ms. Kish. Ms. Waters votes no.

1185 Mr. Cohen?

1186 Mr. Cohen. No.

1187 Ms. Kish. Mr. Cohen votes no.

1188 Mr. Johnson?

1189 Mr. Johnson. No.

1190 Ms. Kish. Mr. Johnson votes no.

1191 Mr. Pierluisi?

1192 Mr. Pierluisi. No.

1193 Ms. Kish. Mr. Pierluisi votes no.

1194 Mr. Quigley?

1195 [No response.]

1196 Ms. Kish. Ms. Chu?

1197 Ms. Chu. No.

1198 Ms. Kish. Ms. Chu votes no.

1199 Mr. Deutch?

1200 Mr. Deutch. No.

1201 Ms. Kish. Mr. Deutch votes no.

1202 Ms. Sanchez?

1203 Ms. Sanchez. No.

1204 Ms. Kish. Ms. Sanchez votes no.

1205 Chairman Smith. The gentleman from California, Mr.

1206 Berman?

1207 Mr. Berman. No.

1208 Ms. Kish. Mr. Berman votes no.

1209 Chairman Smith. Has the gentleman from Ohio voted?

1210 Yes, okay.

1211 The clerk will report. Before the clerk reports, the

1212 gentleman from Arkansas?

1213 Mr. Griffin. Aye.

1214 Ms. Kish. Mr. Griffin votes aye.

1215 Chairman Smith. The clerk will report.

1216 Mr. Goodlatte. Mr. Chairman?

1217 Chairman Smith. The gentleman from Virginia, Mr.

1218 Goodlatte?

1219 Mr. Goodlatte. Am I recorded?

1220 Ms. Kish. No, sir.

1221 Mr. Goodlatte. Aye.

1222 Ms. Kish. Mr. Goodlatte votes aye.

1223 Chairman Smith. The clerk will report.

1224 Ms. Kish. Mr. Chairman, 19 members voted aye; 14
1225 members voted nay.

1226 Chairman Smith. The ayes have it and the bill, as
1227 amended, is ordered reported favorably.

1228 Ms. Jackson Lee. Mr. Chairman?

1229 Chairman Smith. Without objection, the bill will be
1230 reported in a single amendment in the nature of a
1231 substitute incorporating amendments adopted. And staff is
1232 authorized to make technical and conforming changes.

1233 Members will have 2 days to submit views.

1234 Chairman Smith. For what purpose does the gentlewoman
1235 from Texas --

1236 Ms. Jackson Lee. Strike the last word.

1237 Chairman Smith. The gentlewoman is recognized.

1238 Ms. Jackson Lee. I know that we are moving on, but I
1239 just wanted for the record to express that I believe H.R.
1240 1996 -- and I know you are obligated in some sense to bring
1241 forward legislation offered by Republicans from all walks
1242 of life, but I believe this is one of the most vile pieces

1243 of legislation that I have ever seen. And I am
1244 disappointed that we would move forward this legislation
1245 that really undermines petitioners' rights, no matter what
1246 their position, to access the courthouse, and that is what
1247 this does. It limits values and views that I may disagree
1248 with from accessing the courthouse. And I would ask the
1249 chairman to review this legislation before he and the
1250 leadership makes an ill-conceived decision to move this
1251 legislation to the floor of the house.

1252 The Bill of Rights guarantees due process, the right
1253 to counsel, a jury trial, and to limit causes and to limit
1254 Americans' access to the courts because of their inability
1255 to pay and the recovery of their lawyers for the work that
1256 these individuals have done, let the jury and the judge
1257 decide frivolous actions. Let us not provide a heinous cap
1258 on the voices of the American people who remain voiceless
1259 if the courthouse is closed to them.

1260 So my colleagues by a party line vote have voted to
1261 send this legislation forward, and it is sad and it is a
1262 sad day for the Constitution of the United States of
1263 America. I frankly do not believe this warrants and merits

1264 a place on the floor of the House.

1265 I yield back.

1266 Chairman Smith. Thank you, Ms. Jackson Lee.

1267 Pursuant to notice, I now call up H.R. 1864, the
1268 Mobile Workforce State Income Tax Simplification Act of
1269 2011.

1270 The clerk will report the bill.

1271 Ms. Kish. "H.R. 1864, to limit the authority of
1272 State" --

1273 Chairman Smith. Without objection, the bill will be
1274 considered as read.

1275 [The information follows:]

1276

1277 Chairman Smith. I will recognize myself for an
1278 opening statement, and then the ranking member.

1279 The American workforce is increasingly mobile. 50
1280 years ago, most people worked in the communities in which
1281 they lived. Today many more Americans travel to other
1282 States for work. Facilitating a mobile workforce is a
1283 fundamental example of the power to regulate interstate
1284 commerce the Congress the Founders delegated to Congress in
1285 the Constitution.

1286 The complexity and variation among State income tax
1287 laws is a burden on interstate commerce. In some States,
1288 for example, a non-resident employee must pay income tax if
1289 they work there for only 1 day, but in other States, income
1290 tax liability is not triggered until the 60th day. Under
1291 this current patchwork system, the employees who travel out
1292 of State for work must file tax returns in other
1293 jurisdictions, even if their ultimate tax liability to a
1294 State is a few dollars.

1295 In addition to burdening our interstate employees,
1296 different State income tax laws require employers to comply
1297 with a wide variety of tax withholding laws. Many of those

1298 employers are small businesses who can least afford these
1299 administrative costs.

1300 That is why I support subcommittee Chairman Coble's
1301 bipartisan bill, the Mobile Workforce State Income Tax
1302 Simplification Act. And I appreciate Mr. Johnson's
1303 cosponsorship of this legislation as well.

1304 This bill simplifies State income tax policies without
1305 infringing on the rights of States to set their own tax
1306 rates. The bill provides that a State may not impose its
1307 income tax on a non-resident employee unless they earn
1308 wages in the State for more than 30 days. The employee
1309 would still owe an income tax to their State of residence
1310 for wages earned during the first 30 days they work in a
1311 non-resident State.

1312 This bill eases the burden that the current patchwork
1313 of State income tax laws places on traveling employees and
1314 small businesses. So rather than increasing the expense of
1315 navigating the maze of tax rules, businesses can use their
1316 resources to invest in creating jobs for American workers.

1317 I thank Mr. Coble and Mr. Johnson for introducing this
1318 important and timely legislation and encourage my

1319 colleagues to vote yes on the bill.

1320 The gentleman from Michigan, Mr. Conyers, is
1321 recognized for his opening statement.

1322 Mr. Conyers. Thank you, Chairman Smith.

1323 This is a bill that apparently has bipartisan support.
1324 My colleague from Georgia, Mr. Johnson, has worked
1325 considerably on it, and I would like to yield to him to
1326 make any comments that he would make in an opening
1327 statement.

1328 There is only letter that troubles me, and I say this
1329 to my friend from Atlanta. The Federation of Tax
1330 Administrators is opposed to this bill. Could I yield to
1331 you, Hank, to just make it clear why that is unfortunately
1332 the case?

1333 Mr. Johnson. Thank you, Mr. Chairman.

1334 The Mobile Workforce State Income tax Simplification
1335 Act is an important bipartisan bill that will help all
1336 workers across the country. It will also help all
1337 businesses, large and small.

1338 I have been working on this bill since I was a
1339 freshman in the 110th Congress, and I am pleased that we

1340 are finally marking it up today.

1341 Take my home State of Georgia as an example. If an
1342 Atlanta-based employee of a St. Louis company travels to
1343 headquarters on a business trip once a year, that employee
1344 would be subject to Missouri tax even if his annual visit
1345 only lasts a day. However, if that employee travels to
1346 Maine, her trip would only be subject to tax if her trip
1347 lasts for 10 days. If she travels to New Mexico on
1348 business, she would only be subject to tax if she was in
1349 the State for 15 days.

1350 The bill that Chairman Coble and I have introduced
1351 would fix this problem by establishing a uniform law that
1352 would ensure the correct amount of tax is withheld and paid
1353 to the States without undue burden of the current
1354 dysfunctional system. H.R. 1864 would only subject
1355 employees who perform employment duties in a non-resident
1356 State if they work in that State for more than 30 calendar
1357 days. At a time when more and more Americans find
1358 themselves traveling for their job, this bill is a common
1359 sense solution that helps workers who are employed in
1360 multiple jurisdictions by simplifying their tax reporting

1361 requirements.

1362 The manager's amendment does not make any substantive
1363 changes to the legislation and it simply cleans up the bill
1364 with some technical changes.

1365 As far as the State revenue collectors being in
1366 opposition to this bill, perhaps they are influenced
1367 heavily by New York, but there are many -- and I think the
1368 majority of them are in favor of this legislation because
1369 it does bring some uniformity from a national standpoint.

1370 Mr. Conyers. Would my colleague yield for this
1371 observation?

1372 Mr. Johnson. I will.

1373 Mr. Conyers. Is this a matter that might well be more
1374 expeditiously handled by the States? The Federation of Tax
1375 Administrators say that this bill invites tax avoidance,
1376 and the States have already, Hank, put together a model
1377 State bill that might be able to take care of this.

1378 Mr. Johnson. If the gentleman will yield?

1379 Mr. Conyers. Surely. I return all the time to you.

1380 Mr. Johnson. Yes. The State revenue collectors have
1381 been working and negotiating on this for the last 4 years,

1382 and I think that 49 of 50, if I am not mistaken, are in
1383 favor of this.

1384 Now, as far as the Federal tax administrators, I don't
1385 know. It could be a trade organization.

1386 But at any rate, this is common sense legislation. It
1387 has been under consideration --

1388 Mr. Conyers. Could I ask Mr. Coble, when you finish,
1389 that maybe he could take a stab at this issue of tax
1390 avoidance and the fact that States are already working on a
1391 model bill?

1392 Mr. Johnson. Well, the ranking member's preference
1393 would certainly be something that I would not stand in the
1394 way of.

1395 But I would ask that my colleagues vote in favor of
1396 this bill voting it out of committee. Thank you.

1397 Mr. Conyers. The gentleman from Michigan has the
1398 time.

1399 Mr. Conyers. Could I yield to Mr. Coble?

1400 Mr. Coble. Mr. Conyers, I will be glad to respond to
1401 you, but I can't improve on what the gentleman from Georgia
1402 has said. I concur with it.

1403 Mr. Conyers. Well, could you tell me what he said?

1404 [Laughter.]

1405 Mr. Coble. Well, he said the lack of consistency
1406 between the States is the main problem that presents an
1407 impediment.

1408 Chairman Smith. The gentleman's time has expired.

1409 The gentleman from North Carolina is recognized.

1410 Mr. Coble. Well, it presents an impediment that I
1411 think frustrates the entire collection process.

1412 Mr. Chairman, I won't jump the procedural gun this
1413 time with my opening statement.

1414 The American workforce, folks, as you all know, is
1415 more mobile in the 21st century than it has ever been. The
1416 diversity of State income tax law places a significant
1417 burden on people who travel for work and their employers,
1418 many of which are small businesses, to which Mr. Johnson
1419 alluded earlier. Currently 41 States tax the wages earned
1420 by non-residents for work performed there. I do not take
1421 issue with the right of those States to impose an income
1422 tax, but I am concerned that the disparity of tax rules
1423 among those States is damaging small businesses, where the

1424 jobs are, and stifling economic growth.

1425 For example, some States require a non-resident to pay
1426 income tax if he or she works in that State for just 1 day.
1427 Other States do not collect tax until the non-resident
1428 works for a number of days in the jurisdiction. Small
1429 businesses must expend considerable resources just to
1430 figure out how much they must withhold for the traveling
1431 employees in 41 different jurisdictions. Employees are
1432 also confused about where their tax liability is triggered
1433 and in which States they must file a tax return.

1434 To alleviate this problem, on May 12th last, I
1435 introduced H.R. 1864, the Mobile Workforce State Income tax
1436 Simplification Act, with the distinguished gentleman from
1437 Georgia, Mr. Hank Johnson. The bill we introduced would
1438 establish a uniform Federal framework for State income tax
1439 liability. It establishes a clear 30-day threshold for tax
1440 liability and employer withholding. Under the bill, States
1441 remain free to set any income tax rate they so desire.
1442 Small businesses are the engine that will drive the
1443 American economy hopefully out of the ditch. Tax
1444 simplification on both the Federal and State level will

1445 permit small businesses to predict their liabilities with
1446 accuracy and expend further resources researching the new
1447 offices of each State's tax law. The money they would have
1448 spent hiring accountants and tax lawyers can then be spent
1449 by creating meaningful jobs and growing the economy.

1450 I appreciate Mr. Johnson's work with me on this bill
1451 and encourage my colleagues to vote in favor of the
1452 proposed legislation.

1453 Chairman Smith. Thank you, Mr. Coble.

1454 Does the gentleman from Tennessee wish to be
1455 recognized?

1456 Mr. Cohen. No, sir. I am building up my time bank.
1457 Thank you.

1458 Chairman Smith. If not, I would like to let Mr. Coble
1459 offer his amendment in the nature of a substitute and then
1460 recognize members to comment on that. Mr. Coble is
1461 recognized for that purpose.

1462 Mr. Coble. I have an amendment at the desk, Mr.
1463 Chairman.

1464 Chairman Smith. The clerk will report the amendment.

1465 Ms. Kish. "Amendment in the nature of a

1466 substitute" --

1467 Mr. Coble. Mr. Chairman, unanimous consent that the
1468 amendment be considered as read.

1469 Chairman Smith. Without objection, the amendment will
1470 be considered as read and the gentleman is recognized to
1471 explain the amendment.

1472 [The information follows:]

1473

1474 Mr. Coble. Well, Mr. Johnson has already alluded to
1475 the manager's amendment. It simply makes technical and
1476 conforming changes to the base text. In reviewing the bill
1477 in preparation for the markup, we noticed some sections of
1478 the bill that could use some clarification. The intent of
1479 the amendment is simply to clarify the bill, not to change
1480 its substance.

1481 I, therefore, encourage my colleagues to support the
1482 amendment and yield back.

1483 Chairman Smith. Thank you, Mr. Coble.

1484 The gentleman from New York, Mr. Nadler, is
1485 recognized.

1486 Mr. Nadler. Mr. Chairman, I move to strike the last
1487 word.

1488 Chairman Smith. The gentleman is recognized for 5
1489 minutes.

1490 Mr. Nadler. Thank you. Mr. Chairman -- and I am
1491 going to subsequently offer an amendment, but right now I
1492 am just striking the last word.

1493 Mr. Chairman, I am opposed to this bill, and I believe
1494 there are very serious constitutional questions about it.

1495 The underlying problem the bill seeks to address is a
1496 real one, and the Multi-State Tax Commission has been
1497 working on this for a number of years. And as they write
1498 in their letter dated November 15th to Mr. Coble and Mr.
1499 Cohen, they say that as of July, the commission adopted a
1500 model mobile workforce statute as a uniformity
1501 recommendation for the States. The model was developed and
1502 vetted through our uniformity process by the States of the
1503 Multi-State Tax Commission, working with the Council on
1504 State Taxation, the American Payroll Association, and the
1505 Federation of Tax Administrators.

1506 I think you will agree -- he says I have attached a
1507 copy of our model uniform mobile workforce state. I think
1508 you will agree it accomplishes virtually everything H.R.
1509 1864 was drafted to accomplish. One State, North Dakota,
1510 has already adopted it. We expect many States to follow
1511 their lead over a reasonable period of time.

1512 Though substantially similar to our model statute, the
1513 commission opposes H.R. 1864 because we oppose any Federal
1514 legislation that encroaches on States' sovereign tax
1515 authority as established in our system of federalism and a

1516 multi-State solution has been developed by States and the
1517 States are in the process of implementing it.

1518 While we recognize that Congress has a constitutional
1519 duty to regulate interstate commerce, we seek to help
1520 Congress maintain the careful balance implicated by State
1521 sovereignty and Federal responsibility. In this case, that
1522 balance has been well maintained through congressional
1523 concerns prompting the States to develop a solution and
1524 then allowing them reasonable time to work out a solution.

1525 I would maintain that the States basically, through
1526 the Multi-State Tax Commission and these organizations,
1527 have worked out a solution. The solution is substantively
1528 very similar to the bill before us, but doesn't involve
1529 invasion of the States' sovereignty or -- and then certain
1530 other problems, which I will mention in the amendment.

1531 Let me just say what the constitutional problem is. I
1532 believe that the Commerce Clause is a very -- the Congress'
1533 power under the Commerce Clause is very broad, and the
1534 Congress can regulate that which has an effect on
1535 interstate commerce. And my understanding of the Commerce
1536 Clause may be, in fact, broader than the understandings of

1537 some other members of this committee.

1538 But to regulate a State's power to tax within its own
1539 borders -- now, we regulate the power to tax. For example,
1540 we have regulated -- we have dealt with legislation that
1541 says when a State can require that a company with no
1542 location in that State collect its sales tax in a different
1543 State. That we can regulate. That is interstate commerce.
1544 But to tell a State how it must use its taxing power or to
1545 limit its taxing power within its own borders, I think that
1546 is a little much as an exercise of our interstate commerce
1547 regulating power.

1548 The power to tax is the key index of sovereignty. It
1549 is the key index of a State's sovereignty. And for us to
1550 come in and tell the States you may not tax within your own
1551 borders except in the following way, I don't think we have
1552 done that previously. I am not aware of any precedent.
1553 And I think it is constitutionally somewhat dubious.

1554 I also think it is totally unnecessary because the
1555 States are going to do this in short order. If we give
1556 them a year or 2, probably almost all the States, maybe all
1557 of them, will have adopted the Multi-State Tax Commission

1558 recommendation. The history is that when the Multi-State
1559 Tax Commission and these other organizations, the
1560 Federation of Tax Administrators -- when they make a
1561 recommendation, within 5 years almost all the States adopt
1562 it. And that is a pretty solid record. So I don't see why
1563 we need to take liberties with the Constitution and enact
1564 something that the States are already in the process of
1565 doing for themselves without our invading and possibly
1566 setting up a heck of a court fight over our power under the
1567 Interstate Commerce Clause to limit the States' taxation
1568 power within their own borders, which I don't think we have
1569 ever -- I could be wrong, but I don't think we have ever
1570 done that before.

1571 I would suggest that the wiser course of action would
1572 just be to wait a year or 2 and see how many States have
1573 adopted this and see if there is any problem left.

1574 So I oppose the bill on that basis and I will offer an
1575 amendment separately.

1576 Chairman Smith. Okay. The gentleman yields back his
1577 time, and the gentleman is recognized to offer an
1578 amendment.

1579 Mr. Ross. Mr. Chairman.

1580 Chairman Smith. I am sorry. The gentleman from
1581 Florida, Mr. Ross, is recognized.

1582 Mr. Ross. Thank you. I move to strike the last word
1583 on the amendment.

1584 Chairman Smith. The gentleman is recognized for 5
1585 minutes.

1586 Mr. Ross. Thank you, Mr. Chairman, and I want to
1587 thank Mr. Coble too for bringing this legislation forward.

1588 I want to give one quick example from Florida about
1589 the absurdity and inconsistencies in the current law.

1590 Feld Entertainment, as you may know, owns Ringley
1591 Brothers and Barnum and Bailey Circus. They have currently
1592 1,500 traveling employees across a range of productions
1593 from motor sports, circus, ice, and stage. Next year,
1594 their mobile workforce will travel to some 45 States with
1595 38 of those States requiring some sort of income tax
1596 withholding. Of those 38 States, 22 require income tax
1597 withholding on the first day the employee travels into that
1598 State, even though many times that employee is in the State
1599 for less than 10 days.

1600 In addition, the remaining 16 States that their mobile
1601 workforce travels to all require tax withholding based on
1602 differing thresholds and requirements. For example, one
1603 State requires withholding if the employee is in the State
1604 for more than 60 days, while another State sets the
1605 threshold at 23 days and another is at 15. Some States use
1606 a monetary threshold based on the non-resident's in-State
1607 earnings such as requiring withholding if the employee
1608 earns in State wages of more than \$800 in a calendar year
1609 or if employee's in-State wages are less than his or her
1610 personal exemption in a calendar year.

1611 Employers are forced to incur extraordinary expenses
1612 just to comply with the various States' widely divergent
1613 withholding requirements, and the poor employees don't even
1614 know most times that they are in violation of States that
1615 they have only worked a few days in.

1616 My point, Mr. Chairman, is that some sort of uniform
1617 law is needed that ensures the correct amount of tax is
1618 being withheld and paid to States without the undue burden
1619 of the complexity that currently exists.

1620 Mr. Johnson. Would the gentleman yield?

1621 Mr. Ross. Yes.

1622 Mr. Johnson. Thank you, sir.

1623 Feld Entertainment is a large, established enterprise
1624 and certainly it incurs burdens keeping up with State by
1625 State changes to its laws, but for a small business or for
1626 a startup -- those are the businesses that provide the most
1627 jobs for Americans. For those small businesses and
1628 startups, the cost of complying with 50 different State
1629 regulations, as well as an employee's responsibility under
1630 those regulations, is just -- the time has been reached for
1631 there to be uniformity. And this is a legitimate Commerce
1632 Clause reach for the Federal Government to enhance small
1633 business and to facilitate the creation of more jobs.

1634 And so I appreciate the gentleman's comments, and I
1635 appreciate the gentleman yielding.

1636 Mr. Ross. Thank you. Reclaiming my time, again it
1637 also not only affects small business but also the employees
1638 who are so burdensome in having to comply with all these
1639 varying State laws.

1640 And I yield back.

1641 Mr. Watt. Will the gentleman yield?

1642 Mr. Ross. Yes.

1643 Mr. Watt. There is a provision in there that involves
1644 entertainment and athletes. How would that affect the
1645 circus?

1646 Mr. Ross. They would be considered professional
1647 athletes or professional entertainers as the bill applies
1648 to. So they would have to be in 30 days over a calendar
1649 year in order to qualify for being subject to the tax laws.

1650 Mr. Watt. If the gentleman would yield. I thought it
1651 was the other way around. If it doesn't apply to them,
1652 they would get taxed on the first day.

1653 Mr. Ross. You are correct. I am sorry. I apologize.

1654 Mr. Watt. Okay. Thank you.

1655 Chairman Smith. The gentleman yields back. Thank
1656 you, Mr. Ross.

1657 The gentleman from New York, Mr. Nadler, is
1658 recognized.

1659 Mr. Nadler. Thank you, Mr. Chairman. I have an
1660 amendment at the desk, Nadler number 3. I don't know why
1661 it is number 3. I have no others.

1662 Chairman Smith. The clerk will report Nadler number

1663 3.

1664 Ms. Kish. "Amendment offered by Mr. Nadler of New
1665 York to the amendment in the nature of a substitute."

1666 Chairman Smith. Without objection, the amendment will
1667 be considered as read.

1668 [The information follows:]

1669

1670 Chairman Smith. And the gentleman is recognized to
1671 explain his amendment.

1672 Mr. Nadler. Thank you, Mr. Chairman.

1673 Mr. Chairman, my amendment would make two simple
1674 changes to the underlying bill. First, it would reduce the
1675 30-day threshold period for one to be subject to State
1676 taxation to 14 days. Second, it would add a threshold
1677 exempting those persons earning above \$130,000. Both
1678 provisions are based on suggestions from the Federation of
1679 Tax Administrators, or FTA, the nonprofit organization
1680 representing the agencies of tax administration across the
1681 country.

1682 The problem at issue is one that no one disputes.
1683 Because of different State income tax rules, it can be
1684 difficult for employees who are non-resident in States for
1685 limited periods of time and their employers to be in
1686 compliance.

1687 Taxpayers, businesses, and States, and the FTA all
1688 would like a solution. While the relevant taxing
1689 jurisdictions could come together and develop a harmonized
1690 system, which they are in the process of doing, that hasn't

1691 happened yet. So some companies have turned to Congress
1692 for relief. Although, as I stated, I wish we would wait
1693 for the States to deal with it on their own, as they are
1694 starting to do, this bill is before us.

1695 The question then becomes the specific legislative
1696 text. Among other provisions, the bill says that if you
1697 work in a State of which you are not a resident for fewer
1698 than 30 days, which is 6 weeks of 5-day weeks, your income
1699 would not be subject to tax by that non-resident State.
1700 While a de minimis time period may make sense, there is
1701 disagreement about what the threshold should be.

1702 As drafted, due mainly to the threshold in the bill,
1703 my home State of New York estimates it would lose about
1704 \$100 million annually if the bill were enacted. New York's
1705 unique location as the center of commerce for the Nation
1706 means many individuals come there at various points
1707 throughout the year for business purposes. This includes
1708 high-paid executives and CEO's. By exempting essentially
1709 everyone that comes to New York for fewer than 30 days, we
1710 would be unfairly costing the State a great deal of
1711 revenue.

1712 Most other States aren't in the same situation,
1713 although some are. But we shouldn't solve a national
1714 problem at the expense of a few States.

1715 Moreover, 30 days is excessive. It works out to 6
1716 work weeks. That is not de minimis. And if employers and
1717 employees have to monitor time to note the taxpayer has
1718 been in a non-resident State for 30 days or more, they can
1719 do it for a lower amount, such as 14 days or more.

1720 The first part of my amendment would make the time a
1721 more reasonable threshold of 14 days.

1722 The second part of the amendment adds a dollar value
1723 threshold as well. People who earn more than \$130,000 a
1724 year would not be covered by the bill and would be subject
1725 to non-resident State tax rules. This figure comes from
1726 those who are considered key employees as defined by the
1727 IRS Code. Such higher-paid persons can and should be
1728 expected to know the laws of each State in which they do
1729 business. And economically critical States in which upper-
1730 income people may come to do business, like New York,
1731 should not be unfairly penalized.

1732 Additionally, H.R. 1864 would provide a windfall to

1733 high-income people. Right now, as we have discussed, these
1734 high-income people who often travel to other States for
1735 work must pay according to non-resident State income tax
1736 law. Even though they may get a credit on their own home
1737 State for that tax paid, it is only up to their own State's
1738 tax rate. So working in another State with a higher
1739 marginal rate would increase their overall tax bill. By
1740 wiping away those State rules, as this bill would do if
1741 such persons worked less than 30 days in another State,
1742 that additional tax burden would be wiped away as well.
1743 This is tax avoidance of millions of dollars, not the
1744 purpose of the bill as I understood it. Putting a dollar
1745 limit in so that people who make over \$130,000 would still
1746 be subject to non-resident State tax law would prevent the
1747 bill from being used as simply another method of tax
1748 avoidance for upper-income people.

1749 The two changes in my amendment would also reduce the
1750 impact on New York -- that is, reducing the number of days,
1751 the threshold from 30 days to 14 days, and exempting people
1752 over \$130,000 -- would reduce the impact on New York from
1753 \$100 million a year to \$6 million a year. That would go a

1754 long way to minimizing the harm to New York and making the
1755 bill fairer while still achieving the bill's underlying
1756 goals.

1757 I know these issues can get esoteric, but it is
1758 important we develop an appropriate compromise. In the
1759 name of fairness and simplification, we don't want to
1760 provide ways to unfairly avoid taxes and we certainly
1761 shouldn't punish a few States with deep revenue reductions.

1762 As an aside, I didn't offer the substitute amendment I
1763 had prefiled because I wanted to focus on what I felt were
1764 the more egregious problems in the bill. The language for
1765 that substitute is based on the text from the Federation of
1766 Tax Administrators and has a number of positive adjustments
1767 to the bill. I hope the suggestions in that substitute
1768 amendment, which I am not offering, will be considered as
1769 the bill moves through the congressional process.

1770 The amendment I am offering, though, is targeted at
1771 the two changes I have discussed, reducing the number of
1772 days threshold from 30 to 14 and including an upper-income
1773 threshold. These are reasonable suggestions and I ask
1774 members to support the amendment.

1775 I yield back the balance of my time.

1776 Chairman Smith. Thank you, Mr. Nadler.

1777 The gentleman from North Carolina, Mr. Coble?

1778 Mr. Coble. Thank you, Mr. Chairman.

1779 Mr. Chairman, I oppose the amendment.

1780 The amendment proposes to remove employees who make
1781 \$130,000 annually from the reach of the bill. Under the
1782 current text, only athletes, entertainers, and prominent
1783 public figures or celebrities are carved out from the 30-
1784 day tax liability threshold. These people are excepted
1785 because they often make millions of dollars in a State in a
1786 short amount of time and their whereabouts is usually
1787 audited.

1788 Using a dollar threshold, it seems to me, instead of
1789 days is problematic. First, States have different
1790 definitions of wages and incomes. State tax laws can vary
1791 with respect to tax deferred compensation or performance
1792 notices, for example. This amendment would force employees
1793 to compute their income to determine where to pay income
1794 taxes rather than simply count the days they worked in a
1795 State.

1796 Secondly, employees frequently cannot estimate how
1797 much money they will earn in a year. What, for example, if
1798 an employee earns a salary of \$120,000 for the first 9
1799 months of a year but gets a pay raise in October that will
1800 put the employee over the \$130,000 threshold included in
1801 the bill? The employer will not have been withholding
1802 during the first 9 months of the year.

1803 Thirdly, many employees have more than one source of
1804 wages income. That is why one employer may pay the
1805 employee \$80,000, well below the proposed \$130,000
1806 threshold. A second employer may be paying the same person
1807 \$60,000. In the aggregate, the employee exceeds the
1808 threshold but neither employer will have withheld on his
1809 behalf.

1810 I think the value of our bill is it is simplification
1811 of State income tax thresholds that operate in interstate
1812 commerce. Among other objections I have to this amendment,
1813 adopting a 14-day threshold waters down the bill and it
1814 loses much of its effectiveness.

1815 For these reasons, a number of days threshold is more
1816 practical than a dollars-earned threshold, and I therefore

1817 oppose the amendment and encourage my colleagues to do
1818 likewise.

1819 Mr. Johnson. Would the gentleman yield?

1820 Mr. Coble. I will be glad to yield.

1821 Mr. Johnson. Thank you, Mr. Chairman.

1822 Congressman Nadler stated at the very beginning of his
1823 comments on his amendment that this is a national problem,
1824 and I agree that it is a national problem. And this
1825 problem has been festering for years and years and years
1826 prior to 4 years ago when this legislation was offered.
1827 And so it is now time for Congress, through this committee,
1828 to act and pass this legislation out of this committee.

1829 New York is only one of 50 States. Why should we not
1830 address this national issue because this legislative
1831 solution has some adverse impact on just one State? It
1832 begs to offer that we need to move forward with this.

1833 The model code that has been spoken about that the
1834 Federal tax administrators have looked at hasn't been
1835 studied by this committee. There has not been any dialogue
1836 that I know of between their efforts and this effort. And
1837 to wait until we see over the next several years whether or

1838 not these States will adopt a model code, I think the
1839 chances of that happening of you having a 50-State solution
1840 State by State is not going to happen. And so I don't want
1841 us to stall anymore. I want us to go ahead and get this
1842 done.

1843 And I will yield back.

1844 Mr. Coble. I thank the gentleman from Georgia. I
1845 reclaim and yield back.

1846 Chairman Smith. Thank you, Mr. Coble.

1847 Mr. Conyers. Mr. Chairman?

1848 Chairman Smith. The gentleman from Michigan is
1849 recognized.

1850 Mr. Conyers. I would just like to ask the gentleman
1851 from New York -- we are trying to check what is going on in
1852 Lansing in my State. But doesn't this come down to a
1853 choice between the high rollers and the lower-income people
1854 when we talk about cutting the 30 days to 14 days and that
1855 we effect this threshold to high-income earners? What does
1856 this translate out to in terms of your reservations about
1857 this that are being resisted by my friend, Mr. Johnson, and
1858 I suspect Mr. Cohen as well on our side?

1859 Mr. Nadler. Well, I don't think it is a question of
1860 high-rollers versus low-rollers. And frankly, I would be
1861 willing in my amendment to forget about the \$130,000
1862 threshold. The important one is the 14-day threshold.

1863 If the objection is that it is burdensome, you are
1864 here 1 day, there 2 days, if you are going to be in a State
1865 for 3 weeks, 14 days -- 15 -- I don't care -- 14 days is 3
1866 weeks of work. That is not de minimis and the State has a
1867 right to tax that. And some States, New York being one --
1868 there are some others. It makes a real difference. \$100
1869 million is not to sneeze at. It makes a real difference
1870 for public services and for the taxpayers in the State.

1871 I generally don't think that the Congress should
1872 interfere with the tax revenues of the States, certainly
1873 not inside their own borders. That is a general objection
1874 to the bill.

1875 But in terms of the goal of the bill, if the bill is
1876 to say that small businesses and individuals are unduly
1877 bothered, okay. But 14 days should be sufficient. If you
1878 are going to work in a State for 3 weeks, that is not de
1879 minimis. You should know that, if their laws require it,

1880 you should file taxes there. 30 days is 12 percent of a
1881 year. 14 days is about 5 percent of the workdays in a
1882 year, 260 workdays in a year. It doesn't seem to me that
1883 breaks down on high-rollers versus low-rollers. It breaks
1884 down on whether you spend a significant amount of time in a
1885 given State, and if you do -- working in a State, and if
1886 you do, you should pay the taxes there.

1887 Mr. Conyers. Well, could I ask Mr. Cohen, who may or
1888 may not have participated in this part of the bill that he
1889 supports? And we are talking now about the Nadler
1890 amendment. Quite frankly, I am caught between three of my
1891 friends on this side in a discussion but I am trying to get
1892 a little bit more explanation on in terms of what the
1893 resistance is to the Nadler amendment to a bill that I
1894 think he may be otherwise inclined to support himself.
1895 Have you been following this, Mr. Ranking Member?

1896 Mr. Cohen. Yes.

1897 Mr. Conyers. And has it led you to shed any light to
1898 those who have not followed this with the carefulness that
1899 you have?

1900 Mr. Cohen. I think everything has followed with the

1901 careful light that I have.

1902 Mr. Johnson. I think I have also. I will concur.

1903 Mr. Watt. Will the gentleman yield?

1904 Mr. Johnson. Yes, I do.

1905 Mr. Scott. I would tell my friend from Michigan that
1906 I haven't followed it that closely, but the Virginia
1907 Society of Certified Public Accountants have and they have
1908 written a strong letter in support of the legislation.

1909 Mr. Conyers. And that did not include the Nadler
1910 amendment.

1911 Mr. Scott. That is right.

1912 Mr. Conyers. Yes, I will yield to the gentleman from
1913 New York.

1914 Mr. Nadler. I appreciate the gentleman yielding when
1915 I hadn't requested it, but I will simply say that again on
1916 the legislation in general, I have severe constitutional
1917 questions with it. Especially when the problem is going to
1918 be solved anyway, I don't know why we have to do this. But
1919 if we are going to do it, 14 days makes much more sense. I
1920 mean, we shouldn't be really invading the revenues of a
1921 State or several States unnecessarily, and if the concern

1922 is bothersome, small businesses, individuals, 3 weeks of
1923 working in a State is not de minimis and how often does
1924 that occur? That would have a real impact on the revenue
1925 for the State, for several States, while not detracting
1926 from the purpose of the bill.

1927 Mr. Coble. Mr. Chairman?

1928 Chairman Smith. The gentleman's time has expired.

1929 Mr. Coble. Mr. Chairman?

1930 Chairman Smith. The gentleman from North Carolina,
1931 Mr. Coble?

1932 Mr. Coble. I want to insert my oars into these
1933 waters. I move to strike the last word.

1934 Chairman Smith. The gentleman is recognized.

1935 Mr. Coble. And I won't take 5 minutes.

1936 I want Mr. Cohen and Mr. Johnson to concur with me, if
1937 they can. The amendment demonstrates that the States may
1938 still have some concerns with the bill, obviously.

1939 Speaking for me -- and I don't mean to be speaking for Mr.

1940 Johnson or Mr. Cohen, but I would be glad to continue to

1941 work with the Mr. Nadler's office. I don't know that we

1942 can resolve the problem, but try to work through any

1943 outstanding concerns with the legislation between markup
1944 and the floor, if that is amenable to all parties involved.

1945 Mr. Johnson. Would the gentleman yield?

1946 Mr. Coble. Yes, sir.

1947 Mr. Johnson. Let me express how great it has been
1948 working with you, Mr. Chairman, on this legislation.

1949 Mr. Coble. Well, thank you, sir. The feeling is
1950 mutual, I might add.

1951 Mr. Johnson. Thank you.

1952 And I would definitely concur in your suggestion.

1953 Mr. Coble. I thank you.

1954 And the gentleman from Memphis?

1955 Mr. Cohen. I am always willing and look forward to
1956 working with the gentleman from the State of East Carolina.

1957 Mr. Coble. I thank you, sir.

1958 And I don't want to lull Mr. Nadler into a sense of
1959 false security because we may fall on our faces, but we
1960 will give it a go.

1961 Mr. Nadler. Will the gentleman yield?

1962 Mr. Coble. I yield.

1963 Mr. Nadler. I appreciate that, and I can see where

1964 the votes are lining up on this amendment at the moment.

1965 So I look forward to working with the gentleman on this.

1966 Mr. Coble. I thank the gentleman.

1967 Mr. Chairman, I yield back.

1968 Chairman Smith. Thank you, Mr. Cohen.

1969 Does the gentleman withdraw the amendment or are we
1970 prepared to vote on the amendment?

1971 Mr. Nadler. Let's vote on it, please.

1972 Chairman Smith. Okay. The question is on the
1973 amendment to the amendment. All in favor, say aye.

1974 [A chorus of ayes.]

1975 Chairman Smith. All opposed, say nay.

1976 [A chorus of nays.]

1977 Chairman Smith. The clerk will call the role. Just a
1978 minute. Will the clerk suspend?

1979 Let me consult with the mover of the amendment and
1980 respect what his wishes are. He does not want a roll call
1981 vote. In the opinion of the chair, the noes have it. Does
1982 he still not want a roll call vote?

1983 Mr. Nadler. Yes. I still do not want a roll call
1984 vote.

1985 [Laughter.]

1986 Chairman Smith. Okay.

1987 A majority having voted against the amendment, the
1988 amendment is not agreed to.

1989 The question is now on the Coble substitute. Those in
1990 favor, say aye.

1991 [A chorus of ayes.]

1992 Chairman Smith. Opposed, no?

1993 [A chorus of nays.]

1994 Chairman Smith. In the opinion of the chair, the ayes
1995 have it and the amendment is agreed to.

1996 A reporting quorum being present, the question is on
1997 reporting the bill, as amended, favorably to the House.

1998 Those in favor, say aye.

1999 [A chorus of ayes.]

2000 Chairman Smith. Opposed, no?

2001 [A chorus of nays.]

2002 Chairman Smith. The ayes have it and the bill, as
2003 amended, is ordered reported favorably.

2004 Without objection, the bill will be reported as a
2005 single amendment in the nature of a substitute

2006 incorporating the amendments adopted, and the staff is
2007 authorized to make technical and conforming changes.

2008 Members will have 2 days to submit views.

2009 I think what I would like to say to the members, while
2010 we are waiting for the author, the sponsor of the next
2011 bill, to arrive, is to take up the Blue Star Mothers bill
2012 because I don't think that will take much time.

2013 Pursuant to notice, I now call up H.R. 2815, to revise
2014 the Federal charter for the Blue Star Mothers of America to
2015 reflect a change in eligibility requirements for membership
2016 for purposes of markup.

2017 And the clerk will report the bill.

2018 Ms. Kish. "H.R. 2815" --

2019 Chairman Smith. Without objection, the bill will be
2020 considered as read.

2021 [The information follows:]

2022

2023 Chairman Smith. And I will yield my time to the
2024 chairman of the Immigration Subcommittee, Mr. Gallegly.
2025 And without objection, my opening statement will be made a
2026 part of the record.

2027 [The statement Mr. Smith follows:]

2028

2029 Chairman Smith. Other members are welcome to have
2030 their statements be made a part of the record as well.

2031 Without objection, the statement by the gentleman from
2032 California will be made a part of the record.

2033 [The information follows:]

2034

2035 Chairman Smith. The gentlewoman from California, Ms.
2036 Lofgren, is recognized.

2037 Ms. Lofgren. Thank you, Mr. Chairman.

2038 Earlier this year, I received a letter from a
2039 constituent asking me to consider cosponsoring this bill.
2040 In her letter, the woman wrote that she is a proud mother
2041 of two U.S. Marines and a Blue Star Mother, an organization
2042 made up of the mothers of our military men and women who
2043 are defending this great country of ours.

2044 I took a look at the bill, which has broad bipartisan
2045 support, and I wholeheartedly support the measure. This
2046 bill makes several small changes to the membership
2047 eligibility requirements for the Blue Star Mothers of
2048 America, which is a federally chartered organization.

2049 Now, generally I believe it should be up to the
2050 organization, not Congress, to decide who should belong to
2051 a group and who should not. And that is just one of the
2052 many reasons why members on both sides of the aisle have
2053 supported this committee's longstanding policy against
2054 creating new Federal charters. However, the committee has
2055 no policy against amending existing charters, and if such

2056 amendments are needed to allow the organization to manage
2057 their own affairs, I see no reason to stop them.

2058 The changes made in this bill, for instance, bring the
2059 organization's Federal charter in line with the change
2060 already adopted by resolution when the Blue Star Mothers
2061 held their national convention in Grand Junction, Colorado
2062 last year.

2063 And I also support the spirit behind the change. One
2064 change made by the organization and by the bill is that it
2065 broadens the definition of "mother" to include not only
2066 birth mothers, adoptive mothers, and certain stepmothers,
2067 but also women who are foster mothers, grandmothers, and
2068 legal guardians of person's in the military. Our men and
2069 women in the military need all of the support we can offer.

2070 So I applaud this effort by the Blue Star Mothers to
2071 expand the circle of support that the organization can
2072 provide, and I would urge that we adopt the bill.

2073 And I yield back.

2074 Chairman Smith. Thank you, Ms. Lofgren.

2075 Also, without objection, the opening statement of the
2076 ranking member, the gentleman from Michigan, will be made a

2077 part of the record.

2078 [The information follows:]

2079

2080 Chairman Smith. A reporting quorum being present, the
2081 question is on reporting the bill favorably to the House.

2082 Those in favor, say aye.

2083 [A chorus of ayes.]

2084 Chairman Smith. Opposed, no?

2085 [No response.]

2086 Chairman Smith. The ayes have it and the bill is
2087 ordered reported favorably.

2088 Without objection, the bill will be reported, and
2089 staff is authorized to make technical and conforming
2090 changes.

2091 Members will have 2 days to submit their views. We
2092 expect momentarily to consider H.R. 3256.

2093 Pursuant to notice, I now call up H.R. 3256, the
2094 Deport Convicted Foreign Criminals Act of 2011, for
2095 purposes of markup. And the clerk will report the bill?

2096 Ms. Kish. H.R. 3256, to amend the Immigration and
2097 Nationality Act --

2098 Chairman Smith. Without objection, the bill will be
2099 considered as read.

2100 [The information follows:]

2101

2102 Chairman Smith. And I am going to yield my time to
2103 the gentleman from Texas, Mr. Poe. And without objection,
2104 my entire opening statement will be made a part of the
2105 record.

2106 [The information follows:]

2107

2108 Mr. Poe. Thank you, Mr. Chairman. I appreciate you
2109 working with me on this important piece of legislation.
2110 And I thank you for marking it up today.

2111 This legislation, H.R. 3256, the Deport Foreign
2112 Convicted Criminals Act, does exactly that. People who are
2113 in the United States and have gone to prison and have been
2114 ordered legally to be deported back to their foreign
2115 countries. Sometimes those countries never take them back,
2116 and, therefore, they are released, in some cases, back on
2117 the streets of the United States.

2118 Some say that this bill is too extreme, and it
2119 punishes countries too harshly for not repatriating their
2120 own convicted criminals in the United States. Let us talk
2121 a little bit about the history of such legislation.

2122 There is a provision already in the law, the IMA
2123 Section 243(d), that mandates that upon notification by
2124 Homeland Security that a foreign country is denying or
2125 unreasonably delaying repatriation of one of their aliens,
2126 the Secretary of State shall discontinue granting visas to
2127 that country. The problem is this provision has been on
2128 the books since 1952 and has rarely been enforced, even

2129 though the law says it shall be enforced.

2130 What that does mean for the United States, here is
2131 what it means, that when it comes to repatriation, we have
2132 been taken advantage of by countries for over 60 years.
2133 Why would they take back their convicted criminals when we
2134 do not even enforce the sanctions we already have on the
2135 books in the United States. The status quo does not work,
2136 and we need to take a stand and stop countries from
2137 ignoring our law and require them to take back lawfully
2138 convicted criminal aliens.

2139 H.R. 3256 changes the mechanism to which Section
2140 343(d) sanctions operate so that any Administration can no
2141 longer ignore Congress' will to impose visa sanctions on
2142 infringing countries. Visas will be denied on a sliding
2143 scale, starting with diplomatic visas, and adding another
2144 level of visas at every 90-day intervals.

2145 Some say this problem can be handled diplomatically
2146 and we should not punish foreign countries so harshly. I
2147 could not disagree more. This is a public safety issues,
2148 and if a country is not going to take back their citizens
2149 who are in our country illegally and commit a crime, why

2150 should we continue to grant their citizens visas to come
2151 here? If these citizens who come here to commit crimes,
2152 then we are not going to be able to send these folks home
2153 because these home countries just will not take them.

2154 Who are the worst offending countries? Well, it is
2155 the usual suspects: China, Pakistan, Iran, Laos, Vietnam,
2156 are just a few. Speaking of China, in 2006, Chinese
2157 national Hung Chin was ordered deported after stalking and
2158 assaulting Quan Wu in New York City. But China refused to
2159 repatriate him. Eventually he ended up getting released
2160 back to the Queens, New York area, where he smashed Wu's
2161 skull with a hammer after she returned home after a trip to
2162 the grocery store in 2010. This would not have occurred if
2163 China had taken him back where he belonged.

2164 On top of the risk of violence to American citizens
2165 and legal immigrants caused by these individuals is the
2166 cost of incarcerating these people while their home
2167 countries unreasonably delay their repatriation. In Fiscal
2168 Year 2011, the average time for China to issue repatriation
2169 travel documents was 144 days. Cambodia was even worse
2170 with over 300 days. Why should the American taxpayer pay

2171 for this with the possibility of more crime by these
2172 lawfully deported individuals? There is no reasonable
2173 explanation aside from a major national disaster for a
2174 country to be averaging this long to take back their
2175 citizens.

2176 This bill does have an exception in circumstances.
2177 America should not have to pay to detain foreign nationals
2178 because their country just refuses to take them back.
2179 Furthermore, history has proven that when we enforce
2180 sanctions of this type, they actually work. Although the
2181 substance of Section 243(d) was part of the original
2182 Immigration and Nationality Act of 1952, congressional
2183 research could only find one instance where it was actually
2184 used. But the one instance where it was used involved the
2185 country of Guyana. It was extremely effective.

2186 In 2001, the State Department discontinued granting
2187 non-immigrant visas to employees of the government of
2188 Guyana and their families. Within in two months, all of a
2189 sudden, Guyana issued travel documents to those 112 of the
2190 113 nationals ordered removed from the United States. The
2191 sanction was lifted.

2192 I expect that if this bill became the law, the vast
2193 majority, if not all countries, who currently delay, delay,
2194 delay in taking back their citizens would shape up, take
2195 their folks back. Some say at we should try diplomacy more
2196 and more and not enforce sanctions. We have tied this
2197 since 1952; it just has not worked. Successive
2198 Administrations have tried to play it nice and the problem
2199 has only gotten worse in this Nation.

2200 In 2003, we tried diplomacy and negotiate a
2201 repatriation agreement with Cambodia. At that time, there
2202 was 1,253 Cambodians with removal orders in the country,
2203 940 of them criminal aliens. Only 109 are actually in
2204 detention; the rest are on the streets. Rather than use
2205 243(d) authority to suspend visa issuances and secure
2206 compliance, the last Administration elected to compensate
2207 Cambodia. That is right, compensate Cambodia with American
2208 funds, authorize ICE to pay the country \$1,000 per returned
2209 alien. So, we actually paid a country to do something they
2210 are legally bound to do anyway, take back their nationals.

2211 Whatever the merits of such efforts, nothing in my
2212 bill precludes ongoing negotiations. In fact, with

2213 sanctions looming, countries may even more amenable to
2214 agreement. We need to negotiate offending countries from a
2215 position of strength, not a position of weakness.

2216 I urge support of this legislation, H.R. 3256. I
2217 yield back my time.

2218 Chairman Smith. Thank you, Mr. Poe. The gentleman
2219 from Michigan, Mr. Conyers, is recognized?

2220 Mr. Conyers. Thank you, Mr. Chairman. Judge Poe, I
2221 recognize the impatience and the fact that you have finally
2222 run out of negotiating zeal about this. But I just want to
2223 ask you if you recognize, or am I correct in saying that
2224 this bill would affect 141 nations out of the 196 nations
2225 that exist on this planet.

2226 Mr. Poe. That is my understanding because that number
2227 of nations, if the gentleman would yield, have one or more
2228 individuals waiting to be deported.

2229 Mr. Conyers. All right. And am I correct that there
2230 have been no legislative hearings in your subcommittee or
2231 anywhere in the Judiciary on this subject?

2232 Mr. Poe. That is correct. The gentleman yields.

2233 Mr. Conyers. Well, I just want to say that I am not

2234 prepared today to pass out of this committee legislation
2235 that would affect 90 percent of the nations on earth in
2236 which there have been no hearings. And if that is the
2237 case, there is no point in me talking about anything else.
2238 I cannot support any legislation that would have this wide
2239 effect upon so many people.

2240 And I am in total accord with the fact that there are
2241 unconscionable delays coming from the nation-states that
2242 you have cited. But I think it would be a mistake for the
2243 House Judiciary Committee to have acted on this subject
2244 without hearings.

2245 I yield back my time.

2246 Chairman Smith. Thank you, Mr. Conyers. The
2247 gentleman from California, Mr. Gallegly, is recognized?

2248 Mr. Gallegly. Thank you, Mr. Chairman. I move to
2249 strike the last word.

2250 Chairman Smith. And the gentleman is recognized for
2251 five minutes?

2252 Mr. Gallegly. Mr. Chairman, ICE is supposed to deport
2253 criminal aliens after they complete their sentences. At
2254 least that is the way it is supposed to work.

2255 Unfortunately some countries refuse to accept criminals
2256 back, leaving the alien and the American citizens in legal
2257 limbo.

2258 The Supreme Court has ruled that if ICE is not able to
2259 remove the criminal within 180 days, the criminal must be
2260 released back into society, free to prey on our citizens.
2261 Congressman Poe's legislation would address this serious
2262 problem by clarifying current law, which prohibits the
2263 State Department from issuing visas, starting with visas
2264 for diplomats, to nationals whose home countries refuse to
2265 repatriate the criminal aliens. This is a reasonable
2266 approach to a very, very serious problem.

2267 I want to thank Congressman Poe for his work on this
2268 issue, and look forward to working with him to bring this
2269 legislation to the floor.

2270 Mr. Chairman, I yield back the balance of my time.

2271 Chairman Smith. Thank you, Mr. Gallegly.

2272 The gentlewoman from California, Ms. Lofgren, is
2273 recognized?

2274 Ms. Lofgren. Thank you, Mr. Chairman. Israel, the
2275 United Kingdom, Germany, Taiwan, Japan, Poland, Georgia.

2276 What do all these countries have in common? These are
2277 America's friends, these countries, and they are also
2278 countries that would be sanctioned under this bill if we
2279 were to enact the bill.

2280 As written, the bill prevents us from issuing visas of
2281 any type to nationals of each of these countries. In fact,
2282 if this bill were to become law, the United States would be
2283 unable to issue visas to people from over three-quarters of
2284 the countries on the planet. No tourist visas, diplomatic
2285 visas, student visas, no visas for Nobel Prize winners,
2286 critical scientists, electrical engineers, ag workers. No
2287 visas for the spouses and children of American citizens.
2288 No visas for children that Americans are trying to adopt.

2289 Now, it is not difficult to see that this would have a
2290 bad effect on America, on American families, and businesses
2291 and the economy. And I cannot believe that that was the
2292 bill's author really intended to do.

2293 As written, the bill sanctions would apply against any
2294 country that fails to take an individual for any reason
2295 within 90 days of a request. And, as we say, the problem
2296 many countries, such as China, and there are certainly some

2297 unreasonable countries that we need to deal with. But it
2298 would be 152 countries of the 190 countries in the world.
2299 And I just do not think that makes any sense.

2300 Now, it is worth understanding why this can happen in
2301 a way that is reasonable, why a country might not take a
2302 person back in 90 days. There may be, and I have certainly
2303 seen cases of this sort, legitimate questions on the part
2304 of the country as to whether the returnee actually is a
2305 citizen of that country.

2306 Now, if somebody was trying to deport somebody, an
2307 alleged American from Germany, and we did not think they
2308 were actually an American, we would not expect to take
2309 Germany's word for it. We would want to make sure that
2310 that person really was an American that we had to take
2311 back. It is the same thing for these other countries.

2312 Sometimes it is a matter of somebody was in transit,
2313 and that is the last country they were in, but they are not
2314 actually a citizen of that country. And when you are
2315 talking about criminals, these are not exactly, you know,
2316 countries are not leaping saying, yeah, I would like to
2317 have a criminal come back here. So, it is not unreasonable

2318 for any country, including the United States, to ascertain
2319 that the person being returned forcefully is actually their
2320 responsibility to take.

2321 I would say also that the two biggest defenders,
2322 according to ICE, are China and India. And I think, and I
2323 have run into many cases of Americans adopting infants from
2324 China. This bill would tell those American parents you
2325 cannot have the child that you adopted come over here from
2326 China. Do you think the Chinese government cares if they
2327 break the hearts of American parents? I do not think so.

2328 We just adopted a bill eliminating the per country
2329 limits, which will help us get really top notch electrical
2330 engineers from India and from China. Well, we might as
2331 well not have passed it because this bill completely undoes
2332 that bill.

2333 Now, I agree that there are problems. We have made
2334 some progress actually in getting countries to repatriate
2335 their citizens. There has been tremendous progress. I,
2336 frankly, have an amendment I will offer later that gives
2337 greater authority to deny visas, but it needs to be denial
2338 of visas that the government will care about.

2339 The Chinese government does not care if an American
2340 citizen is separated from his or her spouse. That is not
2341 going to matter to them. They will care if their diplomats
2342 and their diplomats' servants are unable to come. That is
2343 the pressure point that we ought to be using.

2344 There is a reason why the current statute has never
2345 really been useful. It is because it is a blunder bust.
2346 You cannot micro target in a way that makes sense. You
2347 know, when somebody is burglarizing your house, it may make
2348 sense to use the gun, but it is not going to be effective
2349 if the gun is pointed to your head. And that is what this
2350 bill does.

2351 So, I hope that we will not pass it as written. I
2352 have an amendment that I will offer that I think may make
2353 this a useful product. But if we were to adopt this now,
2354 it would be absurd frankly. And I yield back.

2355 Chairman Smith. And the gentlewoman's time has
2356 expired.

2357 The gentleman from Iowa, Mr. King?

2358 Mr. King. Thank you, Mr. Chairman. In response to
2359 the gentlelady from California, I would point out that if

2360 this blunder bust supposedly of a bill has not been useful,
2361 it is because it has not been complied with. The current
2362 laws are not being complied with. That is why Mr. Poe has
2363 brought this legislation, which I support.

2364 And also, there is a waiver in the bill that allows
2365 for the President, the executive branch, Secretary of
2366 State, one might say, can make a request of Congress to
2367 grant a waiver. So, if these issues that have been claimed
2368 as being some reason to oppose this legislation, are a
2369 strong enough reason to convince a majority of Congress,
2370 Congress would grant a waiver. I do not think that
2371 adoptees from China are the central issue here at all. I
2372 think China has an interest in allowing people to come
2373 here, and some of those people go back to China with a
2374 significant amount of knowledge that I just as soon stayed
2375 in the United States, from my own perspective.

2376 But the critics of this bill focus their criticism on
2377 presumption of non-compliance, and that is why they will
2378 argue that 152 of 190 nations will not be able to have
2379 visas to come to the United States. They presume non-
2380 compliance. And they also waive their understanding that

2381 there is a non-criminal alien exemption written into this
2382 bill, or a 10 percent, whichever the case may be. So,
2383 there is room for error written into the bill.

2384 Let us look at it instead, let us presume compliance.
2385 Now, if you presume compliance, now you would have
2386 eliminated those 152 countries, and if there is someone
2387 going through another country on the way to the United
2388 States and there is some disagreement as to which country
2389 that individual gets repatriated to, let those two
2390 countries sort that out. If they are on the way through
2391 Eritrea into the United States from the Sudan, for example,
2392 we send them back to Eritrea, and the Eritreans can then
2393 make their deal with Sudan. They can pass similar
2394 legislation. I am sure Mr. Poe would be flattered, as
2395 would I.

2396 And so, the countries of Israel, United Kingdom,
2397 Germany, Taiwan, Japan, Poland, and Georgia that were
2398 mentioned, those are all countries that we do business with
2399 on a fairly effective basis, and I think they would adopt
2400 this. I think they would comply. I think there is
2401 latitude in here. And if there is any concern about

2402 whether there is going to be free travel into the United
2403 States, this is a simple solution to a complex problem that
2404 Mr. Poe has brought.

2405 And it does put the onus on the countries that refuse
2406 to take people back. We should be thinking instead of
2407 133,662 illegal aliens that have their pending final orders
2408 of removal been suspended because there is not a country
2409 that will take them. We should think of the, if my memory
2410 serves me correctly, over 3,600 under *Zavidas* who are
2411 dangerous criminals, some of them murderers, who have been
2412 ordered by the courts, released onto the streets of the
2413 United States, and are killing Americans.

2414 Mr. Berman. Would the gentleman yield?

2415 Mr. King. If I finish my statement. And are killing
2416 Americans because the court has ordered that if there is
2417 not a place for them to be returned to in six months past
2418 their term, they have to be released into the streets of
2419 the United States. Americans are dying because we do not
2420 have the full legislation.

2421 So, I support it. I urge its adoption. I yield to
2422 the gentleman from California.

2423 Mr. Berman. I thank the gentleman very much for
2424 yielding. Let me just ask a hypothetical. Somebody, you
2425 know, born in Egypt, parents at the age of 16 bring him to
2426 Great Britain. At the age of 18, say on a student visa, he
2427 comes to go to university and is convicted of a series of
2428 heinous crimes. Finishes serving his term, deportation.
2429 He chooses to go to Great Britain, not to Egypt. Great
2430 Britain says, you were just passing through; you were here
2431 two years. We are not taking you.

2432 The 10-person exemption that you referred to applies
2433 to people who have not been convicted of those kinds of
2434 crimes.

2435 Mr. King. Non-criminals, yes.

2436 Mr. Berman. One criminal that Great Britain will not
2437 take because they say send him to Egypt, and, as I
2438 understand the practice, ironically he gets to choose which
2439 country where he has a claim of either habitual residence
2440 or nationality. He chooses Great Britain. At some point
2441 in this process, we stopped letting anyone in from Great
2442 Britain?

2443 Mr. King. Reclaiming my time, I am not aware that he

2444 gets to choose, and if there is a clarification on that, I
2445 will want to know that. However, my judgment on this would
2446 be that the visa that sent them here is the nation of
2447 responsibility, not some country that they have traveled
2448 from through. The visa that sent them here would be the
2449 country responsible. And I would suggest that if the
2450 United Kingdom would not take that individual back that
2451 they have authorized to come to the United States, then
2452 they should make their deal with the donating country that
2453 sent the individual to their nation. We cannot go back
2454 through multiple iterations of this; it can only be one.

2455 Mr. Berman. And if Egypt --

2456 Chairman Smith. The gentleman's time has expired.

2457 The gentlewoman from California, Ms. Lofgren, is
2458 recognized?

2459 Ms. Lofgren. I move to strike the last word.

2460 Chairman Smith. The gentlewoman is recognized for
2461 five minutes?

2462 Ms. Lofgren. I understand the motivation to do
2463 something about *Zavidas* releases, and I agree with that
2464 actually. We are not arguing what we are trying to

2465 accomplish here. This remedy is very flawed. It will not
2466 work. The waivers will not work.

2467 And Mr. Berman is exactly correct. If you have one
2468 criminal conviction and there is a doubt on the part of the
2469 country that we are trying to remove that person to that is
2470 legit on their part, it ultimately will end up in no visas
2471 whatsoever for some of the closest allies of the United
2472 States. I mean, Great Britain, their intelligence agencies
2473 and our intelligence agencies are arm in arm. I mean, that
2474 is not an effective remedy.

2475 And I will tell you, I will give you an example, a
2476 real case that I know about. We were looking several years
2477 ago at cases where ICE had erroneously held American
2478 citizens. There was a case of a woman who, and I cannot
2479 remember what her offense was, but she was in custody. And
2480 she claimed to be French. France would not give her a
2481 passport, and they would not take her.

2482 Well, it turned out, I mean, she did not speak French,
2483 and she was not French, in fact. She had a mental health
2484 problem. But she was in custody for over a year, while
2485 France refused to take her because they said she is not

2486 ours. And, in fact, they were right that she was not ours.

2487 Under this provision, all visas for France would be
2488 denied, even though in the end France was correct that she
2489 was not their citizen. She was actually an American
2490 citizen.

2491 So, we are legislators here. How we write the law
2492 actually does matter. It is not just what we intend. And
2493 this bill would lead to damage to our allies and to our own
2494 country. That is a mistake. We should use the ability to
2495 sanction other governments through denial of diplomatic
2496 visas to them and to the servants and assistants of the
2497 diplomats. That actually would work; this will not.

2498 And with that, I would yield --

2499 Mr. Conyers. Would the gentlelady yield?

2500 Ms. Lofgren. I would be happy to yield.

2501 Mr. Conyers. Could I inquire of the distinguished
2502 chairman of the subcommittee, would he consider holding
2503 hearings on this subject and the bill for consideration?

2504 And I yield to him.

2505 Mr. Gallegly. Thank you. I thank the gentleman for
2506 yielding. I certainly would like to discuss this with the

2507 chairman, and it seems like a reasonable thing to do.

2508 We have a problem. It is a major problem. And we
2509 have people dying on our streets as a result of this
2510 problem. And I think that collectively we ought to focus
2511 on the problem and not maybe some of the political spin. I
2512 think that my good friend, Ms. Lofgren, makes some good
2513 arguments, but at the same time, rather than finding ways
2514 not to support Mr. Poe, let us collectively work a way
2515 together to solve this problem, because the status quo, in
2516 my estimation, is not acceptable.

2517 Mr. Conyers. So, you want to pass the bill and then
2518 hold hearings afterwards?

2519 Mr. Gallegly. I would say, well, you know, I would
2520 accept passing this bill and seeing that it be subject to -
2521 - I think it can be done through an amendment process.
2522 But, again, I am going to yield to the chairman of the
2523 committee on that process.

2524 Mr. Conyers. Well, is the chairman aware of the
2525 Department of Homeland Security and the State Department
2526 recently signed memorandum of understanding that provides a
2527 series of escalating steps which can be taken against

2528 countries that refuse to take back their nationals?

2529 Mr. Gallegly. I think the operative word, if the
2530 gentleman would yield, is can. The question is, will they?

2531 Ms. Lofgren. Recalling my time, if I may, I do not
2532 know if it is in order to make a motion to refer this bill
2533 to the subcommittee for additional hearings. But if it is,
2534 I think it would serve the whole committee and certainly
2535 would be respectful of the --

2536 Chairman Smith. If the gentlewoman would yield, I
2537 would say that it is not in order to make such a motion.

2538 I also want to point out we are not really changing
2539 policy here today. And in point of fact, this particular
2540 subject was, in fact, raised at an earlier hearing. It was
2541 a hearing where we were trying to decide whether ICE should
2542 hold individuals beyond six months and what the appropriate
2543 interpretation of a Supreme Court ruling was. So, the
2544 subject has come up at a previous hearing, and, as I say,
2545 we are really not changing policy anyway.

2546 But in any case, the answer to the gentlewoman's
2547 question was it would not be appropriate.

2548 Ms. Lofgren. But, Mr. Chairman --

2549 Chairman Smith. The gentlewoman's time has expired.

2550 Ms. Lofgren. -- I make a motion to postpone further
2551 consideration of the bill.

2552 Voice. Second.

2553 Mr. Gallegly. Reserving the right to object. Mr.
2554 Chairman, I would make a motion to table the gentlelady's
2555 motion.

2556 Chairman Smith. A motion has been made to table the
2557 motion to postpone. All in favor of the motion to table,
2558 say aye?

2559 [A chorus of ayes.]

2560 Chairman Smith. Opposed, nay?

2561 [A chorus of nays.]

2562 Chairman Smith. In the opinion of the chair, the ayes
2563 have it.

2564 Ms. Lofgren. May we have a roll call on that, Mr.
2565 Chairman?

2566 Chairman Smith. A roll call has been requested, and
2567 the clerk will call the roll?

2568 Ms. Kish. Mr. Smith?

2569 Chairman Smith. Aye.

2570 Ms. Kish. Mr. Smith votes aye.

2571 Mr. Sensenbrenner?

2572 [No response.]

2573 Ms. Kish. Mr. Coble?

2574 [No response.]

2575 Ms. Kish. Mr. Gallegly?

2576 Mr. Gallegly. Aye.

2577 Ms. Kish. Mr. Gallegly votes aye.

2578 Mr. Goodlatte?

2579 [No response.]

2580 Ms. Kish. Mr. Lungren?

2581 [No response.]

2582 Ms. Kish. Mr. Chabot?

2583 Mr. Chabot. Aye.

2584 Ms. Kish. Mr. Chabot votes aye.

2585 Mr. Issa?

2586 [No response.]

2587 Ms. Kish. Mr. Pence?

2588 [No response.]

2589 Ms. Kish. Mr. Forbes?

2590 [No response.]

2591 Ms. Kish. Mr. King?

2592 Mr. King. Aye.

2593 Ms. Kish. Mr. King votes aye.

2594 Mr. Franks?

2595 [No response.]

2596 Ms. Kish. Mr. Gohmert?

2597 Mr. Gohmert. Aye.

2598 Ms. Kish. Mr. Gohmert votes aye.

2599 Mr. Jordan?

2600 Mr. Jordan. Aye.

2601 Ms. Kish. Mr. Jordan votes aye.

2602 Mr. Poe?

2603 Mr. Poe. Aye.

2604 Ms. Kish. Mr. Poe votes aye.

2605 Mr. Chaffetz?

2606 [No response.]

2607 Ms. Kish. Mr. Griffin?

2608 [No response.]

2609 Ms. Kish. Mr. Marino?

2610 [No response.]

2611 Ms. Kish. Mr. Gowdy?

2612 Mr. Gowdy. Yes.

2613 Ms. Kish. Mr. Gowdy votes yes.

2614 Mr. Ross?

2615 [No response.]

2616 Ms. Kish. Ms. Adams?

2617 Ms. Adams. Yes.

2618 Ms. Kish. Ms. Adams votes yes.

2619 Mr. Quayle?

2620 Mr. Quayle. Aye.

2621 Ms. Kish. Mr. Quayle votes aye.

2622 Mr. Amodei?

2623 Mr. Amodei. Yes.

2624 Ms. Kish. Mr. Amodei votes yes.

2625 Mr. Conyers?

2626 Mr. Conyers. No.

2627 Ms. Kish. Mr. Conyers votes no.

2628 Mr. Berman?

2629 Mr. Berman. No.

2630 Ms. Kish. Mr. Berman votes no.

2631 Ms. Kish. Mr. Nadler?

2632 Mr. Nadler. No.

2633 Ms. Kish. Mr. Nadler votes no.

2634 Mr. Scott?

2635 Mr. Scott. No.

2636 Ms. Kish. Mr. Scott votes no.

2637 Mr. Watt?

2638 [No response.]

2639 Ms. Kish. Ms. Lofgren?

2640 Ms. Lofgren. No.

2641 Ms. Kish. Ms. Lofgren votes no.

2642 Ms. Jackson Lee?

2643 Ms. Jackson Lee. No.

2644 Ms. Kish. Ms. Jackson Lee votes no.

2645 Ms. Waters?

2646 [No response.]

2647 Ms. Kish. Mr. Cohen?

2648 [No response.]

2649 Ms. Kish. Mr. Johnson?

2650 [No response.]

2651 Ms. Kish. Mr. Pierluisi?

2652 [No response.]

2653 Ms. Kish. Mr. Quigley?

2654 [No response.]

2655 Ms. Kish. Ms. Chu?

2656 Ms. Chu. No.

2657 Ms. Kish. Ms. Chu votes no.

2658 Mr. Deutch?

2659 Mr. Deutch. No.

2660 Ms. Kish. Ms. Deutch votes no.

2661 Ms. Sanchez?

2662 [No response.]

2663 Chairman Smith. The gentleman from Arkansas?

2664 Mr. Griffin. Aye.

2665 Ms. Kish. Mr. Griffin votes aye.

2666 Chairman Smith. The gentleman from North Carolina?

2667 Mr. Coble. Aye.

2668 Mr. Kish. Mr. Coble votes aye.

2669 Ms. Jackson Lee. Mr. Chairman?

2670 Chairman Smith. The gentlewoman from Texas?

2671 Ms. Jackson Lee. How am I recorded?

2672 Ms. Kish. Ms. Jackson Lee is recorded as nay.

2673 Chairman Smith. The gentleman from Arizona?

2674 Mr. Franks. Aye.

2675 Ms. Kish. Mr. Franks votes aye.

2676 Chairman Smith. The clerk will report?

2677 Mr. Nadler. Mr. Chairman?

2678 Chairman Smith. The clerk will suspend. For what
2679 reason does the gentleman from -- the clerk will suspend.
2680 The gentleman from North Carolina, Mr. Watt?

2681 Mr. Watt. No.

2682 Ms. Kish. Mr. Watt votes no.

2683 Mr. Nadler. Mr. Chairman?

2684 Chairman Smith. The gentleman from New York?

2685 Mr. Nadler. I am intensely curious, how am I
2686 recorded, please?

2687 Ms. Kish. Mr. Nadler is recorded as no.

2688 Mr. Nadler. No. Thank you.

2689 Chairman Smith. It still just counts once.

2690 Ms. Lofgren. Mr. Chairman?

2691 Chairman Smith. Who seeks to be recognized? The
2692 gentlewoman from California?

2693 Ms. Lofgren. I would like to inquire as to how I am
2694 recorded.

2695 Ms. Kish. Ms. Lofgren is recorded as no.

2696 Chairman Smith. The clerk will report?

2697 Ms. Kish. Mr. Chairman, 14 members voted aye, 9
2698 members voted nay.

2699 Chairman Smith. The majority having voted in favor to
2700 table the motion, the motion is tabled.

2701 Mr. Nadler. Mr. Chairman?

2702 Chairman Smith. For what purposes does the gentleman
2703 from New York wish to be recognized?

2704 Mr. Nadler. Strike the last word.

2705 Chairman Smith. I would like to recognize someone on
2706 this side before the gentleman is recognized.

2707 Mr. Nadler. Okay, I am sorry.

2708 Chairman Smith. The gentleman from South Carolina,
2709 Mr. Gowdy, is recognized?

2710 Mr. Gowdy. Thank you, Mr. Chairman. I want to
2711 commend His Honor Judge Poe for his patience. Despite the
2712 mandatory language of *Zhou*, visas are not suspended. And,
2713 Mr. Chairman, I have to be candid, this is a new phenomenon
2714 to me to have a law passed and signed, and still yet not
2715 enforced is something I was not familiar with until the
2716 last 11 months.

2717 The Supreme Court bars the post-adjudicatory
2718 indefinite detention of criminal aliens, so we are left
2719 frankly, Mr. Chairman, with no remedy other than His Honor
2720 Judge Poe's, which is to simply take back your criminals,
2721 and then all will be well.

2722 Our friends like Israel and Great Britain do not take
2723 back their criminals, Mr. Chairman, because they do not
2724 have to. And they know they do not have to. And I suspect
2725 that once they realize full well that they do have to, they
2726 will, and all will be well. Our colleagues on the other
2727 side have used a hypothetical, Mr. Chairman, of someone who
2728 cannot figure out whether they are Indian or British. I
2729 find it curious that because they cannot figure out if they
2730 are British or Indian, they talismanically become American.
2731 That is the least acceptable alternative.

2732 I have heard a lot of criticism with His Honor Judge
2733 Poe's bill. I have heard no specific remedies whatsoever
2734 offered on the other side, other than promises of good
2735 will, and promises of working together, and future bills.
2736 We need a remedy now.

2737 Mr. Conyers. Would the gentleman yield?

2738 Mr. Gowdy. And I commend His Honor Judge Poe for
2739 seeking to merely enforce the law as it is currently
2740 written.

2741 Mr. Conyers. Would the gentleman yield?

2742 Mr. Gowdy. I would be delighted to yield to the
2743 ranking member, the gentleman from Michigan.

2744 Mr. Conyers. Thank you. The reason you have not
2745 heard any remedies is that we have not had a hearing to
2746 have remedies expressed.

2747 Mr. Gowdy. Well, I would say this to the gentleman
2748 from Michigan. I was sitting here racking my brain trying
2749 to imagine what possibly would come from those hearings.
2750 We know that the visa prohibition or suspension is not
2751 being enforced. We know that the Supreme Court already
2752 will not allow us to involuntarily indefinitely detain
2753 people beyond a certain point. We know that these
2754 criminals are continuing to commit offenses against our
2755 fellow citizens because their native countries will not
2756 take them back. I am struggling to see what part of the
2757 puzzle I am missing.

2758 So, while ordinarily I am a big fan of hearings, and I

2759 enjoy the opportunity to listen from witnesses and
2760 occasionally question them. I think we have waited long
2761 enough. And, again, Judge Poe's remedy simply enforces
2762 what we already have, and until there is a better remedy, I
2763 am resigned to support his.

2764 And I would yield back.

2765 Chairman Smith. Thank you, Mr. Gowdy. The gentleman
2766 from New York is recognized?

2767 Mr. Nadler. Thank you. Mr. Chairman, when I was a
2768 child my mother said, never bite your nose to spite your
2769 face. And that is what we seem to be doing today. Yes,
2770 there is a problem, but we are going to eliminate the
2771 entire tourist industry in this country, which is what this
2772 bill would do essentially. If nobody from 140 countries
2773 could get tourist visas, you eliminate the entire tourist
2774 industry? What percentage of our economy is the tourist
2775 industry?

2776 We have lots of foreign students in the United States.
2777 The majority of our engineering students are foreign
2778 students, many of whom -- in fact, a few years it was most
2779 -- stay here. We are the beneficiaries of huge brain drain

2780 of people who come to the United States and stay here and
2781 become some of our most productive scientists and
2782 engineers. Do away with that?

2783 It does not make sense. Yes, I hear a lot of
2784 frustration in this committee about a problem, and, yes, it
2785 is a problem, and, yes, we ought to deal with it. And we
2786 have got to hold a hearing and figure out how to deal with
2787 it.

2788 And just the fact to express frustration and say,
2789 well, we have not dealt with the problem, and no one today
2790 is suggesting the best way to deal with it, therefore, let
2791 us enact this absurd way of dealing with it does not make
2792 sense.

2793 For example, in 2010, over 800,000 Chinese nationals
2794 visited the United States, spent \$5 billion on American
2795 goods and services which supported 36,000 jobs. In 2012,
2796 the Commerce Department forecasted that 1.3 million Chinese
2797 nationals will seek to travel to the U.S. to spend more
2798 money and create thousands of new U.S. jobs.

2799 Now, do we really want to try to solve this problem we
2800 want to destroy the entire tourism industry, eliminate the

2801 brain drain that is helping us remain competitive in
2802 innovation, and science, and engineering? It does not make
2803 sense.

2804 Mr. Gowdy. Could I --

2805 Ms. Lofgren. Would the gentleman yield?

2806 Mr. Nadler. I yield.

2807 Mr. Gowdy. Just one question, because I was not here
2808 when the other law was passed. Is it correct that the
2809 language says "shall."

2810 Mr. Nadler. I do not know. I do not know. It may
2811 be. But the fact is, and I have not worked on this
2812 problem. I do not know what the solution is, but we have
2813 got to find a solution.

2814 Ms. Lofgren. Would the gentleman yield?

2815 Mr. Nadler. I will yield.

2816 Ms. Lofgren. I want to just give you a real life
2817 example. I called ICE, and I got a list of all the
2818 countries and all of the *Zavidas* releases by country. Take
2819 Israel. So far this year, there were two non-criminal and
2820 two criminal issues where Israel did not take these
2821 individuals in the 90 days. I do not know all of the

2822 details, but there can be many reasons why. They would say
2823 they are not their citizens. Sometimes it takes time to
2824 get the passport to the person. So, there are a lot of
2825 innocent reasons why you cannot get this done in 90 days.

2826 If this bill were law, Netanyahu could not have come
2827 to address the Joint Session. I do not think that is what
2828 we want. I do not think that is what we want.

2829 That is why I think it would make sense, and I say
2830 this with respect for the author because I know he is
2831 sincere in his effort and that he has a substantial legal,
2832 but his specialty is not immigration law, as mine was, that
2833 we could work through this. And that is why I would like,
2834 and we have checked with the parliamentarian. I would like
2835 to make a motion to refer this to the subcommittee. The
2836 parliamentarian says that is a proper motion. And that we
2837 could have collegial, respectful hearing and hopefully a
2838 bill that Mr. Poe's name will be on that we could agree to.
2839 So, that would be my motion.

2840 Mr. Nadler. Reclaiming my time, I have another piece
2841 of paper here that says that foreign students studying in
2842 the United States last year put \$21.5 billion dollars into

2843 our economy. We would eliminate that, too.

2844 The fact is, you know, this subject is not like some
2845 other subjects this committee deals with where you know
2846 that the Democrats are going to take one position and the
2847 Republicans are going to take another position, or the
2848 ideologies come from different areas. We all agree on the
2849 basic problem here. We all agree we want to deal with it.
2850 We should hold hearings. We should collegially develop, as
2851 the gentlelady from California said, an approach that will
2852 be effective without all this collateral damage to the
2853 economy and to everything else. So, I do not understand
2854 why we do not take a few weeks or a month or two to do
2855 that.

2856 The bill that is before us, maybe it will pass the
2857 House. It probably will not pass the Senate. It certainly
2858 will be vetoed by the President because the State
2859 Department will tell him it is ridiculous. Let us develop
2860 an approach that makes sense, that will be effective, that
2861 can be dealt with. And I support the motion of the
2862 gentlelady from California to refer to committee. That
2863 makes it.

2864 Chairman Smith. The gentleman's time has expired.

2865 The gentleman from Texas, Mr. Gohmert, is recognized?

2866 Ms. Lofgren. What about my motion, Mr. Chairman?

2867 Mr. Gohmert. Thank you, Mr. Chairman.

2868 Ms. Lofgren. My motion, Mr. Chairman?

2869 Chairman Smith. I was not aware that the gentlewoman
2870 had made a motion.

2871 Ms. Lofgren. I did make a motion.

2872 Chairman Smith. Okay. And would you restate the
2873 motion?

2874 Ms. Lofgren. The motion is to refer this matter to
2875 the subcommittee.

2876 Chairman Smith. Okay. The motion has been made to
2877 refer the bill to the appropriate subcommittee.

2878 Ms. Lofgren. Immigration subcommittee.

2879 Mr. Gallegly. Mr. Chairman, I would --

2880 Chairman Smith. Just a minute. Okay. The gentleman
2881 from California is recognized?

2882 Mr. Gallegly. Motion to table.

2883 Chairman Smith. A motion has been made to table the
2884 motion. I thought we just voted on this a few minutes ago.

2885 Ms. Lofgren. No, you suggested that it was not in
2886 order to make a motion to refer to committee. We called
2887 the parliamentarian, who told us that it is in order to
2888 make such a motion.

2889 Chairman Smith. Okay.

2890 Ms. Lofgren. The prior motion was merely to postpone
2891 consideration.

2892 Chairman Smith. Okay. There is a motion to table the
2893 motion to refer the bill to the Immigration Subcommittee.
2894 All in favor of the motion to table, say aye?

2895 [A chorus of ayes.]

2896 Chairman Smith. All opposed, no?

2897 [A chorus of nays.]

2898 Chairman Smith. And the clerk will call the roll?

2899 Ms. Kish. Mr. Smith?

2900 Chairman Smith. Aye.

2901 Ms. Kish. Mr. Smith votes aye.

2902 Mr. Sensenbrenner?

2903 [No response.]

2904 Ms. Kish. Mr. Coble?

2905 [No response.]

2906 Ms. Kish. Mr. Gallegly?

2907 Mr. Gallegly. Aye.

2908 Ms. Kish. Mr. Gallegly votes aye.

2909 Mr. Goodlatte?

2910 [No response.]

2911 Ms. Kish. Mr. Lungren?

2912 [No response.]

2913 Ms. Kish. Mr. Chabot?

2914 [No response.]

2915 Ms. Kish. Mr. Issa?

2916 [No response.]

2917 Ms. Kish. Mr. Pence?

2918 [No response.]

2919 Ms. Kish. Mr. Forbes?

2920 [No response.]

2921 Ms. Kish. Mr. King?

2922 Mr. King. Aye.

2923 Ms. Kish. Mr. King votes aye.

2924 Mr. Franks?

2925 [No response.]

2926 Ms. Kish. Mr. Gohmert?

2927 Mr. Gohmert. Aye.

2928 Ms. Kish. Mr. Gohmert votes aye.

2929 Mr. Jordan?

2930 Mr. Jordan. Yes.

2931 Ms. Kish. Mr. Jordan votes yes.

2932 Mr. Poe?

2933 Mr. Poe. Yes.

2934 Ms. Kish. Mr. Poe votes yes.

2935 Mr. Chaffetz?

2936 [No response.]

2937 Ms. Kish. Mr. Griffin?

2938 Mr. Griffin. Aye.

2939 Ms. Kish. Mr. Griffin votes aye.

2940 Mr. Marino?

2941 [No response.]

2942 Ms. Kish. Mr. Gowdy?

2943 Mr. Gowdy. Yes.

2944 Ms. Kish. Mr. Gowdy votes yes.

2945 Mr. Ross?

2946 [No response.]

2947 Ms. Kish. Ms. Adams?

2948 Ms. Adams. Aye.

2949 Ms. Kish. Ms. Adams votes aye.

2950 Mr. Quayle?

2951 Mr. Quayle. Aye.

2952 Ms. Kish. Mr. Quayle votes aye.

2953 Mr. Amodei?

2954 Mr. Amodei. Yes.

2955 Ms. Kish. Mr. Amodei votes yes.

2956 Mr. Conyers?

2957 Mr. Conyers. No.

2958 Ms. Kish. Mr. Conyers votes no.

2959 Mr. Berman?

2960 Mr. Berman. No.

2961 Ms. Kish. Mr. Berman votes no.

2962 Ms. Kish. Mr. Nadler?

2963 Mr. Nadler. No.

2964 Ms. Kish. Mr. Nadler votes no.

2965 Mr. Scott?

2966 Mr. Scott. No.

2967 Ms. Kish. Mr. Scott votes no.

2968 Mr. Watt?

2969 Mr. Watt. No.

2970 Ms. Kish. Mr. Watt votes no.

2971 Ms. Lofgren?

2972 Ms. Lofgren. No.

2973 Ms. Kish. Ms. Lofgren votes no.

2974 Ms. Jackson Lee?

2975 Ms. Jackson Lee. No.

2976 Ms. Kish. Ms. Jackson Lee votes no.

2977 Ms. Waters?

2978 [No response.]

2979 Ms. Kish. Mr. Cohen?

2980 [No response.]

2981 Ms. Kish. Mr. Johnson?

2982 [No response.]

2983 Ms. Kish. Mr. Pierluisi?

2984 [No response.]

2985 Ms. Kish. Mr. Quigley?

2986 [No response.]

2987 Ms. Kish. Ms. Chu?

2988 Ms. Chu. No.

2989 Ms. Kish. Ms. Chu votes no.

2990 Mr. Deutch?

2991 Mr. Deutch. No.

2992 Ms. Kish. Ms. Deutch votes no.

2993 Ms. Sanchez?

2994 [No response.]

2995 Chairman Smith. The gentlewoman from Florida? Oh,
2996 the gentleman from North Carolina?

2997 Mr. Coble. Aye.

2998 Ms. Kish. Mr. Coble votes aye.

2999 Chairman Smith. Are there other members who wish to
3000 be recorded? The gentleman from Arizona, Mr. Franks?

3001 Mr. Franks. Aye.

3002 Ms. Kish. Mr. Franks votes aye.

3003 Chairman Smith. The clerk will report?

3004 Ms. Kish. Mr. Chairman, 13 members voted aye, 9
3005 members voted nay.

3006 Chairman Smith. The majority having voted in favor of
3007 the motion to table, the motion passes.

3008 Let me say to the members who are here, we are now
3009 going to recess because of a number of members' previous
3010 engagements. And we may or may not return tomorrow to

3011 complete the markup.

3012 We stand in recess.

3013 [Whereupon, at 12:31 p.m., the committee was

3014 adjourned.]