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4 MARKUP OF:

5 H.R. 1254, THE SYNTHETIC DRUG CONTROL ACT OF 2011;

6 H.R. 3010, THE REGULATORY ACCOUNTABILITY ACT OF 2011; AND

7 H.R. 2369, TO AMEND TITLE 36, UNITED STATES CODE, TO PROVIDE

8 FOR AN ADDITIONAL POWER FOR THE AMERICAN LEGION UNDER ITS

9 FEDERAL CHARTER

10 Thursday, November 3, 2011

11 House of Representatives

12 Committee on the Judiciary

13 Washington, D.C.

14 The committee met, pursuant to call, at 10:06 a.m., in

15 Room 2141, Rayburn House Office Building, Hon. Lamar Smith

16 [chairman of the committee] presiding.

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

23 Staff Present: Sean McLaughlin, Majority Chief of  
24 Staff; Allison Halatei, Majority Deputy Chief of  
25 Staff/Parliamentarian; Sarah Kish, Clerk; Daniel Flores,  
26 Majority Counsel; Art Baker, Majority Counsel; Perry  
27 Apelbaum, Minority Staff Director; James Park, Minority  
28 Counsel; and Liliana Coronado, Minority Counsel.

29

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

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

35 Ms. Kish. Mr. Smith?

36 Chairman Smith. Present.

37 Ms. Kish. Mr. Sensenbrenner?

38 Mr. Coble?

39 Mr. Gallegly?

40 Mr. Gallegly. Here.

41 Ms. Kish. Mr. Goodlatte?

42 Mr. Lungren?

43 Mr. Chabot?

44 Mr. Issa?

45 Mr. Pence?

46 Mr. Forbes?

47 Mr. Forbes. Here.

48 Ms. Kish. Mr. King?

49 Mr. Franks?

50 Mr. Gohmert?

51 Mr. Jordan?

52 Mr. Poe?

53 Ms. Kish. Mr. Chaffetz?

54 Mr. Chaffetz. Here.

55 Ms. Kish. Mr. Griffin?

56 Mr. Griffin. Here.

57 Ms. Kish. Mr. Marino?

58 Mr. Gowdy?

59 Mr. Ross?

60 Mrs. Adams?

61 Mr. Quayle?

62 Mr. Amodei?

63 Mr. Conyers?

64 Mr. Berman?

65 Mr. Nadler?

66 Mr. Scott?

67 Mr. Scott. Here.

68 Ms. Kish. Mr. Watt?

69 Ms. Lofgren?

70 Ms. Lofgren. Here.

71 Ms. Kish. Ms. Jackson Lee?

72 Ms. Waters?

73 Mr. Cohen?

74 Mr. Johnson?

75 Mr. Pierluisi?

76 Mr. Quigley?

77 Mr. Quigley. Here.

78 Ms. Kish. Ms. Chu?

79 Mr. Deutch?

80 Ms. Sanchez?

81 Chairman Smith. The gentleman from North Carolina?

82 Ms. Kish. Mr. Coble?

83 Mr. Coble. Here.

84 [Pause.]

85 Chairman Smith. The gentleman from South Carolina?

86 Ms. Kish. Mr. Gowdy?

87 Mr. Gowdy. Present.

88 [Pause.]

89 Chairman Smith. The gentleman from Ohio?

90 Ms. Kish. Mr. Jordan?

91 Mr. Jordan. Here.

92 Chairman Smith. The gentleman from North Carolina,

93 Mr. Watt?

94 Mr. Watt. Present.

95 Chairman Smith. The gentleman from Wisconsin?

96 Mr. Sensenbrenner. Here for now.

97 Chairman Smith. We hope for longer.

98 Okay. The clerk will report.

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

100 Chairman Smith. A working quorum is present. And  
101 pursuant to notice, I now call up H.R. 3010, the Regulatory  
102 Accountability Act of 2011, for purposes of markup, and the  
103 clerk will report the bill.

104 Ms. Kish. H.R. 3010. To reform the process by which  
105 Federal agencies analyze and formulate new regulations and  
106 guidance documents.

107 Chairman Smith. Without objection, the bill will be  
108 considered as read.

109 [The information follows:]

110

111 Chairman Smith. I would like to pause here in case  
112 the ranking member is on the way.

113 [Pause.]

114 Chairman Smith. I am told that the ranking member is  
115 on the way. So I will recognize myself for an opening  
116 statement.

117 Employers across America face an avalanche of  
118 unnecessary Federal regulatory cost. Federal regulations  
119 cost our economy \$1.75 trillion each year, and the Obama  
120 administration seeks to add billions more to the cost.

121 The administration's record-setting issuance of major  
122 regulations is particularly troubling. By its own  
123 admission, the administration is preparing 200 regulations  
124 that each will affect the economy by \$100 million or more  
125 per year. For employers, the people who create jobs and pay  
126 taxes, the impact of these costly regulations is clear.

127 Government regulation has become a barrier to economic  
128 growth and job creation. Faced with huge new regulatory  
129 burdens and uncertainties about what will come next,  
130 employers slow down hiring, stop investing, and wait for  
131 another bill.

132           What enables the administration to issue so many new  
133 regulations with so little regard for their cost is the  
134 outdated Administrative Procedure Act. Enacted in 1946, the  
135 APA's minimal limitations on rulemaking have hardly changed  
136 in decades.

137           The APA does not require agencies to identify the cost  
138 of their regulations before they impose them. It does not  
139 require agencies to consider reasonable lower-cost  
140 alternatives. The APA does not even require agencies to  
141 rely on the best reasonably obtainable evidence.

142           The Regulatory Accountability Act fixes this problem  
143 by bringing the APA up to date. Under its common sense  
144 provisions, agencies are required to assess the cost and  
145 benefits of regulatory alternatives. Unless interests of  
146 public health, safety, or welfare require otherwise,  
147 agencies must adopt the least costly alternative that  
148 achieves the regulatory objectives Congress has established.

149           The Regulatory Accountability Act has bipartisan  
150 support in both the House and the Senate, including from a  
151 number of House Democrats who have cosponsored the bill. In  
152 large part, this is because its provisions are modeled on

153 the executive orders that Presidents Reagan, Clinton, Bush,  
154 and Obama have issued to compensate for the APA's  
155 weaknesses.

156 Opponents of the act claim that it requires the  
157 benefits of all new regulations to exceed their cost. They  
158 argue that, as a result, the act will prevent Federal  
159 agencies from issuing important new public health, safety,  
160 and welfare regulations. That is false.

161 The Regulatory Accountability Act only requires  
162 agencies to adopt the lowest-cost regulatory alternative  
163 that achieves the agency's statutory objectives. This  
164 assures that agencies will achieve all of those objectives,  
165 but with much lower cost.

166 Opponents also assert that the act's new procedural  
167 requirements will halt all Federal rulemaking, but the act  
168 primarily codifies existing executive order principles and  
169 practices under which agencies have been able to issue  
170 regulations. The act's few additional requirements all are  
171 streamlined. They will improve the quality and lower the  
172 cost of regulations, but they will not unduly delay them.

173 The act increases the transparency of the rulemaking

174 process, with more advance notices of proposed rulemaking,  
175 more opportunities for public comment, and more  
176 opportunities for public hearings. This will lessen the  
177 influence of all special interests.

178         Republicans recently have passed multiple pro-jobs  
179 bills to stop the burdens of new regulations from harming  
180 America's economic recovery. Some have supported those  
181 bills, but most have not. The Regulatory Accountability Act  
182 provides the greatest opportunity yet for Republicans and  
183 Democrats to join together and lower the job-killing cost of  
184 regulations, and it allows costs to be lowered while it  
185 assures that all of Congress's regulatory objectives are  
186 attained.

187         The bill also provides a clear opportunity for the  
188 votes of Democrats in Congress to match President Obama's  
189 words on regulatory reform. In his State of the Union  
190 address, the President said that, "To reduce barriers to  
191 growth and investment, when we find rules that put an  
192 unnecessary burden on businesses, we will fix them."

193         In Executive Order 13563, the President said that,  
194 "Our regulatory system must promote economic growth,

195 innovation, competitiveness, and job creation; must allow  
196 for public participation and an open exchange of ideas; must  
197 identify and use the best, most innovative, and least  
198 burdensome tools for achieving regulatory ends; and must  
199 take into account benefits and cost."

200         The President was right, and the Regulatory  
201 Accountability Act does all those things. So I urge my  
202 colleagues to support this bill and yield back the balance  
203 of my time.

204         And the gentleman from Michigan, the ranking member of  
205 the Judiciary Committee, is recognized for his opening  
206 statement.

207         Mr. Conyers. Thank you, Chairman Smith, members of  
208 the committee.

209         We are in a series of activities that I think need to  
210 be examined in terms of regulation. We are talking now  
211 about first came the Regulatory Flexibility Improvement Act,  
212 then came the REINS Act, and now we are dealing with the  
213 Regulatory Accountability Act.

214         Now, on February 10th of this year, the Flexibility  
215 Improvements Act on regulations came out. On last Tuesday,

216 October 25th, the REINS Act came out in which we were  
217 approving major rules changes that would make rules harder  
218 to go into effect. I think there were 60 new analytical  
219 requirements? Oh, in this bill. So now we have the third  
220 regulatory bill today in which we have 60 new analytical  
221 requirements that we add to the rulemaking process.

222 Now I presume you are all dead serious about this  
223 because it doesn't take a veteran Hill observer to know that  
224 this means with us requiring the Congress to approve rule  
225 changes, that ties up and ends the rulemaking process for  
226 all time. Am I missing something here? And now, today, we  
227 want to add 60 new analytical requirements to the rulemaking  
228 process.

229 And I should point out that it was last Tuesday, the  
230 Regulatory Accountability Act is still open. We haven't  
231 even closed the record on it. And the 5 legislative day  
232 period for keeping the record open runs through today, and  
233 now we have another regulatory bill. In fact, the  
234 transcript still hasn't been completed yet. It was  
235 delivered -- I got it last night.

236 Well, I am trying to make sure I am following the

237 provisions in the bill before us, the Regulatory  
238 Accountability Act, that will facilitate greater business  
239 interests' influence in the rulemaking process. And rather  
240 than leveling the playing field, H.R. 3010 will further tip  
241 the balance in favor of business interests by giving them  
242 multiple opportunities, numerous chances to intervene at  
243 various points in the rulemaking process through expanded  
244 judicial review.

245 Now I can't ask anybody if you are serious about it  
246 because the bill is scheduled, and we are discussing it  
247 right now. And underneath it all -- and thank you for the  
248 additional time, Chairman Smith. I do need another minute,  
249 if you will let me.

250 Chairman Smith. The gentleman will continue to be  
251 recognized for at least another minute.

252 Mr. Conyers. Thank you.

253 Now underneath these three regulatory bills before  
254 Judiciary is based the premise that regulations result in  
255 economically stifling costs, kills jobs or reduces the  
256 opportunity to expand employment, and promotes uncertainty.  
257 Now, the majority's witness, Christopher DeMuth, who

258 appeared on behalf of the American Enterprise Institute,  
259 clearly took issue with this premise.

260 He said that the focus on jobs before the committee  
261 can lead to confusion in regulatory debates and that the  
262 employment effects of regulation are indeterminate. In  
263 other words, jobs don't really figure into all this re-  
264 regulation and deregulation. And so, I am deeply concerned  
265 about this rush since the spring with three different bills  
266 on regulation, re-regulation, and increased requirements and  
267 opportunities to make sure bills -- that rules don't get  
268 passed and that, further, the Congress would have to approve  
269 the rulemaking process.

270 And finally, of course, we would diminish the  
271 opportunity to have the full impact of clean air, clean  
272 water, and occupational safety and health given its full due  
273 in our American system.

274 And I thank you for the additional time, Chairman  
275 Smith.

276 Chairman Smith. Thank you, Mr. Conyers.

277 The gentleman from North Carolina, Mr. Coble, the  
278 chairman of the Courts, Commercial, and Administrative Law

279 Subcommittee, is recognized.

280 Mr. Coble. Well, I think you have pretty well said  
281 it, Mr. Chairman. I will be very brief.

282 One problem that concerns me. Many opponents of the  
283 proposal before us have accused those of us who support it  
284 of being willing to compromise safety, and I think that is  
285 ill advised and inaccurate.

286 Having said this, I think it is a good bill. We have  
287 got a good approach to overregulation. I think, Mr.  
288 Chairman, that maybe overregulation may be as harmful as no  
289 regulation. There ought to be some happy medium drawn, and  
290 I think it does it in this bill.

291 And yield back.

292 Chairman Smith. Thank you, Mr. Coble.

293 The gentleman from Tennessee, Mr. Cohen, is recognized  
294 for an opening statement.

295 Mr. Cohen. Thank you, Mr. Chairman.

296 Just I do want to make an opening statement. I  
297 somewhat reluctantly make this opening statement because you  
298 and the chairman of the subcommittee are so kind and so nice  
299 and so wonderful, and I hate to say things that I have to

300 say in my intellectual capacity as an individual  
301 congressperson about certain legislation that you all  
302 author. But I have to say it.

303 The Administrative Procedure Act has been described as  
304 an administrative constitution that attempts to strike a  
305 balance between the need for due process and fairness on the  
306 one hand and the need for agencies to be able to effectively  
307 carry out their policymaking responsibilities on the other.  
308 As with the Constitution itself, we must approach these  
309 proposals that would make dramatic changes to the APA with  
310 caution, if not some considerable skepticism.

311 And I would have to say that overregulation cannot be  
312 in any way at all compared to no regulation because  
313 overregulation, you would still have regulations on  
314 airplanes and cars and food. So you wouldn't crash and you  
315 wouldn't, you know, go through your windshield and you  
316 wouldn't be poisoned.

317 With no regulation, you do get poisoned, you do die in  
318 airplane crashes, and you do die in automobile accidents.  
319 So you just can't say that overregulation is as bad as no  
320 regulation because that is a difference in life and death.

321 I go for life.

322           The proponents of H.R. 3010, the Regulatory  
323 Accountability Act, have a high burden to meet in that  
324 regard. Based on the testimony that thus far in four  
325 hearings before the subcommittees that we have and full one  
326 committee hearing, I don't believe that they have made their  
327 case.

328           As an initial matter, whatever the merits of any of  
329 the individual proposals contained in H.R. 3010, I am  
330 concerned the cumulative weight of all these changes would  
331 simply serve to stifle agency rulemaking, threatening to  
332 hamper the promulgation of important public health and  
333 safety rules. You know, when it is my food that I eat, it  
334 is important that we have rules. And when it is your food  
335 that you eat, I think it is still important.

336           You have got to have rules, or else you have got the  
337 e. coli bacteria out there and you have spinach you can't  
338 eat. And if we didn't have spinach, where would Popeye be?  
339 We need to be concerned about Popeye.

340           In addition, several provisions in particular raise  
341 concern. First, H.R. 3010's expanded use of formal

342 rulemaking procedures for major and high-impact rules  
343 strikes me as an unnecessary procedural expansion that would  
344 not serve to improve the quality of rulemaking while at the  
345 same time adding major cost to the process and would  
346 effectively grind agency rulemaking to a halt.

347         Formal rulemaking largely fell out of favor more than  
348 a generation ago, as its costs became more evident. A  
349 consensus developed the notice and comment rulemaking  
350 procedures of Section 553 of the APA, which are fairly  
351 heavily proceduralized, especially when combined with non-  
352 APA analytical requirements, struck a better balance of  
353 ensuring a fair and accurate rulemaking process while still  
354 maintaining effectiveness.

355         The proponents of this 3010 offer no study or other  
356 data indicating that the use of cross-examination or other  
357 facets of the formal rulemaking process are more effective  
358 tools for making policy and scientific judgments than the  
359 current process. If anything, history may suggest just the  
360 opposite.

361         In an infamous example, one formal rulemaking  
362 proceeding before the FDA took more than 10 years to

363 determine whether FDA should require peanut butter have 90  
364 percent rather than 87 percent peanuts. A Government  
365 witness was examined and cross-examined for an entire day  
366 about a survey of cookbook and patented peanut butter  
367 formulas, missing recipes, and his personal preferences of  
368 peanut butter. The witness must have gained pounds eating  
369 all that peanut butter.

370 While I make no judgments about personal preferences  
371 for how many peanuts should be in peanut butter or crunchy  
372 or smooth, I do think the Government could better spend its  
373 resources, spending more than 10 years to decide this  
374 particular question. And we ought to be wary of returning  
375 to those "good old days."

376 Another concern with H.R. 3010 is its codification of  
377 some very overly burdensome cost-benefit analysis  
378 requirements. I do not oppose the use of cost-benefit  
379 analysis for economically significant rules. It can be  
380 useful in helping agencies do their jobs and getting best-  
381 quality results. Indeed, every administration from  
382 President Reagan's to President Obama's has required through  
383 effective orders that agencies conduct cost-benefit

384 analysis.

385           Nonetheless, particular agency determinations required  
386 by H.R. 3010 and the requirement that all of these  
387 determinations be made for all rules, overriding statutory  
388 provisions that prohibit or limit agencies from considering  
389 costs when promulgating certain rules, threaten to cause  
390 unnecessary delay and cost tremendous taxpayer resources, as  
391 well as the cost to society stemming from potentially  
392 regulatory affairs.

393           Therefore, it may be appropriate that a cost-benefit  
394 analysis be done on H.R. 3010 itself, as I will propose  
395 through an amendment, an autopsy of the bill. I will also  
396 address through amendment 3010's expansion of judicial  
397 review under which judges would second-guess agencies' cost-  
398 benefit analysis, the establishment of a less deferential  
399 judicial review standard.

400           If we get rid of all these regulations, it is going to  
401 be a much less safe society, and the chairman, like me,  
402 believes in safety.

403           I yield the remainder of my time.

404           Chairman Smith. The gentleman's time has expired, and

405 we will be happy to discuss some of the points that the  
406 gentleman has made when we consider his amendments.

407 At this time, and if there is no objection, a request  
408 has been made by the ranking member and the gentlewoman from  
409 California, Ms. Lofgren, that we take up the American Legion  
410 charter since we have a number of those interested in that  
411 particular bill in the room right now. And rather than have  
412 them wait several hours, I would like to consider that  
413 legislation.

414 And therefore, we will suspend consideration of the  
415 current bill and go to H.R. 2369. Pursuant to notice, I now  
416 call up H.R. 2369 for purposes of markup, and the clerk will  
417 report the bill.

418 Ms. Kish. H.R. 2369. To amend Title 36, United  
419 States Code, to provide for an additional power --

420 Chairman Smith. Without objection, the bill will be  
421 considered as read.

422 [The information follows:]

423

424 Chairman Smith. And I will recognize myself for an  
425 opening statement, and then the ranking member.

426 The American Legion received its Federal charter in  
427 1919 as a patriotic veterans organization. Today, the  
428 Legion is America's largest veterans service organization  
429 with 2.5 million members. Membership is available to  
430 persons who have served in the U.S. Armed Forces during  
431 wartime, including the current war on terrorism, and who  
432 were honorably discharged or continue in their service.

433 The Legion's goals are to uphold and defend the U.S.  
434 Constitution, promote worldwide peace and goodwill, and  
435 preserve the memories of the two world wars and the other  
436 conflicts fought to uphold democracy. The Legion also aims  
437 to cement the ties and comradeship born of service and  
438 commit the efforts of its members to service to the United  
439 States.

440 The American Legion has over 14,000 local posts. The  
441 national organization is not designed to have control over  
442 all the independent posts. As the Supreme Court of  
443 Minnesota has found, local posts and State chapters are  
444 separately incorporated, and the posts all have their own

445 constitutions and bylaws.

446           The court found that there was a very limited  
447 relationship between the posts and national headquarters.  
448 The national organization's Officers Guide and Manual of  
449 Ceremonies states that the post is a separate and distinct  
450 unit, which can, and often does, function independently.

451           The American Legion has asked Congress to amend its  
452 Federal charter to specify that the national organization  
453 "may provide guidance and leadership to the individual  
454 departments and posts, but may not control or otherwise  
455 influence the specific activities and conduct of the  
456 independent, autonomous departments and posts."

457           The director of the Legion's national legislative  
458 commission explained the request by stating that, "The  
459 Legion wants to allow members to renew their membership and  
460 pay their dues to the national organization through the use  
461 of a credit card over the Internet. Currently, these dues  
462 payments flow to the national organization from our posts  
463 through our departments.

464           "We are concerned that plaintiffs' lawyers would argue  
465 this would indicate that the national organization has

466 control over those departments and posts. Appearance of  
467 control may support a claim of liability against the  
468 national organization when a legal dispute against a post  
469 arises."

470 H.R. 2369 amends the Legion's Federal charter as  
471 requested. And I commend Mr. Altmire, our colleague, for  
472 sponsoring this legislation, and I am pleased to see that  
473 the bill has a remarkable 427 cosponsors, probably a new  
474 record.

475 I urge my colleagues to support H.R. 2369. That  
476 concludes my opening statement, and the gentleman from  
477 Michigan, the ranking member, is recognized for his.

478 Mr. Conyers. Thank you, Chairman Smith.

479 I have news for you. The 427 Members have now risen  
480 to 433 Members. Yes, there are two Members of the Congress  
481 that have not cosponsored this bill, none of which of those  
482 two are on the Judiciary Committee. So that means everyone  
483 on the committee has cosponsored this bill.

484 And as a veteran myself, I am very proud of the  
485 Nation's largest veterans organization, the American Legion,  
486 and we are proud to push this bill through. I agree with

487 the opening statement of Chairman Smith, and I yield back my  
488 time.

489 Chairman Smith. Thank you, Mr. Conyers.

490 The gentleman from North Carolina, Mr. Coble, is  
491 recognized.

492 Mr. Coble. Mr. Chairman, I will be very brief. I am  
493 an active and proud member of the American Legion back in  
494 North Carolina. You done good. I say to the Legionnaires,  
495 you all are a great outfit, and I heartily endorse the  
496 passage of the proposal before us, Mr. Chairman, and yield  
497 back.

498 Chairman Smith. Thank you, Mr. Coble.

499 The gentlewoman from California, Ms. Lofgren, is  
500 recognized.

501 Ms. Lofgren. I will be brief. First, thanks, Mr.  
502 Chairman, for taking this bill out of order so that our  
503 Legionnaires can go on with their business.

504 I won't say anything further except to say this is  
505 probably the simplest bill that will come before us this  
506 year. And as we have noted, we have 433 cosponsors. I am  
507 one of them. I urge that we support this bill and support

508 our American Legion, who do so much for our country.

509 And I yield back.

510 Chairman Smith. Okay. Thank you, Ms. Lofgren.

511 The gentlewoman from Texas, Ms. Jackson Lee?

512 Ms. Jackson Lee. We are all joining the brief crowd  
513 this morning. But to the American Legion, those of us who  
514 see you in our States and our districts, let me thank you  
515 for your service.

516 This is a smart legislative initiative that allows you  
517 to give guidance and counsel. But as all of us know, no  
518 matter how great we are, we do need to have that kind of, if  
519 you will, structure that allows you to lead on the national  
520 level.

521 Thank you again for your service, and I am very happy  
522 to be able to support this legislation.

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

524 Ms. Jackson Lee. I yield back.

525 Chairman Smith. Are there others who wish to be  
526 recognized? I understand there are no amendments and assume  
527 -- are there any amendments?

528 [No response.]

529 Chairman Smith. If not, we will proceed to vote. A  
530 reporting quorum being present, the question is on reporting  
531 the bill favorably to the House. All in favor, say aye.

532 [A chorus of ayes.]

533 Chairman Smith. Opposed, no.

534 [No response.]

535 Chairman Smith. The ayes clearly have it, and the  
536 bill is ordered reported favorably.

537 Without objection, the bill will be reported, and the  
538 staff is authorized to make technical and conforming  
539 changes. Members will have 2 days to submit their views.

540 Congratulations to those in the audience who have an  
541 interest in that legislation.

542 We will now return to considering H.R. 3010, the  
543 Regulatory Accountability Act of 2011, and I will recognize  
544 myself for a manager's amendment. And the clerk will report  
545 the amendment.

546 Ms. Kish. Amendment in the nature of a substitute to  
547 H.R. 3010, offered by Mr. Smith. Strike all after the  
548 enacting clause and insert the following. Section 1, Short  
549 Title --

550 Chairman Smith. Without objection, the amendment will  
551 be considered as read.

552 [The information follows:]

553

554 Chairman Smith. And I will recognize myself to  
555 explain the amendment.

556 To help America's economy recover, create jobs, and  
557 grow, Congress must reform Federal rulemaking. The  
558 Regulatory Accountability Act delivers that reform. Under  
559 its common sense measures, agencies will produce effective  
560 regulations at much lower cost. Agency fact-finding will  
561 improve and the rulemaking process will be more transparent  
562 to the public.

563 The substitute amendment strengthens the bill with a  
564 number of targeted amendments to further achieve these ends.  
565 It refines the definition of major rule so all rules with  
566 significant impacts on multiple sectors of the economy  
567 benefit from advance notices of proposed rulemaking. This  
568 increases transparency and provides agencies with more  
569 complete information during the early phase of rule  
570 development.

571 The substitute requires advance notice of proposed  
572 rulemaking for rules based on novel legal or policy issues  
573 that arise from statutory mandates. The substitute provides  
574 other improvements in transparency as well. It requires

575 agencies to provide earlier public access to their  
576 assessments of a proposed rule's cost, benefits, and other  
577 impacts. It also promotes the posting of agency decisions  
578 and documents online and increases the transparency and  
579 consistency of agency guidance.

580 To further streamline the rulemaking process, the  
581 substitute allows agencies to issue rules that technically  
582 correct existing rules or are otherwise noncontroversial  
583 without prior notice and comment. To curb abuse, if  
584 agencies do receive significant adverse comment after they  
585 publish rules within this exception, agencies will then have  
586 to undertake normal rulemaking procedures.

587 In addition, the substitute reduces the required  
588 comment period for nonmajor rules and streamlines  
589 supplemental notice requirements after agencies issue  
590 interim rules. To improve the quality of agency information  
591 in fairness to those affected by agency decisions, the  
592 substitute allows judicial review when agencies deny  
593 petitions to correct information under the Information  
594 Quality Act.

595 The substitute also contains a number of provisions

596 that clarify or smooth the technical operation of assorted  
597 provisions of the bill.

598         So I urge my colleagues to support this amendment and  
599 yield to the gentleman from Michigan, the ranking member,  
600 Mr. Conyers.

601         Mr. Conyers. Thank you, Chairman Smith.

602         This manager's amendment, if you can believe it, makes  
603 the bill worse in two ways. One, it broadens the  
604 applicability of the advance notice of proposed rulemaking  
605 requirement to rules involving -- and this is the new  
606 language -- "novel legal and policy issues," which could  
607 include almost any new rule and appears to be targeted at  
608 the financial reform regulations that are being promulgated  
609 under the Dodd-Frank law.

610         The second thing that I think makes the bill even  
611 worse than it is, is that it gives the Office of Management  
612 and Budget even more control over rulemaking so it puts in  
613 effect a chokehold on the ability of agencies to promulgate  
614 their own rules.

615         And so, therefore, I clearly will not be able to  
616 support this manager's amendment, and I yield back the

617 balance of my time.

618 Chairman Smith. Thank you, Mr. Conyers.

619 Are there any amendments to the amendment? And does  
620 the gentleman from Michigan want to offer an amendment?

621 Mr. Conyers. No. I would like to get rid of an  
622 amendment.

623 Chairman Smith. Well, okay. Are there other Members  
624 who have an amendment to the amendment?

625 Mr. Cohen?

626 Mr. Cohen. I have a series, but I think I want to  
627 simply offer two of them.

628 Chairman Smith. Mr. Cohen, if you will suspend for a  
629 minute? Mr. Watt had his -- wanted to be recognized, I  
630 believe.

631 Mr. Watt. I think I was offering one of the ones for  
632 Mr. Cohen, Number 8. But I am way down the list so -- but  
633 nobody else seemed to be speaking up.

634 Chairman Smith. Okay.

635 Mr. Watt. I presume this is the substitute which is  
636 the base text, and we are offering amendments to it, right?

637 Chairman Smith. That is correct.

638 Mr. Watt. Okay. Well, I will --

639 Mr. Cohen. I would yield to the gentleman from North  
640 Carolina to propose Yogi Berra's amendment, No. 8.

641 Chairman Smith. Okay. The gentleman from North  
642 Carolina, Mr. Watt, is recognized.

643 Mr. Watt. It is Cohen Number 8, I think.

644 Chairman Smith. Okay. The clerk will report Cohen  
645 Number 8.

646 Ms. Kish. Amendment to the Smith amendment in the  
647 nature of a substitute --

648 Mr. Watt. I ask unanimous consent the amendment be  
649 considered as read.

650 Chairman Smith. Without objection, the amendment will  
651 be considered as read.

652 [The information follows:]

653

654 Chairman Smith. And the gentleman from North Carolina  
655 is recognized to explain the amendment.

656 Mr. Watt. Thank you, Mr. Chairman.

657 This amendment would strike the formal rulemaking  
658 provision, which in the bill starts on page 14 at line 17  
659 and continues to page 16, line 20. That part of the bill  
660 requires agencies to hold formal rulemaking hearings for all  
661 "high-impact rules" before the issuance of a final rule, and  
662 of course, it defines what a high-impact rule is.

663 But the problem is that the American Bar Association  
664 has said that formal rulemaking is obsolete and discredited  
665 and leads to substantial delays and unproductive  
666 confrontation and -- because courtroom methods are not  
667 generally suited to resolution of legislative-type disputes.

668 So, once again, we have our colleagues here seemingly  
669 at odds with two of their cherished principles. Number one,  
670 they say they don't like litigation. Yet they are setting  
671 up virtual litigation in an administrative process.

672 Number two, they say they don't like process. Yet  
673 this bill sets up more and more and more process for doing  
674 things that they don't like to have done in an effort to

675 make it impossible to do the things that they don't want.

676           So their mantras don't seem to correspond with their  
677 actions in this bill, as they have not in a number of other  
678 contexts.

679           Formal rulemaking allows industry to cross-examine  
680 agency officials. As Mr. Cohen said in his opening  
681 statement, in one case, it took the FDA more than 10 years  
682 through the formal rulemaking process to issue a rule about  
683 whether peanut butter should be 87 percent or 90 percent  
684 peanuts. That is not something that we need to have a  
685 cross-examination of agency people about and taking up  
686 Government time when the regular rulemaking process, the  
687 comment period, allows people to input their comments.

688           And ultimately, if you come out with a rule that is  
689 illegal or not supported by the process of the comment  
690 period, it is going to end up in a second round of  
691 litigation in the courts anyway.

692           The consensus in the administrative law community is  
693 that formal rulemaking imposes tremendous cost and delay  
694 without adding to the quality of rulemaking because the rest  
695 of the rulemaking process without the formal rulemaking

696 actually gets you to a less litigious, better, and quicker  
697 result than going through all this formal rulemaking  
698 process.

699         So we believe that the current notice and comment  
700 rulemaking is already heavily process oriented, and it  
701 ensures a fair and open process. And adding more process to  
702 it just is not only consistent with the mantras that you say  
703 you support, but it is counterproductive and doesn't get you  
704 a better result when it comes to the end of the day and you  
705 end up with a rule anyway.

706         So let us not complicate this process and stretch it  
707 out to 10, 12, 7, 8 years, something that should be done in  
708 7 or 8 months or a year and tie up a bunch of taxpayer  
709 money, paying a bunch of people to go to a bunch of hearings  
710 about something that really shouldn't be in a litigious  
711 confrontational process, but should be more in a  
712 conciliatory input rulemaking process, which is already  
713 available.

714         I ask support for the amendment and yield back the  
715 balance of my time.

716         Chairman Smith. Thank you, Mr. Watt.

717           The gentleman from North Carolina, Mr. Coble, is  
718 recognized.

719           Mr. Coble. Thank you, Mr. Chairman.

720           Mr. Gowdy was scheduled to handle this amendment, but  
721 I think he is on his way. So I will fill in for him.

722           One of the most beneficial provisions of this  
723 legislation requires that if an agency is going to issue a  
724 regulation that imposes \$1 million or more in cost, it has  
725 to at least hold a hearing first. At the hearing, the  
726 affected parties will have the right to use the most  
727 effective way to find the facts, that is the right to cross-  
728 examination.

729           The limitation limits hearings to a handful of key  
730 factual issues. If the parties so desire, they can waive  
731 their hearing rights for any one of these issues or even the  
732 hearing itself. In addition, since there are few \$1 million  
733 rules per year, agencies will not be required to hold many  
734 hearings in any case.

735           Clearly, the legislation hearing requirements are  
736 streamlined and easy for agencies to carry. What is not  
737 acceptable is for regulated businesses to have to absorb \$1

738 million in costs in our present troubled, dismal economy  
739 without even having the right to cross-examine other  
740 agencies on their most critical evidence.

741 I urge my colleagues to oppose the amendment and yield  
742 back.

743 Chairman Smith. Thank you, Mr. Coble.

744 Are there other Members who wish to be heard on the  
745 amendment?

746 The gentleman from Virginia, Mr. Forbes, is  
747 recognized.

748 Mr. Forbes. Thank you, Mr. Chairman.

749 Mr. Chairman, I just want to make it clear. I heard  
750 the gentleman from North Carolina mention that on this side,  
751 we don't like litigation. And let me just be clear. We do  
752 not like unnecessary litigation. And let me repeat that  
753 again. We do not like unnecessary litigation because we  
754 think oftentimes litigation is not productive, but we also  
755 realize that you do have to have litigation.

756 And there are times, as the other gentleman from North  
757 Carolina mentioned, when you are talking about a million  
758 dollars of impact, companies should have the right to have

759 litigation, at least to be able to cross-examine some of the  
760 policies which sometimes make very, very little sense in  
761 terms of regulation.

762         We have heard our friends on the other side today talk  
763 about how terrible it is and how unfortunate it is that it  
764 might take 10 years to get a regulation that might have a  
765 significant impact on business actually passed. But they  
766 didn't mention the fact of the huge, huge burden it may take  
767 on a business to take 10 years before they can build  
768 something to create jobs or produce something in this United  
769 States because of all the regulations that sometimes are  
770 unnecessarily imposed on them.

771         And the bottom line is we recognize on this side of  
772 the aisle that sometimes businesses go too far, and they  
773 need to be regulated. We understand that. But sometimes  
774 the regulators go too far, and they need to be regulated.

775         And what this act is all about is trying to make sure  
776 when regulators do that, that there is some recourse and  
777 businesses have an opportunity. Because at the bottom, end  
778 of the day, it is important that those businesses be able to  
779 do what they do best, which is to create jobs.

780           And to hear our friends over there say that additional  
781 regulations do not impact the number of jobs a business  
782 might save or create is just not to talk to many businessmen  
783 across this country who, time after time, tell me that these  
784 regulations are stifling their ability to create jobs and to  
785 save jobs.

786           So, Mr. Chairman, thank you for the legislation. I  
787 hope we will reject this amendment and pass the underlying  
788 bill. And I yield back.

789           Chairman Smith. Thank you, Mr. Forbes.

790           If there are no other Members who wish to speak on  
791 this amendment, the question is on the amendment. All in  
792 favor, say aye.

793           [A chorus of ayes.]

794           Chairman Smith. Opposed, nay.

795           [A chorus of nays.]

796           Chairman Smith. The clerk will call the roll. The  
797 chair is uncertain as to the vote.

798           Ms. Kish. Mr. Smith?

799           Chairman Smith. No.

800           Ms. Kish. Mr. Smith votes no.

801 Mr. Sensenbrenner?  
802 [No response.]  
803 Ms. Kish. Mr. Coble?  
804 Mr. Coble. No.  
805 Ms. Kish. Mr. Coble votes no.  
806 Mr. Gallegly?  
807 [No response.]  
808 Ms. Kish. Mr. Goodlatte?  
809 [No response.]  
810 Ms. Kish. Mr. Lungren?  
811 [No response.]  
812 Ms. Kish. Mr. Chabot?  
813 [No response.]  
814 Ms. Kish. Mr. Issa?  
815 [No response.]  
816 Ms. Kish. Mr. Pence?  
817 [No response.]  
818 Ms. Kish. Mr. Forbes?  
819 Mr. Forbes. No.  
820 Ms. Kish. Mr. Forbes votes no.  
821 Mr. King?

822 Mr. King. No.

823 Ms. Kish. Mr. King votes no.

824 Mr. Franks?

825 Mr. Franks. No.

826 Ms. Kish. Mr. Franks votes no.

827 Mr. Gohmert?

828 Mr. Gohmert. No.

829 Ms. Kish. Mr. Gohmert votes no.

830 Mr. Jordan?

831 [No response.]

832 Ms. Kish. Mr. Poe?

833 Mr. Poe. No.

834 Ms. Kish. Mr. Poe votes no.

835 Mr. Chaffetz?

836 [No response.]

837 Ms. Kish. Mr. Griffin?

838 [No response.]

839 Ms. Kish. Mr. Marino?

840 Mr. Marino. No.

841 Ms. Kish. Mr. Marino votes no.

842 Mr. Gowdy?

843 Mr. Gowdy. No.

844 Ms. Kish. Mr. Gowdy votes no.

845 Mr. Ross?

846 [No response.]

847 Ms. Kish. Mrs. Adams?

848 [No response.]

849 Ms. Kish. Mr. Quayle?

850 Mr. Quayle. No.

851 Ms. Kish. Mr. Quayle votes no.

852 Mr. Amodei?

853 Mr. Amodei. No.

854 Ms. Kish. Mr. Amodei votes no.

855 Mr. Conyers?

856 Mr. Conyers. Aye.

857 Ms. Kish. Mr. Conyers votes aye.

858 Mr. Berman?

859 [No response.]

860 Ms. Kish. Mr. Nadler?

861 Mr. Nadler. Aye.

862 Ms. Kish. Mr. Nadler votes aye.

863 Mr. Scott?

864 Mr. Scott. Aye.

865 Ms. Kish. Mr. Scott votes aye.

866 Mr. Watt?

867 Mr. Watt. Aye.

868 Ms. Kish. Mr. Watt votes aye.

869 Ms. Lofgren?

870 Ms. Lofgren. Aye.

871 Ms. Kish. Ms. Lofgren votes aye.

872 Ms. Jackson Lee?

873 [No response.]

874 Ms. Kish. Ms. Waters?

875 Ms. Waters. Aye.

876 Ms. Kish. Ms. Waters votes aye.

877 Mr. Cohen?

878 Mr. Cohen. Aye.

879 Ms. Kish. Mr. Cohen votes aye.

880 Mr. Johnson?

881 Mr. Johnson. Aye.

882 Ms. Kish. Mr. Johnson votes aye.

883 Mr. Pierluisi?

884 Mr. Pierluisi. Aye.

885 Ms. Kish. Mr. Pierluisi votes aye.  
886 Mr. Quigley?  
887 Mr. Quigley. Aye.  
888 Ms. Kish. Mr. Quigley votes aye.  
889 Ms. Chu?  
890 [No response.]  
891 Ms. Kish. Mr. Deutch?  
892 Mr. Deutch. Aye.  
893 Ms. Kish. Mr. Deutch votes aye.  
894 Ms. Sanchez?  
895 Ms. Sanchez. Aye.  
896 Ms. Kish. Ms. Sanchez votes aye.  
897 Ms. Jackson Lee. Mr. Chairman?  
898 Chairman Smith. The gentlewoman from Texas, Ms.  
899 Jackson Lee?  
900 Ms. Jackson Lee. How am I recorded?  
901 Ms. Kish. Not recorded, ma'am.  
902 Ms. Jackson Lee. Aye.  
903 Ms. Kish. Ms. Jackson Lee votes aye.  
904 Chairman Smith. The gentleman from Utah, Mr.  
905 Chaffetz?

906 Mr. Chaffetz. No.

907 Ms. Kish. Mr. Chaffetz votes no.

908 Chairman Smith. The gentleman from California, Mr.

909 Gallegly?

910 Mr. Gallegly. No.

911 Ms. Kish. Mr. Gallegly votes no.

912 Chairman Smith. The gentleman from Ohio, Mr. Jordan?

913 Mr. Jordan. No.

914 Ms. Kish. Mr. Jordan votes no.

915 Chairman Smith. And the gentleman from Wisconsin, Mr.

916 Sensenbrenner?

917 Mr. Sensenbrenner. No.

918 Ms. Kish. Mr. Sensenbrenner votes no.

919 Chairman Smith. The clerk will report.

920 Mr. Griffin. Mr. Chairman?

921 Chairman Smith. Oh, before the clerk reports, the

922 gentleman from Arkansas, Mr. Griffin?

923 Mr. Griffin. No.

924 Ms. Kish. Mr. Griffin votes no.

925 Chairman Smith. The clerk will report.

926 Ms. Kish. Mr. Chairman, 13 Members voted aye; 16

927 Members voted nay.

928 Chairman Smith. A majority having voted against the  
929 amendment, the amendment is not agreed to.

930 Are there other amendments to the amendment?

931 The gentleman from New York, Mr. Nadler, is  
932 recognized.

933 Mr. Nadler. Mr. Chairman, I have an amendment at the  
934 desk. It is listed on the docket as Cohen 12.

935 Chairman Smith. The clerk will report Cohen Number  
936 12.

937 Ms. Kish. Amendment to the Smith amendment in the  
938 nature of a substitute to H.R. 3010.

939 Chairman Smith. Without objection, the amendment will  
940 be considered as read.

941 [The information follows:]

942

943 Chairman Smith. And the gentleman from New York is  
944 recognized to explain the amendment.

945 Mr. Nadler. Thank you, Mr. Chairman.

946 Everyone agrees we have serious economic problems in  
947 America today, specifically unemployment and slow economic  
948 growth. By all indicators, it is a lack of demand caused by  
949 consumer debt and depressed housing prices which is keeping  
950 our economy down.

951 Unfortunately, the majority believes, based on faith  
952 and ideology alone -- certainly not on any evidence -- that  
953 the reasons for our slow growth and high unemployment are  
954 Government spending and Government overregulation. Despite  
955 the fact that there is absolutely no evidence that  
956 overregulation is the cause of our current economic woes,  
957 stopping regulation is the solution proposed by the majority  
958 today.

959 Not only would this have no impact on economic or job  
960 growth, but it would put public safety, health, and the  
961 environment at risk. This bill would force agency  
962 rulemaking to grind to a halt by putting up numerous  
963 additional procedural requirements before rules could be

964 promulgated. These requirements are unnecessary roadblocks  
965 designed not to add any real analysis or due process, but  
966 simply to delay or block rulemaking.

967 For example, the bill would expand the use of cost-  
968 benefit analysis to all rules, not just economically  
969 significant ones, and require an analysis of all  
970 alternatives to the proposed or final rule. What sense does  
971 it make to require an in-depth analysis of every single  
972 possible alternative?

973 And this requirement is written so as to override  
974 provisions in other statutes, such as the Clean Air Act,  
975 that prohibit agencies from considering costs when acting to  
976 protect public health or safety. Not surprisingly, groups  
977 who care about protecting public health, safety, and the  
978 environment, such as the Natural Resources Defense Council,  
979 Public Citizen, Defenders of Wildlife, and so forth, oppose  
980 this bill.

981 We can't risk our health and well-being to the far  
982 right ideology that motivates this bill. One area in which  
983 I am especially concerned that the collateral damage of this  
984 bill could cause great harm is nuclear power. It is beyond

985 obvious that problems at a nuclear power plant could be  
986 catastrophic. We have seen that. Accidents, natural  
987 disasters, and terrorist attacks all could cause unspeakable  
988 horrors wherever we have a nuclear power plant.

989         Just last year we saw at the Fukushima plant in Japan  
990 what can happen when a nuclear power plant gets hit by an  
991 earthquake or tsunami and, for whatever reason, suffers a  
992 power failure. And it was just a few months ago that a  
993 nuclear power plant in Virginia had to go offline when we  
994 had an earthquake here.

995         My district lies just less than 40 miles from an old  
996 nuclear power plant at Indian Point in New York. There are  
997 20 million people living within a 50-mile radius around the  
998 plant. The 50-mile radius being used by the Nuclear  
999 Regulatory Commission is the basis for the evacuation zone  
1000 recommended after the Fukushima disaster. Indian Point also  
1001 sits near two fault lines and, according to the NRC, is the  
1002 most likely nuclear power plant in the country to experience  
1003 core damage due to an earthquake.

1004         I have serious concerns about the safety risks posed  
1005 by Indian Point and by nuclear power more generally. If we

1006 are going to have nuclear power, we must reduce the risk of  
1007 catastrophe as much as possible by strengthening safety  
1008 standards. That is why I am a cosponsor of H.R. 1242, the  
1009 Nuclear Power Plant Safety Act of 2011, which would  
1010 accomplish this goal.

1011       Among other changes, it would require the NRC to  
1012 impose rules requiring plants to upgrade to withstand severe  
1013 events like earthquakes and to have enough backup power so  
1014 as to avoid a meltdown for a significant length of time. As  
1015 someone who recognizes that we need new, more stringent  
1016 requirements for nuclear power plants, I cannot imagine why  
1017 we would want to make rulemaking concerning nuclear plants  
1018 more difficult, and yet that is what this bill would do.

1019       In order to protect public health, safety, and the  
1020 environment and to ensure that the NRC can act when  
1021 necessary, my amendment, this amendment would exempt actions  
1022 taken by the NRC under the Atomic Energy Act from this bill.  
1023 By exempting rules concerning nuclear power plant  
1024 operations, my amendment would preserve the Nuclear  
1025 Regulatory Commission's ability to impose real safety  
1026 standards before a catastrophic accident.

1027           Such standards may one day serve to prevent a nuclear  
1028 catastrophe. They may be needed steps to avoid millions of  
1029 lives lost and miles of uninhabitable land and water. I  
1030 would hope that my colleagues would agree that nuclear power  
1031 plants are at least one area where we should be  
1032 strengthening, not weakening safety standards. One area  
1033 where we should not be tying the hands of the regulatory  
1034 agency, in this case, the Nuclear Regulatory Commission,  
1035 from imposing regulatory standards that protect the public  
1036 health and safety.

1037           I ask all Members to support my amendment, and I yield  
1038 back the balance of my time.

1039           Chairman Smith. Thank you, Mr. Nadler.

1040           The gentleman from South Carolina, Mr. Gowdy, is  
1041 recognized.

1042           Mr. Gowdy. Thank you, Mr. Chairman.

1043           I oppose the amendment. The amendment seeks to create  
1044 a special exception from the legislation's requirement for  
1045 regulations of the Nuclear Regulatory Commission.

1046 Regulation of the nuclear power industry, however, should go  
1047 through the same rulemaking process as other regulations.

1048 In this way, all interested parties will have an opportunity  
1049 to test their assumptions about nuclear power and nuclear  
1050 waste.

1051 Perhaps, Mr. Chairman, the amendment is motivated by a  
1052 concern that the legislation could prevent the Nuclear  
1053 Regulatory Commission from issuing emergency rules. That  
1054 concern, however, is misplaced. The legislation preserves  
1055 agencies' ability to make interim final rules for "good  
1056 cause." This exception certainly would cover emergency  
1057 rules from the commission.

1058 Consequently, I urge my colleagues to oppose this  
1059 amendment.

1060 Chairman Smith. Thank you, Mr. Gowdy.

1061 Are there other Members who wish to be heard on the  
1062 amendment?

1063 [No response.]

1064 Chairman Smith. If not, the question is on the  
1065 amendment. All in favor, say aye.

1066 [A chorus of ayes.]

1067 Chairman Smith. Opposed, no.

1068 [A chorus of nays.]

1069 Chairman Smith. In the opinion of the chair, the nays  
1070 have it, and the amendment is not agreed to.

1071 A roll call vote has been requested, and the clerk  
1072 will call the roll.

1073 Ms. Kish. Mr. Smith?

1074 Chairman Smith. No.

1075 Ms. Kish. Mr. Smith votes no.

1076 Mr. Sensenbrenner?

1077 Mr. Sensenbrenner. No.

1078 Ms. Kish. Mr. Sensenbrenner votes no.

1079 Mr. Coble?

1080 Mr. Coble. No.

1081 Ms. Kish. Mr. Coble votes no.

1082 Mr. Gallegly?

1083 Mr. Gallegly. No.

1084 Ms. Kish. Mr. Gallegly votes no.

1085 Mr. Goodlatte?

1086 [No response.]

1087 Ms. Kish. Mr. Lungren?

1088 [No response.]

1089 Ms. Kish. Mr. Chabot?

1090 [No response.]

1091 Ms. Kish. Mr. Issa?

1092 [No response.]

1093 Ms. Kish. Mr. Pence?

1094 [No response.]

1095 Ms. Kish. Mr. Forbes?

1096 Mr. Forbes. No.

1097 Ms. Kish. Mr. Forbes votes no.

1098 Mr. King?

1099 Mr. King. No.

1100 Ms. Kish. Mr. King votes no.

1101 Mr. Franks?

1102 Mr. Franks. No.

1103 Ms. Kish. Mr. Franks votes no.

1104 Mr. Gohmert?

1105 Mr. Gohmert. No.

1106 Ms. Kish. Mr. Gohmert votes no.

1107 Mr. Jordan?

1108 [No response.]

1109 Ms. Kish. Mr. Poe?

1110 Mr. Poe. No.

1111 Ms. Kish. Mr. Poe votes no.  
1112 Mr. Chaffetz?  
1113 [No response.]  
1114 Ms. Kish. Mr. Griffin?  
1115 Mr. Griffin. No.  
1116 Ms. Kish. Mr. Griffin votes no.  
1117 Mr. Marino?  
1118 Mr. Marino. No.  
1119 Ms. Kish. Mr. Marino votes no.  
1120 Mr. Gowdy?  
1121 Mr. Gowdy. No.  
1122 Ms. Kish. Mr. Gowdy votes no.  
1123 Mr. Ross?  
1124 [No response.]  
1125 Ms. Kish. Mrs. Adams?  
1126 [No response.]  
1127 Ms. Kish. Mr. Quayle?  
1128 Mr. Quayle. No.  
1129 Ms. Kish. Mr. Quayle votes no.  
1130 Mr. Amodei?  
1131 Mr. Amodei. No.

1132 Ms. Kish. Mr. Amodei votes no.  
1133 Mr. Conyers?  
1134 Mr. Conyers. Aye.  
1135 Ms. Kish. Mr. Conyers votes aye.  
1136 Mr. Berman?  
1137 [No response.]  
1138 Ms. Kish. Mr. Nadler?  
1139 Mr. Nadler. Aye.  
1140 Ms. Kish. Mr. Nadler votes aye.  
1141 Mr. Scott?  
1142 Mr. Scott. Aye.  
1143 Ms. Kish. Mr. Scott votes aye.  
1144 Mr. Watt?  
1145 Mr. Watt. Aye.  
1146 Ms. Kish. Mr. Watt votes aye.  
1147 Ms. Lofgren?  
1148 Ms. Lofgren. Aye.  
1149 Ms. Kish. Ms. Lofgren votes aye.  
1150 Ms. Jackson Lee?  
1151 [No response.]  
1152 Ms. Kish. Ms. Waters?

1153 [No response.]

1154 Ms. Kish. Mr. Cohen?

1155 [No response.]

1156 Ms. Kish. Mr. Johnson?

1157 Mr. Johnson. Aye.

1158 Ms. Kish. Mr. Johnson votes aye.

1159 Mr. Pierluisi?

1160 Mr. Pierluisi. Aye.

1161 Ms. Kish. Mr. Pierluisi votes aye.

1162 Mr. Quigley?

1163 Mr. Quigley. Aye.

1164 Ms. Kish. Mr. Quigley votes aye.

1165 Ms. Chu?

1166 Ms. Chu. Aye.

1167 Ms. Kish. Ms. Chu votes aye.

1168 Mr. Deutch?

1169 Mr. Deutch. Aye.

1170 Ms. Kish. Mr. Deutch votes aye.

1171 Ms. Sanchez?

1172 Ms. Sanchez. Aye.

1173 Ms. Kish. Ms. Sanchez votes aye.

1174 Ms. Jackson Lee. Mr. Chairman?

1175 Chairman Smith. The gentlewoman from Texas, Ms.

1176 Jackson Lee?

1177 Ms. Jackson Lee. How am I recorded?

1178 Ms. Kish. Not recorded, ma'am.

1179 Ms. Jackson Lee. Aye.

1180 Ms. Kish. Ms. Jackson Lee votes aye.

1181 Chairman Smith. The gentleman from Utah?

1182 Mr. Chaffetz. No.

1183 Ms. Kish. Mr. Chaffetz votes no.

1184 Chairman Smith. The gentleman from Ohio, Mr. Jordan?

1185 Mr. Jordan. No.

1186 Ms. Kish. Mr. Jordan votes no.

1187 Chairman Smith. The gentleman from Tennessee?

1188 Mr. Cohen. Aye.

1189 Ms. Kish. Mr. Cohen votes aye.

1190 Chairman Smith. Okay. The clerk will report.

1191 Ms. Kish. Mr. Chairman, 13 Members voted aye; 16

1192 Members voted nay.

1193 Chairman Smith. A majority having voted against the

1194 amendment, the amendment is not agreed to.

1195 Are there other amendments?

1196 The gentleman from Tennessee, Mr. Cohen, is  
1197 recognized.

1198 Mr. Cohen. Thank you, Mr. Chairman.

1199 I have an amendment at the desk also known as  
1200 Amendment Number 10, Tony Kubek.

1201 Chairman Smith. The clerk will report the amendment.

1202 Ms. Kish. Amendment to the Smith amendment in the  
1203 nature of a substitute to H.R. 3010, offered by Mr. Cohen of  
1204 Tennessee. Beginning on page 32, line 1 --

1205 Mr. Cohen. I ask unanimous consent the amendment be  
1206 considered as read.

1207 Chairman Smith. Without objection, the amendment will  
1208 be considered as read, and I think the amendment has  
1209 actually been completely read.

1210 [The information follows:]

1211

1212 Chairman Smith. And the gentleman is recognized to  
1213 explain his amendment.

1214 Mr. Cohen. Thank you, sir.

1215 My amendment deletes Section 7 of the manager's  
1216 amendment. Section 7 expands the scope of judicial review  
1217 of agency action to include agency compliance with the  
1218 Information Quality Act and by adding four grounds under  
1219 which courts "shall not defer to" an agency's  
1220 determinations.

1221 This expanded and nondeferential judicial review  
1222 standard departs substantially from current law, which was  
1223 created through two generations of case law to strike a  
1224 carefully balanced role for courts when reviewing final  
1225 agency actions. The Supreme Court has made it clear that  
1226 courts can strike an agency rule when it is unconstitutional  
1227 or when the agency acts beyond its statutory authority. But  
1228 that where the statute is ambiguous, courts must defer to an  
1229 agency's permissible interpretation of the law.

1230 A court cannot strike down a law on substantive policy  
1231 grounds in deference to an agency's expertise in the subject  
1232 matter being regulated. Courts also review agency rules for

1233 compliance with required procedures. Currently, courts will  
1234 review a rule issued by a notice and comment rulemaking  
1235 through an "arbitrary and capricious" standard.

1236         While a deferential standard, courts will also give a  
1237 hard look at agency actions under that standard, especially  
1238 making it the rough equivalent to the nominally more  
1239 stringent substantive evidence standard that applies to  
1240 court reviews of formal rulemaking procedures. These  
1241 various judicial review standards all recognize the courts  
1242 have an important, but limited role in reviewing agency  
1243 action in light of their limited substantive experience and  
1244 relative lack of political accountability for policy  
1245 decisions.

1246         Yet Section 7 would require unelected generalist  
1247 judges to second-guess an agency's interpretations of its  
1248 own rule and its cost-benefit analysis, among other things,  
1249 when the agency does not follow the onerous analytical  
1250 requirements that are contained for this bill, in essence,  
1251 giving these judges the power to make law, rather than  
1252 interpret law -- something that we all hear about.

1253         With respect to agencies' cost-benefit analysis in

1254 particular, C. Boyden Gray, a majority witness at last  
1255 week's hearing on 3010, noted that cost-benefit analysis  
1256 would be best committed to economists rather than lawyers,  
1257 and yet Section 7 would commit review of economists' work to  
1258 judges, likely almost all of whom are lawyers and not  
1259 economists.

1260         Committing such authority to courts, particularly  
1261 considering judges' relative lack of substantive expertise,  
1262 heightens the risk of unelected judges who will substitute  
1263 their own policy preferences for those of the executive  
1264 branch, even if such substitution is inadvertent.

1265         In addition to a lack of expertise and the risk that  
1266 Federal courts will sit as super administrative agencies,  
1267 expanded and less deferential judicial review may also  
1268 strain already overstretched judicial resources. The  
1269 expanded and less deferential judicial review standard in  
1270 Section 7 cuts against the grain of well-developed case law  
1271 the courts themselves have developed regarding the  
1272 appropriate role that the court should play in review of  
1273 agency rulemaking. It should be stricken from the manager's  
1274 amendment.

1275           This is, in essence, the equivalent of judicial  
1276 activism, judicial empowerment, and taking away from the  
1277 people the authority and giving it to people in robes.

1278           I urge my colleagues to support my amendment.

1279           Chairman Smith. Thank you, Mr. Cohen.

1280           The gentleman from South Carolina, Mr. Gowdy, is  
1281 recognized.

1282           Mr. Gowdy. Thank you, Mr. Chairman.

1283           I oppose the amendment. Section 7 of this  
1284 legislation, which the amendment seeks to strike altogether,  
1285 was carefully crafted to close problematic loopholes in the  
1286 judicial review of regulations. The Information Quality Act  
1287 was meant to ensure that agencies rely on high-quality  
1288 information in carrying out their duties.

1289           Unfortunately, courts have held an agency's failure to  
1290 comply with the Information Quality Act is not judicially  
1291 reviewable. Section 7, Mr. Chairman, fixes this problem.

1292           Courts have also adopted a curious doctrine under  
1293 which they defer to an agency's interpretation of its own  
1294 regulations. Often, these interpretations come in the form  
1295 of so-called "guidance." Judicial deference in this context

1296 encourages agencies to promulgate vague regulations that  
1297 they can then interpret as they see fit.

1298         Too often agencies leverage this guidance against  
1299 regulated entities, threatening enforcement action if what  
1300 should be nonbinding guidance is not obeyed. This kind of  
1301 abuse should be stopped, and Section 7 of the legislation  
1302 stops it by prohibiting deference to regulatory  
1303 interpretations issued outside of rulemaking.

1304         Section 7 also limits deference to agency cost-benefit  
1305 analyses that do not conform with the cost-benefit  
1306 guidelines from the Office of Information and Regulatory  
1307 Affairs. OIRA is the Government-wide authority on cost-  
1308 benefit analysis. If an agency wants deference for its  
1309 cost-benefit analyses, it is eminently reasonable to expect  
1310 it to follow OIRA's guidelines.

1311         Like the Administrative Procedure Act, the legislation  
1312 also allows agencies temporarily to bypass notice and  
1313 comment rulemaking if good cause supports the issuance of an  
1314 interim final rule. But when agencies hurry out interim  
1315 final rules, they cannot apply their full expertise to legal  
1316 or factual issues.

1317           This bill, therefore, reasonably denies deference to  
1318 determination made in support of interim final rules. If an  
1319 agency wants deference, they will get it when they follow  
1320 full rulemaking procedures.

1321           Finally, Mr. Chairman, the legislation applies a  
1322 light-handed abuse of discretion standard to agency denials  
1323 of hearing petitions. In this way, the legislation balances  
1324 the right to petition with an agency's need to exercise its  
1325 rightful discretion in conducting hearings.

1326           The amendment regrettably undoes all of the sensible  
1327 reforms of this underlying legislation with respect to  
1328 judicial review. As such, it will encourage agency abuse  
1329 and poor decision-making. And I consequently urge my  
1330 colleagues to oppose the amendment.

1331           Chairman Smith. Thank you, Mr. Gowdy.

1332           The question is on the amendment to the amendment.

1333 All in favor, say aye.

1334           [A chorus of ayes.]

1335           Chairman Smith. Opposed, no.

1336           [A chorus of nays.]

1337           Chairman Smith. In the opinion of the chair, the nays

1338 have it, and the amendment is not agreed to.

1339 Are there other amendments? The gentleman from New  
1340 York, Mr. Nadler?

1341 Mr. Nadler. Oh, did you want to --

1342 Mr. Cohen. We would like a hearing test. A roll  
1343 call. Auditory challenge.

1344 Chairman Smith. It is a late request, but it will be  
1345 honored, and the clerk will call the roll.

1346 Ms. Kish. Mr. Smith?

1347 Chairman Smith. No.

1348 Ms. Kish. Mr. Smith votes no.

1349 Mr. Sensenbrenner?

1350 Mr. Sensenbrenner. No.

1351 Ms. Kish. Mr. Sensenbrenner votes no.

1352 Mr. Coble?

1353 Mr. Coble. No.

1354 Ms. Kish. Mr. Coble votes no.

1355 Mr. Gallegly?

1356 Mr. Gallegly. No.

1357 Ms. Kish. Mr. Gallegly votes no.

1358 Mr. Goodlatte?

1359 [No response.]

1360 Ms. Kish. Mr. Lungren?

1361 [No response.]

1362 Ms. Kish. Mr. Chabot?

1363 Mr. Chabot. No.

1364 Ms. Kish. Mr. Chabot votes no.

1365 Mr. Issa?

1366 [No response.]

1367 Ms. Kish. Mr. Pence?

1368 Mr. Pence. No.

1369 Ms. Kish. Mr. Pence votes no.

1370 Mr. Forbes?

1371 Mr. Forbes. No.

1372 Ms. Kish. Mr. Forbes votes no.

1373 Mr. King?

1374 Mr. King. No.

1375 Ms. Kish. Mr. King votes no.

1376 Mr. Franks?

1377 Mr. Franks. No.

1378 Ms. Kish. Mr. Franks votes no.

1379 Mr. Gohmert?

1380 [No response.]

1381 Ms. Kish. Mr. Jordan?

1382 [No response.]

1383 Ms. Kish. Mr. Poe?

1384 Mr. Poe. No.

1385 Ms. Kish. Mr. Poe votes no.

1386 Mr. Chaffetz?

1387 Mr. Chaffetz. No.

1388 Ms. Kish. Mr. Chaffetz votes no.

1389 Mr. Griffin?

1390 Mr. Griffin. No.

1391 Ms. Kish. Mr. Griffin votes no.

1392 Mr. Marino?

1393 Mr. Marino. No.

1394 Ms. Kish. Mr. Marino votes no.

1395 Mr. Gowdy?

1396 Mr. Gowdy. No.

1397 Ms. Kish. Mr. Gowdy votes no.

1398 Mr. Ross?

1399 Mr. Ross. No.

1400 Ms. Kish. Mr. Ross votes no.

1401 Mrs. Adams?  
1402 [No response.]  
1403 Ms. Kish. Mr. Quayle?  
1404 Mr. Quayle. No.  
1405 Ms. Kish. Mr. Quayle votes no.  
1406 Mr. Amodei?  
1407 Mr. Amodei. No.  
1408 Ms. Kish. Mr. Amodei votes no.  
1409 Mr. Conyers?  
1410 Mr. Conyers. Aye.  
1411 Ms. Kish. Mr. Conyers votes aye.  
1412 Mr. Berman?  
1413 [No response.]  
1414 Ms. Kish. Mr. Nadler?  
1415 Mr. Nadler. Aye.  
1416 Ms. Kish. Mr. Nadler votes aye.  
1417 Mr. Scott?  
1418 Mr. Scott. Aye.  
1419 Ms. Kish. Mr. Scott votes aye.  
1420 Mr. Watt?  
1421 Mr. Watt. Aye.

1422 Ms. Kish. Mr. Watt votes aye.

1423 Ms. Lofgren?

1424 Ms. Lofgren. Aye.

1425 Ms. Kish. Ms. Lofgren votes aye.

1426 Ms. Jackson Lee?

1427 Ms. Jackson Lee. Aye.

1428 Ms. Kish. Ms. Jackson Lee votes aye.

1429 Ms. Waters?

1430 [No response.]

1431 Ms. Kish. Mr. Cohen?

1432 Mr. Cohen. Aye.

1433 Ms. Kish. Mr. Cohen votes aye.

1434 Mr. Johnson?

1435 Mr. Johnson. Aye.

1436 Ms. Kish. Mr. Johnson votes aye.

1437 Mr. Pierluisi?

1438 Mr. Pierluisi. Aye.

1439 Ms. Kish. Mr. Pierluisi votes aye.

1440 Mr. Quigley?

1441 Mr. Quigley. Aye.

1442 Ms. Kish. Mr. Quigley votes aye.

1443 Ms. Chu?

1444 Ms. Chu. Aye.

1445 Ms. Kish. Ms. Chu votes aye.

1446 Mr. Deutch?

1447 Mr. Deutch. Aye.

1448 Ms. Kish. Mr. Deutch votes aye.

1449 Ms. Sanchez?

1450 Ms. Sanchez. Aye.

1451 Ms. Kish. Ms. Sanchez votes aye.

1452 Chairman Smith. The gentleman from Texas, Mr.

1453 Gohmert?

1454 Mr. Gohmert. No.

1455 Ms. Kish. Mr. Gohmert votes no.

1456 Chairman Smith. The gentlewoman from California, Ms.

1457 Waters?

1458 Ms. Waters. I vote aye.

1459 Ms. Kish. Ms. Waters votes aye.

1460 Chairman Smith. The clerk will report.

1461 Ms. Kish. Mr. Chairman, 14 Members voted aye; 18

1462 Members voted nay.

1463 Chairman Smith. A majority having voted against the

1464 amendment, the amendment is not agreed to.

1465 Are there other amendments?

1466 Mr. Cohen. Mr. Chairman, I have an amendment at the  
1467 desk.

1468 Chairman Smith. The gentleman from Tennessee and also  
1469 the gentleman from New York. Is there any coordination?

1470 Mr. Cohen. I will defer to my senior, more  
1471 experienced, mature, elderly Member.

1472 [Laughter.]

1473 Mr. Nadler. I appreciate the deference, but not the  
1474 description.

1475 Chairman Smith. The gentleman from New York is  
1476 recognized.

1477 Mr. Nadler. I thank the gentleman. Thank you, Mr.  
1478 Chairman.

1479 Mr. Chairman, I have an amendment at the desk.

1480 Chairman Smith. The clerk will report the amendment.

1481 And which amendment is it again?

1482 Mr. Nadler. Which is it? It is Cohen 5 on the  
1483 docket.

1484 [Pause.]

1485 Chairman Smith. The clerk will report the amendment.

1486 Ms. Kish. Amendment to the Smith amendment in the  
1487 nature of a substitute to H.R. 3010, offered by Mr. Nadler

1488 --

1489 Chairman Smith. Without objection, the amendment will  
1490 be considered as read.

1491 [The information follows:]

1492

1493 Chairman Smith. The gentleman from New York is  
1494 recognized to explain the amendment.

1495 Mr. Nadler. Thank you.

1496 Mr. Chairman, this bill requires that all agencies,  
1497 including independent regulatory agencies, consult with  
1498 OIRA, the Office of Information and Regulatory Affairs, in  
1499 the White House. OIRA, it is a White House office. This  
1500 bill requires that all agencies, including independent  
1501 regulatory agencies, consult with OIRA, this office in the  
1502 White House, before they may publish a notice of proposed  
1503 rulemaking or before they may issue final rules.

1504 Now, taken as a whole, the changes in this bill  
1505 represent an unprecedented delegation of power to OIRA and  
1506 to the President, away from the independent agencies and to  
1507 the President, to the White House. It would centralize this  
1508 power in the White House, which, frankly, surprises me  
1509 coming from the other side of the aisle. I didn't think  
1510 that our Republican colleagues were intent on centralizing  
1511 power in the White House.

1512 The bill would effectively allow OIRA -- read "the  
1513 White House" -- to control all rulemaking activity. This is

1514 rather one might say hypocritical or one might say  
1515 inconsistent in light of the REINS Act, which is an example  
1516 where Congress is attempting to regain control from the  
1517 executive branch over the rulemaking process, and this goes  
1518 in exactly the other direction.

1519         The REINS Act says let us get more power away from the  
1520 executive branch, and this bill says let us give all power  
1521 to the White House by requiring that all agencies consult  
1522 with OIRA in the White House before they may publish a  
1523 notice of proposed rulemaking or before they may issue final  
1524 rules. These changes would endanger the independence of the  
1525 independent regulatory agencies that Congress created to be  
1526 independent of the President.

1527         I find it surprising that anybody here would want to  
1528 subject the independent agencies to rule by the White House.  
1529 We have heard many people say that the White House -- that  
1530 the administration has too much authority, too much  
1531 influence with the independent agencies. And this would say  
1532 let them have all the power from the independent agencies.

1533         The bill would require the agencies to consult with  
1534 OIRA on all proposed and final rules issued each year --

1535 about 2,000 proposed rules, about 5,000 final rules -- not  
1536 just the 500 or so significant rules that agencies currently  
1537 submit to OIRA under Executive Order 12866. So under the  
1538 current executive order of the President, about 500 or so  
1539 significant rules are submitted to OIRA each year. This  
1540 would say, no, all 7,000 proposed and final rules must be  
1541 submitted to OIRA in the White House. This would centralize  
1542 a lot more power in the White House than I think we would  
1543 want to see.

1544         So what this amendment does is it simply removes that  
1545 requirement that all agencies, including the independent  
1546 regulatory agencies, must submit all rules and proposed  
1547 rules and notices of rulemaking to OIRA. It would leave it  
1548 at the current status quo on that question.

1549         Now whatever we think, Mr. Chairman, about rulemaking  
1550 -- that regulations are too little, too much, too stifling,  
1551 not enough, whatever -- I don't think that people who think  
1552 any of those thoughts, including that the regulations are  
1553 too stifling of the economy, which is what the majority  
1554 says, which is what this bill supposedly says, would want  
1555 all such rules submitted to the White House and power

1556 centralized in the White House. So I urge my colleagues to  
1557 adopt this amendment, which would remove this provision from  
1558 the bill.

1559 Thank you. I yield back.

1560 Chairman Smith. Thank you, Mr. Nadler.

1561 The gentleman from Arizona, Mr. Quayle, is recognized.

1562 Mr. Quayle. Thank you, Mr. Chairman, and I oppose  
1563 this amendment.

1564 The amendment strikes provisions of the legislation  
1565 that require agencies to consult with the Office of  
1566 Information and Regulatory --

1567 Mr. Nadler. Mr. Chairman, I am sitting right behind  
1568 the gentleman. I can't hear him.

1569 Mr. Quayle. My mike is kind of broken. Here we go.  
1570 I will start over.

1571 I oppose this amendment. The amendment strikes  
1572 provisions of the legislation that require agencies to  
1573 consult with the Office of Information and Regulatory  
1574 Affairs before issuing proposed and final rules, including  
1575 proposed major and high-impact rules. Significant  
1576 consultation with OIRA on major and high-impact rules is a

1577 longstanding and important feature of presidential orders on  
1578 rulemaking. More light-handed coordination with OIRA also  
1579 is part of executive order practice.

1580 Under the legislation, OIRA and the agencies will be  
1581 able to structure their consultations in a practical way  
1582 that does not unduly impede agency activity. The required  
1583 consultation helps the rulemaking process and should be  
1584 retained.

1585 The amendment also strikes provisions that enlist OIRA  
1586 to help agencies comply with the Regulatory Accountability  
1587 Act while still complying with special procedural  
1588 requirements and agency-specific statutes. These include,  
1589 for example, some of our environmental and labor statutes.  
1590 OIRA's assistance can only be helpful, and there is no  
1591 reason to eliminate it from the legislation.

1592 I urge my colleagues to oppose the amendment, and I  
1593 yield back my time.

1594 Chairman Smith. Thank you, Mr. Quayle.

1595 The question is on the amendment. All in favor, say  
1596 aye.

1597 [A chorus of ayes.]

1598 Chairman Smith. Opposed, nay.

1599 [A chorus of nays.]

1600 Chairman Smith. In the opinion of the chair, the nays  
1601 have it, and the amendment is not agreed to.

1602 Mr. Nadler. Mr. Chairman, I ask for roll call.

1603 Chairman Smith. A roll call vote has been requested.

1604 The clerk will call the roll.

1605 Ms. Kish. Mr. Smith?

1606 Chairman Smith. No.

1607 Ms. Kish. Mr. Smith votes no.

1608 Mr. Sensenbrenner?

1609 Mr. Sensenbrenner. No.

1610 Ms. Kish. Mr. Sensenbrenner votes no.

1611 Mr. Coble?

1612 Mr. Coble. No.

1613 Ms. Kish. Mr. Coble votes no.

1614 Mr. Gallegly?

1615 Mr. Gallegly. No.

1616 Ms. Kish. Mr. Gallegly votes no.

1617 Mr. Goodlatte?

1618 [No response.]

1619 Ms. Kish. Mr. Lungren?  
1620 [No response.]  
1621 Ms. Kish. Mr. Chabot?  
1622 Mr. Chabot. No.  
1623 Ms. Kish. Mr. Chabot votes no.  
1624 Mr. Issa?  
1625 [No response.]  
1626 Ms. Kish. Mr. Pence?  
1627 Mr. Pence. No.  
1628 Ms. Kish. Mr. Pence votes no.  
1629 Mr. Forbes?  
1630 Mr. Forbes. No.  
1631 Ms. Kish. Mr. Forbes votes no.  
1632 Mr. King?  
1633 Mr. King. No.  
1634 Ms. Kish. Mr. King votes no.  
1635 Mr. Franks?  
1636 Mr. Franks. No.  
1637 Ms. Kish. Mr. Franks votes no.  
1638 Mr. Gohmert?  
1639 [No response.]

1640 Ms. Kish. Mr. Jordan?  
1641 [No response.]  
1642 Ms. Kish. Mr. Poe?  
1643 Mr. Poe. No.  
1644 Ms. Kish. Mr. Poe votes no.  
1645 Mr. Chaffetz?  
1646 Mr. Chaffetz. No.  
1647 Ms. Kish. Mr. Chaffetz votes no.  
1648 Mr. Griffin?  
1649 Mr. Griffin. No.  
1650 Ms. Kish. Mr. Griffin votes no.  
1651 Mr. Marino?  
1652 Mr. Marino. No.  
1653 Ms. Kish. Mr. Marino votes no.  
1654 Mr. Gowdy?  
1655 Mr. Gowdy. No.  
1656 Ms. Kish. Mr. Gowdy votes no.  
1657 Mr. Ross?  
1658 Mr. Ross. No.  
1659 Ms. Kish. Mr. Ross votes no.  
1660 Mrs. Adams?

1661 Mrs. Adams. No.

1662 Ms. Kish. Mrs. Adams votes no.

1663 Mr. Quayle?

1664 Mr. Quayle. No.

1665 Ms. Kish. Mr. Quayle votes no.

1666 Mr. Amodei?

1667 Mr. Amodei. No.

1668 Ms. Kish. Mr. Amodei votes no.

1669 Mr. Conyers?

1670 Mr. Conyers. Aye.

1671 Ms. Kish. Mr. Conyers votes aye.

1672 Mr. Berman?

1673 [No response.]

1674 Ms. Kish. Mr. Nadler?

1675 Mr. Nadler. Aye.

1676 Ms. Kish. Mr. Nadler votes aye.

1677 Mr. Scott?

1678 Mr. Scott. Aye.

1679 Ms. Kish. Mr. Scott votes aye.

1680 Mr. Watt?

1681 Mr. Watt. Aye.

1682 Ms. Kish. Mr. Watt votes aye.  
1683 Ms. Lofgren?  
1684 Ms. Lofgren. Aye.  
1685 Ms. Kish. Ms. Lofgren votes aye.  
1686 Ms. Jackson Lee?  
1687 Ms. Jackson Lee. Aye.  
1688 Ms. Kish. Ms. Jackson Lee votes aye.  
1689 Ms. Waters?  
1690 Ms. Waters. Aye.  
1691 Ms. Kish. Ms. Waters votes aye.  
1692 Mr. Cohen?  
1693 Mr. Cohen. Aye.  
1694 Ms. Kish. Mr. Cohen votes aye.  
1695 Mr. Johnson?  
1696 Mr. Johnson. Aye.  
1697 Ms. Kish. Mr. Johnson votes aye.  
1698 Mr. Pierluisi?  
1699 Mr. Pierluisi. No.  
1700 Ms. Kish. Mr. Pierluisi votes no.  
1701 Mr. Quigley?  
1702 Mr. Quigley. Aye.

1703 Ms. Kish. Mr. Quigley votes aye.

1704 Ms. Chu?

1705 Ms. Chu. No.

1706 Ms. Kish. Ms. Chu votes no.

1707 Mr. Deutch?

1708 Mr. Deutch. Aye.

1709 Ms. Kish. Mr. Deutch votes aye.

1710 Ms. Sanchez?

1711 Ms. Sanchez. Aye.

1712 Ms. Kish. Ms. Sanchez votes aye.

1713 Chairman Smith. The gentleman from Ohio?

1714 Mr. Jordan. No.

1715 Ms. Kish. Mr. Jordan votes no.

1716 Chairman Smith. The clerk will report. The clerk

1717 will suspend.

1718 The gentlewoman from California, Ms. Chu?

1719 Ms. Kish. Ms. Chu has voted no.

1720 Ms. Chu. Aye.

1721 Ms. Kish. Ms. Chu votes aye.

1722 Chairman Smith. The clerk will report.

1723 Ms. Kish. Mr. Chairman, 13 Members voted aye; 20

1724 Members voted nay.

1725 Chairman Smith. A majority having voted against the  
1726 amendment, the amendment is not agreed to.

1727 Are there other amendments? The gentleman from  
1728 Tennessee, Mr. Cohen?

1729 Mr. Cohen. Thank you, Mr. Chairman.

1730 I have an amendment at the desk, Number 13.

1731 Chairman Smith. The clerk will report Amendment  
1732 Number 13.

1733 Ms. Kish. Amendment to the Smith amendment in the  
1734 nature of a substitute to H.R. 3010, offered by Mr. Cohen --

1735 Mr. Cohen. I ask unanimous consent --

1736 Chairman Smith. Without objection, the amendment will  
1737 be considered as read.

1738 [The information follows:]

1739

1740 Chairman Smith. And the gentleman is recognized to  
1741 explain his amendment.

1742 Mr. Cohen. My amendment will delay the effective date  
1743 of this bill for 90 days after the Administrative Conference  
1744 of the United States completes and submits to Congress a  
1745 report containing an analysis of the quantitative and  
1746 qualitative benefits and the cost of H.R. 3010 to Federal  
1747 agencies, the rulemaking process, and society.

1748 I have heard an awful lot about the benefits of cost-  
1749 benefit analysis from the proponents. Their argument is, as  
1750 I understand it, that before acting to change or add to  
1751 existing law, agencies should think carefully about whether  
1752 a particular rule addresses a real problem, what the scope  
1753 of that problem is, whether a particular rule is really  
1754 necessary to address that problem, and whether the rule  
1755 addresses that problem in a manner that maximizes benefits  
1756 and minimizes costs.

1757 If that is the case, I don't see why these very same  
1758 considerations should not apply to H.R. 3010 itself, kind of  
1759 a res ipsa loquitur. My own view is that H.R. 3010 is a  
1760 solution in search of a problem. But rather than simply

1761 relying on the talking points of Members of Congress from  
1762 both sides of the aisle, it may be valuable to have a  
1763 neutral body of administrative law experts assess the cost  
1764 and benefits of H.R. 3010.

1765 Besides, this is exactly the type of analysis that  
1766 ACUS was intended to conduct. And ACUS saves us lots of  
1767 money. We all support ACUS.

1768 Such a "look before you leap" measure would be  
1769 especially important, given the dramatic changes H.R. 3010  
1770 would make to the Administrative Procedure Act, our  
1771 administrative constitution. Importantly, the cost-benefit  
1772 analysis that ACUS would conduct would not be limited to  
1773 H.R. 3010's Federal budgetary impact, though I suspect even  
1774 that limited type of analysis would show that a significant  
1775 expenditure of taxpayer money would be required to implement  
1776 3010.

1777 Rather, this analysis would be broader, including  
1778 consideration of H.R. 3010's nonquantitative benefits and  
1779 costs, including the projected cost to society of not  
1780 regulating or impose long delays on the rulemaking process.  
1781 The proponents of H.R. 3010 should welcome this amendment.

1782 After all, if cost-benefit analysis is good for agency  
1783 rules, it ought to be good for H.R. 3010 itself, the goose  
1784 and the gander.

1785 I yield back the remainder of my time.

1786 Chairman Smith. Thank you, Mr. Cohen.

1787 The gentleman from North Carolina, Mr. Coble, is  
1788 recognized.

1789 Mr. Coble. I thank the chairman.

1790 Mr. Chairman, I oppose the amendment. I support the  
1791 mission of the Administrative Conference of the United  
1792 States and recently cosponsored legislation to reauthorize  
1793 that conference, but a study from the conference is not  
1794 needed, in my opinion, before we apply this legislation to  
1795 regulatory agencies.

1796 The full committee and the Subcommittee on Courts,  
1797 Commercial, and Administrative Law together held five  
1798 hearings pertaining to this legislation this year.  
1799 Testimony was received from many highly distinguished  
1800 witnesses in the field of administrative law, former high-  
1801 ranking Government officials, practitioners, and  
1802 academicians. The legislation we consider today is a result

1803 of the careful consideration of the record of those  
1804 hearings.

1805 The committee having done its work, there is no need  
1806 to delay for a second opinion, particularly as our troubled  
1807 economy suffers from the ever-more job-killing regulations.

1808 I urge my colleagues to oppose the amendment. Yield  
1809 back.

1810 Mr. Nadler. Mr. Chairman?

1811 Chairman Smith. Thank you, Mr. Coble.

1812 The gentleman from New York, Mr. Nadler?

1813 Mr. Nadler. I would just point out that the gentleman  
1814 from -- I can never remember if Mr. Coble is from North or  
1815 South Carolina.

1816 Chairman Smith. North Carolina.

1817 Mr. Nadler. North Carolina. The gentleman from North  
1818 Carolina says that this bill has been carefully considered.  
1819 We don't need a cost-benefit analysis. That would delay the  
1820 bill from doing its wonderful work.

1821 I would simply point out that if we did a cost-benefit  
1822 analysis, it might increase the odds, negligible as they now  
1823 are, that this bill might, in fact, pass the Senate and

1824 might, in fact, become law. And if the bill is so wonderful  
1825 -- I don't agree that it is -- but if it is so wonderful,  
1826 then anything that would help increase the odds of this bill  
1827 becoming law, which is not going to happen right now, might,  
1828 in fact, be beneficial from the point of view of the authors  
1829 of the bill.

1830 I would just point that out that delay attendant on a  
1831 cost-benefit analysis might be well worth it if it helped  
1832 the bill pass, assuming the bill is worthwhile, which a  
1833 cost-benefit analysis might help tell us.

1834 I yield back.

1835 Chairman Smith. Okay. Thank you, Mr. Nadler.

1836 Are there other Members who wish to speak?

1837 [No response.]

1838 Chairman Smith. If not the question -- the question  
1839 is on the Cohen amendment. All in favor, say aye.

1840 [A chorus of ayes.]

1841 Chairman Smith. All opposed, say no.

1842 [A chorus of nays.]

1843 Chairman Smith. The nays have it. The amendment is  
1844 not agreed to.

1845 Are there other amendments?

1846 Mr. Cohen. Yes, sir.

1847 Chairman Smith. Let me announce to the Members who  
1848 are here that if we finish this bill -- and hopefully, we  
1849 will in the next few minutes -- we will recess until 1:00  
1850 p.m. So we will be taking a lunch break. Maybe that will  
1851 be an incentive to get through some of these amendments.

1852 Mr. Nadler. Mr. Chairperson, could we ask the clerk  
1853 to read the roll faster?

1854 Chairman Smith. We can do that as well.

1855 Are there any other amendments?

1856 Mr. Cohen. Yes, sir. Mr. Chairman, I have Number 2,  
1857 which was originally Conyers, and it becomes Cohen.

1858 Chairman Smith. The clerk will report the amendment.

1859 Ms. Kish. Amendment to the Smith amendment in the  
1860 nature of a substitute to H.R. 3010 --

1861 Chairman Smith. Without objection, the amendment will  
1862 be considered as read.

1863 [The information follows:]

1864

1865 Chairman Smith. And the gentleman from Tennessee is  
1866 recognized to explain the amendment.

1867 Mr. Cohen. Thank you, Mr. Chairman.

1868 This repeals the bill's super mandates. This bill has  
1869 super mandates that override all other laws. It overrides  
1870 the Clean Air Act, which was, of course, President Nixon's  
1871 crowning glory, 1972. The Clean Water Act, also 1972.  
1872 Clean Air Act was '63. That was a Democratic bill. Clean  
1873 Water Act, Nixon's bill. And the OSHA bill with respect to  
1874 the need to conduct cost-benefit analysis and other  
1875 requirements.

1876 The bill would require agencies to consider potential  
1877 cost and benefits associated with proposed and final rules  
1878 notwithstanding any other provision of law, and that would  
1879 affect these historical laws that protect the public -- the  
1880 Clean Air Act, the Clean Water Act, and the Occupational  
1881 Safety and Health Act. This super mandate would effectively  
1882 trump all those statutes that prohibit or limit the use of  
1883 cost information in setting health and safety standards.

1884 There are other super mandates in the bill, such as  
1885 requiring agencies to adopt the least costly rule considered

1886 during the rulemaking that meets relevant statutory  
1887 objectives and permits agencies to choose a more expensive  
1888 option only if the additional benefits justify its  
1889 additional cost. This amendment would ensure that prior  
1890 congressional intent, as expressed in the Clean Air Act and  
1891 other acts that I mentioned, will be preserved and prevent  
1892 unelected agency bureaucrats to weigh cost against saving  
1893 lives.

1894         Without this amendment, H.R. 3010 will generate  
1895 extensive litigation and delay the promulgation of rules  
1896 intended to protect public health and safety. This is why  
1897 50 administrative law professors, 50 respected  
1898 administrative law professors and other respected entities  
1899 have raised serious questions about the bill.

1900         They represent an assortment of groups, some of which  
1901 -- the American Association for Justice; the Administrative  
1902 Law Section of the American Bar Association, with respect to  
1903 most provisions of the bill as well; the Coalition for  
1904 Sensible Safeguards; the American Association of University  
1905 Professors; Americans for Financial Reform; Main Street  
1906 Alliance; Blue Green Alliance; an assortment of other

1907 institutions and groups which I have great fondness for, but  
1908 the other side would probably find despicable.

1909 I present my amendment and yield the balance of my  
1910 time.

1911 Chairman Smith. Thank you, Mr. Cohen.

1912 I am going to recognize myself in opposition to the  
1913 amendment.

1914 The underlying legislation requires that agencies  
1915 consider the cost of all new regulations as they conduct  
1916 rulemaking. But this amendment would allow numerous  
1917 agencies to ignore cost under a range of statutes.

1918 The total burden of Federal regulation on the economy  
1919 has been estimated at \$1.75 trillion. The administration is  
1920 preparing 200 regulations that each will impact the economy  
1921 by \$100 million or more per year.

1922 Supreme Court Justice Stephen Breyer observed as long  
1923 ago as 1993 that the first 10 percent of regulatory cost can  
1924 eliminate 90 percent of the risk society faces. After  
1925 decades of regulatory initiatives, we are at the point where  
1926 we should take his advice into account.

1927 From this point on, all agencies should always

1928 consider cost as they prepare new regulations, and that is  
1929 why I urge my colleagues to oppose the amendment.

1930 Are there other Members who wish to be heard?

1931 Mr. Conyers. Mr. Chairman?

1932 Chairman Smith. The gentleman from Michigan, Mr.  
1933 Conyers, is recognized.

1934 Mr. Conyers. I want to make clear or see if we have  
1935 agreement on this. Do you agree with the author of this  
1936 amendment that the super mandate would effectively trump the  
1937 Clean Air Act, the Clean Water Act, and the Occupational  
1938 Safety and Health Act?

1939 Chairman Smith. If the gentleman will yield? No, I  
1940 don't agree that that would be the case.

1941 Mr. Conyers. All right.

1942 Mr. Cohen. Would the gentleman yield?

1943 Mr. Conyers. Yes, I would.

1944 Mr. Cohen. Would the chairman yield?

1945 Mr. Conyers. It is my time.

1946 Mr. Cohen. I know that. Can I pass --

1947 Mr. Conyers. Oh, he is trying to get your attention.

1948 Chairman Smith. Yes?

1949 Mr. Cohen. The ranking member asked you if you agreed  
1950 that this would trump those bills. Would it not trump them  
1951 in part?

1952 Chairman Smith. Oh, no, no. I do not think it would  
1953 trump them.

1954 Mr. Cohen. But would it trump them in part?

1955 Chairman Smith. It would in part.

1956 Mr. Cohen. And I yield back to the ranking member.

1957 Mr. Conyers. Well, it partially trumps, this super  
1958 mandate, according to the chairman, partially trumps the  
1959 Clean Air Act, the Clean Water Act, and the Occupational  
1960 Safety and Health Act. Well, that is bad enough.

1961 Chairman Smith. Well, if the gentleman will yield?

1962 Mr. Conyers. Of course.

1963 Chairman Smith. To further clarify what I was saying,  
1964 it would trump those statutes, those acts only to the extent  
1965 that they prohibited cost from being considered. So this  
1966 would say that all regulations would need to receive a cost-  
1967 benefit analysis. It is not going to substantively change  
1968 the legislation. It is simply going to require that the  
1969 cost be considered.

1970 Mr. Conyers. Well, in other words, then I take it  
1971 that the chairman is saying that the cost then would become  
1972 a factor in determining how much we would enact or enforce  
1973 these three bills -- Clean Air, Clean Water, and  
1974 Occupational Safety. In other words, what you are saying is  
1975 the cost does become a factor then.

1976 Chairman Smith. If the gentleman would yield?

1977 Mr. Conyers. Is that right?

1978 Chairman Smith. The cost does not trump the statutory  
1979 objectives of those three pieces of legislation. It is  
1980 simply saying that we need to determine what the costs are.  
1981 And as far as other statutes go, it is simply saying that we  
1982 want the least costly way to allow the objectives to be met,  
1983 not that we are trying to undermine those objectives.

1984 Mr. Conyers. Well, could the chair just explain to me  
1985 that on page 6, notwithstanding any other provisions of the  
1986 law, A, the potential cost and benefits associated with  
1987 potential alternative rules and other responses considered  
1988 indirect, direct, cumulative costs, benefits and estimated  
1989 impacts on jobs, economic growth, innovation, and economic  
1990 competitiveness; B, means to increase the cost effectiveness

1991 of any Federal response; and C, incentive for innovation,  
1992 consistency, and predictability, lower costs of enforcement  
1993 and compliance to Government entities.

1994 Now you are saying that this is only a partial  
1995 trumping of these statutes. Now if the chair would explain  
1996 to me why this is -- if it only partially trumps these  
1997 statutes, why would it have to be added to the law already?  
1998 I mean, it would seem that this efficiency that you suggest  
1999 is what the section means, and what the gentleman from  
2000 Tennessee is trying to undo is already a part of the bill.

2001 Chairman Smith. If the gentleman would yield? And  
2002 you are correct. Looking at page 6, I do want to emphasize,  
2003 and that is one of the benefits of the bill that we do  
2004 consider cost. If you look at page 17 of my amendment, you  
2005 will see that this is only to the extent that it meets  
2006 relevant statutory objectives. Page 17, line 8.

2007 So it doesn't conflict with the statutory objectives.  
2008 It just says that when costs have been prohibited from being  
2009 considered, they simply need to be considered in the future,  
2010 as long as the statutory objectives are still met.

2011 We are looking -- as I mentioned in my opening

2012 statement, what we are looking to do here is to come up with  
2013 the least costly way to meet the statutory objectives. We  
2014 are not trying to undermine the statutory objectives  
2015 themselves.

2016 I will yield back.

2017 Mr. Conyers. Well, my time has expired. But I am  
2018 going to investigate whether or not the gentleman from  
2019 Tennessee is correct because my reading of this, and I  
2020 haven't looked at page 17 with the care that perhaps you  
2021 have, but this amendment to me undoes the bill's super  
2022 mandates that are in both the bill and in the chairman's  
2023 amendment. And for that reason, it seems critical that  
2024 anybody concerned with air and water and occupational safety  
2025 can't possibly think that this is a conditional --

2026 And this is why we have 50 law professors, plus over a  
2027 dozen other organizations -- mostly environmental, some  
2028 labor -- all opposed to the bill for this reason. And I  
2029 strongly support the amendment of the gentleman from  
2030 Tennessee.

2031 And thank you.

2032 Chairman Smith. Thank you, Mr. Conyers.

2033 The gentleman from Tennessee?

2034 Mr. Cohen. Mr. Chairman, let me ask you a question.

2035 How do you foresee this working? Let us say you have got  
2036 OSHA, and let us say they come up with a rule, and the court  
2037 says it is too expensive, but it would save 100 lives. How  
2038 do you determine what is the value of a life?

2039 I mean, we had a bill last week on drugs, and we said  
2040 if it saves one life, we should pass this bill. How do you  
2041 determine 100 people who might lose their lives because some  
2042 machinery is defective or some part or --

2043 Chairman Smith. If the gentleman will yield? Let me  
2044 rephrase what I have said a while ago or repeat what I said  
2045 a while ago. The agency objectives will continue, whether  
2046 it is to save lives, whether it is to protect the health of  
2047 individuals or the safety of individuals. We are just  
2048 trying to achieve those objectives in the least costly way  
2049 possible, and that is up to the agency to determine. We are  
2050 trying to come up with cost-benefit analysis.

2051 Mr. Cohen. Yes, sir, I understand that. But what you  
2052 are doing in this bill, as I understand it, you are letting  
2053 a judge that doesn't have any expertise trump the agency.

2054 And they are going to say, "Oh, you could do it cheaper."

2055 And the judge doesn't have a clue, really. They may know  
2056 about peanut butter, but they may not know about OSHA.

2057 Chairman Smith. I am told that that is not the case.  
2058 The judge is not going to be the final arbiter of that  
2059 decision. Again, what we are trying to do is to keep the  
2060 agency objectives intact, but do so in the least costly way.  
2061 But that, ultimately, is not necessarily up to the judge.

2062 Mr. Cohen. Thank you, sir.

2063 Chairman Smith. Are there other Members? The  
2064 gentleman from New York?

2065 Mr. Nadler. Just to follow up, if it isn't up to the  
2066 judge, who is it up to?

2067 Chairman Smith. I am sorry?

2068 Mr. Nadler. If it isn't up to the judge, who is it up  
2069 to?

2070 Chairman Smith. Okay. I am told that the judge  
2071 simply determines whether the agency objectives have been  
2072 achieved or not. They are not going to make the  
2073 determination as to whether lives are going to be lost or  
2074 otherwise.

2075 Mr. Nadler. But, again, as I understand it --  
2076 Chairman Smith. And if the gentleman will further  
2077 yield? The judge will determine or the court will determine  
2078 whether or not the least costly way of achieving the  
2079 objectives of the agency is valid or not, but the goal there  
2080 is not to, again, not to undermine the agency objectives.  
2081 It is simply to come up with the least costly way of doing  
2082 so.

2083 Mr. Nadler. Reclaiming my time. The court is going  
2084 to decide what the agency, the rule is the least costly way  
2085 of doing it or not? The court has the expertise to  
2086 substitute its judgment on what the least costly way of  
2087 accomplishing the objective is against the agency?

2088 Chairman Smith. If the gentleman will yield? The  
2089 court is basing its finding on the administrative record.  
2090 That is what it is basing it on.

2091 Mr. Nadler. But there is no deference to that record,  
2092 is there?

2093 Chairman Smith. I am told that there is a record as  
2094 long as the agency follows --

2095 Mr. Nadler. There is what?

2096 Chairman Smith. There is a record, an administrative

2097 --

2098 Mr. Nadler. No, but there is no deference to that  
2099 record.

2100 Chairman Smith. I am told that there is deference to  
2101 the record. And apparently, that is --

2102 Mr. Watt. Why don't you put your staff person on the  
2103 microphone?

2104 [Laughter.]

2105 Chairman Smith. Well, you are right. I am relying  
2106 upon him for that answer.

2107 Mr. Watt. I mean, you know, the --

2108 Mr. Nadler. I will yield to the gentleman.

2109 Chairman Smith. The gentleman yields to the gentleman  
2110 from North Carolina.

2111 Mr. Watt. I appreciate the gentleman yielding. I  
2112 guess I apologize for just blurting out. But it just shows  
2113 how ridiculous what we are doing is because nobody, all of  
2114 these questions, even the majority doesn't understand what  
2115 the implications of this bill are. And yet you are saying  
2116 we should take your staff's interpretation, and in most

2117 cases, your staff's interpretation is directly in conflict  
2118 with what the wording of the bill says.

2119 Chairman Smith. If the gentleman will yield, or if  
2120 the gentleman from New York will yield?

2121 Mr. Nadler. I will yield.

2122 Chairman Smith. That is simply not the case. That  
2123 may be your interpretation. It is certainly not the  
2124 majority's interpretation.

2125 Mr. Watt. It is not your staff's interpretation. You  
2126 obviously don't have a --

2127 Chairman Smith. Will the gentleman from New York  
2128 yield to the gentleman from Tennessee?

2129 Mr. Nadler. Yes.

2130 Mr. Cohen. Thank you, sir. Thank you.

2131 So the agency comes up with a rule, Mr. Chairman, and  
2132 the agency rule is appealed. And they go into court, and  
2133 they look at the record, and the judges say this isn't the  
2134 most cost-effective way to do it. Does the rule stay in  
2135 effect at that point, or is the rule not in effect? Does  
2136 that stay the agency's ruling when the court says that is  
2137 not the most cost-effective way? Or does the ruling stay in

2138 effect until it is reheard?

2139 Chairman Smith. If the gentleman will yield? I think  
2140 it is the gentleman from New York.

2141 Mr. Nadler. Yes, I yield.

2142 Chairman Smith. I may be repeating myself, and in  
2143 fact, I am. But apparently, it needs to be repeated. The  
2144 court is simply going to determine whether the  
2145 administrative record supports the agency's objectives.  
2146 There is nothing new about that. There is nothing unusual  
2147 about that. That is the way the system is supposed to work.

2148 Mr. Nadler. Reclaiming my time.

2149 Chairman Smith. The gentleman from New York, yes?

2150 Mr. Nadler. Thank you.

2151 Reclaiming my time. One of the problems with this  
2152 bill is illustrated right here. An agency is set up and  
2153 given a permanent staff, given certain expertise in a  
2154 certain area. They make a rule, pursuant to congressional  
2155 delegation of powers, to accomplish some safety objective -  
2156 to prevent a nuclear plant from exploding, to prevent the  
2157 air from poisoning us, whatever it may be.

2158 The court is now going to substitute its judgment over

2159 the agency's expertise not on the question which normally a  
2160 court does -- Is the rule arbitrary and capricious? Did it  
2161 lack due process? -- but on the question of fact, on the  
2162 question of judgment. Is this the most effective way to  
2163 accomplish that objective? Is that objective a proper  
2164 objective? Or is this the most effective way to accomplish  
2165 that objective?

2166 That is a judgment that an agency should make, not a  
2167 court should make. And it is one of the problems with this  
2168 bill, and it is why I support the amendment.

2169 I yield back.

2170 Chairman Smith. The gentleman's time has expired.

2171 The question is on the amendment. All in favor, say  
2172 aye.

2173 [A chorus of ayes.]

2174 Chairman Smith. Opposed, nay.

2175 [A chorus of nays.]

2176 Chairman Smith. In the opinion of the chair, the nays  
2177 have it. The amendment is not agreed to.

2178 Voice. I request a vote.

2179 Chairman Smith. A recorded vote has been requested.

2180 The clerk will call the roll.

2181 Ms. Kish. Mr. Smith?

2182 Chairman Smith. No.

2183 Ms. Kish. Mr. Smith votes no.

2184 Mr. Sensenbrenner?

2185 [No response.]

2186 Ms. Kish. Mr. Coble?

2187 Mr. Coble. No.

2188 Ms. Kish. Mr. Coble votes no.

2189 Mr. Gallegly?

2190 Mr. Gallegly. No.

2191 Ms. Kish. Mr. Gallegly votes no.

2192 Mr. Goodlatte?

2193 [No response.]

2194 Ms. Kish. Mr. Lungren?

2195 [No response.]

2196 Ms. Kish. Mr. Chabot?

2197 Mr. Chabot. No.

2198 Ms. Kish. Mr. Chabot votes no.

2199 Mr. Issa?

2200 [No response.]

2201 Ms. Kish. Mr. Pence?  
2202 [No response.]  
2203 Ms. Kish. Mr. Forbes?  
2204 [No response.]  
2205 Ms. Kish. Mr. King?  
2206 Mr. King. No.  
2207 Ms. Kish. Mr. King votes no.  
2208 Mr. Franks?  
2209 Mr. Franks. No.  
2210 Ms. Kish. Mr. Franks votes no.  
2211 Mr. Gohmert?  
2212 [No response.]  
2213 Ms. Kish. Mr. Jordan?  
2214 [No response.]  
2215 Ms. Kish. Mr. Poe?  
2216 Mr. Poe. No.  
2217 Ms. Kish. Mr. Poe votes no.  
2218 Mr. Chaffetz?  
2219 Mr. Chaffetz. No.  
2220 Ms. Kish. Mr. Chaffetz votes no.  
2221 Mr. Griffin?

2222 [No response.]

2223 Ms. Kish. Mr. Marino?

2224 Mr. Marino. No.

2225 Ms. Kish. Mr. Marino votes no.

2226 Mr. Gowdy?

2227 Mr. Gowdy. No.

2228 Ms. Kish. Mr. Gowdy votes no.

2229 Mr. Ross?

2230 [No response.]

2231 Ms. Kish. Mrs. Adams?

2232 Mrs. Adams. No.

2233 Ms. Kish. Mrs. Adams votes no.

2234 Mr. Quayle?

2235 Mr. Quayle. No.

2236 Ms. Kish. Mr. Quayle votes no.

2237 Mr. Amodei?

2238 Mr. Amodei. No.

2239 Ms. Kish. Mr. Amodei votes no.

2240 Mr. Conyers?

2241 Mr. Conyers. Aye.

2242 Ms. Kish. Mr. Conyers votes aye.

2243 Mr. Berman?

2244 [No response.]

2245 Ms. Kish. Mr. Nadler?

2246 Mr. Nadler. Aye.

2247 Ms. Kish. Mr. Nadler votes aye.

2248 Mr. Scott?

2249 Mr. Scott. Aye.

2250 Ms. Kish. Mr. Scott votes aye.

2251 Mr. Watt?

2252 Mr. Watt. Aye.

2253 Ms. Kish. Mr. Watt votes aye.

2254 Ms. Lofgren?

2255 Ms. Lofgren. Aye.

2256 Ms. Kish. Ms. Lofgren votes aye.

2257 Ms. Jackson Lee?

2258 Ms. Jackson Lee. Aye.

2259 Ms. Kish. Ms. Jackson Lee votes aye.

2260 Ms. Waters?

2261 Ms. Waters. Aye.

2262 Ms. Kish. Ms. Waters votes aye.

2263 Mr. Cohen?

2264 Mr. Cohen. Aye.

2265 Ms. Kish. Mr. Cohen votes aye.

2266 Mr. Johnson?

2267 Mr. Johnson. Aye.

2268 Ms. Kish. Mr. Johnson votes aye.

2269 Mr. Pierluisi?

2270 Mr. Pierluisi. Aye.

2271 Ms. Kish. Mr. Pierluisi votes aye.

2272 Mr. Quigley?

2273 Mr. Quigley. Aye.

2274 Ms. Kish. Mr. Quigley votes aye.

2275 Ms. Chu?

2276 Ms. Chu. Aye.

2277 Ms. Kish. Ms. Chu votes aye.

2278 Mr. Deutch?

2279 Mr. Deutch. Aye.

2280 Ms. Kish. Mr. Deutch votes aye.

2281 Ms. Sanchez?

2282 Ms. Sanchez. Aye.

2283 Ms. Kish. Ms. Sanchez votes aye.

2284 Chairman Smith. The gentleman from Arkansas, Mr.

2285 Griffin?

2286 Mr. Griffin. No.

2287 Ms. Kish. Mr. Griffin votes no.

2288 Chairman Smith. The gentleman from Wisconsin?

2289 Mr. Sensenbrenner. No.

2290 Ms. Kish. Mr. Sensenbrenner votes no.

2291 Chairman Smith. The clerk will report.

2292 Ms. Kish. Mr. Chairman, 14 Members voted aye; 15

2293 Members voted nay.

2294 Chairman Smith. A majority having voted against the

2295 amendment, the amendment is not agreed to.

2296 Ms. Jackson Lee. Mr. Chairman? Mr. Chairman?

2297 Chairman Smith. I understand that there are

2298 additional amendments. Therefore, we will stand in recess

2299 until 1:00 p.m.

2300 And just so Members can be notified as to what the

2301 remaining schedule is for the afternoon, we will return and

2302 resume markup at 1:00 p.m. until approximately 2:00 p.m.,

2303 when we expect votes. After those series of votes, we will

2304 return to resume the markup until 5:00 p.m., when we expect

2305 the last series of votes today.

2306 So we stand in recess until about 1:00 p.m.

2307 [Whereupon, at 11:56 a.m., the committee recessed, to  
2308 reconvene at 1:05 p.m., the same day.]

2309 Chairman Smith. The Judiciary Committee will  
2310 reconvene, and the clerk will call the roll.

2311 Ms. Kish. Mr. Smith?

2312 Chairman Smith. Present.

2313 Ms. Kish. Mr. Sensenbrenner?

2314 Mr. Coble?

2315 Mr. Coble. Here.

2316 Ms. Kish. Mr. Gallegly?

2317 Mr. Goodlatte?

2318 Mr. Lungren?

2319 Mr. Chabot?

2320 Mr. Issa?

2321 Mr. Pence?

2322 Mr. Forbes?

2323 Mr. Forbes. Here.

2324 Ms. Kish. Mr. King?

2325 Mr. Franks?

2326 Mr. Gohmert?

2327 Mr. Jordan?

2328 Mr. Poe?

2329 Mr. Poe. Here.

2330 Ms. Kish. Mr. Chaffetz?

2331 Mr. Griffin?

2332 Mr. Marino?

2333 Mr. Gowdy?

2334 Mr. Griffin?

2335 Mr. Griffin. Present.

2336 Ms. Kish. Mr. Gowdy?

2337 Mr. Ross?

2338 Mrs. Adams?

2339 Mrs. Adams. Here.

2340 Ms. Kish. Mr. Quayle?

2341 Mr. Amodei?

2342 Mr. Conyers?

2343 Mr. Berman?

2344 Mr. Nadler?

2345 Mr. Scott?

2346 Mr. Scott. Present.

2347 Ms. Kish. Mr. Watt?

2348 Ms. Lofgren?

2349 Ms. Jackson Lee?

2350 Ms. Waters?

2351 Mr. Cohen?

2352 Mr. Johnson?

2353 Mr. Pierluisi?

2354 Mr. Quigley?

2355 Ms. Chu?

2356 Mr. Deutch?

2357 Ms. Sanchez?

2358 Mr. Poe. [Presiding] The gentleman from Utah?

2359 Mr. Chaffetz. Present.

2360 Mr. Poe. The gentleman from South Carolina?

2361 Mr. Gowdy. Present.

2362 Mr. Poe. The gentleman from Puerto Rico?

2363 Mr. Pierluisi. Present.

2364 [Pause.]

2365 Mr. Poe. The gentleman from Pennsylvania?

2366 Mr. Marino. Here.

2367 [Pause.]

2368 Mr. Poe. The gentleman from Arizona?

2369 Mr. Franks. Here.

2370 [Pause.]

2371 Chairman Smith. [Presiding] Have all Members in the  
2372 room been recorded? Okay.

2373 [Pause.]

2374 Chairman Smith. The gentleman from California, Mr.

2375 Issa? Present.

2376 Mr. Issa. Present.

2377 [Laughter.]

2378 Chairman Smith. The gentleman from Virginia, Mr.

2379 Goodlatte?

2380 Mr. Goodlatte. Present.

2381 Chairman Smith. The clerk will report.

2382 Ms. Kish. Mr. Chairman, 14 Members responded present.

2383 Chairman Smith. A working quorum is present. So we  
2384 will proceed.

2385 Are there any other amendments to the manager's

2386 amendment?

2387 [No response.]

2388 Chairman Smith. If not, those in those in favor of

2389 the manager's amendment, say aye.

2390 [A chorus of ayes.]

2391 Chairman Smith. Repeat -- those in favor of the  
2392 manager's amendment, say aye.

2393 [A chorus of ayes.]

2394 Chairman Smith. Opposed, no?

2395 [A chorus of nays.]

2396 Chairman Smith. In the opinion of the chair, the ayes  
2397 have it, and the amendment is agreed to.

2398 Are there any other amendments? We are going to wait  
2399 until we have a reporting quorum.

2400 [Pause.]

2401 Chairman Smith. A reporting quorum being present, the  
2402 question is on reporting the bill, as amended, favorably to  
2403 the House. Those in favor, say aye.

2404 [A chorus of ayes.]

2405 Chairman Smith. Opposed, no.

2406 [A chorus of nays.]

2407 Chairman Smith. The ayes have it, and the bill, as  
2408 amended, is ordered reported favorably.

2409 Mr. Johnson. Mr. Chairman?

2410 Chairman Smith. The gentleman from Georgia asks for a

2411 recorded vote, and the clerk will call the roll.

2412 Ms. Kish. Mr. Smith?

2413 Chairman Smith. Aye.

2414 Ms. Kish. Mr. Smith votes aye.

2415 Mr. Sensenbrenner?

2416 [No response.]

2417 Ms. Kish. Mr. Coble?

2418 Mr. Coble. Aye.

2419 Ms. Kish. Mr. Coble votes aye.

2420 Mr. Gallegly?

2421 Mr. Gallegly. Aye.

2422 Ms. Kish. Mr. Gallegly votes aye.

2423 Mr. Goodlatte?

2424 Mr. Goodlatte. Aye.

2425 Ms. Kish. Mr. Goodlatte votes aye.

2426 Mr. Lungren?

2427 [No response.]

2428 Ms. Kish. Mr. Chabot?

2429 [No response.]

2430 Ms. Kish. Mr. Issa?

2431 Mr. Issa. Aye.

2432 Ms. Kish. Mr. Issa votes aye.

2433 Mr. Pence?

2434 [No response.]

2435 Ms. Kish. Mr. Forbes?

2436 Mr. Forbes. Aye.

2437 Ms. Kish. Mr. Forbes votes aye.

2438 Mr. King?

2439 Mr. King. Aye.

2440 Ms. Kish. Mr. King votes aye.

2441 Mr. Franks?

2442 Mr. Franks. Aye.

2443 Ms. Kish. Mr. Franks votes aye.

2444 Mr. Gohmert?

2445 [No response.]

2446 Ms. Kish. Mr. Jordan?

2447 [No response.]

2448 Ms. Kish. Mr. Poe?

2449 Mr. Poe. Aye.

2450 Ms. Kish. Mr. Poe votes aye.

2451 Mr. Chaffetz?

2452 Mr. Chaffetz. Aye.

2453 Ms. Kish. Mr. Chaffetz votes aye.  
2454 Mr. Griffin?  
2455 [No response.]  
2456 Ms. Kish. Mr. Marino?  
2457 Mr. Marino. Aye.  
2458 Ms. Kish. Mr. Marino votes aye.  
2459 Mr. Gowdy?  
2460 Mr. Gowdy. Aye.  
2461 Ms. Kish. Mr. Gowdy votes aye.  
2462 Mr. Ross?  
2463 Mr. Ross. Aye.  
2464 Ms. Kish. Mr. Ross votes aye.  
2465 Mrs. Adams?  
2466 Mrs. Adams. Aye.  
2467 Ms. Kish. Mrs. Adams votes aye.  
2468 Mr. Quayle?  
2469 [No response.]  
2470 Ms. Kish. Mr. Amodei?  
2471 Mr. Amodei. Yes.  
2472 Ms. Kish. Mr. Amodei votes yes.  
2473 Mr. Conyers?

2474 [No response.]

2475 Ms. Kish. Mr. Berman?

2476 [No response.]

2477 Ms. Kish. Mr. Nadler?

2478 [No response.]

2479 Ms. Kish. Mr. Scott?

2480 Mr. Scott. No.

2481 Ms. Kish. Mr. Scott votes no.

2482 Mr. Watt?

2483 [No response.]

2484 Ms. Kish. Ms. Lofgren?

2485 [No response.]

2486 Ms. Kish. Ms. Jackson Lee?

2487 [No response.]

2488 Ms. Kish. Ms. Waters?

2489 [No response.]

2490 Ms. Kish. Mr. Cohen?

2491 [No response.]

2492 Ms. Kish. Mr. Johnson?

2493 Mr. Johnson. No.

2494 Ms. Kish. Mr. Johnson votes no.

2495 Mr. Pierluisi?

2496 Mr. Pierluisi. No.

2497 Ms. Kish. Mr. Pierluisi votes no.

2498 Mr. Quigley?

2499 [No response.]

2500 Ms. Kish. Ms. Chu?

2501 Ms. Chu. No.

2502 Ms. Kish. Ms. Chu votes no.

2503 Mr. Deutch?

2504 [No response.]

2505 Ms. Kish. Ms. Sanchez?

2506 Ms. Sanchez. No.

2507 Ms. Kish. Ms. Sanchez votes no.

2508 Chairman Smith. The gentlewoman from California, Ms.

2509 Waters?

2510 Ms. Waters. Waters, no.

2511 Ms. Kish. Ms. Waters votes no.

2512 Chairman Smith. The gentleman from Arkansas?

2513 Mr. Griffin. Yes.

2514 Ms. Kish. Mr. Griffin votes yes.

2515 Chairman Smith. Are there other Members who wish to

2516 be recorded?

2517 [No response.]

2518 Chairman Smith. If not, the clerk will report.

2519 Ms. Kish. Mr. Chairman, 16 Members voted aye; 6

2520 Members voted nay.

2521 Chairman Smith. The ayes have it. The bill is

2522 reported, and --

2523 [Pause.]

2524 Chairman Smith. Without objection, the bill will be

2525 reported as a single amendment in the nature of a

2526 substitute, incorporating amendments adopted, and the staff

2527 is authorized to make technical and confirming changes.

2528 Members will have 2 days to submit views.

2529 We are now going to return to consideration of H.R.

2530 1254, the Synthetic Drug Control Act of 2011. Pursuant to

2531 notice, I now call up H.R. 1254, the Synthetic Drug Control

2532 Act of 2011, for purposes of markup. And the clerk will

2533 report the bill.

2534 Ms. Kish. H.R. 1254. To amend the Controlled

2535 Substances Act --

2536 Chairman Smith. Without objection, the bill will be

2537 considered as read.

2538 [The information follows:]

2539

2540 Chairman Smith. When the committee adjourned last  
2541 week, we had concluded statements on Mrs. Adams amendment in  
2542 the nature of a substitute, and we will now continue with  
2543 amendments to that substitute amendment.

2544 Are there any amendments to the amendment in the  
2545 nature of a substitute?

2546 The gentleman from Virginia, Mr. Scott?

2547 Mr. Scott. Mr. Chairman, I have an amendment to the  
2548 substitute, Number 2.

2549 Chairman Smith. The clerk will report Amendment  
2550 Number 2.

2551 Ms. Kish. Amendment to H.R. 1254, offered by Mr.  
2552 Scott. On the first page, strike line 17 and all that  
2553 follows through line 23 on page 4 and insert the following.

2554 Chairman Smith. Without objection, the amendment will  
2555 be considered as read, and the gentleman is recognized to  
2556 explain his amendment.

2557 Mr. Scott. Mr. Chairman? I object to -- I would like  
2558 to have some of it read, if we could?

2559 Chairman Smith. Okay. The clerk will continue to  
2560 read the amendment.

2561 Mr. Scott. So we know what we are doing.

2562 Ms. Kish. In paragraph one, the term "cannabimimetic  
2563 agents" means any of the following: A, 5-(1,1-  
2564 dimethylheptyl-3-hydroxycyclohexyl)-phenol (CP-47,497). B,  
2565 5-(1,1-dimethyloctyl-2[(1R,3S)-3-hydroxycyclohexyl]-phenol  
2566 (cannabicyclohexanol CP-47,497 C8-homolog --

2567 Mr. Scott. Mr. Chairman --

2568 Chairman Smith. You are doing better than I could  
2569 have on that.

2570 Mr. Scott. Mr. Chairman, I withdraw my objection. I  
2571 just wanted to give people a taste of what we are voting on  
2572 so that they now know exactly --

2573 Chairman Smith. Without objection, the amendment will  
2574 be considered as read.

2575 [The information follows:]

2576

2577 Chairman Smith. We are happy to discuss it, but not  
2578 read it, Mr. Scott.

2579 Mr. Scott. Thank you, Mr. Chairman.

2580 Mr. Chairman, what this amendment actually does, it  
2581 strikes from the bill all of those except the chemical  
2582 compounds that are already temporarily banned by the DEA.  
2583 There are only five of the substances this bill makes  
2584 illegal are currently on that temporary banned list.

2585 Banning substances that have not even hit the United  
2586 States market will set a horrible precedent to enable  
2587 Federal law enforcement to include and proscribe future  
2588 emerging synthetic drugs while circumventing the scheduling  
2589 process. This sets a bad process and inhibits the  
2590 scientific community's ability to research.

2591 Now when Congress enacted 21 U.S.C. 811, it intended  
2592 for the Attorney General and the Department of Health and  
2593 Human Services to do due diligence and study the substances  
2594 before placing them on Schedule I. Schedule I garners the  
2595 loftiest consequences, and the designation should be taken  
2596 seriously.

2597 A Schedule I designation would hinder ongoing and

2598 future study by research centers at universities and  
2599 scientists who seek better understanding of these compounds.  
2600 This is particularly true with these chemicals where the  
2601 potential for medical benefit are great.

2602 This amendment will place only those compounds that  
2603 the DEA has already issued a temporary ban, allows the  
2604 Department of Health and Human Services sufficient time to  
2605 properly study the compounds before permanently  
2606 criminalizing them.

2607 Mr. Chairman, we have views on this bill from several  
2608 university professors. University of California at San  
2609 Francisco professor says that, "While we support  
2610 restrictions on the sale of these chemicals for purposes of  
2611 illicit use, such as Internet or head shop sales of bath  
2612 salts, scheduling so as to impede access to precursor  
2613 chemicals in small quantities has the potential to seriously  
2614 hamper medical research. On balance, the faculty are  
2615 against this measure."

2616 University of California-Berkeley, "This effort is  
2617 well intentioned, but will cause more problems than it  
2618 solves." University of Wisconsin-Madison, "This bill is an

2619 irrational, simplistic response to a social problem of great  
2620 complexity. As such, the world will get significantly less  
2621 medical and technical help, with low probability of helping  
2622 anyone with a substance abuse issue. This list is too broad  
2623 and does not seriously restrict what would otherwise be  
2624 important and easy experiments. Paperwork problems are  
2625 already a serious concern."

2626 I would like also to introduce for the record a number  
2627 of other quotes from scientists that have similar views.

2628 [The information follows:]

2629

2630 Mr. Scott. So, Mr. Chairman, there is a process, a  
2631 logical process to get these things on the list. I would  
2632 hope we would go through the process. The Attorney General  
2633 can put things on the list temporarily after they have done  
2634 due diligence and had an intelligent process.

2635 Obviously, the reading of the first two of several  
2636 chemical compounds ought to notify everybody in the world  
2637 watching this that nobody has a clue as to what these are,  
2638 other than the fact that the Attorney General has already  
2639 done due diligence and put these on the list because he has  
2640 gone through and concluded that they are dangerous. The  
2641 long list in the substitute amendment is over-inclusive, and  
2642 due diligence has not been done on those compounds.

2643 So I would hope we would adopt the amendment.

2644 Chairman Smith. Thank you, Mr. Scott.

2645 And I will recognize myself in opposition.

2646 This amendments deletes the scientific definition of  
2647 cannabimimetic agents from the bill and denies the Federal  
2648 Government the tools it needs to combat emerging synthetic  
2649 drugs. This amendment would only allow the classification  
2650 of eight synthetic drugs on Schedule I.

2651           The DEA has recently added these eight drugs to the  
2652 temporary list of prohibited drugs. However, chemists can  
2653 easily turn these drugs into noncontrolled substances,  
2654 thereby circumventing the law.

2655           This amendment strikes all but eight of the synthetic  
2656 drugs added to Federal law by the underlying bill. This  
2657 will prevent the DEA from proactively seizing these  
2658 dangerous drugs and getting ahead of this latest drug  
2659 epidemic. The synthetic drugs eliminated by this amendment  
2660 pose a significant danger to the public. The drug  
2661 traffickers will reap the profits while Americans are harmed  
2662 and overdose on synthetic drugs.

2663           The broader list of synthetic drugs contained in this  
2664 bill will permit the Government to act quickly when new  
2665 synthetic drugs emerge in our communities. So I urge my  
2666 colleagues to oppose the amendment.

2667           Mr. Scott. Mr. Chairman, I have a unanimous consent  
2668 request.

2669           Chairman Smith. Without objection.

2670           Mr. Scott. To place in the record a study of making  
2671 mephedrone in England illegal resulted -- they conclude that

2672 the only thing it did was increase the price and possibly  
2673 increase health harms because of reduction in purity. And  
2674 letters from University of California at Irvine, where they  
2675 go to great length to show what adverse effects this will  
2676 have on scientific research.

2677 Chairman Smith. Without objection, the studies and  
2678 the letters will be made a part of the record.

2679 [The information follows:]

2680

2681 Chairman Smith. The gentleman from Georgia, Mr.

2682 Johnson, is recognized.

2683 Mr. Johnson. Thank you, Mr. Chairman.

2684 Mr. Chairman, I am at a loss to even properly say

2685 cannabimimetic -- cannabimimetic. C-A-N-N-A-B-I-M-I-M-E-T-

2686 I-C. Cannabimimetic. Cannabimimetic agents.

2687 Mr. Cohen. Would the gentleman from Georgia yield?

2688 Mr. Johnson. And what I would like to know is what

2689 exactly is a cannabimimetic agent? Can someone explain that

2690 to me? I see that it is explained.

2691 Mr. Cohen. Would the gentleman from Georgia yield?

2692 Mr. Johnson. Who is that?

2693 Mr. Cohen. Back here. I think if you went to Beki-

2694 Beki-Beki-Bekistan, you could find out.

2695 [Laughter.]

2696 Chairman Smith. If the gentleman from Georgia will

2697 yield a minute more? It is a synthetic substitute for

2698 marijuana.

2699 Mr. Johnson. Well, yes, but I mean, what our

2700 legislation says is that unless otherwise -- unless

2701 specifically exempted or unless listed in another schedule,

2702 any material, compound, mixture, or preparation which  
2703 contains any quantity of cannabimimetic agents or which  
2704 contains their salts, isomers, and salts of isomers,  
2705 whenever the existence of such salts, isomers, and salts of  
2706 isomers is possible within a specific chemical designation.  
2707 Now I have not heard from any chemist in terms of what  
2708 exactly is a cannabimimetic agent, but I see that it refers  
2709 to those in the plural. And so, there are a number of such  
2710 agents, and so there are a number of ways to create what one  
2711 would call synthetic marijuana.

2712 I think what we need to know is exactly what type of  
2713 agent we are banning here, and if we don't know what we are  
2714 banning specifically, then we have no idea as to whether or  
2715 not there are any legitimate uses for that substance. We  
2716 are just with a broad brush, just wiping out a number of  
2717 substances, and then we are making it illegal under Schedule  
2718 I to possess any quantity.

2719 It could be less than 0.01 percent. But if there is a  
2720 little dash of a cannabimimetic agent in a substance, then  
2721 this person could be subjected to the full range of  
2722 prosecution and punishment in accordance with the Schedule I

2723 designation, which I am not sure what those mandatory  
2724 minimum sentences are for Schedule I substances.

2725 Does anybody know that? There is just so many  
2726 questions. How many people have been prosecuted thus far  
2727 for synthetic substances under some other provision of law?  
2728 What are the alternatives to a broad brush approach such as  
2729 the one offered by this legislation?

2730 We have not had any committee hearings whatsoever on  
2731 this issue. It is just brought to the full committee. This  
2732 just doesn't make a whole lot of sense when we could be  
2733 doing things to help enhance jobs instead of looking for  
2734 ways to lock more people up, put them in a prison industrial  
2735 complex, go with the private prison industry, the for-  
2736 profit, private prison industry.

2737 We set these guys up to handle our people that we lock  
2738 away and throw away the key. It is an industry, the prison  
2739 industrial complex, and we are looking at creating more  
2740 growth for that industry as we pass, haphazardly perhaps,  
2741 these kinds of draconian responses to problems that need to  
2742 be solved with a more specific focus.

2743 Chairman Smith. The gentleman's time has expired.

2744 Mr. Johnson. And with that, I will waive the rest of  
2745 my time.

2746 Chairman Smith. Thank you, Mr. Johnson.

2747 Other Members who wish to speak? The gentlewoman from  
2748 Florida, Mrs. Adams?

2749 Mrs. Adams. Thank you, Mr. Chair.

2750 I oppose this amendment. As legislative and executive  
2751 scheduling of drugs are compatible and coequal, they both  
2752 are part of the normal process for placing substances on  
2753 Schedule I or any other schedule. Just as DEA has already  
2754 moved toward scheduling bath salts and synthetic marijuana,  
2755 that does not preclude Congress from acting.

2756 Also, legislative scheduling does not preclude the  
2757 executive branch from rescheduling the substance should it  
2758 be approved for medical use. And at this time, it has not  
2759 ever been marketed, to my knowledge, as being approved for  
2760 human consumption. Or from authorizing bona fide research.

2761 Moreover, legislative scheduling does not prevent the  
2762 multi-agency scheduling and research process from going  
2763 forward. As I said the other day, this does not preclude  
2764 research with Schedule I controlled substances. As of

2765 October 4th, DEA has 3,983 active registrants who  
2766 manufacture, research, and conduct chemical analysis with  
2767 Schedule I controlled substances.

2768 I would also like to move to have a letter from the  
2769 American College of Emergency Physicians placed into the  
2770 record, and parts of this letter, and I just want to read a  
2771 little bit of it. This is from the American College of  
2772 Emergency Physicians.

2773 "Americans have witnessed an explosion of synthetic  
2774 drug use during the past year. In 2010, there were a little  
2775 less than 2,900 calls to poison control centers regarding  
2776 synthetic marijuana exposure. Through August of this year,  
2777 that number has already reached more than 4,400 calls. Last  
2778 year, there were about 300 calls related to bath salts. By  
2779 comparison, that number has risen to more than 4,700 by the  
2780 end of August."

2781 For example, there was a boy in Louisiana who snorted  
2782 bath salts and spent the next few days, next few days  
2783 experiencing intermittent psychotic episodes. He sliced his  
2784 own throat with a kitchen knife and ultimately succeeded in  
2785 committing suicide by shooting himself in the head.

2786 Another incident was a teen in Illinois who smoked  
2787 synthetic marijuana and died when he drove his car into a  
2788 house. He crashed into a bedroom of a 2-year-old who,  
2789 fortunately, was playing in the back yard at the time.

2790 Another one. A 14-year-old Tennessee boy, high on  
2791 synthetic drugs, had to be given 28 times typical dose of a  
2792 sedation drug so that he would be able to stay on the bed  
2793 without physical restraints.

2794 For these and many other reasons, I ask for this  
2795 letter to be placed into the record, and I oppose this  
2796 amendment.

2797 I will yield back my time.

2798 Chairman Smith. Thank you, Mrs. Adams.

2799 And without objection, the letter will be made a part  
2800 of the record.

2801 [The information follows:]

2802

2803 Chairman Smith. Other members who wish to be heard on  
2804 this amendment?

2805 The gentlewoman from Texas, Ms. Jackson Lee?

2806 Ms. Jackson Lee. I rise to support the gentleman's  
2807 amendment.

2808 Just very briefly, it is my understanding -- and those  
2809 are horrific incidents that none of us would hold to and  
2810 certainly want to be able to prevent horrific loss of life.

2811 But I think Mr. Johnson's point and the intent of the  
2812 letter that was written is whether or not we should have  
2813 hearings to establish as to whether or not those that are  
2814 already existing on the DEA list, Mr. Scott's amendment, can  
2815 suffice to protect us in the instance of synthetic drugs.  
2816 Without having a hearing, you can't discern how you should -  
2817 - whether to criminalize them or whether there should be  
2818 other remedies for the utilization of those drugs or how  
2819 those drugs should be treated.

2820 We are certainly not here promoting drugs that kill  
2821 people, but we certainly need information as to how to  
2822 discern synthetic drugs that should be criminalized and  
2823 others that should not. So I support the gentleman's

2824 amendment.

2825 I have a parliamentary inquiry for the chairman,  
2826 please. Mr. Chairman?

2827 Chairman Smith. The gentlewoman will state her  
2828 parliamentary inquiry.

2829 Ms. Jackson Lee. Mr. Chairman, let the record show  
2830 that a number of us were meeting in other meetings,  
2831 including with Justice Kagan. You passed the regulatory  
2832 bill with remaining amendments. My question is, is it your  
2833 intent on the regulatory, and that is the Regulatory  
2834 Accountability Act, H.R. 2329, to have that bill go to the  
2835 floor under regular order, a rule, or under suspension?

2836 Chairman Smith. If the gentlewoman will yield?

2837 Ms. Jackson Lee. I will be happy to yield.

2838 Chairman Smith. That will be up to the leadership and  
2839 the Rules Committee. It is my expectation that it will be  
2840 under regular order, but I don't know that for a fact.

2841 Ms. Jackson Lee. And Mr. Chairman, thank you. If you  
2842 would take another inquiry? It would not be your intent to  
2843 push suspension at this time?

2844 Chairman Smith. It would not be --

2845 Ms. Jackson Lee. It would not be your intent from the  
2846 committee to push suspension, meaning the chairman and  
2847 ranking member -- I know the ranking member is not here, but  
2848 --

2849 Chairman Smith. Again, my expectation is that it will  
2850 be a rule bill. I have heard nothing to the contrary.

2851 Ms. Jackson Lee. And I understand that the synthetic  
2852 drug bill has gone to Energy and Commerce and is already, I  
2853 think, out of that committee. Would that be your same  
2854 intent, except for leadership determination, that this would  
2855 be regular order?

2856 Chairman Smith. The Synthetic Drug Act, as you just  
2857 said, we received secondary referral on. And Energy and  
2858 Commerce had the primary jurisdiction. And again, I am not  
2859 aware that any decisions have been made one way or the other  
2860 as to whether it is a suspension bill or a rule bill.

2861 Ms. Jackson Lee. And for the record, I am chairing a  
2862 meeting and ranking member at 2:00 p.m., and I have two  
2863 amendments on this bill. And I don't know whether we will  
2864 finish, but I would certainly want to have at least one  
2865 amendment debated. It looks as if that may not be the case.

2866 And so, I am very concerned that the bill would move  
2867 without the opportunity --

2868 Chairman Smith. If the gentleman from Tennessee  
2869 doesn't object, we could take one of your amendments up  
2870 next. But we need to --

2871 Mr. Scott. Mr. Chairman, I would move that we suspend  
2872 consideration --

2873 Chairman Smith. We need to dispose of the amendment  
2874 under consideration.

2875 Ms. Jackson Lee. No. I do understand that. I was  
2876 just making the inquiry.

2877 Mr. Scott. We could suspend consideration of this  
2878 amendment temporarily?

2879 Chairman Smith. Are there any other Members who wish  
2880 to speak on this amendment?

2881 Ms. Jackson Lee. I yield back.

2882 Mr. Cohen. Mr. Chairman?

2883 Chairman Smith. The gentlewoman yields back.

2884 The gentleman from Tennessee, Mr. Cohen?

2885 Mr. Cohen. Thank you.

2886 I don't know a lot about this area. I haven't heard

2887 much input in my district from it because I guess it is a  
2888 rather limited group of people who have used or tried these  
2889 substances. Mrs. Adams seems to have a little bit more  
2890 information.

2891 I would like to -- would you yield for a second?  
2892 Would you tell me about the gentleman or the young man or  
2893 wherever he was that had the synthetic marijuana and drove  
2894 his or her car into a house?

2895 Mrs. Adams. What I have is this is the American  
2896 College of Emergency Physicians letter to me, and I just  
2897 read you exactly what it said. A 14-year-old Tennessee boy,  
2898 high on synthetic drugs -- this one was from Tennessee, I am  
2899 sorry, had to be given 28 times the typical dose of sedation  
2900 in order for him to maintain on the bed.

2901 Mr. Cohen. But he is not the one that drove into the  
2902 house?

2903 Mrs. Adams. No, that was from Illinois.

2904 Mr. Cohen. And what did you get about that?

2905 Mrs. Adams. What I said -- oh, wait, yes, he died  
2906 when he drove his car into the house. It was the bedroom of  
2907 a 2-year-old, and thankfully, the 2-year-old was out in the

2908 back yard playing. So the 2-year-old survived that crash  
2909 because he wasn't in his bedroom.

2910 Mr. Cohen. And allegedly, that young man was using  
2911 synthetic marijuana?

2912 Mrs. Adams. He had smoked synthetic marijuana.

2913 Mr. Cohen. Do we know if he had anything else to  
2914 drink or any other drugs or --

2915 Mrs. Adams. No. And the sad part is, this is just a  
2916 small -- it is just over and over and over again. We just  
2917 had one reported last week, a 14-year-old dies following  
2918 double lung transplant after smoking -- after smoking  
2919 synthetic marijuana out of a Pez candy dispenser.

2920 Mr. Cohen. This may be an indication that we should  
2921 have some study to know why people would want synthetic  
2922 marijuana when they can get the real marijuana so easily.  
2923 Even if it is a Schedule I drug itself, I have never heard  
2924 of anybody on smoked marijuana driving their car into a  
2925 bedroom with a 2-year-old child.

2926 The synthetic marijuana must be a lot worse, and maybe  
2927 it should be Schedule I and marijuana should be Schedule  
2928 III. But we don't know because there is no scientific

2929 inquiry. All we have is the bare skeleton of a case.  
2930 Without the ability to cross-examine the individual, the  
2931 subject stands for itself without any ability to be cross-  
2932 examined.

2933 And this is all --

2934 Mrs. Adams. Will the gentleman yield?

2935 Mr. Cohen. -- doing something without any knowledge.

2936 Ms. Jackson Lee. Would the gentleman yield? Would  
2937 the gentleman yield?

2938 Mr. Cohen. I would yield to the lady from Texas.

2939 Ms. Jackson Lee. I won't take up very long. But if I  
2940 might make a quick inquiry, Mr. Chairman, on the  
2941 parliamentary inquiry that I made. Mr. Scott indicated,  
2942 could we suspend this discussion for the Amendment Number 9  
2943 that I would not ask for a roll call vote?

2944 Chairman Smith. The gentlewoman will yield? We will  
2945 consider her amendment with the concurrence of actually Mr.  
2946 Scott and Mr. Cohen since he had the next amendment. But we  
2947 need to finish this amendment first.

2948 Mr. Cohen. Thank you.

2949 Ms. Jackson Lee. I yield back to the gentleman.

2950           Mr. Cohen. Claiming my time back. I have just been  
2951 given some information about the Pez. Apparently, the Pez  
2952 situation resulted in toxic release of fumes from the  
2953 burning plastic that then burned his lungs, requiring the  
2954 lung transplants.

2955           So, I mean, this is what we are getting in our  
2956 testimony. We are being told smoking synthetic marijuana  
2957 causes a boy to lose his lungs and a have -- it is not. It  
2958 was the plastic. And that is why we shouldn't be just  
2959 scheduling stuff without having an opportunity to have a  
2960 hearing.

2961           Mr. Gowdy. Would the gentleman from Tennessee via the  
2962 gentlelady from Florida yield for just one anecdote from  
2963 South Carolina? We had a basketball player --

2964           Mr. Cohen. We are all in the SEC.

2965           Mr. Gowdy. Well, we had a basketball player at  
2966 Anderson Community College, and to the gentleman's point  
2967 about a demand for proof, he died on the basketball court.  
2968 And typically, 20-year-olds don't die playing pickup  
2969 basketball games. So they did an autopsy.

2970           And it was the forensic pathologist who told us he

2971 died as a direct result of K2, which is synthetic marijuana,  
2972 which you can buy in any drugstore. It is mislabeled. I  
2973 can't remember the last time somebody died from real  
2974 marijuana. But there are people dying from synthetic  
2975 marijuana.

2976 And my fear is the longer we wait, the more people are  
2977 going to die. And I would be happy to give the gentleman  
2978 from Tennessee, a highly skilled, highly decorated attorney,  
2979 I will be happy to give you the autopsy report, if it has  
2980 been made public. There are kids in South Carolina dying  
2981 from this.

2982 Mr. Cohen. And there may be. I don't deny it, but  
2983 that doesn't mean it shouldn't be a Schedule II or a  
2984 Schedule III. We don't know. There has been no study.  
2985 There has been no anything at all. We are just saying  
2986 Schedule I.

2987 Mr. Gowdy. But marijuana is Schedule I, and the  
2988 schedule doesn't have anything to do with the penalty  
2989 because the penalty for Schedule IIs are higher than they  
2990 are for certain Schedule Is.

2991 Mr. Cohen. Sometimes. Schedule Is tend to be higher.

2992 But regardless of that --

2993 Mr. Gowdy. But marijuana is a Schedule I, and you  
2994 have got to have a tractor trailer full of that to go to  
2995 Federal prison these days.

2996 Mr. Cohen. Well, and it is Schedule I because they  
2997 haven't -- they tried to get a study --

2998 Mr. Gowdy. Medicinal value.

2999 Mr. Cohen. But there was an attempt, the gentleman  
3000 from Pennsylvania, we were discussing it the last time, and  
3001 he said, "Oh, you can have a study." It took 10 years for  
3002 the DEA to release their findings when it was asked to  
3003 reclassify marijuana.

3004 Ask the DEA to have a study and to reclassify a drug  
3005 from Schedule I, you would be better off asking the Vatican  
3006 to have some type of abortion program.

3007 Mr. Gowdy. But I think what the gentleman is really  
3008 getting at are the penalties for marijuana juxtaposed with  
3009 the penalties for other drugs -- heroin, methamphetamine --  
3010 and the scheduling of them doesn't impact the penalty. You  
3011 can have a lower penalty for Schedule I -- in fact, we do --  
3012 than Schedule IIs.

3013           So to your point about penalties, I am happy to have  
3014 that conversation with you. The scheduling of them --

3015           Mr. Cohen. But under what scientific argument or  
3016 scientific study are we basing that this should be a  
3017 Schedule I?

3018           Chairman Smith. The gentleman's time has expired.  
3019 Without objection, the gentleman is yielded an additional  
3020 minute.

3021           Mr. Gowdy. The fact that marijuana is a Schedule I.  
3022 So I think it serves to reason that a synthetic form of  
3023 marijuana would also be Schedule I.

3024           Mr. Cohen. But we are seeing that allegedly synthetic  
3025 marijuana are causing basketball players to die and people  
3026 to drive their cars into 2-year-old's bedrooms.

3027           Mr. Gowdy. You are right. It should be worse.

3028           Mr. Cohen. But it has never been the case with smoked  
3029 marijuana. So, obviously, there is a problem with our  
3030 schedules.

3031           Mr. Gowdy. You are arguing -- you are agreeing with  
3032 us that synthetic marijuana should be Schedule I, but you  
3033 want to reconsider whether real marijuana should be Schedule

3034 I?

3035 Mr. Cohen. It is possible that synthetic marijuana  
3036 should be I. Maybe it should be II, and marijuana should be  
3037 XVII.

3038 Mr. Gowdy. But we agree they should be illegal and  
3039 controlled? We agree at least on that, that they should be  
3040 --

3041 Mr. Cohen. We can agree on that.

3042 Mr. Gowdy. -- illegal and controlled. I thank the  
3043 gentleman from Tennessee.

3044 Mr. Cohen. I yield back the remainder of my time.

3045 Chairman Smith. The gentleman's time has expired.

3046 Anyone else who wishes to speak on this amendment?

3047 [No response.]

3048 Chairman Smith. If not, all in favor of the Scott  
3049 amendment, say aye.

3050 [A chorus of ayes.]

3051 Chairman Smith. Opposed, no.

3052 [A chorus of nays.]

3053 Chairman Smith. In the opinion of the chair, the nays  
3054 have it, and the amendment is not agreed to.

3055 Are there other amendments?

3056 Ms. Jackson Lee. Mr. Chairman?

3057 Chairman Smith. The gentlewoman from Texas, Ms.

3058 Jackson Lee, is recognized.

3059 Ms. Jackson Lee. Mr. Chairman, I have an amendment,

3060 Number 034.

3061 Chairman Smith. The clerk will report the amendment.

3062 Ms. Kish. Amendment to H.R. 1254, offered by Ms.

3063 Jackson Lee. Add at the end the following: "GAO evaluation

3064 of the fiscal impact of Controlled Substances Act

3065 enforcement. A, Study evaluating the fiscal impact. The

3066 Comptroller General of the United States shall conduct a

3067 study on, 1, the fiscal impact of the amendments made by

3068 Section 2 of the Federal budget; 2, the fiscal impacts of

3069 arrests --"

3070 Ms. Jackson Lee. I ask unanimous consent that the

3071 amendment be considered as read. I ask unanimous consent --

3072 Chairman Smith. Without objection, the amendment will

3073 be considered as read.

3074 [The information follows:]

3075

3076 Chairman Smith. And the gentlewoman is recognized to  
3077 explain the amendment.

3078 Ms. Jackson Lee. I ask unanimous consent to amend the  
3079 amendment to read "Amendment to the Adams amendment."

3080 Chairman Smith. Without objection. And the  
3081 gentlewoman is recognized to explain her amendment.

3082 Ms. Jackson Lee. Thank you very much, Mr. Chairman.  
3083 We have raised a lot of questions today, and I think  
3084 all of us understand the impact of any kind of abuse of a  
3085 drug. But I think it is important to have information. The  
3086 United States Government has spent billions of dollars on  
3087 the drug war, much of it which has been allocated to  
3088 enforcing laws prohibiting the recreational use of Schedule  
3089 I drugs.

3090 Among the list of Schedule I drugs are the following:  
3091 LSD, marijuana, opium, amphetamines, and heroin. As it  
3092 stands, the DEA reports that States have placed restrictions  
3093 on the purchase of some of these compounds, including the 37  
3094 States restrict the sale of bath salts and 38 States have  
3095 enacted laws banning synthetic cannabinoids.

3096 My amendment is simple. It asks, since we are in the

3097 mode of fiscal responsibility, is in the mode of fiscal  
3098 cuts, concerned about the funding for DEA and the work that  
3099 it does, we want lives to be saved. Mr. Cohen, who I do  
3100 want to thank for his kindness for yielding, made a very  
3101 important point that the Pez container might have  
3102 contributed or did contribute to the death.

3103         And as we add to Schedule Is, even though I heard the  
3104 gentleman from I think South Carolina say that it does not  
3105 adhere to the sentencing schedule or sentencing structure,  
3106 it does cost money. And so, my amendment is simple. I  
3107 would like the amendment to address the question of how much  
3108 this enforcement will cost so that we can prepare and  
3109 allocate resources accordingly.

3110         This information is valuable information. Certainly,  
3111 money should not be a factor in combating drug use or saving  
3112 lives, but we certainly have to estimate or have the cost  
3113 estimated for the enforcement of this legislation so the  
3114 relevant agencies can adequately prepare.

3115         I would ask my colleagues to support this amendment.

3116         Chairman Smith. Thank you, Ms. Jackson Lee.

3117         I will recognize myself briefly in opposition.

3118 I oppose this amendment because there is no need to  
3119 study the fiscal impact of enforcing the provisions of this  
3120 bill that amend the Controlled Substances Act. Now I have  
3121 to say to the gentlewoman from Texas, and I admit I am not  
3122 being entirely serious here. But I wanted to keep an open  
3123 mind, but I was actually persuaded by several of our  
3124 colleagues and what they said last week when we were  
3125 considering a request for a GAO study by our colleague Mr.  
3126 Lungren.

3127 And I want to quote several Members who responded to  
3128 his request for a GAO study. Mr. Conyers, "The problem with  
3129 this amendment is that the bill kicks in, and then we do the  
3130 study. That is not the way this should play out."

3131 Mr. Watt, "To have a study conducted after the passage  
3132 of the law, it just seems to me to be an ineffective time to  
3133 have the study."

3134 And Ms. Waters, "This is a waste of time and money.  
3135 It certainly is not timely. This is closing the barn door  
3136 after the horse has left."

3137 Their comments, I suspect, apply equally to this  
3138 amendment, and they helped further persuade me to oppose it.

3139 I will yield back the balance of my time. Are there  
3140 other Members who wish to be recognized?

3141 Ms. Jackson Lee. Would the gentleman yield? Would  
3142 the gentleman yield?

3143 Chairman Smith. Yes.

3144 Ms. Jackson Lee. I always take my chairman seriously,  
3145 and so I would ask unanimous consent that the legislation be  
3146 amended that the study take place before the enforcement of  
3147 the bill.

3148 Chairman Smith. Without objection, the amendment will  
3149 be altered in that respect.

3150 Ms. Jackson Lee. And I would ask my colleague --

3151 Chairman Smith. I don't know if that is, as a  
3152 practical matter, possible, but we won't object to the  
3153 amendment.

3154 Ms. Jackson Lee. I thank the chairman.

3155 I would ask my colleagues to support the amendment.

3156 It is a roadmap. It is constructive, and we are all  
3157 responsible persons that do care about money spent.

3158 And I will yield back to the gentleman.

3159 Chairman Smith. Okay. Other Members who wish to be

3160 heard on the amendment? The gentleman from Virginia, Mr.  
3161 Scott?

3162 Mr. Scott. Thank you, Mr. Chairman.

3163 I think the comments that you quoted are, in fact,  
3164 timely on this amendment because they point out the fact  
3165 that we are doing this without appropriate information. I  
3166 would ask unanimous consent that the Congressional Research  
3167 Service study, dated October 28, 2011, last week, includes a  
3168 reference to the report from the Director of the Office of  
3169 National Drug Control Policy, who issued a statement earlier  
3170 this year in which he noted a lack of sufficient data  
3171 regarding the prevalence of bath salt stimulant drugs.

3172 It points out that HHS and the DEA are required to do  
3173 studies when they proscribe certain drugs, but "Congress is  
3174 not statutorily required to consider research and data in  
3175 its decisions." In other words, we can operate without any  
3176 intelligent basis and just do it. DEA and HHS are required  
3177 to have an intelligent process.

3178 The comments that you have quoted suggest that some of  
3179 us would like to do things in order -- have an intelligent  
3180 process and then make a decision. But if you are going to

3181 go forward, as the gentlelady's amendment does, at least  
3182 after the fact, figure out what you did.

3183 I would ask unanimous consent that the CRS study be  
3184 entered into the record.

3185 Chairman Smith. Without objection, the CRS study will  
3186 be made a part of the record.

3187 [The information follows:]

3188

3189 Ms. Jackson Lee. Would the gentleman yield? Mr.  
3190 Scott?

3191 Mr. Scott. I would also like to enter into the record  
3192 an article about the Pez dispenser, which the dean of the  
3193 university school of pharmacy suggests that there is nothing  
3194 in the literature to show the drug had any -- there is  
3195 nothing in the literature to show that it could cause lung  
3196 toxicity. However, the plastic such as found in the candy  
3197 dispenser heated at high temperatures will release highly  
3198 toxic cyanide gas and carbon monoxide, which could have been  
3199 -- well, he concludes, obviously, that --

3200 Chairman Smith. Without objection, so ordered.

3201 [The information follows:]

3202

3203           Mr. Scott. And I would also like to introduce an  
3204 article, it may have been one referred to, that one of the  
3205 people using these drugs committed suicide, and this makes  
3206 the note that the Virginia General Assembly had already  
3207 passed a law making it illegal. So those who suggest that  
3208 passing the bill will save lives, according to this, passing  
3209 that bill didn't save this life.

3210           Chairman Smith. Without objection, the article will  
3211 be made a part of the record.

3212           [The information follows:]

3213

3214 Mr. Scott. So, Mr. Chairman, we are adding dozens --  
3215 because of the defeat of my amendment, we are adding dozens  
3216 of substances to Schedule I. Cocaine, I understand, is  
3217 Schedule II. So why it is Schedule I or II hasn't been  
3218 studied. We haven't had any hearings, and here we go.

3219 And at least we ought to study to see what we did, and  
3220 I will yield to the gentlelady from Texas.

3221 Ms. Jackson Lee. Just to clarify the record, to Mr.  
3222 Scott and the chairman, as I amended this amendment, the  
3223 comments that the chairman made on the record pertaining to  
3224 last week's discussion have been clarified. I have amended  
3225 my amendment to seek to have the study before the  
3226 implementation of this bill.

3227 I ask my colleagues to support the Jackson Lee  
3228 amendment. I yield back.

3229 Chairman Smith. Thank you, Mr. Scott.

3230 The gentleman from North Carolina, Mr. Watt?

3231 Mr. Watt. Mr. Chairman, I was just seeking to find  
3232 out what the amendment to the Jackson Lee amendment was.  
3233 How exactly was the amendment --

3234 Chairman Smith. The gentlewoman from Texas asked

3235 unanimous consent to amend her amendment, and that was  
3236 granted.

3237 Mr. Watt. But I don't know what the amendment to the  
3238 amendment said. I am trying to figure out what it is.

3239 Chairman Smith. The amendment to the amendment stated  
3240 that the GAO study would be conducted before the legislation  
3241 was implemented.

3242 Mr. Watt. And where would that -- is that language?  
3243 I am sorry.

3244 Chairman Smith. She spoke it verbally.

3245 Ms. Jackson Lee. Before the implementation of the  
3246 bill, Mr. Watt -- because it was after the implementation.  
3247 So we amended it so that it would be --

3248 Chairman Smith. I assume that the gentleman has  
3249 yielded to the gentlewoman from Texas, Ms. Jackson Lee.

3250 Ms. Jackson Lee. Previous amendments and letters that  
3251 have been sent by Members. And the reason why I am standing  
3252 is I am ranking member on a meeting that just started, a  
3253 hearing that just started in another committee.

3254 But the letter, everyone pointed to the idea that we  
3255 needed more facts as to whether or not this legislation

3256 should be passing as it is.

3257 Mr. Watt. Can I assume that on line 6 after the word  
3258 "study," we are inserting "before the implementation of the  
3259 bill"? Is that --

3260 Chairman Smith. That is my understanding. That would  
3261 be a fair assumption.

3262 Ms. Jackson Lee. And that would be mine as well, Mr.  
3263 Watt.

3264 Mr. Watt. And that is important, Mr. Chairman,  
3265 because the points that we made last week are relevant  
3266 points to some extent. But they were about a study that was  
3267 being conducted after the bill was already -- I mean, after  
3268 the horse was already out of the barn or the cow was out of  
3269 the pasture or several different iterations of that same  
3270 kind of theory.

3271 So I might feel exactly the same way about this  
3272 amendment, although I think there is a lot more benefit to  
3273 be derived from this study than what we were talking about  
3274 last week. The study we were talking about last week, as I  
3275 understood it, was more for the political protection of our  
3276 colleague than it was --

3277 Chairman Smith. Well, Mr. Watt, I don't think that is  
3278 appropriate for you to say. And as much as the Member is  
3279 not here to defend himself. You are questioning his motive,  
3280 and that is not appropriate.

3281 Mr. Watt. No, my -- all I am saying is I believe that  
3282 that was more for the benefit -- that is my opinion. I  
3283 mean, I am not questioning his motives. I am telling you  
3284 what my interpretation of his motives were, right? So, and  
3285 I don't think there is anything improper about that. Mr.  
3286 Lungren and I are good friends.

3287 And I made that same point last week. There is  
3288 substantive benefit to be gained from the study. It is a  
3289 lot more substantive benefit if the study is done before the  
3290 implementation of the bill than it is after the  
3291 implementation of the bill because, to some extent, what we  
3292 would be doing is substituting that study for what this  
3293 committee should have done before we passed the bill. And I  
3294 think that is the point that Mr. Scott has been making.

3295 So I appreciate the gentlelady clarifying what she was  
3296 doing, and I appreciate the gentleman emphasizing that we  
3297 are trying to be consistent here. I do like to be

3298 consistent. So this is a very important amendment that --

3299 Mrs. Adams. Will the gentleman yield?

3300 Mr. Watt. I am happy to yield to the gentlelady, Mrs.

3301 Adams.

3302 Mrs. Adams. When you brought up the consistency, I

3303 guess I have to ask. Because I wasn't here, but as a law

3304 enforcement officer back then, I watched with great deal of

3305 interest back in 2000, when GHB was a big issue, and law

3306 enforcement came to Congress. Congress voted to move that

3307 into a controlled substance, did it not?

3308 Mr. Watt. I can't remember what I did yesterday, Mrs.

3309 Adams.

3310 [Laughter.]

3311 Mrs. Adams. It was H.R. 2130.

3312 Mr. Watt. Much less -- I do remember the discussion

3313 we had in the committee last week that the chairman referred

3314 to.

3315 Mrs. Adams. Okay.

3316 Ms. Jackson Lee. Would the gentleman --

3317 Mr. Watt. But I guarantee you, I can't remember what

3318 happened in 2000 on this issue.

3319 Ms. Jackson Lee. Will the gentleman yield? Because I  
3320 have answer --

3321 Mrs. Adams. Well, as someone who has been a law  
3322 enforcement officer, who watches with great interest when I  
3323 see people within my community harmed or hurt by some of  
3324 these drugs or even synthetic drugs. So back then --

3325 Mr. Watt. You know, what we try to do, Mrs. Adams, is  
3326 we try to be thoughtful about the approach that we -- I  
3327 mean, you know? And the place to be thoughtful about these  
3328 issues is not on the floor of the House or in some other  
3329 committee or somewhere down the line in case somebody else  
3330 takes it up. The place to be thoughtful about these issues  
3331 is in the Judiciary Committee.

3332 Chairman Smith. And that is correct, and the  
3333 gentleman's time has expired.

3334 Mr. Watt. I ask unanimous consent for 1 additional  
3335 minute so maybe Ms. Jackson Lee can answer Mrs. Adams's  
3336 question.

3337 Chairman Smith. Without objection, the gentleman is  
3338 yielded an additional minute. I thought we were trying to  
3339 expedite the process for the gentlewoman from Texas.

3340 Mr. Watt. I will yield to the gentlelady from Texas.

3341 Maybe she can answer Mrs. Adams's question.

3342 Ms. Jackson Lee. I can. I carried that bill with Mr.  
3343 Upton of Michigan. It was signed by President Clinton. We  
3344 had extensive hearings, unlike what we have had here.

3345 And so, I want to give Mrs. Adams tools to police  
3346 officers, like I know my colleagues on this side of the  
3347 aisle do. But I think our point is what extensive review  
3348 have we had for this particular legislation? But it was the  
3349 Hillory Farias bill, and it was combined with Mr. Upton, and  
3350 it was signed into law.

3351 And I yield back -- and there were full hearings on  
3352 that. I yield back.

3353 Mr. Watt. Mr. Scott is the ranking member of the  
3354 Crime Subcommittee. Have there been any hearings about  
3355 this?

3356 Mr. Scott. If the gentleman will yield?

3357 Mr. Watt. I am happy to yield.

3358 Mr. Scott. Not in the Crime Subcommittee.

3359 Mr. Watt. Mr. Smith, as the chairman of the full  
3360 committee, have there been any hearings about this?

3361 Chairman Smith. The committee in the last Congress,  
3362 if the gentleman will yield, considered 17 bills that  
3363 received secondary referral to this committee. On only 1 of  
3364 the 17 was there a hearing. I am happy to follow the  
3365 precedent of the chairman in the last Congress.

3366 And the gentleman's time has expired.

3367 The question is on the amendment. All in favor of the  
3368 Jackson Lee amendment, say aye.

3369 [A chorus of ayes.]

3370 Chairman Smith. Opposed, no.

3371 [A chorus of nays.]

3372 Chairman Smith. In the opinion of the chair, the nays  
3373 have it, and the amendment is not agreed to.

3374 Are there any other amendments?

3375 The gentleman from Tennessee, Mr. Cohen, is  
3376 recognized.

3377 Mr. Cohen. I have an amendment at the desk.

3378 Chairman Smith. The clerk will report the amendment.

3379 Mr. Cohen. Amendment Number 3.

3380 Ms. Kish. Amendment to H.R. 1254, offered by Mr.  
3381 Cohen of Tennessee. Strike Section 3 relating to temporary

3382 scheduling to avoid imminent hazards to public --

3383 Mr. Cohen. Would move that it be considered as blah,

3384 blah, blah.

3385 Chairman Smith. Without objection, the amendment will

3386 be considered as read.

3387 [The information follows:]

3388

3389 Chairman Smith. And the gentleman is recognized to  
3390 explain the amendment.

3391 Mr. Cohen. Thank you.

3392 This would change the section of the bill that has  
3393 relevance to the entire drug scheme, not just to synthetic  
3394 drugs. And this bill came to us because of some findings  
3395 that there are these new synthetic drugs that need to be  
3396 controlled, and indeed, they do. But at what level and for  
3397 how long and what schedule, we really don't know too much,  
3398 and we are, I think, showing that.

3399 But what it also does is it doubles the time that the  
3400 DEA can put a drug on an emergency basis on a schedule.  
3401 Right now, the DEA has got 18 months that they can put a  
3402 drug, emergency wise, which they did with bath salts. They  
3403 have emergency powers, and they did this, and they put it on  
3404 that list. This bill would double the time to 36 months.

3405 There is no indication, I would submit, that we need  
3406 to go to 36 months and that the DEA has problems with the 18  
3407 months. And if 18 is not enough, maybe 24 is enough, maybe  
3408 you need 60. But just to double it, I mean, if we just want  
3409 to just throw out some stuff and say we are tough on drugs

3410 and we are going to double the time that they can put drugs  
3411 on an emergency list without any scientific basis, that is  
3412 fine. But that is not what we should be about.

3413         There is no need, Mr. Chairman and members of the  
3414 committee, to change this part of the law to take care of  
3415 the bath salt problem or the synthetic marijuana problem.  
3416 This would mean placing substances on the most restrictive  
3417 and punitive schedule for up to 3 years without any input  
3418 necessarily from the scientific community. And the DEA has  
3419 not shown, not testified, not any evidence that 18 months is  
3420 an inadequate amount of time to have an emergency basis and  
3421 then come forward with some type of request to change the  
3422 laws.

3423         I am concerned about the lack of truly independent  
3424 scientific input under the current scheduling process, and I  
3425 am going to be offering an amendment on that in the future.  
3426 But to double the amount of time the DEA can effectively  
3427 circumvent review places too much power in the hands of law  
3428 enforcement.

3429         There are emergencies that need to be considered, and  
3430 they have got an 18-month rule to do it, and that is what it

3431 should be. But just like the previous bill we had that the  
3432 chairman sponsored on saying that sometimes these agencies  
3433 go beyond what they should do and they should be reviewed,  
3434 we are giving this agency twice as much time to place  
3435 substances under schedules without any scientific study or  
3436 research or basis and without any thought about it.

3437         There is no cost-benefit analysis to doing this. It  
3438 is just we are going to be tough. Why don't we make it  
3439 seven times, or just take away the whole process and let  
3440 them put anything they want on the committee? But I would  
3441 just ask you not to adopt -- this is not part of the bath  
3442 salt world. It is not part of the artificial cannabinoid  
3443 world. This is just kind of throwing it into up against the  
3444 wall and see who salutes and what kind of happens with it.

3445         So, with all due respect for the sponsors who I  
3446 respect greatly, this is a little lagniappe that is not  
3447 needed. And it would ask that we approve the amendment,  
3448 eliminate the lagniappe, and pass the bill to effectively  
3449 deal with the artificial substances and not the time factor  
3450 that mitigates against and argues against the previous bill  
3451 that the chairman so eloquently sponsored to see that the

3452 agencies are held in check.

3453 I yield back the balance of my time.

3454 Chairman Smith. Thank you, Mr. Cohen, for mentioning  
3455 both bills. I will object to this amendment, however.

3456 It denies the Government the adequate time it needs to  
3457 conduct scientific tests and technical examinations before  
3458 classifying a new drug. Extending the time available for  
3459 analyzing drugs before they are added to the list of  
3460 prohibited drugs would alleviate the current burden of time  
3461 constraints to conduct scientific studies and literature  
3462 reviews.

3463 These reviews are now conducted in a shorter time  
3464 period with limited resources. While the Government has  
3465 been able to meet its statutory obligations in this regard,  
3466 this legislation is an example of how new drugs entering the  
3467 American market can require costly, comprehensive analysis  
3468 by several Government agencies all at once.

3469 The minority criticizes this bill for a lack of  
3470 vetting. This amendment contradicts that by denying the  
3471 administration's request to enhance the time needed to  
3472 complete its comprehensive scientific reviews as required by

3473 law. That request should be approved.

3474 So I urge my colleagues to oppose the amendment and  
3475 yield back the balance of my time.

3476 Mr. Cohen. Would the chairman yield?

3477 Chairman Smith. Before I yield back, I will yield to  
3478 the gentleman from Tennessee.

3479 Mr. Cohen. Thank you, sir.

3480 Where is it that we see that they needed more than 18  
3481 months? Where is a case where they worked so hard, they  
3482 stayed up weekends and holidays and didn't put their  
3483 stockings by the chimney and all those things?

3484 Chairman Smith. Okay. Let me respond to that as well  
3485 as the gentleman's broader point by saying that one reason I  
3486 am surprised by this amendment at all is because I have just  
3487 heard the gentleman and others argue in the last several  
3488 hours that we need more time for study. And now the  
3489 gentleman, through this amendment, is actually arguing for  
3490 less time for study.

3491 It seems to me that these are complex synthetic drugs.  
3492 The administration supports the amendment. I don't know why  
3493 we would not want adequate time for a study.

3494 But again, I would like to basically follow up on what  
3495 the gentleman said earlier today, that we do need additional  
3496 study in this regard.

3497 Mr. Cohen. Adequate is an adverb, and nobody has  
3498 shown that we have an adverb problem.

3499 Chairman Smith. Well, I think it goes way beyond an  
3500 adverb problem with the synthetic drugs.

3501 [Laughter.]

3502 Chairman Smith. Let us try to finish up this  
3503 amendment. Then we will vote and return for continuing the  
3504 markup.

3505 All in favor of the Cohen amendment, say aye.

3506 [A chorus of ayes.]

3507 Chairman Smith. Opposed, no.

3508 [A chorus of nays.]

3509 Chairman Smith. The chair is unsure of the vote, and  
3510 the clerk will call the roll.

3511 Ms. Kish. Mr. Smith?

3512 Chairman Smith. No.

3513 Ms. Kish. Mr. Smith votes no.

3514 Mr. Sensenbrenner?

3515 [No response.]

3516 Ms. Kish. Mr. Coble?

3517 [No response.]

3518 Ms. Kish. Mr. Gallegly?

3519 [No response.]

3520 Ms. Kish. Mr. Goodlatte?

3521 [No response.]

3522 Ms. Kish. Mr. Lungren?

3523 [No response.]

3524 Ms. Kish. Mr. Chabot?

3525 [No response.]

3526 Ms. Kish. Mr. Issa?

3527 [No response.]

3528 Ms. Kish. Mr. Pence?

3529 [No response.]

3530 Ms. Kish. Mr. Forbes?

3531 [No response.]

3532 Ms. Kish. Mr. King?

3533 [No response.]

3534 Ms. Kish. Mr. Franks?

3535 Mr. Franks. No.

3536 Ms. Kish. Mr. Franks votes no.  
3537 Mr. Gohmert?  
3538 [No response.]  
3539 Ms. Kish. Mr. Jordan?  
3540 [No response.]  
3541 Ms. Kish. Mr. Poe?  
3542 [No response.]  
3543 Ms. Kish. Mr. Chaffetz?  
3544 Mr. Chaffetz. No.  
3545 Ms. Kish. Mr. Chaffetz votes no.  
3546 Mr. Griffin?  
3547 Mr. Griffin. No.  
3548 Ms. Kish. Mr. Griffin votes no.  
3549 Mr. Marino?  
3550 Mr. Marino. No.  
3551 Ms. Kish. Mr. Marino votes no.  
3552 Mr. Gowdy?  
3553 Mr. Gowdy. No.  
3554 Ms. Kish. Mr. Gowdy votes no.  
3555 Mr. Ross?  
3556 Mr. Ross. No.

3557 Ms. Kish. Mr. Ross votes no.

3558 Mrs. Adams?

3559 Mrs. Adams. No.

3560 Ms. Kish. Mrs. Adams votes no.

3561 Mr. Quayle?

3562 [No response.]

3563 Ms. Kish. Mr. Amodei?

3564 Mr. Amodei. No.

3565 Ms. Kish. Mr. Amodei votes no.

3566 Mr. Conyers?

3567 [No response.]

3568 Ms. Kish. Mr. Berman?

3569 [No response.]

3570 Ms. Kish. Mr. Nadler?

3571 [No response.]

3572 Ms. Kish. Mr. Scott?

3573 [No response.]

3574 Ms. Kish. Mr. Watt?

3575 Mr. Watt. Aye.

3576 Ms. Kish. Mr. Watt votes aye.

3577 Ms. Lofgren?

3578 [No response.]

3579 Ms. Kish. Ms. Jackson Lee?

3580 [No response.]

3581 Ms. Kish. Ms. Waters?

3582 [No response.]

3583 Ms. Kish. Mr. Cohen?

3584 Mr. Cohen. Aye.

3585 Ms. Kish. Mr. Cohen votes aye.

3586 Mr. Johnson?

3587 Mr. Johnson. Aye.

3588 Ms. Kish. Mr. Johnson votes aye.

3589 Mr. Pierluisi?

3590 Mr. Pierluisi. Aye.

3591 Ms. Kish. Mr. Pierluisi votes aye.

3592 Mr. Quigley?

3593 [No response.]

3594 Ms. Kish. Ms. Chu?

3595 Ms. Chu. Aye.

3596 Ms. Kish. Ms. Chu votes aye.

3597 Mr. Deutch?

3598 [No response.]

3599 Ms. Kish. Ms. Sanchez?

3600 Ms. Sanchez. Aye.

3601 Ms. Kish. Ms. Sanchez votes aye.

3602 Chairman Smith. The gentleman from North Carolina,

3603 Mr. Coble?

3604 Mr. Coble. No.

3605 Ms. Kish. Mr. Coble votes no.

3606 Chairman Smith. The gentleman from Virginia, Mr.

3607 Goodlatte?

3608 Mr. Goodlatte. No.

3609 Ms. Kish. Mr. Goodlatte votes no.

3610 Chairman Smith. The gentleman from Texas, Mr.

3611 Gohmert?

3612 Mr. Gohmert. No.

3613 Ms. Kish. Mr. Gohmert votes no.

3614 Chairman Smith. The gentleman from California, Mr.

3615 Issa?

3616 Mr. Issa. No.

3617 Ms. Kish. Mr. Issa votes no.

3618 Chairman Smith. The clerk will report.

3619 Ms. Kish. Mr. Chairman, 6 Members voted aye; 13

3620 Members voted nay.

3621 Chairman Smith. A majority having voted against the  
3622 amendment, the amendment is not agreed to.

3623 We will recess for these series of three votes, after  
3624 which we will resume the markup.

3625 We stand in recess.

3626 [Recessed.]

3627 Chairman Smith. The Judiciary Committee will  
3628 reconvene, and we will continue markup of H.R. 1254.

3629 The clerk will call the roll so that we can determine  
3630 whether we have a working quorum?

3631 Ms. Kish. Mr. Smith?

3632 Chairman Smith. Present.

3633 Ms. Kish. Mr. Sensenbrenner?

3634 Mr. Coble?

3635 Mr. Coble. Here.

3636 Ms. Kish. Mr. Gallegly?

3637 Mr. Goodlatte?

3638 Mr. Lungren?

3639 Mr. Chabot?

3640 Mr. Issa?

3641 Mr. Pence?  
3642 Mr. Forbes?  
3643 Mr. King?  
3644 Mr. Franks?  
3645 Mr. Gohmert?  
3646 Mr. Jordan?  
3647 Mr. Poe?  
3648 Mr. Chaffetz?  
3649 Mr. Griffin?  
3650 Mr. Marino?  
3651 Mr. Marino. Present.  
3652 Ms. Kish. Mr. Gowdy?  
3653 Mr. Gowdy. Present.  
3654 Ms. Kish. Mr. Ross?  
3655 Mrs. Adams?  
3656 Mrs. Adams. Present.  
3657 Mr. Quayle?  
3658 Mr. Amodei?  
3659 Mr. Amodei. Present.  
3660 Ms. Kish. Mr. Conyers?  
3661 Mr. Berman?

3662 Mr. Nadler?

3663 Mr. Scott?

3664 Mr. Scott. Present.

3665 Ms. Kish. Mr. Watt?

3666 Ms. Lofgren?

3667 Ms. Jackson Lee?

3668 Ms. Waters?

3669 Mr. Cohen?

3670 Mr. Cohen. Present.

3671 Ms. Kish. Mr. Johnson?

3672 Mr. Pierluisi?

3673 Mr. Quigley?

3674 Ms. Chu?

3675 Mr. Deutch?

3676 Ms. Sanchez?

3677 Chairman Smith. The gentleman from Arkansas?

3678 Mr. Griffin. Present.

3679 Chairman Smith. The gentleman from California, Mr.

3680 Gallegly.

3681 Mr. Gallegly. Present more or less.

3682 Chairman Smith. The gentleman from Florida, Mr. Ross,

3683 is present.

3684 Mr. Sensenbrenner. [Presiding] The gentleman from  
3685 Virginia?

3686 Mr. Forbes. Present.

3687 Mr. Sensenbrenner. Mr. Forbes, present.

3688 The gentleman from North Carolina, Mr. Watt?

3689 Mr. Watt. Present, I think.

3690 Mr. Sensenbrenner. The gentleman is present. And the  
3691 clerk will report?

3692 Ms. Kish. Mr. Chairman, 13 members responded present.

3693 Mr. Sensenbrenner. Very well. Are there any  
3694 amendments? Mr. Scott? The gentleman from Virginia is  
3695 recognized?

3696 Mr. Scott. Mr. Chairman, I have an amendment at the  
3697 desk, number 5.

3698 Mr. Sensenbrenner. The clerk will report?

3699 Ms. Kish. Amendment to H.R. 1254 offered by Mr.  
3700 Scott, add at the end the following new section, "Study: A  
3701 report. The attorney general shall cause a scientific and  
3702 medical evaluation be conducted and make recommendations  
3703 based thereon of the sort required under Section 201 of the

3704 Controlled Substances Act, 21 U.S.C." --

3705 Mr. Sensenbrenner. The clerk will suspend. Mr.

3706 Scott, do you want the entire amendment read?

3707 Ms. Scott. No, that is fine, Mr. Chairman.

3708 Mr. Sensenbrenner. The amendment will be considered

3709 as read.

3710 [The information follows:]

3711

3712 Mr. Sensenbrenner. The gentleman from Virginia is  
3713 recognized?

3714 Mr. Scott. Thank you, Mr. Chairman. This amendment  
3715 will require the attorney general to do after the fact what  
3716 really should have been done before. It requires the  
3717 attorney general to obtain the scientific and medical  
3718 evaluation and make recommendations as to whether substances  
3719 enumerated in this bill should be criminalized.

3720 Under normal circumstances, this would be done before  
3721 the substances are criminalized, and it should be prepared  
3722 both by the secretary of Health and Human Services and the  
3723 Institute of Drug Abuse, and they must concur on the  
3724 findings.

3725 Under U.S.C. 811, there are eight factors that have to  
3726 be considered before you decide to schedule a drug. And  
3727 those include the actual and potential for abuse, the  
3728 pharmacology, other current scientific knowledge, the  
3729 history and current pattern of abuse, the scope, duration,  
3730 and significance of abuse, the public health risk, the  
3731 psychic or psychological dependence ability, and whether or  
3732 not it is an immediate precursor for a controlled substance.

3733           And the bill itself circumvents this important  
3734 statutory process, so at least we ought to get it done after  
3735 the fact. The fact is we know very little about these  
3736 compounds. According to the DEA, only eight of these  
3737 compounds are actually in the United States. The remainder  
3738 cannot be found in the United States at this point.

3739           Researchers have not had sufficient time to begin to  
3740 understand the health implications, and we have already  
3741 entered into the record several letters from researchers  
3742 that have suggested that studies for Parkinson's disease and  
3743 many other neurological diseases can be hampered if too many  
3744 of these compounds are put on the controlled substances  
3745 list.

3746           This amend is consistent with the statutory scheme for  
3747 scheduling the substances, and this amendment would simply  
3748 require the same process to be set forth. And Part B of the  
3749 amendment delays the effective dates of the no substances  
3750 placed on Schedule 1 by the amendments made in this Act,  
3751 should be so placed unless so recommended by the attorney  
3752 general, and only 30 days after his report and  
3753 recommendations.

3754 Chairman, the fact is that we are putting things on  
3755 the list without any evaluation and possession, and  
3756 hopefully we can remove possession as an offense under this  
3757 bill.

3758 But people have to have some kind of notice that what  
3759 they are buying is actually illegal, and without these  
3760 studies, we cannot know whether that is a reasonable  
3761 expectation or not.

3762 So, Mr. Chairman, I hope we would adopt the amendment  
3763 so that we would have some clue as to what we are doing  
3764 before we do it. I yield back.

3765 Chairman Smith. [Presiding] Thank you, Mr. Scott.  
3766 And I will recognize myself in opposition to the amendment.

3767 I oppose the amendment because there is no need for  
3768 further study or to study something more that has already  
3769 been proven to be deadly. The scientific and medical  
3770 communities have already learned about these drugs because  
3771 of the death and destruction that they cause. Congress does  
3772 not need to require something that is so duplicative and  
3773 costly.

3774 The Department of Justice has significant input in the

3775 DEA of evaluating whether to schedule a drug. Requiring the  
3776 study implies that the Administration does not take  
3777 seriously the consequences of the scheduling process.

3778 Our role on this committee is to protect citizens and  
3779 save lives by properly criminalizing behavior that  
3780 jeopardizes the public safety.

3781 These synthetic drugs do not require further study,  
3782 which would only delay addressing the destruction they  
3783 cause. I urge my colleagues to oppose the amendment.

3784 Mr. Scott. Will the gentleman yield?

3785 Chairman Smith. I will yield to the gentleman from  
3786 Virginia.

3787 Mr. Scott. Thank you. Mr. Chairman, previously I  
3788 have entered into the record a report from CRS that exposes  
3789 the fact that the Office of Drug Policy in the White House  
3790 as the last they could find had earlier this year  
3791 acknowledged that they had not done sufficient studies to  
3792 put these things on any kind of list.

3793 And the process that we have now where people just  
3794 were trading newspaper articles and things for which there  
3795 are two sides and only one side is being acknowledged, it is

3796 just not the way we ought to be doing things. We should  
3797 have had a hearing where this information could have been  
3798 made public so that we could know to some extent what we are  
3799 doing. We did not have a study, and so we are just looking  
3800 at boxes that purport to be studies, newspaper articles that  
3801 have been shown to be misleading. And we have in the record  
3802 a report from CRS that suggests that the Administration has  
3803 acknowledged that they have not done the appropriate  
3804 studies.

3805         So, I would hope that we would close the loop, get the  
3806 studies done so that we know what we are doing.

3807         And I thank the gentleman for yielding.

3808         Chairman Smith. I will reclaim my time. Thank you,  
3809 Mr. Scott.

3810         Just again, it is the White House who supports this  
3811 particular legislation, and it is DEA and HHS who made the  
3812 determination as to where they recommend a drug be  
3813 scheduled. And that is what we are doing is following their  
3814 recommendations.

3815         Are there other members who wish to be heard on this  
3816 amendment?

3817 If not, all in favor of the amendment, say aye?

3818 [A chorus of ayes.]

3819 Chairman Smith. Opposed nay?

3820 [A chorus of nays.]

3821 Chairman Smith. In the opinion of the chair, the noes  
3822 have it, and the amendment is not agreed to.

3823 Does the gentleman have another amendment?

3824 Mr. Scott. Yes, Mr. Chairman, I have amendment number  
3825 6.

3826 Chairman Smith. The clerk will report number 6?

3827 Ms. Kish. Amendment to H.R. 1254, offered by Mr.  
3828 Scott, add at the end the following, "Exclusion of synthetic  
3829 drugs from simple possession offenses." Section 404 of the  
3830 Controlled Substances Act --

3831 Chairman Smith. Without objection, the amendment will  
3832 be considered as read.

3833 [The information follows:]

3834

3835 Chairman Smith. And the gentleman from Virginia is  
3836 recognized to explain the amendment?

3837 Mr. Scott. Thank you, Mr. Chairman.

3838 Mr. Chairman, this amendment would exclude the offense  
3839 of simple possession of the substances scheduled throughout  
3840 this bill. In short, it would not criminalize simple  
3841 possession of these synthetic drugs that we have not gotten  
3842 appropriate information on.

3843 As you have said, Mr. Chairman, the Administration has  
3844 asked just to put these on the list because the criminal  
3845 code requires them to do studies before they can put them on  
3846 the list. They have not done the studies. We are not  
3847 required to do any studies. We are not required to know  
3848 what we are doing before we do it, so that we can get these  
3849 things on the list without any information at all. And that  
3850 is why the recommendation, I suppose, has been that we do  
3851 this.

3852 The fact of the matter is there are no apparent  
3853 studies with respect to the number of people using the  
3854 drugs, who are where the people are, or how dangerous the  
3855 drugs truly are. We have had all kinds of studies, one of

3856 which suggests that a person who is smoking one of these  
3857 substances had lung problems, and the information we now  
3858 have and that is in the record is that there is no evidence  
3859 that smoking this will cause those kinds of lung problems.  
3860 However, if you smoke it, if you inhale the plastic, you can  
3861 have problems with the plastic because you are smoking a  
3862 dangerous material. The plastics are not part of the  
3863 prohibition.

3864       Until these facts are better understood, this  
3865 amendment would allow the DEA to continue to pursue dealers  
3866 and merchants who are selling the information, but it would  
3867 protect the users from the devastating consequences of  
3868 Federal prosecution, and it would protect the medical  
3869 college researchers for using some of these chemicals to  
3870 study such things as Parkinson's disease.

3871       The collateral consequences of a felony conviction are  
3872 far reaching and include loss of eligibility for student  
3873 loans, jail or prison sentences, difficulty in securing  
3874 employment, loss of licenses, driver's license, professional  
3875 licenses, lack of eligibility for housing assistance, loss  
3876 of voting rights.

3877           Now, this amendment would not prevent States from  
3878 criminalizing and prosecuting simple possession where they  
3879 have made the decision that that is the right thing to do.  
3880 This amendment would focus our Federal resources on the  
3881 traffickers of the substance and exclude those who are  
3882 researching or just simply possessing without knowing what  
3883 they are possessing.

3884           We heard earlier the staff try to read these chemical  
3885 descriptions of what we are prescribing. And the average  
3886 person cannot possibly know when they have one of these  
3887 substances and when they do not. Someone selling ought to  
3888 know what they are selling, but someone possessing cannot  
3889 possibly whether that chemical is on the list or is not.

3890           For that reason, Mr. Chairman, I would hope that we  
3891 would eliminate simple possession from the application of  
3892 the bill.

3893           I yield back.

3894           Chairman Smith. Thank you, Mr. Scott.

3895           The gentlewoman from Florida, does she desire to be  
3896 recognized? Maybe not. Oh, I am sorry. It is the  
3897 gentleman from Pennsylvania who seeks to be recognized. The

3898 gentleman is recognized?

3899 Mr. Marino. Thank you, Chairman. This amendment  
3900 contradicts the principles of how drugs are classified and  
3901 scheduled. The system for drug scheduling is set forth in  
3902 the Controlled Substance Act and two international drug  
3903 treaties.

3904 There are five categories in which controlled  
3905 substances are classified. The drugs placed in the  
3906 schedules vary based on three factors. Does the drug have  
3907 an acceptable medical use? What is the drug's potential for  
3908 abuse and dependence? Is the drug safe for use under  
3909 medical supervision?

3910 The synthetic drugs referred to in this bill, like all  
3911 other drugs in Schedule 1, have no medical use, have a high  
3912 potential for abuse, and are demonstrated to be unsafe. To  
3913 permit the possession and use of these drugs defies both  
3914 logic and the evidence. Even the drug traffickers who  
3915 supply these poisons admit they have no medical use. That  
3916 is why they label them as plant food, jewelry cleaner, and  
3917 incense.

3918 The minority complains that we are attempting to

3919 criminalize the simple possession of drugs that are not even  
3920 here yet in the United States. We know from the Drug  
3921 Enforcement Administration that this wave of synthetic drugs  
3922 originated in Europe. We also know that additional waves  
3923 are on the way to the United States. I would like to give  
3924 an example of a synthetic drug that was considered on the  
3925 way, but is here now.

3926         In January of this year, a 48-year-old Panama City,  
3927 Florida woman was jailed after she attacked and attempted to  
3928 behead her 71-year-old mother with a machete. The woman was  
3929 high on bath salts she purchased from a local hedge shop.  
3930 In November of last year, a 21-year-old Louisiana man snorts  
3931 a packet of cloud 9 bath salts and endures several days of  
3932 delirium and paranoia. He cuts his own throat with a  
3933 kitchen knife, only to survive, and then shoots himself  
3934 later when he had visions of army soldiers swarming his  
3935 house. I have other information that is just similar to  
3936 this.

3937         What this amendment would permit, the possession and  
3938 the use of deadly drugs.

3939         We talked a little bit about the 13-year-old boy from

3940 Pittsburgh, Brandon Rice. And the article does state that  
3941 the plastic from the device which he was using to smoke had  
3942 a lot to do with his lung problems. But just imagine this  
3943 for a moment. Just think, sure, Brandon probably would have  
3944 used something else to smoke that, but just think for a  
3945 moment if he did not have access to that drug. Just maybe,  
3946 just maybe Brandon would still be with us today.

3947 And I want to note for the record also that, and I  
3948 think this was submitted, and it is a letter from the  
3949 Justice Department supporting this legislation, and actually  
3950 asking us to enhance the legislation as well. I think that  
3951 was entered into the record last night.

3952 Chairman Smith. Without objection, we will enter it  
3953 into the record again to make sure.

3954 [The information follows:]

3955

3956 Mr. Marino. Thank you, sir. And I yield back. I ask  
3957 my colleagues not to support this amendment, with all due  
3958 respect.

3959 Chairman Smith. Thank you, Mr. Marino.

3960 The gentleman from North Carolina, Mr. Watt?

3961 Mr. Watt. I move to strike the last word and yield to  
3962 Mr. Scott.

3963 Chairman Smith. The gentleman is recognized for five  
3964 minutes?

3965 Mr. Scott. Thank you, Mr. Chairman. I thank the  
3966 gentleman for yielding.

3967 This is a problem with not having a hearing. You get  
3968 all these stories about people who smoked and then committed  
3969 some crime. You could have a lot more of those stories if  
3970 you had beer or alcohol.

3971 Mr. Marino. Would the gentleman yield for a moment?  
3972 Would the gentleman yield for one moment?

3973 Mr. Watt. I would be happy to yield to the gentleman.

3974 Mr. Marino. Thank you. Sir, I have a sensitive  
3975 restrictive report here where this information is obtained  
3976 through law enforcement and other agencies. I will be glad

3977 to share this with you. I do not want to put it in the  
3978 record because it is restricted. So, it is not clippings  
3979 from a newspaper. It is not what I heard from the guy in  
3980 the restaurant.

3981 Mr. Scott. I thank the gentleman for yielding. I am  
3982 not suggesting that the stories are not true. I am just  
3983 suggesting that you could come up with a lot of other true  
3984 stories of things that happened after someone drank some  
3985 beer, or drank some alcohol.

3986 Mrs. Adams. Would the gentleman yield?

3987 Mr. Watt. I am happy to yield to the gentlelady.

3988 Mrs. Adams. Would it be thoughtful to say that  
3989 alcohol is for human consumption, whereas these drugs are  
3990 not labeled for human consumption? Would you agree with  
3991 that?

3992 Mr. Scott. Would the gentleman yield? Some of these  
3993 are labeled not for human consumption, that is right, and  
3994 should not have been --

3995 Mrs. Adams. And alcohol is.

3996 Mr. Scott. -- should not be taken. But the point I  
3997 am making is that just listing a bunch of anecdotes. If we

3998 had had a hearing, we could show whether or not there is a  
3999 direct correlation or whether or not people who had not had  
4000 anything, had committed these crimes. So, it is just not a  
4001 way to be able to come up with a list of crimes that are  
4002 committed by somebody who is high. You could say the exact  
4003 same thing about alcohol, that crimes and a lot more crimes  
4004 have been committed that way.

4005         The fact of the matter is that someone will not know  
4006 whether they are possessing a prescribed chemical based on  
4007 what was read earlier today or not. Now, if you are selling  
4008 it, you ought to know what you are selling. But to suggest  
4009 that because you have come up with a list of incidents where  
4010 someone smoked and then they did something is not any more  
4011 reason to prohibit them than to go through the long list of  
4012 all the crime and mayhem that occurs when somebody gets high  
4013 on beer.

4014         And to suggest that you have some stories and you are  
4015 happy to show them to me is a weird way of doing a hearing.  
4016 And that is the kind of thing that we should have been able  
4017 to evaluate and look to see if it made sense to base  
4018 legislation on it or not.

4019           The only question is whether or not simple possession  
4020 ought to be subject to all these mandatory minimums and long  
4021 prison terms and loss of liberties from a felony conviction  
4022 when people do not even know whether or not it is, I mean --

4023           Mr. Marino. Would the gentleman yield?

4024           Mr. Scott. -- prohibited or not.

4025           Mr. Marino. Would the gentleman yield, please?

4026           Mr. Watt. I am happy to yield. I am happy to yield  
4027 to --

4028           Mr. Marino. Thank you, sir.

4029           Sir, do you believe for a moment, and this is  
4030 rhetorical, that these individuals are buying these  
4031 synthetic drugs for any other purpose than getting high?

4032           Mr. Scott. Some of it -- yeah. I mean, I assume that  
4033 is what they are getting. Just like they buy beer and  
4034 alcohol.

4035           Mr. Marino. Okay, but having a beer, having a couple  
4036 of beers is not going to cause someone to want to kill  
4037 themselves.

4038           Mr. Scott. There is no evidence --

4039           Mr. Marino. Hurt anyone else.

4040 Mr. Scott. How many people use this, and how many of  
4041 them commit crimes? You could have millions of people doing  
4042 this, and one of them commits a crime.

4043 Mr. Marino. It is much, much more than one of them.

4044 Mr. Scott. And that is why we have a hearing.

4045 Mr. Marino. Just the, you know, the simple fact that  
4046 it is an illegal drug -- I have experienced this myself. I  
4047 have seen what these drugs do. I saw the reports. I have  
4048 been out in the field with the police officers --

4049 Mr. Scott. Okay.

4050 Mr. Marino. -- and law enforcement to see what  
4051 happens when somebody is under the influence.

4052 Mr. Scott. And I do not have the benefit of any of  
4053 that information, and none of that information is public.  
4054 You are convinced by your personal experience. We have not  
4055 had a hearing so the information could be put out there for  
4056 the record. And I guess, you know, that is just a weird way  
4057 to legislate.

4058 Mr. Marino. I do not think --

4059 Mr. Scott. We have some stories, and, therefore, we  
4060 got to pass the bill.

4061 Mr. Marino. You know, I do not think it is a weird  
4062 way because it is going to save lives. I have no problem  
4063 with continuing the research. And, by the way, there is a  
4064 system by which to do the research. There is an application  
4065 that should be filled out, and once that is accomplished,  
4066 the research center, DEA facility, pharmaceutical, they  
4067 could pursue the research. I have absolutely no problem  
4068 with that.

4069 But if we are going to save just one kid's life, or we  
4070 are going to save someone from killing another individual,  
4071 which is just, you know, replete with examples of what this  
4072 drug does to someone, then we should make the move now,  
4073 because since 1970, the Controlled Substance Act --

4074 Mr. Watt. Mr. Chairman, might I reclaim my time --

4075 Chairman Smith. The gentleman's time has expired.

4076 Mr. Watt. -- just long enough to say that --

4077 Chairman Smith. Okay. The gentleman from North  
4078 Carolina is yielded an additional minute without objection?

4079 Mr. Watt. Just long enough to say that the point is,  
4080 if we do not have the hearing in the Judiciary Committee and  
4081 have the benefit of whatever private documents the gentleman

4082 has and whatever research there is, I do not know who is  
4083 going to that. I mean, that is what our role is in the  
4084 process, and once we have that information, what you are  
4085 doing may be rational, it may not be. But otherwise, it is  
4086 just anecdotal. And we do not have even have the anecdotal  
4087 evidence that justifies it.

4088 So, I yield back, Mr. Chairman.

4089 Chairman Smith. The gentleman's time has not expired.  
4090 He yields back.

4091 The gentleman from South Carolina, Mr. Gowdy, is  
4092 recognized?

4093 Mr. Gowdy. Mr. Chairman, notwithstanding the fact  
4094 that counties, and municipalities, and States are moving  
4095 with all deliberate speed to ban these substances, I want to  
4096 focus on another aspect of this amendment, which I think is  
4097 the fundamental flaw.

4098 The Federal drug laws do not draw distinction in terms  
4099 of drug amounts between possession and possession with  
4100 intent to distribute. Possession is a lesser included  
4101 offense of possession with intent to distribute.

4102 So, if Mr. Scott's amendment were to become law, we

4103 have no way to judge whether this amount is for simple  
4104 possession, therefore, personal use, or whether this amount  
4105 is for possession with intent to distribute. So, in every  
4106 trial you would have this anomaly.

4107         If you package it one way, you may go to jail for a  
4108 mandatory minimum. If you package it another way and can  
4109 convince a jury that it was just for your own personal use  
4110 and not for distribution, then that is an automatic defense.  
4111 There is not another drug in Title 21 that is treated that  
4112 way.

4113         So, we do not have drug thresholds in the Federal  
4114 system where if you have an ounce it is personal use, but if  
4115 you have a kilo it is possession with intent to distribute.  
4116 That strikes me as the fundamental flaw of this amendment is  
4117 it is one thing to say simple possession, although I have  
4118 yet to have a name provided to me when I have asked, name me  
4119 a single person serving an active prison sentence for simple  
4120 possession of marijuana. In the United States Bureau of  
4121 Prisons, name me a single person serving an active sentence  
4122 for simple possession of marijuana.

4123         Leaving that aside for a moment, there are no drug

4124 thresholds in this bill. And I think that is the  
4125 fundamental flaw.

4126 Mr. Watt. Would the gentleman yield?

4127 Mr. Gowdy. I would be happy to.

4128 Mr. Watt. Just in terms of the difference between  
4129 possession and possession with intent to distribute, the  
4130 penalties are significantly different, and juries make that  
4131 demarcation all the time.

4132 Mr. Gowdy. Well, but it is the jury that does it.  
4133 so, you are left with the anomaly of you could have a kilo,  
4134 and there are reported cases where a kilo was personal use,  
4135 but you can go to jail for life for two grams of crack  
4136 cocaine. That is an impossible anomaly that I just -- there  
4137 is a reason the Federal code does not set drug amounts, and  
4138 the distinction between simple possession and possession  
4139 with intent to distribute, to have a mini trial with no drug  
4140 presumptions, no drug weight presumptions, just seems to me  
4141 to be a fundamental flaw of this amendment.

4142 Chairman Smith. The gentleman yields back his time.

4143 Are there other members who wish to be heard on this  
4144 amendment?

4145 If not, all in favor of the Scott amendment, say aye?

4146 [A chorus of ayes.]

4147 Chairman Smith. Opposed, no?

4148 [A chorus of nays.]

4149 Chairman Smith. In the opinion of the chair, the noes  
4150 have it.

4151 Mr. Watt. Mr. Chairman --

4152 Chairman Smith. The gentleman from Virginia requests  
4153 a recorded vote. The clerk will call the roll?

4154 Ms. Kish. Mr. Smith?

4155 Chairman Smith. No.

4156 Ms. Kish. Mr. Smith votes no.

4157 Mr. Sensenbrenner?

4158 Mr. Sensenbrenner. No.

4159 Ms. Kish. Mr. Sensenbrenner votes no.

4160 Mr. Coble?

4161 Mr. Coble. No.

4162 Ms. Kish. Mr. Coble votes no.

4163 Mr. Gallegly?

4164 [No response.]

4165 Ms. Kish. Mr. Goodlatte?

4166 [No response.]

4167 Ms. Kish. Mr. Lungren?

4168 [No response.]

4169 Ms. Kish. Mr. Chabot?

4170 [No response.]

4171 Ms. Kish. Mr. Issa?

4172 [No response.]

4173 Ms. Kish. Mr. Pence?

4174 [No response.]

4175 Ms. Kish. Mr. Forbes?

4176 [No response.]

4177 Ms. Kish. Mr. King?

4178 [No response.]

4179 Ms. Kish. Mr. Franks?

4180 [No response.]

4181 Ms. Kish. Mr. Gohmert?

4182 [No response.]

4183 Ms. Kish. Mr. Jordan?

4184 [No response.]

4185 Ms. Kish. Mr. Poe?

4186 [No response.]

4187 Ms. Kish. Mr. Chaffetz?

4188 Mr. Chaffetz. No.

4189 Ms. Kish. Mr. Chaffetz votes no.

4190 Mr. Griffin?

4191 Mr. Griffin. No.

4192 Ms. Kish. Mr. Griffin votes no.

4193 Mr. Marino?

4194 Mr. Marino. No.

4195 Ms. Kish. Mr. Marino votes no.

4196 Mr. Gowdy?

4197 Mr. Gowdy. No.

4198 Ms. Kish. Mr. Gowdy votes no.

4199 Mr. Ross?

4200 Mr. Ross. No.

4201 Ms. Kish. Mr. Ross votes no.

4202 Mrs. Adams?

4203 Mrs. Adams. No.

4204 Ms. Kish. Ms. Adams votes no.

4205 Mr. Quayle?

4206 [No response.]

4207 Ms. Kish. Mr. Amodei?

4208 Mr. Amodei. No.

4209 Ms. Kish. Mr. Amodei votes no.

4210 Mr. Conyers?

4211 [No response.]

4212 Ms. Kish. Mr. Berman?

4213 [No response.]

4214 Ms. Kish. Mr. Nadler?

4215 Mr. Nadler. Aye.

4216 Ms. Kish. Mr. Nadler votes aye.

4217 Mr. Scott?

4218 Mr. Scott. Aye.

4219 Ms. Kish. Mr. Scott votes aye.

4220 Mr. Watt?

4221 Mr. Watt. Aye.

4222 Ms. Kish. Mr. Watt votes aye.

4223 Ms. Lofgren?

4224 [No response.]

4225 Ms. Kish. Ms. Jackson Lee?

4226 [No response.]

4227 Ms. Kish. Ms. Waters?

4228 [No response.]

4229 Ms. Kish. Mr. Cohen?

4230 Mr. Cohen. Aye.

4231 Ms. Kish. Mr. Cohen votes aye.

4232 Mr. Johnson?

4233 [No response.]

4234 Ms. Kish. Mr. Pierluisi?

4235 Mr. Pierluisi. Aye.

4236 Ms. Kish. Mr. Pierluisi votes aye.

4237 Mr. Quigley?

4238 [No response.]

4239 Ms. Kish. Ms. Chu?

4240 Ms. Chu. Aye.

4241 Ms. Kish. Ms. Chu votes aye.

4242 Mr. Deutch?

4243 [No response.]

4244 Ms. Kish. Ms. Sanchez?

4245 [No response.]

4246 Mr. Sensenbrenner. [Presiding] Are there additional

4247 members who wish to cast or change their vote?

4248 The gentleman from Virginia, Mr. Forbes?

4249 Mr. Forbes. No.

4250 Ms. Kish. Mr. Forbes votes no.

4251 Mr. Sensenbrenner. The gentleman from Virginia, Mr.

4252 Goodlatte?

4253 Mr. Goodlatte. No.

4254 Ms. Kish. Mr. Goodlatte votes no.

4255 Mr. Sensenbrenner. The gentleman from Arizona, Mr.

4256 Franks?

4257 Mr. Franks. No.

4258 Mr. Kish. Mr. Franks votes no.

4259 Mr. Sensenbrenner. The gentleman from California, Mr.

4260 Gallegly?

4261 Mr. Gallegly. No.

4262 Ms. Kish. Mr. Gallegly votes no.

4263 Mr. Sensenbrenner. Are there further additional

4264 members who wish to cast or change their vote?

4265 If not, the clerk will report?

4266 Ms. Kish. Mr. Chairman, 6 members voted aye, 14

4267 members voted nay.

4268 Mr. Sensenbrenner. The amendment is not agreed to.

4269 Are there further amendments?

4270 Mr. Cohen. Mr. Chairman?

4271 Mr. Sensenbrenner. The gentleman from Tennessee, for  
4272 what purpose do you arise?

4273 Mr. Cohen. I arise for the purpose of offering an  
4274 amendment, which Mr. Scott said I could take at this time,  
4275 and it is called amendment number 13.

4276 Mr. Sensenbrenner. The clerk will report the  
4277 amendment --

4278 Mr. Cohen. It is at the desk.

4279 Mr. Sensenbrenner. -- with Mr. Scott's permission?

4280 Ms. Kish. Amendment to H.R. 1254, offered by Mr.  
4281 Cohen of Tennessee, add at the end the following --

4282 Mr. Sensenbrenner. Without objection, the amendment  
4283 is considered as read, open for amendment at any point.

4284 [The information follows:]

4285

4286 Mr. Sensenbrenner. And the gentleman from Tennessee  
4287 is recognized for five minutes?

4288 Mr. Cohen. Thank you, Mr. Chairman.

4289 This amendment would require the attorney general to  
4290 obtain from a peer reviewed independent scientific  
4291 organization advice from them before making changes to the  
4292 drugs listed in the Controlled Substances Act.

4293 If the advice is not followed, the attorney general  
4294 would have to explain in writing the considerations that led  
4295 to not following that advice.

4296 This amendment cuts to the heart of my problem with  
4297 this legislation; it is not these drugs per se, not at all.  
4298 But this bill adds a number of products to Schedule 1, the  
4299 most restrictive and punitive schedule without sufficient  
4300 scientific evidence to demonstrate a need to make them  
4301 Schedule 1. And they are on Schedule 1 for 18 months  
4302 through the emergency rules already. As it is, the process  
4303 for making scheduling decisions is controlled by law  
4304 enforcement without adequate independent scientific input.

4305 It is true the Department of Health and Human Services  
4306 was consulted, but HHS is still a political agency and not

4307 truly an independent scientific agency.

4308           Our national drug policy should be driven by science,  
4309 not politics. For example, marijuana is a Schedule 1 drug.  
4310 According to the criteria under the Controlled Substance  
4311 Act, this means it supposedly has a high potential for  
4312 abuse. It has no currently accepted medical use and  
4313 treatment in the United States, and there is a lack of  
4314 accepted safety for the use of the drug under medical  
4315 supervision.

4316           Let us put aside for a moment whether it has any high  
4317 potential for abuse. There is certainly a lot of  
4318 demonstrative evidence and testimony that would say that is  
4319 not true. But I think the thousands of people who have  
4320 depended on marijuana in the 15 States where it has been  
4321 used for medical marijuana to treat the effects of AIDS,  
4322 cancer, glaucoma, and multiple sclerosis would take issue  
4323 with the notion that it has no medical use.

4324           It is increases appetite and eases pain in a way that  
4325 has helped countless people in the last stages of life. Ask  
4326 Montel Williams. He will tell you it has helped him.

4327           I had a dear friend named Oral James Mitchell, Jr., a

4328 Navy SEAL who had pancreatic cancer. He smoked marijuana  
4329 while he had pancreatic cancer. He emaciated from a 215-  
4330 pound rock to 114-pound skeleton. And his 86-year-old  
4331 mother said, thank God for the marijuana; it is the only  
4332 thing that lets Oral smile or have an appetite and eat.

4333         The drugs czar told me in a response to a letter that  
4334 synthetic marijuana, not the type we discussed in the  
4335 previous bill, but the type that the drug folks make  
4336 marinol, is legal because it increases appetite and works  
4337 for nausea. He could not show me, nor could anybody show  
4338 me, one study that says marijuana does not increase your  
4339 appetite. It helps that and it helps with nausea, too.

4340         We treat our approach to drugs as a law enforcement  
4341 matter and not a scientific matter, and we have placed  
4342 marijuana on Schedule 1, the most restrictive schedule.  
4343 Meanwhile, the scientific community is urging we reschedule  
4344 Marijuana so we can continue to conduct important research  
4345 and make it available to those in need.

4346         Just a few weeks ago, the California Medical  
4347 Association called for cannabis to be legalized and  
4348 regulated primarily so that scientists can gain access to it

4349 and conduct further research, which is difficult when it is  
4350 a class 1 drug. They advocate a wider clinical research for  
4351 accountability and quality control production of cannabis.  
4352 None of this can happen on Schedule 1.

4353         If scheduling decisions were made on the basis of  
4354 science, I am confident marijuana and perhaps other drugs  
4355 would be reclassified in accordance with their true risks.  
4356 Or maybe not, but that for the scientists to determine, not  
4357 the politicians. If there are considerations that would  
4358 lead to the attorney general to ignore the advice of  
4359 scientists, this amendment would still provide for that  
4360 flexibility. But it would also require transparency and  
4361 full explanations of those considerations. This in turn  
4362 leads to greater accountability.

4363         This amendment is a step towards ensuring our drug  
4364 policy is made on the basis of science, not politics, and I  
4365 urge its adoption. It will also restore a lot of people's  
4366 faith in the justice system that they do not have at the  
4367 present time.

4368         Thank you, and I yield back the remainder of my time.

4369         Mr. Sensenbrenner. The gentleman yields back.

4370 For what purpose does the gentleman from Pennsylvania  
4371 seek recognition?

4372 Mr. Marino. Thank you, Chairman. I do not know what  
4373 this --

4374 Mr. Sensenbrenner. For what purpose do you seek  
4375 recognition?

4376 Mr. Marino. I seek recognition to oppose the  
4377 amendment --

4378 Mr. Sensenbrenner. The gentleman is recognized for  
4379 five minutes?

4380 Mr. Marino. Thank you. I have no idea what this has  
4381 to do with real marijuana, but I am going to zero in on  
4382 facts on the controlled substance.

4383 This amendment duplicates existing requirements in  
4384 Federal law. The Controlled Substances Act already requires  
4385 the attorney general to receive recommendations from the  
4386 Secretary of Department of Health and Human Services, HHS.  
4387 These requirements include a scientific and medical  
4388 evaluation and recommendations as to whether a drug should  
4389 be controlled or removed as a controlled substance. The HHS  
4390 recommendation must also include a proposal regarding the

4391 appropriate schedule on which the drug should be placed.

4392 HHS recommendations are binding on the attorney  
4393 general as to such scientific and medical matters. And if  
4394 HHS recommends that the drug not be controlled, that  
4395 recommendation is binding on the attorney general. This  
4396 amendment is unnecessary.

4397 Federal law on this issue already requires expert,  
4398 independent, and objective recommendations, which are  
4399 binding on the attorney general and scientific matters of  
4400 drug classification.

4401 I urge my colleagues to oppose this amendment.

4402 I yield back the remainder of my time.

4403 Mr. Sensenbrenner. The gentleman yields back.

4404 The question -- for what purpose does the gentleman  
4405 from Virginia, Mr. Scott, seek recognition?

4406 Mr. Scott. Move to strike the last word.

4407 Mr. Sensenbrenner. The gentleman is recognized for  
4408 five minutes?

4409 Mr. Scott. Just very briefly, the scientific  
4410 procedure that was just outlined is what the attorney  
4411 general is supposed to do. Unfortunately, that scientific

4412 analysis and process does not apply to Congress. And we can  
4413 just do what we want to do whether it makes any sense or  
4414 not, and that is apparently why the decisions are being made  
4415 here rather than in the Department of Justice, because the  
4416 Department of Justice would have to follow a logical  
4417 process.

4418 They are allowed to have a year to have something on  
4419 the schedule, and then six months more if they need some  
4420 more time. And so, there is no reason why they cannot get a  
4421 study done, and this bill will extend that time anyway. So,  
4422 that is a much more thoughtful process than what we are  
4423 going through now. At least this amendment would restore  
4424 some semblance of thought process, and I would hope the  
4425 amendment would be adopted.

4426 I yield back.

4427 Mr. Marino. Would the gentleman yield?

4428 Mr. Sensenbrenner. The gentleman yields back.

4429 The question is --

4430 Mr. Cohen. Mr. Chairman?

4431 Mr. Sensenbrenner. The gentleman from Tennessee has  
4432 already been recognized on this amendment.

4433 Mr. Watt. Mr. Chairman?

4434 Mr. Sensenbrenner. For what purpose does the  
4435 gentleman from North Carolina seek recognition?

4436 Mr. Watt. Move to strike the last word.

4437 Mr. Sensenbrenner. The gentleman is recognized for  
4438 five minutes.

4439 Mr. Watt. I yield to Mr. Marino.

4440 Mr. Marino. Thank you, sir. In 1970, the Controlled  
4441 Substance Act was implemented, and Congress since that time  
4442 has placed over 50 drugs on the Controlled Substance Act.  
4443 Congress did that in and of itself.

4444 For the past 20 years, the DEA put 31 on the schedule.  
4445 So, Congress has had that authority. It has exercised that  
4446 authority, and it has done it through information sought  
4447 through Justice, HHS, and other experts.

4448 I think this bill passed the Energy and Commerce on a  
4449 voice vote with one amendment, which was a procedural  
4450 matter. I cannot for the life of me understand why the  
4451 resistance is here to pass this now with the intention of  
4452 further research.

4453 Mr. Watt. Reclaiming my time. I think the gentleman

4454 is bragging about the very thing that we are complaining  
4455 about, that political decisions are being made rather than  
4456 rational decisions that have been studied and documented.  
4457 And I do not think that is really something --

4458 Mr. Sensenbrenner. Will the gentleman from North  
4459 Carolina yield?

4460 Mr. Watt. I do not really think that is something  
4461 that he ought to be bragging about. I will yield to --

4462 Mr. Sensenbrenner. Is the gentleman saying that a  
4463 political decision can never be rational?

4464 Mr. Watt. No, I am not saying that at all, but, you  
4465 know, for us to beat on our chests and say how hard we are  
4466 on crime when instead of applying a rigorous research basis  
4467 to what we are doing, we often make decisions that are just  
4468 not good, sound, well researched decisions that will  
4469 actually prevent the problem that we are trying to prevent.  
4470 We serve our own political purposes sometimes, but that does  
4471 not necessarily mean that it is a good thing.

4472 Let me yield to Mr. Cohen because he was seeking  
4473 recognition just like Mr. Marino was. And I was just a  
4474 facilitator really. I was kind of --

4475 Mr. Cohen. Thank you. Thank you. I appreciate it,  
4476 Mr. Watt.

4477 I would just like to submit that the HHS is not a peer  
4478 reviewed independent scientific organization. It is still a  
4479 political appointment, and you want to get science. And  
4480 this would require the attorney general to obtain the advice  
4481 from a peer reviewed independent scientific organization.  
4482 That is not Health and Human Services. You can put health  
4483 in the title; that does not make them scientists. It does  
4484 not make them independent.

4485 And that is what we need to have. It just needs to be  
4486 based on science. Right now it is not. It is based on the  
4487 hysteria from the 30s, a lot of it. A lot of this stuff was  
4488 Harry Anslinger, and it made no sense then, and it makes no  
4489 sense today. And we are putting our stamp of approval or  
4490 surety to a man that was not aware of what he was doing. I  
4491 do not know what he was drinking.

4492 Mr. Marino. Will the gentleman yield?

4493 Mr. Watt. Yeah, I am happy to yield to the gentleman.

4494 Mr. Marino. First of all, I do not brag, number one.

4495 And I am basing my commitment on this legislation on facts

4496 that I have gathered and experience. But the  
4497 Administration, the Obama Administration, is asking for  
4498 this.

4499 Now, are my colleagues on the other side are saying  
4500 that they do not believe the political appointments by Obama  
4501 who are giving us the information and asking for this to be  
4502 put on Schedule 1?

4503 Mr. Watt. Well, reclaiming my time, I think you might  
4504 be making the point. I mean, part of the reason they are  
4505 asking for it is they do not have to do what they should be  
4506 doing to go through the process of analyzing whether this is  
4507 a good idea or not.

4508 So, they make political judgments, too, I mean,  
4509 presidents running for political office. That does not  
4510 necessarily mean that we ought to be shirking our own  
4511 responsibilities to try to set public policy in a rational,  
4512 well-researched way, and on a rational research basis.

4513 We take the easy way out, I think, way too often, and  
4514 we take the politically expedient way out way too often, and  
4515 that does not mean, as I indicated to Mr. Sensenbrenner,  
4516 that all political decisions are bad. But I think political

4517 decisions are better if they are based on scientific  
4518 research when there is something that can be --

4519 Mrs. Adams. Will the gentleman yield?

4520 Mr. Sensenbrenner. The gentleman's time has expired.

4521 The question is on the amendment offered by the  
4522 gentleman from Tennessee, Mr. Cohen.

4523 Those in favor will say aye?

4524 [A chorus of ayes.]

4525 Mr. Sensenbrenner. Opposed, no?

4526 [A chorus of nays.]

4527 Mr. Sensenbrenner. Noes appear to have it.

4528 Mr. Cohen. Roll call.

4529 Mr. Sensenbrenner. Roll call is ordered.

4530 Those in favor of the Cohen amendment will, as your  
4531 names are called, answer aye, those opposed, no. And the  
4532 clerk will call the roll?

4533 Ms. Kish. Mr. Sensenbrenner?

4534 Mr. Sensenbrenner. No.

4535 Ms. Kish. Mr. Sensenbrenner votes no.

4536 Mr. Smith?

4537 Chairman Smith. No.

4538 Ms. Kish. Mr. Smith votes no.  
4539 Mr. Coble?  
4540 Mr. Coble. No.  
4541 Ms. Kish. Mr. Coble votes no.  
4542 Mr. Gallegly?  
4543 Mr. Gallegly. No.  
4544 Ms. Kish. Mr. Gallegly votes no.  
4545 Mr. Goodlatte?  
4546 Mr. Goodlatte. No.  
4547 Ms. Kish. Mr. Goodlatte votes no.  
4548 Mr. Lungren?  
4549 [No response.]  
4550 Ms. Kish. Mr. Chabot?  
4551 [No response.]  
4552 Ms. Kish. Mr. Issa?  
4553 [No response.]  
4554 Ms. Kish. Mr. Pence?  
4555 [No response.]  
4556 Ms. Kish. Mr. Forbes?  
4557 [No response.]  
4558 Ms. Kish. Mr. King?

4559 [No response.]

4560 Ms. Kish. Mr. Franks?

4561 Mr. Franks. No.

4562 Ms. Kish. Mr. Franks votes no.

4563 Mr. Gohmert?

4564 [No response.]

4565 Ms. Kish. Mr. Jordan?

4566 [No response.]

4567 Ms. Kish. Mr. Poe?

4568 [No response.]

4569 Ms. Kish. Mr. Chaffetz?

4570 Mr. Chaffetz. No.

4571 Ms. Kish. Mr. Chaffetz votes no.

4572 Mr. Griffin?

4573 [No response.]

4574 Ms. Kish. Mr. Marino?

4575 Mr. Marino. No.

4576 Ms. Kish. Mr. Marino votes no.

4577 Mr. Gowdy?

4578 Mr. Gowdy. No.

4579 Ms. Kish. Mr. Gowdy votes no.

4580 Mr. Ross?

4581 Mr. Ross. No.

4582 Ms. Kish. Mr. Ross votes no.

4583 Mrs. Adams?

4584 Mrs. Adams. No.

4585 Ms. Kish. Ms. Adams votes no.

4586 Mr. Quayle?

4587 [No response.]

4588 Ms. Kish. Mr. Amodei?

4589 Mr. Amodei. No.

4590 Ms. Kish. Mr. Amodei votes no.

4591 Mr. Conyers?

4592 [No response.]

4593 Ms. Kish. Mr. Berman?

4594 [No response.]

4595 Ms. Kish. Mr. Nadler?

4596 Mr. Nadler. Aye.

4597 Ms. Kish. Mr. Nadler votes aye.

4598 Mr. Scott?

4599 Mr. Scott. Aye.

4600 Ms. Kish. Mr. Scott votes aye.

4601 Mr. Watt?

4602 Mr. Watt. Aye.

4603 Ms. Kish. Mr. Watt votes aye.

4604 Ms. Lofgren?

4605 [No response.]

4606 Ms. Kish. Ms. Jackson Lee?

4607 [No response.]

4608 Ms. Kish. Ms. Waters?

4609 [No response.]

4610 Ms. Kish. Mr. Cohen?

4611 Mr. Cohen. Aye.

4612 Ms. Kish. Mr. Cohen votes aye.

4613 Mr. Johnson?

4614 [No response.]

4615 Ms. Kish. Mr. Pierluisi?

4616 [No response.]

4617 Ms. Kish. Mr. Quigley?

4618 [No response.]

4619 Ms. Kish. Ms. Chu?

4620 Ms. Chu. Aye.

4621 Ms. Kish. Ms. Chu votes aye.

4622 Mr. Deutch?

4623 [No response.]

4624 Ms. Kish. Ms. Sanchez?

4625 [No response.]

4626 Chairman Smith. [Presiding] The gentleman from  
4627 Virginia, Mr. Forbes?

4628 Mr. Forbes. No.

4629 Ms. Kish. Mr. Forbes votes no.

4630 Chairman Smith. The gentleman from Arkansas, Mr.  
4631 Griffin?

4632 Mr. Griffin. No.

4633 Ms. Kish. Mr. Griffin votes no.

4634 Chairman Smith. The clerk will report?

4635 Ms. Kish. Mr. Chairman, 5 members voted aye, 14  
4636 members voted nay.

4637 Chairman Smith. The majority having voted against the  
4638 amendment, the amendment is not agreed to.

4639 The gentleman from New York, Mr. Nadler, is  
4640 recognized?

4641 Mr. Nadler. Thank you, Mr. Chairman. I have an  
4642 amendment at the desk.

4643 Chairman Smith. I will take that, Mr. Nadler.

4644 The clerk will report the amendment?

4645 Ms. Kish. Amendment to H.R. 1254 offered by Mr.

4646 Nadler of New York, add at the end the following.

4647 Mr. Nadler. Mr. Chairman, I ask unanimous consent the

4648 amendment be considered as read.

4649 Chairman Smith. Without objection, the amendment will

4650 be considered as read.

4651 [The information follows:]

4652

4653 Chairman Smith. The gentleman is recognized to  
4654 explain his amendment?

4655 Mr. Nadler. Mr. Chairman, as I said last week, I am  
4656 opposed to the underlying bill. Instead of jumping in, we  
4657 ought to let the legal process for scheduling drugs play  
4658 out.

4659 If there really is a crisis, the attorney general has  
4660 the power to bypass the normal scheduling process and to  
4661 schedule drugs on an emergency basis when there is an  
4662 imminent hazard to the public. That step has already been  
4663 taken with respect to a few of the chemical compounds that  
4664 are the subject of this bill.

4665 And on this committee, we certainly do not have the  
4666 expertise or the factual record to decide that all of these  
4667 compounds should be not only legal, but on Schedule 1. We  
4668 have not held one hearing on any of these compounds.

4669 Along with other members of the committee, I sent a  
4670 letter to Chairman Smith and Subcommittee Chairman  
4671 Sensenbrenner asking for a hearing on this issue. The  
4672 request, however, was not granted. Frankly I do not  
4673 understand the rush or the refusal by the majority to follow

4674 regular order.

4675 I do appreciate the opportunity, however, to talk  
4676 about how we regulate drugs. Drugs are divided into five  
4677 schedules. Schedule 1 drugs on which we are putting all  
4678 these drugs, have no accepted medical use. The underlying  
4679 bill would put the list of compounds on Schedule 1. Drugs  
4680 on Schedules 2, 3, 4, and 5 have medical uses, varying  
4681 levels of potential for abuse, and differing addiction  
4682 profiles. Each schedule has its own rules regarding  
4683 prescriptions, security, penalties for unauthorized use, and  
4684 so on. The more dangerous drugs are put on the more  
4685 restrictive schedules.

4686 The normal process is not for Congress to step in and  
4687 decide which drugs belong on which schedule as we are doing  
4688 today, but for such questions to be decided administratively  
4689 after appropriate proceedings.

4690 The process for deciding whether a compound should be  
4691 placed on a schedule or should be moved to a different  
4692 schedule begins with the Drug Enforcement Administration.  
4693 It can act in response to an investigation is launched or  
4694 petitioned by any interested party.

4695           As part of its analysis, the DEA requests information  
4696 from the Department of Health and Human Services. This  
4697 information consists of a scientific and medical analysis  
4698 and recommendation regarding what should be done with the  
4699 compounds. The scientific and medical analysis from HHS is  
4700 binding on DEA, as is the recommendation from HHS that a  
4701 drug should not be scheduled at all. Other recommendations  
4702 from HHS, however, such as which schedule a drug should be  
4703 on, are not binding.

4704           Concerns have been raised that this system places too  
4705 much power on how a drug should controlled in the hands of a  
4706 law enforcement agency, DEA. DEA has the ultimate  
4707 authority, and, not surprisingly, approaches the question  
4708 from a crime and punishment point of view. What may not be  
4709 given equal weight are the scientific reality and medical  
4710 value of these compounds. For example, despite the  
4711 mountains of evidence of the medicinal value of marijuana  
4712 and its use as part of health care in States across the  
4713 country, it remains on Schedule 1, the schedule for drugs  
4714 with no medical value whatsoever. Additionally, even though  
4715 HHS is involved in the process, there are concerns that it

4716 simply rubber stamps the decision on scheduling a drug  
4717 already made by DEA.

4718           For example, in the 1987 case of *Grinspoon v. Drug*  
4719 *Enforcement Agency*, the 1st Circuit made the following  
4720 finding, "HHS performed in a less than admirable fashion in  
4721 making its recommendations to the DEA. The record indicates  
4722 that HHS failed to look beyond its own files upon receiving  
4723 DEA's request for scientific and medical evaluation,  
4724 neglected to consult any organization or medical  
4725 professionals, or even the FDA's own panel of experts, and  
4726 simply rubber stamped DEA's conclusion by adopting the  
4727 eight-factor analysis already performed by the DEA."

4728           I think it is time we reviewed this entire process,  
4729 and that is what this amendment would do. This amendment  
4730 would require the Comptroller General, the head of the  
4731 Government Accountability Office, to do a study and report  
4732 to Congress within one year on drug scheduling. The study  
4733 would have two parts. First, the study would evaluate the  
4734 process by which are scheduled and make recommendations to  
4735 Congress on any changes which may be needed in the process;  
4736 that is, the process of deciding whether a drug should be

4737 placed on the schedule, and, if so, on which schedule.

4738 Second, the study would evaluate drugs on the current five  
4739 schedules and determine if any changes need to be made  
4740 regarding the current characterization of these drugs.

4741 I would hope that sound science and modern medicine  
4742 would be appropriately considered in guiding our country in  
4743 how we control drugs and punish their use or distribution.  
4744 To me, that seems like a position with which it is hard to  
4745 argue. If our current approach is unbalanced, that is  
4746 something we should know about. Let the GAO do a proper  
4747 study and make recommendations on the process of drug  
4748 scheduling and recommendations for moving drugs from one  
4749 schedule to another, if indicated.

4750 I ask all members to support the amendment, which  
4751 simply asks GAO to answer these questions about drug  
4752 scheduling. And I yield back the balance of my time.

4753 Chairman Smith. Thank you, Mr. Nadler.

4754 I will recognize myself in opposition to the  
4755 amendment.

4756 I oppose this amendment because there is no need to  
4757 evaluate and report on the current process for adding drugs

4758 to the list of prohibited drugs under the Controlled  
4759 Substances Act. Robust investigation and testing of drugs  
4760 and substances is required before the administrator or the  
4761 DEA evaluates the relevant data and makes a final  
4762 determination as to whether the drug or substance should be  
4763 controlled.

4764 In making a determination regarding the control of a  
4765 drug or substance, the DEA administrator considers several  
4766 factors. The factors include the drug's actual or relative  
4767 potential for abuse, scientific evidence of its  
4768 pharmacological effect, the current state of scientific  
4769 knowledge regarding the drug or substance, the risk to the  
4770 public health, and whether the substance is in an immediate  
4771 precursor of a substance already controlled.

4772 After considering these factors, the administrator  
4773 makes specific findings concerning the drug or substance  
4774 that determines on which the drug or substance will be  
4775 placed. This process is not arbitrary and is soundly based  
4776 in science and medicine.

4777 This process is not in need of review, and it is not  
4778 in need in change. Efforts to change this process are

4779 largely effort to decriminalize certain controlled  
4780 substances. So, I urge my colleagues to oppose this  
4781 amendment.

4782 Are there other members who wish to be heard?

4783 The gentleman from North Carolina, Mr. Watt?

4784 Mr. Watt. Move to strike the last word and yield to  
4785 Mr. Nadler.

4786 Chairman Smith. The gentleman is recognized for five  
4787 minutes?

4788 Mr. Nadler. I thank the gentleman for yielding.

4789 Mr. Chairman, I agree with everything you just said  
4790 until the last sentence. You pointed out the process that  
4791 is undergone now before a drug is placed on a schedule, a  
4792 process designed to determine after proper evidence and  
4793 evaluation whether a drug should be placed on a schedule and  
4794 on which schedule.

4795 And then, you said that my amendment to do a study of  
4796 this and to see whether we can make improvements in that  
4797 process is unnecessary because it is a fine process and it  
4798 works. Well, if that is true, why do we need this bill?

4799 The whole point of this bill is to take these drugs

4800 which have not been placed on the schedule, but which should  
4801 have been placed on the schedule, and do it quickly before  
4802 lives are lost.

4803 Chairman Smith. Correct.

4804 Mr. Nadler. That is the point of the bill.

4805 Chairman Smith. Yes.

4806 Mr. Nadler. What that says in effect is that the  
4807 process has not worked. The process has not worked, because  
4808 had it worked, these terribly dangerous drugs would already  
4809 be on Schedule 1. And the project was so screwed up, it did  
4810 not work so much that we must pass this bill, bypass the  
4811 process of putting these drugs on Schedule 1 right away.

4812 Now, I do not like the bill because I do not think  
4813 that is the proper way to proceed, and I do not know if  
4814 these drugs belong on Schedule 1 or not. But clearly, the  
4815 whole point of what you are saying is that the process does  
4816 not work. And all I am saying with this amendment is let us  
4817 have a study to determine whether the process works. You  
4818 have already determined it does not because if it did,  
4819 contrary to what you were saying, if it did work properly,  
4820 this bill would be highly improper. I think it probably is

4821 highly improper, but you do not think that obviously.

4822 But this bill is saying the process does not work.

4823 Because the process does not work, we have to come in on an  
4824 emergency basis, and by congressional fiat, immediately, not  
4825 take the time, not say to the administrative agency, take a  
4826 look at these drugs, report back in three months or three  
4827 weeks or six months or whatever. We cannot wait for that.  
4828 We got to do it right now, because you have not done the job  
4829 that you should have done.

4830 Mrs. Adams. Will the gentleman yield?

4831 Mr. Nadler. Well, if they have not done the job they  
4832 should have done, why do we not have a study, if we are  
4833 going to pass this bill --

4834 Chairman Smith. If the gentleman would yield --

4835 Chairman Smith. -- to see how we can improve that  
4836 process.

4837 Chairman Smith. The gentleman from North Carolina has  
4838 the time. Will he yield for --

4839 Mr. Nadler. I would be happy to yield to the  
4840 chairman.

4841 Chairman Smith. Thank you, Mr. Watt.

4842 I think the gentleman from New York is misrepresenting  
4843 my objections to his amendment and why I support the bill.  
4844 There are many reasons to support the bill, but one of them  
4845 is that by acting now, we are going to save a lot of lives  
4846 and save a lot of grief and save a lot of individuals. And  
4847 I say that because as the gentleman did admit, the process  
4848 of going through the regulatory procedure takes a lot longer  
4849 than passing legislation.

4850 The reason the DoJ, the reason the White House has us  
4851 to move this bill is because they know that it will save  
4852 lives if we act expeditiously and do not wait for the long  
4853 regulatory process.

4854 By the way, I do not have the exact figures in front  
4855 of me, but I believe going by memory that Congress has put  
4856 51 drugs on Schedule 1, and I believe DEA has put 31 drugs  
4857 on Schedule 1. So, it is not unusual for Congress to want  
4858 to act quickly in order to save lives and protect the public  
4859 safety.

4860 I thank the gentleman for yielding.

4861 Mr. Watt. I yield to Mr. Nadler.

4862 Mr. Nadler. Well, thank you. But the fact of the

4863 matter is that assuming that these drugs are as dangerous as  
4864 you think they are, and that, therefore, we must act now,  
4865 there is a failure in the process or otherwise they would  
4866 have already been put on the list.

4867 What you are saying is they should have been on the  
4868 list. We have got to act now quickly. What I am saying is,  
4869 if that is true, then we ought to take a look and see why  
4870 the process has not already done that. If these drugs are  
4871 as dangerous as they are and action should not wait, it  
4872 already should have been done. It should have been way down  
4873 the pike.

4874 Chairman Smith. That is exactly what we are trying to  
4875 do.

4876 Mr. Nadler. And so, I am offering the amendment that  
4877 simply says, take a look at the process and see whether we  
4878 ought to improve it in some way.

4879 Mr. Marino. Will the gentleman yield?

4880 Mr. Nadler. Yes. Well --

4881 Chairman Smith. The gentleman from North Carolina?

4882 Mr. Watt. I would be happy to yield to Mr. Marino.

4883 Mr. Marino. Thank you, sir. These designer drugs,

4884 particularly the bath salts, this did not come about three  
4885 years ago or two years ago and it was just ignored. This is  
4886 recent. This is happening now. The deaths are happening  
4887 this year and the end of last year. And actually, I think,  
4888 with all due respect, sir, you made my argument for me given  
4889 the fact that we need to respond in a manner by which we can  
4890 prevent deaths by Congress having the authority, as it has  
4891 exercised as the chair said, since 1970 over 50 times.

4892 And I would hazard a guess that my friends and my  
4893 colleagues on the other side probably voted to support  
4894 somewhere within these 50 drugs that were put on the  
4895 Controlled Substance Act.

4896 I yield back.

4897 Mr. Watt. Mr. Nadler, I yield to Mr. Nadler.

4898 Mr. Nadler. Thank you. I do not know these drugs.

4899 Chairman Smith. The gentleman's time has expired.

4900 The gentleman without objection is recognized for an  
4901 additional minute.

4902 Mr. Nadler. I thank the gentleman. I do not know  
4903 these drugs, and at this moment I am not saying they should  
4904 or should not be put on. But if we have gotten to the point

4905 where these drugs are so severe and time is of such an  
4906 exigency that we got to act now, we ought to take a look and  
4907 find out why we have not already acted.

4908 Now, maybe they are new drugs.

4909 Mrs. Adams. Will the gentleman yield?

4910 Mr. Nadler. But still, the process should be such  
4911 that it should not require an act of Congress. So, all I am  
4912 saying in this amendment is take a look at the process, and  
4913 maybe it can be improved.

4914 Mr. Watt. Reclaiming my time. I yield to Mrs. Adams.

4915 Mrs. Adams. Thank you. I think that you will find  
4916 that because DEA has to do each and every one of them  
4917 separately, independently, and the 41 are not inclusive of  
4918 all of the things that are out there. These are the most  
4919 egregious. So, I think if you look at the way everything is  
4920 done.

4921 And I would like to maybe go back to what everyone  
4922 said. We have done, both Congress and the Administration  
4923 has done this on executive and legislative side co-equally  
4924 over the years. And the most recent, as I said earlier, is  
4925 one that I watched when I was in law enforcement when it was

4926 the date rape drug. That was done by Congress at the behest  
4927 of law enforcement.

4928 I yield back.

4929 Chairman Smith. The gentleman's time has expired.

4930 The question is on the amendment. All in favor of the  
4931 Nadler amendment, say aye?

4932 [A chorus of ayes.]

4933 Chairman Smith. Opposed, nay?

4934 [A chorus of nays.]

4935 Chairman Smith. In the opinion of the chair, the noes  
4936 have it, and the amendment is not agreed to.

4937 Mr. Nadler. I ask for roll call.

4938 Chairman Smith. A roll call vote has been requested,  
4939 and the clerk will call the roll?

4940 Ms. Kish. Mr. Smith?

4941 Chairman Smith. No.

4942 Ms. Kish. Mr. Smith votes no.

4943 Mr. Sensenbrenner?

4944 Mr. Sensenbrenner. No.

4945 Ms. Kish. Mr. Sensenbrenner votes no.

4946 Mr. Coble?

4947 [No response.]

4948 Ms. Kish. Mr. Gallegly?

4949 Mr. Gallegly. No.

4950 Ms. Kish. Mr. Gallegly votes no.

4951 Mr. Goodlatte?

4952 [No response.]

4953 Ms. Kish. Mr. Lungren?

4954 [No response.]

4955 Ms. Kish. Mr. Chabot?

4956 [No response.]

4957 Ms. Kish. Mr. Issa?

4958 [No response.]

4959 Ms. Kish. Mr. Pence?

4960 [No response.]

4961 Ms. Kish. Mr. Forbes?

4962 [No response.]

4963 Ms. Kish. Mr. King?

4964 [No response.]

4965 Ms. Kish. Mr. Franks?

4966 [No response.]

4967 Ms. Kish. Mr. Gohmert?

4968 [No response.]

4969 Ms. Kish. Mr. Jordan?

4970 [No response.]

4971 Ms. Kish. Mr. Poe?

4972 [No response.]

4973 Ms. Kish. Mr. Chaffetz?

4974 Mr. Chaffetz. No.

4975 Ms. Kish. Mr. Chaffetz votes no.

4976 Mr. Griffin?

4977 Mr. Griffin. No.

4978 Ms. Kish. Mr. Griffin votes no.

4979 Mr. Marino?

4980 Mr. Marino. No.

4981 Ms. Kish. Mr. Marino votes no.

4982 Mr. Gowdy?

4983 Mr. Gowdy. No.

4984 Ms. Kish. Mr. Gowdy votes no.

4985 Mr. Ross?

4986 Mr. Ross. No.

4987 Ms. Kish. Mr. Ross votes no.

4988 Mrs. Adams?

4989 Mrs. Adams. No.

4990 Ms. Kish. Ms. Adams votes no.

4991 Mr. Quayle?

4992 [No response.]

4993 Ms. Kish. Mr. Amodei?

4994 Mr. Amodei. No.

4995 Ms. Kish. Mr. Amodei votes no.

4996 Mr. Conyers?

4997 [No response.]

4998 Ms. Kish. Mr. Berman?

4999 [No response.]

5000 Ms. Kish. Mr. Nadler?

5001 Mr. Nadler. Aye.

5002 Ms. Kish. Mr. Nadler votes aye.

5003 Mr. Scott?

5004 Mr. Scott. Aye.

5005 Ms. Kish. Mr. Scott votes aye.

5006 Mr. Watt?

5007 Mr. Watt. Aye.

5008 Ms. Kish. Mr. Watt votes aye.

5009 Ms. Lofgren?

5010 [No response.]

5011 Ms. Kish. Ms. Jackson Lee?

5012 [No response.]

5013 Ms. Kish. Ms. Waters?

5014 [No response.]

5015 Ms. Kish. Mr. Cohen?

5016 [No response.]

5017 Ms. Kish. Mr. Johnson?

5018 [No response.]

5019 Ms. Kish. Mr. Pierluisi?

5020 [No response.]

5021 Ms. Kish. Mr. Quigley?

5022 [No response.]

5023 Ms. Kish. Ms. Chu?

5024 Ms. Chu. Aye.

5025 Ms. Kish. Ms. Chu votes aye.

5026 Mr. Deutch?

5027 [No response.]

5028 Ms. Kish. Ms. Sanchez?

5029 [No response.]

5030 Chairman Smith. The gentleman from California, Mr.

5031 Lungren?

5032 Mr. Lungren. No.

5033 Ms. Kish. Mr. Lungren votes no.

5034 Chairman Smith. The gentleman from Virginia, Mr.

5035 Forbes?

5036 Mr. Forbes. No.

5037 Ms. Kish. Mr. Forbes votes no.

5038 Chairman Smith. The gentleman from North Carolina,

5039 Mr. Coble?

5040 Mr. Coble. No.

5041 Ms. Kish. Mr. Coble votes no.

5042 Chairman Smith. The gentleman from Arizona, Mr.

5043 Franks?

5044 Mr. Franks. No.

5045 Ms. Kish. Mr. Franks votes no.

5046 Chairman Smith. The clerk will report?

5047 Ms. Kish. Mr. Chairman, 4 members voted aye, and 14

5048 members voted nay.

5049 Chairman Smith. The majority having voted against the

5050 amendment, the amendment is not agreed to.

5051 Are there any other amendments?

5052 If not -- the gentleman from Virginia, Mr. Scott?

5053 Mr. Scott. Thank you, Mr. Chairman. I have an  
5054 amendment at the desk. At top it is 036.

5055 Chairman Smith. The clerk will --

5056 Mr. Scott. I am sorry. That is the wrong one. It is  
5057 037, I am sorry.

5058 Chairman Smith. The clerk will report amendment  
5059 number 037?

5060 Ms. Kish. Amendment to H.R. 1254 offered by Mr.  
5061 Scott, add at the end the following, "Excluding synthetic  
5062 drugs from the application of a mandatory minimum sentence."  
5063 Section 401(b)(1)(C) of the Controlled Substances Act, 21  
5064 U.S.C. 841(b)(1)(C) shall not apply with respect to any  
5065 substance added to Schedule 1 by the amendments made by this  
5066 act."

5067 Chairman Smith. The gentleman is recognized to  
5068 explain the amendment?

5069 Mr. Scott. Thank you, Mr. Chairman.

5070 Mr. Chairman, this is a simple amendment that will  
5071 prevent the expansion of a 20-year mandatory minimum prison  
5072 sentence for substances added as a result of this bill.

5073           As has been noted many times, little is known about  
5074 the substances that this bill will place in the Schedule 1,  
5075 yet once they are so placed, all applicable criminal  
5076 statutes in Title 21 are triggered.

5077           There is a mandatory minimum sentence which would  
5078 apply which mandates a minimum of 20 years in prison in  
5079 cases where a Schedule 1 or Schedule 2 substance resulted in  
5080 the death or serious bodily injury.

5081           Now, while I oppose the expansion of mandatory  
5082 minimums in all cases because they force judges to impose  
5083 sentences which they disagree or may even violate common  
5084 sense, it is particularly problematic when linked to  
5085 substances for which very little is known.

5086           Now, this amendment will not prohibit long sentences  
5087 where appropriate. It just prohibits the mindless  
5088 imposition of a 20-year sentence when it makes no sense.

5089           Mandatory minimums apply to girlfriends who might take  
5090 a message or a driver or lookout, or a lot of other  
5091 situations for whom a 20-year sentence and a half million  
5092 dollars expenditures of the taxpayers' money is just absurd.  
5093 But unless this amendment passes, it will be required in

5094 many cases. So, I would hope that we would not impose a  
5095 mandatory minimum where it violates common sense.

5096 And before I yield back, Mr. Chairman, I would like to  
5097 introduce into the record a letter from the Drug Policy  
5098 Alliance, American Civil Liberties Union, Justice Policy  
5099 Institute, the NAACP, National Association of Criminal  
5100 Defense Lawyers, National Association of Social Workers,  
5101 Sentencing Project, stopthear.org, and Students for  
5102 Sensible Drug Policy, that criticized the possibility of a  
5103 mandatory minimum in this bill. And also one from FAMM,  
5104 Families Against Mandatory Minimums, that go into  
5105 significant background about how people can get caught in  
5106 20-year mandatory minimums for things for which obviously  
5107 the sentence would not be deserved.

5108 And I would ask unanimous consent that these two  
5109 letters --

5110 Chairman Smith. Without objection, those letters will  
5111 be made a part of the record.

5112 [The information follows:]

5113

5114 Mr. Scott. And I yield back.

5115 Chairman Smith. And the gentleman yields back.

5116 The gentleman from Pennsylvania, Mr. Marino, is  
5117 recognized?

5118 Mr. Marino. Thank you, Mr. Chairman.

5119 I speak in opposition to this amendment, and I move to  
5120 strike the last word.

5121 Chairman Smith. The gentleman is recognized for five  
5122 minutes?

5123 Mr. Marino. This amendment seeks to exclude the  
5124 poisonous drugs contained in this legislation from certain  
5125 mandatory minimum sentences that are limited to very  
5126 specific circumstances. Mandatory minimum sentences under  
5127 the Controlled Substance Act apply to illegal drugs, such as  
5128 marijuana, meth, powder and crack cocaine, PCP, and LSD.

5129 The section of the Controlled Substance Act actually  
5130 targeted by this amendment contains mostly maximum  
5131 penalties, but sets mandatory minimum penalties in  
5132 situations in which death or serious bodily injury result.  
5133 In plain and unambiguous language, the CSA mandates that  
5134 where death or serious bodily injury results from the

5135 distribution of certain drugs, mandatory minimum penalties  
5136 apply. Those minimum penalties should apply in those  
5137 circumstances.

5138           This legislation is not singling out specific drugs  
5139 for mandatory minimum sentences. These drugs, however,  
5140 highlight the need for this legislation because Americans  
5141 are dying or being harmed by them.

5142           These mandatory minimum sentences should apply to the  
5143 manufacturers, distributors, and sellers of these deadly  
5144 drugs. Whether for deterrence or punishment, mandatory  
5145 minimum sentences should apply to those who kill or  
5146 seriously harm Americans with these lethal drugs. And I  
5147 urge my colleagues to oppose this amendment.

5148           I yield back the remainder of my time.

5149           Mr. Scott. Would the gentleman yield?

5150           Mr. Marino. Yes, sir. Yeah, I take that back, and I  
5151 yield.

5152           Mr. Scott. Thank you. If a girlfriend were to take a  
5153 message and, therefore, become part of the conspiracy, and  
5154 somebody overdosed on her boyfriend's drug dealing products,  
5155 would she be subject to the 20-year mandatory minimum?

5156 Mr. Marino. I think yes based on her involvement, the  
5157 degree of her involvement or knowledge of.

5158 Chairman Smith. The gentleman yields back his time.  
5159 Are there other members who wish to be heard on this  
5160 amendment?

5161 The gentleman from North Carolina, Mr. Watt?

5162 Mr. Watt. Mr. Chairman, I move to strike the last  
5163 word.

5164 Chairman Smith. The gentleman is recognized for five  
5165 minutes?

5166 Mr. Watt. I have been moving to strike the last word  
5167 basically as an intermediary for people. On this one, I  
5168 have very strong feelings because the mandatory minimums  
5169 have just yielded results in a number of cases that are  
5170 mindless. Judges almost rebelling because they are having  
5171 to sentence people under mandatory minimum sentences where  
5172 it is just mindless.

5173 Mr. Marino. Would the gentleman yield for a moment?  
5174 I think I have to clarify something. I think there is a  
5175 misunderstanding of my colleagues on the other side of the  
5176 aisle.

5177 Mr. Watt. I am happy to yield.

5178 Mr. Marino. Thank you. When you were talking about  
5179 the girlfriend, as a prosecutor, that is not an automatic --  
5180 it is up to the prosecutor to ask for that mandatory. And  
5181 that is --

5182 Mr. Watt. It is up to the prosecutor, but --

5183 Mr. Marino. -- not an automatic. I would take that  
5184 case on a case by case basis to determine how much  
5185 involvement.

5186 Mr. Watt. Let me reclaim my time. You might, but if  
5187 you decided and the judge disagreed with you, why should you  
5188 be the arbiter of whether somebody gets a mandatory minimum  
5189 sentence as a prosecutor as opposed to the judge having the  
5190 discretion to evaluate your decision about that? That is  
5191 the problem.

5192 And if a prosecutor's emotionally involved with  
5193 families sometimes, they are subject to political influences  
5194 sometimes. I am not saying you were, but that is just not  
5195 the role that you even ought to want to be in as the final  
5196 arbiter in a criminal justice situation. That is the role  
5197 that a judge should be playing. And you are taking that

5198 discretion away from the judge.

5199 A girlfriend gets a call, passes the call along to --

5200 and these are real cases. We ain't making up facts now.

5201 These are cases in which --

5202 Mr. Gowdy. Would the gentleman yield for just a real

5203 quick question?

5204 Mr. Watt. Yes, sir.

5205 Mr. Gowdy. Can you give me the details of that call,

5206 what is asked for, what is said? Because just getting a

5207 call is not criminal, so what --

5208 Mr. Watt. I need to speak to your boyfriend, and

5209 please take the message. She passes the message along. She

5210 becomes part of the conspiracy in the case.

5211 Mr. Gowdy. She is not even guilty of a crime.

5212 Mr. Watt. Well, she is part of the conspiracy.

5213 Mr. Gowdy. No, she has no mens rea. She has no

5214 criminal knowledge whatsoever if all she does is pass the

5215 phone.

5216 Mr. Watt. She knows her boyfriend is a drug dealer.

5217 Mr. Gowdy. Does she know the conversation is about

5218 drugs?

5219 Mr. Watt. She may or may not.

5220 Mr. Gowdy. Well, I mean, it makes a difference.

5221 Mr. Watt. But you are going to force a judge to put  
5222 her in jail for 20 years just because she took a phone call.  
5223 And it is --

5224 Mr. Adams. Will the gentleman yield?

5225 Mr. Watt. And what we found over the years is that it  
5226 just undermines the integrity of the system. So, all of  
5227 these sentences can be still imposed, but that should not be  
5228 up to the prosecutor. It should be up to somebody who is in  
5229 an arbiter's position.

5230 I am happy to yield to Mrs. Adams.

5231 Mrs. Adams. You said that you are forcing a judge to  
5232 make a decision, but the judge does not make the final  
5233 decision on the case until after the jury has come back and  
5234 there has been a conviction. So, there is no just  
5235 thoughtless adjudication of the crime. I mean, there is a  
5236 process that has taken place prior to that.

5237 Mr. Watt. And the jury does not know what the  
5238 sentence is, so they find that this young lady who had some  
5239 marginal influence with it was involved, yeah. And she ends

5240 up getting a mandatory 20-year sentence for just taking a  
5241 phone call. And the jury has no knowledge of the extent of  
5242 her involvement.

5243 Mr. Marino. Would the gentleman yield for a moment?

5244 Mr. Watt. Let me yield to Mr. Scott, and I am back in  
5245 my facilitator role now.

5246 Mr. Scott. Thank you. And I would ask the gentleman  
5247 three additional minutes.

5248 Chairman Smith. The gentleman's time has expired, and  
5249 the gentleman is recognized for an additional minute?

5250 Mr. Scott. Thank you. Mr. Chairman, Kimba Smith  
5251 lives close to my district. She was given 20-some years  
5252 because her boyfriend was dealing drugs, and she was  
5253 involved. She took some messages. She was not using drugs,  
5254 was not in any way meaningfully involved in any conspiracy.  
5255 But she got 20-some years. Thankfully President Clinton  
5256 gave her a commutation.

5257 Now, one of the letters that I introduced from FARM  
5258 outlines the case where a young lady went out with a friend  
5259 with whom she occasionally used drugs. She gave her one of  
5260 her pain medication patches before they went out for the

5261 evening. She left her at the bar. The next morning, her  
5262 friend was found dead. Traces of the pain medication were  
5263 found in her blood as well as many other drugs, including  
5264 cocaine and Oxycontin. There was nothing to suggest that  
5265 the death was intentional.

5266 She had no prior record, was charged with and pled  
5267 guilty to distribution of a controlled substance. The  
5268 government objected to the sentencing recommendation of 10-  
5269 16 months and argued that she should be sentenced to a  
5270 minimum of 20 years because of her provision of pain  
5271 medication resulted in death. Twenty years.

5272 The judge who sentenced her stated that he believed  
5273 that the defendant deserved a significant sentence, but not  
5274 20 years. He said while convicted of distribution of  
5275 diverse amounts of narcotics is being sentenced for  
5276 homicide, the judge made it clear that he was sentencing the  
5277 lady to 20 years because he felt he had no choice or  
5278 discretion. He specifically noted that he otherwise would  
5279 have been inclined to issue a shorter sentence. And to  
5280 support his view, the judge pointed out that the average  
5281 length of incarceration for defendants convicted of

5282 distribution of the same drug that she gave her friend that  
5283 did not result in death was just seven months. Twenty  
5284 years.

5285 Chairman Smith. The gentleman's time has expired.

5286 Are there other members who wish to be recognized?

5287 The gentleman from South Carolina, Mr. Gowdy?

5288 Mr. Gowdy. I would note the gentleman from Virginia,  
5289 for whom I have great respect. He was candid enough to  
5290 include in his factual recitation she pled guilty. And with  
5291 respect to the gentleman from North Carolina, I think the  
5292 scenario you painted was an 846 scenario. That is a  
5293 conspiracy for which there are no mandatory minimums. She  
5294 would have to be indicted for this substantive offense which  
5295 she would not be indicted for if all she did was pass the  
5296 telephone message on.

5297 But, Mr. Chairman, I want to say this. I was trying  
5298 to make it through the whole day without saying, but I was  
5299 not successful. We had a hearing, and it was a week ago,  
5300 maybe two weeks ago; I think Chairman Sensenbrenner chaired  
5301 it, wherein we learned for the 100th time that the  
5302 sentencing guidelines are worthless, and are of apparently

5303 no more legal import to Federal judges than the lyrics to a  
5304 Wiz Khalifa song. They just do not matter.

5305 And the head of the Sentencing Guideline Commission,  
5306 who sat right there, herself departs from the sentencing  
5307 guidelines. And she works in a courthouse where they depart  
5308 30-something percent of the time from the sentencing  
5309 guidelines. And lest anyone think these are upward  
5310 departures, they are downward departures by a factor of 20.

5311 So, while I do think mandatory minimums make perfect  
5312 sense in violations, I actually, shockingly, I am sure to  
5313 some of my friends on the other side, am open minded when it  
5314 comes to mandatory minimums on drug cases. I am open minded  
5315 to it.

5316 But what we have right now are sentencing guidelines  
5317 that are honored only in their breach. And if the judges  
5318 would start following sentencing guidelines, we would not  
5319 feel the need to impose mandatory minimum sentences to the  
5320 extent that we do now.

5321 Mr. Watt. Would the gentleman yield?

5322 Mr. Gowdy. I would be happy to.

5323 Mr. Scott. Well, did I understand you to say the

5324 conspiracy to distribute drugs to not carry a mandatory  
5325 minimum?

5326 Mr. Gowdy. No, I just said she would be charged 846.  
5327 She would have to be convicted of --

5328 Mr. Watt. Part of the conspiracy.

5329 Mr. Gowdy. Well, she would have to be convicted, I  
5330 believe, of this substantive offense because there are no  
5331 drug amounts.

5332 Mr. Watt. Part of the conspiracy.

5333 Mr. Gowdy. There are no drug amounts. This is not a  
5334 mandatory minimum triggered by drug amount. It is a  
5335 mandatory minimum triggered by the fact that the action  
5336 resulted in death or serious bodily injury. So, if she is  
5337 not indicted for that --

5338 Mr. Watt. Well, suppose she is indicted as part of  
5339 the conspiracy that resulted in death?

5340 Mr. Gowdy. She would have to be indicted for that  
5341 specific substantive count --

5342 Mr. Watt. Right.

5343 Mr. Gowdy. -- which she is not guilty of that  
5344 specific substantive count because she did not give drugs to

5345 anyone.

5346 Mr. Watt. If you are part of the conspiracy that  
5347 resulted in death, and you are indicted for that, along with  
5348 everybody else up and down the chain involved in the  
5349 conspiracy, and somebody died, then everybody is looking at  
5350 the mandatory minimum.

5351 One of the things that when you start talking about  
5352 the guidelines is the guidelines are based on the code  
5353 section you violated. And very often the code section  
5354 itself is not a good indication in the individual case about  
5355 how serious a crime it is.

5356 For example, the same code section, when a 19-year-old  
5357 has consensual sex with a 15-year-old, that is the same code  
5358 section as a 50-year-old having sex with a 13-year-old. One  
5359 of them, I would hope, would get a different sentence than  
5360 the others.

5361 Now, we had testimony at a hearing where they said  
5362 same code section, same sentence. But some of us think that  
5363 a little common sense ought to apply, and they would get  
5364 different sentences.

5365 Mr. Gowdy. If the gentleman would yield, one of the

5366 factors that judges can consider is the age of the offender.

5367 Mr. Watt. Not under --

5368 Mr. Gowdy. There are no mandatory minimums for  
5369 consensual sex.

5370 Mr. Watt. -- the guidelines, if you violate this code  
5371 section, this is what you get.

5372 Mr. Gowdy. Well, there is a safety valve. There is a  
5373 safety valve that gets you --

5374 Chairman Smith. The gentleman from South Carolina, I  
5375 believe, has the time.

5376 Mr. Gowdy. There is a safety valve, and I listened --

5377 Mr. Watt. Would the gentleman yield?

5378 Mr. Gowdy. If I could just make one more point,  
5379 because if I do not, I will not remember it.

5380 The analogies for consensual sex, I am struggling to  
5381 find the Federal jurisdiction for a 19-year-old having sex  
5382 with a 15-year-old. I do not know what Federal law has been  
5383 violated. Those are state laws unless you do it on an  
5384 Indian reservation or --

5385 Mr. Scott. When you cross State lines, you go from  
5386 Arlington to Washington, D.C.

5387 Mr. Gowdy. Okay. That is a different crime. That is  
5388 not just consensual sex. And I am not aware of any  
5389 mandatory minimums with respect to that. The judges can  
5390 take into consideration the relationship between the 19-  
5391 year-old and the 15-year-old and the age of them, and they  
5392 do so.

5393 My point is this. We pass laws with respect to  
5394 sentencing, and they are never followed by the judges.

5395 Mr. Watt. Will the gentleman yield?

5396 Mr. Gowdy. Something talismanically happens when you  
5397 put on that robe and you feel the need to depart 30 percent  
5398 of the time from the sentences that we think are  
5399 appropriate. And that is why we have mandatory minimums.  
5400 And I would be happy to yield to the gentleman from --

5401 Chairman Smith. The gentleman's time has expired.  
5402 Without objection, the gentleman is yielded an additional  
5403 minute?

5404 Mr. Watt. Does the gentleman yield?

5405 Mr. Gowdy. Yes, sir.

5406 Mr. Watt. Because I want to pick up on that point. I  
5407 actually alluded to that because I agree with you that that

5408 is what is eroding the trust of people in the system. And  
5409 we keep piling on more and more and more mandatory minimums,  
5410 which judges then try to figure out some way to deviate  
5411 from, which undermines the trust of the system.

5412 And the problem is not that the judges are being  
5413 disingenuous. They are just trying to be reasonable under  
5414 the circumstances in the facts of the case. You are saying  
5415 they are being unreasonable by deviating. We are saying we  
5416 are being unreasonable by continuing to add more and more  
5417 and more mandatory minimums in factual circumstances just  
5418 need to be taken into account.

5419 Mr. Gowdy. Reclaiming my time. What I am saying is  
5420 statistically that departures by a factor of at least 20 to  
5421 1 are downward and not upward. And I do not think that  
5422 reflects public will. And I need to yield to the former  
5423 United States attorney from the great State of Pennsylvania.

5424 Chairman Smith. The gentleman's time has expired.

5425 The question is on the amendment --

5426 Ms. Jackson Lee. Mr. Chairman?

5427 Chairman Smith. The gentlewoman from Texas, Ms.

5428 Jackson Lee?

5429 Ms. Jackson Lee. I want to take issue with my dear  
5430 friend from South Carolina in the hearing that I think I was  
5431 either in and out. I do not think it is a question of the  
5432 sentencing guidelines having no consequence as much as we  
5433 have just moved into a reordering of or a, if you will, an  
5434 enhanced flexibility that what I sense that the judges were  
5435 trying to become comfortable with.

5436 I am rising to support the gentleman from Virginia's  
5437 amendment, and I am just going to tie it to a simple  
5438 premise, is that we have not had hearings. We now will be  
5439 adding a pile on, as I heard as I walked into the room. We  
5440 have not had hearings to determine the breadth and depth of  
5441 synthetic drugs, how they have grown, the impact of  
5442 mandatory minimum, the impact of sentencing, the impact of  
5443 the levels of incarceration in our jails.

5444 And, frankly, I think that judges in synthetic drugs,  
5445 once we understand the depth and the vastness of them, I  
5446 think we know, I guess, one aspect of those drugs are well  
5447 known to us. But there are many nuances, and there are many  
5448 ways that defendants may come into contact with mandatory --  
5449 excuse me, with synthetic drugs.

5450           And to not allow discretion beyond the mandatory  
5451 minimum through the flexibility that is now being given  
5452 through the Sentencing Commission, I think is a heavy burden  
5453 to have, and only adds to the population of our Federal  
5454 prisons for individuals that might need to go elsewhere.  
5455 But a mandatory minimum, that is a ceiling -- a floor rather  
5456 for our Federal judges. And I do, in fact, do think that  
5457 they are beginning to look at the options that are given  
5458 with the greater flexibility. So, I would support the  
5459 gentleman's amendment of excluding mandatory minimums in  
5460 this legislation.

5461           And I yield back.

5462           Chairman Smith. The question is on the Scott  
5463 amendment.

5464           All in favor, say aye?

5465           [A chorus of ayes.]

5466           Chairman Smith. Opposed, no?

5467           [A chorus of nays.]

5468           Chairman Smith. In the opinion of the chair, the noes  
5469 have it, and the amendment is not agreed to.

5470           Are there other amendments?

5471 A recorded vote has been requested. The clerk will  
5472 call the roll.

5473 Ms. Kish. Mr. Smith?

5474 Chairman Smith. No.

5475 Ms. Kish. Mr. Smith votes no.

5476 Mr. Sensenbrenner?

5477 Mr. Sensenbrenner. No.

5478 Ms. Kish. Mr. Sensenbrenner votes no.

5479 Mr. Coble?

5480 [No response.]

5481 Ms. Kish. Mr. Gallegly?

5482 Mr. Gallegly. No.

5483 Ms. Kish. Mr. Gallegly votes no.

5484 Mr. Goodlatte?

5485 Mr. Goodlate. No.

5486 Ms. Kish. Mr. Goodlatte votes no.

5487 Mr. Lungren?

5488 [No response.]

5489 Ms. Kish. Mr. Chabot?

5490 [No response.]

5491 Ms. Kish. Mr. Issa?

5492 [No response.]

5493 Ms. Kish. Mr. Pence?

5494 [No response.]

5495 Ms. Kish. Mr. Forbes?

5496 [No response.]

5497 Ms. Kish. Mr. King?

5498 [No response.]

5499 Ms. Kish. Mr. Franks?

5500 Mr. Franks. No.

5501 Ms. Kish. Mr. Franks votes no.

5502 Mr. Gohmert?

5503 [No response.]

5504 Ms. Kish. Mr. Jordan?

5505 Mr. Jordan. No.

5506 Ms. Kish. Mr. Jordan votes no.

5507 Mr. Poe?

5508 [No response.]

5509 Ms. Kish. Mr. Chaffetz?

5510 Mr. Chaffetz. No.

5511 Ms. Kish. Mr. Chaffetz votes no.

5512 Mr. Griffin?

5513 Mr. Griffin. No.

5514 Ms. Kish. Mr. Griffin votes no.

5515 Mr. Marino?

5516 Mr. Marino. No.

5517 Ms. Kish. Mr. Marino votes no.

5518 Mr. Gowdy?

5519 Mr. Gowdy. No.

5520 Ms. Kish. Mr. Gowdy votes no.

5521 Mr. Ross?

5522 Mr. Ross. No.

5523 Ms. Kish. Mr. Ross votes no.

5524 Mrs. Adams?

5525 Mrs. Adams. No.

5526 Ms. Kish. Ms. Adams votes no.

5527 Mr. Quayle?

5528 [No response.]

5529 Ms. Kish. Mr. Amodei?

5530 Mr. Amodei. No.

5531 Ms. Kish. Mr. Amodei votes no.

5532 Mr. Conyers?

5533 [No response.]

5534 Ms. Kish. Mr. Berman?

5535 [No response.]

5536 Ms. Kish. Mr. Nadler?

5537 Mr. Nadler. Aye.

5538 Ms. Kish. Mr. Nadler votes aye.

5539 Mr. Scott?

5540 Mr. Scott. Aye.

5541 Ms. Kish. Mr. Scott votes aye.

5542 Mr. Watt?

5543 Mr. Watt. Aye.

5544 Ms. Kish. Mr. Watt votes aye.

5545 Ms. Lofgren?

5546 [No response.]

5547 Ms. Kish. Ms. Jackson Lee?

5548 Ms. Jackson Lee. Aye.

5549 Ms. Kish. Ms. Jackson Lee votes aye.

5550 Ms. Waters?

5551 [No response.]

5552 Ms. Kish. Mr. Cohen?

5553 Mr. Cohen. Aye.

5554 Ms. Kish. Mr. Cohen votes aye.

5555 Mr. Johnson?

5556 [No response.]

5557 Ms. Kish. Mr. Pierluisi?

5558 [No response.]

5559 Ms. Kish. Mr. Quigley?

5560 [No response.]

5561 Ms. Kish. Ms. Chu?

5562 Ms. Chu. Aye.

5563 Ms. Kish. Ms. Chu votes aye.

5564 Mr. Deutch?

5565 [No response.]

5566 Ms. Kish. Ms. Sanchez?

5567 [No response.]

5568 Chairman Smith. The gentleman from California, Mr.

5569 Lungren?

5570 Mr. Lungren. No.

5571 Ms. Kish. Mr. Lungren votes no.

5572 Chairman Smith. The gentleman from Virginia, Mr.

5573 Forbes?

5574 Mr. Forbes. No.

5575 Ms. Kish. Mr. Forbes votes no.

5576 Chairman Smith. The gentleman from North Carolina,  
5577 Mr. Coble?

5578 Mr. Coble. No.

5579 Ms. Kish. Mr. Coble votes no.

5580 Chairman Smith. The clerk will report?

5581 Ms. Kish. Mr. Chairman, 6 members voted aye, 16  
5582 members voted nay.

5583 Chairman Smith. The majority having voted against the  
5584 amendment, the amendment is not agreed to.

5585 Are there other amendments?

5586 The gentleman from Virginia, Mr. Scott?

5587 Mr. Scott. Yes, Mr. Chairman. I have an amendment at  
5588 the desk. I think it is 041.

5589 Chairman Smith. The clerk will report amendment  
5590 number 41. And the gentlewoman from Florida reserves a  
5591 point of order?

5592 Mrs. Adams. Thank you, Mr. Chairman.

5593 Ms. Kish. Amendment to H.R. 1254, offered by Mr.  
5594 Scott, add at the end the following, "Modification of  
5595 limitation on applicability of statutory minimums in certain  
5596 cases." Section 3553 of Title 18 --

5597 Mr. Scott. I ask the amendment be considered as read.

5598 Chairman Smith. Without objection, the amendment will

5599 be considered as read.

5600 [The information follows:]

5601

5602 Chairman Smith. And the gentleman is recognized to  
5603 explain his amendment?

5604 Mr. Scott. Thank you, Mr. Chairman.

5605 The gentleman from South Carolina indicated a desire  
5606 to apply safety valves, and this amendment would modify the  
5607 applicability of statutory minimums in certain cases  
5608 involving synthetic substances.

5609 There have been no studies of actual harm believed to  
5610 be caused by these drugs, and the demographics of users or  
5611 the scope of the problems. As mentioned before, there is  
5612 one mandatory minimum which would apply, and this amendment  
5613 would give the judge discretion to go below the 20-year  
5614 mandatory minimum sentence in these cases if the offense  
5615 involved synthetic drugs. In short, it would permit, but  
5616 not require, the application of the safety value in order  
5617 for the judge to sentence below the mandatory minimum.

5618 This amendment strikes a reasonable balance by  
5619 allowing offenses involving substance scheduled in this bill  
5620 to be treated differently given the lack of data to justify  
5621 them treating the same as other controlled substances.

5622 If we are going to leave the 20-year mandatory minimum

5623 on the books, we ought to allow judges to sentence below the  
5624 mandatory minimum when the imposition of that sentence  
5625 violates common sense. And I would hope we would adopt at  
5626 least a safety valve amendment

5627 And I yield back.

5628 Chairman Smith. Thank you, Mr. Scott.

5629 Does the gentlewoman insist on her point of order?

5630 Mrs. Adams. Yes, I insist on my point of order. This  
5631 bill is very narrow. It merely amends the Controlled  
5632 Substance Act to add specific substances to the drug control  
5633 schedule, and addresses the scheduling of substances.

5634 The amendment goes beyond the scope of the bill by  
5635 amending Title 18 with regard to mandatory minimums.  
5636 Prosecution and sentencing for violations of the law are not  
5637 germane topics to this bill. I, therefore, insist on my  
5638 point of order that this amendment is non-germane.

5639 Chairman Smith. Thank you, Mrs. Adams.

5640 Does the gentleman from Virginia want to speak on the  
5641 point of order?

5642 Ms. Scott. Yes, Mr. Chairman. What the bill does is  
5643 put substances in the Code that would provoke a 20-year

5644 mandatory minimum. And what this amendment does, it says  
5645 that the 20-year mandatory minimum should be subject to the  
5646 safety valve. You put the crime on the books, the  
5647 punishment for the crime certainly ought to be germane to  
5648 the discussion.

5649 You put this stuff in the Code, and they are subject  
5650 to the 20-year mandatory minimum. All this says is that if  
5651 you are going to put in the Code, it should not be subject  
5652 to the 20-year mandatory minimum, except it would be still  
5653 subject to the 20-year mandatory minimum, but with the  
5654 safety valve.

5655 Now, how you can put something on the books and have a  
5656 20-year mandatory minimum and not be able to discuss whether  
5657 or not that mandatory minimum ought to apply is absurd. Of  
5658 course it is germane. And I would hope that we continue  
5659 with the discussion.

5660 Chairman Smith. Thank you, Mr. Scott.

5661 The chair is prepared to rule on the point of order.  
5662 And in the opinion of the chair, the amendment is not  
5663 germane.

5664 We will now go to what --

5665 Mr. Scott. Mr. Chairman, I challenge the ruling of  
5666 the chair.

5667 Mr. Sensenbrenner. Mr. Chairman, I move to lay the  
5668 appeal on the table.

5669 Chairman Smith. The question is on tabling the  
5670 motion.

5671 All in favor, say aye?

5672 [A chorus of ayes.]

5673 Chairman Smith. Opposed, no?

5674 [A chorus of nays.]

5675 Chairman Smith. In the opinion of the chair, the ayes  
5676 have it, and the motion is tabled.

5677 Mr. Scott. Roll call.

5678 Chairman Smith. A roll call vote has been requested.

5679 And the clerk will call the roll?

5680 Ms. Kish. Mr. Smith?

5681 Chairman Smith. Aye.

5682 Ms. Kish. Mr. Smith votes aye.

5683 Mr. Sensenbrenner?

5684 Mr. Sensenbrenner. Aye.

5685 Ms. Kish. Mr. Sensenbrenner votes aye.

5686 Mr. Coble?

5687 [No response.]

5688 Ms. Kish. Mr. Gallegly?

5689 Mr. Gallegly. Aye.

5690 Ms. Kish. Mr. Gallegly votes aye.

5691 Mr. Goodlatte?

5692 Mr. Goodlatte. Aye.

5693 Ms. Kish. Mr. Goodlatte votes aye.

5694 Mr. Lungren?

5695 [No response.]

5696 Ms. Kish. Mr. Chabot?

5697 [No response.]

5698 Ms. Kish. Mr. Issa?

5699 [No response.]

5700 Ms. Kish. Mr. Pence?

5701 [No response.]

5702 Ms. Kish. Mr. Forbes?

5703 [No response.]

5704 Ms. Kish. Mr. King?

5705 [No response.]

5706 Ms. Kish. Mr. Franks?

5707 Mr. Franks. Aye.

5708 Ms. Kish. Mr. Franks votes aye.

5709 Mr. Gohmert?

5710 [No response.]

5711 Ms. Kish. Mr. Jordan?

5712 Mr. Jordan. Yes.

5713 Ms. Kish. Mr. Jordan votes yes.

5714 Mr. Poe?

5715 [No response.]

5716 Ms. Kish. Mr. Chaffetz?

5717 Mr. Chaffetz. Aye.

5718 Ms. Kish. Mr. Chaffetz votes aye.

5719 Mr. Griffin?

5720 Mr. Griffin. Aye.

5721 Ms. Kish. Mr. Griffin votes aye.

5722 Mr. Marino?

5723 Mr. Marino. Aye.

5724 Ms. Kish. Mr. Marino votes aye.

5725 Mr. Gowdy?

5726 Mr. Gowdy. Aye.

5727 Ms. Kish. Mr. Gowdy votes aye.

5728 Mr. Ross?

5729 [No response.]

5730 Ms. Kish. Mrs. Adams?

5731 Mrs. Adams. Yes.

5732 Ms. Kish. Ms. Adams votes yes.

5733 Mr. Quayle?

5734 [No response.]

5735 Ms. Kish. Mr. Amodei?

5736 Mr. Amodei. Yes.

5737 Ms. Kish. Mr. Amodei votes yes.

5738 Mr. Conyers?

5739 [No response.]

5740 Ms. Kish. Mr. Berman?

5741 [No response.]

5742 Ms. Kish. Mr. Nadler?

5743 Mr. Nadler. No.

5744 Ms. Kish. Mr. Nadler votes no.

5745 Mr. Scott?

5746 Mr. Scott. No.

5747 Ms. Kish. Mr. Scott votes no.

5748 Mr. Watt?

5749 [No response.]

5750 Ms. Lofgren?

5751 [No response.]

5752 Ms. Kish. Ms. Jackson Lee?

5753 Ms. Jackson Lee. No.

5754 Ms. Kish. Ms. Jackson Lee votes no.

5755 Ms. Waters?

5756 [No response.]

5757 Ms. Kish. Mr. Cohen?

5758 [No response.]

5759 Ms. Kish. Mr. Johnson?

5760 [No response.]

5761 Ms. Kish. Mr. Pierluisi?

5762 [No response.]

5763 Ms. Kish. Mr. Quigley?

5764 [No response.]

5765 Ms. Kish. Ms. Chu?

5766 Ms. Chu. No.

5767 Ms. Kish. Ms. Chu votes no.

5768 Mr. Deutch?

5769 [No response.]

5770 Ms. Kish. Ms. Sanchez?

5771 [No response.]

5772 Chairman Smith. The gentleman from North Carolina,

5773 Mr. Coble?

5774 Mr. Coble. Aye.

5775 Ms. Kish. Mr. Coble votes aye.

5776 Chairman Smith. The clerk will report?

5777 Ms. Kish. Mr. Chairman, 13 members voted aye, 4

5778 members voted nay.

5779 Chairman Smith. The majority having voted in favor of

5780 tabling the motion, the motion is tabled.

5781 Are there --

5782 Mr. Jackson Lee. Mr. Chairman?

5783 Chairman Smith. We will now go to the next amendment.

5784 Does the gentlewoman from Texas have an amendment?

5785 Ms. Jackson Lee. Yes, 035.

5786 Chairman Smith. The clerk will report the amendment.

5787 Mrs. Adams. Mr. Chairman?

5788 Chairman Smith. And the gentlewoman from Florida

5789 reserves a point of order.

5790 Mrs. Adams. Thank you.

5791 Ms. Kish. Amendment to H.R. 1254 offered by Ms.  
5792 Jackson Lee, add at the end the following, "Demographic  
5793 study of users of synthetic drugs, a study."

5794 Chairman Smith. Without objection, the amendment will  
5795 be considered as read.

5796 [The information follows:]

5797

5798 Chairman Smith. And the gentlewoman is recognized to  
5799 explain the amendment?

5800 Ms. Jackson Lee. I thank the gentleman and would  
5801 follow suit on the previous offer of Mr. Scott to, one, I am  
5802 going to ask for a waiver of the germaneness and argue as  
5803 well that it is germane.

5804 But let me for a moment, Mr. Chairman, go out of order  
5805 to indicate that I was the ranking member on a Homeland  
5806 Security subcommittee hearing, and I missed the following  
5807 votes: Cohen 061 . I ask unanimous consent that these be  
5808 placed appropriately in the record. Cohen 061, I would have  
5809 voted aye. Nadler 054, I would have voted aye. Scott 036,  
5810 I would have voted aye. Cohen 211, I would have voted aye.  
5811 I ask the chairman that these remarks and notations be  
5812 placed in the appropriate place in the record. I ask  
5813 unanimous consent.

5814 Chairman Smith. Without objection.

5815 [The information follows:]

5816

5817           Ms. Jackson Lee. Let me start off by saying that as  
5818 Ms. Adams has brought to this committee very valuable  
5819 firsthand experience, I frankly believe this legislation  
5820 could on this committee have bipartisan support, but we have  
5821 made the comment and notation of the lack of information  
5822 data hearing.

5823           And I remember the issues of the date rape drug that  
5824 culminated in a legislative initiative by myself and Mr.  
5825 Upton. I know that there have been a number of epidemics,  
5826 if you will, from alleged synthetic drugs utilized that can  
5827 be very dangerous.

5828           My legislation is similar to trying to put the horse  
5829 before the cart, and that is to determine a demographic  
5830 which broadly suggest regions where it might be a larger  
5831 problem than others, the type of users, the ages, which  
5832 makes for a more effective initiative, even beyond the  
5833 scheduling or the schedule focus that this particular  
5834 legislation has.

5835           I am sure the initial sponsor of the bill probably has  
5836 an independent fact situation from his particular district.  
5837 Ms. Adams has cited a number of incidences that may have

5838 come in her experience. But a simple straight up and down  
5839 initiative this is not, and we did not have a hearing to  
5840 have a range of understanding of the basis of the  
5841 legislation.

5842 So, I would hope that a waiver could be rendered on  
5843 the basis of making this a better bill, and it can, to add  
5844 this language to the legislation so that we are far aware of  
5845 the vast population that this may be impacting.

5846 Many of the substances regulated in this Act have only  
5847 recently been introduced to the market. As a result, there  
5848 is little pharmacological and psychopharmacological research  
5849 available to fully grasp the health consequences of these  
5850 products in order to adequately address a potential public  
5851 health concern. We do not use who is using, as I have said,  
5852 where it is being used. We must at least know the rate at  
5853 which these drugs are being used, by whom, and for what  
5854 purpose. And having a hunt or merely speculating on who may  
5855 be using these drugs is not the same as having actual  
5856 scientific data.

5857 We must keep in mind that by expanding the list of  
5858 drugs that are on Schedule 1, we also expand the pool of

5859 individual users who today are legally using these compounds  
5860 and then tomorrow will be criminals for using the same  
5861 substances. It goes, again, to the question of just an open  
5862 door to the Federal penitentiary, to the Federal jail  
5863 system. And, to my knowledge, in the midst of super  
5864 committees and super cuts, I am not sure if we are going to  
5865 have beds, jailers, Federal system, as they say, anyhow,  
5866 because all of those are in the eye of the storm.

5867         Prior to expending the potential groups of people who  
5868 may be prosecuted for the use of these drugs, we need a  
5869 clear picture of who they are and whether an education  
5870 campaign would be a better option.

5871         In large part, public officials only learn about how  
5872 some people are using these products based on the amount of  
5873 people who have called poison control centers or have  
5874 visited hospital emergency rooms with symptoms. These  
5875 people are not mostly likely criminals. They have either  
5876 mistakenly come into contact with this, or they have been,  
5877 as you would hear from your parents, in bad company.

5878         The question is, do we need to make bad company people  
5879 criminals and lifelong residents of the Federal prison

5880 system? I would argue vigorously not.

5881 So, I would ask my colleagues to support this  
5882 amendment. I would ask the chairman to, in essence, seek  
5883 and accept a waiver on this particular language because I  
5884 think it would be a very effective addition to this  
5885 legislation. My amendment would, again, speak to the issue  
5886 of information, which we really do not have at this time.

5887 Chairman Smith. Thank you, Ms. Jackson Lee.

5888 Ms. Jackson Lee. I yield back.

5889 Chairman Smith. Does the gentlewoman insist on her  
5890 point of order?

5891 Mrs. Adams. Yes, I insist on my point of order. I  
5892 respect her concerns, but this bill is very narrow. It  
5893 merely amends the Control Substances Act to add specific  
5894 substances to the drug control schedule, and address the  
5895 scheduling of those substances.

5896 This amendment goes beyond the scope of the bill by  
5897 requiring a study to examine various aspects of the users of  
5898 synthetic drugs. This bill is confined to the subject of  
5899 the drugs themselves. While a study of the users on the  
5900 drugs might be interesting, it is not germane to the subject

5901 matter of the bill.

5902 I, therefore, insist on my point of order that this  
5903 amendment is not germane.

5904 Chairman Smith. Thank you, Mrs. Adams.

5905 Does the gentlewoman from Texas want to address the  
5906 point of order?

5907 Ms. Jackson Lee. Yes, Mr. Chairman. I indicated  
5908 earlier that the narrowness of the bill is as it is  
5909 presently drafted. It would be quite appropriate for this  
5910 particular addition to give more credence to the listing of  
5911 these drugs on Schedule 1. And I believe Congress does  
5912 itself a disservice by limiting its information, and  
5913 legislators can expand, if you will, the framework of a  
5914 legislative initiative. That is what amendments are all  
5915 about.

5916 I would ask that, again, the point of order be  
5917 rejected. I would also ask a waiver to be put in place if  
5918 there is a question of the germaneness of this particular  
5919 addition, which I think would make the bill a better bill.

5920 I yield back.

5921 Chairman Smith. Thank you, Ms. Jackson Lee.

5922           The chair is prepared to rule on the point of order,  
5923 and in the opinion of the chair, the amendment is not in  
5924 order.

5925           Ms. Jackson Lee. Mr. Chairman, I seek to appeal the  
5926 ruling of the chair.

5927           Mr. Sensenbrenner. Mr. Chairman. I move to lay the  
5928 appeal on the table.

5929           Ms. Jackson Lee. I ask for a roll call vote.

5930           Chairman Smith. The roll call vote will take place.

5931           All in favor of tabling the motion, say aye?

5932           [A chorus of ayes.]

5933           Chairman Smith. All opposed, no?

5934           [A chorus of nays.]

5935           Chairman Smith. The clerk will call the roll?

5936           Ms. Kish. Mr. Smith?

5937           Chairman Smith. No. I mean, yes on the table. No,  
5938 on the amendment.

5939           Ms. Kish. Mr. Smith votes aye.

5940           Mr. Sensenbrenner?

5941           Mr. Sensenbrenner. Aye.

5942           Ms. Kish. Mr. Sensenbrenner votes aye.

5943 Mr. Coble?

5944 Mr. Coble. Aye.

5945 Ms. Kish. Mr. Coble votes aye.

5946 Mr. Gallegly?

5947 Mr. Gallegly. Aye.

5948 Ms. Kish. Mr. Gallegly votes aye.

5949 Mr. Goodlatte?

5950 [No response.]

5951 Ms. Kish. Mr. Lungren?

5952 [No response.]

5953 Ms. Kish. Mr. Chabot?

5954 [No response.]

5955 Ms. Kish. Mr. Issa?

5956 [No response.]

5957 Ms. Kish. Mr. Pence?

5958 [No response.]

5959 Ms. Kish. Mr. Forbes?

5960 [No response.]

5961 Ms. Kish. Mr. King?

5962 [No response.]

5963 Ms. Kish. Mr. Franks?

5964 [No response.]

5965 Ms. Kish. Mr. Gohmert?

5966 [No response.]

5967 Ms. Kish. Mr. Jordan?

5968 Mr. Jordan. Yes.

5969 Ms. Kish. Mr. Jordan votes yes.

5970 Mr. Poe?

5971 [No response.]

5972 Ms. Kish. Mr. Chaffetz?

5973 [No response.]

5974 Ms. Kish. Mr. Griffin?

5975 Mr. Griffin. Aye.

5976 Ms. Kish. Mr. Griffin votes aye.

5977 Mr. Marino?

5978 Mr. Marino. Aye.

5979 Ms. Kish. Mr. Marino votes aye.

5980 Mr. Gowdy?

5981 Mr. Gowdy. Yes.

5982 Ms. Kish. Mr. Gowdy votes yes.

5983 Mr. Ross?

5984 Mr. Ross. Aye.

5985 Ms. Kish. Mr. Ross votes aye.

5986 Mrs. Adams?

5987 Mrs. Adams. Aye.

5988 Ms. Kish. Ms. Adams votes aye.

5989 Mr. Quayle?

5990 [No response.]

5991 Ms. Kish. Mr. Amodei?

5992 Mr. Amodei. Aye.

5993 Ms. Kish. Mr. Amodei votes aye.

5994 Mr. Conyers?

5995 [No response.]

5996 Ms. Kish. Mr. Berman?

5997 [No response.]

5998 Ms. Kish. Mr. Nadler?

5999 Mr. Nadler. No.

6000 Ms. Kish. Mr. Nadler votes no.

6001 Mr. Scott?

6002 Mr. Scott. No.

6003 Ms. Kish. Mr. Scott votes no.

6004 Mr. Watt?

6005 [No response.]

6006 Ms. Kish. Ms. Lofgren?

6007 [No response.]

6008 Ms. Kish. Ms. Jackson Lee?

6009 Ms. Jackson Lee. No.

6010 Ms. Kish. Ms. Jackson Lee votes no.

6011 Ms. Waters?

6012 [No response.]

6013 Ms. Kish. Mr. Cohen?

6014 Mr. Cohen. No.

6015 Ms. Kish. Mr. Cohen votes no.

6016 Mr. Johnson?

6017 [No response.]

6018 Ms. Kish. Mr. Pierluisi?

6019 [No response.]

6020 Ms. Kish. Mr. Quigley?

6021 [No response.]

6022 Ms. Kish. Ms. Chu?

6023 [No response.]

6024 Ms. Kish. Mr. Deutch?

6025 [No response.]

6026 Ms. Kish. Ms. Sanchez?

6027 [No response.]

6028 Chairman Smith. The gentleman from Virginia, Mr.

6029 Forbes?

6030 Mr. Forbes. Yes.

6031 Ms. Kish. Mr. Forbes votes yes.

6032 Chairman Smith. Another gentleman from Virginia, Mr.

6033 Goodlatte?

6034 Mr. Goodlatte. Aye.

6035 Ms. Kish. Mr. Goodlatte votes aye.

6036 Chairman Smith. The clerk will report?

6037 Ms. Kish.

6038 Ms. Kish. Mr. Chairman, 13 members voted aye, 4

6039 members voted nay.

6040 Chairman Smith. The ayes have it, and the motion is

6041 tabled.

6042 Are there any other amendments?

6043 I believe this is the last amendment of the day.

6044 The gentleman from Virginia, Mr. Scott?

6045 Mr. Scott. Mr. Chairman, I have an amendment at the

6046 desk.

6047 Chairman Smith. The clerk will report the amendment?

6048 Mr. Scott. It is FB001.

6049 Ms. Kish. Amendment to H.R. 1254, offered by Mr.

6050 Scott, add at the end the following, "Study of the

6051 Controlled Substances Act and other relevant" --

6052 Chairman Smith. Without objection, the amendment will

6053 be considered as read.

6054 [The information follows:]

6055

6056 Chairman Smith. The gentleman is recognized to  
6057 explain his amendment?

6058 Mr. Scott. Thank you, Mr. Chairman.

6059 Mr. Chairman, this amendment will require the  
6060 comptroller general to evaluate and report on the DoJ  
6061 registration process for Schedule 1 controlled substances.

6062 As we have learned today, it is a very complicated  
6063 process. And we have heard from scientists suggesting that  
6064 many of these substances being on Schedule 1 will severely  
6065 hinder scientific research, and also will severely hinder  
6066 scientific evaluation into the health implications of these  
6067 substances.

6068 We would hope that we would have research and research  
6069 related. There is an approval basis for research and  
6070 research related requests to get Schedule 1 drugs, but  
6071 everybody we have heard from says it is virtually impossible  
6072 to get that approval. So, a lot of research is just stymied  
6073 because of this process. Existing government laws and  
6074 regulations, I believe, to hinder the ability of scientists  
6075 and academics to access Schedule 1 drugs for that reason.

6076 Mr. Chairman, I would hope that we would allow the

6077 comptroller general to do a study on the whole process to  
6078 see if we are doing it the best way we can.

6079 I yield back.

6080 Chairman Smith. Thank you, Mr. Scott.

6081 Does the gentleman from Pennsylvania wish to be  
6082 recognized?

6083 Mr. Marino. Yes, Chairman, I do.

6084 Chairman Smith. Yes, the gentleman is recognized?

6085 Mr. Marino. I speak in opposition to this amendment,  
6086 and I move to strike the last word.

6087 Chairman Smith. The chairman is recognized for five  
6088 minutes.

6089 Mr. Marino. This amendment misstates how drugs listed  
6090 on Schedule 1 of the Controlled Substance Act, the CSA, can  
6091 be used. Drugs that are considered controlled substances  
6092 under the CSA are divided into five schedules. H.R. 1254  
6093 adds a list of synthetic drugs to Schedule 1 of the CSA, the  
6094 most restrictive of the five schedules.

6095 Schedule 1 drugs are those with a high tendency for  
6096 abuse and no accepted medical use. This schedule includes  
6097 drugs such as marijuana, heroin --

6098 Mr. Scott. Mr. Chairman?

6099 Mr. Marino. -- ecstasy and LSD.

6100 Mr. Scott. If the gentleman would suspend, I think in  
6101 light of the vote coming up, I will withdraw the amendment.

6102 Chairman Smith. Okay. Without objection, the  
6103 amendment is withdrawn.

6104 If there are no other amendments -- thank you, Mr.  
6105 Scott, that is appreciated.

6106 The question is on the Adams substitute.

6107 Those in favor, say aye?

6108 [A chorus of ayes.]

6109 Chairman Smith. Opposed, no?

6110 [A chorus of nays.]

6111 Chairman Smith. In the opinion of the chair, the ayes  
6112 have it, and the amendment is agreed to.

6113 Chairman Smith. A reporting quorum being present, the  
6114 question is on reporting the bill, as amended, favorably to  
6115 the House.

6116 Those in favor say aye?

6117 [A chorus of ayes.]

6118 Chairman Smith. Opposed, no?

6119 [A chorus of nays.]

6120 Chairman Smith. The ayes have it, and the bill, as  
6121 amended, is ordered reported favorably.

6122 Without objection, the bill will be reported as a  
6123 single amendment in the nature of a substitute,  
6124 incorporating amendments adopted. And staff is authorized  
6125 to make technical and conforming changes.

6126 Members will have 2 days to submit views.

6127 [The information follows:]

6128

6129 Chairman Smith. I thank all members for their lengthy  
6130 day of work and their interest in this subject.

6131 And we stand adjourned.

6132 [Whereupon, at 5:19 p.m., the committee was  
6133 adjourned.]