

1 NATIONAL CAPITOL CONTRACTING
2 RPTS CATALA
3 HJU123000

4 MARKUP OF H.R. 1892; H.R. 1761;
5 H.R. 1039; H.R. 2266
6 Wednesday, May 3, 2017
7 House of Representatives,
8 Committee on the Judiciary,
9 Washington, D.C.

10 The committee met, pursuant to call, at 10:23 a.m., in
11 Room 2141, Rayburn House Office Building, Hon. Bob Goodlatte
12 [chairman of the committee] presiding.

13 Present: Representatives Goodlatte, Smith, Chabot,
14 Issa, King, Franks, Gohmert, Jordan, Poe, Marino, Gowdy,
15 Farenthold, Collins, DeSantis, Buck, Ratcliffe, Gaetz,
16 Johnson of Louisiana, Biggs, Conyers, Nadler, Lofgren,
17 Jackson Lee, Cohen, Johnson of Georgia, Deutch, Bass,
18 Cicilline, Swalwell, Lieu, Raskin, Jayapal, and Schneider.

19 Staff Present: Shelley Husband, Staff Director; Branden
20 Ritchie, Deputy Staff Director; Zach Somers, Parliamentarian

21 and General Counsel; Jason Cervenak, Counsel, Subcommittee
22 on Crime, Terrorism, Homeland Security, and Investigations;
23 Meg Barr, Counsel, Subcommittee on Crime, Terrorism,
24 Homeland Security and Investigations; Ryan Dattilo, Counsel,
25 Subcommittee on Regulatory Reform, Commercial and Antitrust
26 Law; Alley Adcock, Clerk; Danielle Brown, Minority Chief
27 Legislative Counsel and Parliamentarian; Matt Morgan,
28 Minority Counsel; Susan Jensen, Minority Senior Counsel; Joe
29 Graupensberger, Minority Chief Counsel, Subcommittee on
30 Crime, Terrorism, Homeland Security, and Investigations;
31 David Greengrass, Minority Counsel; Monalisa Dugue, Minority
32 Deputy Chief Counsel, Subcommittee on Crime, Terrorism,
33 Homeland Security, and Investigations; Elizabeth McElvein,
34 Minority Professional Staff; Joseph Ehrenkrantz, Minority
35 Professional Staff; Veronica Eligan, Minority Professional
36 Staff; Regina Milledge-Brown, Minority Counsel; Slade Bond,
37 Minority Chief Counsel, Subcommittee on RRCAL; and Perry
38 Apelbaum, Minority Chief Counsel and Staff Director.

39 Chairman Goodlatte. The Judiciary Committee will come
40 to order. Without objection, the chair is authorized to
41 declare a recess at any time. Pursuant to notice, I now
42 call up H.R. 1892 for purposes of markup and move that the
43 committee report the bill favorably to the House. The clerk
44 will report the bill.

45 Ms. Adcock. H.R. 1892, to amend title 4 United States
46 Code to provide for the flying of the flag at half-staff in
47 the event of the death of a first responder in the line of
48 duty.

49 [The bill follows:]

50 ***** INSERT 1 *****

51 Chairman Goodlatte. Without objection, the bill is
52 considered as read and open for amendment at any time. And
53 I will begin by recognizing myself for an opening statement.

54 On June 14, 1777, the Continental Congress passed an
55 act establishing an official flag for our new Nation. The
56 resolution stated that the flag would be 13 stripes,
57 alternate red and white, and that the Union be 13 stars,
58 white in a blue field, representing a new constellation.

59 Since that time, the flag has evolved; changes were
60 made to its design, shape, and arrangement, with new stars
61 added to reflect the admission of each new State. What has
62 remained steadfast, however, is what the flag represents.
63 It represents one Nation; it represents freedom; it
64 represents justice; and it represents the sacrifices made in
65 pursuit of our common values.

66 Federal law provides guidance in displaying and
67 handling the flag, so that it is afforded the respect it
68 deserves. Abiding by these guidelines is a way to symbolize
69 the value and love we all hold for what it represents. That
70 is why it is not only appropriate, but necessary for the
71 flag's codes and guidelines to include the provision
72 proposed in H.R. 1892, the Hometown Heroes Act.

73 This bill amends the flag code to permit Governors and
74 the Mayor of Washington, D.C., to order that the flag be
75 flown at half-staff in the event that a public safety

76 officer dies in the line of duty. These public safety
77 officers include local police officers, firefighters, and
78 EMS professionals, a class of individuals who make great
79 sacrifices so we all can live in a free country. These
80 officers work long hours, consistently experience
81 traumatizing incidents, and place themselves in harm's way
82 so we can live the way we do. These sacrifices often go
83 unappreciated.

84 When an officer dies in the line of duty, they are
85 making the ultimate sacrifice for their community, their
86 family, and for their country. This bill allows the
87 American people to show their appreciation to these men and
88 women, who are truly the bulwark between order and chaos.
89 They are people who represent the values the Founders held
90 so dear so many years ago. Their sacrifice must be
91 recognized and publicly acknowledged, so it is not taken for
92 granted.

93 I urge my colleagues to support this legislation, and
94 it is now my pleasure to recognize the ranking member of the
95 committee, the gentleman from Michigan, Mr. Conyers, for his
96 opening statement.

97 [The prepared statement of Chairman Goodlatte follows:]

98 ***** COMMITTEE INSERT *****

99 Mr. Conyers. Thank you, Chairman Goodlatte. Members
100 of the committee, H.R. 1892, Honoring Hometown Heroes Act,
101 will bestow one of the highest honors that can be given to
102 our first responders, who have died in the line of duty, by
103 having the United States flag lowered in their respective
104 jurisdictions.

105 The bill amends the U.S. flag code to allow Governors
106 of a State, territory, or possession of the United States,
107 and the Mayor of the District of Columbia to order the flag
108 be lowered to half-staff if a first responder from the
109 jurisdiction dies while serving in the line of duty.

110 Our first responders put their lives in the line daily
111 for the greater good of those whom they have taken an oath
112 to serve and protect. Unfortunately, some first responders
113 make the ultimate sacrifice and die while in the line of
114 duty, serving and protecting their communities.

115 Currently, under the United States flag code, a
116 Governor of a State, territory, or possession of the United
117 States, and the Mayor of the District of Columbia can order
118 that the flag be lowered to half-staff after the death of a
119 present or former government official or after the death of
120 a member of the Armed Forces from that jurisdiction. It is
121 only fitting that, given the daily sacrifices made by first
122 responders, that we honor these brave men and women in the
123 same way as we honor government officials and members of the

124 Armed Forces when they make the ultimate sacrifice by
125 authorizing Governors and the Mayor of the District of
126 Columbia to order that our flag be lowered to half-staff.

127 And so, for these reasons, I urge my colleagues to
128 support this important bill, and I thank the chairman.

129 [The prepared statement of Mr. Conyers follows:]

130 ***** COMMITTEE INSERT *****

131 Chairman Goodlatte. The chair thanks the gentleman.
132 Are there any amendments to H.R. 1892?

133 A reporting quorum being present, the question is on
134 the motion to report the bill H.R. 1892 favorably to the
135 House.

136 Those in favor will say aye.

137 Those opposed, no.

138 The ayes have it, and the bill is ordered reported
139 favorably. Members will have 2 days to submit views.

140 Pursuant to notice, I now call up H.R. 1761 for
141 purposes of markup and move that the committee report the
142 bill favorably to the House.

143 The clerk will report the bill.

144 Ms. Adcock. H.R. 1761, to amend title 18 of the United
145 States Code to criminalize the knowing consent of the visual
146 depiction or live transmission of a minor engaged in
147 sexually-explicit conduct and for other purposes.

148 [The bill follows:]

149 ***** INSERT 2 *****

150 Chairman Goodlatte. Without objection, the bill is
151 considered as read and open for amendment at any time. And
152 I will begin by recognizing myself for an opening statement.

153 H.R. 1761, the Protecting Against Child Exploitation
154 Act of 2017, fixes a regrettable, judicially-created
155 loophole in the Federal Production of Child Pornography
156 statute.

157 In U.S. v. Palomino-Coronado, the Fourth Circuit Court
158 of Appeals reversed the defendant's conviction for
159 production of child pornography, citing insufficient
160 evidence. Under the facts of the case, the defendant had
161 engaged in sexual activity with a 7-year-old child and had
162 taken a picture of himself doing so. However, the Fourth
163 Circuit held that a defendant must initiate sexually-elicited
164 conduct with the specific intent to create child
165 pornography.

166 In Palomino's case, the court determined that the
167 single photo is not evidence that Palomino-Coronado engaged
168 in sexual activity with the child to take the picture, only
169 that he engaged in sexual activity with the child and took a
170 picture. Needless to say, this decision has extremely
171 undesirable consequences in the prosecution of the
172 production of child pornography.

173 It has created a new defense whereby a defendant can
174 merely deny a preformed, specific intent to record a sexual

175 offense of a minor and escape Federal conviction. That is
176 untenable and clearly contrary to Congress' intent. The
177 creation of child pornography must be adequately deterred to
178 protect children like the 7-year-old Palomino victim. This
179 judicially-created hurdle protects her abuser.

180 I thank Mr. Johnson for introducing this legislation to
181 ensure that sexual predators cannot avoid responsibility for
182 their heinous acts against children, and I urge my
183 colleagues to support this important bill, and it is now my
184 pleasure to recognize the ranking member of the judiciary
185 committee, Mr. Conyers, for his opening statement.

186 [The prepared statement of Chairman Goodlatte follows:]

187 ***** COMMITTEE INSERT *****

188 Mr. Conyers. Thank you, Chairman Goodlatte. Members
189 of the committee, H.R. 1761, Protecting Against Child
190 Exploitation Act, would restructure one section of title 18
191 of the United States Code, as, apparently, requested by the
192 unit at the Justice Department that enforces the law against
193 child pornography.

194 The bill is intended to address shortcomings in section
195 2251 that the Department has identified in the statute,
196 based on its experience implementing the law. The bill
197 would separate the current provision concerning the
198 production of child pornography into five enumerated
199 offenses.

200 Section 2251(a) prohibits the use of a child to produce
201 child pornography and related conduct, including overseas
202 production and advertising child pornography. Two new
203 offenses would be added to this section to prohibit the
204 production of child pornography and the transmission of live
205 depictions of a child engaged in sexually-explicit conduct,
206 such as livestreaming abuse online.

207 This bill would modify the offense of having a minor
208 assist in sexually-explicit conduct for the purpose of
209 producing or transmitting child pornography to prohibit
210 having a minor assist in sexually-explicit conduct that
211 violates each of the three, newly-enumerated production
212 offenses, except transportation of a minor for use in child

213 pornography production.

214 The prohibition against the production of child
215 pornography abroad would be amended to forbid the live
216 transmission of child pornography produced abroad. The
217 jurisdictional requirement for each of the offenses
218 enumerated in section 2251, except the production of child
219 pornography abroad, would be codified in a separate
220 subsection. Other portions of the bill would be modified to
221 follow the new structure of the statute for consistency.

222 Unfortunately, current law provides a series of
223 mandatory minimum terms of imprisonment for production of
224 child pornography offenses. First-time offenses are
225 punishable by mandatory imprisonment of at least 15 years;
226 offenders with a prior conviction face mandatory
227 imprisonment for at least 25 years; and offenders with two
228 or more prior convictions must be sentenced to imprisonment
229 of at least 35 years.

230 By modifying and expanding section 2251 to include
231 several new ways in which to violate the prohibition against
232 the production of child pornography, it would subject new
233 classes of defendants to mandatory minimum sentences.

234 To avoid this result, I will offer an amendment to
235 strike the mandatory minimums in current law applicable to
236 this section, but retain the very high maximum penalties so
237 that judges may still, nevertheless, impose even the most

238 severe sentences, when appropriate, according to each case,
239 and I look forward to the consideration of my amendment and
240 further discussion of the bill.

241 I yield back and thank the chair.

242 [The prepared statement of Mr. Conyers follows:]

243 ***** COMMITTEE INSERT *****

244 Chairman Goodlatte. The chair thanks the gentleman and
245 recognizes the sponsor of the bill, the gentleman from
246 Louisiana, Mr. Johnson, for his opening statement.

247 Mr. Johnson of Louisiana. Thank you, Mr. Chairman. I
248 am honored today to speak in support of my legislation, the
249 Protecting Against Child Exploitation Act, which aims to
250 close a court-created loophole, as we have heard, that
251 exists in our law and, as the title suggests, further
252 protect our children from predators.

253 When I first arrived at Congress after almost 20 years
254 of litigating constitutional law cases, I was deeply
255 concerned to learn that this loophole even existed in
256 current Federal law, essentially allowing a predator to
257 admit to sexually abusing a child and, yet, still evade
258 punishment.

259 In the 2015 case of U.S. v. Palomino-Coronado that we
260 have just heard of, the Fourth Circuit reversed the
261 conviction of a child sex offender simply because the court
262 determined the perpetrator lacked specific intent to take
263 the disgusting images of the rape that were found on his
264 smartphone. This is despite the fact that the defendant
265 admitted to sexually abusing the 7-year-old child and
266 memorializing the conduct.

267 In its opinion, the court decided that the lack of
268 "purpose" or specific intent was enough to overturn the

269 conviction, even though the defendant himself took the
270 picture of the heinous act and subsequently admitted to
271 sexually abusing the child. This is absolutely a clear
272 contradiction of Congress' intention to protect children.

273 In Scripture, Romans 13 refers to the governing
274 authorities as God's servants, agents of wrath to bring
275 punishment on the wrongdoer. This committee is an important
276 part of the governing authority of this great Nation, and I,
277 for one, believe we have a moral obligation, as any just
278 government should, to defend the defenseless.

279 My legislation presents a simple fix and updates title
280 18 of the U.S. Code to ensure future defendants are not able
281 to circumvent the law by simply claiming a lack of intent,
282 especially after knowingly creating a visual depiction of a
283 minor engaged in sexually-explicit conduct. More
284 specifically, my legislation amends section 2251 of title 18
285 to prohibit the production and transmission of a visual
286 depiction of a real minor engaged in sexually-explicit
287 conduct. Furthermore, it also amends current law to include
288 prohibiting the depiction of a minor assisting any person in
289 engaging in a sexually-explicit act.

290 I encourage all my colleagues to support this critical
291 fix, so we can close this shameful loophole that now exists
292 in the law.

293 Those that prey on innocent children deserve nothing

294 but the fullest force of our law, and I am confident this
295 legislation will ensure justice is served. I am grateful to
296 have the vocal support of our law enforcement community on
297 this bill, including the National Fraternal Order of Police,
298 the National District Attorneys Association, and the Major
299 County Sheriffs of America.

300 Again, I thank the committee for its consideration of
301 this important legislation.

302 With that, Mr. Chairman, I yield back, but note that I
303 do have an amendment at the desk.

304 [The prepared statement of Mr. Johnson of Louisiana
305 follows:]

306 ***** COMMITTEE INSERT *****

307 Chairman Goodlatte. The chair thanks the gentleman and
308 notes that the ranking member of the subcommittee is not
309 present.

310 For what purpose does the gentleman from New York seek
311 recognition?

312 Mr. Nadler. I move to strike the last word, sir.

313 Chairman Goodlatte. The gentleman is recognized for 5
314 minutes.

315 Mr. Nadler. Thank you. Although I laud the purpose of
316 the bill, and it is a loophole that ought to be closed, the
317 bill has two major problems. Number one, as the ranking
318 member of the committee said, the gentleman from Michigan,
319 it subjects to mandatory minimum sentences of 15 to 30 years
320 in prison. For reasons we stated over and over again, and I
321 do not want to go through the debate against now, a number
322 of us, certainly, I am very much opposed to mandatory
323 minimums, especially when the mandatory minimum is 15 to 30
324 years.

325 There may very well be circumstances in which a
326 violator of this statute ought to be sentenced to jail, but
327 not necessarily to 15 to 30 years. We sentence murderers to
328 25 to life, or even 15 to life; 15 to 30 is way out of line.
329 And second of all, it does not have an exception for
330 situations of so-called Romeo and Juliet exception.

331 It is one thing when someone is deliberately creating

332 child pornography for the purpose of dissemination or
333 whatever. It is another thing when you have two people who
334 are infatuated or in love with each who are close in age;
335 let's say a 19-year-old and a 17-year-old, and they have an
336 affair, and they photograph it and email it to themselves or
337 to some friend to show or whatever. It is stupid and
338 infantile behavior, but not deserving of a 15- to 30-year
339 sentence.

340 I do not even think, if you are 18 and you are having
341 sex with a 17-year-old and you are photographing it, that
342 that really should be called creating child pornography, so
343 that the 18-year-old is sentenced to a 15-year term, and the
344 17-year-old is a victim when they are having consensual sex.
345 Certainly, if I were their parent or their adviser, in some
346 sense, I would advise them not to do that, obviously, but
347 nonetheless, it should not be punished harshly, and the life
348 of one of them ruined.

349 So, in the absence of an exception for that type of
350 situation, where people close in age are having sex with
351 each other and then photographing it, which is stupid, but
352 not venal and criminal, and because of the harsh, mandatory
353 minimum sentences, this bill should not be supported, unless
354 it is amended to deal with this two problems. I yield back.

355 Chairman Goodlatte. Would the gentleman yield?

356 Mr. Nadler. Yes, certainly.

357 Chairman Goodlatte. I thank the gentleman for
358 yielding. I just want to make a point. Your complaints go
359 to the underlying statute and not to the gentleman from
360 Louisiana's bill, which is to correct what I think is a very
361 flawed interpretation of the statute by the circuit court.

362 Mr. Nadler. Reclaiming my time, it is true the
363 complaints go to the underlying statute. But by correcting
364 this, and as I said, the underlying statute ought to be
365 corrected. By not correcting the underlying statute's two
366 problems, you are expanding the reach of the statute. You
367 know, in a case where, you know, in many cases, someone who
368 does that should not get off scot-free, despite what the
369 court said. But by undoing this court decision and undoing
370 this loophole, you are creating situations where you will
371 have very unfair and very unjust results because of the two
372 problems I enunciated.

373 Chairman Goodlatte. Will the gentleman yield back?

374 Mr. Nadler. Let me just finish. I will in a second.
375 So, without correcting those two things, we should not
376 expand the reach of the statute. If we corrected those two
377 things, then this would be in order. And I will yield.

378 Chairman Goodlatte. I thank the gentleman for
379 yielding. The only further point I wanted to make was that
380 I am not aware, and perhaps the gentleman is aware, but I am
381 not aware of any complaints about abuse by Federal

382 prosecutors under the statute of the matters that you have
383 complained of. I am not aware of any Romeo-Juliet
384 situations where individuals have been given undue sentences
385 for the type of relationship you describe.

386 Mr. Nadler. Reclaiming my time, I cannot cite any. I
387 did not come here equipped to cite any. I have read about
388 some situations over the years in the newspapers; I cannot
389 cite any of them right now. But you should not have a
390 statute hanging around like a loaded bomb for some
391 insensitive prosecutor, and one cannot guarantee that every
392 prosecutor in the United States is intelligent and
393 sensitive. Most are, but there are those who are not, and
394 we should correct statutory errors instead of expanding
395 them. I yield back.

396 Chairman Goodlatte. The chair thanks the gentleman.

397 For what purpose does the gentleman from Louisiana seek
398 recognition?

399 Mr. Johnson of Louisiana. Mr. Chairman, I do have an
400 amendment at the desk.

401 Chairman Goodlatte. The clerk will report the
402 amendment.

403 Ms. Adcock. Amendment to H.R. 1761 offered by Mr.
404 Johnson of Louisiana. Page 5, line 7 --

405 [The amendment of Mr. Johnson of Louisiana follows:]

406

***** COMMITTEE INSERT *****

407 Chairman Goodlatte. Without objection, the amendment
408 is considered as read, and the gentleman is recognized for 5
409 minutes on his amendment.

410 Mr. Johnson of Louisiana. Thank you, Mr. Chairman.
411 The purpose of this bill is to capture child predators, who
412 knowingly memorialize the sexual abuse of children. Of
413 course, whether it is to keep these recordings for their own
414 collection or whether it is for distribution, the mere
415 production is repulsive. The bill aims to close a loophole
416 to bar a meritless defense.

417 This amendment to H.R. 1761 is to clarify potential
418 circumstances of misinterpretation of the statute and to
419 ensure that the statute is not used erroneously to prosecute
420 internet service providers when they have not engaged in
421 wrongdoing. The amendment, therefore, emphasizes that, to
422 be criminally liable under subsection (a)(3) of the statute,
423 an internet service provider must have actual knowledge the
424 child pornography is on its server and that it must
425 intentionally transmit the image or intentionally cause its
426 transmission.

427 Internet service providers are in a unique position as
428 common carriers who transmit millions of bytes of data per
429 day; thus, the standard of knowing transmission for an
430 internet service provider may cause confusion in the courts
431 that would not otherwise arise when an individual knowingly

432 transmits these depictions. The amendment expressly
433 eliminates criminal and civil liability for internet service
434 providers who send child pornography to law enforcement in
435 response to a legal process, such as a search warrant in
436 child exploitation cases.

437 Of course, we would never anticipate a prosecution of
438 an ISP for merely responding to legal process; however, it
439 is my hope that expressly providing for this immunity in the
440 statute will further enhance the relationship between
441 internet service providers and law enforcement, so that they
442 can further facilitate their working together to combat
443 these predators.

444 Mr. Chairman, I encourage my colleagues to support this
445 amendment, and with that, I yield back.

446 Chairman Goodlatte. The chair thanks the gentleman.

447 Mr. Conyers. Mr. Chairman?

448 Chairman Goodlatte. For what purpose does the
449 gentleman from Michigan seek recognition?

450 Mr. Conyers. I rise in support of the amendment.

451 Chairman Goodlatte. The gentleman is recognized for 5
452 minutes.

453 Mr. Conyers. Thank you. Members of the committee, I
454 support this amendment because it makes clear that
455 electronic service providers and remote computing services
456 will not be liable under the statute unless they have

457 transmitted certain images intentionally with actual
458 knowledge of the nature of the images.

459 In addition, it clarifies that such electronic services
460 would not be liable for transmitting such images to law
461 enforcement as part of an investigation. These
462 clarifications are consistent with longstanding policy to
463 hold criminals accountable, but not chill the honest
464 operation of electronic services and an open internet.

465 Please support the amendment. And I yield back.

466 Chairman Goodlatte. The chair thanks the gentleman for
467 his comments.

468 The question is on the amendment offered by the
469 gentleman from Louisiana.

470 All those in favor, respond by saying aye.

471 Those oppose, no.

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

473 Ms. Jackson Lee. Mr. Chairman?

474 Chairman Goodlatte. For what purpose does the
475 gentlewoman from Texas seek recognition?

476 Ms. Jackson Lee. I have an amendment at the desk, 092.

477 I have two amendments at the desk.

478 Chairman Goodlatte. The clerk will report.

479 Which amendment?

480 Ms. Jackson Lee. 092; I would like to do them back to
481 back: 092.

482 Chairman Goodlatte. Let me ask the ranking member. Do
483 you --

484 Mr. Conyers. That is all right.

485 Chairman Goodlatte. Okay, we will go ahead and do
486 that.

487 Ms. Jackson Lee. They are not en bloc, but they are --

488 Chairman Goodlatte. No, we understand.

489 Ms. Jackson Lee. All right. Thanks.

490 Chairman Goodlatte. He has an amendment, too, but I am
491 happy to have the gentlewoman's amendments considered in
492 order.

493 Ms. Jackson Lee. Thank you, Ranking Member.

494 Chairman Goodlatte. And we will start with 092. The
495 clerk will report the amendment.

496 Ms. Adcock. Amendment to H.R. 1761, offered by Ms.
497 Jackson Lee of Texas. Page 5, line 7, insert after "United
498 States" the following --

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

500 ***** COMMITTEE INSERT *****

501 Chairman Goodlatte. Without objection, the amendment
502 is considered as read, and the gentlewoman is recognized for
503 5 minutes on her amendment.

504 Ms. Jackson Lee. I thank my colleagues on both sides
505 of the aisle. I thank the chairman and the ranking member,
506 and I want to state, for the record, that I abhor sexual
507 predators and understand the basis of this important
508 legislation, as I have supported it from the time I have
509 been a member of this Judiciary Committee.

510 But I note the importance of this particular amendment
511 that deals with the Romeo and Juliet exception. This is not
512 a mandatory minimum; it is an exception to the mandatory
513 minimum, and it indicates the need to be able to be
514 responsive to teenagers.

515 The bill in front of us would expand and modify the
516 meaning of sexual exploitation under section 2251, thereby
517 having a sweeping effect in adding additional offenses to an
518 already very inclusive criminal code and resulting impact on
519 the criminal justice system generally, and may involve mass
520 incarceration. My primary concern with this bill is the
521 cumulative effect it will have on our young people, our
522 youth.

523 Given the change of times and how youth communicate
524 with each other, we must proceed with caution and due care
525 when implementing legislation that will have a lifetime,

526 adverse impact on this special segment of our population.
527 They are the future of America. We must take care to ensure
528 that the legislation does not usurp their opportunity to
529 thrive, go to college, and be positioned to carry on the
530 good work we are all doing today.

531 We were all juveniles at some point and may recall some
532 of the innocuous behaviors we engaged in that our parents
533 policed to make sure we got back in line. This bill takes
534 that role out of the hands of parents, community
535 organizations, and other support groups and places it in the
536 hands of the law, which, under this bill, is harsh in its
537 sentencing and unforgiving of mistakes made as juveniles.

538 Teenagers are immature risk-takers, who do not fully
539 comprehend the consequences of their actions, and science
540 has confirmed this and illustrates that the frontal lobe
541 does not fully develop until the age of 24. That is why it
542 is best to address these matters in juvenile court, which
543 can provide remedies that convey to juveniles the
544 seriousness of their actions, while avoiding the stigma of
545 criminal conviction and a lifetime of registration as a sex
546 offender.

547 Take Jacob C., for example, who, at 11 years old, was
548 tried and found guilty of one count of criminal sexual
549 conduct. He was placed on a Michigan sex offender registry
550 and prevented, by residential restriction laws, from living

551 near other children. When he was 14 and unable to return
552 home because of his restriction, he became the foster child
553 of a pastor and his wife, who both helped little Jacob deal
554 with the trauma of growing up on the registry.

555 Mr. Chairman, I would like to submit this article for
556 the record which depicts the irreparable harm. In
557 discussing the production and transmittal of live and visual
558 depictions of a minor engaged in any sexually-explicit
559 conduct --

560 Chairman Goodlatte. Without objection, the document
561 will be made a part of the record.

562 [The information follows:]

563 ***** COMMITTEE INSERT *****

564 Ms. Jackson Lee. I thank you. We must give an extra
565 weight to the innocence portrayed when juveniles engage in
566 texting each other casually and where no coercion is
567 involved. For example, two teenage girls, 12 or 13, are
568 hanging out, taking photographs of each other on their
569 cellphones, where one of the girls is photographed talking
570 and the other is flashing a peace sign. Like many
571 teenagers, they are depicted in their sports bras in the
572 photo and think nothing of it.

573 My amendment, of course, wants to except persons of 19
574 years or under at the time of the violation be punished for
575 violation of this section by imprisonment for not more than
576 one year or a fine under this title or both if no coercion
577 has occurred, and that the violation consists solely of
578 producing or causing to be produced visual depictions. In
579 showing their friends the silly photos, the photo was
580 confiscated by the teacher, who then called the parents into
581 the school because the girls were then facing child
582 pornography charges. The innocent charges were labeled as
583 provocative and semi-nude by the D.A.

584 And so, I would ask my colleagues to support the
585 Jackson Lee amendment, which is a reasonable response to the
586 importance of training children, teaching children, and not
587 criminalizing children.

588 I ask my colleagues to support the Jackson Lee

589 amendment. With that, I yield back.

590 Chairman Goodlatte. For what purpose does the
591 gentleman from Louisiana seek recognition?

592 Mr. Johnson of Louisiana. Mr. Chairman, I oppose the
593 amendment.

594 Chairman Goodlatte. The gentleman is recognized for 5
595 minutes.

596 Mr. Johnson of Louisiana. It is true, as has been
597 conceded this morning, the objections do concern the
598 underlying statute regarding minimum mandatory sentences,
599 and my legislation does not create any new mandatory minimum
600 sentences. Instead, it modifies existing statutory
601 framework to ensure the existing enhancements are applied
602 equitably, and to close this loophole that we have all
603 discussed.

604 It is simple: my legislation prohibits the production
605 and transmission of a visual depiction of a real minor
606 engaged in sexually-explicit conduct. Nothing in this
607 legislation adds to mandatory minimum sentencing at all.
608 The primary responsibility of this committee is to address
609 the problems of the day and protect the public, especially
610 our children. Sex crimes against children are ubiquitous.
611 Their number, as we have heard in our child protection
612 hearing last month, is growing.

613 Additionally, the offenses are becoming more depraved

614 and the victims are getting younger. There is no sign of
615 this crisis slowing down, and the present law does not
616 appear to be keeping up with the numbers. The gravity and
617 growing prevalence of these crimes merit an appropriate
618 societal response to have a proper deterrent effect. The
619 enhancements here will create a further deterrent effect.

620 Unfortunately, I believe that this amendment will not
621 fix a Federal problem. Instead, its risks outweigh its
622 benefits. It will create another loophole and allow
623 numerous predators to escape prosecution. Juveniles are
624 typically not prosecuted federally unless there is no
625 recourse at the State level. Federal prosecutions, in that
626 regard, are rare.

627 This amendment would create a loophole that we are
628 trying to avoid. It would essentially allow young sex
629 traffickers, for example, to escape prosecution because they
630 are closer in age to their victim.

631 We know that sex trafficking is increasingly used by
632 young gang members, for example. They traffic women in
633 their teens, and they force them to sell themselves.

634 So, I believe that this amendment, while I know it is
635 well intended, is not appropriate. It will actually more
636 risk than it resolves, and I oppose it for that purpose and
637 I encourage my colleagues to do the same. I yield back.

638 Mr. Conyers. Mr. Chairman.

639 Chairman Goodlatte. For what purpose does the
640 gentleman from Michigan seek recognition?

641 Mr. Conyers. I rise in support of this amendment.

642 Chairman Goodlatte. The gentleman is recognized for 5
643 minutes.

644 Mr. Conyers. Members of the committee, the amendment
645 is intended to provide an opportunity to avoid mandatory
646 minimum sentences in certain cases involving sexting by
647 teenagers. The amendment would allow for the imposition of
648 misdemeanor penalties in such cases where the defendant is
649 no more than 19 years old, and no more than four years older
650 than the victim. The victim must have been a willing
651 participant in producing or transmitting a sexually explicit
652 photo or video.

653 Now, the pervasiveness of personal devices, such as
654 cellphones and tablets, have given rise to teenage sexting,
655 the use of these devices to send and receive sexually
656 explicit messages or images. Research has shown that
657 teenage sexting is widespread, even among middle schoolers,
658 and a study conducted by Drexel University found that more
659 than half of the undergraduate students who took part in an
660 online survey said that they sexted when they were
661 teenagers. Thirty percent said they included photos in
662 their messages, and surprisingly, 61 percent did not know
663 that sending nude photos via text could be considered child

664 pornography.

665 Another online survey found that almost 40 percent of
666 teenagers between ages 13 and 19 had sent sex messages,
667 almost 50 percent had received a sex message, and 20 percent
668 posted nude or semi-nude content online. Under the bill,
669 teenagers prosecuted for sexting would be subject to
670 mandatory prison sentences of at least 15 years under
671 section 2251.

672 And so this amendment takes teen sexting out of the
673 realm of child pornography, providing an alternative to
674 harsh, mandatory sentences. I think this is a reasonable
675 amendment and I urge you to support.

676 Ms. Jackson Lee. Would the gentleman yield?

677 Mr. Conyers. Of course, with pleasure.

678 Ms. Jackson Lee. I thank the gentleman for a more-
679 than-detailed support of the amendment and I thank him for
680 his explanation. And I want to bring to, because you were
681 so right. Teenage sexting, which is because of technology,
682 a phenomenon of today, the 21st century.

683 And to the offer of this legislation, the amendment, or
684 present legislation amends the underlying bill. And so,
685 this amendment is both relevant and needs to deal with that
686 subject of what happens to juveniles now.

687 And I just want to draw the attention to Jacob who,
688 unfortunately that he had to register, but fortunately he

689 was able to find two individuals who helped restore his
690 life. But yet, he was still registered at the young age of
691 11. And I believe that this is a fair amendment that
692 addresses that question, protects society, as the underlying
693 bill wants to do and as I have supported, but recognizes
694 that children are children in this instance. And I cannot
695 imagine why my colleagues would not be supportive of this
696 legislation. Again, I ask my colleagues to support the
697 Jackson Lee amendment. Thank you.

698 Mr. Conyers. Thanks for your comments. And I yield
699 back, Mr. Chairman.

700 Chairman Goodlatte. The chair thanks the gentleman and
701 recognizes himself in opposition to the amendment. While I
702 appreciate Ms. Jackson Lee's sentiment in introducing this
703 amendment, it is unnecessary and I must oppose it.
704 Prosecutorial discretion has been a sufficient buffer in
705 ensuring this statute is properly applied.

706 Again, I have heard no complaints that this provision
707 has been used to prosecute so-called "Romeo and Juliet"
708 cases at the Federal level. In fact, nowhere in the chapter
709 has such an exception. And I have heard no allegations of
710 abuse in Federal prosecutions under the offenses in this
711 chapter, such as distribution or possession of child
712 pornography.

713 This amendment is not fixing a problem. Instead, it

714 creates a loophole whereby an offender may escape criminal
715 prosecution based on his age, even if he is unquestionably
716 guilty of the crime. This amendment would exclude an
717 arbitrary swath of individuals who may be committing
718 horrific crimes against children in producing pornography.

719 And let me point out, in the case at hand, this was a
720 horrific crime and we are trying to fix the statute to cover
721 that type of situation. I do not see a need to change the
722 statute for this purpose. Prosecutorial discretion has
723 worked and that is why this amendment is unnecessary. The
724 point of this legislation is to close loopholes, not to
725 create new ones, and I urge my colleagues to reject the
726 amendment.

727 For what purpose does the gentleman from Tennessee seek
728 recognition?

729 Mr. Cohen. To strike the last word.

730 Chairman Goodlatte. The gentleman is recognized for 5
731 minutes.

732 Mr. Cohen. I am going to support the amendment and all
733 the amendments, and probably the bill. But I would hope
734 that, in circumstances like this, that instead of having to
735 do so, that we could try to work out amendments that make
736 sense.

737 Now, I do not understand particularly "Romeo and
738 Juliet" defense. Romeo would have had to have a pen and

739 paper and be drawing. And it may be an indication of my
740 age, but I always understood that sex was a lot like
741 driving. You should use both hands and not necessarily one
742 for the camera. But if one chooses to do such, I guess they
743 could.

744 But it does seem we could come up with an amendment
745 that would satisfy the "Romeo and Juliet" defense, and not
746 leave it to prosecutorial discretion. We should not be
747 passing laws that we recognize have a possible space in them
748 that needs closing, and leave it up to the discretion of the
749 prosecutor, because you could have a bad prosecutor. And I
750 think we could draw a proper amendment.

751 We had this last week when we had a bill up, and I
752 think it was one of the gentlemen from Texas, Mr. Poe, and
753 he said something about making folks second-class sheriffs;
754 law enforcement, second-class citizens. And I suggested he
755 was making Governors in States second-class political
756 entities and office holders. And that was part of the
757 underlying statute.

758 Well, we could fix the underlying statute at the same
759 time we are fixing the punishment. And it just seems like
760 this committee could be doing a whole lot more good than
761 just passing laws that, like Mr. Johnson's, that are good in
762 terms of catching loopholes, but at the same time, if we see
763 another problem with the main offense, that we do not clean

764 it up when we have a chance to do it. And I think we do a
765 better service to our code, to our country, by cleaning up
766 potential prosecutorial saves by finishing it with Max
767 Scherzer going nine, and not depending on the bullpen to
768 save us.

769 I yield back the balance of my time.

770 Chairman Goodlatte. The question occurs on the
771 amendment offered by the gentlewoman from Texas.

772 All those in favor respond by saying aye.

773 Those opposed, no.

774 In the opinion of the chair, the noes have it.

775 Roll call is requested and the clerk will call the
776 roll.

777 Ms. Adcock. Mr. Goodlatte?

778 Mr. Goodlatte. No.

779 Ms. Adcock. Mr. Goodlatte votes no.

780 Mr. Sensenbrenner?

781 [No response.]

782 Mr. Smith?

783 [No response.]

784 Mr. Chabot?

785 [No response.]

786 Mr. Issa?

787 [No response.]

788 Mr. King?

789 Mr. King. No.

790 Ms. Adcock. Mr. King votes no.

791 Mr. Franks?

792 [No response.]

793 Mr. Gohmert?

794 Mr. Gohmert. No.

795 Ms. Adcock. Mr. Gohmert votes no.

796 Mr. Jordan?

797 Mr. Jordan. No.

798 Ms. Adcock. Mr. Jordan votes no.

799 Mr. Poe?

800 [No response.]

801 Mr. Chaffetz?

802 [No response.]

803 Mr. Marino?

804 Mr. Marino. No.

805 Ms. Adcock. Mr. Marino votes no.

806 Mr. Gowdy?

807 Mr. Gowdy. No.

808 Ms. Adcock. Mr. Gowdy votes no.

809 Mr. Labrador?

810 Mr. Labrador. No.

811 Ms. Adcock. Mr. Labrador votes no.

812 Mr. Farenthold?

813 [No response.]

814 Mr. Collins?
815 Mr. Collins. No.
816 Ms. Adcock. Mr. Collins votes no.
817 Mr. DeSantis?
818 Mr. DeSantis. No.
819 Ms. Adcock. Mr. DeSantis votes no.
820 Mr. Buck?
821 Mr. Buck. No.
822 Ms. Adcock. Mr. Buck votes no.
823 Mr. Ratcliffe?
824 Mr. Ratcliffe. No.
825 Ms. Adcock. Mr. Ratcliffe votes no.
826 Mrs. Roby?
827 [No response.]
828 Mr. Gaetz?
829 Mr. Gaetz. No.
830 Ms. Adcock. Mr. Gaetz votes no.
831 Mr. Johnson of Louisiana?
832 Mr. Johnson of Louisiana. No.
833 Ms. Adcock. Mr. Johnson votes no.
834 Mr. Biggs?
835 Mr. Biggs. No.
836 Ms. Adcock. Mr. Biggs votes no.
837 Mr. Conyers?
838 Mr. Conyers. Aye.

839 Ms. Adcock. Mr. Conyers votes aye.
840 Mr. Nadler?
841 Mr. Nadler. Aye.
842 Ms. Adcock. Mr. Nadler votes aye.
843 Ms. Lofgren?
844 Ms. Lofgren. Aye.
845 Ms. Adcock. Ms. Lofgren votes aye.
846 Ms. Jackson Lee?
847 Ms. Jackson Lee. Aye.
848 Ms. Adcock. Ms. Jackson Lee votes aye.
849 Mr. Cohen?
850 Mr. Cohen. Aye.
851 Ms. Adcock. Mr. Cohen votes aye.
852 Mr. Johnson of Georgia?
853 Mr. Johnson of Georgia. Aye.
854 Ms. Adcock. Mr. Johnson votes aye.
855 Mr. Deutch?
856 Mr. Deutch. Aye.
857 Ms. Adcock. Mr. Deutch votes aye.
858 Mr. Gutierrez?
859 [No response.]
860 Ms. Bass?
861 Ms. Bass. Aye.
862 Ms. Adcock. Ms. Bass votes aye.
863 Mr. Richmond?

864 [No response.]

865 Mr. Jeffries?

866 [No response.]

867 Mr. Cicilline?

868 [No response.]

869 Mr. Swalwell?

870 [No response.]

871 Mr. Lieu?

872 Mr. Lieu. Yes.

873 Ms. Adcock. Mr. Lieu votes yes.

874 Mr. Raskin?

875 [No response.]

876 Ms. Jayapal?

877 Ms. Jayapal. Aye.

878 Ms. Adcock. Ms. Jayapal votes aye.

879 Mr. Schneider?

880 Mr. Schneider. Yes.

881 Ms. Adcock. Mr. Schneider votes yes.

882 Chairman Goodlatte. The gentleman from Arizona?

883 Mr. Franks. No.

884 Ms. Adcock. Mr. Franks votes no.

885 Chairman Goodlatte. The gentleman from California?

886 Mr. Issa. No.

887 Ms. Adcock. Mr. Issa votes no.

888 Chairman Goodlatte. The gentleman from California?

889 Mr. Swalwell. No.

890 Ms. Adcock. Mr. Swalwell votes no.

891 Chairman Goodlatte. The gentleman from Texas?

892 Mr. Poe. No.

893 Ms. Adcock. Mr. Poe votes no.

894 Chairman Goodlatte. Has every member voted who wishes
895 to vote? Clerk will report.

896 Ms. Adcock. Mr. Chairman, 11 members voted aye, 18
897 members voted no.

898 Chairman Goodlatte. And the amendment is not agreed
899 to.

900 Ms. Jackson Lee. I have an amendment at the desk.

901 Chairman Goodlatte. The clerk will report the Jackson
902 Lee amendment.

903 Ms. Adcock. Amendment to H.R. 1761 offered by Ms.
904 Jackson Lee of Texas, Page 5, line 7 --

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

906 ***** COMMITTEE INSERT *****

907 Chairman Goodlatte. Without objection, the amendment
908 is considered as read. And the gentleman is recognized for
909 5 minutes on her amendment.

910 Ms. Jackson Lee. I thank you. Ladies and gentlemen,
911 this is dealing with the registration. I will make it very
912 simple; is that these individuals of this age, teenagers
913 who, pursuant to my earlier amendment, I believe the matter
914 should be handled in a juvenile setting with parents, family
915 members, society, teaching juveniles who are like the two
916 girls, or like Jacob, 11 years old, and that they should not
917 have to be registered, that this does no harm to the
918 underlying legislation or the legislation, and, as well, it
919 deals with it not being violent, not being coercive.

920 And we really have a problem if we are going to subject
921 our juveniles to this kind of treatment and them having to
922 be registered. And then, of course, they will be subject to
923 mandatory minimums and irreparable harm of a sex offender
924 registration program. That means it carries them through
925 summer jobs, it carries them through college. It carries
926 them through their life. I ask my colleagues to support the
927 Jackson Lee amendment. I yield back.

928 Mr. Conyers. Mr. Chairman?

929 Chairman Goodlatte. For what purpose does the
930 gentleman from Louisiana seek recognition?

931 Mr. Johnson of Louisiana. Mr. Chairman, I oppose the

932 amendment. But first --

933 Chairman Goodlatte. The gentleman is recognized for 5
934 minutes.

935 Mr. Johnson of Louisiana. Thank you. I first question
936 whether it is germane or not. This deals with the Adam
937 Walsh Child Protection and Safety Act of 2006, which is not
938 directly --

939 Chairman Goodlatte. If the gentleman would yield, we
940 have determined that it is germane and you can proceed to
941 the substance of the amendment.

942 Mr. Johnson of Louisiana. Thank you, Mr. Chairman.
943 Well, I would oppose the amendment on substance for the same
944 reasons that I opposed the last amendment. There is no
945 similar carve-outs that exist in related statutes. The
946 Department of Justice says that these types of changes are
947 unnecessary and they would potentially exacerbate the
948 problem, causing further loopholes.

949 And, as has been stated eloquently by the chairman, I
950 do not believe America's prosecutors are engaging in any
951 widespread abuse of these statutes. There is no evidence of
952 that. Prosecutorial discretion is part of our system. We
953 rely upon it and I think it is sufficient here, and for that
954 reason, and many of the others that have been stated
955 already, I would oppose this amendment and encourage my
956 colleagues to do the same. And I would yield.

957 Chairman Goodlatte. The chair thanks the gentleman.
958 For what purpose does the gentleman from Michigan seek
959 recognition?

960 Mr. Conyers. I rise in support of the amendment.

961 Chairman Goodlatte. The gentleman is recognized for 5
962 minutes.

963 Mr. Conyers. And I yield, briefly, to the gentlelady
964 from Texas.

965 Ms. Jackson Lee. I thank the gentleman very much. And
966 so this is just a passionate plea on behalf of young people
967 who make mistakes. Teenagers under 19, 11-year-olds, 13-
968 year-olds. Prosecutorial discretion is not the answer. We
969 are writing a bill that is labeling teens as sex offenders.
970 Non-coercive acts, texting, sexting. And I cannot imagine
971 that there is not a clarity of mind -- I think my colleague
972 from Tennessee was correct.

973 There is no reason why we could not have crafted
974 legislation better, the underlying legislation of Mr.
975 Johnson's, and why Mr. Johnson is not willing to see the
976 reasonableness of these amendments so that we could have an
977 opportunity to work through them. That did not occur.

978 But I am insistent on the fact that this is wrong-
979 headed and does nothing but an injustice to our young
980 people. They do not deserve, under circumstances of playful
981 sexting -- wrong behavior -- to be labeled as a lifetime sex

982 offender. I would like to get their lives corrected; I
983 would like to get them in treatment; I would like to have
984 them understand what their options are; but with that in
985 mind, I ask my colleagues to support the legislation that
986 simply asks that these kids not be on a permanent, lifetime,
987 sex offender registration list. With that, I yield back to
988 the gentleman. I thank him for his kindness.

989 Mr. Conyers. My colleagues, I am impressed by the
990 compassion that is the basis of the gentlelady's remarks.
991 It is important to me that an amendment that would exempt
992 teenagers from Federal sex offender registration
993 requirements who were involved in sexting and convicted of a
994 misdemeanor, that would be more appropriate. But a
995 conviction that requires a teenager to register as a sex
996 offender can inflict lifelong consequences that affect the
997 ability to work or obtain an education, and maybe even limit
998 where that teenager may live.

999 And so, the Jackson Lee amendment would allow teenagers
1000 to avoid the stigma of being labeled as sex offenders for
1001 non-malicious conduct that is not indicative of future
1002 criminality.

1003 And so, I urge my colleagues here to support the
1004 compassion that surrounds this amendment, and urge its
1005 support. And I thank the chairman.

1006 Chairman Goodlatte. The chair thanks the gentleman and

1007 recognizes himself in opposition to the amendment. The
1008 amendment would insert a provision into Federal law to
1009 clarify that provisions of H.R. 1761, which are intended to
1010 protect children from sexual predators, do not apply to so-
1011 called "Romeo and Juliet" cases; meaning cases involving a
1012 child above the age of 15, where there is not more than a 4-
1013 year age difference between victim and perpetrator.

1014 I appreciate the sentiment behind this amendment;
1015 however, this amendment is misguided for two reasons.
1016 First, current law already specifically excludes in
1017 appropriate circumstances, these so-called "Romeo and
1018 Juliet" cases, from the definition of sex offense.

1019 Second, as I stated earlier, this amendment seeks to
1020 fix a problem that does not exist. This bill is intended to
1021 protect children from sexual predators. I am not aware of
1022 any so-called abuses of this statute by Federal prosecutors.

1023 Finally, I would remind my colleagues that this
1024 legislation does not, as many of them have stated, expand
1025 the reach of the statute. What it does is fix a regrettable
1026 and misguided Fourth Circuit Court of Appeals decision that
1027 inserted a loophole into Federal law, which protects the
1028 perpetrator, not the child, and was clearly contrary to
1029 congressional intent.

1030 For that reason, I urge my colleagues to oppose the
1031 amendment.

1032 Mr. Nadler. Would the gentleman yield?

1033 Chairman Goodlatte. I would be happy to yield to the
1034 gentleman.

1035 Mr. Nadler. I am just curious to what the gentleman's
1036 referring. I am told that, I am not aware of a Romeo and
1037 Juliet exception to section 2251, certainly not through the
1038 older of the two.

1039 Chairman Goodlatte. I am referring to a provision in
1040 section 16911, 42 U.S.C. 16911, dealing with the Adam Walsh,
1041 in which the gentlewoman's amendment seeks to amend.

1042 Mr. Nadler. And that would apply here?

1043 Chairman Goodlatte. Yes. Subsection C, Offenses
1044 Involving Consensual Sexual Conduct.

1045 Mr. Nadler. And without the gentlelady's amendment,
1046 that would apply in a situation like this?

1047 Chairman Goodlatte. It would apply in many situations
1048 like this.

1049 Mr. Nadler. In many but not all? Where is the
1050 difference?

1051 Chairman Goodlatte. It would depend on the facts of
1052 the case, what constitutes a "Romeo and Juliet"
1053 relationship.

1054 Mr. Nadler. Well, a 19- and a 15-year-old, an 18- and
1055 a 17-year-old, that is what we are talking about.

1056 Chairman Goodlatte. The section says, "an offense

1057 involving consensual sexual conduct is not a sex offense for
1058 the purpose of this subchapter if the victim was an adult,
1059 unless the adult was -- "

1060 Mr. Nadler. If the victim was an adult?

1061 Chairman Goodlatte. "-- under the custodial authority
1062 of the offender at the time of the offense, or if the victim
1063 was at least 13 years old and the offender was not more than
1064 4 years older than the victim."

1065 The question occurs on the amendment offered by the
1066 gentlewoman from Texas.

1067 All those in favor, respond by saying aye.

1068 Those opposed, no.

1069 In the opinion of the chair, the noes have it.

1070 Roll call is requested. Clerk will call the roll.

1071 Ms. Adcock. Mr. Goodlatte?

1072 Mr. Goodlatte. No.

1073 Ms. Adcock. Mr. Goodlatte votes no.

1074 Mr. Sensenbrenner?

1075 [No response.]

1076 Mr. Smith?

1077 Mr. Smith. No

1078 Ms. Adcock. Mr. Smith votes no.

1079 Mr. Chabot?

1080 [No response.]

1081 Mr. Issa?

1082 [No response.]

1083 Mr. King?

1084 Mr. King. No.

1085 Ms. Adcock. Mr. King votes no.

1086 Mr. Franks?

1087 [No response.]

1088 Mr. Gohmert?

1089 [No response.]

1090 Mr. Jordan?

1091 Mr. Jordan. No.

1092 Ms. Adcock. Mr. Jordan votes no.

1093 Mr. Poe?

1094 [No response.]

1095 Mr. Chaffetz?

1096 [No response.]

1097 Mr. Marino?

1098 Mr. Marino. No.

1099 Ms. Adcock. Mr. Marino votes no.

1100 Mr. Gowdy?

1101 Mr. Gowdy. No.

1102 Ms. Adcock. Mr. Gowdy votes no.

1103 Mr. Labrador?

1104 [No response.]

1105 Mr. Farenthold?

1106 [No response.]

1107 Mr. Collins?
1108 Mr. Collins. No.
1109 Ms. Adcock. Mr. Collins votes no.
1110 Mr. DeSantis?
1111 Mr. DeSantis. No.
1112 Ms. Adcock. Mr. DeSantis votes no.
1113 Mr. Buck?
1114 Mr. Buck. No.
1115 Ms. Adcock. Mr. Buck votes no.
1116 Mr. Ratcliffe?
1117 Mr. Ratcliffe. No.
1118 Ms. Adcock. Mr. Ratcliffe votes no.
1119 Mrs. Roby?
1120 [No response.]
1121 Mr. Gaetz?
1122 Mr. Gaetz. No.
1123 Ms. Adcock. Mr. Gaetz votes no.
1124 Mr. Johnson of Louisiana?
1125 Mr. Johnson of Louisiana. No.
1126 Ms. Adcock. Mr. Johnson votes no.
1127 Mr. Biggs?
1128 Mr. Biggs. No.
1129 Ms. Adcock. Mr. Biggs votes no.
1130 Mr. Conyers?
1131 Mr. Conyers. Aye.

1132 Ms. Adcock. Mr. Conyers votes aye.

1133 Mr. Nadler?

1134 Mr. Nadler. Aye.

1135 Ms. Adcock. Mr. Nadler votes aye.

1136 Ms. Lofgren?

1137 Ms. Lofgren. Aye.

1138 Ms. Adcock. Ms. Lofgren votes aye.

1139 Ms. Jackson Lee?

1140 Ms. Jackson Lee. Aye.

1141 Ms. Adcock. Ms. Jackson Lee votes aye.

1142 Mr. Cohen?

1143 Mr. Cohen. Aye.

1144 Ms. Adcock. Mr. Cohen votes aye.

1145 Mr. Johnson of Georgia?

1146 Mr. Johnson of Georgia. Aye.

1147 Ms. Adcock. Mr. Johnson votes aye.

1148 Mr. Deutch?

1149 Mr. Deutch. Aye.

1150 Ms. Adcock. Mr. Deutch votes aye.

1151 Mr. Gutierrez?

1152 [No response.]

1153 Ms. Bass?

1154 Ms. Bass. Aye.

1155 Ms. Adcock. Ms. Bass votes aye.

1156 Mr. Richmond?

1157 [No response.]

1158 Mr. Jeffries?

1159 [No response.]

1160 Mr. Cicilline?

1161 [No response.]

1162 Mr. Swalwell?

1163 Mr. Swalwell. No.

1164 Ms. Adcock. Mr. Swalwell votes no.

1165 Mr. Lieu?

1166 Mr. Lieu. Aye.

1167 Ms. Adcock. Mr. Lieu votes aye.

1168 Mr. Raskin?

1169 [No response.]

1170 Ms. Jayapal?

1171 [No response.]

1172 Mr. Schneider?

1173 Mr. Schneider. No.

1174 Ms. Adcock. Mr. Schneider votes no.

1175 Chairman Goodlatte. The gentleman from Arizona?

1176 Mr. Franks. No.

1177 Ms. Adcock. Mr. Franks votes no.

1178 Chairman Goodlatte. The gentleman from Texas, Mr. Poe?

1179 Mr. Poe. No.

1180 Ms. Adcock. Mr. Poe votes no.

1181 Chairman Goodlatte. The gentleman from Texas, Mr.

1182 Gohmert?

1183 Mr. Gohmert. No.

1184 Ms. Adcock. Mr. Gohmert votes no.

1185 Chairman Goodlatte. Has every member voted who wishes
1186 to vote? The clerk will report.

1187 Ms. Adcock. Mr. Chairman, 9 members voted aye, 18
1188 members voted no.

1189 Chairman Goodlatte. And the amendment is not agreed
1190 to. For what purpose does the gentleman from Michigan seek
1191 recognition?

1192 Mr. Conyers. I have an amendment at the desk, Mr.
1193 Chairman.

1194 Chairman Goodlatte. The clerk will report the
1195 amendment.

1196 Ms. Adcock. Amendment to H.R. 1761, offered by Mr.
1197 Conyers. Page 4, insert after line 5 --

1198 [The amendment of Mr. Conyers follows:]

1199 ***** COMMITTEE INSERT *****

1200 Chairman Goodlatte. Without objection, the amendment
1201 is considered as read and the gentleman is recognized on his
1202 amendment.

1203 Mr. Conyers. Mr. Chairman and my colleagues, this
1204 amendment addresses the issue of a mandatory minimum
1205 sentences that, unfortunately, is raised by our
1206 consideration of the bill. The bill in front of us would
1207 make a number of changes to the Federal statute prohibiting
1208 the sexual exploitation of children through the production
1209 of child pornography. Certainly, we should do all we can to
1210 prevent this crime and to assist victims and hold offenders
1211 accountable when these crimes do unfortunately take place.
1212 Accordingly, the current statute would allow for quite
1213 lengthy maximum sentences for such crimes.

1214 I do not oppose lengthy statutory maximum penalties for
1215 such egregious cases. However, for every level of the
1216 offenses in this section of the code, from the first-time
1217 offenders to recidivist offenders, there are also mandatory
1218 minimum penalties in current law. And that is what the
1219 point of this amendment is.

1220 I believe we must start the process of eliminating
1221 mandatory minimum sentences. We must get rid of them. Even
1222 with regard to statutes involving such egregious conduct, we
1223 should not set minimum penalties that preclude judges from
1224 determining which sentence level is appropriate. Judges are

1225 obviously aware of the facts and circumstances in each case
1226 and are in a better position to set sentences.

1227 And therefore, I offer this amendment to current law,
1228 to retain the high maximum penalties for the offenses
1229 amended by this bill, but eliminate the unnecessary and
1230 unwise mandatory minimums. Offenders may still receive
1231 sentences greater than the current minimums, all the way up
1232 to the quite lengthy maximum penalties, but those would be
1233 imposed on a case-by-case basis, by the judge, which is how
1234 it should be. And so, I plead with my colleagues to receive
1235 this amendment in a favorable manner and support the
1236 amendment. And I thank the chairman.

1237 Chairman Goodlatte. For what purpose does the
1238 gentleman from Louisiana seek recognition?

1239 Mr. Johnson of Louisiana. Thank you, Mr. Chairman. To
1240 strike the last word.

1241 Chairman Goodlatte. The gentleman is recognized for 5
1242 minutes.

1243 Mr. Johnson of Louisiana. Thank you. I rise to oppose
1244 the amendment and, not to sound like a broken record, but we
1245 have discussed this now over and over with regard to all of
1246 these.

1247 This is not the time or the place to deal with the
1248 underlying statute regarding mandatory minimum sentences.
1249 This bill does not directly address that. It is simply

1250 trying to close a loophole, as we said. And for that simple
1251 reason, I oppose this amendment and encourage my colleagues
1252 to do the same. I yield back.

1253 Chairman Goodlatte. The chair recognizes himself in
1254 opposition to the amendment. This amendment goes outside
1255 the scope of this bill and seeks to repeal established
1256 minimum sentences that already exist in current law, and
1257 that apply to offenders who produce child pornography. We
1258 have just spent the last several minutes discussing the
1259 horrors faced by children subjected to unspeakable abuse at
1260 the hands of these predators.

1261 This legislation does not amend current penalties under
1262 the law, but rather, simply closes a loophole that allows
1263 child predators to escape liability for their heinous crimes
1264 against our children. I cannot, in good conscience, support
1265 this amendment, which would proactively reduce the current
1266 law punishment for these crimes.

1267 Every time an image of child pornography is viewed, the
1268 victim is revictimized. Victims spend the rest of their
1269 lives wondering who is looking at their abuse or, worse yet,
1270 experiencing gratification from it. It is important that
1271 there is no confusion that the very creation of these images
1272 is abhorrent. Regardless of whether or not the abuse was
1273 done with the specific intent of creating an image, or if
1274 the intent to memorialize this conduct was a secondary

1275 thought.

1276 Consider the facts of the case that led to this bill.
1277 An adult male had sexual relations with a 7-year-old, and
1278 felt the need to photograph it. That is the production of
1279 child pornography. No one should be permitted to escape
1280 responsibility merely by asserting they did not have the
1281 specific intent to create the image when they were abusing
1282 the child. The act of taking a photo or making a video
1283 should be enough to demonstrate intent, and I urge my
1284 colleagues to oppose this amendment.

1285 The question occurs on the amendment offered by the
1286 gentleman from Michigan.

1287 All those in favor, respond by saying aye.

1288 Those opposed, no.

1289 In the opinion of the chair, the noes have it. The
1290 amendment is not agreed to.

1291 Mr. Conyers. Record vote is requested.

1292 Chairman Goodlatte. Record vote is requested, and the
1293 clerk will call the roll.

1294 Ms. Adcock. Mr. Goodlatte?

1295 Chairman Goodlatte. No.

1296 Ms. Adcock. Mr. Goodlatte votes no.

1297 Mr. Sensenbrenner?

1298 [No response.]

1299 Mr. Smith?

1300 Mr. Smith. No.

1301 Ms. Adcock. Mr. Smith votes no.

1302 Mr. Chabot?

1303 [No response.]

1304 Mr. Issa?

1305 [No response.]

1306 Mr. King?

1307 Mr. King. No.

1308 Ms. Adcock. Mr. King votes no.

1309 Mr. Franks?

1310 [No response.]

1311 Mr. Gohmert?

1312 [No response.]

1313 Mr. Jordan?

1314 Mr. Jordan. No.

1315 Ms. Adcock. Mr. Jordan votes no.

1316 Mr. Poe?

1317 [No response.]

1318 Mr. Chaffetz?

1319 [No response.]

1320 Mr. Marino?

1321 Mr. Marino. No.

1322 Ms. Adcock. Mr. Marino votes no.

1323 Mr. Gowdy?

1324 Mr. Gowdy. No.

1325 Ms. Adcock. Mr. Gowdy votes no.
1326 Mr. Labrador?
1327 [No response.]
1328 Mr. Farenthold?
1329 [No response.]
1330 Mr. Collins.
1331 Mr. Collins. No.
1332 Ms. Adcock. Mr. Collins votes no.
1333 Mr. DeSantis?
1334 Mr. DeSantis. No.
1335 Ms. Adcock. Mr. DeSantis votes no.
1336 Mr. Buck?
1337 Mr. Buck. No.
1338 Ms. Adcock. Mr. Buck votes no.
1339 Mr. Ratcliffe?
1340 Mr. Ratcliffe. No.
1341 Ms. Adcock. Mr. Ratcliffe votes no.
1342 Mrs. Roby?
1343 [No response.]
1344 Mr. Gaetz?
1345 Mr. Gaetz. No.
1346 Ms. Adcock. Mr. Gaetz votes no.
1347 Mr. Johnson of Louisiana?
1348 Mr. Johnson of Louisiana. No.
1349 Ms. Adcock. Mr. Johnson votes no.

1350 Mr. Biggs?

1351 [No response.]

1352 Mr. Conyers?

1353 Mr. Conyers. Aye.

1354 Ms. Adcock. Mr. Conyers votes aye.

1355 Mr. Nadler?

1356 Mr. Nadler. Aye.

1357 Ms. Adcock. Mr. Nadler votes aye.

1358 Ms. Lofgren?

1359 Ms. Lofgren. Aye.

1360 Ms. Adcock. Ms. Lofgren votes aye.

1361 Ms. Jackson Lee?

1362 [No response.]

1363 Mr. Cohen?

1364 Mr. Cohen. Aye.

1365 Ms. Adcock. Mr. Cohen votes aye.

1366 Mr. Johnson of Georgia?

1367 Mr. Johnson of Georgia. Aye.

1368 Ms. Adcock. Mr. Johnson votes aye.

1369 Mr. Deutch?

1370 Mr. Deutch. Aye.

1371 Ms. Adcock. Mr. Deutch votes aye.

1372 Mr. Gutierrez?

1373 [No response.]

1374 Ms. Bass?

1375 [No response.]

1376 Mr. Richmond?

1377 [No response.]

1378 Mr. Jeffries?

1379 [No response.]

1380 Mr. Cicilline?

1381 [No response.]

1382 Mr. Swalwell?

1383 Mr. Swalwell. No.

1384 Ms. Adcock. Mr. Swalwell votes no.

1385 Mr. Lieu?

1386 Mr. Lieu. Aye.

1387 Ms. Adcock. Mr. Lieu votes aye.

1388 Mr. Raskin?

1389 Mr. Raskin. Aye.

1390 Ms. Adcock. Mr. Raskin votes aye.

1391 Ms. Jayapal?

1392 [No response.]

1393 Mr. Schneider?

1394 Mr. Schneider. Aye.

1395 Ms. Adcock. Mr. Schneider votes aye.

1396 Chairman Goodlatte. The gentleman from Arizona, Mr.

1397 Franks?

1398 Mr. Franks. No.

1399 Ms. Adcock. Mr. Franks votes no.

1400 Chairman Goodlatte. The gentleman from Texas, Mr. Poe?
1401 Mr. Poe. No.
1402 Ms. Adcock. Mr. Poe votes no.
1403 Chairman Goodlatte. The gentleman from Texas, Mr.
1404 Gohmert?
1405 Mr. Gohmert. No.
1406 Ms. Adcock. Mr. Gohmert votes no.
1407 Chairman Goodlatte. The gentleman from Iowa, Mr. King?
1408 Mr. King. No.
1409 Ms. Adcock. Mr. King votes no.
1410 Chairman Goodlatte. The gentleman from Arizona, Mr.
1411 Biggs?
1412 Mr. Biggs. No.
1413 Ms. Adcock. Mr. Biggs votes no.
1414 Chairman Goodlatte. Has every member voted who wishes
1415 to vote?
1416 The clerk will report.
1417 Ms. Adcock. Mr. Chairman, 9 members voted aye, 17
1418 members voted no. Mr. Chairman.
1419 Ms. Lofgren. Mr. Chairman?
1420 Chairman Goodlatte. And the amendment is not agreed
1421 to.
1422 For what purpose does the gentlewoman from California
1423 seek recognition?
1424 Ms. Lofgren. I move to strike the last word.

1425 Chairman Goodlatte. The gentlewoman is recognized for
1426 5 minutes.

1427 Ms. Lofgren. I am disappointed that some of these
1428 excellent amendments that would have made the statute better
1429 had not been accepted. Nevertheless, I do believe that it
1430 is necessary to correct the problem created by the court
1431 decision. And so, despite my disappointment at the losing
1432 amendments, I intend to support the overall bill.

1433 And I wanted to thank, also, the committee for working
1434 together to resolve the internet issue, so that there would
1435 be an unintended consequence of the bill. And I would also
1436 like to yield to my colleague, Mr. Nadler.

1437 Mr. Nadler. I thank the gentlelady for yielding. I
1438 just have two comments.

1439 Number one, because of the failure of these amendments
1440 on the Romeo and Juliet exception and the mandatory
1441 minimums, I plan to vote against the bill.

1442 But the reason I sought recognition now is that, going
1443 back to Ms. Jackson Lee's amendment, I have advised my staff
1444 that the section of the law read by the chairman applies to
1445 the sexual crime. It does not apply to the child
1446 pornography crime. And that being the case, I would hope
1447 that, before this bill comes to the floor, if it is reported
1448 from committee, we could look at that again and apply the
1449 same exception to the child pornography section that the law

1450 already applies to the underlying sex exception.

1451 It was apparently the impression of the committee
1452 leadership that already did that, but since it does not do
1453 that, I would hope we could take another look at that before
1454 it comes to the floor. And I thank you. I yield back.

1455 Ms. Lofgren. And I yield back.

1456 Chairman Goodlatte. Are there further amendments to
1457 H.R. 1761?

1458 The reporting quorum being present, the question is on
1459 the motion to report the bill, H.R. 1761, as amended,
1460 favorably to the House.

1461 Those in favor, respond by saying aye.

1462 Those opposed, no.

1463 The ayes have it, and the bill, as amended, is ordered
1464 reported favorably. Members will have 2 days to submit
1465 views.

1466 Without objection, the bill will be reported as a
1467 single amendment in the nature of a substitute,
1468 incorporating all adopted amendments, and staff is
1469 authorized to make technical and conforming changes.

1470 The bill has been reported. It is too late to do that.

1471 Pursuant to notice, I now call up H.R. 2266 for
1472 purposes of markup and move that the committee report the
1473 bill favorably to the House.

1474 The clerk will report the bill.

1475 Ms. Adcock. H.R. 2266: to amend title 28 of the United
1476 States Code to authorize the appointment of additional
1477 bankruptcy judges and for other purposes.

1478 [The bill follows:]

1479 ***** INSERT 3 *****

1480 Chairman Goodlatte. Without objection, the bill is
1481 considered as read and open for amendment at any time, and I
1482 will begin by recognizing myself for an opening statement.

1483 A well-functioning bankruptcy system is an essential
1484 element of our economy, providing relief to consumers and
1485 allowing businesses to reorganize, preserve jobs, and
1486 maximize the value of assets. A strained bankruptcy
1487 judiciary will slow that system down and undermine the
1488 essential benefits it provides.

1489 There are presently 29 temporary bankruptcy judgeships
1490 in the bankruptcy system with a lapse date of May 25, 2017.
1491 These temporary judgeships comprise more than 8 percent of
1492 the current bankruptcy judgeships nationwide. After May 25,
1493 these judgeships are at risk of being permanently lost,
1494 resulting in larger caseloads shared by fewer judges and
1495 causing further strain on our judiciary system.

1496 The Bankruptcy Judgeship Act of 2017 converts 14 of the
1497 existing temporary judgeships to permanent status and
1498 creates four new permanent bankruptcy judgeships in
1499 districts with some of the highest caseloads in the country.
1500 In fact, since the enactment of the Bankruptcy Abuse and
1501 Prevention and Consumer Protection Act of 2005, when a
1502 majority of the temporary judgeships were created, these
1503 districts have seen weighted filings increase by more than
1504 55 percent.

1505 This bill is based on a comprehensive study of judicial
1506 resource needs conducted by the Judicial Conference and is
1507 supported by the Administrative Office of the U.S. Courts.

1508 The Conference has assured us that its request comes
1509 only after it has taken steps to maximize all other
1510 alternatives to reduce judicial workloads. Moreover, the
1511 Conference has demonstrated that, while a district may have
1512 a permanent judgeship, it will not be filled unless
1513 completely necessary.

1514 Importantly, this bill will not present any new cost
1515 for the taxpayers. The Bankruptcy Judgeship Act includes an
1516 increase in the quarterly U.S. Trustee's fees or large,
1517 chapter 11 debtors excluding small businesses. This fee
1518 increase is directly tied to the balance of the United
1519 States Trustee System Fund and will only be applied when the
1520 balance of the Fund falls below a \$200 million threshold.

1521 These temporary bankruptcy judgeships were first set to
1522 lapse in 2010. They have been extended for over 12 years.
1523 Despite this committee's previous efforts to address the
1524 issue, to date, there have been only limited, short-term
1525 fixes.

1526 Additional permanent bankruptcy judgeships have not
1527 been authorized since 1992. The time has come for Congress
1528 to address bankruptcy judgeship needs more permanently. We
1529 need a bankruptcy system that has a sufficient number of

1530 judges to be able to manage the system's caseload in a just,
1531 economical, and timely manner. This bill ensures that we
1532 have such a system.

1533 I would like to thank Ranking Member Conyers for his
1534 leadership on this issue, and I would also like to thank
1535 Regulatory Reform, Commercial and Antitrust Law Subcommittee
1536 Chairman Marino, and Ranking Member Cicilline for joining me
1537 as original cosponsors of the bill. And I urge my
1538 colleagues to support this legislation.

1539 It is now my pleasure to recognize the ranking member,
1540 Mr. Conyers, for his opening statement.

1541 [The prepared statement of Chairman Goodlatte follows:]

1542 ***** COMMITTEE INSERT *****

1543 Mr. Conyers. Thank you, Chairman Goodlatte. Every 2
1544 years, the Judicial Conference of the United States
1545 undertakes a comprehensive survey of all judicial circuits
1546 to determine whether to request additional bankruptcy
1547 judgeships and whether any temporary bankruptcy judgeships
1548 should be extended.

1549 Earlier this week, I introduced H.R. 2266, the
1550 Bankruptcy Judgeship Act, together with my chairman,
1551 Goodlatte, and Regulatory Reform Chairman Marino, and
1552 Ranking Member David Cicilline, based on the results of the
1553 Conference's most recent request to Congress. I encourage
1554 my colleagues to support this legislation for several
1555 reasons.

1556 To begin with, the measure reflects the Conference's
1557 request which itself is based on its highly prudential
1558 survey of judicial resource needs. This analysis consists
1559 of two components. The first is premised on a case weight
1560 formula devised by the Federal Judicial Center intended to
1561 provide a more accurate and useful measure of judicial
1562 workload than a mere count of case filings.

1563 The second component considers a broad array of other
1564 factors, including the nature of a court's caseload, filing
1565 trends, demographic considerations, geographic issues, and
1566 economic aspects, among other items.

1567 Taken together, the resulting analysis provides a

1568 reliable basis upon which Congress may assess the necessity
1569 of authorizing additional judgeships. In addition, H.R.
1570 2266 addresses an immediate need.

1571 All of the temporary judgeships addressed in H.R. 2266,
1572 as pointed out by the chairman himself, lapse as of May 25,
1573 which is just three weeks away. And once a temporary
1574 judgeship lapses, any ensuing vacancies may not be filled.
1575 Accordingly, I share the Conference's concern that the
1576 bankruptcy courts would face a serious and, in many cases,
1577 debilitating workload crisis if their temporary judgeships
1578 were to expire.

1579 This is particularly true with respect to the eastern
1580 district of Michigan, my district, which has a weighted
1581 caseload well in excess of the minimum necessary to trigger
1582 additional judicial resources.

1583 Congress has previously extended temporary bankruptcy
1584 judgeships from time to time, but some have also lapsed as a
1585 result of Congress' failure to act in a timely fashion. So,
1586 to avoid future lapses in judicial resources, my legislation
1587 converts these temporary judgeships to permanent status.

1588 Finally, I am pleased to report that H.R. 2266 pays for
1589 all of these judgeships without having to require consumer
1590 debtors to bear that cost. The cost of this legislation is
1591 offset by increasing the quarterly fees that the largest 10
1592 percent of chapter 11 debtors pay to the United States

1593 Trustee System Fund, a proposal initially made by the Obama
1594 administration as part of the President's budget request for
1595 2017. Specifically, the fee increase would apply only to
1596 chapter 11 debtors that have quarterly disbursements in
1597 excess of \$1 million and only during the period when the
1598 Fund has less than \$200 million.

1599 And so, in closing, I, again, express my appreciation
1600 to Chairman Goodlatte, Chairman Marino, and Ranking Member
1601 Cicilline, as well as their staff, for their cooperative
1602 efforts in working with me on this bipartisan legislation.
1603 And so, I urge my colleagues to join us in supporting the
1604 measure and yield back the balance of my time. Thank you.

1605 [The prepared statement of Mr. Conyers follows:]

1606 ***** COMMITTEE INSERT *****

1607 Chairman Goodlatte. The chair thanks the gentleman.
1608 For what purpose does the gentleman from --
1609 Mr. Cohen. Tennessee.

1610 Chairman Goodlatte. No, I know. I am trying to
1611 determine. The gentleman from Michigan has an amendment --
1612 Mr. Cohen. Oh, I am sorry.

1613 Chairman Goodlatte. -- as well, but the chair will,
1614 instead, recognize the gentleman from Rhode Island, since I
1615 do not think he has an amendment. He wants to speak about
1616 the bill.

1617 The gentleman is recognized for 5 minutes.

1618 Mr. Cicilline. Thank you, Mr. Chairman. H.R. 2266,
1619 the Bankruptcy Judgeship Act of 2017, authorizes the
1620 establishment of four additional permanent bankruptcy judges
1621 and converts 14 temporary bankruptcy judges to permanent
1622 status.

1623 I am pleased to be an original cosponsor of this
1624 legislation, which is a necessary response to alleviate the
1625 strain on bankruptcy courts in certain districts that have
1626 experienced a significant increase in bankruptcy filings
1627 over the past decade or more.

1628 Importantly, this legislation adopts the
1629 recommendations of the Judicial Conference of the United
1630 States, the national policymaking body of the Federal
1631 Courts, and does not impose additional fees on ordinary

1632 consumer debtors.

1633 As the Conference notes in support of this measure,
1634 while bankruptcy filings have decreased nationwide, the
1635 bankruptcy courts that would receive permanent or new
1636 judgeships under this legislation have seen weighted filings
1637 increase by more than 55 percent.

1638 Furthermore, without this legislation, all 14 temporary
1639 judgeships covered by this bill will lapse later this month
1640 on May 25. Allowing a lapse in these judgeships would have
1641 potentially crippling effects on the bankruptcy system.

1642 For example, five of the six authorized judgeships of
1643 the U.S. Bankruptcy Court of the district of Delaware, the
1644 preferred venue for corporate reorganization under chapter
1645 11, are temporary.

1646 Accordingly, I urge this swift adoption of this
1647 critical legislation, and I thank Ranking Members Conyers,
1648 the bill sponsor, for their leadership, and Chairman
1649 Goodlatte, and Subcommittee Chairman Marino for their
1650 support of H.R. 2266 and yield back the balance of my time.

1651 Chairman Goodlatte. The chair thanks the gentleman.

1652 For what purpose does the gentleman from Michigan seek
1653 recognition?

1654 Mr. Conyers. Mr. Chairman, I have an amendment at the
1655 desk.

1656 Chairman Goodlatte. The clerk will report the

1657 amendment.

1658 Mr. Johnson of Georgia. Mr. Chairman?

1659 Chairman Goodlatte. For what purpose does the

1660 gentleman from --

1661 Mr. Johnson of Georgia. I would like to speak in

1662 support of the main bill.

1663 Chairman Goodlatte. You will be able to speak at any

1664 time during the process for the main bill, and I will

1665 recognize you at the appropriate time.

1666 But the amendment will be reported by the clerk.

1667 Mr. Conyers. I would say to my colleague from Georgia

1668 that these are merely technical revisions that I am bringing

1669 forth now in this amendment.

1670 Chairman Goodlatte. The clerk will report the

1671 amendment.

1672 Ms. Adcock. Amendment to H.R. 2266 offered by Mr.

1673 Conyers of Michigan. Page 1, line 1 --

1674 [The amendment of Mr. Conyers follows:]

1675 ***** COMMITTEE INSERT *****

1676 Chairman Goodlatte. Without objection, the amendment
1677 is considered as read, and the gentleman is recognized for 5
1678 minutes on his amendment.

1679 Mr. Conyers. Thank you. Mr. Chairman and members, my
1680 amendment makes a series of purely technical revisions to
1681 H.R. 2266, some of which were informally suggested by the
1682 Executive Office of the United States Trustee. These
1683 revisions correct certain typographical errors and specify
1684 that, notwithstanding an intervening vacancy in an
1685 authorized judgeship, the position can nevertheless be
1686 filled.

1687 In addition, the amendment includes clarifying language
1688 concerning the allocation of the United States Trustee
1689 quarterly fees. And so, again, I thank the chairman and
1690 appreciate the collaborative efforts that we engaged in, in
1691 the pursuit of this timely legislation and with respect to
1692 my amendment. Thank you.

1693 Chairman Goodlatte. Would the gentleman yield?

1694 Mr. Conyers. Of course.

1695 Chairman Goodlatte. I thank the gentleman for yielding
1696 and strongly support his amendment, and I believe it
1697 improves the bill and ensures that these important
1698 judgeships are preserved. And we must maintain our well-
1699 functioning bankruptcy system. So, I thank the gentleman
1700 for yielding.

1701 Mr. Conyers. Thank you, sir, and I yield back.

1702 Chairman Goodlatte. At this time, the chair will turn
1703 to the gentleman from Georgia for his remarks, and he is
1704 recognized for 5 minutes.

1705 Mr. Johnson of Georgia. Thank you, Mr. Chairman. I
1706 support a rising support of --

1707 Chairman Goodlatte. Let me have a vote on the
1708 underlying amendment, unless somebody else wants to address
1709 the amendment.

1710 The question is on the amendment offered by the
1711 gentleman from Michigan.

1712 All those in favor, respond by saying aye.

1713 Those opposed, no.

1714 The ayes have it. The amendment is agreed to.

1715 Now, we will go to the gentleman from Georgia for his
1716 comments on the underlying bill.

1717 Mr. Johnson of Georgia. Thank you, Mr. Chairman. I
1718 arise in support of the underlying bill. As former chairman
1719 of the Courts and Competition Policies Subcommittee of the
1720 Judiciary Committee, and also as former ranking member on
1721 the Regulatory Reform, Commercial and Administrative Law
1722 Subcommittee, I support this bill, which would authorize
1723 four additional, permanent bankruptcy judgeships and convert
1724 14 temporary bankruptcy judgeships to permanent status,
1725 based upon the most recent recommendation of the Judicial

1726 Conference of the United States.

1727 Bankruptcy case filings have increased by more than 55
1728 percent for the involved districts since the last time
1729 additional judgeships were authorized in 2005. In addition,
1730 all 14 of the temporary bankruptcy judgeships and the full
1731 bill that the bill converts to permanent status lapsed as of
1732 May 25 of 2017. If this bill is not passed, the remaining
1733 permanent bankruptcy judges in the affected districts will
1734 face a crippling caseload.

1735 I strongly support this bill, Mr. Chairman, and I yield
1736 back.

1737 Chairman Goodlatte. The chair thanks the gentleman,
1738 and now recognizes the gentleman from Tennessee for his
1739 amendment.

1740 Mr. Cohen. Thank you, sir.

1741 Chairman Goodlatte. The clerk will report the
1742 amendment.

1743 Ms. Adcock. Amendment to H.R. 2266 offered by Mr.
1744 Cohen of Tennessee. At the end of the bill add the
1745 following --

1746 [The amendment of Mr. Cohen follows:]

1747 ***** COMMITTEE INSERT *****

1748 Chairman Goodlatte. Without objection, the amendment
1749 is considered as read, and the gentleman is recognized for 5
1750 minutes on his amendment.

1751 Mr. Cohen. Thank you, Mr. Chairman. This amendment
1752 would extend a temporary bankruptcy court judgeship in the
1753 western district of Tennessee for 2 years, not make it
1754 permanent, but extend it.

1755 We had a bill in 2010 that passed this committee when I
1756 was the chair and Mr. Coble was my ranking member. We
1757 passed the bill. It should have passed the Senate in 2010
1758 at the height of the bankruptcy problem, and this temporary
1759 judgeship would have been made permanent.

1760 It was not agreed to in the Senate because of the
1761 small-minded thinking of the senator who was responsible
1762 that there would be incidental costs like hiring clerks.
1763 And because of that, we did not get bankruptcy judges that
1764 could have put people back in the position to participate in
1765 society and earn a living, but unfortunately, that happened.

1766 Tennessee, in the western district, has been one of the
1767 highest incidences of bankruptcy in our Nation's history.
1768 And for that reason, one of my predecessors, Walter
1769 Chandler, in the 1930s, passed a significant bankruptcy bill
1770 that we worked under for years.

1771 This court is still needed. I do not believe our
1772 division realized that it was coming up and was not going to

1773 be included, or else it would have reached out to the Sixth
1774 Circuit which could have recommended such and probably had
1775 it among the judgeships that were at least extended, if not
1776 made permanent.

1777 Judge Kennedy did not approach Judge Donald on the
1778 Sixth Circuit or anybody else. And so, the Sixth Circuit
1779 did not make such a recommendation.

1780 We have five judges. Four work basically in Memphis
1781 and one in Jackson. If we lose this temporary judgeship, it
1782 means a judge has to be spending time traveling to Jackson
1783 and hearing cases there. That is a waste of time for that
1784 judge and an additional expense. Even though incidental and
1785 small-minded, it seems to go contemporaneously with the
1786 thinking that the Senate had in 2010 and defeated the
1787 opportunity to have this judgeship made permanent then.

1788 Statewide, Tennessee sees a high bankruptcy relative to
1789 its population. From 1990 to 2016, it is 96 percent above
1790 average. Nationwide, its bankruptcy filings have fallen by
1791 approximately 50 percent between 2010 and 2016. Filings in
1792 Tennessee have only fallen by 29 percent.

1793 There is a strong possibility the caseload the Judicial
1794 Conference is working off of for the western district may
1795 not represent the full caseload; the reduced number end up
1796 being more of an outlier than of a defining trend.

1797 This would not create a new bankruptcy court judgeship.

1798 It would simply preserve the status quo in terms of staffing
1799 until we see the results of the next Judicial Conference
1800 survey.

1801 I would ask that the committee agree with this
1802 amendment, extend this temporary judgeship for 2 years in
1803 western district of Tennessee, which is having terrible
1804 economic times, has suffered historically from bankruptcies,
1805 and would have had a permanent judgeship but for the errant
1806 thinking of the Senate at the time.

1807 With that, I yield back the balance of my time and
1808 would ask for a positive vote.

1809 Chairman Goodlatte. The chair thanks the gentleman and
1810 is concerned, but recognizes himself in opposition of the
1811 amendment. Let me take you through the process that we have
1812 been through and the Judicial Conference has been through.

1813 The 14 temporary judgeship conversions and the four
1814 newly-authorized judgeships contained in this bill are based
1815 on the Judicial Conference's most recent recommendation from
1816 April 3, 2017 and are supported by the Administrative Office
1817 of the Courts. The Judicial Conference's recommendation to
1818 Congress concerning the need for bankruptcy judgeships is
1819 the product of a multi-step process.

1820 First, the bankruptcy court submits a request for
1821 additional bankruptcy judgeships to the district court,
1822 which transmits the request to the circuit court. Then, the

1823 circuit court's judicial council considers the request and
1824 either approves it with or without modification or disproves
1825 it.

1826 Approved requests are then sent to the Judicial
1827 Conference's Bankruptcy Committee's Subcommittee on
1828 Judgeships for Consideration. The subcommittee reviews the
1829 Circuit Court's recommendation, conducts onsite evaluations
1830 of judicial needs, and makes a recommendation to the full
1831 Bankruptcy Committee. The Bankruptcy Committee reviews the
1832 subcommittee's findings and makes a recommendation to the
1833 full Judicial Conference. Upon final approval, the
1834 recommendation is then transmitted by the Judicial
1835 Conference to Congress in its biannual report.

1836 The Judicial Conference did not recommend that the
1837 temporary judgeship in Tennessee be converted to permanent
1838 status or extended. No one is closer to the needs of the
1839 court system than the Judicial Conference and the
1840 Administrative Office. I am not aware of any facts or
1841 circumstances that would supersede the well-developed
1842 recommendation of the Judicial Conference to not convert or
1843 extent this judgeship.

1844 So, I would just say to the gentleman, I am concerned
1845 because he reports a different experience; however, I think
1846 it is not a good precedent for this committee to jump in
1847 based upon this one set of facts. So, I cannot support the

1848 amendment.

1849 But if the gentleman would withdraw it, we certainly
1850 can go back through the process. And if the Conference
1851 comes back, at any time, with a recommendation that the
1852 judgeship be extended or be made permanent, I think the
1853 committee should then take it up. But at this point in
1854 time, it would be my preference to have the gentleman either
1855 withdraw the amendment or that the amendment be opposed.

1856 Mr. Cohen. I will accept that offer and withdraw as I
1857 did take math and understand the situation. To some extent,
1858 I am just upset about what the Senate did in 2010. And it
1859 was really with small-minded thinking. But that thinking
1860 existed, and if we can, I will get Judge Kennedy to ask the
1861 Sixth Circuit. And if we can get something better, we will
1862 get it. Thank you, sir.

1863 Chairman Goodlatte. I thank the gentleman for
1864 withdrawing. Without objection, it is withdrawn.

1865 Are there any further amendments to H.R. 2266?

1866 Being none, a reporting forum being present, the
1867 question is on the motion to report the bill H.R. 2266, as
1868 amended, favorably to the House.

1869 Those in favor will say aye.

1870 Those opposed, no.

1871 The ayes have it, and the bill, as amended, is ordered
1872 reported favorably. Members will have 2 days to submit

1873 views. And without objection, the bill will be reported as
1874 a single amendment in the nature of a substitute,
1875 incorporating all adopted amendments. And staff is
1876 authorized to make technical and conforming changes.

1877 We have one bill remaining. Pursuant to notice, I now
1878 call up H.R. 1039 for purposes of markup and move that the
1879 committee report the bill favorably to the House.

1880 The clerk will report the bill.

1881 Ms. Adcock. H.R. 1039: to amend section 3606 of title
1882 18 United States Code to grant probation officers authority
1883 to arrest hostile third parties who obstruct or impede a
1884 probation officer in the performance of official duties.

1885 [The bill follows:]

1886 ***** INSERT 4 *****

1887 Chairman Goodlatte. Without objection, the bill is
1888 considered as read and open for amendment at any time, and I
1889 will begin by recognizing myself for an opening statement.

1890 Under current law, a federal probation officer may
1891 arrest a probationer or an offender on supervised release if
1892 the officer has probable cause to believe that the offender
1893 has violated a condition of his or her probation or release.
1894 The officer may make the arrest with or without a warrant.
1895 Unfortunately, current law does not grant probation officers
1896 arrest authority in situations where a third party attempts
1897 to physically obstruct an officer or inflict physical harm
1898 on the officer.

1899 Despite the fact that interfering with a probation
1900 officer in the performance of his or her official duties is
1901 in itself a crime, Federal probation officers lack the
1902 authority to correct or restrain a physically-interfering
1903 third party. In fact, a probation officer's only course of
1904 action is to retreat from the situation.

1905 This not only exposes these officers to a heightened
1906 risk of harm, as they are not permitted to subdue the
1907 assailant, it also allows the probationer to conceal
1908 evidence that he has violated terms of his probation or
1909 supervised release or any other criminal activity.

1910 H.R. 1039 is a reasonable and responsible remedy to
1911 this very real problem. This bill, which has the support of

1912 the Administrative Office of the U.S. Courts, will protect
1913 probation officers and enhance their ability to do their job
1914 by giving them authority to arrest a third party who
1915 forcibly interferes with an officer's performance of his or
1916 her official duties.

1917 This bill would not give Federal probation officers
1918 general arrest authority. Rather, as noted, it grants them
1919 the very limited authority to arrest a third party who is
1920 interfering with the duties of the officer.

1921 I urge my colleagues to support this commonsense
1922 measure to ensure that these dedicated men and women have
1923 the necessary authorities to undertake their duties safely
1924 and effectively, and probation officers care very deeply
1925 about this proposed legislation, and I want to acknowledge
1926 that two of them are present here in the hearing room:
1927 former U.S. probation officer in Colorado and northern
1928 district of Texas, Kerry Kent, and Lisa Barry, a current
1929 U.S. probation officer in the eastern district of Missouri.

1930 Ladies, welcome. Thank you for your past and present
1931 service, and we are going to try to fix this problem for
1932 you. And the chair is pleased to now recognize the ranking
1933 member for his opening statement.

1934 [The prepared statement of Chairman Goodlatte follows:]

1935 ***** COMMITTEE INSERT *****

1936 Mr. Conyers. Thank you for, Mr. Chairman. I am sorry
1937 to report that I must, with some reluctance, oppose this
1938 bill for several very important reasons.

1939 To begin with, I believe the changes the bill would
1940 make to current law would significantly alter the role of
1941 Federal probation officers and invite abuse in the
1942 application of the proposed expanded authority.

1943 Federal probation officers perform a critical service
1944 in interacting with and managing their supervisees. They
1945 have a central role in seeking to achieve the important
1946 goals of supervision; that is, to rehabilitate the
1947 defendant, to protect society from further criminal conduct
1948 by the defendant, and to protect the rights of the victims.

1949 Although they do have ability to arrest the supervisee
1950 under certain, circumscribed conditions, I think it best
1951 that probation officers not take on the role of police
1952 officers and, instead, focus on their roles of working in a
1953 constructive manner with supervisees to maximize the chances
1954 of adherence to the conditions of supervision. We certainly
1955 do not want probation officers to be threatened or assaulted
1956 when performing their duties, nor do we want anyone to
1957 obstruct the performance of those duties, and that is why
1958 Congress enacted section 111 of title 18, which prohibits
1959 such behavior.

1960 If violated, these crimes should be investigated and

1961 charges brought when or where appropriate. In fact,
1962 probation officers have long relied on trained law
1963 enforcement officers to provide support during searches, and
1964 I believe that that is the best course to continue.

1965 Section 111, however, itself, presents serious issues
1966 about the vagueness of some of its terms, the defined
1967 violates, such as "interferes," or "opposes." This
1968 exacerbates my concerns about allowing probation officers to
1969 arrest individuals whom they are not supervising for
1970 violations of this section, making such determinations on
1971 such vague terms, like those mentioned, invites abuse.

1972 Indeed, we are told by proponents of the bill that
1973 Federal probation officers plan to use lesser included
1974 authority to detain violators instead of bringing them in
1975 for charges after an arrest.

1976 To me, this is an invitation for an abuse and indicates
1977 the statute may be used at times when not even necessary.
1978 And at a time when we need to do more to deescalate
1979 circumstances involving confrontation between law
1980 enforcement and citizens, I am concerned that introducing
1981 this authority will only lead to more confrontation and may
1982 have the opposite effect that was intended.

1983 This is all the more troubling because of
1984 constitutional concerns regarding such detentions. The
1985 Federal Public Defender of New York detailed these concerns

1986 in a letter to us opposing this bill. And as the letter
1987 states, "The Fourth Amendment does not permit probation
1988 officers to exercise this lesser-included power.

1989 Under an exception to the Fourth Amendment's probable
1990 cause requirement, police officers, when executing a search
1991 warrant, are permitted to temporarily restrain third
1992 parties, absent probable cause for arrest, including by
1993 using handcuffs."

1994 In holding such detentions to be reasonable, the
1995 Supreme Court emphasized the fact, "of prime importance that
1996 the search was authorized by a neutral magistrate's finding
1997 of probable cause to search the premises." So in the
1998 circumstances contemplated by this bill, the probation
1999 officers would have the right to be on the premises, but
2000 their underlying authority to detain individuals, not based
2001 on a probable cause warrant, would not rise to the level
2002 required under the Constitution.

2003 Furthermore, the bill would put the Federal courts in
2004 the position of ruling on the constitutionality of the
2005 arrest of probation officers who are, themselves, agents of
2006 the Federal court. All these arguments are detailed in the
2007 very thoughtful and, I say, prudential analysis by the
2008 Federal Public Defenders, and so I ask that that letter be
2009 included in the record, Mr. Chairman.

2010 Chairman Goodlatte. Without objection, it will be made

2011 part of the record.

2012 [The information follows:]

2013 ***** COMMITTEE INSERT *****

2014 Mr. Conyers. Thank you. As the defenders state, the
2015 bill represents a retreat from the current, constructive
2016 role of probation officers in reintegrating offenders into
2017 society. If probation officers assume the role of police,
2018 directing and restraining or arresting a family and friend's
2019 progress in individual cases, and the system, as a whole,
2020 would be undermined, and I would add seriously undermined.

2021 The American Civil Liberties Union and the Leadership
2022 Council for Civil and Human Rights have also sent letters
2023 opposing this bill and outlining many of the same concern,
2024 and I ask unanimous consent that their letters be inserted
2025 also into the record.

2026 Chairman Goodlatte. Without objection, they will be
2027 made a part of the record.

2028 [The information follows:]

2029 ***** COMMITTEE INSERT *****

2030 Mr. Conyers. Thank you, and so I urge the members of
2031 the committee to join me in opposing this well-intentioned,
2032 but nevertheless, harmful bill.

2033 [The prepared statement of Mr. Conyers follows:]

2034 ***** COMMITTEE INSERT *****

2035 Chairman Goodlatte. Would the gentleman yield?

2036 Mr. Conyers. Yes, of course.

2037 Chairman Goodlatte. I thank the gentleman for
2038 yielding, and I appreciate the concerns he has raised;
2039 however, I would point out that a probation officer already,
2040 under current law, has the authority to arrest a probationer
2041 or an offender on supervised relief that the probation
2042 officer has reason to believe has committed a violation of
2043 their probation or release.

2044 However, there are occasions, when a probation officer
2045 is meeting with the probationer, that they get attacked by
2046 people who are friends or family members or other associates
2047 of the individual, and they have to have the ability to take
2048 an affirmative step to protect themselves, rather than
2049 simply retreating; otherwise, you would have to have law
2050 enforcement officers present in many, many circumstances
2051 where you are simply meeting with your probation officer,
2052 and you are not able to anticipate that these events might
2053 occur.

2054 So that is why I think that this bill, which is
2055 bipartisan, has the support of Democrats in the House, as
2056 well as Republicans, has a lot of merit to simply help to
2057 deal with problematic circumstances. It does not give them
2058 general arrest authority, and for that reason, I must
2059 disagree with my good friend and urge support for the

2060 legislation.

2061 Mr. Johnson of Georgia. Mr. Chairman?

2062 Chairman Goodlatte. For what purpose does the

2063 gentleman from Georgia seek recognition?

2064 Mr. Johnson of Georgia. Move to strike --

2065 Chairman Goodlatte. Actually, still the gentleman's

2066 time, even though we are well past.

2067 Mr. Conyers. Thank you very much. I just wanted to

2068 add to the fact that I know that Chairman is well-

2069 intentioned, but we have not had any problem that I know of

2070 where there is a need or a necessity for adding law

2071 enforcement, that that has occurred, and I believe that this

2072 is not necessary at all, not at all. And I thank the

2073 gentleman, and I yield back.

2074 Chairman Goodlatte. Thank you very much, and without

2075 objection, a letter from the AOUC will be submitted for the

2076 record.

2077 [The information follows:]

2078 ***** COMMITTEE INSERT *****

2079 Mr. Conyers. ACLU.

2080 Chairman Goodlatte. No, no. This is a letter that we
2081 have in support of the legislation that would recount
2082 instances that justify this legislation.

2083 For what purpose does the gentleman from Georgia seek
2084 recognition?

2085 Mr. Johnson of Georgia. Move to strike the last word.

2086 Chairman Goodlatte. The gentleman is recognized for 5
2087 minutes.

2088 Mr. Johnson of Georgia. Mr. Chairman, I thank you, and
2089 I am afraid that this legislation is a solution in search of
2090 a problem. I have not heard of the problem that would
2091 justify this drastic approach, which is to give law
2092 enforcement credentials to a probation officer.

2093 Probation officers are not trained to be law
2094 enforcement officers; they are trained to be probation
2095 officers. And most of the time probationees or supervisees
2096 come to the office of the probation officer. That is the
2097 way it works most of the time. Sometimes, probation
2098 officers go to a supervisee's home or job just to check to
2099 ensure that they are doing what they are supposed to do:
2100 they are at home during a curfew, or they are working when
2101 they are supposed to be working.

2102 They may go onsite, and usually, when they go onsite,
2103 they go by themselves, and they generally exercise caution

2104 not to go places where there would be a security threat to
2105 them, but if you give them arrest powers and then send them
2106 into situations where they may feel threatened, and this may
2107 not be a justifiable threat; they just simply are not used
2108 to going into neighborhoods, let's say, where African
2109 Americans live.

2110 They are not used to being by themselves, going into
2111 that setting, and so they are naturally apprehensive. They
2112 are frightened. They are on alert. They are on edge, and
2113 you put that with an overzealousness streak that may be in
2114 the mind of that particular probation officer, you are
2115 setting up a situation where a probation officer goes in
2116 Rambo-style and decides to lock everybody up, who has a
2117 harsh word to say to that officer, who may be telling
2118 everybody to get back and do not do this and do not do that,
2119 speaking in disrespectful terms or a tone of voice to
2120 someone who may be around a supervisee, and then decides,
2121 with the power that we have given them with the passage of
2122 this legislation, to just go in and lock this person up just
2123 out of vindictiveness.

2124 So what it is does is put innocent third parties, who
2125 are minding their own business, but they happen to be around
2126 when a supervisee is confronted by a renegade probation
2127 officer who is having a bad day, and then we get a lot of
2128 people locked up. This legislation, as I say, is a solution

2129 in search of a problem. There is a lot of unintended
2130 consequences that could be opened up as a result of passage
2131 of this legislation.

2132 And quite frankly, the people who are going to be
2133 adversely impacted by this legislation happen to be people
2134 of color because those are the people who find themselves on
2135 probation in an over-representative way in this society, and
2136 so, therefore, I ask my colleagues to consider the fact that
2137 there are other options for a probation officer who feels
2138 that they have been obstructed in an unlawful way.

2139 They can either call the police. The police can, then,
2140 decide whether or not to arrest an innocent third party, or
2141 they can go to a magistrate and swear out a warrant for
2142 someone's arrest, just like a police officer who did not
2143 have probable cause or a reasonable suspicious could do, as
2144 well, and so I ask my colleagues to vote no on this bill,
2145 and with that, I yield back.

2146 Chairman Goodlatte. For what purpose does the
2147 gentleman from Ohio seek recognition?

2148 Mr. Jordan. Excuse me, Mr. Chairman. I seek
2149 recognition to yield time to the chairman.

2150 Chairman Goodlatte. The chair thanks the gentleman for
2151 yielding. I just want to make a couple of points in
2152 response to the comments made by the gentleman from Georgia.

2153 First of all, probation officers are law enforcement

2154 officers. They are not police officers, which some
2155 erroneously use interchangeably, but they are, indeed, law
2156 enforcement officers, and it is a crime to interfere with
2157 them, as per 18 United States Code section 111. I do not
2158 think it is really so radical to suggest that Federal law
2159 enforcement officers, which is what probation officers are,
2160 should be able to arrest someone who commits a Federal crime
2161 by interfering with the probation officer's official duties.

2162 And should other law enforcement agencies really bear
2163 the burden of having to escort Federal probation officers on
2164 searches or even home visits? And, secondly, this is not a
2165 general arrest authority. So it is not just somebody
2166 hanging around that they say, well, I am going to arrest you
2167 for this, and that, and the other thing.

2168 The authority would not be permitted, under 1039,
2169 merely to claim interference and arrest any third party,
2170 but, rather, would be required to establish probable cause
2171 to believe that the person has forcibly assaulted, resisted,
2172 opposed, impeded, intimidated, or interfered with the
2173 probation officer or a fellow probation officer.

2174 That is what you would have to have before you could
2175 arrest somebody, so this is a narrow protection for
2176 probation officers that I think is important to enable them
2177 to do their job and do their job properly and not something
2178 that is directed at any community or any broadening of

2179 arrest authority for people involved.

2180 For what purpose does the gentleman from Rhode Island
2181 seek recognition?

2182 Mr. Cicilline. I move to strike the last word.

2183 Chairman Goodlatte. The gentleman is recognized for 5
2184 minutes.

2185 Mr. Cicilline. Mr. Chairman, I actually toyed with the
2186 notion of offering an amendment to change this to the
2187 Probation Officer Endangerment Act of 2017 because I think
2188 that what this legislation does is really present tremendous
2189 dangers to probation officers, and I think, in every way,
2190 this is a colossally bad idea.

2191 First, it is a clearly unconstitutional delegation of
2192 responsibility from the executive branch to the judicial
2193 branch. Probation officers are employed by the judicial
2194 branch to serve as administrative units of the district
2195 court in article III court. The enforcement of the criminal
2196 law is a quintessentially law enforcement function that
2197 rests with the executive branch, and the difference in the
2198 example that the chairman used about a probationer being
2199 subject to arrest, well, that person is under the
2200 supervision of the court already.

2201 That is quite different than giving arrest powers to a
2202 probation officer. So you have a very serious separation of
2203 powers question because you are delegating, to the

2204 administrative unit of the district court, executive
2205 functions, and I am just going to quote from a letter from
2206 the Public Defenders of New York:

2207 "This is not only a formalistic concern. A probation
2208 officer, who has arrested a private citizen for impeding the
2209 probation officer in his duties, would naturally have a
2210 direct, personal interest in both the legality of the arrest
2211 and the outcome of any resulting criminal case. The court,
2212 in turn, is the probation officer's employer, so when ruling
2213 on a challenge to the constitutionality of an arrest by a
2214 probation officer, the court would, thus, review the actions
2215 of its own agent, who is also the interested arresting
2216 officer and alleged victim to an offense."

2217 You can see why this presents very serious conflicts
2218 and a clear violation of the separation of powers. The
2219 second thing is it includes a Fourth Amendment requirement
2220 that is waived, really, by this.

2221 As you know, as all the members of this committee know,
2222 the Fourth Amendment requires a warrant before someone can
2223 be arrested subject to only a few, very specifically
2224 established and well-delineated exceptions, so you also have
2225 very serious Fourth Amendment concerns when you are giving
2226 arrest authority to a probation officer in the absence of a
2227 warrant, which is a part of our Constitution.

2228 So you have two very serious, I would suggest,

2229 constitutional problems with this statute. The second point
2230 is the bill is unnecessary, as my colleagues have said; it
2231 is a solution in search of a problem. There is, in fact,
2232 not a single instance that was cited in the U.S. probation
2233 service and seizure reports or in the Judicial Conference
2234 letters in which a probation officer requested law
2235 enforcement in advance or called for assistance from the
2236 scene where law enforcement declined or failed to show up.

2237 In fact, as the chairman said, the only course is not
2238 retreat. The course is contact law enforcement to, in fact,
2239 do what is necessary to arrest an individual. And so the
2240 notion that there is a system which is not currently working
2241 is simply not true. There is no evidence whatsoever that
2242 probation officers need the ability to arrest third parties
2243 without a warrant to address some serious problem. It is
2244 really a solution in search of a problem that will create, I
2245 would suggest, many more problems.

2246 The third issue is probation officers are not trained
2247 police officers, and so giving them police powers in the
2248 absence of training would really put probation officers in
2249 danger. Probation officers typically get a 6-week
2250 orientation program. It is very different from policing.

2251 I was the public safety commissioner in the city that I
2252 was mayor of. I know what police academies do. They
2253 generally are 16 to 21 weeks of classroom and field

2254 instruction. They provide all kinds of training, which
2255 probation officers do not have, that show them how to affect
2256 safely and arrest of another individual.

2257 So I think, while this may be well-intentioned, it is
2258 fraught with practical problems, with constitutional
2259 shortcomings, and addresses a problem that just does not
2260 exist. We will be responsible for putting probationers in a
2261 position of being the only people in America who can arrest
2262 someone without a warrant, without being properly trained to
2263 execute that arrest, and then go into a courtroom and
2264 testify in front of their employer about the legality of
2265 that arrest. That is a recipe for disaster.

2266 Chairman Goodlatte. Would the gentleman yield?

2267 Mr. Cicilline. I would be glad to.

2268 Chairman Goodlatte. I would like to address several of
2269 your points. First of all, Congress authorized the judicial
2270 branch to have law enforcement authority when it established
2271 the Supreme Court of the United States Police right across
2272 from this building.

2273 Secondly, the authority that is granted in this bill is
2274 very common among State and local probation and parole
2275 officers. So it is not new. It is done already in many
2276 State and local governments across the country.

2277 Finally, Federal probation officers currently, right
2278 now, receive extensive, ongoing, nationally-standardized

2279 training regarding firearms, regarding the use of force, and
2280 regarding search and seizure protocols, so the gentleman is
2281 simply not correct when he asserts --

2282 Mr. Cicilline. Mr. Chair, with all due respect, I am
2283 reclaiming my time.

2284 Chairman Goodlatte. You can reclaim your time.

2285 Mr. Cicilline. Yeah. Reclaim my time, Mr. Chairman.
2286 Whether or not States authorize probation officers to
2287 address third parties without a warrant is, while it is
2288 interesting, it is unconstitutional. We have a warrant
2289 requirement in our Constitution.

2290 Secondly, police officers are trained differently than
2291 probation officers --

2292 Chairman Goodlatte. Will the gentleman yield?

2293 Mr. Cicilline. -- so I think we have a responsibility
2294 to honor the provisions of our Constitution. The ability of
2295 probation officers to arrest probationers is predicated on
2296 the fact that they are being supervised by the court. That
2297 is not what this is.

2298 This is a third party. This is someone who is not
2299 subject to the supervision of the court, and we are allowing
2300 a probation officer, without training, without a warrant, to
2301 take them into custody. It is a recipe for disaster. I
2302 urge my colleagues to vote no, and I yield back.

2303 Chairman Goodlatte. For what purpose does the

2304 gentlewoman from Texas seek recognition?

2305 Ms. Jackson Lee. Mr. Chairman, thank you very much,
2306 and there is one thing that we compliment for you is your
2307 patient for the vigorous arguments that we believe are so
2308 meritorious.

2309 I thank Mr. Cicilline, and I would like to follow his
2310 theme by making this point: this bill is so racked with
2311 constitutional violations, I do not know where it will go.

2312 First of all, we have been unified on this committee on
2313 our support of Federal law enforcement officers and, really,
2314 our support of best practices for law enforcement across
2315 America. And that means that we try to encourage and
2316 applaud, but also provide resources.

2317 In the appropriations that we just passed, the Cops on
2318 the Beat program was enhanced by Democrats and, I hope,
2319 Republicans coming together. We plussed-up Cops on the Beat
2320 monies. I want my constituents back home to know that, but
2321 the probation officer structure is one where some carry
2322 guns, and in some jurisdictions, they do not carry guns.

2323 Also, this particular legislation never had a hearing,
2324 and what I think is important that I want to make note of is
2325 that probation has a unique framework: the goal of probation
2326 is rehabilitative in nature and not punitive. As exhibited
2327 in the punishment created under this bill, the
2328 rehabilitation sought, thus, creates a unique relationship

2329 between a probation officer and the supervisee, which
2330 necessitates trust on both ends.

2331 They may know the family members, and they, over the
2332 years, they may have known how to deal with the family
2333 members. Now, you entrust them with an unconstitutional
2334 right, under statutory law, to violate the Fourth Amendment,
2335 where they have the right to arrest or detain without a
2336 warrant and without documented probable cause that a judge
2337 had indicated or that can be documented.

2338 So, take for example, you have, in the real world, I
2339 see this all the time. Maybe some people do not have this
2340 in their districts. I do. This could be the mother of a
2341 son on probation is arrested for denying a probation officer
2342 access to her private space like her bedroom, or because she
2343 is chattering up a storm because of the argument about he
2344 did not do it, or he was home, or whatever. That calls for
2345 an assessment, a comeback, another process. It does not
2346 call for arresting the mother, detaining the mother.

2347 You are racked with no constitutional basis for doing
2348 so. So I would ask my colleagues if they think of anything
2349 -- and we know what rights probation officers have. They
2350 have it based upon forcibly assaulted, resisted, opposed,
2351 impeded, intimidated, or interfered with a probation officer
2352 or a fellow probation officer. Now, you are going into the
2353 third party, and you have no basis, no warrant, no facts, no

2354 hearing.

2355 Now, let me conclude and ask, as I said, for opposition
2356 to this particular bill. Then, Mr. Chairman, again, Mr.
2357 Ranking Member, we have worked collaboratively together. As
2358 we speak, Director Comey is testifying in the Senate, and
2359 next week, former Deputy Attorney General Sally Yates is
2360 testifying regarding a Russian connection, the actions of
2361 this administration, the connection to Russia, General
2362 Flynn.

2363 I am asking this committee, we cannot remain silent.
2364 It is a deafening silence. We have had no hearings on the
2365 question of the Russian collusion of this administration,
2366 and we are the first line of offense on Articles of
2367 Impeachment. That may be relevant; it may not be, but
2368 certainly, hearings are relevant about potential criminal
2369 activity with individuals in any administration, and I have
2370 sat here long enough to watch the allegations and the
2371 charges and impeachment proceedings against one President at
2372 least, and my colleague, the Dean, has seen more than that.

2373 And I sat here through the WACO, long-ended hearings of
2374 that tragic incident, where enormous loss of life. There is
2375 no reason why, when this blatant, obvious potential of
2376 wrongdoing, alleged, cannot be and should not be
2377 investigated by this particular committee. And, certainly,
2378 committees dealing with crime and Constitution, so I hope --

2379 Mr. Conyers. Would the gentlelady yield?

2380 Ms. Jackson Lee. I would be happy to yield.

2381 Mr. Conyers. I want to commend you. You have raised
2382 two, in my view, separate, but very important issues, and I
2383 support your reasoning and your insistence that this
2384 committee do its responsibility in conducting hearings. I
2385 think for us not to do that would be unthinkable, and I
2386 congratulate the lady on her comments.

2387 Chairman Goodlatte. The time of the gentleman has
2388 expired, but I would be happy to extend additional time to
2389 the gentlewoman if she would yield to me on the last point
2390 that she just raised?

2391 Ms. Jackson Lee. I would be happy to accept the time
2392 and to yield to the gentleman, both gentlemen.

2393 Chairman Goodlatte. I thank the gentlewoman for
2394 yielding. I just want to say to her that this committee has
2395 inquired of the Justice Department to be sure that they are
2396 doing their job in properly addressing the matter that the
2397 gentlewoman raised, and I would point out to her that in the
2398 last Congress there was great concern regarding whether or
2399 not the Federal Bureau of Investigation was properly
2400 investigating alleged charges against the Presidential
2401 candidate of her party in that election. And I would point
2402 out to her that this committee did not hold any hearings on
2403 that issue until after the Attorney General of the United

2404 States met on a plane with the husband of the former
2405 Secretary of State and Presidential candidate. And after
2406 the FBI Director announced that he did not think that
2407 charges should be brought against Mrs. Clinton. It was only
2408 then that his committee acted.

2409 So we have both acted responsibly to be assured that
2410 there is an ongoing investigation because both the chairman
2411 and the ranking member have been so advised by the Director
2412 of the Federal Bureau of Investigation that such an
2413 investigation is being conducted, and we have not sought to
2414 interfere with that investigation by holding hearings, just
2415 as we did not seek to interfere with the investigation
2416 regarding Mrs. Clinton by holding hearings until after the
2417 FBI announced their position with regard to that
2418 investigation which, as you know, was very controversial
2419 throughout the remainder of that presidential election.

2420 So I appreciate the gentlewoman's concern about that
2421 issue. We are watching the issue closely, but we think we
2422 are acting properly in our oversight responsibility; not of
2423 the State Department, not of the Whitehouse, but of the
2424 Justice Department, to be assured that the Director of the
2425 FBI is indeed conducting the investigation that you seek to
2426 have conducted. So I thank the gentlewoman for raising --

2427 Ms. Jackson Lee. Would the gentleman yield for just a
2428 moment? Just a brief appreciation for the chairman on that

2429 commentary. That was an election. As you well know, the
2430 FBI Director did not restrain himself from casting great
2431 doubt and injuring the campaign process, even though he knew
2432 that he was investigating the Russian collusion as July
2433 2016, but he decided to publicly announce that of Mrs.
2434 Clinton.

2435 But the point is, is that was an election. Now we talk
2436 about the President of the United States. You had no basis
2437 to impeach either candidate. We do have a basis of
2438 impeaching the President of the United States, and I do not
2439 think that we should be long in relying upon -- the Justice
2440 Department has an Attorney General who has recused himself.
2441 The new Deputy Attorney General just walked through the
2442 door. Mr. Chairman, I think that we are brilliant-minded
2443 persons here on this committee. With you and the ranking
2444 member, I think we need to begin our own hearings,
2445 exploratory hearings. And I yield back.

2446 Chairman Goodlatte. The gentlewoman does not even have
2447 before this committee any such basis for doing that, and the
2448 committee has acted responsibly in reviewing the concerns
2449 raised about whether or not the Department has indeed been
2450 and is now conducting an investigation, and that is the --

2451 Mr. Conyers. Would the gentlelady yield?

2452 Ms. Jackson Lee. I would be happy to yield.

2453 Mr. Conyers. I would like to propose that the chairman

2454 and myself begin to meet on this as opposed to trying to
2455 resolve it under these circumstances with a completely
2456 different issue in front of us. Would the chairman be
2457 willing?

2458 Chairman Goodlatte. If the gentleman would yield --
2459 Mr. Conyers. Sure.

2460 Chairman Goodlatte. -- let me just say, that as I
2461 stated, when there is allegations of criminal misconduct
2462 those are handled by investigations by the Department of
2463 Justice, as was handled in the case with Mrs. Clinton, and
2464 that, because of allegations made now, that is being handled
2465 that way as well. But there is no basis for this committee
2466 to begin to meet and discuss anything other than making sure
2467 the Department of Justice is doing its job, and that is what
2468 they are doing --

2469 Mr. Conyers. But I am suggesting that the chairman and
2470 I have discussions. We do not have to have any standard
2471 discussions.

2472 Chairman Goodlatte. I do not see any need. You and I
2473 can always talk, but I do not see any need to have any
2474 formalized request for such discussions when there is
2475 nothing before this committee that would suggest that that
2476 would be appropriate, and I do not --

2477 Mr. Conyers. Well I do.

2478 Chairman Goodlatte. Well I appreciate the gentleman's

2479 interest in that. This matter is being investigated by
2480 other committees that have jurisdiction over the underlying
2481 facts and it being investigated by the Department of
2482 Justice, and you and I have both been assured of that.

2483 Mr. Conyers. Well that is all right, but I still want
2484 to talk with the chairman of this committee. I mean, I do
2485 not see where that is all precluded by all of these other
2486 inquiries that are going on around us, sir.

2487 Chairman Goodlatte. I appreciate the gentleman's
2488 position.

2489 Are there any amendments to H.R. 1039?

2490 Ms. Jackson Lee. Mr. Chairman, I have an argument I
2491 would like to put into the record.

2492 Chairman Goodlatte. Without objection, it will be made
2493 a part of the record.

2494 [The information follows:]

2495 ***** COMMITTEE INSERT *****

2496 Ms. Jackson Lee. ACLU letter, thank you.

2497 Chairman Goodlatte. A reporting quorum being present,
2498 the question is on the motion to report the bill H.R. 1039
2499 favorably to the House.

2500 Those in favor respond by saying aye.

2501 Those opposed, no.

2502 In the opinion of the chair, the ayes have it, and the
2503 bill is ordered reported --

2504 Mr. Conyers. Mr. Chairman, I would like a recorded
2505 vote.

2506 Chairman Goodlatte. A recorded vote is requested and
2507 the clerk will call the roll.

2508 Ms. Adcock. Mr. Goodlatte?

2509 Mr. Goodlatte. Aye.

2510 Ms. Adcock. Mr. Goodlatte votes aye.

2511 Mr. Sensenbrenner?

2512 [No response.]

2513 Mr. Smith?

2514 [No response.]

2515 Mr. Chabot?

2516 [No response.]

2517 Mr. Issa?

2518 [No response.]

2519 Ms. Adcock. Mr. King?

2520 Mr. King. Aye.

2521 Ms. Adcock. Mr. King votes aye.

2522 Mr. Franks?

2523 [No response.]

2524 Mr. Franks. Aye.

2525 Ms. Adcock. Mr. Franks votes aye.

2526 Mr. Gohmert?

2527 [No response.]

2528 Mr. Jordan?

2529 Mr. Jordan. Yes.

2530 Ms. Adcock. Mr. Jordan votes yes.

2531 Mr. Poe?

2532 [No response.]

2533 Mr. Chaffetz?

2534 [No response.]

2535 Mr. Marino?

2536 Mr. Marino. Yes.

2537 Ms. Adcock. Mr. Marino votes yes.

2538 Mr. Gowdy?

2539 Mr. Gowdy. Yes.

2540 Ms. Adcock. Mr. Gowdy votes yes.

2541 Mr. Labrador?

2542 [No response.]

2543 Mr. Farenthold?

2544 Mr. Farenthold. Yes.

2545 Ms. Adcock. Mr. Farenthold votes yes.

2546 Mr. Collins?
2547 [No response.]
2548 Mr. DeSantis?
2549 [No response.]
2550 Mr. Buck?
2551 Mr. Buck. Aye.
2552 Ms. Adcock. Mr. Buck votes aye.
2553 Mr. Ratcliffe?
2554 [No response.]
2555 Mrs. Roby?
2556 [No response.]
2557 Mr. Gaetz?
2558 Mr. Gaetz. Yes.
2559 Ms. Adcock. Mr. Gaetz votes yes.
2560 Mr. Johnson of Louisiana?
2561 Mr. Johnson of Louisiana. Yes.
2562 Ms. Adcock. Mr. Johnson votes yes.
2563 Mr. Biggs?
2564 Mr. Biggs. Yes.
2565 Ms. Adcock. Mr. Biggs votes yes.
2566 Mr. Conyers?
2567 Mr. Conyers. No.
2568 Ms. Adcock. Mr. Conyers votes no.
2569 Mr. Nadler?
2570 [No response.]

2571 Ms. Lofgren?
2572 [No response.]
2573 Ms. Jackson Lee?
2574 Ms. Jackson Lee. No.
2575 Ms. Adcock. Ms. Jackson Lee votes no.
2576 Mr. Cohen?
2577 [No response.]
2578 Mr. Johnson of Georgia?
2579 Mr. Johnson of Georgia. No.
2580 Ms. Adcock. Mr. Johnson votes no.
2581 Mr. Deutch?
2582 [No response.]
2583 Mr. Gutierrez?
2584 [No response.]
2585 Ms. Bass?
2586 [No response.]
2587 Mr. Richmond?
2588 [No response.]
2589 Mr. Jeffries?
2590 [No response.]
2591 Mr. Cicilline?
2592 Mr. Cicilline. No.
2593 Ms. Adcock. Mr. Cicilline votes no.
2594 Mr. Swalwell?
2595 [No response.]

2596 Mr. Lieu?

2597 [No response.]

2598 Mr. Raskin?

2599 [No response.]

2600 Ms. Jayapal?

2601 [No response.]

2602 Mr. Schneider?

2603 Mr. Schneider. No.

2604 Ms. Adcock. Mr. Schneider votes no.

2605 Chairman Goodlatte. The gentleman from California.

2606 Mr. Issa. Yes.

2607 Ms. Adcock. Mr. Issa votes yes.

2608 Chairman Goodlatte. The gentleman from Texas, Mr.

2609 Gohmert.

2610 Mr. Gohmert. Yes.

2611 Ms. Adcock. Mr. Gohmert votes yes.

2612 Chairman Goodlatte. The gentleman from Texas, Mr. Poe.

2613 Mr. Poe. Yes.

2614 Ms. Adcock. Mr. Poe votes yes.

2615 Chairman Goodlatte. The gentleman from Ohio, Mr.

2616 Chabot.

2617 The gentleman from Florida.

2618 Mr. Deutch. No.

2619 Ms. Adcock. Mr. Deutch votes no.

2620 Chairman Goodlatte. You are recorded as a no.

2621 The gentleman from New York.

2622 Mr. Nadler. No.

2623 Ms. Adcock. Mr. Nadler votes no.

2624 Chairman Goodlatte. Has every member voted who wishes
2625 to vote? The clerk will report.

2626 Ms. Adcock. Mr. Chairman, 15 members voted aye, 7
2627 members voted no.

2628 Chairman Goodlatte. The ayes have it, and the bill is
2629 ordered reported favorably to the House. Members will have
2630 2 days to submit views. This concludes our business for
2631 today. Thanks to all the members for attending. The markup
2632 is adjourned.

2633 [Whereupon, at 12:47 p.m., the committee was
2634 adjourned.]