

1 NATIONAL CAPITOL CONTRACTING  
2 RPTS CATALA  
3 HJU164000

4 MARKUP OF H.R. 4423, H.R. 5954,  
5 H.R. 5904  
6 Wednesday, June 13, 2018  
7 House of Representatives,  
8 Committee on the Judiciary,  
9 Washington, D.C.

10 The committee met, pursuant to call, at 10:00 a.m., in  
11 Room 2141, Rayburn House Office Building, Hon. Bob Goodlatte  
12 [chairman of the committee] presiding.

13 Present: Representatives Goodlatte, Sensenbrenner,  
14 Chabot, Issa, King, Gohmert, Jordan, Poe, Marino, DeSantis,  
15 Buck, Ratcliffe, Roby, Gaetz, Johnson of Louisiana, Biggs,  
16 Rutherford, Handel, Rothfus, Nadler, Jackson Lee, Johnson of  
17 Georgia, Bass, Richmond, Jeffries, Cicilline, Lieu, Raskin,  
18 Jayapal, Schneider, and Demings.

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

21 and General Counsel; Daniel Flores, Chief Counsel,  
22 Subcommittee on Regulatory Reform, Commercial and Antitrust  
23 Law; Dan Huff, Counsel, Subcommittee on Regulatory Reform,  
24 Commercial and Antitrust Law; Alley Adcock, Clerk; James  
25 Park; Matt Morgan, Danielle Brown; Slade Bond; Susan Jensen;  
26 David Greengrass; Rachel Calanni; and Perry Apelbaum.

27           Mr. Chabot. [Presiding.] The Judiciary Committee will  
28 come to order. Without objection, the chair is authorized  
29 to call a recess at any time. Pursuant to notice, I now  
30 call up H.R. 5904 for purposes of markup and move that the  
31 committee report the bill favorably to the House. The clerk  
32 will report the bill.

33           Ms. Adcock. H.R. 5904 to amend the Sherman Act to make  
34 oil producing --

35           [The bill follows:]

36 \*\*\*\*\* INSERT 1 \*\*\*\*\*

37 Mr. Chabot. Without objection, the bill is considered  
38 as read and open for amendment at any time. I will begin by  
39 recognizing myself for an opening statement.

40 The No Oil Producing and Exporting Cartels Act, NOPEC,  
41 is a bipartisan bill whose enactment is long overdue. The  
42 fact that the Organization of Petroleum Exporting Countries,  
43 OPEC, is not being held accountable for its anticompetitive  
44 behavior makes a mockery of U.S. antitrust law.

45 Consider that the Justice Department has been opposing  
46 a high-profile merger over consumers potentially paying 50  
47 cents more a month. Meanwhile, academics call for greater  
48 regulation to protect consumer welfare based on increasingly  
49 exotic antitrust theories. Yet nothing is done about OPEC's  
50 collusive activity, even though it appears illegal per se  
51 and it is behind a rise in gas prices of over 50 cents a  
52 gallon since 2016.

53 The lack of action is not a function of gaps in the  
54 underlying antitrust statutes. As the Supreme Court has  
55 explained, "Under the Sherman Act, the combination formed  
56 for the purpose and with the effect of stabilizing the price  
57 of a commodity in interstate or foreign commerce is illegal  
58 per se."

59 OPEC's organizational document under the headline  
60 "Objectives" states that "the organization shall devise ways  
61 and means of ensuring the stabilization of prices in

62 international oil markets." Federal law specifically  
63 provides that the Sherman Act applies to foreign conduct  
64 that has a direct, substantial, and reasonably foreseeable  
65 effect on U.S. domestic commerce. That is certainly true of  
66 oil prices.

67       Unfortunately, the courts have blocked efforts to hold  
68 OPEC accountable under these provisions. In 1979, a Federal  
69 district court dismissed on the ground of sovereign immunity  
70 a lawsuit against OPEC brought by a labor union, but the  
71 same Federal law that creates that immunity contains an  
72 exception for commercial activity.

73       Nevertheless, the judge read that exception narrowly to  
74 avoid having to decide the case. On appeal, the Ninth  
75 Circuit did reach the sovereign immunity question. Instead,  
76 it held that the suit was barred by the Act of State  
77 Doctrine, which is a judge-made doctrine designed to avoid  
78 judicial action in sensitive areas.

79       H.R. 5904 removes the hurdles to hold OPEC accountable.  
80 It prohibits foreign state actors from cooperating to limit  
81 oil production. As explained, existing law already appears  
82 to do that, but the new language removes any doubt. The  
83 bill also makes clear that anticompetitive activities  
84 relating to oil production fall within the commercial  
85 activity exception to the Foreign Sovereign Immunities Act.  
86 Similarly, the bill provides that courts may not decline to

87 hear an antitrust case relating to oil production under the  
88 Act of State Doctrine.

89 Finally, NOPEC authorizes the Department of Justice,  
90 but not private parties, to bring suit against oil cartel  
91 members in Federal court. This last provision is important  
92 because it ensures that courts would only be hearing cases  
93 that the executive branch affirmatively elected to bring  
94 after considering the foreign policy and national security  
95 implications.

96 Despite strong support in Congress over a period of  
97 years, NOPEC is not yet become law. However, recently  
98 President Trump signaled that he may be more receptive than  
99 prior Presidents to measures that would counteract OPEC's  
100 adverse impact. Further, while a private citizen, President  
101 Trump specifically endorsed a prior iteration of NOPEC.  
102 This creates a real opportunity to enact this long overdue  
103 legislation.

104 Accordingly, on May 18th, 2018, the Subcommittee on  
105 Regulatory Reform, Commercial, and Antitrust Law held a  
106 hearing on NOPEC legislation featuring experts in antitrust,  
107 foreign policy, and energy issues. Following the hearing, I  
108 introduced H.R. 5904 with strong bipartisan support. This  
109 markup is timely. OPEC's next meeting is scheduled for June  
110 22nd, 2018. The time for action is now.

111 This legislation is the right thing to do as a matter

112 of antitrust law and to help consumers as we head toward the  
113 summer driving season. I am proud to be the sponsor of this  
114 legislation. I want to thank the ranking member, Mr.  
115 Nadler, for his leadership on this as well as Mr. Cicilline,  
116 Chairman Goodlatte, Mr. Marino, and Mrs. Handel as well, and  
117 other members who have cosponsored it.

118         And with that I yield back my time. And it is my  
119 pleasure to recognize the ranking member, Mr. Nadler of the  
120 Judiciary Committee for his opening statement.

121         [The prepared statement of Mr. Chabot follows:]

122         \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

123 Mr. Nadler. Thank you, Mr. Chairman. The Organization  
124 of Petroleum Exporting Countries -- or OPEC -- is an  
125 international cartel whose members deliberately collude to  
126 limit crude oil production as a means of fixing prices,  
127 unfairly driving up the price of crude oil to satisfy the  
128 greed of oil producers. Such behavior done by private  
129 companies would be illegal per se under U.S. antitrust law.

130 Because of a series of court decisions, however, U.S.  
131 antitrust enforcers are unable to protect American consumers  
132 and businesses from the direct harm caused by OPEC's  
133 blatantly anticompetitive conduct. H.R. 5904, the No Oil  
134 Producing and Exporting Cartels Act, or NOPEC, addresses  
135 these decision by amending procedural law in a variety of  
136 ways and by expressly authorizing the Department of Justice  
137 to pursue antitrust litigation against OPEC members, should  
138 it choose to do so.

139 I am pleased to join my colleague, Congressman Chabot,  
140 as an original cosponsor of this legislation, along with  
141 Chairman Goodlatte, Mr. Marino, and Mr. Cicilline. The  
142 NOPEC Act would amend the Sherman Antitrust Act to add a new  
143 section 7(a) that explicitly makes it illegal for any  
144 foreign state to act collectively with others to limit  
145 production, fix prices, or otherwise restrain trade with  
146 respect to oil, natural gas, or other petroleum products.  
147 This provision could be enforced only by the Justice



148 Department.

149       The bill also creates an exemption under the Foreign  
150 Sovereign Immunities Act to allow litigation against foreign  
151 countries to the extent that they are engaged in price  
152 fixing and other anticompetitive activities in violation of  
153 this new section 7(a). Finally, the bill clarifies that the  
154 Act of State Doctrine does not prevent courts from deciding  
155 antitrust cases brought against foreign governments under  
156 section 7(a).

157       The NOPEC Act strikes an appropriate balance between  
158 allowing aggressive enforcement of U.S. antitrust law  
159 against OPEC to keep oil prices in check and respecting the  
160 separation of powers by deferring to the executive branch as  
161 to whether litigation is appropriate in any given case in  
162 light of foreign policy and national security concerns.

163       In 2007, I voted for legislation virtually identical to  
164 this measure which passed the House with overwhelming  
165 bipartisan support. Although 11 years have passed since  
166 then, many of the reasons for supporting that legislation in  
167 2007 remain valid today. OPEC controls more than 80 percent  
168 of global oil reserves, 40 percent of the world's oil  
169 production, and more than 60 percent of the petroleum that  
170 is traded internationally.

171       When acting collectively, OPEC countries can greatly  
172 influence crude oil prices. Why should the average American

173 care about this? Because the price of crude oil is the  
174 largest single determinant of retail gas prices.

175       According to one estimate, crude oil prices accounted  
176 for 57 percent of the cost of retail gasoline as of February  
177 2018. And the retail price of gasoline touches almost every  
178 aspect of American's daily lives, from the cost of commuting  
179 to the price of food and almost every consumer good to the  
180 extent that such prices reflect transportation expenses.  
181 High gasoline prices, in addition to raising these costs and  
182 cutting into Americans' income can also cause a vicious  
183 cycle of negative economic effects, such as causing  
184 consumers to cut back on purchases and limit their travel,  
185 which in turn hurts businesses and their employees.

186       For a bill we last considered in 2007, one might be  
187 tempted to say that the concerns motivating an OPEC act are  
188 yesterday's news. In a somewhat literal sense, I agree.  
189 According to a CNBC report from last month, oil prices rose  
190 to \$80 a barrel for the first time since November 2014.

191       Recently, the U.S. Energy Information estimated that  
192 U.S. regular gasoline retail prices over the period of April  
193 to September will rise to an average of \$2.90 per gallon,  
194 which is 17 cents per gallon higher than it was in April,  
195 and up from an average of \$2.41 last summer. That agency  
196 also reported that gasoline prices will reach a summer peak  
197 of \$2.97 per gallon by June, and that this projected

198 increase is primarily the result of higher forecast crude  
199 oil prices.

200 I support the NOPEC Act because it would provide the  
201 Federal Government with one tool to address unfair retail  
202 gas prices. Nevertheless, I caution that it would be a  
203 mistake to think that enacting this legislation alone will  
204 fix the problem. Congress and the Trump administration  
205 should explore the other factors that also drive high  
206 gasoline prices, including an anticompetitive level of  
207 concentration among oil refiners, our excessive petroleum  
208 consumption as a society, and a heightened risk of war and  
209 instability in the Middle East.

210 Passing the NOPEC Act, however, would be a helpful  
211 step. I thank the chairman and the sponsor of this  
212 legislation, urge my colleagues to support this measure, and  
213 I yield back the balance of my time.

214 [The prepared statement of Mr. Nadler follows:]

215 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

216 Mr. Chabot. Thank you very much. The gentleman yields  
217 back. The gentleman from Pennsylvania, Mr. Marino, who is  
218 the chairman of the Subcommittee on Regulatory Reform,  
219 Commercial, and Antitrust Law is recognized for 5 minutes.

220 Mr. Marino. Thank you, Chairman. Last month my  
221 subcommittee held a hearing on H.R. 5904, the NOPEC Act, of  
222 which I am an original cosponsor. NOPEC is a longstanding  
223 bipartisan, bicameral bill that would expose the  
224 Organization of the Petroleum Exporting Countries, also  
225 known as OPEC, to U.S. antitrust law for its cartel behavior  
226 by removing the State immunity shield available to enter  
227 judicial precedent.

228 In previous Congresses, NOPEC has passed both the House  
229 and the Senate by overwhelming majorities. The bill has yet  
230 to be enacted into law, however, and the need for enactment  
231 remains.

232 The average U.S. household spends over \$2,000 a year  
233 just on gasoline. That would be one of the things, if fuel  
234 prices were set by the free market, but they are not. Sixty  
235 percent of the total petroleum traded internationally is  
236 controlled by OPEC, and OPEC was founded in 1960. It has 14  
237 members countries, including Iran and Libya.

238 According to the U.S. Energy Information  
239 Administration, "Production by OPEC countries is an  
240 important factor that affects oil prices. This organization

241 seeks to actively manage oil production in its member  
242 countries by setting production targets." This collusion  
243 translates directly to consumers' wallets, since oil prices  
244 are by far the most important factor in determining gas  
245 prices at the pump.

246 From 2008 to 2017, crude oil cost accounted for 61  
247 percent of the average retail price of gasoline. In April  
248 2018, OPEC and non-OPEC producers led by Russia agreed to  
249 continue an agreement they struck in 2016 limiting  
250 production. At the time, oil was at \$43 a barrel. It is  
251 now at \$63 a barrel.

252 Given all of this, the American people would be right  
253 to wonder why OPEC has not been held accountable for its  
254 anticompetitive behavior in oil markets. The fact is that  
255 over the years, consumers have tried to hold it accountable  
256 but have failed because of essential judge-made barriers.

257 The No Oil Producing and Exporting Cartel Act removes  
258 these barriers. Although existing antitrust law already  
259 appears to prohibit foreign state actors from cooperating to  
260 limit oil production, NOPEC makes that explicit in the  
261 Sherman Antitrust Act to remove any doubt. It also removes  
262 the immunity shields currently available under the judicial  
263 precedent.

264 Specifically, NOPEC makes clear that anticompetitive  
265 activities relating to oil production fall within the

266 commercial exception to the Foreign Sovereign Immunities  
267 Act. No wonder that NOPEC has enjoyed robust bipartisan  
268 support since it was first introduced in the 106th Congress,  
269 and it is identical to the version offered in both chambers  
270 of the 110th Congress.

271 I want to thank my colleague, Steve Chabot, for  
272 allowing this legislation to move forward and leading on the  
273 issue. Helping bring down gas prices for my constituents is  
274 a priority of mine, and this bill takes a significant step  
275 in lowering the price at the pump. With summer driving soon  
276 approaching, I hope we can act swiftly in a bipartisan way  
277 to pass this important legislation that protects American  
278 consumers, and I yield back. Thank you.

279 [The prepared statement of Mr. Marino follows:]

280 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

281 Mr. Chabot. Thank you very much. The gentleman yields  
282 back. The gentleman from Rhode Island, Mr. Cicilline, who  
283 is the ranking member of the subcommittee is recognized 5  
284 minutes.

285 Mr. Cicilline. Thank you, Mr. Chairman. Since 1960,  
286 the Organization of the Petroleum Exporting Countries or  
287 OPEC has colluded to manipulate the supply and price of  
288 crude oil with total impunity under our laws. Most  
289 recently, OPEC members have announced a new agreement with  
290 11 non-OPEC countries, including Russia, to manipulate oil  
291 prices by reducing production, which means that working  
292 people in our country end up paying more for gas for their  
293 car or heat for their homes.

294 Cartel behavior like this is considered a hardcore  
295 criminal violation of the antitrust laws because it is an  
296 explicit agreement to collude in order to fix prices, reduce  
297 output, or allocate markets. The Supreme Court has referred  
298 to this anticompetitive conduct, which has no procompetitive  
299 justification, as the supreme evil of antitrust.

300 Unlike other cartels, foreign oil cartels are free to  
301 engage in anticompetitive conduct to fix the price of oil  
302 due to legal doctrines of sovereign immunity and Act of  
303 State, which place firm limitations of the judicial process  
304 when it comes to resolving legal disputes with foreign  
305 governments. It is time for this practice to end. I am

306 proud to join my colleagues as the lead Democratic cosponsor  
307 of the NOPEC Act, which will give Americans relief from the  
308 high cost of OPEC that OPEC has forced on them for decades.

309 This bill, which passed the House and the Senate with  
310 overwhelming support in prior Congresses, would allow the  
311 Justice Department to investigate and prosecute foreign oil  
312 cartels. It would do so by clarifying that commercial  
313 activity by other countries to limit the production or set  
314 the price of oil and other petroleum products is not exempt  
315 under the Foreign Sovereign Immunities Act or other judicial  
316 doctrines.

317 While I strongly support the goals of the NOPEC Act, it  
318 is important to keep several caveats in mind as we moved  
319 forward with this legislation. First, merely removing  
320 barriers to antitrust enforcement against foreign oil  
321 cartels by the Justice Department, as this bill would do,  
322 does not compel law enforcement in this area or constrain  
323 the Department's enforcement strategies.

324 Instead, the NOPEC Act authorizes the Department to  
325 investigate and potentially bring these types of cases,  
326 which alone may be enough to discourage collusion by foreign  
327 oil cartels. Put another way, this bill gives the executive  
328 branch a tool to speak softly and carry a big stick.

329 Second, this legislation is designed to serve as a  
330 complement, not a substitute, to diplomacy and thoughtful



331 engagement with OPEC members and other countries that  
332 collude to withhold oil supply. As I am sure my colleagues  
333 will agree, the NOPEC Act is not an invitation for any  
334 administration to politicize antitrust enforcement or pick  
335 geopolitical winners and losers. With this concern in mind,  
336 I look forward to including language in the committee report  
337 to make this point clear.

338         And finally, the use of antitrust enforcement in this  
339 area, if used at all, should be part of a broader strategy  
340 toward energy independence. Antitrust enforcement alone is  
341 not a silver bullet to lowering oil prices. It must be a  
342 national priority to deploy and expand our capacity for  
343 clean energy production.

344         I firmly believe that addressing oil consumption rather  
345 than oil production is critical to ensuring America's energy  
346 independent. Developing alternatives to oil consumption is  
347 not just about combating climate change, lowering energy  
348 prices, or decreasing the market power of oil cartels. It  
349 is also about creating economic opportunity.

350         And my home State, Rhode Island, is already hard at  
351 work to deploy innovative, clean, efficient energy solutions  
352 to deliver clean energy and address climate change. And in  
353 fact just a couple of weeks ago it announced the siting of a  
354 second wind farm in Rhode Island that when fully operational  
355 will provide electricity to half the households in our

356 State. Furthermore, as one of our witnesses at our  
357 subcommittee hearing on this legislation testified, the  
358 Trump administration's flip flop on fuel efficiency  
359 standards and other policies is a major step in the wrong  
360 direction that should be rejected by the courts.

361 In closing, I want to thank Congressman Chabot,  
362 Chairman Goodlatte, Ranking Member Nadler, and Subcommittee  
363 Chairman Marino for their commitment to taking on foreign  
364 oil cartels for consideration of the NOPEC Act. This  
365 legislation is a testament to the committee's longstanding  
366 bipartisan tradition of investigating and addressing  
367 anticompetitive conduct that harms working families.

368 I look forward to continuing this work with my  
369 colleagues to ensure that our economy is working for  
370 everyone and yield back the balance of my time.

371 And I would just like to ask the chairman if he would  
372 engage in a brief colloquy so that we can be sure that the  
373 record is clear that it is not the intention of the NOPEC  
374 Act to interfere or to be used in a way to pick political  
375 winners and losers, but rather to be used as a supplement to  
376 the diplomatic engagement of our country and to the work  
377 that the State Department does in working with OPEC  
378 countries, but to be a resource to really end  
379 anticompetitive and collusive behavior, but not in a way to  
380 politicize or pick winners and losers on the geopolitical

381 stage.

382 [The prepared statement of Mr. Cicilline follows:]

383 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

384 Mr. Chabot. If the gentleman would yield?

385 Mr. Cicilline. Of course.

386 Mr. Chabot. I agree with the sentiment and the  
387 statement that the gentleman from Rhode Island just made.  
388 The purpose of this is ensure fair competition in the oil  
389 markets so that we can keep prices down for the American  
390 people, and it is good to see that we are doing this in a  
391 bipartisan manner.

392 I would just add that I have offered this amendment a  
393 number of times over the years, oftentimes with our former  
394 colleague, Mr. Conyers, so it was bipartisan then, and this  
395 was under both Democratic and Republican Presidents. So, I  
396 thank the gentleman for raising that.

397 Mr. Cicilline. Thank you, Mr. Chairman. I yield back.

398 Mr. Chabot. And as I said, I appreciate the sentiment.  
399 Thank you. At this time, I would ask unanimous consent to  
400 enter the following letters of support for H.R. 5904 into  
401 the record.

402 First, a letter of support from Securing America's  
403 Future Energy. Next, a letter of support from George  
404 Berman, a professor at the Columbia Law School, and an  
405 expert in sovereign immunity and international trade, and  
406 thirdly, a letter of support from former Senator from  
407 Wisconsin and Chairman of the Senate Judiciary Subcommittee  
408 on Antitrust, Competition Policy, and Consumer Rights, Herb

409 Kohl. Without objection, so ordered.

410 [The information follows:]

411 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

412 Mr. Chabot. And I now have an amendment at the desk,  
413 and I would ask the clerk to read the amendment.

414 Ms. Adcock. Amendment to H.R. 5904 offered by Mr.  
415 Chabot. Page 2, strike line 19 and all that follows --

416 Mr. Chabot. Unanimous consent that the amendment be  
417 considered as read.

418 [The amendment of Mr. Chabot follows:]

419 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

420 Mr. Chabot. And I will speak very briefly as the  
421 amendment is passed out. This amendment makes several  
422 primarily technical changes to the underlying bill. In  
423 particular, this amendment further clarifies that there is  
424 no private right of action under the bill. It also makes  
425 technical changes to eliminate duplicative language on  
426 sovereign immunity, rephrasing the sentence to conform to  
427 existing statutory styles and rewording a section heading  
428 title to make it more informative. And finally, subsections  
429 are renumbered accordingly.

430 As I mentioned at the Regulatory Reform, Commercial,  
431 and Antitrust Law Subcommittee hearing last month, this is  
432 the fifth time that I have introduced this legislation since  
433 the fall of 2000. So we are going back 18 years here. So  
434 again, it is under both Republic and Democratic  
435 administrations each time when OPEC's price controls cause  
436 gas prices to skyrocket in my district and throughout the  
437 Nation.

438 Back in my home district in Cincinnati and Warren  
439 County, the price of a gallon of gasoline is nearing \$3.  
440 This upward trend is devastating to middle-class Americans  
441 all over the country who rely on reasonable gas prices to  
442 reliably fill up their cars and trucks to be able to get to  
443 work and take their kids to school or go to church on  
444 Sunday.

445           Additionally, as chairman of the House Small Business  
446 Community, which I actually have to chair the meeting at  
447 11:00, so I am hoping we can wrap this up in 17 minutes, I  
448 also recognize the impact that rising gas prices will have  
449 on small businesses. As the price of gas increases, so does  
450 the price of shipping goods throughout the United States,  
451 putting pressure on an already razor-thin bottom line for  
452 many small business owners, and ultimately having a negative  
453 impact on our overall economy.

454           We successfully passed similar legislation in the House  
455 nearly a decade ago, but it stalled when the Senate  
456 considered it. I want to again thank Mr. Nadler for his  
457 leadership on this issue over the years as well. Now we  
458 again have an opportunity to pass this important legislation  
459 and the law.

460           It is high time that we do more to fight the production  
461 controls that continue to keep the price of crude oil and  
462 gasoline arbitrarily high in the United States. Ultimately,  
463 NOPEC accomplishes that goal, holding foreign countries and  
464 entities accountable for violating U.S. antitrust law.

465           I urge my colleagues to support this amendment and  
466 support final passage of this bill, and I yield back. The  
467 gentleman from New York, ranking member is recognized.

468           Mr. Nadler. Thank you, Mr. Chairman. Mr. Chairman, in  
469 service of your desire to wrap this up in 16 minutes now, I



470 will be brief. I support this amendment, which makes  
471 several technical clarifications to this bill. These  
472 include eliminating duplicative language regarding the  
473 bill's treatment of foreign sovereign immunity and language  
474 to clarify that the Justice Department has the sole  
475 authority to file cases under the Sherman Act against  
476 foreign oil cartels.

477 I support this amendment. I urge my colleagues to do  
478 the same. I support the bill. I urge my colleagues to do  
479 the same. I yield back.

480 Mr. Chabot. Thank you very much. The gentleman from  
481 Rhode Island.

482 Mr. Cicilline. I, too, Mr. Chairman, will be very  
483 brief. I just want to underscore the point you just made  
484 that our small businesses and families that we represent are  
485 struggling with the high cost of fuel. It is something I  
486 hear about all the time from my constituents.

487 One of the reasons that happens is because we have  
488 allowed OPEC countries, and now with this new agreement it  
489 is OPEC countries plus 11 nonmember OPEC countries that have  
490 the ability to, frankly, just decide that they are going to  
491 increase the price of gasoline by lowering the production.  
492 We do not let that happen in any other area.

493 They are allowed to freely manipulate the market, and  
494 frankly Americans have lived with this for far too long.

495 This legislation will finally give us the ability to prevent  
496 that collusive behavior, drive down gas prices for our  
497 constituents. Your amendment is important, and the  
498 clarifying language it provides. I urge passage of your  
499 amendment and the underlying bill. I thank the gentleman.

500 Mr. Chabot. Thank you very much. The gentleman yields  
501 back. Are there any other members who wish to speak on this  
502 amendment? If not, the question is on the amendment.

503 Those in favor, say aye.

504 Those opposed, no.

505 In the opinion of the chair, the ayes have it. The  
506 ayes have it, and the amendment is agreed to.

507 Are there any other amendments? Okay. All right. If  
508 not, a reporting quorum being present, the question is on  
509 the motion to report the bill, H.R. 5904, as amended,  
510 favorably to the House.

511 Those in favor, say aye.

512 Those opposed, no.

513 The ayes have it. In the opinion of the chair, the  
514 ayes have it. The ayes have it, and the bill is ordered  
515 reported favorably.

516 All right. Okay, members will have 2 days to submit  
517 views. Without objection, the bill will be reported as a  
518 single amendment in the nature of a substitute incorporating  
519 all adopted amendments, and the staff is authorized to make

520 technical and conforming changes.

521 Pursuant to notice, I now call up H.R. 4423 for  
522 purposes of markup and move that the committee report the  
523 bill favorably to the House. The clerk will report the  
524 bill.

525 Ms. Adcock. H.R. 4423; to limit claims under Federal  
526 law seeking judicial review of any environmental impact  
527 statement, environmental review, or authorization for the  
528 Lower Bois d'Arc Creek Reservoir Project in Fannin County,  
529 Texas, and for other purposes.

530 [The bill follows:]

531 \*\*\*\*\* INSERT 2 \*\*\*\*\*

532 Mr. Chabot. Okay. Without objection, the bill is  
533 considered as read and open for amendment at any time. I  
534 will begin by recognizing myself for purposes of an opening  
535 statement.

536 Recent economic news tells us that things have taken a  
537 strong turn for the better. Thanks to measures undertaken  
538 by Congress and President Trump, unemployment is down and  
539 wages, economic growth, and small business confidence are  
540 up, up, and up. Part of the good news stems from the Trump  
541 administration's implementation of Congress' major down  
542 payment on permit streamlining during the last Congress;  
543 Title 41 of the Fixing America's Surface Transportation Act  
544 or FAST.

545 FAST 41 contained the biggest permit streamlining  
546 reforms in recent years. It has already begun to clear the  
547 logjams that have stood in the way of permitting decisions  
548 for many of the Nation's largest proposed construction  
549 projects, but there remains much work to be done. The bill  
550 before us today, the North Texas Water Supply Security Act,  
551 highlights why that help is needed.

552 Following over a decade of work by the North Texas  
553 Municipal Water District and environmental review in which  
554 the U.S. Army Corps of Engineers, the U.S. Environmental  
555 Protection Agency, and several other agencies participated,  
556 the Corps issued on February 2nd, 2018, with the EPA's

557 consent, a Clean Water Act section 404 permit authorizing  
558 the Lower Bois d'Arc Creek Reservoir Project's construction.  
559 This \$1.2 billion project will be owned, operated, and paid  
560 for by NTMWD, a State agency.

561       The project is needed to assure that Texans served by  
562 the NTMWD can have online a new, working water reservoir no  
563 later than 2025, and perhaps earlier, to stave off a looming  
564 water crisis related to rapid population growth in the area.  
565 Construction of the project is expected to take 3 years,  
566 followed by another estimated 2 years at a minimum to fill  
567 the reservoir. Once operational, the reservoir is projected  
568 to help the NTMWD service water needs in its area until  
569 approximately 2060.

570       The problem is that after North Texans already had to  
571 wait over a decade under old law for project to be approved,  
572 the existing statute of limitations allowed litigants to  
573 challenge the permit in court as late as 6 years from the  
574 permit's issuance. To make matters worse, existing law  
575 allows such a lawsuit to be based on matters that were not  
576 even presented to the Corps for its review during the Corps'  
577 painstaking, decades-plus process.

578       As a result, without further legislation, even the  
579 commencement of an action challenging the permit and any  
580 motion for a preliminary injunction against the project  
581 pending the litigation's resolution could be delayed until

582 the eve of 2025 date by which the reservoir, at the latest,  
583 would actually need to be online servicing North Texans and  
584 preventing a water crisis.

585         The North Texas Water Supply Security Act solves that  
586 problem in a straightforward, commonsense way. It allows  
587 litigation to be filed, but within a prompt statute of  
588 limitation. Further, it requires litigation challenging the  
589 permit to be brought in the U.S. district court for the  
590 Eastern District of Texas. This means that all affected  
591 stakeholders can easily be present and heard in the  
592 litigation.

593         The bill also requires litigation to be based on issues  
594 presented to the permitting authority during administrative  
595 review. Finally, it requires a judge entertaining motions  
596 for injunctive relief against the project not to presume  
597 that the adverse consequences of adjoining the project will  
598 be reparable.

599         I urge my colleagues to support this legislation, and  
600 it is now my pleasure to recognize the ranking member of the  
601 Judiciary Committee, Mr. Nadler, for his opening statement.

602         [The prepared statement of Mr. Chabot follows:]

603 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

604 Mr. Nadler. Thank you, Mr. Chairman. Mr. Chairman, I  
605 strongly oppose H.R. 4423, which takes aim at legal  
606 challenges to a single construction project; namely, the  
607 Lower Bois d'Arc Creek Reservoir Project built by the North  
608 Texas Municipal Water District in Fannin County, Texas.  
609 Rather than allowing for the fair consideration in court of  
610 the merits of any environmental challenges to this project,  
611 this bill seeks to stack the process so that its supporters  
612 can ensure their desired outcome; facts or law  
613 notwithstanding.

614 The bill includes several damaging provisions intended  
615 to restrict judicial review and to limit public  
616 participation for claims challenging the Bois d'Arc project.

617 First, it would drastically reduce the statute of  
618 limitations governing petitions for judicial review. Under  
619 the Administrative Procedure Act this period is currently 6  
620 years. The bill, however, would reduce this period to just  
621 60 days following approval of the project by the U.S. Army  
622 Corps of Engineers -- which, by the way, occurred on  
623 February 2nd of this year.

624 Since 60 days have already elapsed, the substitute  
625 amendment that we will consider shortly will set the review  
626 period at 105 days from the date of the project's approval.  
627 But this is just window dressing and it will not improve the  
628 bill at all. And notice that this sets up these very hasty

629 requirements only for this project. It does not say that  
630 Federal time periods and other requirements for litigation  
631 in projects generally should be changed. Only for this  
632 project so we get the desired result.

633         This legislation would also unduly restrict who may  
634 seek judicial review of this project by limiting it to only  
635 those entities that filed comments during the applicable  
636 public comment periods. Further, the bill establishes new  
637 standards for this project only that a court must consider  
638 in determining whether to grant injunctive relief. Among  
639 the most novel and telling of these factors is the  
640 requirement that the court considers such reliefs "potential  
641 for significant negative economic effects."

642         While regulators routinely engage in such cost-benefit  
643 analysis, this requirement is far outside the expertise of  
644 the courts and is designed to lead to a negative conclusion.  
645 Cost-benefit analysis should be left to the regulators and  
646 not to the court. Finally, the bill imposes a variety of  
647 additional requirements related to the general obligation of  
648 parties seeking injunctive relief to secure a bond in case  
649 of a wrongful injunction.

650         The cumulative effect of these additional requirements  
651 is to deter parties from seeking injunctive relief  
652 altogether by making it more expensive and possibly cost  
653 prohibitive, particularly for economically disadvantaged



654 plaintiffs.

655       For example, nine landowners who filed a lawsuit  
656 challenging the project last month claim that this  
657 undertaking will cause them to "suffer significant adverse  
658 consequences," because each of them will lose his or her  
659 property as a result of the project's construction. Given  
660 that the estimated cost of this project is well in excess of  
661 \$1 billion, the potential bonding requirements under this  
662 bill would be debilitating for such landowners and would  
663 prevent them from seeking injunctive relief.

664       The plaintiffs allege that the project, which is  
665 expected to cover more than 16,000 acres, presents serious  
666 environmental concerns and violates the Clean Water Act  
667 among other laws. But rather than allowing for full and  
668 fair review of these claims and the claims of other injured  
669 parties, the bill stacks the deck against them. Aside from  
670 the obvious substantive concerns with this bill, there is a  
671 larger question that must be asked.

672       Why is this bill even in front of the Judiciary  
673 Committee at all? What expertise do we have over  
674 environmental laws? And what do we know about a specific  
675 project in North Texas, pro or con? There is already a  
676 perfectly good law in place, the National Environmental  
677 Protection Act, or NEPA, which sets forth guidelines and  
678 procedures for approval in consideration of such projects.

679 NEPA, which was signed into law by President Richard  
680 Nixon in 1970, requires Federal agencies to consider the  
681 environmental impact of certain projects and to ensure the  
682 involvement of the public and other appropriate agencies.

683 For the most part, NEPA has worked well and the sources  
684 of any delay in the Federal permitting approval process are  
685 not generally attributable to that act. These delays result  
686 from such disparate sources as insufficient project funding,  
687 concerns raised by State, local, or tribal communities,  
688 project complexity, and other factors unrelated to judicial  
689 review of the project's environmental impacts.

690 Rather than having the committee with jurisdiction over  
691 NEPA consider any necessary amendments to that act, the  
692 supporters of this legislation instead seek to invoke our  
693 committee's jurisdiction under the guise of amending the  
694 Administrative Procedure Act, a law that applies generally  
695 to administrative law. And it does so with respect to one  
696 project only, which is a waste and an abuse of this  
697 committee's resources.

698 In other words, instead of going to the committee which  
699 has jurisdiction over environmental law, which has expertise  
700 which may actually look at the merits of this project, which  
701 may look at whether the requirements of NEPA should be  
702 changed or not, they come to this committee under the  
703 Administrative Procedure Act, a committee that has no

704 expertise in environmental law and knows nothing about the  
705 pros and cons of this project.

706         Although the bill pertains solely to one construction  
707 project, I am also concerned that it may set a dangerous  
708 precedent for legislative copycat bills targeting other  
709 specific projects. In other words, when you have a project  
710 and it has questionable environmental or other impacts, so  
711 you do not want it examined in the normal way that the  
712 environmental laws require, you come to this committee by  
713 seeking to amend the Administrative Procedure Act for the  
714 one bill.

715         This is an end run, which is highly improper, gets  
716 around our environmental laws, around the committees with  
717 expertise and jurisdiction, and serves nobody's interest  
718 except the interest of the sponsors of the project who feel  
719 that they cannot or do not want to answer on the merits in  
720 the normal process.

721         On the other hand, the limited applicability of the  
722 bill does provide some comfort. At least its damaging  
723 effects would be restricted to just one construction  
724 project. But that is no excuse. Accordingly, I oppose the  
725 bill, I urge my colleagues to do the same, and I yield back  
726 the balance of my time.

727         [The prepared statement of Mr. Nadler follows:]

728

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

729 Mr. Ratcliffe. [Presiding.] Thanks, ranking member. I  
730 now recognize myself for the purpose of offering amendment  
731 in the nature of a substitute. The clerk will report the  
732 amendment.

733 Ms. Adcock. Amendment in the nature of a substitute to  
734 H.R. 4423 offered by Mr. Ratcliffe of Texas. Strike all  
735 that follows --

736 [The amendment of Mr. Ratcliffe follows:]

737 \*\*\*\*\* INSERT 3 \*\*\*\*\*

738 Mr. Ratcliffe. Without objection, it will be  
739 considered as read. This amendment includes many of the  
740 provisions for the bill as it was originally introduced, as  
741 well as changes to account for the Army Corps' issuance of  
742 its record of decision, and permit approval for the Lower  
743 Bois d'Arc Creek Reservoir earlier this year, and the filing  
744 in Eastern District of Texas on May 11, 2018 of actual  
745 litigation challenging the Corps' permit approval.  
746 Specifically, this amendment extends the legislation's  
747 statute of limitations to 105 days from the date of the  
748 Corps' approval of the permit.

749 The amendment also adds a grandfathering provision to  
750 allow any additional litigation filed after the  
751 legislation's specified statute of limitations but before  
752 the bill's enactment to have complied with that statute of  
753 limitations.

754 And finally, the amendment redesignates the bill as the  
755 North Texas Water Supply Security Act of 2018 and ties the  
756 legislation's separate 60-day statute of limitation for  
757 actions challenging any supplemental environmental impact  
758 statement, or SEIS, required for the project to the date of  
759 the final agency action on that SEIS rather than on the  
760 publication of that action in the Federal Register.

761 This legislation is the culmination of all of the hard  
762 work by the bill's sponsor, Congressman Sam Johnson.

763 Without objection, I would ask unanimous consent to submit a  
764 statement for the record from Congressman Johnson in support  
765 of this bill.

766 [The information follows:]

767 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

768 Mr. Ratcliffe. The Lower Bois d'Arc Creek Reservoir  
769 Project is an extremely important potential water resource  
770 that will supply 1.7 million North Texans. Without this  
771 reservoir, it is projected that the project's local sponsor,  
772 the North Texas Municipal Water District, will not be able  
773 to meet the water needs of its customers by 2021 or 2022.

774 The permitting process for the Lower Bois d'Arc has  
775 taken nearly 15 years, more than enough time for interested  
776 parties to raise issues with the relevant permitting  
777 agencies. Yet under current law, despite those 15 years  
778 those parties had to raise concerns, they would have an  
779 additional 6 years to interrupt the project with an  
780 injunction or a temporary restraining order.

781 Without this bill, North Texas could complete 95  
782 percent of the reservoir and under current law, despite  
783 having 15 years prior to raise issues regarding the project,  
784 an outside group could stop construction and the ability of  
785 the North Texas Municipal Water District to serve 1.7  
786 million Texans relying on that water supply. I, therefore,  
787 urge my colleagues to support this commonsense measure. And  
788 I yield back the balance of my time and recognize the  
789 ranking member.

790 Mr. Nadler. Thank you, Mr. Chairman. I oppose this  
791 amendment because it makes a bad bill worse. As I have  
792 already stated, the bill establishes a series of draconian



793 requirements for claims challenging the Bois d'Arc project  
794 in North Texas. These severe limitations and judicial  
795 review are clearly designed to limit public participation  
796 and to shield potentially dangerous or environmentally  
797 harmful aspects of this project from public scrutiny and  
798 legal accountability.

799       Because the U.S. Army Corps of Engineers approved this  
800 project back in February, however, the bill's 60-day statute  
801 of limitations for challenging this project in court -- the  
802 bill, not the existing law -- has already lapsed. The  
803 substitute amendment, therefore, establishes a new statute  
804 of limitations to litigation relating to the environmental  
805 review of the project of 105 days from the date of the  
806 project's approval.

807       As a coalition of public interest groups opposing the  
808 bill, including Earthjustice, American Access to Justice,  
809 and the Center for Biological Diversity have noted, this new  
810 period established by the substitute amendment has itself  
811 already closed last month.

812       Although this extension will enable the lone existing  
813 lawsuit that has been filed to continue, it forecloses any  
814 further litigation from being filed. It is, therefore,  
815 nothing more than a fig leaf. In other words, we are  
816 foreclosing litigation in a process which we are shortening,  
817 where still the substitute amendment would retroactively

818 apply to the bill's owner security requirements any existing  
819 legal challenges to this project.

820 To date, we are aware of a single lawsuit which was  
821 filed by a group of local landowners and rural farmers who  
822 have raised significant environmental concerns. Yet this  
823 amendment would further stack the legal process against  
824 them. As the Center for Progressive Reform notes, it is  
825 manifestly unfair to retroactively change the rules for  
826 those who have exercised their right to judicial review.

827 And let me just state the following: This project may  
828 be a very necessary project, or not. I have no idea. On  
829 this committee, we do not know anything about this project,  
830 about its pros and cons. All we know is that proponents say  
831 it is a very important project, which it may be, and that it  
832 has been under review for a long time, which may be the  
833 case.

834 Opponents, I assume, say the project has deleterious  
835 effects outweighing its salutary effects and violates the  
836 National Environmental Protection Act in various ways. They  
837 should get their proper hearing in court. They should get  
838 their proper hearing.

839 The effect of this bill is to say, "We are stacking the  
840 deck. We do not want them to get their hearing. And we are  
841 not saying that the process is unfair, that the process  
842 ought to be changed generally. No. We are saying it ought

843 to be changed only for this project because we want to stack  
844 the deck for this project. Because we are making the  
845 judgment that the local people in Texas who oppose this  
846 project are wrong."

847 Well, maybe they are, and maybe they are not. I have  
848 no idea. But they ought to get their day in court. And  
849 now, we are saying just in case -- just in case -- this one  
850 lawsuit which was filed on time under the time limits we are  
851 establishing now just to make sure that they cannot proceed,  
852 we are retroactively increasing the bonding requirements so  
853 that they may have to put up I do not know how many millions  
854 or billions of dollars in order to seek injunctive relief in  
855 court. We are saying, in effect, they cannot get a review.

856 Now, I must say that in my district we had an  
857 experience like this many years ago. We had a big project  
858 that the governor supported, the mayor supported, the New  
859 York Times supported. Everybody supported it except some  
860 local people. And it was under review for a number of  
861 years. And it kept being under review because the  
862 administrative agencies kept lying in court. And every time  
863 they lied in court, we proved it, and they had to start the  
864 project over again.

865 And they complained, "Oh, my God, the project is taking  
866 so long. The approval is taking so long." Had they been  
867 honest, it would not have taken so long. Eventually, we

868 killed the project because they could not support it on the  
869 merits when they honest. And I do not know if the same  
870 thing is going on here. But there ought to be the fair  
871 review. And the import of this bill and this amendment is  
872 to deny the local opponents a fair review.

873 And again, if we think the review process is too  
874 lengthy, too onerous, too burdensome, then let the  
875 appropriate committees of the House review the general  
876 process, maybe amend NEPA or whatever, and change the  
877 process and let the House consider that. But this project -  
878 - and no particular project -- should be excluded.

879 The local opponents of no project should be excluded  
880 from the normal opportunities of review just because someone  
881 has friends in Congress. And especially, it should not be  
882 done by a committee such as ours coming in through left  
883 field for the Administrative Procedure Act instead of the  
884 environmental acts which this is really amending, which has  
885 no expertise, no knowledge, et cetera.

886 This bill is the worst kind of special-interest  
887 legislation for one special interest, a special interest I  
888 might approve of if I knew the facts. I do not know. But  
889 we should not be doing this. We should let the process play  
890 out, let the local people have their proper opportunities to  
891 support it and oppose it. If the process is wrong, we  
892 should deal with that.

893           But we should not be saying the process goes on except  
894 for this project because they have got the political clout  
895 in this House to overwhelm the local opponents. It is  
896 wrong. I hope everyone will vote against the amendment and  
897 the bill. I yield back.

898           Mr. Ratcliffe. The ranking member's time has expired.  
899 Are there any amendments to the amendment? For what purpose  
900 does the gentlelady from Texas seek recognition?

901           Ms. Jackson Lee. I thank you, Mr. Chairman. I have an  
902 amendment at the desk.

903           Mr. Ratcliffe. I recognize the gentlelady on her --

904           Ms. Jackson Lee. Zero, zero, one.

905           Mr. Ratcliffe. I recognize the gentlelady on her  
906 amendment. The clerk will report the amendment.

907           Ms. Adcock. Amendment to the amendment in the nature  
908 of a substitute to H.R. --

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

910 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

911 Mr. Ratcliffe. Without objection, the amendment is  
912 considered as read and the gentlelady is recognized.

913 Ms. Jackson Lee. Frankly, Mr. Chairman, I am quite  
914 aware of the challenges of water in the state of Texas. My  
915 amendment, I believe, is simply an act of faith of fairness.  
916 It strikes the section of the bill that limits whom they  
917 bring in action pertaining to an environmental impact  
918 statement, environmental review of or authorization for the  
919 reservoir project to parties who submitted a comment during  
920 the public comment period on that environmental impact  
921 statement for the reservoir.

922 My concern is that we are talking about the average  
923 citizen, the everyday working man or woman, who may not even  
924 understand the process of comment on a regulatory process.  
925 And so, I think it is unreasonable and unfair to expect any  
926 given citizen who may be harmed by a government project to  
927 participate in the notice and comment period, given most  
928 Americans probably are not even aware of such a period. It  
929 takes a big stretch to be able to find out where that notice  
930 and comment is.

931 And so, we all are supportive of water needs. All of  
932 our colleagues are. But in the process of the  
933 responsibilities of the Judiciary Committee, I think it is  
934 important to realize an actual fact. A regular citizen is  
935 just not going to be aware that a comment period went

936 forward. I ask my colleagues to support the Jackson Lee  
937 amendment.

938 Chairman Goodlatte. The chair recognized himself in  
939 opposition to the amendment. H.R. 4423 includes a venue  
940 restriction to the Eastern District of Texas for a simple,  
941 commonsense reason. That is, make sure that those who are  
942 directly affected by the relevant reservoir project,  
943 including those in need of the water it is needed to  
944 provide, will have full and ready access to be heard in  
945 litigation of a project.

946 Ms. Jackson Lee. Let me explain it again, Mr.  
947 Chairman.

948 Chairman Goodlatte. Go ahead.

949 Ms. Jackson Lee. The provisions in the bill indicate  
950 that only those who made a comment on the comment period  
951 would be allowed to further pursue any issue. And my point  
952 is that all of us understand the regular citizen who may not  
953 be even aware a comment period is in process. And I am  
954 suggesting that we not bar that person, who did not make a  
955 comment originally, from having the opportunity to express  
956 their views.

957 It is unreasonable and unfair to expect any given  
958 citizen who may be harmed by a government project, wherever  
959 it is, to participate in the notice and comment period,  
960 given most Americans probably are not even aware of such a

961 period exists. With that, I ask my colleagues to support  
962 the amendment.

963 Chairman Goodlatte. All right. Now, I think I can  
964 talk about this amendment. As with its venue restriction,  
965 H.R. 4423 for a simple, commonsense reason, includes a  
966 requirement that a litigant challenging the relevant permit  
967 have actually submitted comments during the administrative  
968 review of the permit application. That is to make sure that  
969 litigation is not brought based on arguments the agency  
970 never had a chance to consider.

971 Such sandbagging litigation, if allowed to proceed,  
972 unnecessarily threatens to prolong even further the day on  
973 which it will be ultimately settled, whether the project at  
974 issue can be completed.

975 In the case of this project, that could mean an  
976 unnecessary water crisis would be thrust on North Texas by  
977 someone who sandbagged the reviewing agency and everyone  
978 else with a stake in the project. So, for that reason, I  
979 cannot support the gentlewoman's amendment. For what  
980 purpose does the gentleman from New York seek recognition?

981 Mr. Nadler. Mr. Chairman, I move to strike the last  
982 word.

983 Chairman Goodlatte. The gentleman is recognized.

984 Mr. Nadler. Thank you, Mr. Chairman. I support Ms.  
985 Jackson Lee's amendment which strikes the bills onerous



986 requirement that parties seeking judicial review of this  
987 project must have filed comments in the project's underlying  
988 permitting process.

989       As I have already stated, among the bill's damaging  
990 provisions to limit judicial review and public participation  
991 in environmental permitting decisions, H.R. 4423 also  
992 forecloses review for any party who does not file comments  
993 during the applicable comment period.

994       These severe limitations on judicial review are clearly  
995 designed to limit public participation and to shield  
996 potentially dangerous or environmentally harmful aspects of  
997 the project from public scrutiny and legal accountability.  
998 We are aware of one single lawsuit which was filed by a  
999 group of local landowners and rural farmers who have very  
1000 significant environmental concerns of this project. It is  
1001 unclear whether they filed comments in the underlying  
1002 permitting decision.

1003       But why should that matter? Why is the majority less  
1004 interested in the concerns of local farm owners and  
1005 communities than they are in stacking the deck against any  
1006 review of this project, no matter how meritorious the claim  
1007 may be or how dangerous the potential harms may be? I  
1008 strongly support this amendment and I urge my colleagues to  
1009 do the same.

1010       Before closing, I ask unanimous consent that letters

1011 from the Center for Progressive Reform and the coalition of  
1012 access to justice groups, including Earthjustice and the  
1013 American Association of Justice, in opportunity to this bill  
1014 be made part of the record.

1015 Mr. Raskin. Would the gentleman yield?

1016 Mr. Nadler. Yes.

1017 Chairman Goodlatte. Without objection, it will made  
1018 part of the record.

1019 [The information follows:]

1020 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

1021 Mr. Nadler. Thank you. I yield.

1022 Mr. Raskin. Would the ranking member yield? Would you  
1023 yield for a question or two on this?

1024 Mr. Nadler. Sure. Yes.

1025 Mr. Raskin. So, the full import of this has just kind  
1026 of weighing in on my mind here. What we are doing with the  
1027 underlying bill is taking a basic administrative law  
1028 structure and then nullifying it for one category of people  
1029 who have a complaint. Is that right?

1030 Mr. Nadler. One project, yes.

1031 Mr. Raskin. For one project. Okay.

1032 Mr. Nadler. Well, not only that: using a change in the  
1033 Administrative Procedure Act in effect to aggregate the  
1034 National Environmental Protection Act for one project.

1035 Mr. Raskin. Okay. And so, as I understand Ms. Jackson  
1036 Lee's amendment, she is saying at least let's chop off the  
1037 second part of this, which says that you do not have the  
1038 right to sue unless you actually submitted a comment during  
1039 the comment period. Now, let me get this right. Is that  
1040 like saying you would not have a right to challenge a law  
1041 passed by Congress unless you had testified against the law  
1042 first? Or you had objected to the law before it was  
1043 enacted?

1044 Mr. Nadler. In one sense. And bear in mind that the  
1045 comment period is past tense. We are not saying that if you

1046 want to protect your right to sue against this project, be  
1047 sure to file a comment. The comment period is over.

1048 Mr. Raskin. Yeah. Is it right that we have had no  
1049 hearing on this legalization? Has there been a hearing on  
1050 this legislation? Or there was a hearing?

1051 Mr. Nadler. There was a hearing last month.

1052 Mr. Raskin. There was a hearing? Okay. Was there any  
1053 consideration of the constitutionality of what the  
1054 underlying bill is doing? In other words, have we looked at  
1055 the due process and equal protection implications of saying  
1056 we are going to revoke the entire administrative law  
1057 protective structure for one category of cases and doing it  
1058 retroactively?

1059 Mr. Nadler. My understanding is that the hearing was  
1060 in the Administrative Law Subcommittee and questions of  
1061 constitutionality were not considered.

1062 Mr. Raskin. Okay. Well, I mean, I am just  
1063 flabbergasted and startled this legislation is before us. I  
1064 think at the very least we have got to adopt this amendment  
1065 by Ms. Jackson Lee, which says that, no, you cannot nullify  
1066 someone's rights to sue if they have a valid, actionable  
1067 cause simply because they did not file an administrative  
1068 comment.

1069 The chairman said, "Well, this protects the government  
1070 against the possibility that a new argument would be

1071 raised." Well, if that is the rationale for it, then we  
1072 should say you do not have a right to bring a suit if the  
1073 argument was not raised before. But this amendment would  
1074 operate even if the argument would raised by a million  
1075 people, as long as the plaintiff in the particular case had  
1076 not raised it himself or herself. That just does not make  
1077 any sense. So, I want to speak in very strong favor of the  
1078 Sheila Jackson Lee amendment.

1079 And I want to go on record as saying I think that this  
1080 whole enterprise is unconstitutional. I have never seen  
1081 anything like it. Essentially, we are trying to strip  
1082 people's administrative law but in one particular case in  
1083 order to gerrymander the outcome of one piece of litigation.  
1084 I yield back.

1085 Mr. Nadler. I thank the gentleman. And I agree with  
1086 his comments. And again, it is highly problematic to try to  
1087 prevent the procedure or short-circuit a procedure under the  
1088 National Environmental Protection Act by amending the  
1089 Administrative Procedure Act. And in any event, to do it  
1090 only for one project and in many respects, ex post facto  
1091 because the comment period has already expired and you are  
1092 saying to people who may have been expecting to sue next  
1093 week, "No, you cannot." Ex post facto. I yield back.

1094 Chairman Goodlatte. The question occurs on the  
1095 amendment offered by the gentlewoman from Texas.

1096 All those in favor respond by saying aye.  
1097 Those opposed, no.  
1098 Being the chair, the noes have it and the amendment is  
1099 not agreed to.  
1100 Mr. Nadler. Can I have a roll call on that, Mr.  
1101 Chairman?  
1102 Chairman Goodlatte. A recorded vote is requested and  
1103 the clerk will call the roll.  
1104 Ms. Adcock. Mr. Goodlatte?  
1105 Chairman Goodlatte. No.  
1106 Ms. Adcock. Mr. Goodlatte votes no.  
1107 Mr. Sensenbrenner?  
1108 Mr. Sensenbrenner. No.  
1109 Ms. Adcock. Mr. Sensenbrenner votes no.  
1110 Mr. Smith?  
1111 [No response.]  
1112 Mr. Chabot?  
1113 [No response.]  
1114 Mr. Issa?  
1115 [No response.]  
1116 Mr. King?  
1117 [No response.]  
1118 Mr. Gohmert?  
1119 Mr. Gohmert. No.  
1120 Ms. Adcock. Mr. Gohmert votes no.

1121 Mr. Jordan?

1122 Mr. Jordan. No.

1123 Ms. Adcock. Mr. Jordan votes no.

1124 Mr. Poe?

1125 [No response.]

1126 Mr. Marino?

1127 Mr. Marino. No.

1128 Ms. Adcock. Mr. Marino votes no.

1129 Mr. Gowdy?

1130 [No response.]

1131 Mr. Labrador?

1132 [No response.]

1133 Mr. Collins?

1134 [No response.]

1135 Mr. DeSantis?

1136 Mr. DeSantis. No.

1137 Ms. Adcock. Mr. DeSantis votes no.

1138 Mr. Buck?

1139 Mr. Buck. No.

1140 Ms. Adcock. Mr. Buck votes no.

1141 Mr. Ratcliffe?

1142 Mr. Ratcliffe. No.

1143 Ms. Adcock. Mr. Ratcliffe votes no.

1144 Mrs. Roby?

1145 [No response.]

1146 Mr. Gaetz?

1147 Mr. Gaetz. No.

1148 Ms. Adcock. Mr. Gaetz votes no.

1149 Mr. Johnson of Louisiana?

1150 Mr. Johnson of Louisiana. No.

1151 Ms. Adcock. Mr. Johnson votes no.

1152 Mr. Biggs?

1153 Mr. Biggs. No.

1154 Ms. Adcock. Mr. Biggs votes no.

1155 Mr. Rutherford?

1156 [No response.]

1157 Mrs. Handel?

1158 Mrs. Handel. No.

1159 Ms. Adcock. Mrs. Handel votes no.

1160 Mr. Rothfus?

1161 Mr. Rothfus. No.

1162 Ms. Adcock. Mr. Rothfus votes no.

1163 Mr. Nadler?

1164 Mr. Nadler. Aye.

1165 Ms. Adcock. Mr. Nadler votes aye.

1166 Ms. Lofgren?

1167 [No response.]

1168 Ms. Jackson Lee?

1169 Ms. Jackson Lee. Aye.

1170 Ms. Adcock. Ms. Jackson Lee votes aye.



1171 Mr. Cohen?  
1172 [No response.]  
1173 Mr. Johnson of Georgia?  
1174 Mr. Johnson of Georgia. Aye.  
1175 Ms. Adcock. Mr. Johnson of Georgia votes aye.  
1176 Mr. Deutch?  
1177 [No response.]  
1178 Mr. Gutierrez?  
1179 [No response.]  
1180 Ms. Bass?  
1181 Ms. Bass. Aye.  
1182 Ms. Adcock. Ms. Bass votes aye.  
1183 Mr. Richmond?  
1184 Mr. Richmond. Aye.  
1185 Ms. Adcock. Mr. Richmond votes aye.  
1186 Mr. Jeffries?  
1187 Mr. Jeffries. Aye.  
1188 Ms. Adcock. Mr. Jeffries votes aye.  
1189 Mr. Cicilline?  
1190 [No response.]  
1191 Mr. Swalwell?  
1192 [No response.]  
1193 Mr. Lieu?  
1194 Mr. Lieu. Aye.  
1195 Ms. Adcock. Mr. Lieu votes aye.

1196 Mr. Raskin?

1197 Mr. Raskin. Aye.

1198 Ms. Adcock. Mr. Raskin votes aye.

1199 Ms. Jayapal?

1200 Ms. Jayapal. Aye.

1201 Ms. Adcock. Ms. Jayapal votes aye.

1202 Mr. Schneider?

1203 Mr. Schneider. Aye.

1204 Ms. Adcock. Mr. Schneider votes aye.

1205 Ms. Demings?

1206 Ms. Demings. Aye.

1207 Ms. Adcock. Ms. Demings votes aye.

1208 Chairman Goodlatte. The gentleman from Iowa, Mr. King?

1209 Mr. King. No.

1210 Ms. Adcock. Mr. King votes no.

1211 Chairman Goodlatte. The gentleman from Texas, Mr. Poe?

1212 Mr. Poe. No.

1213 Ms. Adcock. Mr. Poe votes no.

1214 Chairman Goodlatte. Has every member voted who wishes

1215 to vote? The clerk will report.

1216 Ms. Adcock. Mr. Chairman, 11 members voted aye; 15

1217 members voted no.

1218 Chairman Goodlatte. And the amendment is not agreed

1219 to. Are there further amendments to H.R. 4423?

1220 Ms. Jayapal. Mr. Chairman?

1221 Chairman Goodlatte. For what purpose does the  
1222 gentlewoman from Washington seek recognition?

1223 Ms. Jayapal. I move to strike the last word.

1224 Chairman Goodlatte. The gentlewoman is recognized for  
1225 5 minutes.

1226 Ms. Jayapal. Thank you, Mr. Chairman. I am going to  
1227 oppose this bill when it comes to a vote. And I want to  
1228 thank our ranking member for his excellent statements. I  
1229 want to thank the gentlewoman from Texas for her amendment  
1230 which would have made a bad bill slightly better.

1231 I want to make clear that this bill does not protect  
1232 public drinking water supplies and rather endangers  
1233 protections provided by the National Environmental  
1234 Protection Act. And it is an attack on people's right to  
1235 have their day in court.

1236 But Mr. Chairman, I would like to use my time to say  
1237 that I am stunned that we are not having any hearings in  
1238 Judiciary Committee on the travesty that is happening across  
1239 the country as asylum seekers are being denied their legal  
1240 rights to have a credible fear hearing along the border when  
1241 they come to the border. I, this last weekend, went to the  
1242 Federal prison where 206 individuals were transferred from  
1243 primarily the Texas border, to a Federal prison because all  
1244 of our ICE facilities are full because of the mass  
1245 detentions and deportations of people across this country

1246 that this administration and some of my colleagues on the  
1247 other side of the aisle are allowing to happen.

1248         These individuals that I met with, 206 people who were  
1249 transferred to a Federal prison, I met with all the women  
1250 who are part of that group, 174 women who were part of the  
1251 group held in three separate pods. They were women who came  
1252 from 16 countries: From Cuba, from El Salvador, from  
1253 Guatemala, as far away as Eritrea. And Mr. Chairman, it was  
1254 horrific what I heard.

1255         In spite of the fact that this was a Federal prison --  
1256 at least, I will say, it is a government-owned and -operated  
1257 facility with some accountability and some standards --  
1258 these women said this was the first place they were treated  
1259 like human beings. A large majority of them had children  
1260 who had been forcibly removed from them at the border when  
1261 they should have had a credible fear hearing for asylum, but  
1262 instead they were prosecuted in mass courts with 75 to 100  
1263 people being prosecuted at one time.

1264         They were taken away from their children; not a single  
1265 one had had the opportunity to say goodbye to their  
1266 children, to explain to them what was happening. In some  
1267 cases, they were deceived, told they were going to be taken  
1268 to take a photograph, came back, and found that their  
1269 children were no longer there and were in rooms right next  
1270 door to their children, where they could hear their children

1271 screaming for them.

1272 Mr. Chairman, the children were as young as 1 year old.  
1273 One year old. And then, these mothers were put into  
1274 facilities that they call the ice box and dog pound. You  
1275 know why they call them the ice box, Mr. Chairman? Because  
1276 the temperatures are so frigid that it is freezing cold.

1277 They crossed the Rio Grande; they turned themselves in  
1278 wet, and they are put into an ice box and denied access to  
1279 clean water for 5 days in some cases. A sink with dirty,  
1280 chlorinated, filthy water, and on top of that, they were  
1281 called filthy, disgusting. They were told that families do  
1282 not exist in this country when they asked to be reunited  
1283 with their children.

1284 They were told that they would never see their children  
1285 again, and in fact over 50 percent of these individuals had  
1286 been held for longer than 2 weeks; many of them, about 35 to  
1287 40 percent, had been held for more than a month; had not  
1288 even seen their children; did not even know where their  
1289 children were.

1290 What parent in this United States of America could say  
1291 that this is the way we should treat people? I am outraged,  
1292 Mr. Chairman, absolutely outraged at what we are doing. And  
1293 I want to read to you, because this all comes from the Trump  
1294 administration's zero tolerance policy, some of the stories  
1295 of the women we are talking about.

1296           One woman from El Salvador has three children -- had  
1297 three children. The first child was murdered by gangs; the  
1298 second child was shot and paralyzed by gangs; the third  
1299 child was the only child that was safe, and she tried to do  
1300 what every mother would do and bring that child to safety.  
1301 She has not seen her child for over a month. She does not  
1302 know where that child is. She has not been given a credible  
1303 fear hearing.

1304           Mr. Chairman, this last policy from the Attorney  
1305 General that is taking away a lifeline for survivors of  
1306 domestic and gang violence is outrageous. Here is the story  
1307 of the woman that the attorney general just weighed in on  
1308 her case.

1309           For over 10 years, Aminta Cifuentes's husband beat,  
1310 raped, and tormented her. He poured turpentine on her and  
1311 tried to set her on fire, resulting in permanent hearing  
1312 loss. He once hit her in the stomach so hard that she gave  
1313 birth prematurely and punched her with such force that she  
1314 still has difficulty breathing and speaking.

1315           She tried to get protection from Guatemalan law  
1316 enforcement multiple times, but the police dismissed her  
1317 complaints as marital problems and told her to go back home.  
1318 When she tried to leave her husband, he hunted her down.  
1319 She finally fled to the United States, where even there her  
1320 husband's threats followed her. This is the case that the

1321 Attorney General has said the United States of America has  
1322 no grounds to hear this case.

1323         What are we coming to? And why are my good colleagues  
1324 on the other side -- I know there are mothers and fathers on  
1325 the other side who must be tormented by this. If you plan  
1326 to not say anything, you have to go home to your children  
1327 that night and tell them why you would allow this to happen  
1328 to children in the United States of America.

1329         We should be having a hearing on this, and Mr.  
1330 Chairman, I request respectfully --

1331         Chairman Goodlatte. The time of the gentlewoman has  
1332 expired.

1333         Ms. Jayapal. I request respectfully that we have a  
1334 hearing in this committee where we bring the Attorney  
1335 General before us to tell us what we are doing with these  
1336 camps on the southern border and in these prisons with women  
1337 who are seeking asylum and who we are violating --

1338         Chairman Goodlatte. The time of the gentlewoman has  
1339 expired.

1340         Ms. Jayapal. -- international human rights law.

1341         Chairman Goodlatte. A reporting quorum being present,  
1342 the question is on the motion to report the bill --

1343         Mr. Jeffries. Mr. Chairman?

1344         Mr. Cicilline. Mr. Chairman? Mr. Chairman?

1345         Mr. Jeffries. Mr. Chairman?

1346 Mr. Sensenbrenner. Mr. Chairman?

1347 Mr. Cicilline. Mr. Chairman, I seek recognition.

1348 Chairman Goodlatte. For what purpose does the

1349 gentleman from Wisconsin seek recognition?

1350 Mr. Sensenbrenner. Mr. Chairman, I move the previous

1351 question on the bill and all amendments thereto.

1352 Chairman Goodlatte. The question is on the motion to

1353 move the previous question.

1354 All those in favor, respond by saying aye.

1355 Mr. Jeffries. Mr. Chairman, I object to the motion.

1356 Chairman Goodlatte. Those opposed --

1357 Mr. Cicilline. Point of order, Mr. Chairman.

1358 Chairman Goodlatte. In the opinion of the chair, the

1359 ayes have it, and the previous question is ordered.

1360 Mr. Jeffries. Roll call vote.

1361 Chairman Goodlatte. A recorded vote is requested, and

1362 the clerk will call the roll.

1363 Ms. Adcock. Mr. Goodlatte?

1364 Chairman Goodlatte. Aye.

1365 Ms. Adcock. Mr. Goodlatte votes aye.

1366 Mr. Sensenbrenner?

1367 Mr. Sensenbrenner. Aye.

1368 Ms. Adcock. Mr. Sensenbrenner votes aye.

1369 Mr. Smith?

1370 [No response.]



1371 Mr. Chabot?  
1372 [No response.]  
1373 Mr. Issa?  
1374 Mr. Issa. Aye.  
1375 Ms. Adcock. Mr. Issa vote aye.  
1376 Mr. King?  
1377 Mr. King. Aye.  
1378 Ms. Adcock. Mr. King votes aye.  
1379 Mr. Gohmert?  
1380 Mr. Gohmert. Aye.  
1381 Ms. Adcock. Mr. Gohmert votes aye.  
1382 Mr. Jordan?  
1383 [No response.]  
1384 Mr. Poe?  
1385 [No response.]  
1386 Mr. Marino?  
1387 Mr. Marino. Yes.  
1388 Ms. Adcock. Mr. Marino votes yes.  
1389 Mr. Gowdy?  
1390 [No response.]  
1391 Mr. Labrador?  
1392 [No response.]  
1393 Mr. Collins?  
1394 [No response.]  
1395 Mr. DeSantis?

1396 [No response.]

1397 Mr. Buck?

1398 Mr. Buck. Yes.

1399 Ms. Adcock. Mr. Buck votes yes.

1400 Mr. Ratcliffe?

1401 Mr. Ratcliffe. Yes.

1402 Ms. Adcock. Mr. Ratcliffe votes yes.

1403 Mrs. Roby?

1404 Mrs. Roby. Aye.

1405 Ms. Adcock. Mrs. Roby votes aye.

1406 Mr. Gaetz?

1407 Mr. Gaetz. Aye.

1408 Ms. Adcock. Mr. Gaetz votes aye.

1409 Mr. Johnson of Louisiana?

1410 [No response.]

1411 Mr. Biggs?

1412 Mr. Biggs. Aye.

1413 Ms. Adcock. Mr. Biggs votes aye.

1414 Mr. Rutherford?

1415 Mrs. Handel?

1416 Mrs. Handel: Yes.

1417 Ms. Adcock. Mrs. Handel votes yes.

1418 Mr. Rothfus?

1419 [No response.]

1420 Mr. Nadler?

1421 Mr. Nadler. No.

1422 Ms. Adcock. Mr. Nadler votes no.

1423 Ms. Lofgren?

1424 [No response.]

1425 Ms. Jackson Lee?

1426 Ms. Jackson Lee. No.

1427 Ms. Adcock. Ms. Jackson Lee votes no.

1428 Mr. Cohen?

1429 [No response.]

1430 Mr. Johnson of Georgia?

1431 Mr. Johnson of Georgia. No.

1432 Ms. Adcock. Mr. Johnson votes no.

1433 Mr. Deutch?

1434 [No response.]

1435 Mr. Gutierrez?

1436 [No response.]

1437 Ms. Bass?

1438 Ms. Bass. No.

1439 Ms. Adcock. Ms. Bass votes no.

1440 Mr. Richmond?

1441 Mr. Richmond. No.

1442 Ms. Adcock. Mr. Richmond votes no.

1443 Mr. Jeffries?

1444 Mr. Jeffries. No.

1445 Ms. Adcock. Mr. Jeffries votes no.

1446 Mr. Cicilline?

1447 Mr. Cicilline. No.

1448 Ms. Adcock. Mr. Cicilline votes no.

1449 Mr. Swalwell?

1450 [No response.]

1451 Mr. Lieu?

1452 Mr. Lieu. No.

1453 Ms. Adcock. Mr. Lieu votes no.

1454 Mr. Raskin?

1455 Mr. Raskin. No.

1456 Ms. Adcock. Mr. Raskin votes no.

1457 Ms. Jayapal?

1458 Ms. Jayapal. No.

1459 Ms. Adcock. Ms. Jayapal votes no.

1460 Mr. Schneider?

1461 Mr. Schneider. No.

1462 Ms. Adcock. Mr. Schneider votes no.

1463 Ms. Demings?

1464 Ms. Demings. No.

1465 Ms. Adcock. Ms. Demings votes no.

1466 Chairman Goodlatte. The gentleman from Florida, Mr.

1467 Gaetz? The gentleman from Florida, Mr. DeSantis?

1468 Mr. DeSantis. Yes.

1469 Ms. Adcock. Mr. DeSantis votes yes.

1470 Chairman Goodlatte. The gentleman from Texas, Mr. Poe?

1471 Mr. Poe. Yes.

1472 Ms. Adcock. Mr. Poe votes yes.

1473 Chairman Goodlatte. The gentleman from Louisiana, Mr.

1474 Johnson?

1475 Mr. Johnson of Louisiana. Yes.

1476 Ms. Adcock. Mr. Johnson votes yes.

1477 Chairman Goodlatte. The gentleman from Pennsylvania,

1478 Mr. Rothfus?

1479 Mr. Rothfus. Yes.

1480 Ms. Adcock. Mr. Rothfus votes yes.

1481 Chairman Goodlatte. Has every member voted who wishes

1482 to vote?

1483 The clerk will report.

1484 Ms. Adcock. Mr. Chairman, 16 members voted aye; 12

1485 members voted no.

1486 Chairman Goodlatte. And the previous question is

1487 ordered.

1488 The question occurs on the amendment in the nature of a

1489 substitute.

1490 All those in favor respond by saying aye.

1491 Those opposed, no.

1492 In the opinion of the chair, the ayes have it, and the

1493 amendment in the nature of a substitute is agreed to.

1494 A reporting quorum being present --

1495 Mr. Cicilline. Mr. Chairman, point of order.

1496 Chairman Goodlatte. There is no point of order in the  
1497 middle of a vote.

1498 Mr. Cicilline. We are not in the middle of anything.  
1499 Point of order, Mr. Chairman.

1500 Chairman Goodlatte. A reporting quorum being present,  
1501 the question is on the motion to report the bill H.R. 4423  
1502 as amended favorably to the House.

1503 Those in favor, respond by saying aye.

1504 Those opposed, no.

1505 The ayes have it, and the bill is ordered reported  
1506 favorably.

1507 Mr. Nadler. Roll call vote.

1508 Chairman Goodlatte. A recorded vote has been  
1509 requested, and the clerk will call the roll.

1510 Ms. Adcock. Mr. Goodlatte?

1511 Chairman Goodlatte. Aye.

1512 Ms. Adcock. Mr. Goodlatte votes aye.

1513 Mr. Sensenbrenner?

1514 Mr. Sensenbrenner. Aye.

1515 Ms. Adcock. Mr. Sensenbrenner votes aye.

1516 Mr. Smith?

1517 [No response.]

1518 Mr. Chabot?

1519 [No response.]

1520 Mr. Issa?

1521 Mr. Issa. Aye.

1522 Ms. Adcock. Mr. Issa votes aye.

1523 Mr. King?

1524 Mr. King. Aye.

1525 Ms. Adcock. Mr. King votes aye.

1526 Mr. Gohmert?

1527 Mr. Gohmert. Aye.

1528 Ms. Adcock. Mr. Gohmert votes aye.

1529 Mr. Jordan?

1530 [No response.]

1531 Mr. Poe?

1532 [No response.]

1533 Mr. Marino?

1534 Mr. Marino. Yes.

1535 Ms. Adcock. Mr. Marino votes yes.

1536 Mr. Gowdy?

1537 [No response.]

1538 Mr. Labrador?

1539 [No response.]

1540 Mr. Collins?

1541 [No response.]

1542 Mr. DeSantis?

1543 Mr. DeSantis. Yes.

1544 Ms. Adcock. Mr. DeSantis votes yes.

1545 Mr. Buck?

1546 Mr. Buck. Aye.

1547 Ms. Adcock. Mr. Buck votes aye.

1548 Mr. Ratcliffe?

1549 Mr. Ratcliffe. Yes.

1550 Ms. Adcock. Mr. Ratcliffe votes yes.

1551 Mrs. Roby?

1552 Mrs. Roby. Aye.

1553 Ms. Adcock. Mrs. Roby votes aye.

1554 Mr. Gaetz?

1555 Mr. Gaetz. Aye.

1556 Ms. Adcock. Mr. Gaetz votes aye.

1557 Mr. Johnson of Louisiana?

1558 Mr. Johnson of Louisiana. Aye.

1559 Ms. Adcock. Mr. Johnson votes aye.

1560 Mr. Biggs?

1561 Mr. Biggs. Aye.

1562 Ms. Adcock. Mr. Biggs votes aye.

1563 Mr. Rutherford?

1564 [No response.]

1565 Mrs. Handel?

1566 Mrs. Handel. Yes.

1567 Ms. Adcock. Mrs. Handel votes yes.

1568 Mr. Rothfus?

1569 Mr. Rothfus: Yes.

1570 Ms. Adcock. Mr. Rothfus votes yes.



1571 Mr. Nadler?

1572 Mr. Nadler. No.

1573 Ms. Adcock. Mr. Nadler votes no.

1574 Ms. Lofgren?

1575 [No response.]

1576 Ms. Jackson Lee?

1577 Ms. Jackson Lee. No.

1578 Ms. Adcock. Ms. Jackson Lee votes no.

1579 Mr. Cohen?

1580 [No response.]

1581 Mr. Johnson of Georgia?

1582 Mr. Johnson of Georgia. No.

1583 Ms. Adcock. Mr. Johnson votes no.

1584 Mr. Deutch?

1585 [No response.]

1586 Mr. Gutierrez?

1587 [No response.]

1588 Ms. Bass?

1589 [No response.]

1590 Mr. Richmond?

1591 Mr. Richmond. No.

1592 Ms. Adcock. Mr. Richmond votes no.

1593 Mr. Jeffries?

1594 Mr. Jeffries. No.

1595 Ms. Adcock. Mr. Jeffries votes no.

1596 Mr. Cicilline?  
1597 Mr. Cicilline. No.  
1598 Ms. Adcock. Mr. Cicilline votes no.  
1599 Mr. Swalwell?  
1600 [No response.]  
1601 Mr. Lieu?  
1602 Mr. Lieu. No.  
1603 Ms. Adcock. Mr. Lieu votes no.  
1604 Mr. Raskin?  
1605 Mr. Raskin. No.  
1606 Ms. Adcock. Mr. Raskin votes no.  
1607 Ms. Jayapal?  
1608 Ms. Jayapal. No.  
1609 Ms. Adcock. Ms. Jayapal votes no.  
1610 Mr. Schneider?  
1611 Mr. Schneider. No.  
1612 Ms. Adcock. Mr. Schneider votes no.  
1613 Ms. Demings?  
1614 Ms. Demings. No.  
1615 Ms. Adcock. Ms. Demings votes no.  
1616 Chairman Goodlatte. The gentleman from Texas, Mr. Poe?  
1617 Mr. Poe. Yes.  
1618 Ms. Adcock. Mr. Poe votes yes.  
1619 Chairman Goodlatte. Has every member who wishes to  
1620 vote? The clerk will report.

1621 Ms. Adcock. Mr. Chairman, 16 members voted aye; 11  
1622 members voted no.

1623 Chairman Goodlatte. The ayes have it, and the bill is  
1624 ordered reported favorably to the House. Members will have  
1625 2 days to submit views, and without objection, the bill will  
1626 be reported as a single amendment in the nature of a  
1627 substitute incorporating all adopted amendments, and staff  
1628 is authorized to make technical and conforming changes.

1629 Pursuant to notice, I now call up H.R. 5954 for  
1630 purposes of markup and move that the committee report the  
1631 bill favorably to the House. The clerk will report the  
1632 bill.

1633 Ms. Adcock. H.R. 5954, to amend title XVIII United  
1634 States Code to clarify the meaning of the terms "act of war"  
1635 and "blocked asset" and for other purposes.

1636 [The bill follows:]

1637 \*\*\*\*\* INSERT 4 \*\*\*\*\*

1638 Chairman Goodlatte. Without objection, the bill is  
1639 considered as read in open for amendment at any time. I  
1640 will begin by recognizing myself for an opening statement.

1641 Congress enacted the Anti-Terrorism Act of 1992 in  
1642 order to help combat international terrorism and to revive  
1643 some level of financial justice to American victims of  
1644 terrorism. The 1992 Act added a civil remedy to the ATA's  
1645 existing criminal regime, removing jurisdictional hurdles  
1646 that often confounded terrorism victims' ability to get  
1647 their day in court, and the act has been largely successful.  
1648 However, from time to time the 1992 Act has also needed  
1649 modifications to ensure that is fully serving its purposes.

1650 For instance, just last Congress, in the Justice  
1651 Against Sponsors of Terrorism Act, I helped lead the charge  
1652 in the House in the civil liability provision to make sure  
1653 that those who aid and abet or conspire with foreign  
1654 terrorist organizations are liable under the ATA. In  
1655 addition, in 2012 the Judiciary Committee worked to lengthen  
1656 the statute of limitations on civil ATA claims and provide  
1657 victims with the time they need to file these often-complex  
1658 lawsuits.

1659 The bill we are considering today, the Anti-Terrorism  
1660 Clarification Act, builds on these previous technical  
1661 amendments to the ATA. It makes three needed improvements  
1662 in order to better ensure that victims of international

1663 terrorism can obtain justice in the U.S. courts against  
1664 terrorists and their supporters.

1665         First, the bill clarifies the ATA's act of war  
1666 exception. Defendants accused of aiding and abetting acts  
1667 of international terrorism have been attempting to use this  
1668 exception as a means of avoiding civil liability, even in  
1669 cases in which the plaintiff's injuries were caused by the  
1670 actions of designated terrorist groups.

1671         For example, in *Kaplan v. Central Bank of Iran*, the  
1672 defendant financial institutions successfully argued that  
1673 rocket attacks against civilians carried out by Hezbollah, a  
1674 designated foreign terrorist organization, were acts of war  
1675 and thus outside the scope of the ATA's civil liability  
1676 provisions.

1677         The act of war exception should not be a liability  
1678 shield for those who aid or abet attacks carried out by  
1679 designated terrorist organizations. This legislation amends  
1680 the definition of act of war in the ATA to clarify that the  
1681 exception does not apply to U.S. government-designated  
1682 foreign terrorist organizations or specially designated  
1683 global terrorists.

1684         Second, at the urging of Representative Posey, the  
1685 author of the CAPTIVE Act, we included language in the bill  
1686 to strengthen the ATA's civil enforcement regime by  
1687 permitting victims of narco-terrorism to satisfy their

1688 court-awarded judgments with the assets of foreign narcotics  
1689 drug kingpins. Assets blocked by the Federal Government  
1690 under the Kingpin Designation Act are not currently  
1691 available to victims, leaving victims of the FARC and other  
1692 narco-terrorists without a meaningful method of getting  
1693 compensation for their injuries.

1694 Finally, this legislation addresses recent Federal  
1695 court decisions that have called into question the continued  
1696 ability of victims to bring terrorists and their supporters  
1697 to justice under the ATA's civil liability regime. The ATA  
1698 was specifically designed to provide extraterritorial  
1699 jurisdiction over terrorists who attack U.S. nationals  
1700 overseas. However, these recent cases have severely limited  
1701 the extraterritorial scope of the ATA.

1702 The Anti-Terrorism Clarification Act amends the  
1703 jurisdiction and venue section of the ATA to make clear that  
1704 defendants who take advantage of certain benefits provided  
1705 by the U.S. government shall be deemed to have consented to  
1706 personal jurisdiction in the U.S. courts in ATA civil  
1707 actions. No defendant should be able to accept U.S. foreign  
1708 assistance while simultaneously dodging responsibility in  
1709 U.S. courts for aiding or carrying out terrorist attacks  
1710 that harm Americans.

1711 I want to thank Ranking Member Nadler along with Senate  
1712 Judiciary Chairman Grassley and Senate Commerce Committee

1713 Ranking Member Nelson for joining me in introducing this  
1714 bicameral and bipartisan bill. I urge my colleagues to  
1715 support us in passing this legislation to clarify  
1716 ambiguities in the ATA that terror sponsors have exploited  
1717 to evade liability so that we can help ensure that Americans  
1718 are able to hold terrorists and their supporters  
1719 accountable.

1720 It is now my pleasure to recognize the ranking member  
1721 of the committee, the gentleman from New York, Mr. Nadler  
1722 for his opening statement.

1723 [The prepared statement of Chairman Goodlatte follows:]

1724 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

1725 Mr. Nadler. Thank you, Mr. Chairman. I am proud to be  
1726 the lead Democratic cosponsor of H.R. 5954, the Anti-  
1727 Terrorism Verification Act of 2018. I support the bill; I  
1728 support the comments made by the chairman; I support the  
1729 amendment in the nature of a substitute that is going to be  
1730 offer. And I want to offer my eloquent and lengthy  
1731 statement of support of the bill into the record.

1732 Chairman Goodlatte. Without objection, it will be made  
1733 a part of the record.

1734 [The prepared statement of Mr. Nadler follows:]

1735 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*



1736 Mr. Nadler. Thank you. But I want to take a moment  
1737 now to object to what I believe to be the majority's abuse  
1738 of power that we have just seen in this committee to silence  
1739 debate on an issue that is squarely within our jurisdiction  
1740 and is of pressing importance.

1741 The shutting down of debate to silence members by use  
1742 of the previous question is inconsistent with this  
1743 committee's history as a place of full and collegial debate  
1744 of some of our Nation's most important issues.

1745 I want to associate myself with the remarks of Ms.  
1746 Jayapal and want to further say that we are overcome with  
1747 examples of the conduct of an administration that appears to  
1748 lack a moral compass and stands in defiance to our Nation's  
1749 history as a beacon of freedom and a refuge for the  
1750 oppressed and that shames our country by the actions it is  
1751 taking.

1752 From the ripping of thousands of children from the arms  
1753 of their parents as a deliberate means -- the administration  
1754 has said so -- "We are going to rip the children away from  
1755 their parents in order to deter people who are fleeing  
1756 violence from seeking political asylum." Forget the motive;  
1757 we are going to rip thousands of children from the arms of  
1758 their parents. That is inhuman. It is inhuman, and it is  
1759 degrading to our country

1760 We can debate immigration policy, but it is hard to

1761 debate deliberate infliction of cruelty and torture on  
1762 victims of violence, of people who are seeking asylum? I  
1763 always thought that when someone comes with a claim of  
1764 asylum, you first say, "Okay, is there a credible fear?"  
1765 You have a credible fear hearing; you have adjudication as  
1766 to whether the asylum claim is justified.

1767       You do not first arrest the person and take the kids  
1768 away, hoping to deter other people from fleeing to this  
1769 country. That is inhuman. It is almost beyond description.  
1770 I want to say "disgusting," but I hate to use the word  
1771 "disgusting" about the action of United States officials.  
1772 But it is the only way we can characterize it.

1773       And for the Attorney General suddenly to decide that  
1774 victims fleeing violence -- domestic violence or other  
1775 violence -- cannot get political asylum as a class. That  
1776 violence, that the inflection of murder and mayhem should  
1777 not be subject to consideration for asylum, is also beyond  
1778 the traditions of this country.

1779       This is the committee with jurisdiction, and we ought  
1780 to be holding hearings to see what we are doing. What is  
1781 the administration doing? Do we approve of what they are  
1782 doing? Should we say, "Okay, go ahead?" Should we say,  
1783 "No, stop?" That is the job of this committee. And instead  
1784 we are sitting here debating worthy bills and some not-so-  
1785 worthy bills, but nothing of such crucial and human

1786 immediacy.

1787       And it is shameful that we not debate this; it is  
1788 shameful that we not act on this, that we not consider this  
1789 when we are faced with an administration doing these  
1790 terrible things in our name. And it is shameful that we use  
1791 the previous question to shut down debate in this committee,  
1792 to shut down so that people cannot raise it, as if perhaps  
1793 the people who move the previous question are afraid of the  
1794 debate, are afraid of what may come out, are afraid that  
1795 they have no responses, or that they have no responses that  
1796 will stand the light of day.

1797       So, I certainly hope that we will have a hearing very  
1798 shortly, that we will call the DHS Secretary to testify, and  
1799 then we can look into this question. That is our job.  
1800 Whether we end up approving -- I will never approve this  
1801 policy -- that is not the point. Whether we as a committee  
1802 end up approving this policy or modifying or suggesting  
1803 changing it or approving it, it is our job to look into it;  
1804 it is our job to hold any administration accountable. And I  
1805 certainly hope we will have such a hearing very quickly. I  
1806 yield back.

1807       Chairman Goodlatte. Will the gentleman yield?

1808       Mr. Nadler. Sure.

1809       Chairman Goodlatte. I just want to point out to the  
1810 gentlemen that we are working diligently. We had scheduled,

1811 and we had to reschedule, but we are going to schedule an  
1812 oversight hearing of the Department, and the secretary will  
1813 appear, and questions of the nature the gentleman has raised  
1814 will be available to be asked.

1815       Mr. Nadler. I appreciate that. I might suggest that  
1816 we ought to have a hearing not overall on the DHS but  
1817 specifically on these policies, which are very new policies  
1818 which are very stridently different from any we have pursued  
1819 in the past, without congressional considerations certainly,  
1820 and they are deserving of their own hearing by themselves.  
1821 I yield back.

1822       Chairman Goodlatte. I now recognize myself for  
1823 purposes of offering an amendment. The clerk will report  
1824 the amendment.

1825       Ms. Adcock. Amendment to H.R. 5954, offered by Mr.  
1826 Goodlatte. Page three, strike line 24 --

1827       [The amendment of Mr. Goodlatte follows:]

1828       \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

1829 Chairman Goodlatte. Without objection, the amendment  
1830 will be considered as read, and I will recognize myself to  
1831 explain the amendment.

1832 My amendment finetunes section 4 of the bill in order  
1833 to ensure that the provision applies in a fair and balanced  
1834 way to both victims and defendants in ATA civil cases.  
1835 section 4 is the section of the bill that provides for  
1836 consent to personal jurisdiction for defendants who accept  
1837 certain foreign assistance from the United States or benefit  
1838 from a waiver or suspension of the anti-terror laws so that  
1839 they can locate an office or headquarters in the United  
1840 States.

1841 First, this amendment enhances the fairness of the  
1842 application of this provision to defendants by making clear  
1843 that the section does not begin to apply until 120 days  
1844 after date of enactment. This will ensure that defendants  
1845 have knowledge that their acceptance of certain benefits  
1846 extended by the United States will constitute consent to  
1847 personal jurisdiction in civil ATA cases.

1848 Second, the amendment provides that consent to suit  
1849 does not have to continue in perpetuity. Rather, section 4,  
1850 as amended, will now cease to apply to any defendant who  
1851 stops receiving U.S. assistance for a period of 5 years. As  
1852 with the previously described change, this will enhance  
1853 meaningfulness of a defendant's consent to personal

1854 jurisdiction.

1855 Third, the amendment balances the interest of the  
1856 victims of terrorism by changing the applicability of the  
1857 section so that it applies to existing ATA cases. The bill,  
1858 as introduced, only applies to cases filed after the date of  
1859 enactment. This is a fair balance to strike, because the  
1860 amendment is pushing back the application of section 4 until  
1861 120 days after the date of enactment.

1862 I hope my colleagues will join me in supporting this  
1863 amendment, which I think makes section 4 of the bill strike  
1864 a better balance of interest between potential defendants in  
1865 these lawsuits and victims of terrorism.

1866 Ms. Jackson Lee. Mr. Chairman?

1867 Chairman Goodlatte. For what purpose does the  
1868 gentlewoman from Texas seek recognition?

1869 Ms. Jackson Lee. I rise to strike the last word and I  
1870 ask for unanimous consent --

1871 Chairman Goodlatte. The gentlewoman is recognized for  
1872 5 minutes.

1873 Ms. Jackson Lee. Mr. Chairman, I rise to support the  
1874 amendment for the additional due process provisions that it  
1875 gives, and I believe, under the circumstances, when we hear  
1876 the word "terrorism," which this bill deals with, we should  
1877 also be mindful of the principles of the United States,  
1878 which do include principles of due process.

1879           Mr. Chairman, might I also make the point that I  
1880 associate myself and desire to associate myself with first  
1881 the words of Congresswoman Jayapal and as well to associate  
1882 myself with Mr. Nadler. As you well know, we have served  
1883 together on this committee for the period of time that we  
1884 are well aware that this committee has jurisdiction over the  
1885 internal actions of ICE.

1886           You are also aware that we proposed the policy under  
1887 the Immigration Committee dealing specifically with  
1888 unaccompanied children, meaning those who specifically came  
1889 to the United States unaccompanied. In addition, many of us  
1890 during that crisis -- myself; Ms. Lofgren -- went to the  
1891 border, and I personally witnessed and handled or took into  
1892 my arms unaccompanied children that were fleeing the  
1893 persecution of massive gang violence; it was so fearful that  
1894 parents, in the tradition of Moses, were sending their  
1895 children to a safe refuge.

1896           To take and abuse that policy as this administration  
1897 has done with no premise in law, no jurisdictional basis to  
1898 de-unify, to separate, to rip, to demean, to jeopardize the  
1899 lives of children, to ruin them for life, to alter their  
1900 psyche, to maybe never find the children again.

1901           My God, if we have all these children in places taken  
1902 from parents without their permission, and in family state  
1903 law -- family law in states -- the highest priority is that

1904 parent. You have to go to court to separate that parent's  
1905 rights from that child, and here we are ripping them away.

1906 Let me just say, this past weekend I was with a  
1907 Guatemalan community. That volcano is worse than we might  
1908 have thought. A million people are displaced. Guatemala is  
1909 not a large country; we expect massive numbers of people  
1910 that will possibly flee because of a natural disaster. And  
1911 then, I think my colleagues should know, and I think the  
1912 congresswoman made it clear -- she alluded to it, and this  
1913 is where we should have the hearing -- is that there is a  
1914 massive -- the process of any form of due process is  
1915 completely alleviated.

1916 The person seeking any relief is hauled in the court  
1917 50, 60, 75 at a time. The Southern District, which this  
1918 area is in, is so short of immigration judges; we have a  
1919 50,000-case backlog, and I am led to believe that there is  
1920 no relief down at the border. There is no increase in  
1921 immigration judges at the border. And so, you are hauling  
1922 in massive numbers of people who do not speak English, who  
1923 are asking for asylum, as the ranking member said, have a  
1924 right to the establishment of credible fear.

1925 The other point is that Hondurans who are coming are  
1926 speaking in their indigenous language. Many of them are  
1927 speaking in their indigenous language; there are no  
1928 translators for the indigenous language, so they do not even



1929 know what is going on, and they certainly do not know where  
1930 their children are. So, Mr. Chairman, I would associate  
1931 myself for a hearing, but an overview hearing is not the  
1932 emergency that we have now.

1933 And really, this committee should be the committee,  
1934 regardless of what side of the aisle you are on immigration,  
1935 to loudly tell, as I have asked for the Secretary of  
1936 Homeland Security and this administration, to cease and  
1937 desist immediately from ripping children away from parents.  
1938 There are legitimate facilities -- not the best, as has been  
1939 evidenced -- that children and family can stay together.

1940 And if they lose these children this will be an  
1941 international humanitarian crisis which the United States  
1942 will be a long time overcoming, because the world is  
1943 watching, and they are appalled. They cannot even imagine  
1944 that people are ripping away -- as bad as the migration  
1945 system is in Europe, meaning those who are fleeing, and the  
1946 tragedy of drowning, they are not as they land, if they land  
1947 on the shore, separating families.

1948 So, this is a violent act, and I know that none of us,  
1949 no matter what side of the aisle, parents and grandparents  
1950 who sit on this particular panel, or those who love children  
1951 on this panel, cannot imagine, Mr. Chairman, this continuing  
1952 to go on.

1953 And I do not know why the Trump administration is

1954 turning a blind eye when just 2 months ago, in Child Abuse  
1955 Month, he got up to speak about the value of the child and  
1956 the parent. This is gross and violent child abuse, Mr.  
1957 Chairman. I would ask that our hearing be on this question,  
1958 separately on this question, and with that I yield back.

1959 Chairman Goodlatte. The time of the gentlewoman has  
1960 expired.

1961 Mr. Johnson of Georgia. Mr. Chairman?

1962 Chairman Goodlatte. For what purpose does the  
1963 gentleman from Georgia seek recognition?

1964 Mr. Johnson of Georgia. I move to strike the last  
1965 word.

1966 Chairman Goodlatte. The gentleman is recognized for 5  
1967 minutes.

1968 Mr. Johnson of Georgia. Thank you, Mr. Chairman. I  
1969 rise in support of the amendment and also in support of my  
1970 dear colleague, Congresswoman Jayapal, who with eloquence  
1971 and controlled emotion spoke on an issue of prime concern to  
1972 many of us in this room today; unfortunately, not enough of  
1973 us, not the majority of us.

1974 Some of us care about children; some of us care about  
1975 people. Some of us agree with Donald Trump when he  
1976 describes certain folks as animals, and certain ones of us  
1977 have adopted that view, obviously and clearly. Some of us  
1978 believe that people coming across our southern border are

1979 animals. And so, Representative Jayapal expressed her view  
1980 on this and, as a result, ran everybody out of the room on  
1981 the other side. I guess the truth hurts, Mr. Chairman.

1982 The truth hurts, and when the truth is being told, it  
1983 is unavoidable to us here on this side of the aisle. So, we  
1984 understand that, even in cases of divorce where children are  
1985 deprived of one of their parents, it has a profound impact  
1986 on the child. Studies show that. That is why so many  
1987 parents wait until their children are able to accept the  
1988 trauma of separation and divorce before they actually take  
1989 that step.

1990 Some parents really care about their children, and the  
1991 majority of those people coming up through our southern  
1992 borders, they are just like us; they care about their  
1993 children, too. And their children are just like children  
1994 here in America. They hurt when they are separated from  
1995 their parents. When children are separated from their  
1996 parents they struggle emotionally for the rest of their  
1997 lives.

1998 They suffer an extreme sense of loss when they are  
1999 pried from the arms of their parents at the border and taken  
2000 away by strangers and housed like animals, like we treat  
2001 cattle. We put the parents through one chute and put the  
2002 children through another chute, treating them like animals.  
2003 We separate the children, put them in a place where nobody

2004 loves them, where they basically have no parental guidance  
2005 whatsoever. They are housed in prisons, in detention, in  
2006 cages like animals, and those children hurt just like  
2007 American children.

2008       They suffer the sadness of not being with their parent.  
2009 They suffer the isolation and loneliness that comes with  
2010 separation. It will result in societal difficulties as they  
2011 age, because they will be the ones with the behavioral  
2012 problems. They will be the ones with -- who will use drugs  
2013 and alcohol to try to numb the pain that they have never  
2014 been able to deal with; they will become pregnant; they will  
2015 be the ones that are committing the delinquencies as  
2016 juveniles, and as adults they will become hardened  
2017 criminals.

2018       What are we doing to ourselves? Because we know that  
2019 we live in a global economy; when this administration leaves  
2020 office, we will not be able to keep our borders closed.  
2021 People, as they do overseas, take actions that impact  
2022 Americans here in this country. You will not be able to  
2023 escape the results of what we are doing to these children.  
2024 We are taking innocent children and turning them into  
2025 monsters that will one day come back to haunt us.

2026       We should not be doing this to these children, and I am  
2027 glad that you brought it up, Congresswoman Jayapal. It is a  
2028 tough subject; nobody wants to hear it on the other side of

2029 the aisle. But we care about people, we care about  
2030 children, and it is wrong what is going on in America. And  
2031 with that, I yield back.

2032 Mr. Cicilline. Mr. Chairman?

2033 Chairman Goodlatte. For what purpose does the  
2034 gentleman from Rhode Island seek recognition?

2035 Mr. Cicilline. I move to strike the last word.

2036 Chairman Goodlatte. The gentleman is recognized for 5  
2037 minutes.

2038 Mr. Cicilline. Thank you, Mr. Chairman. I support the  
2039 amendment. I too want to spend a moment to address the  
2040 really important issue raised by the gentlelady from  
2041 Washington and associate myself with her remarks and the  
2042 remarks that strongly criticized the shutting down a debate  
2043 by the committee chairman on this important issue.

2044 I know these are hard stories to hear, and I know  
2045 nobody wants to hear them, because they are devastating to  
2046 listen to. But imagine how devastating they are to experience  
2047 them, to be a mother sitting in a room and hear her child  
2048 crying, and there is nothing you can do to soothe those  
2049 cries. This is not who we are. This is unspeakable  
2050 violence against children.

2051 In fact, it is so bad that the United Nations condemned  
2052 the United States, that this practice of ripping children  
2053 from their parents violates international law and basic

2054 human rights. It also violates our own law. You know, we  
2055 hear from this committee, "This is the Judiciary Committee."  
2056 We have laws that we have enacted about asylum; when you are  
2057 eligible for it; how that determination is made. None of  
2058 that is happening.

2059 And instead, we hear stories of detention, arrest,  
2060 separation, the most horrific examples of violence against  
2061 children in the history of our country maybe. And our  
2062 committee has responsibly to do something about it, to do  
2063 bring the Attorney General, bring the Department of Homeland  
2064 Security Director here to answer questions about this  
2065 practice.

2066 These are violations of laws duly enacted by Congress.  
2067 Asylum seekers have rights; they are fleeing the most  
2068 horrific violence: rape, threats of murder, child  
2069 trafficking, unspeakable violence. They come to America  
2070 because they know if they come here, and they can make a  
2071 claim for asylum, that they are really in fear that  
2072 something really awful is happening in their lives, that  
2073 they have a process, a lawful process, they can go through.

2074 What happens? They get here, and they get arrested and  
2075 put in a cage, and then they are separated from their  
2076 children. And agents tell them, "Make sure everyone knows  
2077 this is what happened," so people will stop coming. Those  
2078 agents do not get to make the laws in this country. That is

2079 our responsibility.

2080 And the examples that Ms. Jayapal heard about should  
2081 alarm and disturb every single one of us. And we have not  
2082 had a single hearing to examine this policy, which is a  
2083 significant departure from all that is decent and right and  
2084 the tradition of this country.

2085 We have not had a single oversight hearing to examine  
2086 this, to hear the cries of these children and these  
2087 families. But we did have a hearing today on the North  
2088 Texas water supply, some project in Texas. I am sure to the  
2089 people in that area it is important, but it seems to me the  
2090 American people are demanding answers about what the impact  
2091 is of this is zero tolerance proposal.

2092 We have a long tradition in this country of  
2093 understanding our responsibilities to be a refuge of people  
2094 that are fleeing violence and seeking a new way of life. We  
2095 set up a whole structure, a whole set of laws to govern how  
2096 we can do that in an orderly way.

2097 The American people expect us to comply with those laws  
2098 we have enacted, and what we are hearing and seeing and  
2099 reporting in the media is evidence of a gross violation of  
2100 basic human rights, a violation of well-established law and  
2101 tradition in this country, and we cannot seem to get our  
2102 Republican colleagues to do anything about it.

2103 We have to fight to get our voices heard in this

2104 committee, to, you know, squeeze in between the gavel,  
2105 because they do not want to hear about this. Well, guess  
2106 what? The American people expect something to be done.  
2107 This is intolerable; it is disgraceful; we should all be  
2108 ashamed it is happening; and we have a responsibility to fix  
2109 it.

2110         And this committee has jurisdiction, and I am asking  
2111 you, Mr. Chairman, to bring before the committee those  
2112 responsible for developing this policy, executing this  
2113 policy, and people who have been victims of this policy, so  
2114 we can understand the gravity of this and fashion a solution  
2115 to it.

2116         But no longer should we expect that the Democrats on  
2117 this committee are just going to sit there and talk about  
2118 the North Texas water supply or some other bill to fill the  
2119 time when real problems persist in this country. And we are  
2120 undermining and undoing the basic rule of law; our  
2121 longstanding tradition of being a beacon and a light to the  
2122 world as a place you come for the protection against  
2123 violence and discrimination and harm. And most importantly,  
2124 a country that values families and values the importance of  
2125 keeping families together.

2126         America can never be known as a country that  
2127 facilitates the ripping apart of families, sending children  
2128 into detention away from their parents. That is not who we



2129 are. And so, I ask you, Mr. Chairman, to adjourn this  
2130 hearing and convene a hearing immediately with the Attorney  
2131 General, the Secretary the Department of Homeland Security,  
2132 ICE officials, so that we can have a real discussion, and  
2133 the American people can see what this policy is doing and  
2134 that the individuals responsible can be held accountable.  
2135 And with that, I yield back.

2136 Chairman Goodlatte. The chair thanks the gentleman.  
2137 We have an important piece of legislation, bipartisan  
2138 legislation, before the committee.

2139 Mr. Raskin. Mr. Chairman?

2140 Chairman Goodlatte. The question occurs on the  
2141 amendment offered by the chair.

2142 All those in favor of this respond by saying aye.

2143 Those opposed, no.

2144 The ayes have it, and the amendment is agreed to.

2145 Mr. Cicilline. Point of order, Mr. Chairman.

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

2148 Mr. Raskin. I move to strike the last word.

2149 Chairman Goodlatte. The gentleman is recognized for 5  
2150 minutes.

2151 Mr. Raskin. Thank you very much. I favor the  
2152 amendment, and I want to add my --

2153 Chairman Goodlatte. The amendment has passed.

2154 Mr. Raskin. Well, I tried to speak beforehand, but --  
2155 okay, I favored the amendment. I want to add my voice to  
2156 the chorus of opposition to this outrageous --

2157 Chairman Goodlatte. That is not relevant to the  
2158 business before the committee today.

2159 Mr. Raskin. Was I not recognized for 5 minutes, Mr.  
2160 Chairman?

2161 Chairman Goodlatte. The gentleman was recognized.

2162 Mr. Raskin. Okay, well, I am going to use my time.

2163 Chairman Goodlatte. But I would point out to him  
2164 that that is the case.

2165 Mr. Raskin. Excuse me?

2166 Chairman Goodlatte. And if it continues we will have  
2167 to use the same procedure we used in the last matter. I do  
2168 not think this is a wise thing to do when we have important  
2169 business for the committee --

2170 Mr. Raskin. Mr. Chairman, has not it always been the  
2171 practice of this committee that people can be recognized,  
2172 and they can speak to matters that they think are important  
2173 to the Judiciary Committee and to the people of the United  
2174 States and their constituents?

2175 Chairman Goodlatte. Actually, it is not, and that is  
2176 why, on occasion, the previous question has been used when  
2177 the minority party filibusters an issue.

2178 Mr. Raskin. Okay.

2179 Chairman Goodlatte. So, the gentleman can proceed. He  
2180 is recognized for 5 minutes.

2181 Mr. Raskin. Look, I understand the impulse not to talk  
2182 about what is taking place in the name of the American  
2183 people, but Ms. Jayapal has properly brought to the  
2184 attention of this committee something which is of urgent  
2185 importance to justice in United States of America.

2186 What we have going on under the guise of the zero-  
2187 tolerance policy is the forcible separation of children from  
2188 their parents. And many of the people being separated from  
2189 their children are here with valid asylum claims. As Mr.  
2190 Cicilline says, this is not who we are. This is not what  
2191 the United States of America is.

2192 Thomas Paine said America was founded as a haven of  
2193 refuge for people fleeing from religious and political  
2194 oppression and violence from all over the world. That is  
2195 why we have got the Statue of Liberty, which says, "Give me  
2196 your tired, your poor, your huddled masses yearning to  
2197 breathe free." That is who we are as America. We are all  
2198 the descendants of immigrants except for the descendants of  
2199 slaves and the descendants of the Native Americans.

2200 Now, we have got people arriving in America, fleeing  
2201 domestic violence, gang violence, government oppression.  
2202 Many of them are coming in lawful ports of entry and are  
2203 still being separated from their children. Ms. Jayapal

2204 tells us -- because we have not had a hearing on this, so  
2205 what we are getting is direct firsthand testimony from  
2206 members of Congress who are trying to go to the scene of  
2207 this crime against human rights -- and she tells us that  
2208 there are mothers who cannot stop crying, and they can hear  
2209 their children crying in neighboring rooms as they are being  
2210 taken to God knows where.

2211         Mr. Chairman, if we can have a hearing on this singular  
2212 exception to the environmental laws of the United States for  
2213 North Texas water district that does not want to give people  
2214 the right to sue to vindicate their environmental rights  
2215 under NEPA, certainly we can have a hearing about what is  
2216 taking place in the name of the American people at the  
2217 border and now all over the country as these children  
2218 relocated, and we read that the White House is looking to  
2219 erect tent cities to house unaccompanied children. More  
2220 than a thousand children are going to be put in makeshift  
2221 tents as they are separated from their parents and families.

2222         This rang a bell with me from 1984. It was a totally  
2223 Orwellian policy, and sure enough, you go back and check  
2224 Orwell. O'Brian says, "We have cut the links between child  
2225 and parent; children will be taken away from their mothers."  
2226 This is an Orwellian policy. It is a policy that is  
2227 reflective of an authoritarian cast of mind, not the cast of  
2228 mind of the greatest liberal democracy that ever existed.

2229 Who are we becoming?

2230 I want to ask, if she would yield for a question, Ms.  
2231 Jayapal a question. Is it really the case that people are  
2232 arriving with asylum claims and causes of action in lawful  
2233 ports of entry --

2234 Chairman Goodlatte. Would the gentleman yield?

2235 Mr. Raskin. By all means.

2236 Chairman Goodlatte. So, I would just ask the gentleman  
2237 was it not under a Democratic Congress and a Democratic  
2238 administration that this policy that does not allow children  
2239 to be held with their parents in detention was passed into  
2240 law? That is the crux of this problem, and that is what  
2241 needs to be addressed. And in fact, we are going to have  
2242 two bills on the floor next week that will address it. As I  
2243 said before, we are going to have the Secretary of Homeland  
2244 Security here soon. You will be able to ask her these  
2245 questions.

2246 Mr. Raskin. Okay.

2247 Chairman Goodlatte. But it needs to be addressed  
2248 legislatively, and that is the crux of the matter. So, you  
2249 are welcome to debate it here, but there is a better time  
2250 and place to do that than when the committee has other  
2251 important business --

2252 Mr. Raskin. Reclaiming my time --

2253 Chairman Goodlatte. -- including protecting people who

2254 are the victims of terrorism by passing legislation to  
2255 enable them to have --

2256 Mr. Raskin. Reclaiming my time --

2257 Chairman Goodlatte. -- fair status.

2258 Mr. Raskin. Thank you very much, Mr. Chairman, and I  
2259 would love to hear a full elaboration of that position at a  
2260 hearing that you call this week for a hearing to examine  
2261 this policy that is taking place in the name of the American  
2262 people. Proceeding with my question for Ms. Jayapal, is it  
2263 true that people are arriving at lawful ports of entry and  
2264 still being separated from their children?

2265 Ms. Jayapal. That is correct. These are individuals  
2266 who are coming to the United States seeking asylum. The  
2267 process should be that they get a credible fear hearing.  
2268 Not a single one of them that I met with; 174 women who were  
2269 held in a Federal prison because we do not have enough space  
2270 in detention centers, because we have mass-deported and  
2271 detained immigrants across this country.

2272 These are all individuals seeking asylum; they have not  
2273 been given that credible fear hearing. And I just want to  
2274 point out that the U.N. Human Rights Office has said that  
2275 the practice of separating children from families violates  
2276 their rights and international law, and the U.N. High  
2277 Commissioner for Human Rights said, "It amounts to arbitrary  
2278 and unlawful interference in family life and is a serious

2279 violation of the rights of the child."

2280           And this all -- let us be clear -- comes from the Trump  
2281 administration/Jeff Sessions zero-tolerance policy at the  
2282 border that has facilitated and encouraged border agents to  
2283 be absolutely outrageously cruel to people and to hold them  
2284 in conditions that, no matter what your policies are, nobody  
2285 should be held in those conditions.

2286           Chairman Goodlatte. The time of the gentleman has  
2287 expired. A reporting quorum being present, the question is  
2288 on the motion to report the bill H.R. 5954, as amended,  
2289 favorably to the House.

2290           Those in favor, respond by saying.

2291           Those opposed, no.

2292           The ayes have it, and the bill is ordered reported  
2293 favorably.

2294           Members will have 2 days to submit views. Without  
2295 objection, the bill be reported as a single amendment in the  
2296 nature of a substitute incorporating all adopted amendments,  
2297 and staff is authorized to make technical and conforming  
2298 changes.

2299           This concludes our business for today. Thanks to all  
2300 members for attending. The markup is adjourned.

2301           [Whereupon, at 12:09 p.m., the committee was  
2302 adjourned.]