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1 {York Stenographic Services, Inc.}

2 RPTS BROWN

3 HIF043.000

4 MARKUP ON H.R. 734, FEDERAL COMMUNICATIONS COMMISSION

5 CONSOLIDATED REPORTING ACT OF 2015;

6 H.R. 639, IMPROVING REGULATORY TRANSPARENCY FOR NEW MEDICAL

7 THERAPIES ACT;

8 H.R. 471, ENSURING PATIENT ACCESS AND EFFECTIVE DRUG

9 ENFORCEMENT ACT OF 2015;

10 H.R. 647, ACCESS TO LIFE-SAVING TRAUMA CARE FOR ALL AMERICANS

11 ACT;

12 H.R. 648, TRAUMA SYSTEMS AND REGIONALIZATION OF EMERGENCY

13 CARE REAUTHORIZATION ACT;

14 H.R. 212, DRINKING WATER PROTECTION ACT

15 THURSDAY, FEBRUARY 12, 2015

16 House of Representatives,

17 Committee on Energy and Commerce

18 Washington, D.C.

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19           The Committee met, pursuant to call, at 10:07 a.m., in  
20 Room 2123 of the Rayburn House Office Building, Hon. Fred  
21 Upton [Chairman of the Committee] presiding.

22           Members present: Representatives Upton, Barton,  
23 Whitfield, Shimkus, Pitts, Walden, Murphy, Burgess,  
24 Blackburn, Scalise, Latta, McMorris Rodgers, Harper, Lance,  
25 Guthrie, Olson, McKinley, Kinzinger, Griffith, Bilirakis,  
26 Johnson, Long, Ellmers, Bucshon, Flores, Brooks, Mullin,  
27 Hudson, Collins, Cramer, Pallone, Eshoo, Green, DeGette,  
28 Capps, Doyle, Schakowsky, Matsui, Castor, Sarbanes, McNerney,  
29 Welch, Lujan, Tonko, Yarmuth, Clarke, Loeb sack, Schrader,  
30 Kennedy, and Cardenas.

31           Staff present: Nick Abraham, Legislative Clerk; Clay  
32 Alspach, Chief Counsel, Health; Gary Andres, Staff Director;  
33 Ray Baum, Senior Policy Advisor for Communications and  
34 Technology; David Bell, Staff Assistant; Sean Bonyun,  
35 Communications Director; Leighton Brown, Press Assistant;  
36 Karen Christian, General Counsel; Noelle Clemente, Press  
37 Secretary; Jerry Couri, Senior Environmental Policy Advisor;  
38 James Decker, Policy Coordinator, Commerce, Manufacturing and  
39 Trade; Andy Duberstein, Deputy Press Secretary; Brad Grantz,  
40 Policy Coordinator, Oversight and Investigations; Kelsey  
41 Guyselman, Counsel, Telecom; Brittany Havens, Legislative

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42 Clerk; Kirby Howard, Legislative Clerk; Peter Kielty, Deputy  
43 General Counsel; Grace Koh, Counsel, Telecom; Alexa Marrero,  
44 Deputy Staff Director; David McCarthy, Chief Counsel,  
45 Environment and Economy; Carly McWilliams, Professional Staff  
46 Member, Health; Katie Novaria, Professional Staff Member,  
47 Health; Tim Pataki, Professional Staff Member; David Redl,  
48 Counsel, Telecom; Chris Sarley, Policy Coordinator,  
49 Environment and Economy; Charlotte Savercool, Legislative  
50 Clerk; Adrianna Simonelli, Legislative Clerk; Heidi Stirrup,  
51 Health Policy Coordinator; John Stone, Counsel, Health; Greg  
52 Watson, Staff Assistant; Jean Woodrow, Director, Information  
53 Technology; Ziky Ababiya, Democratic Policy Analyst; Jen  
54 Berenholz, Democratic Chief Clerk; Jeff Carroll, Democratic  
55 Staff Director; Jacqueline Cohen, Democratic Senior Counsel;  
56 Eric Flamm, Democratic FDA Detailee; David Goldman,  
57 Democratic Chief Counsel, Communications and Technology; Lisa  
58 Goldman, Democratic Counsel; Hannah Green, Democratic Policy  
59 Analyst; Tiffany Guarascio, Democratic Deputy Staff Director  
60 and Chief Health Advisor; Caitlin Haberman, Democratic  
61 Professional Staff Member; Ashley Jones, Democratic Director,  
62 Outreach and Member Services; Rick Kessler, Democratic Senior  
63 Advisor and Staff Director, Energy and Environment; Debbie  
64 Letter, Democratic Staff Assistant; Elizabeth Letter,

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65 Democratic Professional Staff Member; Margaret McCarthy,  
66 Democratic Professional Staff Member; Tim Robinson,  
67 Democratic Chief Counsel; and Ryan Skukowski, Democratic  
68 Policy Analyst.

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|

69 H.R. 734

70 The {Chairman.} The committee will come to order.

71 At the conclusion of opening statements yesterday, the  
72 chair called up H.R. 734, and the bill was open for amendment  
73 at any point.

74 Are there any bipartisan amendments to the bill?

75 Seeing none, are there any other amendments?

76 Seeing none, the question now occurs on favorably  
77 reporting H.R. 734 to the House.

78 All those in favor, signify by saying aye.

79 All those opposed, say no.

80 The ayes appear to have it. The ayes have it, and the  
81 bill is favorably reported.

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|

82 H.R. 639

83           The {Chairman.} The chair now calls up H.R. 639 as  
84 forwarded by the Subcommittee on Health, and asks the clerk  
85 to report.

86           The {Clerk.} H.R. 639, to amend the Controlled  
87 Substances Act with respect to drug scheduling  
88 recommendations by the Secretary of Health and Human  
89 Services, and with respect to registration of manufacturers  
90 and distributors seeking to conduct clinical testing.

91           [H.R. 639 follows:]

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

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|

93           The {Chairman.} Without objection, the first reading of  
94 the bill is dispensed with, and the bill will be open for  
95 amendment at any point.

96           The chair will recognize Mr. Pitts for the purpose of  
97 offering an amendment in the nature of a substitute.

98           Mr. {Pitts.} Thank you, Mr. Chairman.

99           DEA delays in scheduling--

100          The {Chairman.} Wait, wait. The clerk needs to report  
101 the amendment.

102          The {Clerk.} Amendment in the nature of a substitute to  
103 H.R. 639 offered by Mr. Pitts.

104          [The amendment of Mr. Pitts follows:]

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

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|  
106           The {Chairman.} And without objection, the reading of  
107 the amendment is dispensed with, and the gentleman is  
108 recognized for 5 minutes in support of the amendment.

109           Mr. {Pitts.} Thank you, Mr. Chairman.

110           DEA delays in scheduling newly FDA approved drugs are  
111 adversely impacting patients who need access to newly  
112 approved therapies. However, we have also heard from the DEA  
113 about their role in the scheduling process for newly approved  
114 medicines.

115           My amendment attempts to strike the right balance.  
116 During its approval process, the FDA examines the abuse  
117 potential of the new drug and makes a scheduling  
118 recommendation to the DEA. Scientific and medical matters  
119 related to the scheduling recommendation are binding on the  
120 DEA, and over the last 15 years the DEA has not made any  
121 scheduling decision for a new drug that was contrary to the  
122 FDA recommendation.

123           However, DEA has raised concerns that under H.R. 639,  
124 the agency would no longer be able to provide its expertise  
125 in the process of scheduling a new drug before it can be  
126 marketed to patients.

127           To address this concern, the amendment would allow for

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128 DEA to continue to conduct its own abuse liability analysis  
129 but require the agency to schedule the new drug within 90  
130 days of receiving FDA's recommendation or 90 days from FDA's  
131 approval of the drug, whichever comes later. DEA would have  
132 a meaningful opportunity to assess any potential diversion  
133 concerns while patients would have the peace of mind that the  
134 current open-ended process does not provide.

135 Concerns have also been raised about the ambiguity in  
136 the law related to when a new drug's exclusivity and patent  
137 term restoration starts if it is subject to scheduling by  
138 DEA. The amendment today would clarify that for the subset  
139 of products that must be scheduled, these periods commence on  
140 the date a product can actually be marketed just as it is for  
141 other new drug products.

142 This bill is another example from this committee where  
143 we can work together in a bipartisan manner to help patients  
144 have timely access to new therapies, and I want to thank  
145 Ranking Members Pallone and Green for their partnership on  
146 this legislation and urge the support of all members, and I  
147 yield back.

148 The {Chairman.} The gentleman yields back.

149 Other members wishing to speak on the amendment? The  
150 chair will recognize the gentleman from New Jersey to offer

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151 an amendment to the amendment.

152 Mr. {Pallone.} That amendment is at the desk.

153 [The amendment of Mr. Pallone follows:]

154 \*\*\*\*\* INSERT 1 \*\*\*\*\*

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|  
155           The {Chairman.} And without objection, the reading of  
156 the amendment is dispensed with, and the gentleman is  
157 recognized for 5 minutes in support of his amendment.

158           Mr. {Pallone.} Mr. Chairman, I just want to say very  
159 quickly, this is an amendment that makes a few technical  
160 corrections to the amendment that Mr. Pitts just offered, and  
161 I would urge all of my colleagues to support it. I yield  
162 back.

163           The {Chairman.} The gentleman yields back.

164           Are there other members wishing to speak on the  
165 amendment to the amendment?

166           If not, the question occurs on the Pallone amendment to  
167 the Pitts amendment.

168           All those in favor will say aye.

169           Those opposed, say no.

170           In the opinion of the chair, the ayes have it. The ayes  
171 have it.

172           The vote now occurs on the Pitts amendment as amended by  
173 the Pallone amendment.

174           All those in favor will say aye.

175           Those opposed, say no.

176           In the opinion of the chair, the ayes have it. The

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177 amendment is amended is agreed to.

178 Are there further amendments to the bill?

179 Seeing none, the question now occurs on the bill as  
180 amended.

181 All those in favor will say aye.

182 Those opposed, say no.

183 In the opinion of the chair, the ayes have it. The ayes  
184 have it, and the bill is agreed to and favorably reported out  
185 of the committee.

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|

186 H.R. 471

187 The {Chairman.} The chair now calls up H.R. 471 and  
188 asks the clerk to report.

189 The {Clerk.} H.R. 471, to improve enforcement efforts  
190 related to prescription drug diversion and abuse, and for  
191 other purposes.

192 [H.R. 471 follows:]

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

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|

194           The {Chairman.} Without objection, the first reading of  
195 the bill is dispensed with and the bill will be open for  
196 amendment at any point.

197           Are there any bipartisan amendments to the bill?

198           Are there any amendments to the bill?

199           Seeing none, the question now occurs on favorably  
200 reporting H.R. 471 to the House.

201           All those in favor will say aye.

202           Those opposed, say no.

203           In the opinion of the chair, the ayes have it, and the  
204 bill is favorably reported.

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|

205 H.R. 647

206 The {Chairman.} The chair now calls up H.R. 647 and  
207 asks the clerk to report.

208 The {Clerk.} H.R. 647, to amend Title XII of the Public  
209 Health Service Act to reauthorize certain trauma care  
210 programs, and for other purposes.

211 [H.R. 647 follows:]

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

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|

213           The {Chairman.} Without objection, the first reading of  
214 the bill is dispensed with and the bill will be open for  
215 amendment at any point.

216           Are there any bipartisan amendments to the bill?

217           Are there any amendments to the bill?

218           Mr. {Burgess.} Mr. Chairman.

219           The {Chairman.} Mr. Burgess?

220           Mr. {Burgess.} Yes, I just move to strike the requisite  
221 number of words.

222           The {Chairman.} The gentleman is recognized for 5  
223 minutes.

224           Mr. {Burgess.} I want to thank you, Chairman Upton, and  
225 of course, Chairman Pitts and the subcommittee, Ranking  
226 Member Pallone, Ranking Member Green on the subcommittee.

227           The two trauma bills, 647 and 648, are important, both  
228 to Mr. Green and I and, I believe, to members of the  
229 committee as well. It is an issue where we have worked  
230 closely together. We have got a long record of  
231 bipartisanship working toward shoring up our Nation's trauma  
232 systems and trauma centers. Trauma affects all individuals  
233 of all ages, 35 million Americans annually, one person every  
234 15 minutes.

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235           At the subcommittee, I read a long list of supporting  
236 organizations. I do have letters of supporting representing  
237 this coalition, and I ask unanimous consent to enter all of  
238 them into the record.

239           The {Chairman.} Without objection.

240           [The information follows:]

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

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|  
242           Mr. {Burgess.} This legislation is broadly supported by  
243 medicine. Both bills are bipartisan. They have gone through  
244 regular order, both reported out of the Health Subcommittee.

245           I want to thank the Energy and Commerce Committee staff  
246 on both sides of the dais: Clay Alspach, Katie Novaria,  
247 Adrianna Simonelli as well as Hannah Green, and with Mr.  
248 Green, I want to thank his staff, Kristen O'Neill. And  
249 finally, I want to thank J.P. Paluskiewicz, who shepherded  
250 this bill through the process.

251           I strongly urge the committee to support both of these  
252 bills and look forward to their consideration by the House.  
253 I would be happy to yield back or yield to Mr. Green,  
254 whichever. Yield back.

255           The {Chairman.} The gentleman yields back.

256           Are there other members wishing to speak?

257           Seeing none, the question now occurs on favorably  
258 reporting H.R. 647 to the House.

259           All those in favor will say aye.

260           All those opposed, say no.

261           In the opinion of the chair, the ayes have it, and the  
262 bill is favorably reported.

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|

263 H.R. 648

264           The {Chairman.} The chair will now call up H.R. 648 and  
265 ask the clerk to report.

266           The {Clerk.} H.R. 648, to amend Title XII of the Public  
267 Health Service Act to reauthorize certain trauma care  
268 programs, and for other purposes.

269           [H.R. 648 follows:]

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

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|

271           The {Chairman.} Without objection, the first reading of  
272 the bill is dispensed with and the bill will be open for  
273 amendment at any point.

274           Are there any bipartisan amendments to the bill?

275           Seeing none, are there any other amendments?

276           Seeing none, the question now occurs on favorably  
277 reporting H.R. 648 to the House.

278           All those in favor will signify by saying aye.

279           All those opposed, say no.

280           The ayes appear to have it. The ayes have it, and the  
281 bill is favorably reported.

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|

282 H.R. 212

283           The {Chairman.} The chair now calls up H.R. 212 as  
284 forwarded by the Subcommittee on the Environment and the  
285 Economy, and ask the clerk to report.

286           The {Clerk.} H.R. 212, to amend the Safe Drinking Water  
287 Act to provide for the assessment and management of the risk  
288 of algal toxins in drinking water, and for other purposes.

289           [H.R. 212 follows:]

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

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|

291           The {Chairman.} Without objection, the first reading of  
292 the bill is dispensed with and the bill will be open for  
293 amendment at any point.

294           Is there any bipartisan amendments to the bill?

295           Mr. {Murphy.} Mr. Chairman.

296           The {Chairman.} The gentleman from Pennsylvania.

297           Mr. {Murphy.} Thank you, Mr. Chairman.

298           Actually, I move to strike the last word, but I want to  
299 make reference to an amendment that was added on to the text  
300 of the bill and just thank Mr. Latta for including that in.

301 It is important that we allow and consult with private  
302 industry, whose research and development has worked  
303 significantly with this, and not just the EPA information.

304           For example, when they had the algae bloom of Lake Erie,  
305 Bowling Green, Ohio, did not have the water problem that  
306 Toledo did, and Bowling Green, for example, used activated  
307 charcoal so they did not have that problem. That is the  
308 important thing we can learn from private industry.

309           I want to thank Mr. Latta, who has shown tremendous  
310 leadership in this, and also Mr. Doyle for his support of  
311 this amendment as well.

312           Thank you very much. I yield back.

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313 The {Chairman.} The gentleman yields back his time.

314 Again, are there any bipartisan amendments to the bill?

315 Seeing none, are there any amendments to the bill?

316 Mr. {Tonko.} Mr. Chair.

317 The {Chairman.} The chair would recognize the gentleman  
318 from New York.

319 Mr. {Tonko.} I have an amendment at the desk.

320 The {Chairman.} The clerk will report the title.

321 The {Clerk.} Which number is your amendment, sir?

322 Mr. {Shimkus.} Mr. Chairman, I reserve a point of  
323 order.

324 The {Chairman.} Wait until the clerk reports the title  
325 of the amendment.

326 The {Clerk.} Amendment to the Committee Print for H.R.  
327 212 offered by Mr. Tonko of New York. After Section 2, add  
328 the following new section. Section 3, reauthorization of  
329 Drinking Water State Revolving Fund. A, references. Except  
330 as otherwise specified, whenever in this section an amendment  
331 is expressed in terms of an amendment to a section of other  
332 provision, the reference shall be considered to be made to a  
333 section or other provision to the Safe Drinking Water, 42  
334 U.S.C. 300f et seq.

335 [The amendment of Mr. Tonko follows:]

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336 \*\*\*\*\* INSERT 6 \*\*\*\*\*

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|  
337           The {Chairman.} Without objection, the title will be  
338 considered as read and--

339           Mr. {Shimkus.} Reserve a point of order.

340           The {Chairman.} --and the gentleman from Illinois  
341 reserves a point of order, and the gentleman from New York is  
342 recognized for 5 minutes in support of his amendment.

343           Mr. {Tonko.} Thank you, Mr. Chair.

344           My amendment reauthorizes the Safe Drinking Water  
345 Revolving Loan Fund, the primary source of funding for State  
346 and local governments to maintain and upgrade their drinking  
347 water systems.

348           The amendment authorizes the SRF for 3 years beginning  
349 in 2016 with \$1.2 billion and rising to \$1.6 billion in 2018.  
350 The amendment also includes a section authorizing funds to  
351 provide technical assistance and support for rural and small  
352 water systems. The authorization is for \$20 million per year  
353 for 4 years.

354           Small communities with their limited rate base operate  
355 on extremely tight budgets. They constantly struggle to  
356 comply with safe drinking water standards and maintain  
357 drinking water infrastructure for the people that they serve.

358           Mr. Chair, we have been seriously underfunding

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359 infrastructure maintenance and repair for water treatment and  
360 delivery systems. I know there are those who will say we  
361 cannot afford to do more. ``Nonsense'' is my response. Not  
362 only can we afford it, we cannot afford to delay this any  
363 longer. It makes no financial sense to continue to allow  
364 critical infrastructure to deteriorate.

365       It seems every week there is another report of a water  
366 main break in one or more drinking water systems. They  
367 happen across the country, every State, every region, not  
368 just in the district I represent. They happen in small  
369 communities and in major cities.

370       Last year, Los Angeles, California, experienced a water  
371 main break that sent eight million gallons of treated water  
372 spilling across the University of California campus and  
373 creating a 15-foot hole in Sunset Boulevard. This past week  
374 in my district, the city of Amsterdam experienced a water  
375 main break. Water spilled down into the street where it  
376 froze into a sheet of ice, making driving treacherous and  
377 walking in the area very dangerous.

378       It isn't just water leaking from those pipes. It is  
379 money, our money, money spent treating the water, money spent  
380 to respond to the emergency, money spent to patch and replace  
381 the pipe, money spent to repair the other infrastructure that

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382 is damaged by the sudden flooding, money spent by businesses  
383 and homeowners to deal with flooded basements, water shutoffs  
384 and other damage to their businesses and personal property.

385 We have programs to advise Third World nations on how to  
386 build and maintain drinking water infrastructure. We tell  
387 them all about the value of clean water for public health  
388 purposes and economic development. We need to take our own  
389 advice. Water is not a luxury. It is a necessity. Any area  
390 that expects to attract business and retain residents must  
391 have functioning, reliable drinking water infrastructure.

392 I do appreciate the bill that Representative Latta has  
393 brought to our committee. I certainly intend to support it.  
394 But we also need to go further. We need to address the  
395 backlog of infrastructure repair and replacement projects  
396 that exist across this country that have rendered us a Third  
397 World nation at times. I know I am not alone in this  
398 concern.

399 We have heard from water utilities, associations of  
400 civil engineers and the people in our districts who are  
401 struggling to cope with these problems. We know what we need  
402 to do. Now we need to just simply do it.

403 Let us not continue to waste water and money. Let us do  
404 what is required to fix the systems that sustain us.

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405 With that, I yield back.

406 The {Chairman.} The gentleman yields back.

407 The chair will recognize the gentleman from New Jersey,  
408 Mr. Pallone.

409 Mr. {Pallone.} Thank you, Mr. Chairman. I want to  
410 indicate my support for the Tonko amendment.

411 Our water infrastructure is in a dangerous state of  
412 disrepair, and most of it has been determined to be at or  
413 beyond the end of its useful life. Every time EPA has  
414 assessed our drinking water infrastructure needs, the needs  
415 have gone up significantly, and industry estimates are even  
416 higher.

417 The American Water Works Association has estimated that  
418 it will take more than \$1 trillion in investment in water  
419 infrastructure over the next 25 years to sustain delivery of  
420 clean and safe water, and time and again we have heard  
421 testimony that greater investment in drinking water  
422 infrastructure is desperately needed.

423 Just last week at the Environment Subcommittee's hearing  
424 on this bill, witnesses representing EPA, water utilities and  
425 State drinking water administrators all expressed support for  
426 reauthorization of the Drinking Water State Revolving Fund  
427 and increasing the amount of available monies.

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428 I just want to stress, we just can't keep taking clean  
429 water for granted. Providing the American people with safe  
430 drinking water is a fundamental duty of the government, and  
431 we can't do that without investing in our infrastructure.

432 This amendment is an important step towards helping  
433 public water systems continue to deliver safe, affordable  
434 drinking water to the American people, and I hope we can work  
435 together on this issue, so I urge my colleagues to support  
436 this amendment.

437 I yield back.

438 The {Chairman.} The gentleman yields back.

439 Does Mr. Shimkus still insist on his point of order?

440 Mr. {Shimkus.} Yes, I do.

441 The {Chairman.} The gentleman insists on his point of  
442 order. Is there anyone that wishes to speak on the point of  
443 order briefly?

444 Mr. {Pallone.} I think that due to the germaneness  
445 issue, I would just ask that you withdraw the amendment.

446 Mr. {Tonko.} I hear the request to withdraw the  
447 amendment. I would like to get a commitment that the  
448 committee would work on this issue. I would love to work  
449 with you to develop a sound program that responds to the  
450 communities across this country. This is a tremendous

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451 resource that is required for a modern society. We can't  
452 bury our heads in the sand any longer.

453 Mr. {Shimkus.} Would the gentleman yield?

454 As my friend, the ranking member of the subcommittee  
455 knows, that we have already--which you have agreed to attend,  
456 a meeting with Mr. Harper to start talking about some of  
457 these issues. I would hope that you and he will have great  
458 discussions and that you can bring through the committee  
459 something that works for the other subcommittee and the full  
460 committee.

461 So we look forward--I mean, you are very passionate, and  
462 we appreciate that passion. No one disregards the challenges  
463 this Nation faces on this issue, but I would encourage you to  
464 continue to work with Mr. Harper and hopefully we can get  
465 something out that is good.

466 Mr. {Tonko.} Well, I hear that and I respect that, and  
467 we certainly are reaching out to Representative Harper, but  
468 his bill is a small piece of the greater measure that we are  
469 trying to introduce, and I just want to state that clearly  
470 for the record.

471 This is about superinfrastructure from States from the  
472 Northeast and East Coast all the way over to the issue I  
473 mentioned in California. There are major critical issues

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474 that are costing us not only dollars but certainly challenge  
475 our public health and safety.

476 Mr. {Pallone.} Ms. Eshoo has a question.

477 The {Chairman.} The gentleman from New Jersey's time is  
478 over.

479 Mr. {Pallone.} I yield to the gentlewoman from  
480 California.

481 Ms. {Eshoo.} Thank you.

482 I just want to ask the chairman of the committee, what  
483 is the problem with what Mr. Tonko is proposing?

484 The {Chairman.} Well, the question here is germaneness  
485 on the subject matter.

486 Ms. {Eshoo.} I see.

487 The {Chairman.} I think based on the unscripted  
488 colloquy between Mr. Shimkus and Mr. Tonko that we--

489 Ms. {Eshoo.} Is there an intention to seriously work on  
490 it so that it will be germane so that it can be brought back  
491 up, or is it--

492 The {Chairman.} Well, again, we only saw this amendment  
493 this morning, so it didn't come up in the subcommittee, and  
494 when it was run through the parls across the street, they did  
495 cite that it was not germane to the bill.

496 Ms. {Eshoo.} Well, since you are just getting to look

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497 at it, I just don't have the feeling that there is a  
498 seriousness about a commitment to work this out so that it  
499 will be germane. This is a big issue for all of us.

500 Mr. {Shimkus.} Would the gentlewoman yield?

501 Mr. {Pallone.} It is my time.

502 Look, let me just say this. I didn't want to have a  
503 vote on the germaneness because I don't really know whether  
504 it is germane or not. I think what we would like to see, and  
505 Ms. Eshoo pointed out, is if we could get--maybe I could just  
506 ask you, Mr. Chairman, directly, that if we can get a  
507 commitment that we will work together on this whole  
508 infrastructure issue that Mr. Tonko is bringing up because it  
509 is an important issue, obviously not only in the context of  
510 safe drinking water and in general but specifically with  
511 regard to the infrastructure. So if we can just get a  
512 commitment that we will address this, that we will talk about  
513 it more, and we will take it up seriously.

514 The {Chairman.} If the gentleman would yield?

515 Mr. {Pallone.} Yes.

516 The {Chairman.} I think we would be delighted to have a  
517 number of discussions. We only saw the amendment this  
518 morning at 8 o'clock, so it is not a problem to have  
519 discussions, and I know that Mr. Shimkus, Mr. Harper, Mr.

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520 Tonko would be delighted to see that opportunity arise.

521 Mr. {Tonko.} I will withdraw the amendment with the  
522 commitment that we will sit down and work on this, and also  
523 with the awareness that the feds have reduced their  
524 commitment to States, local governments on the revenue that  
525 is required to maintain these systems.

526 So with that stated and with the commitment made here  
527 publicly to continue the work on the issue, I will withdraw  
528 the amendment.

529 The {Chairman.} We will continue to have discussions.

530 Mr. {Tonko.} Thank you, Mr. Chair.

531 The {Chairman.} So with that, the amendment is  
532 withdrawn.

533 Are there further amendments to the bill?

534 Mr. {McNerney.} Mr. Chairman.

535 The {Chairman.} The gentleman from California, I see,  
536 Mr. McNerney.

537 Mr. {McNerney.} Thank you, Mr. Chairman.

538 The {Chairman.} Do you have an amendment at the desk?

539 Mr. {McNerney.} I have an amendment at the desk.

540 The {Chairman.} The clerk will report the title of the  
541 amendment.

542 The {Clerk.} Amendment to the Committee Print for H.R.

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543 212 offered by Mr. McNerney of California.

544 [The amendment of Mr. McNerney follows:]

545 \*\*\*\*\* INSERT 9 \*\*\*\*\*

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|

546           The {Chairman.} The--

547           Mr. {Harper.} Mr. Chairman.

548           The {Chairman.} Mr. Harper?

549           Mr. {Harper.} Mr. Chairman, I reserve a point of order

550 against the amendment.

551           The {Chairman.} Point of order is reserved, and the

552 gentleman from California is recognized for 5 minutes in

553 support of his amendment.

554           Mr. {McNerney.} Thank you, Mr. Chairman.

555           I would like to thank the bill's authors, Mr. Latta, Ms.

556 Miller, Mr. Quigley and Ms. Kaptur for their advocacy on this

557 issue of clean and safe drinking water. I am glad that this

558 legislation will be moving forward.

559           The Safe Drinking Water Act was established to protect

560 health by regulating the Nation's drinking water supply.

561 This mission hasn't changed but new elements and activities

562 threaten our water supplies including climate change,

563 drought, algae blooms and other factors.

564           Over the past few years, more and more western States

565 including California have been stricken by drought

566 conditions. Droughts impact the people in many different

567 ways. Water and energy prices increase, agricultural

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568 production suffers, and access to critical resources becomes  
569 more challenging. Droughts can be a cause of alga blooms.  
570 When the water level drops, nutrient levels and  
571 concentrations rise, which feed algae, so this is a germane  
572 issue. Drought is an issue that affects and feeds alga  
573 blooms.

574 Now, California is entering its fourth year of drought  
575 and we have seen the consequences of not adequately--

576 Mr. {Shimkus.} Mr. Chairman, the committee is not in  
577 order.

578 The {Chairman.} The gentleman is correct. The  
579 gentleman will continue.

580 Mr. {McNerney.} California is entering its fourth year  
581 of drought, and we have seen the consequences of not  
582 adequately preparing for water shortages and infrastructure  
583 system needs.

584 My amendment directs the EPA to develop a strategic plan  
585 for assessing and managing risks of drought to drinking water  
586 provided by public water systems including the risk of alga  
587 blooms to safe drinking water. It also establishes guidance  
588 around analytical methods and ways in which to protect  
589 drinking water as it becomes limited due to drought  
590 conditions.

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591 Mr. Chairman, I want to see the efforts of this bill  
592 succeed in protecting drinking water. I would like to thank  
593 my colleague, Ms. Matsui for cosponsoring this amendment, and  
594 I yield back.

595 The {Chairman.} The gentleman yields back.

596 Are there other members wishing to speak on the  
597 amendment?

598 The gentl lady from California, Ms. Capps.

599 Mrs. {Capps.} I move to strike the last word, and I  
600 strongly support the McNerney amendment.

601 This amendment strengthens the underlying bill by  
602 helping us prepare our water systems for all the problems  
603 they face, not just harmful algal blooms.

604 Droughts pose many serious problems for the safety and  
605 availability of drinking water, and we are unfortunately  
606 woefully unprepared to properly address these problems. For  
607 example, there is a lake in my district, Lake Cachuma, which  
608 is the primary source of drinking water for the Santa Barbara  
609 area, and this lake is quickly being depleted due to the  
610 ongoing California drought, and the water level is currently  
611 expected to drop below the gravity-fed intake tunnels by  
612 April or May. That is a very short time from now.

613 To ensure local residents could continue getting water,

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614 the Cachuma Operation and Maintenance Board has to build an  
615 emergency pumping system to get the water into the system  
616 once water levels dropped below the intake tunnels. The  
617 project received a \$2 million grant from the State and  
618 additional grants from the Bureau of Reclamation to pay  
619 \$300,000 worth of electrical costs for this, but to date,  
620 this project has cost a total of \$4.3 million. This is just  
621 one example of the multitude of problems our drinking water  
622 systems will face as droughts become more frequent and severe  
623 due to climate change.

624 Water will need to be conserved, recycled and treated  
625 differently as droughts become more frequent and severe  
626 because of this cause, and that is why this amendment is so  
627 important. Creating a comprehensive assessment of the  
628 threats to safe drinking water posed by drought will help the  
629 EPA and local communities that we represent better prepare  
630 for the future.

631 It is also important to note that mitigating and  
632 adapting to these threats will require significant  
633 infrastructure funding similar to what is happening at my  
634 Lake Cachuma. In addition to developing strategic plans, we  
635 should also be authorizing additional funding for the State  
636 Revolving Fund and other federal infrastructure programs to

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637 help our local communities actually implement these  
638 strategies. A strategic plan is worthless if it just sits on  
639 a shelf due to a lack of funding to implement it. So EPA  
640 needs additional resources to help our local communities  
641 prepare for the evolving and growing threats to our water  
642 systems.

643 I will soon be reintroducing legislation to help provide  
644 these resources, and I know that Mr. McNerney, Mr. Tonko and  
645 other of our colleagues also have bills to address these  
646 water infrastructure issues as well.

647 So Mr. Chairman, I hope H.R. 212 is just the beginning  
648 of a more comprehensive effort by this committee to address  
649 the entirety of what I believe is a very serious problem.  
650 Adopting the McNerney amendment would be a good step in this  
651 direction. I urge my colleagues to support it, and I yield  
652 back.

653 The {Chairman.} Other members wishing to speak on the  
654 amendment?

655 Mr. Tonko.

656 Mr. {Tonko.} Thank you, Mr. Chair. I move to strike  
657 the last word.

658 As I stated earlier, drinking water is not something we  
659 can do without, and I think the effort here by Mr. McNerney

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660 is an improvement to the bill under consideration.

661 When water sources are drawn down, it is proven that the  
662 problems of obtaining and treating drinking water increase.  
663 Salinity, suspected solids and other contaminants can be more  
664 concentrated and therefore harder to remove from our given  
665 water supplies. Given the large area of our Nation that is  
666 experiencing drought, I believe we really need to support  
667 this amendment because we need to better understand this risk  
668 and to have better ways to manage it.

669 So I speak in support of the amendment by Mr. McNerney,  
670 and I yield back.

671 The {Chairman.} The gentleman yields back.

672 Other members wishing to speak on the amendment? Does  
673 the gentleman from Mississippi insist on his point of order?

674 Mr. {Harper.} Mr. Chairman, I regret I must insist on  
675 the point of order.

676 The amendment violates clause 7 of Rule 16 of the Rules  
677 of the House because it is not germane to the underlying  
678 bill.

679 The {Chairman.} The gentleman insists on his point of  
680 order. Are there any members wishing to speak briefly on the  
681 point of order? The chair is prepared to rule in support of  
682 the point of order. Does the gentleman from California wish

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683 to--

684 Mr. {McNerney.} Yes, Mr. Chairman, I just want to  
685 reiterate that drought causes reduction in water levels and  
686 an increase in the concentration of nutrients, which do feed  
687 algal blooms, so I feel it is in order, but I will let the  
688 chair decide on that.

689 The {Chairman.} Well, I will note that we did check  
690 with the parliamentarians, and they confirmed that in fact it  
691 is subject to a point of order, so clause 7, Rule 16 of the  
692 Rules of the House prohibits the committee from considering  
693 non-germane amendments.

694 The precedents of the House set forth several general  
695 tests for germaneness. They include the fundamental purpose  
696 test, the jurisdiction test and the subject matter test, and  
697 having reviewed the amendment, the chair finds the amendment  
698 does violate that with respect to the underlying bill.  
699 Therefore, the chair sustains the point of order.

700 Mr. {McNerney.} Mr. Chairman, may I be recognized?

701 The {Chairman.} The gentleman is recognized.

702 Mr. {McNerney.} All right, Mr. Chairman, I will go  
703 ahead and withdraw this, but I ask the chairman's indulgence  
704 in working to find a way to include the effects of drought,  
705 especially in that they do feed algal blooms.

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706           The {Chairman.} I know that it is an issue,  
707 particularly in California, and I think we might have some  
708 joint jurisdiction with the Natural Resources Committee, but  
709 I enjoy talking and listening and seeing if there might be a  
710 way that we can move together.

711           Mr. {Pallone.} Mr. Chairman, could I strike the last  
712 word a minute?

713           I wanted to point out, you know, we have a discussion  
714 with Mr. Shimkus earlier. As you know, when we had the  
715 subcommittee markup on this, I guess it was earlier this week  
716 or last week, I made the point that you were working and Mr.  
717 Shimkus was working with Mr. Tonko in trying to include some  
718 Democratic amendments in this bill, and they were included,  
719 and I do appreciate the fact that the chairman and the  
720 ranking member of the subcommittee were working together, and  
721 that was accomplished.

722           But as you can see, we have several amendments today  
723 that we think have to be addressed and that go to issues  
724 that, you know, we didn't negotiate an agreement on, and as  
725 Mr. Shimkus knows, I was concerned at the time that even  
726 though we did follow regular order, we went right from a  
727 hearing to a markup, you know, the same day.

728           So I would ask that with all of these amendments that

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729 are going to come up, I think that in every case here we are  
730 going to have amendments that are probably going to be  
731 declared non-germane and that, you know, the members are  
732 going to withdraw them but I would ask that in each case,  
733 given the fact that we didn't have a lot of time since last  
734 week, that we would take some time before we go to the Floor  
735 and either in the context of this bill or further down the  
736 road that we have some further discussions and try to  
737 accommodate and deal with these issues because I think every  
738 one of these issues starting with the infrastructure issue is  
739 something that, you know, over the next--during the session  
740 we should be dealing with.

741 So if I could just get the chairman's--

742 The {Chairman.} If the gentleman would yield, it is an  
743 unusual practice that we had last week where we went right  
744 from the hearing to the markup, so there are lots of  
745 extenuating circumstances not only with Washington being shut  
746 down for the weather. That is not going to be our normal  
747 practice.

748 Mr. {Pallone.} And again, I know that Mr. Shimkus  
749 worked hard with Mr. Tonko to try to incorporate some  
750 Democratic amendments, and they were incorporated, but we do  
751 have these additional ones that we are going to raise today.

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752 They are all going to be withdrawn, and I think if we could  
753 just continue to talk about these issues over the next few  
754 weeks or months, we certainly would appreciate that because  
755 they are important.

756 The {Chairman.} They are. I recognize that, and as I  
757 look at the members of the committee, there are not two finer  
758 gentlemen than Mr. Tonko and Mr. Shimkus. The solid  
759 relationship that they have together, we appreciate that.

760 Okay. With that, the amendment is withdrawn.

761 Are there further amendments to the bill?

762 The gentlelady from California, Ms. Capps, amendment at  
763 the desk?

764 Mrs. {Capps.} Amendment at the desk.

765 The {Chairman.} The clerk will report the title of the  
766 amendment.

767 The {Clerk.} Amendment to the Committee Print for H.R.  
768 212 offered by Mrs. Capps of California. After Section 2,  
769 add the following new section: Section 3, amendment to the  
770 Safe Drinking Water Act relating to--

771 [The amendment of Mrs. Capps follows:]

772 \*\*\*\*\* INSERT 10 \*\*\*\*\*

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|  
773 Mr. {Harper.} Mr. Chairman, I reserve a point of order  
774 against the amendment.

775 The {Chairman.} Point of order is reserved. I will ask  
776 unanimous consent that the title of the amendment be read.  
777 The gentlelady is recognized for 5 minutes in support of her  
778 amendment.

779 Mrs. {Capps.} Thank you, Mr. Chairman.

780 And as policymakers, as you know, we have a  
781 responsibility to create the policies that advocate the best  
782 interest of current and future generations. Ensuring that  
783 everyone has access to safe, clean and abundant drinking  
784 water is one such responsibility.

785 My amendment would simply add a new section at the end  
786 of the bill requiring EPA to develop a strategic plan for  
787 assessing and managing the risks of climate change to  
788 drinking water. The language is very similar to that of the  
789 underlying bill and would in no way hinder EPA's ability to  
790 develop its harmful algal bloom strategy. In fact, my  
791 amendment would strengthen the underlying bill by requiring  
792 EPA to examine the full array of environmental factors that  
793 contribute to harmful algal blooms. Water temperature,  
794 salinity and nutrient availability all dictate where and when

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795 the algal species responsible for these blooms thrive and  
796 survive, and the expected changes in these environmental  
797 factors due to climate change will likely increase the  
798 frequency of the duration, timing and intensity of harmful  
799 algal blooms.

800 For example, it is well documented that algal blooms  
801 most often occur in warm waters, primarily during summer  
802 months. It is also well documented that climate change can  
803 contribute to warmer waters and longer summers, thus  
804 increasing the number of potentially harmful blooms in the  
805 future.

806 Climate change is also predicted to alter the frequency  
807 and severity of droughts and severe storms. Changes to  
808 evaporation and precipitation patterns can make freshwater  
809 around the country saltier, which supports the survival of  
810 certain harmful algal species that have higher tolerances to  
811 salinity.

812 Intense rainfall can also increase nutrient runoff into  
813 water bodies, which can lead to faster algae growth and more  
814 harmful algal blooms. This problem is exacerbated when  
815 intense storms are followed by periods of drought, which has  
816 been seen around the country including in the Great Lakes and  
817 along the East Coast.

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818           In addition to altering the timing, duration and  
819 severity of harmful algal blooms, climate change also poses  
820 several other threats to safe drinking water and public  
821 health. Rising sea levels, for example, threaten coastal  
822 water systems through saltwater intrusions and increasing  
823 flooding from stronger storms and sea-level rise can cripple  
824 drinking water systems that are not adequately prepared.

825           The threats to safe drinking water posed by climate  
826 change are diverse and they are serious, and we do have a  
827 responsibility to help communities mitigate them.

828           My amendment would simply direct EPA to look at all  
829 these threats to drinking water safety rather than just a  
830 narrow piece of the puzzle.

831           Mr. Chairman, H.R. 212 is a well-intentioned bill, and I  
832 comment its authors for the bipartisan effort. One of the  
833 strengths of the bill is that it relies on the best available  
834 science to develop a strategic plan, but if we trust  
835 scientists to assess the threat of harmful algal blooms to  
836 our drinking water, we should also trust them to assess any  
837 and all threats that they deem relevant including climate  
838 change. We can't pick and choose what science we want to  
839 believe or pay attention to. Like it or not, science tells  
840 us that safe drinking water is threatened by both harmful

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841 algal blooms and climate change. We owe it to our  
842 constituents to respect the science and do everything we can  
843 to make sure that our folks have safe water to drink now and  
844 in the future.

845 My amendment would help achieve this goal, and I urge my  
846 colleagues to adopt it.

847 I yield back.

848 The {Chairman.} The gentlelady yields back.

849 Other members wishing to speak on the amendment?

850 Mr. Tonko.

851 Mr. {Tonko.} Mr. Chair, I move to strike the last word.

852 I stand in support of the Capps amendment. I applaud  
853 Representative Capps for providing the sort of thoughtfulness  
854 about climate change as it relates to this legislation.

855 Climate change poses a real risk both to sources of  
856 water and to water infrastructure. The recent large  
857 hurricanes that swept through the Gulf Coast and the  
858 Northeast showed how vulnerable drinking water systems are to  
859 these events. I have seen it in my district. Increased  
860 drought poses risk for some areas while flooding poses risk  
861 for other areas. Temperature change has also increased some  
862 pollution problems. With harmful algal blooms, for example,  
863 they may become more prevalent. They like warm water.

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864           If we understand the risks and act now to make our  
865 drinking water systems more resilient and resistant to these  
866 risks, we will save money and be ready for the changes we  
867 face.

868           So I fully stand in support of this amendment, and I  
869 yield back.

870           The {Chairman.} The gentleman yields back.

871           The chair would recognize the gentleman from Illinois.

872           Mr. {Shimkus.} Thank you, Mr. Chairman. I ask that we  
873 oppose this amendment, and just kind of remind people that  
874 H.R. 212 creates a strategic plan to tackle the biological  
875 phenomenon of harmful algae growth in source water and to  
876 shore up information gaps that EPA has on harmful algal  
877 blooms. It is intentionally not prescriptive because it does  
878 not prejudge the answers.

879           Shouldn't the focus be on how we deal with cyanotoxins  
880 in the water source used for drinking water? The risk of  
881 trying to make this bill do everything for everybody is that  
882 it could wind up being nothing for anybody, leaving harmful  
883 algal blooms right outside the intake of some drinking water  
884 utility pipes.

885           So I appreciate my colleagues and friends. I understand  
886 their concerns. I appreciate their passion. The bill is

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887 really designed to be a directive to identify this problem  
888 that happened in Ohio in a bipartisan manner along with Bob  
889 Latta and Marcy Kaptur, and my fear is, if we add and bolt on  
890 all these additional issues, we will not get it to the Floor.

891 Mr. {Pallone.} Will the gentleman yield?

892 Mr. {Shimkus.} I will.

893 Mr. {Pallone.} You know, I understand the gentleman. I  
894 know that Ms. Kaptur is one of the main people that is also  
895 pushing for this legislation, and I understand that again  
896 this is something locally that needs to be addressed, but you  
897 have to understand that the issue of--and I am sure you do--  
898 that the issue of climate change is not only something that  
899 we as Democrats care very much about but that we not only  
900 here in the committee but I also believe in the House as a  
901 whole feel has not been addressed, and as you know, many  
902 Republicans--not speaking for yourself, but there are many  
903 Republicans who feel that it is an issue that doesn't even  
904 exist, at least in terms of human impact, which many of us  
905 disagree with.

906 So I think you have to understand that we are going to  
907 continue to raise the issue of climate change whenever we  
908 think it is appropriate to bring up. I mean, when we had an  
909 organizational meeting of the committee, I raised it and I

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910 tried to get it into the organizational plan, which I knew  
911 that would be defeated, but it is a major issue for us that  
912 impacts almost everything that we do in this committee, not  
913 even just in the subcommittee that Mr. Tonko is the ranking  
914 member of.

915         So I understand you want to move this bill. Again, due  
916 to germaneness or whatever, you know, these amendments will  
917 be withdrawn, but understand that we feel very strongly that  
918 the issue of climate change does have to be addressed, not  
919 only in this committee but in the House as a whole, and we  
920 are going to continue to raise it.

921         In my own district, as Mr. Tonko mentioned, you know, I  
922 was the district that was hit most by Superstorm Sandy, and  
923 we still haven't recovered from it over 2 years later, and it  
924 had impacts in everything--drinking water, utility plants.  
925 Everything was impacted. So it is hard to find an issue that  
926 does not have some relationship to climate change.

927         I yield back.

928         Mr. {Shimkus.} Reclaiming my time, I would just say I  
929 remember a young ranking member on the Health Subcommittee  
930 who kept harassing his chairman about having hearings on a  
931 particular subject, so I appreciate those comments.

932         The {Chairman.} The gentleman yields back.

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933 Are there other members wishing to speak?

934 The gentlelady from California.

935 Mrs. {Capps.} I don't want to cut off anyone else who  
936 wants to speak, but I understand that there is probably going  
937 to be a point of order against this amendment, and  
938 anticipation of that, I am prepared to withdraw it.

939 But if I could just make one comment, it doesn't make  
940 the problem go away in many of our drought-stricken areas,  
941 and so I would ask for assurances from the chairman that this  
942 topic will be addressed and that we will continue to look for  
943 ways that we can respond better and effectively and  
944 meaningful to our constituents.

945 The {Chairman.} If the gentlelady will yield, I know  
946 that we are all looking forward to the Administrator of EPA  
947 coming to testify here shortly, and I am sure that we will  
948 have lots of questions on the issues that are being raised  
949 today with the amendments.

950 Does the gentleman insist on his point of order?

951 Mr. {Harper.} Yes, Mr. Chairman, I do.

952 The {Chairman.} He does, and before the chair rules,  
953 does the author wish to withdraw the amendment?

954 Mrs. {Capps.} I am willing to withdraw the amendment.

955 The {Chairman.} The amendment is withdrawn.

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956 Are there further amendments to the bill?

957 The gentleman from Maryland. At the desk?

958 Mr. {Sarbanes.} I do, Mr. Chairman.

959 The {Chairman.} The clerk will report the title of the  
960 amendment.

961 The {Clerk.} Amendment to the Committee Print for H.R.  
962 212 offered by Mr. Sarbanes.

963 [The amendment of Mr. Sarbanes follows:]

964 \*\*\*\*\* INSERT 12 \*\*\*\*\*

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|  
965 Mr. {Harper.} Mr. Chairman, I reserve a point of order.

966 The {Chairman.} A point of order is reserved.

967 Without objection, the amendment is considered as read.

968 The gentleman is recognized for 5 minutes in support of his  
969 amendment.

970 Mr. {Sarbanes.} Thank you, Mr. Chairman.

971 This amendment is being offered to require the  
972 Environmental Protection Agency to develop a strategic plan  
973 for assessing and managing drinking water-related risks  
974 associated with hydraulic fracturing operations.

975 The practice of hydraulic fracturing, which has become  
976 quite pervasive now, is having a significant positive impact  
977 on our energy security. We know that. But the regulation of  
978 fracking has not kept pace with that, and there are concerns  
979 about the impact it has on drinking water.

980 As it happens, EPA is currently working on a study of  
981 the drinking water impacts of fracking. That study, which we  
982 expect to be completed this spring, will outline the  
983 mechanisms by which fracking impacts drinking water supplies.  
984 Because of EPA's extensive work preparing that study, we know  
985 already that there are impacts at all stages of the fracking  
986 process.

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987           At the beginning of the process, there are significant  
988 amounts of water which are drawn from aquifers, which  
989 potentially impact drinking water supplies. At the end of  
990 the process, there are large amounts of wastewater that are  
991 sent for disposal, potentially overwhelming wastewater  
992 treatment works and dumping pollution into our surface  
993 waters. And of course, throughout the process of fracking,  
994 the fracking itself and surface spills of fracking fluids,  
995 which we have seen occur, do pose some serious risks. There  
996 has long been as well an absence of real transparency around  
997 what chemicals fracking companies are mixing and injecting  
998 into our ground, but we know that many of them do pose risk  
999 to drinking water.

1000           I want to emphasize I support this bill, the underlying  
1001 bill, which pairs assessment and management of drinking water  
1002 impacts. For fracking, EPA has been hard at work on the  
1003 assessment side, as I indicated, but doesn't have in place a  
1004 strategic plan to manage the drinking water impacts that have  
1005 been or will be identified. That is why I am offering the  
1006 amendment, to ensure an effective response to protect public  
1007 health.

1008           I do want to mention that the Chesapeake Bay Watershed,  
1009 which I and other members whose districts intersect with it

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1010 jealously seek to protect, the footprint of that watershed is  
1011 New York, Pennsylvania, Virginia, West Virginia, the District  
1012 of Columbia, Maryland and Delaware. The footprint of the  
1013 Marcellus shale deposit is New York, Pennsylvania, Virginia,  
1014 West Virginia and Maryland. So you have almost a complete  
1015 overlap of the watershed and the Marcellus shale deposit,  
1016 which means it is really critical that we understand what  
1017 negative impacts can come from fracking, particularly in the  
1018 region that I am speaking about.

1019         So this is a commonsense opportunity for us to get the  
1020 kind of management of the impacts of hydraulic fracturing on  
1021 drinking water, and I think that if you sat with certainly  
1022 any one of my constituents and I think the average citizen  
1023 out there and said the EPA is doing this study, they are  
1024 going to determine what the impacts of fracking are on  
1025 drinking water and we think it is a good idea to have a  
1026 strategic plan in place to manage those risks and potential  
1027 harms going forward, they would say that is absolutely a  
1028 commonsense thing to do and would support it, and for that  
1029 reason, I urge my colleagues to vote yes on the amendment,  
1030 and I yield back.

1031         The {Chairman.} Other members wishing to speak on the  
1032 amendment?

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1033           The gentleman from New York.

1034           Mr. {Tonko.} Thank you, Mr. I move to strike the last  
1035 word.

1036           To address the issue of protecting our water supplies,  
1037 it needs to be holistic, and this is yet another issue that  
1038 needs to be addressed in terms of the hydraulic fracturing  
1039 that Representative Sarbanes has introduced here in the form  
1040 of an amendment.

1041           In New York State, we currently have a ban on fracking,  
1042 and this issue is and has been highly controversial in my  
1043 State where water resources are highly valued. When this  
1044 committee granted an exception to the Safe Drinking Water Act  
1045 for the shale gas industry, they set up this controversy. I  
1046 believe Representative Sarbanes is attempting to address that  
1047 exemption.

1048           Even in my home State of New York where water regulation  
1049 is very strong, the public does not trust that the industry  
1050 necessarily will protect their water. So where there are  
1051 risks, we need to deal with them. I strongly support this  
1052 effort, the amendment that addresses hydraulic fracturing,  
1053 and yield back.

1054           The {Chairman.} The gentleman yields back.

1055           Does the gentleman insist on his point of order?

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1056 Mr. {Harper.} Yes, Mr. Chairman.

1057 Mr. {Sarbanes.} Mr. Chairman, on the point of order, I  
1058 gather the objection can be based on jurisdiction or subject  
1059 matter and so forth, and I am obviously not a  
1060 parliamentarian. I know there is a ruling coming at your  
1061 insistence.

1062 But I would just say this. If you said to the average  
1063 person who is turning their tap on and expecting clean water  
1064 to come out of it, we decided to focus on the impacts that X,  
1065 Y and Z have on whether that water is drinkable but we didn't  
1066 look at A, B and C, they would say that seems to be all part  
1067 of the same subject matter as far as I am concerned; I just  
1068 want to know that if the water goes into this glass and I  
1069 drink it, I am going to be okay.

1070 I understand that is not the parliamentary standard  
1071 perhaps, but just looking at it from the point of view of the  
1072 average citizen out there, I think that is important to note,  
1073 and I would say I am prepared to withdraw the amendment based  
1074 on the parliamentary objection on germaneness, but I would  
1075 encourage the committee going forward, and hopefully the  
1076 chairman will support this, to take a closer look at these  
1077 impacts on drinking water of hydraulic fracturing,  
1078 particularly since we are going to have a good study from the

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1079 Environmental Protection Agency, and it would be kind of a  
1080 waste when we receive that study and the public receives it  
1081 not to know that there is a strategic plan in place for  
1082 managing the risks that it identifies going forward. So  
1083 hopefully that is a discussion the committee can continue to  
1084 have. With that, I am prepared--

1085 The {Chairman.} Would the gentleman yield?

1086 So this bill is focused on certain living organisms, of  
1087 which fracking is not. But again, as I indicated on the last  
1088 amendment, we are looking forward to having Administrator  
1089 McCarthy here in a couple weeks, and I am sure that this is  
1090 going to be an extensive subject and we are going to make  
1091 sure that it is hopefully not on a getaway day so that we  
1092 will be able to have her for an extended period of time for  
1093 questions on both sides of the aisle.

1094 Mr. {Shimkus.} Mr. Chairman.

1095 The {Chairman.} Let me go first to Mr. Pallone and then  
1096 Mr. Shimkus.

1097 Mr. {Pallone.} I don't know who has the time, but I  
1098 just want to say I know, again, the germaneness is here. I  
1099 mean, I don't know whether it is the case or not. But I know  
1100 that the gentleman is going to withdraw his amendment.

1101 But like climate change, fracking obviously is a major

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1102 issue that comes under the jurisdiction of the subcommittee  
1103 in particular, in this case dealing with drinking water, or  
1104 in many other respects, not only for the subcommittee but for  
1105 the committee as a whole, and you know, when I go home, this  
1106 is what people talk about. They are concerned about climate  
1107 change, they are concerned about fracking and what the  
1108 impacts are. Municipalities, our State legislatures are all  
1109 dealing with this in various ways.

1110 So again, I understand that we are taking this up in the  
1111 context of this particular bill, and this bill is going to  
1112 move forward without it, but I do think that this is an issue  
1113 that we need to address and discuss in a larger sense in this  
1114 committee over the next few weeks or the next few months. So  
1115 I appreciate the fact that the gentleman from Maryland is  
1116 raising it at this point.

1117 Thank you, Mr. Chairman.

1118 The {Chairman.} Mr. Shimkus?

1119 Mr. {Shimkus.} Thank you, Mr. Chairman. I will be  
1120 quick.

1121 The regulatory authority is held with the State on the  
1122 fracking issue. That is why New York has been able to ban  
1123 it, and while other States have passed rules and regulations,  
1124 Illinois has a very aggressive regulatory regime. In fact,

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1125 they haven't even permitted any fracking, led by a Democratic  
1126 governor and a Democratic legislature. So I think that is  
1127 another debate of who actually has the authority.

1128 Now, some will say it should be national authority, but  
1129 of course, we would say it should be held with the States.

1130 Mr. {Sarbanes.} Will the gentleman yield for a moment?

1131 Mr. {Shimkus.} I will yield.

1132 Mr. {Sarbanes.} Very fair point, and obviously there  
1133 are States that are being more aggressive than others.  
1134 Maryland as does New York has a moratorium in place right  
1135 now.

1136 But getting back to the watershed, you know, these  
1137 rivers know no State boundaries. It is not like some  
1138 contaminant coming up to the Maryland State border from  
1139 Pennsylvania decides to stop there, comes through the  
1140 Susquehanna Watershed, and when you look at it through the  
1141 watershed lens, you understand that there is a regional  
1142 dimension to this that can really only be managed by having  
1143 the kind of oversight that can be provided by a federal  
1144 agency like the Environmental Protection Agency.

1145 So I hope we have that discussion going forward just so  
1146 we don't frustrate the efforts of the States to do the right  
1147 thing but States are next to each other and they are impacted

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1148 by what happens upstream, and I yield back.

1149 The {Chairman.} The chair would recognize the  
1150 gentlelady from California.

1151 Ms. {Eshoo.} Thank you, Mr. Chairman.

1152 I think that several excellent points have been made  
1153 both in terms of the regulatory responsibilities and the  
1154 States but also what is happening all around this issue.

1155 I would venture to say that probably more than half of  
1156 the full committee may have never really done a deep dive on  
1157 the issue, and I think that it deserves--there are some that  
1158 know a lot, there are some that know very little, but I think  
1159 that the full committee really needs to be informed on this  
1160 because it is an issue that is right out there. It is wedded  
1161 to one part, a major part of it, of our country becoming  
1162 independent of foreign oil and our energy supplies, but that  
1163 is not the only part of it.

1164 So what I am asking you, Mr. Chairman, is to make a  
1165 commitment that there is a hearing on this. This should  
1166 really have a thorough examination, and after that thorough  
1167 examination, members as we always do, we draw a great deal  
1168 from the witnesses that come in including the lead agency,  
1169 and that people can make up their minds about where the facts  
1170 take them, but this is large enough, important enough for

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1171 this important committee to have a hearing on it.

1172 So I am asking that you begin to put that in place and

1173 work with the subcommittee and the--

1174 The {Chairman.} The chair--

1175 Ms. {Eshoo.} --chairs it and the ranking member. I

1176 think it deserves that kind of attention.

1177 The {Chairman.} The chair will reclaim his time.

1178 Again, I know this is an issue that is going to be

1179 raised when the EPA comes. I will recall well an amendment

1180 that was prepared for the House Floor, and at the urging of

1181 some Democratic leaders, the amendment was not offered on the

1182 House Floor, knowing what its result was going to be.

1183 Again, I was asking of the point of order was going to

1184 be insisted upon.

1185 With that, I might just yield to Mr. Flores.

1186 Mr. {Flores.} Thank you, Mr. Chairman. If the

1187 amendment is not withdrawn or if their point of order is not

1188 sustained, I will have multiple comments.

1189 But I think the record should reflect the 360-degree

1190 view of the practice of hydraulic fracturing so I want to

1191 keep this very brief since we have the point of order pending

1192 or potential withdrawal.

1193 The allegations made about hydraulic fracturing are not

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1194 correct that you have heard in the record so far, and that  
1195 has been substantiated by every Obama Administration person,  
1196 administrator or official who has testified before Congress  
1197 for the last 6 years, and so I think it is important that the  
1198 record reflect that this is a solution in search of a  
1199 problem. If it does come up, we can have a more robust  
1200 discussion later on.

1201 Thank you. I will yield back.

1202 The {Chairman.} The gentleman yields back. My time is  
1203 expired.

1204 Does the gentleman insist on his point of order?

1205 Mr. {Harper.} Yes, Mr. Chairman.

1206 The {Chairman.} Prior to the ruling, does the gentleman  
1207 wish to withdraw?

1208 Mr. {Sarbanes.} Mr. Chairman, prior to ruling, I will  
1209 withdraw the amendment, but hope that the committee will give  
1210 it to the attention that has been requested.

1211 The {Chairman.} I think we will be looking forward to  
1212 that.

1213 The amendment is withdrawn. Are there further  
1214 amendments to the bill?

1215 Ms. {Clarke.} Yes, Mr. Chairman.

1216 The {Chairman.} The gentlelady is recognized. Does she

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1217 have an amendment at the desk? The clerk will report the

1218 title of the amendment.

1219 The {Clerk.} Amendment to the Committee Print for H.R.

1220 212--

1221 [The amendment of Ms. Clarke follows:]

1222 \*\*\*\*\* INSERT 15 \*\*\*\*\*

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|  
1223 Mr. {Harper.} Mr. Chairman, I reserve a point of order.

1224 The {Chairman.} A point of order is reserved, and the  
1225 gentlelady is recognized for 5 minutes.

1226 Ms. {Clarke.} Thank you, Mr. Chairman.

1227 I offer the amendment to H.R. 212, the Clarke amendment,  
1228 otherwise known as the Drinking Water Protection Act. This  
1229 amendment is based on the drinking water security bill that  
1230 was passed in the House in the 111th Congress.

1231 The bill was the product of a bipartisan negotiation and  
1232 collaboration between this committee and the Committee on  
1233 Homeland Security, and while we are speaking to naturally  
1234 occurring phenomena with the scope of this bill, ensuring the  
1235 safety and security of America's drinking water is of  
1236 paramount concern to all members here today.

1237 H.R. 212 critically addresses the risk posed by  
1238 particular contaminants that may make their way into the  
1239 drinking water supply. Indeed, while it is critical to  
1240 analyze the effects of toxins and for the Environmental  
1241 Protection Agency to draw up a plan to mitigate these risks,  
1242 it is equally important to guarantee the security of water  
1243 systems infrastructure.

1244 This amendment will enhance our homeland security,

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1245 improving protections for employees, neighbors and local  
1246 communities while ensuring the continued delivery of clean  
1247 and safe drinking water. Through this important amendment,  
1248 the EPA will help to identify and assess vulnerabilities in  
1249 the covered water systems. Identifying these vulnerabilities  
1250 can help mitigate not only naturally occurring phenomena but  
1251 just as importantly, intentional acts of sabotage.

1252 It is time to finally close the security gap with such  
1253 profound consequences for our communities living around  
1254 drinking water facilities and beyond. That is why I am  
1255 offering this amendment to H.R. 212 and ask my colleagues to  
1256 join me in support, and I thank you, Mr. Chairman. I yield  
1257 back the balance of my time.

1258 The {Chairman.} The gentlelady yields back.

1259 The chair would recognize the gentleman from New Jersey,  
1260 Mr. Pallone.

1261 Mr. {Pallone.} Thank you, and again, I want to thank  
1262 the gentlewoman from New York for raising this very important  
1263 issue regardless of, you know, what we end up doing with the  
1264 amendment today. I certainly support it and, you know, she  
1265 is from New York, but if you look at the New York-New Jersey  
1266 metropolitan area, we have, I don't know, I am going to  
1267 venture to guess 20 million people concentrated in a

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1268 relatively small area, and there is a tremendous amount of  
1269 concern at home about the impact if there was some kind of  
1270 terrorist attack or some other effort to contaminate drinking  
1271 water. So the whole issue of security in the context of  
1272 drinking water is really so important, because in the wrong  
1273 hands, you know, dangerous chemicals or other intentional  
1274 terrorist acts could really have a terrible impact on our  
1275 whole population.

1276 So I just want to say once again, again, I know this is  
1277 going to be withdrawn, but this is something that we  
1278 definitely need to address and is within the scope obviously  
1279 of the subcommittee and the full committee. So thank you  
1280 again.

1281 The {Chairman.} The chair would recognize Mr. Shimkus.

1282 Mr. {Shimkus.} Thank you, Mr. Chairman.

1283 For the record, I think it is not accurate to portray  
1284 this as a bipartisan bill. If you go into the record of the  
1285 dissenting opinions, it is pretty clear that there was a lot  
1286 of dissent on this bill. So again, we want to focus on the  
1287 narrow scope of this language. This actually makes it way  
1288 beyond it means, and we look forward to working with people  
1289 in the future. Yield back.

1290 The {Chairman.} The gentleman yields back.

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1291           The gentleman from New York.

1292           Mr. {Tonko.} Thank you, Mr. Chair. I move to strike  
1293 the last word.

1294           I want to thank my colleague, Representative Clarke, for  
1295 her very thoughtful amendment. Both of us hailing from the  
1296 State of New York understand what intentional attack can  
1297 mean. We witnessed that through the devastation of 9/11 and  
1298 know that there are great impacts that can be felt by  
1299 communities.

1300           Physical security and cybersecurity are vital to our  
1301 critical infrastructure systems. Drinking water is certainly  
1302 one of those critical systems. This is another area where  
1303 the federal government should be a strong partner with State  
1304 and local governments and with water utilities to ensure the  
1305 continued safety of our drinking water supplies. An accident  
1306 or an intentional attack on these resources is something we  
1307 hope never to face. Prevention and certainly preparation are  
1308 the best ways to ensure that we never do.

1309           So with that, I support the amendment by Representative  
1310 Clarke and yield back.

1311           The {Chairman.} The gentleman yields back.

1312           Does the gentleman still insist on his point of order?

1313           Mr. {Harper.} Yes, Mr. Chairman, I insist on the point

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1314 of order. The amendment violates clause 7 of Rule 16 of the  
1315 Rules of the House because it is not germane to the  
1316 underlying bill.

1317 The {Chairman.} Before the chair rules, does the  
1318 gentlelady wish to withdraw her amendment?

1319 Ms. {Clarke.} Mr. Chairman, I will withdraw the  
1320 amendment. However, I want us to recognize that we are  
1321 missing an opportunity here to really address a gap in the  
1322 work that we are doing. The concern of our drinking water is  
1323 both biological and intentional, and we need to be very  
1324 cognizant of that as has been stated by my colleagues here on  
1325 this side of the aisle.

1326 But I do withdraw, Mr. Chairman.

1327 The {Chairman.} The gentlelady withdraws her amendment.

1328 Are there further amendments to the bill?

1329 Seeing none, the question now occurs on favorably  
1330 reporting H.R. 212 to the House.

1331 All those in favor will say aye.

1332 All those opposed, say no.

1333 The ayes have it, and the bill is favorably reported.

1334 Without objection, staff is authorized to make technical  
1335 and conforming changes to the bills reported by the committee  
1336 today. So ordered.

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1337           And without objection, the committee stands adjourned.

1338           [Whereupon, at 11:12 a.m., the Committee was adjourned.]