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LEGISLATIVE HEARING ON 17 FTC BILLS

TUESDAY, MAY 24, 2016

House of Representatives,

Subcommittee on Commerce, Manufacturing,

and Trade,

Committee on Energy and Commerce

Washington, D.C.

The subcommittee met, pursuant to call, at 10:00 a.m., in Room 2123 Rayburn House Office Building, Hon. Michael Burgess [chairman of the subcommittee] presiding.

Members present: Representatives Burgess, Lance, Blackburn, Harper, Guthrie, Olson, Pompeo, Kinzinger, Bilirakis, Brooks, Mullin, Schakowsky, Clarke, Kennedy, Cardenas, Rush, Butterfield, Welch, and Pallone (ex officio).

Also present: Representatives McNerney and Tonko.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

Staff present: Leighton Brown, Deputy Press Secretary; Rebecca Card, Assistant Press Secretary; James Decker, Policy Coordinator, Commerce, Manufacturing, and Trade; Graham Dufault, Counsel, Commerce, Manufacturing, and Trade; Melissa Froelich, Counsel, Commerce, Manufacturing, and Trade; Giulia Giannangeli, Legislative Clerk, Commerce, Manufacturing, and Trade; Paul Nagle, Chief Counsel, Commerce, Manufacturing, and Trade; Tim Pataki, Professional Staff Member; Olivia Trusty, Professional Staff, Commerce, Manufacturing, and Trade; Dylan Vorbach, Deputy Press Secretary; Michelle Ash, Minority Chief Counsel, Commerce, Manufacturing, and Trade; Jeff Carroll, Minority Staff Director; Lisa Goldman, Minority Counsel, Commerce, Manufacturing, and Trade; Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment; Dan Miller, Minority Staff Assistant; Caroline Paris-Behr, Minority Policy Analyst; Tim Robinson, Minority Chief Counsel; Matt Schumacher, Minority Press Assistant; Andrew Souvall, Minority Director of Communications, Outreach and Member Services; and CJ Young, Minority Press Secretary.

Mr. Burgess. [presiding] The Subcommittee on Commerce, Manufacturing, and Trade will come to order.

The Chair recognizes himself for five minutes for the purpose of an opening statement.

I want to welcome everyone here this morning. This is going to be a very productive morning and, certainly, we have been looking forward to it for some time. It has been 20 years since Congress last reauthorized the Federal Trade Commission. I don't need to remind you that that was in the Dark Ages. People still carried pagers; they dialed into the internet, if they were lucky enough to have one, let alone multiple, email accounts. The world was very much a different place.

We are long overdue to revisit the FTC Act and to ponder some of the targeted adjustments. We are guided by many new products and services that we have examined in this subcommittee in our Disruptor Series. Mobile payments and connected devices, for example, pose new policy questions. Some of these questions have inspired technophobia, but there is something that is actually more frightening than new technology, the prospect of never realizing the jobs and prosperity that result from the inventive industry because of fear of production.

A key takeaway from the Disruptor Series is that, if the law lags behind technology, capital shrinks and new products and

services do not emergency. Certainty, on the other hand, begets investment, which, in turn, delivers more progress for consumers and, finally, does answer the questions that many Americans are still asking, where are the jobs?

Many members of the subcommittee have introduced bills that make general reforms to the Commission's activities under Section 5 of the FTC Act, and I thank them for their involvement and their leadership in this area. The basic FTC framework for policing unfair or deceptive conduct after the fact is a good one. However, the Federal Trade Commission faces tough decisions when it encounters cases presented by new products and new services in evolving markets.

For example, it must revisit the length of consent decrees against the speed of businesses and what other agencies do. Twenty-year consent decrees easily move away from after-the-fact remedies to a prospective "Mother May I"-type regulation.

Other areas need fortification. It is widely understood that informal policy guidelines are helpful and do not create liability independent of enforceable rules or statutes. Clarifying that the Federal Trade Commission will not use them to pressure a settlement would provide incremental definition to a company's liability while maintaining the Federal Trade Commission's current authority.

Similarly, providing analyses showing why the Federal Trade Commission believes certain investigations reveal no liability would also help define legality under Section 5. Along with policy guidance, previous complaints, and consent orders, this additional information would be another strong signal for the market.

The second thing this morning deals with specific industries or services under the Federal Trade Commission's jurisdiction. The bills in this category focus on specific conduct that has been observed and has felt to possibly harm consumers. The Federal Trade Commission is likely familiar with many of these issues.

The Reinforcing American-Made Products Act recognizes the Federal Trade Commission's work on made-in-the-USA labeling and establishes it as a nationwide standard. Differing standards among states as to what is an American product has not always been helpful. This legislation would be especially impactful to a company back in Texas. In Justin, Texas, surprisingly, is the home of Justin Boots. They make handcrafted leather cowboy boots. The various patchwork state standards of made-in-America regulations throughout the country have made it difficult for Justin Boots to sell its products in all 50 states. And certainly, this morning I look forward to supporting legislation

that will unburden this historic and great company from the amount of red tape imposed on it through these regulations. This bill is a critical step in making it worthwhile for United States manufacturers to make their product in America.

The Consumer Review Fairness Act builds on the Federal Trade Commission's work in the Roca Labs case, which was an enforcement action brought by the FTC against a company which producing a line of weight-loss supplements who allegedly made baseless claims for its products and, then, threatened to enforce gag clause provisions against consumers to stop them from posting negative reviews and testimonials online. A company should never be in the business of preventing American consumers from speaking honestly.

In summary, the bills we put forward today are designed to make some adjustments to ensure that innovation can thrive in order to provide consumer benefits and create jobs.

I now yield to the ranking member of the subcommittee, Ms. Schakowsky, for five minutes.

Ms. Schakowsky. Do I have to assure you there is no lead in there [referring to glass of water]?

[Laughter.]

Okay. All right. Thank you, Chairman Burgess, for holding this, our first legislative hearing in the subcommittee since

September.

We have a long list of bills to discuss today, enough to fill several legislative hearings, and the connecting theme is the Federal Trade Commission.

The FTC is critical to consumers and businesses. It protects consumers from unfair and deceptive practices. At the same time, it defends fair competition. In just the past few months, the FTC has stopped organizations falsely claiming to help cancer patients in order to steal from unsuspecting donors. It has stopped a debt-relief organization that was targeting struggling homeowners and charging illegal fees.

We have talked a lot in this subcommittee about new technology, and the FTC has been fully engaged. Last month the FTC put out guidance for mobile health apps, encouraging companies to protect consumers' privacy as they develop these new products.

The FTC track record as a consumer and competition watchdog is impressive. As Chairman Ramirez shares with us in her written testimony, last year the FTC's consumer protection efforts yielded over $700 million in savings and its competition efforts saved consumers $3.4 billion. This agency works, and this subcommittee should be working to strengthen the FTC, not disrupt it.

Unfortunately, the bills put forth by Republicans in this

hearing go in the wrong direction. They tie the hands of the FTC under the guise of so-called process reform. I have concerns with each of the eight Republican process bills.

For instance, the FTC uses consent decrees to protect consumers from repeated bad behavior by companies. One bill would cut the maximum length of these consent decrees by more than half, leaving consumers more vulnerable.

Suppose the FTC issues a consent decree against a company that fails to protect a consumer's credit card information. Under this bill, the company could put consumers' finances back at risk in as little as five years.

This and other proposals would effectively bog down the FTC by forcing it more frequently to review and renew its actions. Stretching the agency's resources would mean less protection, more consumers falling victim to deceptive ads and unfair business practices.

Under these bills when the FTC does take action, it would have to jump through additional hoops to protect consumers. It would be harder for the FTC to pursue actions to prevent harm to consumers, and when the FTC would want to take action under its now-narrowed authority, it would have to wait for a time-consuming economic analysis, even on minor actions. Instead of protecting consumers, these bills would protect

companies that victimize consumers.

The so-called SHIELD Act would provide a safe harbor for companies that comply with FTC guidance at the same time it says that FTC cannot use noncompliance with guidance as proof that the law was violated. You can't have it both ways. Guidance is not the law and it definitely should not be treated as the law only when it works to the company's advantage.

I don't have enough time to go through all the problems with these bills one by one, but I think you have got the picture. These eight bills reflect an effort to prioritize the interest of industry above the interest of consumers.

Meanwhile, Democrats have introduced bills to empower the FTC. Congressman McNerney's bill would allow the FTC to go after deceptive practices by telecom companies such as lying about data, speed, or service that consumers will receive. Congressman Rush's bill would allow the FTC to more easily go after sham nonprofits.

In this hearing we will also be considering seven bills directed at specific areas of commerce such as tickets, sporting goods, hotels, funeral services, consumer reviews, and American manufacturing.

I look forward to hearing from supporters and opponents of each of these bills. I worry we won't have enough time to give

each individual bill a thorough examination in this hearing, but I am glad that we are finally giving them a closer look.

We have a lot to discuss today, but, as we look at the bills today, I hope we focus on how we can best fulfill the FTC's mission of protecting consumers and competition.

I thank all our three panels of witnesses, and I look forward to your testimony.

I yield back right on time.

Mr. Burgess. Thank you very much, Congresswoman.

The Chair now recognizes the Vice Chair of the full committee, Congresswoman Blackburn of Tennessee.

Mrs. Blackburn. Thank you, Mr. Chairman.

Ms. Ramirez, we appreciate that you would take the time; also, appreciate your testimony and the fact that you have given a review to the legislation that we are bringing before you today. As Ms. Schakowsky said, we are going to have questions. We do want your input, and we look forward to moving ahead with the legislation and the bills that would really bring some additional and needed transparency to the FTC's consumer protection mission and get into addressing some industry-specific concerns. That is always helpful to industry. It is helpful to us, and I know you all as regulators, it is helpful to you.

I want to speak briefly about H.R. 5104, which Congressman

Tonko and I have introduced, the Better On-Line Ticket Sales Act of 2016, or the BOTS bill as it is commonly called. This is important to many of my constituents who are in Tennessee who are concert performers and entertainers.

What this will do, simply, it to disallow the use of some of this hacking software that we see the scalpers use, and they bundle up all the tickets, purchase all the tickets before fans and our constituents and consumers have the ability to, from their laptop or mobile device or PC, get onto that online ticket sales portal and make their purchase.

So, as more of this moves online, it is important that we look at this. As a label head said to me yesterday, this is about keeping the marketplace fair and about allowing consumers to exercise online commerce and ecommerce. So, we do seek your input there.

I also want to welcome Robert Arrington, a fellow Tennessean who is here for the National Funeral Directors and say welcome to the committee. We look forward to hearing from you later on the bill.

With that, I yield my time to the Vice Chair of the subcommittee, Mr. Lance.

Mr. Lance. Thank you very much, Congresswoman.

This hearing is a product of our ongoing Disruptor Series,

and the package of bills we are considering today is the result of what we have learned from these hearings and aims to bring the Federal Trade Commission into the 21st century.

For my part, I have introduced H.R. 5111, the Consumer Review Fairness Act, with my colleague from Massachusetts, Congressman Kenned. Today it is easier than ever for consumers to make informed choices on which business or service to use by conducting websites and apps that publish crowdsourced reviews of local businesses. Easy access to reliable product and service evaluations has reduced transactions costs and helped contribute to an enormous consumer surplus estimated in the billions of dollars.

Unfortunately, a number of businesses have become frustrated by what they perceive as unfair criticism, and some have turned to the questionable legal remedy known as non-disparagement clauses, often buried in nonnegotiable form contracts. These clauses prohibit their customers from writing negative reviews about their businesses. It is essential we protect consumers' right to free speech and remove any doubt in potential consumers' minds that the reviews they are reading online are anything other than fair and accurate.

This bill would void non-disparagement clauses in form contracts. It would also provide the FTC with the enforcement

tools it needs to combat the bad actors who try to use these onerous clauses.

And I yield the balance of my time to Mr. Pompeo of Kansas.

Anyone else on our side?

[No response.]

Thank you very much.

I next recognize the ranking member of the full committee, Mr. Pallone.

Mr. Pallone. Thank you. It is good to see you in the chair.

Mr. Lance. Thank you, Mr. Pallone. New Jersey has to stick together.

[Laughter.]

Mr. Pallone. Today the subcommittee will attempt to review 17 bills. I say "attempt" because we cannot possibly expect a thorough review of each piece of legislation on the agenda. While I am pleased that the majority agreed to add six bills authored by Democrats, unfortunately, it was to an already-too-long list of 11 Republican bills.

Mr. Chairman, as you know, I am a big proponent of regular order. To me, that means engaging in real deliberation, not just having a check-the-box hearing. Since I can't possibly cover all the bills being considered, I am going to focus my comments on those that are intended to inhibit the ability of the Federal

Trade Commission from carrying out its mission of protecting consumers. This attack on the FTC is notable, in light of the majority's recent praise of the FTC's privacy and data security expertise, both recently in the Communications and Technology Subcommittee and last year during this subcommittee's markup of data security legislation.

But the Republican process bills before us today just confirm the majority's true intention, I believe, and that is across-the-board deregulation. Republicans say privacy should be only in the purview of the FTC. Yet, they are simultaneously introducing bills to gut the FTC of even its limited authorities.

Among their many deficiencies, these bills would encourage stall tactics by bad actors, burden the staff with unconstructive tasks, and effectively obstruct important information exchanges between Congress and the FTC. These initiatives also would limit the FTC's ability to assist local, state, federal, and other countries' governments in their efforts to help consumers. They would also undermine the FTC's ability to be flexible and nimble in addressing emerging problems.

Republicans claim that these bills would promote innovation, but, in reality, they would actually hurt companies. For example, two of these bills could lead to confidential investigations being inadvertently revealed before the FTC has

decided whether to take action or after the Commission has decided not to take any action. And businesses do not want the FTC being discouraged from providing guidance to help those companies ensure that they are complying with the law.

These eight bills put the FTC on the wrong track. If we want to help consumers, we should be giving the FTC additional tools, not raiding their toolshed.

And that is why I support the bill authored by Mr. Rush that would give the FTC authority over nonprofits. That bill would increase the ability of the FTC to protect consumers. For example, it would allow the FTC to pursue scammers that have formed faked veterans' charities to scam Americans who want to help veterans.

And I support Mr. McNerney's bill, also, the Protecting Consumers in Commerce Act of 2016, which would give the FTC the authority to bring enforcement actions against communications common carriers. Enforcement should be based on the activity, not the entity. If a company in the telecommunications industry acts unfairly or deceptively in advertising, marketing, or billing, the FTC should act to protect consumers. For example, if a wireless company promises unlimited data, but deceptively slows the data speeds of high-usage customers, the FTC should be able to act.

So, Mr. Chairman, I would like to move several of the bills under discussion forward with the limited time that we have left before the summer recess, but I would strongly urge that we only advance those bills that can garner true bipartisan support, because together I know we can move the ball forward for consumers.

I don't know that anybody on my side would like some time. If not, I will yield back the balance of the time.

Thanks, Mr. Chairman.

Mr. Burgess. The gentleman yields back. The Chair thanks the gentleman.

That concludes member opening statements. The Chair would remind members that, pursuant to committee rules, all members' opening statements will be made part of the record.

[The information follows:]

**********COMMITTEE INSERT 1**********

Mr. Burgess. We do want to thank our witnesses for being here today and for taking time to testify before the subcommittee.

Today's hearing will consist of three panels. Each panel of witnesses will have the opportunity to give a summary of their opening statement, followed by a round of questions from members. Once we conclude with questions from the first panel, we will take a brief recess and set up for the second panel and, then, subsequently, the third panel.

Our first witness panel for today's hearing is Ms. Edith Ramirez, the Chairwoman at the Federal Trade Commission. We appreciate your being here today and thank you for the time and attention that you have always given to the subcommittee when we have called. It is certainly appreciated.

We will begin the panel with you, five minutes to summarize your opening statement, please.

STATEMENT OF EDITH RAMIREZ, CHAIRWOMAN, FEDERAL TRADE COMMISSION

Ms. Ramirez. Thank you. Dr. Burgess, Ranking Member Schakowsky, and members of the subcommittee, I appreciate the opportunity to appear before you today to present the Federal Trade Commission's testimony on the 17 bills under consideration by the subcommittee. My fellow Commissioners and I appreciate the subcommittee's commitment to protecting both consumers and innovation.

As you know, the FTC is an independent and highly-effective bipartisan agency. We are the only agency with the jurisdiction to protect consumers and promote competition in most sectors of the economy.

As a civil law enforcer, we guard against business practices that are unfair or deceptive to consumers and we aim to do so without impeding legitimate business activity. We also enforce the antitrust laws to ensure a competitive marketplace in which law-abiding businesses can flourish.

In addition to our law enforcement, the FTC engages in extensive research and policy work. The FTC also educates consumers and businesses to encourage informed consumer choices, compliance with the law, and public understanding of the competitive process.

We are particularly committed to addressing the impact of technology and changing business practices as part of our law enforcement, policy, and education efforts. We work to enhance our understanding of how technology affects consumers and the functioning of the marketplace through research and engagement with consumer advocates, industry, academics, and other experts.

Over the last several years, we have also deepened our internal technical expertise. We hired our first Chief Technologist in 2010 and have continued to attract prominent experts to serve in that role. And last year we created the Office of Technology, Research, and Investigation to support our law enforcement efforts and explore cutting-edge technical and policy issues relating to big data, the internet of things, and other emerging technologies.

But, even as commerce and technology continue to evolve, many of the fundamental problems we see in the marketplace remain the same: fraudulent schemes, deceptive advertising, unfair practices, as well as mergers and conduct that harm or threaten to harm competition. The agency tackles these challenges through targeted law enforcement. Our structure, committed staff, and research capacity enable the FTC to meet its mandate of protecting consumers and competition in an ever-changing marketplace.

I appreciate the opportunity to comment on the 17 proposed

bills before the subcommittee. While the Commission generally supports several of the bills, we believe that other measures may unintentionally hamper the FTC's ability to continue to fulfil its mission to protect consumers and competition. Our written testimony addresses each of the bills, but let me provide a brief overview.

House bills 5111, 5092, 4460, 4526, 5212, 5245, and 5104, if enacted, would identify and address specific acts or practices that Congress proposes to include in the Commission's consumer protection agenda. We generally share the subcommittee's goals in these areas.

For example, to prevent companies from silencing truthful consumer reviews, to stop deceptive safety claims in the sale of sports equipment, to promote fairness and transparency in sale of concert tickets, and to prohibit online travel sites from deceiving consumers about their affiliations with hotels.

The Commission also shares the subcommittee's goal of facilitating deliberations and highlighting important agency work. To this end, H.R. 5116 would give a bipartisan majority of Commissioners another way to meet and deliberate, and portions of H.R. 5098 would require an annual report to Congress on the important problem of elder fraud.

As to several other bills, specifically H.R. 5093, 5097,

5109, 5118, 5136, 5115, and the remaining portions of 5098, we do have certain concerns. We recognize and support the objectives of these bills, the avoidance of undue burdens on business, transparency of agency operations and its application of the law, and assurance that agency actions are based on sound analysis and evidence.

But the agency already has a variety of processes in place to advance these important values. As explained in our written statement, we are concerned that the measures could have unintended consequences for our work and, ultimately, for consumers.

Finally, House bills 5239 and 5255 would repeal the common carrier and nonprofit exemptions to the FTC Act. The Commission supports these measures which would allow us to protect consumers and competition more broadly and to ensure the consistent application of laws across economic sectors.

In closing, I want to reiterate that we are committed to finding ways to enhance our effectiveness, anticipate and respond to changes in the marketplace, and meet current and future challenges.

Thank you very much.

[The prepared statement of Ms. Ramirez follows:]

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

**********INSERT 2**********

Mr. Burgess. The Chair thanks the gentlelady for her testimony, and we will move to the question-and-answer portion of the hearing. I will begin the questioning by recognizing Mr. Lance of New Jersey for five minutes, please.

Mr. Lance. Thank you, Mr. Chairman, and good morning to you, Commissioner.

I understand that the FTC settled a case with Roca Labs that resulted in an injunction that prohibits the company from using form contract provisions punishing consumers for giving negative reviews. And I am the sponsor the legislation in this regard, H.R. 5111, and I am pleased that you commented favorably upon it.

I would like to know, based on your expertise, what additional tools would the Consumer Review Fairness Act give the Commission to stop these kinds of deceptive practices.

Ms. Ramirez. Congressman, thank you for your question. This is an issue that is of concern to us in connection with the case that you mentioned, Roca Labs. That case involved deceptive advertising with regard to weight-loss products, but the company also threatened lawsuits against consumers who wrote negative reviews in connection with those products.

We believe that it is important for consumers to have access to truthful information, and we believe that the bill that you

are cosponsoring would, in fact, permit that. We can't address these kinds of issues individually as effectively as legislation like the kind that you are sponsoring. So, we see this as something that would be beneficial.

Mr. Lance. I don't recall the details. Was this a decision of one of the United States Circuit Courts in that case?

Ms. Ramirez. This was a settlement that was reached by the Commission and it did address this issue of non-disparagement clauses that we believe have the effect of impeding accurate and truthful information about products.

Mr. Lance. And generally, how do companies entrap consumers so as not to be able to be honest in their reviews?

Ms. Ramirez. What could happen is that there might be a non-disparagement clause that is included as a term in a contract that consumers may potentially not be aware of. In any event, it does impede the ability of consumers to provide useful reviews online. We think that that is an important avenue for consumers to be aware of reviews of products, and we promote the need for consumers to have access to truthful and accurate information, regardless of whether it is a negative review, so long as it is truthful.

Mr. Lance. And the average consumer might sign some sort of form when he or she purchases a product and not realize that

he or she is signing a form with a non-disparagement clause in it?

Ms. Ramirez. That certainly could be a scenario that we might encounter, yes.

Mr. Lance. I think it is essential that the American people have the right to speak their minds in this area, and I hope that the bill I am sponsoring, with the cosponsorship of Congressman Kennedy, will be able to garner unanimous support here. And I certainly want to work with the FTC because I think it is nothing short of a scandal that the American people cannot freely and fairly express their points of view regarding products and services for which they have contracted.

Thank you, Mr. Chairman, and I yield back the balance of my time.

Mr. Burgess. The gentleman yields back. The Chair thanks the gentleman.

The Chair recognizes Ms. Schakowsky of Illinois, the ranking member of the subcommittee, for five minutes for questions, please.

Ms. Schakowsky. Thank you, Mr. Chairman.

Much of the discussion from the majority in today's hearing is about how the FTC is holding back innovation by overreaching on its enforcement. At the same time, they are ignoring, I think,

the need for the FTC to be innovative and flexible, to adapt to innovation in industry.

So, let me refer to H.R. 5098, which requires the FTC to publish an annual plan of its projected activities for the year. The bill may seem innocuous to some people, but I know the FTC has concerns about publishing such a report. What are some of the concerns, Mr. Ramirez?

Ms. Ramirez. Thank you, Ranking Member.

I would highlight at least two concerns. One is that we are already quite transparent about the priorities and work that the agency undertakes. I mean, I will just offer you just a few examples of that. That includes the fact that we include our priorities and plans for the upcoming year in connection with our congressional budget justification. We also go through a strategic planning process that we are required to do at the outset of every administration. We last published a strategic plan, a five-year plan, back in 2014 covering the years 2014 through 2018.

Also, in connection with our regulatory matters, we on annual basis publish upcoming rule reviews or rulemakings that we are undertaking. That is apart from the significant communication that we have on our website where we list upcoming events. Our law enforcement actions, of course, are confidential, but when

we do take enforcement action, we absolutely publicize those.

So, No. 1, I believe that we are fully transparent when it comes to our priorities and upcoming plans. And secondly, I worry about the added burden that would be placed on the agency doing more than we already do with existing reporting requirements.

Ms. Schakowsky. Well, let me raise a concern I have, that it would inhibit in some way the agency's ability to react to emerging trends. So that, if you have to issue a report more than a year in advance, that it could, and I would be concerned, that it would make the Commission less flexible.

Ms. Ramirez. I completely concur. We, for instance, hold a number of workshops over the course of a year. Oftentimes, we may not know in December what all of the workshops that we may be hosting the following year. We want to be flexible. We want to make sure that we stay on top of emerging trends, and we want to have the flexibility to decide on those going forward. I think the more burdened that we are with reporting requirements, we may feel compelled to stick to a particular framework that has been set out when, in fact, it is more important for the agency to remain nimble and flexible.

Ms. Schakowsky. Right. H.R. 5097 automatically closes investigations after six months unless the FTC acts through communications with the company being investigated or the

Commissioners vote to keep the investigation open. Why would investigations take longer than six months? And I wonder if you have any examples of investigations that may have been idle for some or just taken longer and why.

Ms. Ramirez. It is not uncommon for an investigation to take longer than six months. A lot of the investigations that we handle are complex. The competition investigations that we handle are certainly difficult and complex and do require time.

Let me note that there is regular communication as a general practice with companies that are under investigation. So, any concern about there being a company who may not know the status of an investigation, we generally endeavor to stay in contact with them.

I think that it would be a very severe consequence that would penalize consumers if the measure that you note were to pass. To automatically terminate an investigation for failure to communicate with a company would, in my mind, be far too severe and really would undermine our ability to protect consumers. There could easily be an oversight where there might not be communication, and in my mind, it is a disproportionate consequence, a failure to communicate.

Let me also just note that we already have processes in place. We have a rule that requires any company that is subject to an

obligation to preserve materials, if there has not been any communication with the agency over the course of one year, that duty to maintain information expires.

So, we already have rules in place to ensure that there is regular contact with companies that are under investigation, but I think it would unduly harm consumers if this measure were to be adopted.

Ms. Schakowsky. Thank you for clarifying that.

I yield back.

Mr. Burgess. Thanks to the gentlelady. The gentlelady yields back.

The Chair recognizes the gentlelady from Tennessee, Mrs. Blackburn, and Vice Chair of the full committee, for five minutes for questions, please.

Mrs. Blackburn. Thank you, Mr. Chairman, and it looks like your allergies are under control. I am happy to see you sitting back there with the gavel.

Ms. Ramirez, I do want to come to you with just a couple of questions on the BOTS Act. As I said earlier, I appreciate your comments on this. Of course, it is a simple three-page bill. It would make an unfair and deceptive practice under the Federal Trade Commission Act to violate the terms and conditions of a ticketing site and the use of a bot to do that. And the third

section would create a private right of action with a clear federal standard to allow parties harmed by bots to sue botsters under that clear federal standard.

So, our goal -- and I think you share this goal -- is to say, how can we help ticket-sellers protect themselves against scalpers who use this circumvention software? And if a ticket-seller is the victim of a ticket bot scheme, how should they report that unlawful activity to the Commission?

Ms. Ramirez. Generally supportive of this measure. So, thank you for sponsoring it. We share the concerns that you have about the use of software in connection with the sale of online tickets.

In connection with this bill, we would only have just a couple of comments to ensure that the bill only prohibits unlawful activity and doesn't unintentionally ensnare legitimate activity. And that would be to make sure that it doesn't punish general purpose software and only software that is designed for the activities that you note.

We would also suggest that the bill clarify that consumers could be permitted to resell tickets. Again, our goal would simply be to make sure that only unlawful activity is captured by the bill. But, generally, we are supportive and share the concerns that you have articulated.

Mrs. Blackburn. Okay. And then, if a ticket-seller is the victim a bot scheme, how do they go about reporting that to you? I want you to discuss just a little bit about your record of work in combating the illegal activities of ticket scalpers.

Ms. Ramirez. We take all complaints. People who have been afflicted and victimized by unlawful activity can report complaints to us online or also via telephone. This is an area that we are concerned about, and I think this measure would allow us to be even more active in an area that we certainly do care about.

Mrs. Blackburn. Well, we will look forward to moving the legislation forward. We know that scalpers using the bots and really putting themselves at the head of the line ahead of consumers ends up costing consumers to have to pay higher prices. So, we want to make certain that we are specific, that there is that clear federal standard, and we will look forward to moving the bill through the process and working with you.

And then, Mr. Chairman, I am going to yield my time back.

Mr. Burgess. The Chair thanks the gentlelady. The gentlelady yields back.

The Chair recognizes the gentleman from Massachusetts, five minutes for your questions, please.

Mr. Kennedy. Thank you, Mr. Chair. I appreciate the chance

to have an important hearing.

And to the Chairwoman, thank you very, very much for appearing before us.

Last month I was pleased to join my colleague, Congressman Lance of New Jersey, in introducing the Consumer Review Fairness Act. And I appreciate the comments on the proposed legislation that you were helpful with.

I would also like to commend a friend of mine, Eric Swalwell, who has been working on this issue for several years as well.

I think we can all agree that truthful consumer reviews are an invaluable tool for prospective consumers in making an informed decision. Like you, I am concerned about companies hiding non-disparagement clauses in their terms of service in an effort to bar consumers from posting negative reviews of a product, service, or experience.

Ms. Ramirez, can you briefly discuss the current tools at the FTC's disposal to combat these types of non-disparagement clauses and how the FTC has dealt with these cases in the past using these clauses?

Ms. Ramirez. We have our enforcement tools available to us. I mentioned in my earlier comments a case, Roca Labs, in which we encountered this issue. It was a weight-loss case where the company was making deceptive weight-loss claims.

But, as part of that, they have included terms and conditions that included a non-disparagement clause, and the company was threatening to sue consumers who had included negative reviews about this what we alleged was a bogus product.

So, we do have law enforcement tools. We can go case by case, on a case-by-case basis, in an effort to address this issue. I think legislation would enhance our ability to tackle these types of non-disparagement clauses.

Mr. Kennedy. And I appreciate that. If you are looking for additional legislation, do you think the Consumer Review Fairness Act would address and provide you with sufficient authority to prevent future use of those clauses from intimidating --

Ms. Ramirez. I think it would be beneficial for us to have the additional authority under this measure, yes.

Mr. Kennedy. Great. Thank you.

And shifting gears for a quick second, I was hoping you might be able to discuss the FTC's approach to made-in-the-USA labeling. How is it enforced and what are the benefits of, quote, "all or substantially all" that standard, if you can just articulate that?

Ms. Ramirez. Sure. This is a standard that the agency has been applying for some time now. It is derived from research

that the agency has done to understand how consumers interpret made-in-the-USA claims. And so, based on this understanding of the net impression that consumers take away from those types of claims, we have determined that a product, in order to make an unconditional, unqualified made-in-the-USA claim, that the product in question must be all or virtually all, it should all be made in the USA, in the U.S., rather.

So, as a result, we have been quite active in this area. This particular measure that would apply a consistent federal standard we think would be beneficial. The one comment that I would make here is that I believe that state enforcement is an important complement to the tools that the agency has used in this area. So, that would be something that we would encourage.

Mr. Kennedy. So, I agree, and it is my understanding that the chief goal of this legislation is, just as you said, to create a singular uniform federal standard for made-in-the-USA manufactured products. I think that is a great goal. But I share the reservation when it comes to blanket preemption of all state laws in that area. In many cases states are far more effective at implementing these types of standards and serve as a great partner and complement some of your efforts.

Can you discuss concerns you have with the bill as it is currently written? And if that is the main concern, preemptive

concerns, if you would just go into a little bit more detail, and about the ability of states to be able to actually enforce that standard as well?

Ms. Ramirez. My principal concern here, as in a number of other areas, is that I find state enforcement to be beneficial. I think it would be very unfortunate if we were to lose state activity when it comes to enforcing claims, made-in-the-USA claims. So, in my mind, it is something that I would urge the members of the committee to consider adding "state". That is my primary concern.

Mr. Kennedy. And what about a private right of action? I'm sorry. Excuse me. What about a private right of action?

Ms. Ramirez. The Commission hasn't taken a position on a private right of action. I think my main concern would be ensuring that there is enforcement by state law enforcers.

Mr. Kennedy. Great.

In your view, would blanket preemption, as the bill is currently drafted, cause any shortfalls in consumer protection? Would it limit the ability of consumers to ensure products are labeled truthfully if only the FTC has the authority to enforce it?

Ms. Ramirez. Again, I do. I believe that, as an agency, we have limited resources. We do our best to tackle deceptive

claims in this area, but I believe that it is important to have other enforcers in the space. In my mind, state attorney general offices have done tremendous work in this and other areas. So, I view, as a general matter and here as well, state enforcement to be important.

Mr. Kennedy. Thank you, ma'am.

I yield back.

Mr. Burgess. The gentleman yields back. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Mississippi, Mr. Harper, five minutes for your questions, please.

Mr. Harper. Thank you, Mr. Chair.

And thank you, Chairwoman Ramirez, for being here.

H.R. 5092, the Reinforcing American-Made Products Act, would establish a national standard on marketing products made domestically with the label "Made in USA". The bill aims to provide that consistency and clarity for manufacturers and businesses and, hopefully, for consumers as well. It would also help manufacturers avoid legal risk and additional regulations caused by conflicting labeling requirements for individual states and, thereby, I believe, help consumers by reducing those costs.

And I certainly appreciate the work that the Commission has done to develop its guidance on made-in-USA labeling. The FTC

has worked with American manufacturers to ensure they understand what it means to source all or virtually all of their inputs domestically. As you noted in your testimony, the FTC standard is based on consumer understanding, and this is the touchstone that matters most because the purpose of the label is to inform rather than to confuse consumers.

What is the danger in having differing standards throughout the United States on made-in-USA labeling?

Ms. Ramirez. As a Commission, we haven't explored the dangers of different standards. I think we are generally supportive of the measure applying what we believe is a robust standard that the FTC applies. My only comment here would be, again, the focus that we not lose state enforcement. So, we haven't opined. I am not an expert in all of the various state standards. I can certainly see the benefits of having one federal standard. I think the standard that we employ is a robust one that does adequately protect consumers. So, as a result, we are generally supportive of this measure.

Mr. Harper. Of course, the word I used was "danger". Had I said "impact," maybe that would have been a better word. But doesn't that create, by having different standards in different states, that is what you believe this would improve on?

Ms. Ramirez. I think there are benefits to having a

consistent standard. Again, my principal concern would be to ensure that states continue to play an active role in this area. They have done, I think, a good job, and I think it is always important to have complementary law enforcement.

Mr. Harper. So you are saying play an active role based on a single standard?

Ms. Ramirez. That is right.

Mr. Harper. A uniform standard? Versus having all the different states with different impacts that may be in compliance or differing from what FTC would prefer?

Ms. Ramirez. Generally, in support of there being a single standard that applies the FTC standard, yes.

Mr. Harper. If states begin legislating in this area, what happens if they conflict and compliance with one means being out of compliance with another?

Ms. Ramirez. Again, I can see there would be benefits to having one standard. So, generally supportive of your measure.

Mr. Harper. The Commission has a brought mandate to enforce all deceptive marketing practices, not just those dedicate to made-in-USA labeling. Fortunately, however, the Commission has dedicated a fair amount of resources to this issue. The Commission brought a complaint against a company in February for deceptive marketing with a made-in-USA label. Continuing to

ensure that companies are playing by the rules is important to guarantee that consumers can rely on made-on-USA labeling. Is the Commission committed to continuing its robust enforcement on this issue?

Ms. Ramirez. Absolutely, we are.

Mr. Harper. I certainly appreciate your time here. I guess one of the concerns that we would have, as we look at your suggestion on this, is, yes, it would move us away from a single standard, but you could still have a broad interpretation by 50 different states of state enforcement of an FTC standard versus FTC doing that. But I appreciate your input on it and your testimony, and we think this would be a step in the right direction. Thank you.

I yield back.

Mr. Burgess. The gentleman yields back. The Chair thanks the gentleman.

The Chair recognizes the gentleman from New Jersey, the ranking member of the full committee, five minutes for your questions, please.

Mr. Pallone. Thank you, Mr. Chairman.

Ms. Ramirez, H.R. 5136 would require the FTC's Bureau of Economics to conduct a cost/benefit analysis for all recommendations for legislative or regulatory actions submitted

by the Commission. Can you provide some background on the Bureau of Economics, what its function is now, and if the Bureau were forced to devote time and resources to preparing the kind of economic analysis required by this bill, would resources have to be redirected away from the Bureau's current work?

Ms. Ramirez. Yes, happy to. There are Bureau of Economics supports all over the work that the agency undertakes. So, there is no Commission action without the input of our Bureau of Economics. So, already, they are involved in review, our enforcement work, our policy work. They play a very active role. Economic thinking is an important issue that we want to take into account as we consider any of the work that the agency undertakes.

We are both a competition agency as well as a consumer protection agency. So, we are always mindful of the signals that we are sending to the marketplace, and we want to encourage companies to protect consumers and to --

Mr. Pallone. Well, what about the resources, because our time is limited?

Ms. Ramirez. Yes.

Mr. Pallone. And whether this bill would force a redirection?

Ms. Ramirez. So, my concern about this particular bill is

that it would, frankly, impede our ability to comment on a number of actions, legislative actions at both the federal and state level, as well as regulatory actions by other agencies.

We frequently on and provide our thinking, including our economic thinking, on proposed action by Congress and other policymakers. However, what the bill calls for is a comprehensive cost/benefit analysis that we may not be in a position to undertake.

No. 1, our expertise is limited to competition and consumer protection. So, oftentimes, we will comment on a proposed bill that may have other impacts, including health and safety. We will not comment on those, but we will simply comment and ask policymakers to consider the competition or consumer protection aspects of those bills.

If we are required to undertake a comprehensive cost/benefit analysis, we would be impeded from commenting on those types of bills. Even beyond that, the types of resources that it would take for us to do a type of cost/benefit analysis of the kind required by the measure would really impede our ability to comment on a number of things. So, I think the measure unintentionally would hinder our ability to provide very useful comments, and I don't believe that that is the intent.

Mr. Pallone. Well, you listed a number of activities that

the Commission would no longer be able to do. Let me ask, how does the FTC provide recommendations to state lawmakers or foreign governments? And under this bill, will you be able to assist states or foreign governments on these crucial consumer protection or competition matters or is that going to be limited, too?

Ms. Ramirez. I think it would dramatically limit our ability to do that because we would not have the ability to undertake a full cost/benefit analysis. And, also, it would dramatically even limit the types of bills on which we could comment, again, if they implicate areas of expertise that are beyond competition and beyond consumer protection, we would feel that we could not opine on the impacts on that side of the equation. So, I am very concerned about this, and I think, again, that it does not accomplish its intended objective.

Mr. Pallone. The last thing is my concern is the bill could prevent the Commission from providing recommendations to Congress. I mean, you are here today to provide comments on 17 bills that would fundamentally affect the operations of the FTC. Your written testimony was 22 pages, including a number of comments and recommendations regarding each of the 17 bills. But, under this bill, the Bureau of Economics would have to conduct a full economic analysis of each recommendation you are sharing

with us about each bill. So, would these burdensome analyses required, would they have even prevented you from being here today or limited what your ability would have been to even comment on what you did today, for example?

Ms. Ramirez. We would be severely hampered in our ability to provide useful comments by this measure, yes.

Mr. Pallone. And other than testifying before Congress, when else does the FTC provide recommendations? And again, would that hinder the abilities of the Commission to assist Congress in these types of things, day-to-day interactions, whatever?

Ms. Ramirez. We provide both formal comments as well as informal comments to a host of policymakers, including state legislators, sister federal agencies. So, this would really impede our ability to provide, I think, very useful observations that the agency can convey.

Mr. Pallone. All right. Thank you so much.

Thank you, Mr. Chairman.

Mr. Burgess. The Chair thanks the gentleman. The gentleman yields back.

And the Chair recognizes the gentleman from Houston, Texas, Mr. Olson, five minutes for your questions, please.

Mr. Olson. I thank my friend from Texas.

Good morning, Chairwoman Ramirez.

As Chairman Burgess mentioned in his opening statement, this hearing is very important to me and the people of Texas, too. FTC's actions threatened Justin Boots in Justin, Texas. That gets my attention because I walked into this hearing with a pair of black ostrich, form-fitting Justin boots made in Justin, Texas. Don't mess with Texas.

[Laughter.]

But, to be serious, I do want to talk about the best bill in the FTC pack, H.R. 5116, the FREE Act. This bill corrects misapplication of open meeting initiatives, and thank you for your support.

I have seen this problem firsthand back at home in Pearland, Texas. Under Texas Open Records laws, I could not meet with our members of the city council to talk about flood control, expanding Highway 288, or our team playing baseball in the Little League World Series. I could not do that because of Texas Open Records.

So, to get around that, well, we had to meet in public, have an audience, engage the whole apparatus of the city to record that meeting for the record. We solved that problem by meeting two-by-two for half-an-hour, very inefficient, without enjoying discussions with the full council.

It appears we have strapped the FTC with similar constraints. H.R. 5116 fixes that problem. My question is, how does FTC's

work see needless constraints on meetings among Commissioners because of the Open Records Act? I mean, are there times when this would be helpful? You have three Commissioners right now. If two sought to meet informally, it would trigger Open Records. How about making this stop and just having open and free discussion?

Ms. Ramirez. I can certainly understand the aim of the Sunshine Act to ensure transparency in government. There are moments when I agree that the Sunshine Act does create problems. Certainly, in our situation right now where we have three Commissioners, I can no longer speak with another one of my fellow Commissioners without implicating in certain circumstances the Sunshine Act.

I appreciate your measure, Congressman, that would add another way for us to deal with the Sunshine Act and allow us to deliberate. There are constraints. At the same time, we are moving forward and we are complying with the Sunshine Act and believe that we can still certainly fulfill our duties.

Mr. Olson. How can you do your job effectively if you can't sit down with another Commissioner, two of you, and discuss what is going forward, not discussing some new rules or something, but just discussing what the FTC does? How does that hurt you? Because we have got to stop that. That is just insane. Any

examples, specific ones, you would like to share with us?

Ms. Ramirez. No. Again, I think right now, given our current composition and the fact that we do have two vacancies, it has made it more challenging. What it means is that we now have to notice meetings in advance. I used to be able to pick up the phone and speak to at least one other fellow Commissioner. We now have to notice that.

Again, we are certainly working within the confines and meeting our obligations under the Sunshine Act, but there are challenges that it presents.

Mr. Olson. So, say it takes you hours/days to fix a problem as opposed to minutes/seconds with an email, a phone call. You can't do that. It just seems, in the cafeteria, hey, another Commissioner; "Let's chat about this issue." You can't do that without triggering this whole Open Records law, is that correct?

Ms. Ramirez. It has made it more challenging. Again, we are working again in compliance with our obligations.

Mr. Olson. Thank you.

And I will close by letting the Chair know that I will support or introduce some comments for the record for the third panel from the funeral directors back home over H.R. 5212. It is coming from the Settegast-Kopf Funeral Home in Sugar Land, Texas; the Davis-Greenlawn and Hernandez homes there in Rosenberg, Texas;

the Froberg Funeral Home in Alvin, Texas, and the South Park Funeral Home in Pearland, Texas. They have some concerns they want to address. I may not be here. So, I will ask permission to submit those for the record.

Mr. Burgess. Okay.

[The information follows:]

**********COMMITTEE INSERT 3**********

Mr. Olson. And one more time, don't mess with Texas boots.

[Laughter.]

I yield back.

Mr. Burgess. The Chair thanks the gentleman. The gentleman yields back.

The Chair recognizes the gentleman from Illinois, Mr. Rush, five minutes for your questions, please.

Mr. Rush. I want to thank you, Mr. Chairman, and I want to thank Chairman Ramirez for her appearance today.

Chairwoman Ramirez, currently, the FTC Act applies only to companies, and I will quote, "organized to carry on business for its own profit or that of its members," end of quote, which means that the FTC cannot protect consumers from nonprofit companies that committee unfair or deceptive acts.

I introduced H.R. 5255, which would amend the FTC Act to give the FTC authority to cover nonprofits. If a company kind of runs afoul of the FTC Act, consumers, in my opinion, must be protected, even if that company is a nonprofit.

Chairwoman Ramirez, in your written testimony, you discuss how H.R. 5255 would allow the FTC to pursue enforcement of deceptive data security and privacy practices at not-for-profits that have been involved with data breaches. I just want you to take this one sliver of what H.R. 5255 is aimed at, and could

you please expand on the importance of this authority specifically as it relates to better security and privacy practices?

Ms. Ramirez. Absolutely. This is a gap that I have serious concerns about. The fact is that a lot of nonprofits, including hospitals and universities, hold a significant amount of consumer information, personal information, that needs to be protected. And we simply don't have the ability to reach nonprofits. There are a few exemptions, but for the most part it is a gap that I think we ought to close in order to provide more complete consumer protection. So, I think it is an incredibly important area. The data security side, it is crucial, but it also impacts us in a number of other areas, including, frankly, in connection with our competition work, where we can't reach certain nonprofit hospitals, for instance.

Mr. Rush. Shifting to the unfair or deceptive acts and practices, what are some cases that the FTC could bring if it were able to bring cases against nonprofits that are committing unfair and/or deceptive acts or practices?

Ms. Ramirez. Well, you know, you cited an important area, which is the data security/privacy arena. Another area that we do often find that certain charities who avail themselves of nonprofit status do engage in fraudulent or deceptive conduct, we can reach that kind of conduct if we can establish that the

entity is, in fact, a sham nonprofit. But sometimes it can be difficult to establish that, and this measure would close, I think, an important gap and allow us to be more fulsome in our protection.

Mr. Rush. Can you expound a little on if the authority at FTC were expanded to cover not-for-profits? Tell us a little bit more about how it would protect consumers.

Ms. Ramirez. Again, the examples that you offered are significant to me. Data security is one of the most significant issues that we face as a nation. And so, being able to reach conduct by just universities, for example, or hospitals I think is deeply important. Fraud in connection with charitable organizations is another significant area that is of concern to us. And while we have had some limited activity, where the facts have warranted it and where we are able to establish that a supposedly nonprofit organization is, in fact, one of the top-rating for-profits, we can reach that conduct.

The case of hospital mergers is another example where we would benefit from having jurisdiction over nonprofits. Because of the current jurisdictional limitation, those matters have to go to the Department of Justice for handling, even though we have significant expertise when it comes to ensuring that healthcare provider consolidation isn't anti-competitive. So, I think

those are just three different examples of ways that it would be very beneficial for us to have jurisdiction over nonprofits.

Mr. Rush. Well, thank you, Mr. Chairman. I yield back.

Mr. Burgess. The Chair thanks the gentleman. The gentleman yields back.

The Chair recognizes Mr. Guthrie from Kentucky, five minutes for questions, please.

Mr. Guthrie. Thank you.

Thank you, Commissioner, for being here.

A particular piece of legislation that I have that we are looking at today is the CLEAR Act, and I understand that closing letters are sometimes provided when an investigation has taken place and you decide that there wasn't an illegal act. So, the closing letters are provided, but these do not include information that would be helpful for companies to determine behavior that is not illegal.

The CLEAR Act provides a framework for illustrating fair and truthful practices. But you noted your concern in testimony that the descriptions required in the bill may identify a company even though the bill prohibits the Commission from including information that identifies the company at issue. And I understand your concern to mean that, even if no information identifies the company in the description, the company could be,

nonetheless, identified.

So, my first question is, do you believe the Commission is unable to describe the legal activities of a company without providing sufficient information for the company to be identified? Because what we are hoping is that in the course of your investigation you can say, "We looked at these practices. They are legal," and other companies could use that to guide themselves as guidance. Is there a possibility of doing that? I know when you asked about the CLEAR Act, your concern on the CLEAR Act was you would disclose companies, and we think it could be done without.

Ms. Ramirez. I have at least two concerns in connection with this measure, Congressman. The first is that companies, as you can imagine, would much rather that we not do anything that could risk identifying that they were the subject of an investigation if we determine that it is appropriate the close the investigation without any enforcement action.

One concern that we have is that being required to identify and explain the basis for not taking action and being sector-specific does risk, as you lay out particular facts, does risk the potential that companies, one could make an inference about the identity of companies. So, in my mind, that is a very substantial risk that I think companies would much rather avoid.

Another significant concern that I have here has to do with burden. I think it is important for the agency to be able to, in a very nimble and flexible way, be able to close investigations. Just to give you a sense of the volume of work that we do, in the last year we completed approximately 250 investigations, many of which did not, in fact, result in any type of formal enforcement action.

So, the burden, also, that would be entailed would be very significant. When it comes to providing guidance, we really do endeavor to provide guidance to companies about ways that they can stay on the right side of the law. In my mind, this measure would not accomplish, I think, its intended objectives.

Mr. Guthrie. But if you were doing an investigation on the company, obviously, something brought you into the company to do the investigation. And if you do the investigation and you realize that they are complying with the law, then I think it would be useful information for other people to have. I think it would be good guidance to say, "Hey, we found these practices are within what we are describing."

But would this concern about disclosure be mitigated if the company could request that particular disclosure for that company not be made before the final CLEAR Act report is completed?

Ms. Ramirez. I would still be concerned about this measure

in all candor. I think in order to describe a basis for not taking action, I think one would have to describe certain facts that, again, raises the same risk of potentially identifying a company. So, I think that concern would persist.

Again, I think in my conversations with companies and our interactions with them, they would much prefer the ability of the agency to much more nimbly close the investigation. I will note that, when we think it is important for us to convey information about the closing of an investigation, we do have closing letters that are posted to our website. Last year we had approximately 40 closing letters, to give you an example. So, sometimes we might encounter a particular business practice that we feel, while it did not rise to a violation, we think it would be useful to notify industry about the concerns and, then, also just explain why we decided not to take action. So, we certainly do do that when it is appropriate. But I think to require that that be done in every single instance when the agency closes an investigation would place an undue burden and would not achieve --

Mr. Guthrie. Well, what if you could make out a company the end result was make out this company and say, "They're complying with the law."? That is when you do the closing.

But, Rule 3.2.4.2 of the Staff Manual provides that, if no

violation of laws or regulations is revealed in the initial phase of the investigation, it shall be submitted for closing. You must have some kind of information that you send back to say, "Hey, the Staff Manual says we are going to look at this."

My point is that you are already doing the work. It seems like that would suffice for the report on the CLEAR Act.

Ms. Ramirez. We do communicate with companies, but it is not necessarily in written form. And when we do have a formal closing letter, those are posted to the website. Again, in our experience, companies really would prefer to maintain our current practice. I have not heard complaints, any significant complaints, about this area.

Mr. Guthrie. Okay. Well, thank you. My time has expired and I yield back.

Mr. Burgess. The gentleman yields back. The Chair thanks the gentleman.

The Chair recognizes the gentlelady from New York, Ms. Clarke, five minutes for your questions, please.

Ms. Clarke. I thank the chairman and I thank our ranking member.

And I thank the Chairwoman for her testimony here this morning.

We all need to remember that the FTC exists not to attack

companies, but to protect consumers. Enforcement actions have happened when a company or a person is committing unfair or deceptive acts or practices that harm consumers.

Chairwoman Ramirez, in my view, a number of the bills we are discussing today could have detrimental effects on the FTC's ability to carry out its consumer protection mission. For example, H.R. 5115 codifies select portions of the FTC's statement on unfairness. The bill focuses on portions of the statement that discusses substantial injury, but ignores other portions of the statement, including a discussion of circumstances in which public policy concerns will independently support action by the FTC.

So, can you tell us a bit more about some cases in which the Commission relied on public policy standards?

Ms. Ramirez. What we do when we apply our unfairness authority is to apply that three-pronged test under Section 5(n) of the FTC Act. We have used that standard now for many years, since the 1980s. I think that it provides a very solid framework for analysis in which we focus on whether or not there is likely substantial harm to consumers, whether consumers can reasonably avoid that harm, and then, also, calls for us to also weigh potential benefits to either competition or to consumers from the practice that we are examining.

So, in my mind, that standard has provided a solid analytical framework and the cases in which we have applied our unfairness authority are ones that we have looked at very seriously and very carefully. And so, we generally don't simply look to general public policy considerations, although that may be a factor that is examined. But I think that we have applied this in a very careful, its authority in a very careful and serious way.

Ms. Clarke. So, if this bill becomes law, would the Commission be able to bring those types of cases in the future?

Ms. Ramirez. My worry is that it would create uncertainty when it comes to applying our unfairness authority, and I have a couple of concerns, in particular. One is that it could operate to prevent the agency from taking action when harm has yet to happen, but could happen in the future.

And let me just give you a very simple example that is cited in the unfairness statement itself that the agency issued back in the 1980s. There we had a case, and the Commission cited it, the Philip Morris case which involved a defendant that distributed free samples of razor blades in a way that could potentially cause danger, particularly if small children opened a package, as you can imagine.

My worry is that, in that kind of an instance because the harms happens in the future, that kind of situation and others

could potentially be hampered. And I think the current framework operates well, and I worry about creating uncertainty. And that is just one example of the concerns I have about this particular measure.

Ms. Clarke. Let me turn your attention to FR 5118 that prohibits the FTC from taking enforcement action based on noncompliance with agency-issued guidance. Does the FTC do that now and are enforcement actions brought based on companies' failure to follow guidance?

Ms. Ramirez. Guidance is an interpretation, administrative interpretation, of the law. It is not the law. And we, in order to bring an enforcement action, always have to show, and to prevail, we need to show that there has been a violation of the law.

My concern with that particular measure is that, on the one hand, it allows companies to be able to rely on guidance as a safe harbor, but at the same time reinforces this idea that guidance is not the law. So, in my mind, the existing law is the right approach to take. Companies can certainly point to guidance and argue that they have fully complied with the law, but does not provide for a safe harbor, which I think, in my mind, could raise concerns. It could also lead the agency, frankly, to provide less guidance than we currently do, for fear that a

company that we believe has engaged in unlawful activity could on a post-hoc basis cling to a statement that is made in some form of guidance.

Another question that this particular measure raises is how one actually defines guidance.

Ms. Clarke. Correct. I was going to ask that.

Ms. Ramirez. There is a multitude of work product that is out there that we put out, whether it is in business education, blogs, as well as more formal forms of guidance that we put out.

Ms. Clarke. Thank you. I yield back, Mr. Chairman.

Mr. Burgess. The Chair thanks the gentlelady., The gentlelady yields back.

The Chair recognizes the gentleman from Florida, Mr. Bilirakis, five minutes for your questions.

Mr. Bilirakis. Thank you, Mr. Chairman. I appreciate it. Thanks for holding this very important hearing.

Chairwoman Ramirez, I want to thank you and the Commission for your great efforts on behalf of the past on the campaign to educate seniors on schemes that could affect them.

I am also supportive of the Commission's effort to identify and bring enforcement actions against bad actors that specifically target older Americans. Although the FTC has not yet seen increased rates of fraud in older Americans versus other

populations, I am concerned that, as the population ages and more older Americans begin using the internet regularly, that these trends will be accompanied by fraud targeting seniors.

It has been about two years since the Pass It On Campaign began. Do you have any thoughts as to what has worked best in this outreach campaign and what lessons other outreach organizations might learn from the Commission's experiences along the way?

Ms. Ramirez. Absolutely. I mean, we certainly have found that outreach is an incredibly important tool in order to make sure that consumers have information available to them, so that they can avoid becoming victims. The Pass It On Campaign is one of our incredibly successful campaigns.

One thing that inspired us to go in that direction was the fact that we learned that consumers, in particular older consumers, don't like to be told what to do or what not to do. And what this campaign taught us is that, if we can pass information, if we get information to consumers and ask them to pass that information on to their friends and family, consumers tend to be, all of us tend to be more receptive to receiving that information and passing it on to others, as opposed to being dictated to. So, that campaign has proven v very effective.

I agree with you that making sure that we address the needs

of older Americans is incredibly important. So, in addition to the law enforcement efforts that we undertake, we are very much engaged when it comes to outreach and education.

Mr. Bilirakis. Well, thank you for focusing on that.

Your testimony also states that the Commission already reports on its performance base for the following year and its strategic plan, as required by the GPRA. This is a useful document that provides some of the highlights of the Commission's plans. However, is the FTC currently required by statute to specifically list its planned workshops, rulemakings, and plans to develop guidelines as far as a strategic plan? If you can answer that question, I would appreciate it.

Ms. Ramirez. So, when it comes to rulemakings, actually, twice a year we publish a chart of information about all upcoming rulemakings. What we aren't obligated to do is that we aren't required to identify specific workshops that we may decide to do over the course of an ensuing year. I think that that is a good thing not to be required to do that because it gives us a lot of flexibility to undertake workshops and participate in other forums that address issues that we may not have thought about, that we see as emerging trends that need to be addressed.

At the same time, I think the proposed measure to provide additional information about the work that we do in connection

with protecting older Americans, that is something that we would be happy to provide information about. So, we are happy to do that. But my worry is on being forced to identify, for instance, workshops. I think it might have the unintended consequence of eliminating the flexibility that we currently have.

Mr. Bilirakis. Again, staying on this topic, the FTC's strategic plan states that the Commission conducts workshops as a form of research, stakeholder outreach, and to advance the agency's understanding of certain issues. Again, how does the Commission decide which topics to pursue in workshops? Who is part of that decisionmaking process? Does the Commission solicit any public feedback in determining what topics to cover in its workshops?

Ms. Ramirez. We do. It is an agencywide endeavor, and we are consistently engaging with industry, with consumer advocates, with academics and other experts. Technology is an area where we want to make sure that we stay current. So, when we develop ideas for workshops, we will also not only make a decision about a particular workshop, but we will also announce it oftentimes months in advance and solicit input from experts and other stakeholders to get their views about what topics we ought to cover within the scope of a particular workshop.

So, we really do endeavor to provide a balanced approach

to the topics that we cover. Our aim with our workshops is to learn, and we take that very seriously. So, we come at it with an open mind and really do solicit a lot of input before we proceed with an agenda.

Mr. Bilirakis. Thank you very much. It is very informative. I appreciate it.

I yield back, Mr. Chairman.

Mr. Burgess. The Chair thanks the gentleman. The gentleman yields back.

The Chair recognizes Mr. McNerney, five minutes for your questions, please.

Mr. McNerney. Well, I thank the chairman. I thank the chairman for allowing me to sit in on this hearing.

Ms. Ramirez, as you know, my bill, H.R. 5239, the Protecting Consumers in Commerce Act of 2016, would lift the common carrier exemption from the FTC's jurisdiction. Lifting this exemption would have the effect of directing the FTC to prevent common carriers from engaging in unfair and deceptive practices against consumers.

Would you briefly explain what the common carrier exemption is and what it means?

Ms. Ramirez. Sure. The common carrier exception to the FTC Act is an exception that was part of our original statute

back in 1914. It does not allow the agency to take action with regard to common carriers. One example of that would be carriers that provide voice service. Today, in light of the FTC's reclassification of broadband service as a common carrier service, that also means that today we cannot take action against internet service providers.

So, this is an area where another example where we at the Commission feel that it creates a gap in our jurisdiction that ought to be addressed. This particular exception is one that is quite antiquated, that in our view no longer makes sense in today's environment, where there has been significant deregulation and where the roles that common carrier services play in today's environment, that no longer makes sense. And so, it is something that we would like to see eliminated.

Mr. McNerney. Well, what are some examples of the exemption harm? What are some examples of how the exemption harms consumers?

Ms. Ramirez. Well, it doesn't allow us to take action. Let me give you one example. We have brought actions involving data throttling where a carrier that is providing internet service will reduce the speeds, will set certain thresholds for consumers, and if they go beyond a particular threshold, reduce their internet speed, which basically would hamper the ability of a

consumer to download certain information without having to wait endlessly.

By example, we have litigation that is pending against AT&T involving what we consider to be deceptive data-throttling practices in light of the FTC's reclassification of broadband service as a common carrier. That would be a type of action that we would no longer be able to bring prospectively. So, that is just, generally speaking, an example.

Mr. McNerney. What type of redress does the FTC provide to consumers?

Ms. Ramirez. Generally speaking, we aim to provide -- there are various remedial tools that we have. One is an injunction relief in order to put a stop to unlawful activity. What we also try to do is to obtain consumer redress, which would be to put money back in the hands of consumers who have been defrauded, who have, for instance, paid a particular premium as a result of deceptive conduct. So, one of our significant aims is to get money back in the hands of consumers who have been victimized.

Mr. McNerney. Well, how do the redress tools that the FTC has differ from those that FCC?

Ms. Ramirez. I think that the FCC has a different congressional mandate. We are, first and foremost, a law enforcement agency. The FCC, for instance, has an ability to

get civil penalties. We have also brought enforcement actions in cooperation with the FCC.

We had two actions that I will mention, AT&T and T-Mobile, involving the practice of what is known as cramming, where unauthorized charges are placed on a consumer's cell phone bill. And in connection with that, our principal aim was to get money back in the hands of consumers. The FCC obtained civil penalties.

So, I think there are different congressional sets of objectives and different mandates. Ours is to primarily seek redress and put a stop to unlawful conduct.

Mr. McNerney. And there has been cooperation between the two agencies?

Ms. Ramirez. Absolutely. We have cooperated in a number of areas over the years, including the area of telemarketing. So, yes, there has been significant cooperation, and we have a history of cooperating not only with the FCC, but with a number of other agencies. We share, for example, competition jurisdiction with the Department of Justice. We have a long history of being able to work effectively with other agencies.

Mr. McNerney. Very good.

Thank you, Mr. Chairman.

Mr. Burgess. The gentleman's time has expired. The Chair recognizes the gentleman from Oklahoma, Mr. Markwayne Mullin,

five minutes for your questions, please.

Mr. Mullin. Thank you, Mr. Chairman.

Ma'am, thank you for being here.

What I am wanting to focus on a little bit first is a bill that we have. My legislation, the SURE Act, would build that by qualifying additional portions of the policy statement. My goal is to provide more clarity as to the consideration at play in the unfairness cases without altering the FTC authority. It seems my bill simply clarifies current language.

My question to you, ma'am, how does codifying a statement that the FTC currently uses to guide its unfairness case take away any authority?

Ms. Ramirez. First of all, I think the current standard that has been codified works well, as I noted earlier. Secondly, my concern is that, by codifying certain pieces of what is in the unfairness statement, leads to a certain emphasis that I worry would ultimately impede our ability to effectively protect consumers.

If you look at the track record that we have in applying our unfairness standard, I think that we have applied it in a very even-handed way. We always look very carefully and ensure that the three prongs of the standard are met, and the key issue is always looking to protect consumers against substantial

injury. But we undertake a cost/benefit analysis.

Mr. Mullin. Well, my legislation doesn't alter current statutory authority for the Commission to prohibit acts or practices that are likely to cause substantial injury. It doesn't alter any of that. It just helps clarify it.

Ms. Ramirez. My concern is that, in that effort to clarify, I think it has the potential to create uncertainty that could limit us.

Mr. Mullin. Well, my biggest concern is, ma'am, that all we are trying to do is clarify something. It doesn't alter it. And what we are afraid of is change. I mean, there is always room for an improvement. I have been in business my whole adult life. One thing we always do is look for better practices. And so, we are sitting here saying that it doesn't need change or there is no point in looking at it because we think everything is working perfectly, can you really tell me that your agency is working perfectly?

Ms. Ramirez. I wouldn't say that we are working perfectly, but I would say --

Mr. Mullin. Okay. So, what we are trying to do --

Ms. Ramirez. But I would say that we are working effectively. And my concern is --

Mr. Mullin. Well, effectively is okay, but improving is

better. There is always room for improving. I mean, we used to do debriefs all the time in a different line of work I used to do, and we would do it after every situation because we always looked to tweak the practices we were using because there is always a better opportunity and a better way to do things.

And so, it concerns me when we are not even willing to change. Ma'am, I am not here getting onto you at all. I am just concerned about the FTC, by you simply saying that, "No, we're good," because that is basically what I am hearing.

Ms. Ramirez. With all due respect, I believe and I would ask, what problem has been identified in connection with our application of the unfairness standard? My serious concern is that, while I understand the effort to clarify, my worry is that it creates greater uncertainty --

Mr. Mullin. There is already uncertainty out there.

Ms. Ramirez. -- more litigation that ultimately I think will consume agency resources, and not to the benefit of consumers. So, that is my --

Mr. Mullin. But it is so broad right now that people are left to wonder what it is; whereas, it is only within the agency's hands to determine to clarify. All we are trying to do is just to make sure everybody is on the same page. Is that wrong?

Ms. Ramirez. Again, I appreciate the effort. My worry is

that this will lead to uncertainty that could impede our ability to be effective when --

Mr. Mullin. How? What is it that you are saying? How could it impede it? Just give me an example of why you are concerned about it.

Ms. Ramirez. I think it has the potential to create difficulties for the agency when we seek to prevent/correct wrong.

Mr. Mullin. Specifically, how does the language do that to you?

Ms. Ramirez. I have already noted that. I believe that by expressing a concern about speculative harm, it has the potential to lead to a situation where it might make it difficult for us to prevent --

Mr. Mullin. In which way?

Ms. Ramirez. -- prevent future harm by creating uncertainty about how that applies.

Let me also give you another example, if I may.

Mr. Mullin. Okay.

Ms. Ramirez. I also think that it elevates, in doing the cost/benefit analysis of the third prong, to use a shorthand, I think that it elevates the impact that our efforts might have on consumers who are not injured, to the detriment of those who might be injured.

Mr. Mullin. But, ma'am, in all due respect back, you are making an assumption, and we really don't know because there was already uncertainty. All we are trying to do is improve it. If there is already uncertainty in it and we are trying to improve the uncertainty, but, yet, we are okay with the way that it is, we move nowhere; there is no change. When we already are trying to help a situation out, trying to make a subtle change to it, it doesn't hurt the situation. It tries to improve it. And next year or later on down the road, if we need to improve some more, we will.

Thank you for your time.

Mr. Chairman, I yield back.

Mr. Burgess. The Chair thanks the gentleman. The gentleman yields back.

The Chair recognizes the gentleman from Kansas, Mr. Pompeo, five minutes for your questions, please.

Mr. Pompeo. Thank you, Mr. Chairman.

And thank you, Chairwoman Ramirez, for being here today.

You had a discussion with Mr. Pallone about H.R. 5136 that had to do with publishing the work of the Bureau of Economics. The bill is pretty simple. It requires the Bureau of Economics to point to a problem with your recommendation that it seeks to solve, and then, requires the Bureau to say why the market and

public institutions are inadequate to take on that problem.

Your primary criticism was that it was going to impose a burden, that you might not be able to do some other things you do because of this burden. Did I understand that correctly?

Ms. Ramirez. Yes, my concern is that the requirement that a comprehensive cost/benefit analysis be conducted prior to the agency providing any form of comments on legislative action, for instance, that would be my main concern, that it would be resource-prohibitive and would impede our ability to provide very useful comments to policymakers.

Mr. Pompeo. What is the budget for the Bureau of Economics today?

Ms. Ramirez. I can give you our budget as a whole is approximately $300 million.

Mr. Pompeo. For the Bureau of Economics, though, what is your budget, the people that would be impacted by this?

Ms. Ramirez. I would have to give you that information. I don't have a specific figure. But what I can tell you is that my economists have very serious concerns about this proposal because our resources, as you can imagine, are limited.

Mr. Pompeo. Fair enough. Fair enough. Fair enough.

I am trying to find out -- you said it is an enormous burden -- I am trying to figure out that; I am trying to translate that

to reality, because we might provide the additional funding for that.

How many economists do you have today?

Ms. Ramirez. We have approximately 80 economists.

Mr. Pompeo. And so, how many additional economists would it take, in your judgment, to comply with this? Because you said it was an enormous burden, so you have obviously done some work thinking about this. So, tell me how many more than 80 we would need to fund in order to comply with it.

Ms. Ramirez. Well, sitting here right now, I couldn't answer that question. But let me also just note a related concern, which is that, by requiring that there be a full and comprehensive cost/benefit analysis, we would also be inhibited from commenting on a matter that would be outside of our expertise. So, for instance, we may comment on a particular legislation that may have health and safety implications, but we will comment and note and ask policymakers to take into account the competitive impact in that situation because we don't have expertise when it comes to health and safety, for instance. So, we comment a lot in connection with scope of practice in the healthcare sector, by way of example.

We are not equipped to comment on health and safety pieces of the equation. But this measure, again, while I think it has

a good intention, would impede our ability to provide any comment there because we would not be able to assess the health and safety part of the equation. That would be a related concern.

Mr. Pompeo. All the more reason you should do it, in my judgment, but I digress.

If you just took what they were doing today and published that, what would be the harm there? So, they are already providing, they are doing something, right? You are doing a recommendation. The Bureau of Economics is doing something. They are providing that to you, correct?

Ms. Ramirez. Yes. These are --

Mr. Pompeo. So, that you can provide your recommendation or your blog post, or whatever it is, or your testimony here today. Why couldn't we just publish that, no additional burden?

Ms. Ramirez. Ultimately, it is the responsibility of the Commission to decide what action they --

Mr. Pompeo. But why couldn't you publish the underlying data? What would be wrong --

Ms. Ramirez. Because, in my mind, there needs to be -- we get input from various parts of our agency. We take economic thinking into account. But, ultimately, the people who are accountable, it would be myself and my fellow Commissioners. And it is up to us, taking into account the recommendations made

by our staff. With all due respect to them, ultimately, we are the ones to be held accountable. And what we, then, do, any action that we take, then, becomes public.

Mr. Pompeo. It just seems, as the consumer protection agency, you would want consumers to have a chance to see your economic analysis. Perhaps we just disagree about that.

I want to go on to the SHIELD Act. Is it the FTC's position that a company's compliance with guidelines should not be admissible as evidence, compliance to a statute?

Ms. Ramirez. I think that may be a relevant consideration, and we certainly would take that into account. My concern is that it not be a safe harbor.

Mr. Pompeo. Right. There is no dispute. That is fine. The SHIELD Act doesn't propose that it become a safe harbor. It simply says that you will not, that the FTC will not argue against a company submitting their compliance with your guideline as evidence that they have complied with a statute. Do you find that acceptable?

Ms. Ramirez. Again, I think it would be a relevant consideration, certainly something that we would consider relevant. But my worry is that that would be tantamount to creating a safe harbor for post-hoc reliance on guidance.

Mr. Pompeo. Fair enough.

I yield back.

Mr. Burgess. The gentleman yields back. The Chair thanks the gentleman.

The Chair recognizes the gentlelady from Indiana, Ms. Brooks, five minutes for your questions, please.

Mrs. Brooks. Thank you, Mr. Chairman. I also want to thank you for holding this hearing.

As the chairman and others may know, Sunday is going to be the 100th running of the Indianapolis 500. As you might imagine, this garners a lot of attention, not only at home, but across the country and the world. In fact, over 300,000 people are expected to come from around the world to our great city this weekend to witness the greatest spectacle in racing.

But our Indianapolis area hotels have been sold out since March 15th and people are booking hotels as far away as South Bend, which is about three hours away. And so, while demand is high, there is, unfortunately, some who seek to take advantage of this and other major sporting events to deceive or mislead the race fans for a quick buck. Last week my office met with a constituent from Shockett Hotels who told us that third-party sites take payments from visitors and promise a room in return. And then, this comes as news for the hotel that has not contracted with these entities and is left to deal with legitimate rage of

a visitor who is showing up when they, the hotel, has to break the news that they are booked and that that visitor does not have a room. It can be a huge problem for us this weekend.

That is why I am interested in examining my good friend Ms. Frankel and Ms. Ros-Lehtinen's bill 4526 today that seeks to strengthen the vital safeguards, increase consumer protections, and bolster the enforcement efforts necessary to stop scammers from mimicking legitimate websites. So, I am interested in hearing about the benefits of the legislation and how we might improve their legislation because, obviously, the backbone of Hoosier hospitality relies on getting these types of things right. We don't want a lot of angry visitors and race fans. It is not a pretty picture when that happens.

So, Ms. Ramirez, according to the hotel industry, this type of scam, close to 15 million reservations were made on such deceptive websites and cost U.S. travelers upward of $1.3 billion. Forty-one thousand people every day are getting scammed by these types of websites.

Are you aware of this and seeing this kind of fraud in the hotel market? And what kind of numbers are you seeing, if not?

Ms. Ramirez. We certainly are aware of this concern, and I have certainly engaged with the online travel industry to address this. I can't give you any specific numbers, and I can

try to get you additional information following the hear.

But what I can tell you is that this is certainly a concern, and we would certainly want consumers to be able to access hotel reservations free of deception. I think that this particular measure does have benefits. One concern that I would have is that we would want to make sure that legitimate businesses that are not deceiving consumers are not captured by the measure. And so, one suggestion we have is that, rather than imposing disclosure requirements, that there be a prohibition on misrepresentations. But, generally speaking, it is a concern that I certainly share and would be happy to continue to work with you and the members of the subcommittee.

Mrs. Brooks. I am curious about that because that is what I think I read in your written testimony. And so, you indicate mainstream third-party online travel agencies generally do not generate that kind of deception. Of course they don't. That is why they have been so incredibly successful. And, of course, this bill is not meant to impede companies like Expedia and others.

But what is it that you actually think a company, a deceptive company would be -- how do we get a deceptive company from operating? You are saying just indicate that -- what are you suggesting? I am confused by your written testimony and even this testimony.

Ms. Ramirez. It is, generally, we are supportive of the measure.

Mrs. Brooks. Okay.

Ms. Ramirez. However, we think that, rather than specifying particular disclosures, that a better way to tackle the problem would be to prohibit misrepresentations. Again, I think getting to your point that a fraudulent site may not comply with law, in our mind, it would be better to bar misrepresentations. It also would not place undue burden on legitimate sites.

Mrs. Brooks. Is that not inherent, that companies like this should not make misrepresentations on their websites?

Ms. Ramirez. I think the objective is the same. Our preference would just simply be to word it differently and bar misrepresentations rather than seeking to specify disclosures.

Mrs. Brooks. And you have authority currently to enforce unfair and deceptive practices, correct? And are you prosecuting any? Are you pursuing any?

Ms. Ramirez. We do. I can't comment on any specific investigation, but it is an issue that I, personally, have met with --

Mrs. Brooks. Can you answer yes or no whether or not you are pursuing any right now?

Ms. Ramirez. It is a matter that we are looking into and

are aware of. That is all I can say --

Mrs. Brooks. So, you cannot say whether or not you are pursuing any investigations of these deceptive websites, yes or no? That is a yes or not, without going into details.

Ms. Ramirez. It is an issue that we are looking at. I can tell you that.

Mrs. Brooks. Then, that --

Ms. Ramirez. I can tell you that.

Mrs. Brooks. That is certainly a deceptive answer. Thank you.

I yield back.

Mr. Burgess. The Chair thanks the gentlelady. The gentlelady yields back.

I would recognize myself for five minutes.

And, Chairwoman, again, I do want to thank you for being here and thank you for your forbearance today.

I just have a couple of questions on the consent orders, consent decrees. Is it fair enough to use those two terms interchangeably, consent decree and consent order?

Ms. Ramirez. Yes.

Mr. Burgess. So, for people who are not lawyers who are watching this, what does a consent decree or a consent order, what does that entail? When you enter into a consent decree with

the FTC, as a business, what is the practical effect of that?

Ms. Ramirez. Generally speaking, our primary remedial tool is an injunction. So, a consent decree will oftentimes prohibit the unlawful conduct that we were targeting. The consent decree may also include monetary provisions. Other provisions that also are typical of our consent decrees would be recordkeeping requirements, so that that would allow us to ensure that a company is, in fact, complying with our order.

Mr. Burgess. And how long will these orders typically run? What is the lifespan of one of these orders?

Ms. Ramirez. Federal court orders are indefinite. An injunction that would be in place, put in place by a federal district court would be indefinite. Under our administrative process, an administrative consent order would be generally in place for 20 years, although the Commission certainly does have flexibility to modify that and impose a different timeframe.

Mr. Burgess. And as a practical matter, is that flexibility employed or are generally consent decrees through the Federal Trade Commission going to exist for 20 years?

Ms. Ramirez. Most of them are for 20 years, but we have modified that timeframe in certain instances. So, to give you a couple of examples, we have certain data security cases where we imposed a requirement that there be data security audits.

I can cite to you two examples of the Twitter case and the investor case. There the requirements of a data security audit lasts only 10 years rather than 20.

Mr. Burgess. Yes, having been in business before I came here, I mean, 20 years is an enormous timeframe in the life of a business. Most businesses don't last 20 years. I don't know if you have noticed. So, I do worry about the fact that the default position tends to be 20 years.

Now what do other agencies do? If the Federal Communications Commission is going to issue a consent decree, what is the timeline likely to be there?

Ms. Ramirez. Dr. Burgess, in all candor, we don't keep track. I couldn't tell you, sitting here right now, what the typical approach is by other agencies.

Mr. Burgess. Do you feel your agency is in line with what other agencies are performing?

Ms. Ramirez. I can't speak to that. What I can tell you is that I think that what the agency does or what the Federal Trade Commission does is appropriate, and it is an important tool. Our consent decrees are an important tool to ensure that consumers are protected. An injunction tends to be our primary remedial tool that we use. We don't have the authority to impose civil penalties, and a good number, most of our cases don't entail

any form of consumer redress or other monetary relief. And so, I think it is important as a matter of deterrence to be able to have a tool that can be long-lasting and that protects consumers.

Mr. Burgess. Now you bring cases both on the anticompetitive front and the consumer protection front. Is there a difference in the consent decree for either one of those subjurisdictions?

Ms. Ramirez. Sure. We do tailor consent decrees to the particular facts. And so, just by way of example, an order in connection with a settlement in a competition matter would require a divestiture, and in that context the requirements of the order would only last so long as it would take to effectuate divestiture. So, they do vary because of the different set of circumstances.

Mr. Burgess. Let me ask you this: just as a practical consideration for a business that is under a consent decree, are they required to obtain permission from the Federal Trade Commission before they were to roll out a new product or service if they are under a consent decree?

Ms. Ramirez. Certainly not, Dr. Burgess. I mean the aim and the predominant form of our injunctions is to prohibit violations of law. So, there are a number of companies that continue to innovate. I mean, this includes Google, Facebook, Apple. They continue to innovate. They are operating just fine

under our orders. I think our orders are tailored to the particular circumstances of a case, tailored to address the consumer harm that we have identified. And I think that we do a good job of ensuring that.

Let me also just note that we also have flexibility to modify and even terminate an order. So, a company, if it finds that there are changed conditions, can always come to us and make a request to modify or even terminate an order.

Mr. Burgess. I have some questions, and in the interest of time, I am going to submit those questions for the record in writing.

[The information follows:]

**********COMMITTEE INSERT 4**********

Mr. Burgess. Seeing no further members wishing to ask questions, I do want to thank the Chairwoman for being here and for answering our questions and being our witness today.

This will conclude the first panel, and the committee will take a brief recess while we assemble for the second panel.

[Recess.]

Mr. Burgess. The subcommittee will come to order.

Welcome back. Thank you for your patience, and thank you, again, for taking the time to be here today.

We are moving into the second panel for today's hearing. We are going to follow the same format as the first panel. Each witness will be given five minutes for an opening statement, followed by questions from members.

For our second panel, we have the following witnesses: Mr. Joshua Wright, university professor, Antonin Scalia Law School, George Mason University; Ms. Abigail Slater, general counsel at The Internet Association; Mr. David Vladeck, professor of law at Georgetown; Mr. Geoffrey Manne, founder and executive director at the International Center for Law and Economics, and Mr. Daniel Castro, vice president for Information Technology and Innovation Foundation.

We appreciate each of you being here today. We will begin our panel with you, Mr. Wright. You are recognized for five

minutes for an opening statement.

STATEMENTS OF JOSHUA WRIGHT, UNIVERSITY PROFESSOR, ANTONIN SCALIA LAW SCHOOL, GEORGE MASON UNIVERSITY; ABIGAIL SLATER, GENERAL COUNSEL, THE INTERNET ASSOCIATION; DAVID VLADECK, PROFESSOR OF LAW, GEORGETOWN LAW SCHOOL; GEOFFREY MANNE, FOUNDER AND EXECUTIVE DIRECTOR, THE INTERNATIONAL CENTER FOR LAW AND ECONOMICS, AND DANIEL CASTRO, VICE PRESIDENT, INFORMATION TECHNOLOGY AND INNOVATION FOUNDATION

STATEMENT OF JOSHUA WRIGHT

Mr. Wright. Thank you, and thank you for the invitation to testify today.

Chairman Burgess, Ranking Member -- it is on [referring to microphone].

Mr. Burgess. Yes, pull that in close. Our equipment here is all old. Thank you.

Mr. Wright. Chairman Burgess, Ranking Member Schakowsky, and members of the subcommittee, thank you for the opportunity to appear before you today, in particular, to discuss those proposed bills aimed at improving the FTC's processes and consumer protection enforcement.

My name is Josh Wright, and I am a university professor at the Antonin Scalia Law School at George Mason University and senior counsel at Wilson Sonsini Goodrich & Rosati.

Until August 2015, I was Commissioner of the Federal Trade Commission. During my career as an economist and lawyer, I have been fortunate enough to enjoy four separate positions at the FTC, ranging from a teenaged intern in the Bureau of Economics to Commissioner.

Before diving into the subject of today's hearing, I want to make clear that the views I express here today are my own. In my written statement I discuss in greater detail a number of the 17 bills that are the subject of today's hearing.

In my opening remarks I would like to discuss what I view as the key institutional challenge facing the FTC and its consumer protection mission, to more deeply integrate economic analysis at all levels of decisionmaking from staff members to the Commission. With this in mind, I would like to begin with a brief discussion of the role of economics and the Bureau of Economics at the FTC.

The Bureau of Economics provides guidance and support to the agency's competition and consumer protection activities. It is a separate unit from the Bureaus of Competition and Consumer Protection and, thus, provides independent economic advice to the Commissioners. Working within the Bureaus of Competition and Consumer Protection, the Bureau of Economics participates in the investigation of mergers and alleged anticompetitive,

deceptive, and unfair acts or practices. It also conducts rigorous economic analyses of various markets and industries.

The FTC's success has been attributable in large part to its flexible enforcement authority that allows it to adapt quickly to changes in technology and business practices, its commitment to integrating independent economic analysis to guide the use of those enforcement tools, and the remarkably high quality of its staff of PhD economists in the Bureau of Economics. I have written elsewhere, and I think it worth repeating here, that the economists assembled within the Bureau of Economics are simply the best team in any regulatory agency in the United States.

Where the FTC has been mindful of integrating economic thinking and research into its new enforcement and policy endeavors, it has performed very well. When the agency's enforcement priorities have become untethered from economic analysis, it has faltered, overreached, and become the subject of significant criticism.

As technology evolves and the FTC's consumer protection shifts into digital markets, privacy regulation, the internet of things, and the world of big data, it is more important than ever that rigorous economic analysis anchors the FTC's activities. With that in mind, I do want to specifically acknowledge Chairwoman Ramirez for her leadership on these issues

and commitment to ensuring that economic analysis remains a priority for the agency.

The Commission, however, does occasionally fail to tether itself sufficiently to rigorous economic analysis in its reports, recommendations, and enforcement actions. Consider the Commission's application of its unfairness authority and its recent action against Apple. The Commission issues an administrative complaint alleging that Apple engaged in an unfair act or practice because Apple's 15-minute window which allowed consumers to void entry of a password a second time after an initial purchase did not allow parents the opportunity for express informed consent.

Apple's product design choices, including the nature of these disclosures and its choice to integrate the 15-minute window to enhance the user experience are a product of considerable investment and innovation. And as most consumers with smartphones know, this feature provides substantial benefits for consumers who don't want to experience excessive disclosures or enter passwords every time they make a purchase. Yet, the FTC cursorily dismissed Apple's design decisions and disclosures having zero benefits for consumers and only imposing harm.

To be clear, while cases like Apple are relatively rare, they are likely to be an increasing part of the FTC's portfolio.

Rigorous economic analysis is the best tool the FTC has available to protect consumers against a risk of erroneously condemning business practices that benefit consumers. For example, in Apple, greater attention to economic analysis would, in my view, have kept the FTC from a harmful second-guessing of product design decisions in ways that might damage innovation.

I would like to mention one specific suggestion to the subcommittee concerning a proposal that would facilitate greater incorporation of economic analysis into Commission decisionmaking. Specifically, I would propose the subcommittee consider amending the SURE Act to mandate that the Bureau of Economics publish a separate explanation of the economic analysis of its cost and benefits of the Commission's action whenever it enters into consent decrees.

The primary benefit of this proposal would be to provide the economists within the FTC a greater role in the development of the agency's consumer protection enforcement priorities in this era of increasingly-complex cases involving rigorous analysis of policy tradeoffs.

Thank you very much for your time, and I am happy to answer any questions.

[The prepared statement of Joshua Wright follows:]

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

**********INSERT 5**********

Mr. Burgess. The Chair thanks the gentleman.

The Chair recognizes Ms. Slater for five minutes for your opening statement, please.

STATEMENT OF ABIGAIL SLATER

Ms. Slater. Thank you. Chairman Burgess, Ranking Member Schakowsky, and members of the subcommittee, thank you for the opportunity to testify before you today.

My name is Gail Slater, and I am the General Counsel at The Internet Association. The Internet Association represents over 40 of the world's leading internet companies. As the voice of the internet economy, part of our job is to ensure that all stakeholders understand the benefits the internet brings to our society.

Today I will highlight three issues for the committee which my written testimony provides greater detail on. First, the Federal Trade Commission plays an important and respected role in our society. However, there is always room for modernization and increased transparency at any agency.

Second, one FTC process bill, in particular, the TIME Act, is important to The Internet Association's members. The internet is a fast-moving and dynamic marketplace, and the framework for FTC consent orders should recognize this reality.

Lastly, the Consumer Review Fairness Act will protect consumers nationwide from meritless attempts to silence free speech, in addition to bolstering the growing online economy.

Regarding FTC process, it is important, first, to acknowledge the valuable role the FTC plays in promoting competition and protecting consumers in our society. Beyond our borders, the FTC plays an equally important role, most recently in the extensive negotiations around the U.S.-EU Privacy Shield with which the committee is familiar.

The Internet Association thanks Chairwoman Ramirez for her leadership of the agency, both here in the U.S. and overseas. However, while we recognize the FTC for the important work that it does, there is always room for modernization and increased transparency at a 100-year-old agency.

Although FTC consumer protection and substantive law and policy commands most of the spotlight, Commission process can be equally important to stakeholders, which brings me to my second point. Of the bills before the committee today, the TIME Act is of particular importance to Internet Association members. The TIME Act would create an eight-year cap on consent orders the FTC enters into; whereas, under current agency practice, consent orders expire only after 20 years.

To put 20 years in context for internet companies, it might be helpful for the committee, first, to cast their memories back to the year 1996, if they can, and then, to fast-forward to the year 2036. In 1996, AOL and CompuServe were the largest internet

platforms in the world. Facebook founder Mark Zuckerberg was 12 years old, and Google was still just a research project for two Stanford grads. Dumb mobile phones barely existed, and smartphones were a figment of Steve Jobs' imagination. In 2036, it is hard to even begin to predict the ways in which we will use the internet.

This time travel exercise is a lighthearted way of illustrating that the internet changes a lot in 20 years. Yet, while internet markets are highly-dynamic, the FTC consent orders applied to them are static. This matters because 20-year consent orders serve to slow down the pace of innovation of the companies involved and are often outstripped by marketplace developments during their term. The TIME Act corrects this imbalance by creating a presumptive eight-year limit on FTC consent orders.

The third and final topic I wish to address today is the Consumer Review Fairness Act, also known as CRFA, which will protect consumers nationwide from meritless attempts to silence free speech online, in addition to bolstering the growing online economy. The FTC would play an important role in the CRFA as backstop enforcer.

To put the CRFA in context, it may be helpful, first, to talk about the importance of online reviews to consumers. Included in the benefits the internet brings to our economy is

the so-called consumer surplus, which exists because the internet empowers consumers to make smarter and quicker choices about how and where they spend their money. This consumer surplus is calculated to be valued at billions of dollars per year.

A great example of the consumer surplus in action is consumer reviews. Every day Internet Association members like Amazon, Trip Advisor, and Yelp democratize purchasing and access to information by crowdsourcing the experiences of others in consumer reviews.

In today's digital economy, nearly 70 percent of consumers rely on online consumer reviews for information on where to eat, shop, travel, and more. However, although most businesses have come to accept this shift in consumers' knowledge, a minority of holdouts refuse to let consumers share their experiences online through onerous contractual terms.

Consumers usually have no idea they are signing up for contracts attempting to limit speech, which are usually only provided in small print at the moment of check-in or purchase. A patchwork of state laws, court decisions, and federal agency actions, including the FTC's, have attempted to protect consumers subject to non-disparagement clauses. However, we must address the issue on a national level to ensure the protection of all consumers online.

The CRFA, which would prohibit the use of these onerous clauses, will protect consumers nationwide from meritless attempts to silence free speech. The Internet Association strongly supports this legislation's effort to protect online reviewers of goods and services from clauses that inhibit honest reviews, and commends the committee for examining this issue during today's hearing.

I welcome your questions on these important topics. Thank you.

[The prepared statement of Abigail Slater follows:]

**********INSERT 6**********

Mr. Burgess. The Chair thanks the gentlelady.

Mr. Vladeck, you are recognized for five minutes for your opening statement, please.

STATEMENT OF DAVID VLADECK

Mr. Vladeck. Thank you. Thank you very much, Dr. Burgess, Ranking Member Schakowsky.

I am David Vladeck. I teach at Georgetown Law School, and I served as Director of the Federal Trade Commission's Bureau of Consumer Protection from 2009 until 2012.

I thank you for inviting me to be here this morning. You have my written statement which addresses many of the proposals pending before this committee. I want to focus my remarks on three particular bills.

And I want to start off by urging the committee to first do no harm. There are a number of these bills that I think are, no doubt, well-intentioned, but would hobble the agency's ability to effectively protect consumers.

I want to start with the TIME Act which would overturn by statute a carefully-considered, balanced, bipartisan view of the Commission that consent decrees ought to last for 20 years, absent some change in circumstance that warrants their modification.

Now one thing to keep in mind is, if we sue in District Court, those injunctions last in perpetuity until they are modified or otherwise rescinded. And so, 20 years I understand sounds like a long time, but it is the only remedy the Commission has in

virtually all of the cases. So, the proposed bill would turn a 20-year consent decree into an eight-year one, renewable only if the Commission can meet the standards set out in the statute. It turns meaningful restraint into what lawyers would call somewhat of a glorified slap on the wrist. And it is particularly inapt here because the data breach cases that the agency litigates and settles are really the only economic incentive for companies to really have robust data security.

So, let's look at the facts. In 2015, there were nearly half a million -- half a million -- complaints filed with the FTC about identity theft. Identity theft is sort of the debris of an internet economy that does not take data security seriously enough.

The Department of Justice estimates that more than 17 million people, 7 percent of American adults, were victims of at least one incident of identity theft in 2014, and this is big business. The last statistics the Justice Department compiled come from 2012, but there identity theft cost the U.S. economy $24 billion, $10 billion more than all of the losses attributable to property loss through crimes.

So, this is the one real tool the agency has. I don't believe any of the companies under consent order have ever been recidivists. And, you know, the argument is this is going to

stifle innovation. Well, look at the companies under order. Not one has experienced any sort of speed bump in innovation. Facebook, Twitter, Google, small companies like Chitika, FrostWire, they are thriving.

And the reason is our consent decrees are tailored not to stifle innovation. If you look at the Google order, it requires the company don't lie; if you are going to change your data-sharing practices, get the consent of the consumer first, and give the agency audits every other year.

In data security cases the fundamental consent decree is do what is reasonable; do what a reasonable company in your shoes would do, and help keep us informed. Those are the nuts and bolts of these FTC orders.

There is a lot of rhetoric here about stifling innovation. I would like to see a case in which some company made a credible claim that was true.

Next, I would like to talk about the changes to the unfairness statement. Contrary to the remarks earlier, the unfairness statement would substantially amend existing law. There are no two ways about it. It would cherry-pick certain provisions to the unfairness statement and make them the law, and it would add others.

Congress has deliberated on this issue for 100 years, and

Congress has decided not to do what has been proposed, which is to rigidify and take off the table options for the agency simply because the marketplace changes. We could not have conceived of unfair acts like what took place in DesignerWare where people devised devices that you take into your home and surreptitiously photograph you, your family, and your loved ones. This is something that we didn't anticipate in 1980, but it is true today. And this recodification of the unfairness standard jeopardizes those kinds of cases.

The last point I want to make is the SHIELD Act. It may be that the intent of the bill is simply to allow evidence of compliance introduced as compliance with guidance documents, but that is not the way the bill is written. Compliance with a guidance document would be viewed as compliance with the law, and it would serve as an absolute defense liability. This may simply be a drafting problem, but the way it is written now, it is a get-out-of-jail-free card for companies that have violated the law, simply because they can find somewhere in the agency's archives a statement from a guidance document that might support its position in litigation. That doesn't protect anyone that we want to protect. It certainly doesn't protect consumers.

I see my time has expired. Thank you very much.

[The prepared statement of David Vladeck follows:]

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

**********INSERT 7**********

Mr. Burgess. The Chair thanks the gentleman.

Mr. Manne, you are recognized for five minutes for an opening statement, please.

STATEMENT OF GEOFFREY MANNE

Mr. Manne. Thank you. Thank you, Chairman Burgess and Ranking Member Schakowsky, and members of the subcommittee. Thank you for the opportunity to appear today.

I am the executive director of the International Center for Law and Economics, a nonprofit, nonpartisan research center; a formerly law professor. I used to work at Microsoft. And I had what I like to call the most illustrious FTC career ever because, at approximately two weeks, it was probably the shortest.

I am not typically one to advocate for active engagement by Congress in anything, no offense, but the FTC is different. The FTC is unique. Despite some congressional reforms, the FTC remains the closest thing we have to a second national legislature. People don't see it that way, but its jurisdiction really does cover nearly every company in America. Section 5, the heart of the FTC, the substantive part runs about 20 words. That leaves an enormous amount of discretion for the Commission to use in a way that is effectively making policy decisions that are essentially legislative.

The courts were supposed to keep the agency on course, but they haven't. As former Chairman of the FTC Muris has written, the agency has traditionally been beyond judicial control.

So, it is up to Congress to monitor the FTC's progress, to tweak them when the FTC goes off-course, which is inevitable. That is not a condemnation of the FTC's dedicated staff. It is just that this one-way rachet of ever-expanding discretion is simply the nature of the beast.

Yet, too many people lionize the status quo. They see any effort to change the agency from the outside as an affront. It is as if Congress was struck by a bolt of lightning in 1914 and the perfect platonic agency sprang forth and there is nothing we can do to improve it.

But in the real world an agency with such massive scope and discretion needs oversight and feedback on how its legal doctrines evolve. So, why don't the courts play that role? Well, it turns out companies essentially always settle with the FTC in its consumer protection work because of its exceptionally-broad investigatory powers, its relatively-weak standard for voting out complaints, and the fact that those decisions effectively aren't reviewable in federal court.

And then, there is the fact that the FTC sits in judgment of its own prosecutions. So, even a company that doesn't settle and actually wins before the administrative law judge, even in those cases, when the FTC staff comes back to the Commission on appeal, it wins 100 percent of the time. Well, able, though, the

FTC staffers are, this cannot be from sheer skill alone.

So, whether by design or neglect, the FTC has become a largely unconstrained agency, again in Tim Muris' words. But please understand, I say this out of love. To paraphrase Churchill, the FTC is the worst form of regulatory agency except for all the others.

Eventually, Congress did, of course, have to course-correct the agency, to fix the disconnect, to apply its own pressure to try to refocus this evolution of Section 5 doctrine. A heavily-Democratic Congress pressured the Commission to adopt the unfairness policy statement. The FTC promised to restrain itself by balancing the perceived benefits of its actions, of its unfairness actions against the costs, not acting when an injury was insignificant or consumers could have reasonably avoided the injury on their own. This was inherently an economic sort of calculus.

But, while the Commission certainly pays lip service to this test, you would be hard-pressed to identify or even know whether it is being implemented in practice. Meanwhile, the agency has essentially nullified the materiality requirement that it volunteered in its 1983 deception policy statement.

Worst of all, Congress failed to anticipate that the FTC -- not the omniscient Congress of 1914; this was later -- Congress

failed to anticipate that the FTC would resume exercising its vast discretion through what it now proudly calls its common law of consent decrees in data security cases. Combined with a flurry of recommended best practices and reports that function as quasi-rulemakings, these settlements have enabled the FTC to circumvent both congressional rulemaking reforms and meaningful oversight by the courts.

The FTC's data security settlements aren't an evolving common law. They are a static restatement of reasonable practices repeated about 55 times over the past 14 years. At this point, it is reasonable to assume that they apply to all circumstances, kind of like a rule would, which is more or less the opposite of the common law.

Congressman Pompeo's SHIELD Act would help curtail this practice, especially if amended to include consent orders and reports within its scope. It would also help focus the Commission on the actual elements of an unfairness policy statement. Those should, indeed, be codified through Congressman Mullin's SURE Act. Mr. Vladeck and I will have some words about that, I suspect.

Significantly, only one data security case has actually gone before the court, an Article III Court, one. The FTC trumped its Wyndham as an out-and-out win, but it wasn't. In fact, the court agreed with Wyndham that prior consent orders were of little

use in trying to understand the requirements of Section 5.

More recently, the FTC suffered another rebuke. While it won its product design suit against Amazon, the Court rejected the Commission's fencing-in request to permanently hover over the company and micromanage practices that Amazon had already ended.

As the FTC grapples with the cutting-edge legal issues of today, it is drifting away from the balance it promised Congress. Congress can't fix these problems simply by telling the FTC to take its bedrock policy principles more seriously. Congress must regularly reassess the process that has allowed the FTC to avoid meaningful judicial scrutiny. The FTC requires significant course correction, and significant course correction over time, if its model is to move closer to a true common law.

Thank you.

[The prepared statement of Geoffrey Manne follows:]

**********INSERT 8**********

Mr. Burgess. The Chair thanks the gentleman.

Mr. Castro, you are recognized for five minutes, please.

STATEMENT OF DANIEL CASTRO

Mr. Castro. Thank you. Chairman Burgess, Ranking Member Schakowsky, and members of the subcommittee, I appreciate the chance to discuss the opportunity Congress has to modernize the FTC, so that it better protects consumers from harm while minimizing regulatory cost and better enabling robust innovation in the U.S. economy.

The FTC's actions send important signals to the private sector about how it should allocate its resources to comply with federal regulations. Ideally, these signals should encourage business to take actions that protect consumers, discourage actions that harm consumers, and not interfere with the private sector risk-taking that underpins innovation. Unfortunately, that is not always the case. Let me provide two examples.

In 2014, the FTC entered a consent decree with Apple over complaint that the company had charged consumers millions of dollars for charges incurred by children without their parents' consent. The key fact in this case was that Apple did not inform customers that, once they enter their password, they opened a 15-minute window during which further charges could be made without additional verification from the account-holder. As part of the consent decree, Apple agreed to stop this practice.

However, for many users, not having to enter their password repeatedly was a convenient feature, not a bug. After all, only a tiny fraction of Apple's customers are children making purchases without their parents' permission. Thus, on balance, it is unlikely that there is even a net harm. It is even possible that the FTC's actions made consumers worse off, since users who are forced to enter their password too frequently may choose to use simpler and, thus, weaker passwords, and thereby increase their risk of a data breach.

These types of unintended consequences happen when government is put in charge of product design. My fellow panelists ask how consent decrees impact innovation. This is exactly how it does it.

As a second example, consider the FTC's case against Nomi. Nomi ran into trouble because it misstated in its privacy policy that customers had the option to opt out of its in-store retail analytic service at its partners' stores. To be clear, the FTC did not object to the tracking itself and the company was under no obligation to provide this additional opt-out feature. Moreover, the FTC could not find any evidence that a single consumer actually suffered any harm. Therefore, the FTC ultimately chose to use its regulatory authority to take action against the company for what was possibly a lawyer's mistake in

drafting Nomi's privacy policy, despite no evidence that any consumers were actually harmed.

By formally taking action when there is no injury to consumers, the FTC has signaled to companies that they should spend more time on corporate lawyers and less time delivering value to consumers, including through developing privacy- and security-enhancing technologies. After all, companies like Nomi would be better off providing no privacy guarantees to their consumers, so they will not fall victim to "gotcha"-style regulatory enforcement actions. Rather than bringing a case and settlement against Nomi, the FTC should have shown some regulatory restraint by simply notifying the company of the problem and verifying that it had been corrected.

There are a number of changes that Congress should make to the FTC, so as to avoid these types of perverse outcomes and unintended consequences. First, the FTC should not take enforcement actions against companies for acts or practices unless the FTC can show substantial injury that is more than trivial or merely speculative. Instead, the FTC should focus its resources on cases where there is a direct and tangible consumer harm. Doing so will incentivize companies to prioritize internal actions that can actually prevent consumer injury.

Second, the FTC should publicly disclose when it decides

to not pursue an investigation. This information would help the private sector better understand how the FTC is enforcing its policies and allow businesses to better comply with the law.

Third, the FTC should stop its practice of using 20-year terms for its consent decrees. By almost any standard, this is an extraordinary amount of time. Most states do not even require sex offenders to register for this long. And there does not appear to be any legitimate reason for this length. This is a waste of time and money for all parties and an avenue for backdoor rulemaking.

Finally, when making policy recommendations, the FTC tends to focus disproportionately on speculative harms while ignoring the tangible benefits for both consumers and businesses and the cost of overly-restrictive regulations. The FTC should only make evidence-based policy recommendations that include a cost/benefit analysis.

If Congress does not address the FTC's approach to consumer protection, compliance may become either a check-the-box activity or, worse, interfere with business practices that would make consumers better off and increase innovation in the U.S. economy.

Thank you for the opportunity to share with you my thoughts on how to transform the FTC into a more modern, innovation-friendly regulatory agency. I look forward to your

questions.

[The prepared statement of Daniel Castro follows:]

**********INSERT 9**********

Mr. Burgess. The Chair thanks the gentleman, thanks all of our panelists for your forbearance today and for your testimony.

I would like to recognize Mr. Olson of Texas for five minutes for questions, please.

Mr. Olson. I thank the Chair.

And welcome to panel two.

My questions will focus on one bill, the FTC package, my bill, the FREE Act, H.R. 5116. It appears from you all's opening comments I am batting 400. Two of five have mentioned my bill in your opening statements, Mr. Wright and Mr. Castro. So, my questions will be largely for them, but to the other three, if the spirit moves you, please feel free to jump in.

Mr. Wright and Mr. Castro, current rules and three Commissioners forced the FTC Commissioners to forego most direct communications and communicate through staff playing telephone. What are the consequences of playing telephone on the efficiency of the FTC? Mr. Wright?

Mr. Wright. Thank you, and I appreciate the question, and will say, as I did in my testimony, that I am fully supportive of the bill. As a former Commissioner, I can certainly testify to the fact that the limitations placed on communication between Commissioners by the Sunshine Act, for all of its other virtues,

are a real drag, I think, on the type of collegial decisionmaking that Congress envisioned when they put the FTC together. The idea of the five-person Commission and bipartisan Commission is to encourage precisely those types of communications, especially in case, I mean not just -- I was here for the exchange with Chairwoman Ramirez, but I would like to add to her concerns. It is not just when it is three Commissioners; when it is four Commissioners, when it is five Commissioners, and one is recused or there is a vacant seat, even when the Commission has its full complement, I think there are considerable virtues to the bill that arise on a regular basis.

Mr. Olson. Thank you.

Mr. Castro, if two FTC Commissioners meet at Starbucks for coffee, they could wave at each other, say, "How was your weekend? How is the family?", complain about the Nats and the Redskins, the Capitals, whatever, but they can't talk about the job at all, risking some violation of this Open Records Act. How does this hurt the FTC in terms of making sure they are efficient at protecting consumers, their No. 1 job? How does this impact their ability to do their job?

Mr. Castro. I think this is a very important proposal because, when we look at the types of Commissioners that we want, we want those that are very engaged with each other, that are

able to collaborate and work through problems, that are constantly in communication. You know, the digital age that we live in, that is how you do business.

This bill is so important because it really gets to that fundamental problem that is arising, obviously, right now. It arises in situations, as my colleague just mentioned, when Commissioners recuse themselves. And it will certainly arise in the future when there are vacancies.

And so, this is the kind of issue where we want to fix it now because we expect the FTC to be fast and responsive and able to deal with problems as they arise, and you can't do that if you can't talk among leadership. And so, this will, I think, move us in that right direction while still preserving the goals of the Sunshine Act, so we are not losing those opportunities.

Mr. Olson. Thank you.

Back to you, Mr. Wright. You mentioned some amendments to my bill, the FREE Act, that I am curious about. One would redefine, quote, "bipartisan majority," end quote, to, another quote, "any bipartisan combination of Commissioners," end quote. Enlighten me. What does that do? How does that improve the bill?

Mr. Wright. I think what it does, as I read the current bill, bipartisan majority is defined as a group of three or more.

In my mind, the modification to any bipartisan combination of Commissioners would free situations to allow one-on-one communications.

Mr. Olson. So, No. 3 is the issue there? Just wipe out the No. 3? Just put "majority of Commissioners"?

Mr. Wright. Yes. So that, when I see a colleague at Starbucks, I can grab them and talk to them or, if I walk into the parking garage, I don't have to leave.

Mr. Olson. Yes, sir.

And finally, questions for you, Mrs. Slater. I will get it here. How do you think the FREE Act will add greater disclosure and collaboration among Commissioners? How would it streamline the decisionmaking process going forward?

Ms. Slater. Thank you for the question. Although I didn't address in oral remarks, I think the FREE Act is a very important piece of legislation before the Committee.

Some context on me. I worked for the FTC for 10 years prior to my current job. The last three years I spent as an attorney advisor to a Commissioner. So, I am quite familiar with the process that Commissioner Wright also was familiar with.

I would say that, when you take a step back and look at the statute of design of the FTC, the Commissioners were intended by Congress as the board of directors. Given the vagaries of

the Sunshine Act, they are often inhibited from acting like a board of directors. And it is sometimes the case that the power devolves from the Commissioners to Bureau Directors, to attorney advisors. I was one. I need to be a little bit careful because we are sitting next to a former Bureau Director here.

[Laughter.]

Mr. Olson. We're all friends here.

Ms. Slater. But I don't think that was the actual intent of Congress. And so, I see in your Act measures to course-correct back to the original design for the Commission, which is a good thing.

Mr. Olson. The panacea is the FREE Act, H.R. 5116.

I yield back.

Mr. Burgess. The gentleman yields back. The Chair thanks the gentleman.

The Chair recognizes the gentlelady from Illinois, Ms. Schakowsky, the ranking member of the subcommittee, for five minutes for questions, please.

Ms. Schakowsky. I thank all of you for your testimony.

Mr. Vladeck, I just wanted to start by asking if you had any reaction -- and I know that you have been sitting here -- to some of the questions that were asked by my colleagues during the first panel or other things that were on your mind to say?

Mr. Vladeck. Well, again, there are parts of these proposals that I think make great sense. Certainly, there needs to be reform of the common carrier exception. There needs to be reform in terms of the exception for bonafide nonprofits because that exemption really seriously impairs a lot of our antifraud work, nonprofits only in name, but scams in practice. The anti-disparagement provision I think is really an important step forward.

But there are a number of concerns I have. For example, requiring BE to vet any public pronouncement the agency may make to Congress, to state legislatures, to state regulators, the clear impact of that provision, put aside its intent, will be to muzzle the FTC. And why would want to restrain the FTC from simply giving its views, when, of course, the state or Congress can disregard them, just doesn't make sense. To perform a real cost/benefit analysis of the kind contemplated in the statute would drain very scarce resources.

And part of that is we are an under-resourced agency. My job was to do triage. Even though we were the largest component of the FTC, my job was to figure out what matters we would proceed with and which ones we would let go. And so, I am very sensitive to the resource constraints the agency has, and I would urge you to avoid placing additional constraints, unless there was

enormous bang for the buck, unless we were getting something seriously out of it.

Ms. Schakowsky. Well, do you think that this tips the balance to less consumer protection? Who is the winner? Who are the winners and the losers in these process changes, by and large, that have been recommended?

Mr. Vladeck. Oh, the American consumer will be the loser. Each of these provisions drains agency resources or gives people who violate the law an out. Termination of investigations because we miss a six-month deadline, really? No matter how egregious the conduct was, no matter what justification was there for missing a deadline? It seems utterly disproportionate to an agency that has got many matters in place simply for missing a deadline. I mean, there is no one here who wins other than lawbreaker, and there is no one here who loses other than the American people.

Modifying the unfairness doctrine will constrain the agency. There is just no question about it. It amends the unfairness standard. It adds components that will make it more difficult to bring actions to prevent harm, which, of course, has been the agency's mission since its founding. And it will make it difficult to do cases where, like DesignerWare, you have people engaged in immoral, unscrupulous conduct, but the conduct does

not cause economic harm.

So, yes, I think there are many, many difficulties with some of these proposals.

Ms. Schakowsky. So, not causing economic harm? I mean, I think you definitely did talk about this, but I am also particularly concerned about the fact that one of the bills does require now the Bureau of Economics, as you mentioned, to conduct an economic analysis for every recommendation provided by the Commission. It doesn't matter who the recommendation is for or whether the recommendation affects American business or American consumers. All recommendations require a detailed cost/benefit analysis.

You mentioned a number of times in your written testimony that some of these bills are a solution in search of a problem. And so, in your experience at the FTC, was the Bureau of Economics ignored?

Mr. Vladeck. Oh, the Bureau of Economics is involved in every matter that goes before the Commission. Every case I worked on, there was a BE economist assigned to it. Every policy, the paper that we generated, a BE economist was assigned to work on that. Every workshop that we held, much of the important reports that the agency generates were largely generated by BE. We did a huge report on the debt buyer industry, a very important report,

which was done by BE. And so, it is a constant presence and powerful force within the agency.

Ms. Schakowsky. Thank you. I appreciate that.

I yield back.

Mr. Burgess. The Chair thanks the gentlelady. The gentlelady yields back.

And the Chair recognizes Mr. Guthrie of Kentucky, five minutes for your questions, please.

Mr. Guthrie. Thank you, Mr. Chairman.

I thank the panel for being here today, the second panel.

A first question for Mr. Wright: the FTC used to issue closing letters indicating why it closed investigations without taking formal agency action. Could you explain how an analysis of why something is not legal is different from complaints which lay out what activities are legal?

Mr. Wright. Sure. So, I am a law professor. I teach the common law to my students all the time. And one of the things that is sort of the first lesson that they learn in contract law, or what have you, is to understand where the line is, you need to know something that falls on each side of it.

And so, I have been occasionally frustrated with the perception that, when the FTC puts out a pile of consent decrees that come through a process, it looks a little bit different,

like the process in front of an Article III judge, that we can refer to those as having the virtues of a common-law-type process.

I think for parties to understand quite simply where the line is, it is critical that the agency be transparent, both with respect to its views on what violates the law and what does not. And to the FTC's credit, on many instances the FTC is sort of on the right side of promoting transparency with respect to standards. Just a year ago, the agency put forth guidance on its unfair methods of competition statute, policy statement, which I think some had been asking for for decades and decades.

Merger guidelines, the unfairness statement, the deception statement, the agency has been on the right side of this for some time. I do think, as the economy shifts into digital markets, privacy regulation, the internet of things, more complicated business practices that involve tradeoffs, that involve costs and benefits -- they are not simple fraud cases that are all harms, no benefits -- as we increasingly shift into those areas, I think it is more important now than ever that the agency continue that trend and maybe even extend it more strongly in those areas where I think guidance is especially needed.

Mr. Guthrie. Okay. Thanks.

I also have H.R. 5109. Well, H.R. 5109 specifically applies to unfair or deceptive acts or practices. But I have introduced

a related bill with a colleague on the Judiciary Committee, with Chairman Burgess, that would also require CLEAR Act disclosures for investigations of unfair methods of competition. In your opinion, would adding this layer of disclosure also be valuable for companies?

Mr. Wright. Yes, I think adding information with respect to -- it is true I did hear the answer on the earlier panel. The FTC does disclose some of this information already.

In my view, some form of aggregated disclosure, so as to avoid some of the confidentiality concerns that arise, some sort of aggregated information that would tell companies these are the types of characteristics of cases where we close, these are the types of characteristics. You can get the other side or you can read the complaints and say, "I understand the types of characteristics that lead the agency to bring a case."

In my view, while we do this sometimes, I think we are a little short of the mark at the FTC in terms of providing some aggregated information to give a sense of when we do not bring cases or when we close. To the extent that the bill furthers that, I think that it is a step in the right direction.

Mr. Guthrie. Thank you.

And based on your first answer leads me to my next question, Mr. Castro. We talked about common law, and you teach common

law. So, Mr. Castro, do you believe there is a true common law created by the FTC's published consent orders? Please explain why you believe that or not believe it.

Mr. Castro. So, I believe there shouldn't be. I believe what we are seeing is that there are a number of avenues aside from official rulemaking where the FTC is making policy through its guidelines, through its consent orders.

As I said in my statement, these are the signals that industry is interpreting about what they should do, and they matter as much as any formal rules they create. The problem is, when you don't go through these formal rulemaking processes, I think we subvert the democratic processes that we intended to create.

And so, if we want to have effective rules, if we want to have full participation and an open, transparent process to do it, we need to have a process that we all agree is the right process. And so, that is why I think it is bad for innovation, it is bad for consumers if we are using these other avenues to create these rules.

Mr. Guthrie. In just a couple of seconds, Mr. Manne, if I can get it in real quick, what value do you see in adding transparency to the FTC's closed process of any investigations where companies have not engaged in unfair or deceptive acts? And, of course, how would the CLEAR Act improve the current state

of affairs at the FTC? Mr. Manne, yes?

Mr. Manne. You said that last part so fast, I couldn't hear what you said, but I got the first part.

Mr. Guthrie. Okay. How would the CLEAR Act improve the current state of affairs at the FTC?

Mr. Manne. Well, I think an important source of guidance that is often neglected -- Josh may have just mentioned this -- which is the reasons that a case is closed, right? That, in and of itself, is actually extremely informative guidance. As Josh said, you can certainly convey that information in a way that doesn't disclose any confidential information and would be particularly useful. It used to be done that way at the Commission. Even when you didn't have an incredibly fulsome sort of closing letter, there are examples of closing letters that at least would enumerate the bases on which the investigation was closed, sort of the issues that they looked at. Well, that in itself is huge.

Now I could suggest a whole welter of more things that should have been asked in that letter and that should be looked at. This is the kind of situation -- I am not saying we would have to do it here -- where economists, as with pretty much everything at the agency, are incredibly useful. And despite Mr. Vladeck's claims to the contrary -- I believe he said something to the effect

that it would be enormous cost and no gain -- I tend to believe, especially in an agency of the sort like the FTC where in the unfairness context it is asked to take on an essentially economic calculation, that having some economists actually help with that calculation would be particularly useful. I think it would be enormously useful, but I certainly think I could identify positive value to it.

The fact that there may be a cost to it is not a reason not to do it. There are tradeoffs to everything, right? I think, well, that is what economists would say, I guess.

Mr. Guthrie. Thank you. I am out of time.

Mr. Burgess. The gentleman's time has expired.

Mr. Guthrie. My time has expired. I appreciate it.

Mr. Burgess. The Chair recognizes Mr. Rush, five minutes for your questions, please.

Mr. Rush. Thank you, Mr. Chairman.

Mr. Vladeck, I introduced a bill that will give the FTC the authority to protect consumers from unfair and deceptive practices by nonprofit organizations. And we heard the Chairwoman earlier testify that the Commission supports repealing the nonprofit exemption. You also testified that you support repealing the nonprofit exemption.

How do you see, me repealing this exemption, how do you see

it being of benefit to consumers?

Mr. Vladeck. This is an enormously important area because often fraudsters, people who are scamming, fake health insurance, they hide under the shield of being a nonprofit. So, one of the first major sweeps I worked on when I got to the FTC involved collaboration with state insurance commissioners, state attorneys general, to go after dozens and dozens and dozens of fake insurers and health providers. And the principal objection we found as a jurisdiction threshold was we don't have any authority because we are organized as a nonprofit. That is a showstopper. If we don't have jurisdiction, we can't proceed. We can't proceed with our investigations. We certainly can't proceed with litigation. And so, the first and important point about this, this will take away a devise scammers and others intent on stealing people's money use to hide from the agency.

Second, we have seen a lot of very serious data breaches by entities that are essentially unregulated, colleges, university, nonprofit healthcare providers. The nonprofit healthcare corporations may have some obligations under HIPAA, but they are not regulated elsewhere.

Time and again, we see massive data breaches involving very sensitive information, health records, education records, and there is no remedy. We did a peer-to-peer sweep to find out what

kinds of information were available from unsecure networks. And many of the most egregious problems were with hospitals, nonprofit hospitals, and with state universities. Yes, we let them know they had vulnerabilities on their system, but we had no leverage to force them to upgrade their systems or to do a better job protecting highly-sensitive data.

And so, this is a very important reform. I urge your colleagues to give this the most careful consideration. It really is essential to enable the FTC to better protect consumers in this space.

Mr. Rush. On the flip side, I have heard of concerns from the nonprofit community that FTC jurisdiction could lead to increased regulation and increases in the cost of doing business. Do you agree with this statement? How accurate do you believe this statement is? And also, do you believe that the increase in consumer protection would justify these costs if any exist?

Mr. Vladeck. Thank you for the question. I am call on my economist friends on the panel to do the cost/benefit analysis, but I have no -- this was a joke.

[Laughter.]

But there is no question that better regulation will ultimately serve the economy. A level playing field, consumer protection, the cost of data breach and identity theft are an

enormous strain on the economy, partly because institutions can externalize their cost on the consumers, who are stuck with the bill.

And so, I think ex-ante regulation makes a whole lot of sense, more than ex-post consumer cost, in trying to restore their credit. If it is a medical facility, medical ID theft has skyrocketed, and there is no easy way to restore your identity. You have to go provider by provider to prove who you are and to get the benefits that you are paying for.

And so, anything that we can do to place at least some market discipline on these actors I think is really critical, and I think this is a very important measure that I urge the committee to seriously consider.

Mr. Rush. Thank you, Mr. Chairman. I yield back.

Mr. Burgess. The Chair thanks the gentleman. The gentleman yields back.

The Chair recognizes Mr. McNerney for five minutes for your questions, please.

Mr. McNerney. Well, I thank the chairman.

And I apologize that I missed your testimony.

Professor Vladeck, in your testimony you mentioned that the FTC has long asked Congress to lift the common carrier exemption. What are the justifications for this prior to the FCC's Title

II reclassification of broadband internet services common carrier?

Mr. Vladeck. So, the FTC and the FCC share jurisdiction in most of the consumer protection issues involved in providing these kinds of telecommunication services. So, a lot of what we did were cases involving false or deceptive advertising, improper marketing claims, billing abuses such as cramming, forcing unauthorized charges onto consumer bills, privacy, data security. These were spaces that we occupied jointly. We collaborated very closely on enforcement.

But with the common carrier exception, and particularly the reclassification under Title II of internet services, the agency is threatened with losing some of that authority. I think it is very important for consumers to have a consumer protection agency in that space.

The FCC is essentially a regulatory agency. It has a very short statute of limitations. It can collect civil penalties. It does not do consumer redress. The FTC puts money back in the hands of consumers. The FCC does not.

Consumers deserve better in this space, and repealing this archaic common carrier exception, which is really an artifact of a different time when monopolies were regulated by the FCC, is long overdue. This is a measure the Commission on a bipartisan

basis has urged Congress to take for decades, and the time really is now.

Mr. McNerney. Well, if the common carrier exemption is not lifted, what are some of the abuses that we would be seeing?

Mr. Vladeck. So, for example, AT&T and TracFone were throttling consumers. They promised unlimited data, but they didn't tell them that, after a certain setpoint, they would get data; they would just get it one grain of sand at a time.

It was incredibly frustrating for consumers. They complained to both agencies. The FTC sued both AT&T and TracFone over this throttling. We got substantial redress for consumers which will go back into their wallets.

This is the sort of thing that the FTC has historically done. We do it well. We certainly did it in cooperation with the FCC. These were investigations that were jointly conducted, but we managed to both stop the practice and to return money to consumers' wallets for a service they did not get.

Mr. McNerney. So, throttling, for example, do you think that was intentional? Do you think they intentionally misled?

Mr. Vladeck. Well, the throttling was intentional.

Mr. McNerney. Right. I mean, well, couldn't it have been the broadband limitations or some other technical limitations?

Mr. Vladeck. Well, for example, I think it is fair to say

the Commission took a very hard look at advertised rates of delivery of broadband service. We did this in collaboration with the FCC. We did not bring enforcement actions, but this is the sort of issue that the Commission, prior to reclassification, took a very hard look at. Post-reclassification our authority to do that, I think, is in some doubt.

Mr. McNerney. Well, I think we agree that the FTC has the expertise in protecting consumer privacy. Would lifting the common carrier exemption lead to better privacy protections?

Mr. Vladeck. Well, again, I think that the FTC has had enormous success in developing a reasonable privacy program that protects consumers' expectations without putting a speed bump on the road to innovation. And I think that we are well-equipped to do that. We have worked jointly with the FCC on all sorts of things ranging from mobile apps to investigations on these kinds of issues. I think there ought to be overlapping jurisdiction here, just the way the FTC has overlapping jurisdiction with the FDA, the SEC, the Commodities Future Trading Commission, and virtually every other agency in the city. We play well, but we also do a very good job of protecting consumers because that is our only mission, unlike the FCC which has the mission of making sure the industry works the way -- it delivers the services it does.

Mr. McNerney. Thank you, Mr. Chairman.

Mr. Burgess. The Chair thanks the gentleman. The gentleman yields back.

I recognize myself for five minutes for questions. These are going to be questions regarding the 20-year lengths on the consent decrees, the consent orders.

Mr. Manne, let me just start with you. Even though your tenure at the FTC was very brief, are you aware of any factors that went into the Federal Trade Commission's decision to set the duration of consent orders at 20 years? Should it be a one-size-fits-all program?

Mr. Manne. Well, yes, you hit on what is the real problem. To my knowledge -- David and Josh can correct me if this isn't right -- to my knowledge, there isn't sort of a set 20 years for everything, but that is what it effectively is. It is not a 20-year program, as far as I know. It is just that, miraculously somehow, all of these companies that are wildly divergent, engaged in wildly different activities, different sizes -- sometimes you have got deception cases and, then, you have unfairness cases. You have situations that it is sort of begs belief to think that they would entail precisely the same remedy.

If you cared about getting your remedy right, so if you had some economists talking to you -- apologies -- they might say

something like you want your remedy to lead to an appropriate optimal level of deterrence. You want the right level of punishment. Because you want to deter the bad conduct, you don't want to overdeter the good conduct, right? You know, everyone sort of understands this stuff.

It cannot be the 20 years is appropriate in every single one of those situations.

Mr. Burgess. So, you think there are variables that should be considered in the negotiation process?

Mr. Manne. Well, yes, of course. It is one of the elements that should be considered, just like every other element should be considered. Now it happens that, actually, these consent decrees, at least in the data security cases, they pretty much all look identical. Never mind all of those differences that I mentioned, they all look at least extraordinarily similar. And that strikes me as problematic, too.

Now it is possible. It is possible that, when the FTC adopted the Safeguards Rule under Gramm-Leach-Bliley, to relate to data security issues at financial institutions, it is possible that they hit upon the optimal menu of data security practices for every company that has ever come in front of the FTC. It is possible. I think it is really unlikely, though.

And I could take three days talking about what I think is

going on here; I will try not to.

Mr. Burgess. Please.

Mr. Manne. But I don't think it is what we want to be going on.

Mr. Burgess. And I agree. That is one of the reasons we are having this panel and this discussion.

Mr. Wright, let me just ask you, if a company is under a consent order, they have probably got a lot of stuff to do to be in compliance with that order. Is that a fair statement?

Mr. Wright. Yes, that is a fair statement.

Mr. Burgess. So, what is the practical effect of a 20-year compliance or 20-year consent agreement with having to produce documentary evidence that they are behaving by the guidelines that have been set out? Is there a cost to having to comply with the 20-year length of time on the consent decree?

Mr. Wright. Sure. You are talking to an economist. So, there is a cost to everything. Most of my students would tell you there is a big cost of being in my classroom.

Mr. Burgess. You know, one of my fondest fantasies is to have a group of doctors on this panel and ask them how economists should be paid.

[Laughter.]

But that is another story. Carry on.

Mr. Wright. I will tell you when the microphone is not on.

[Laughter.]

So, there is certainly a cost to consent orders. There is a cost to compliance. There is a cost to injunctive relief that changes behavior that is in the consent order. Sometimes we want to incur those costs because we are getting, as Professor Vladeck said, a big bang for the buck in terms of consumer return. We are stopping fraud.

Sometimes, whether it is competition or consumer protection, we are stopping behavior that we are really not sure about what its effects on consumers are. We are sort of drawing a big fence around the firm's behavior and hoping for the best. This is the reason, precisely the reason, you want economists in the room who are trained, sort of by definition, to think about those tradeoffs. If you start from the premise that everything the agency does is good for consumers, this is a really easy hearing. Just do more of all the things.

Mr. Burgess. Well, let me ask you a question. You heard the Chairwoman testify. I mean, I asked her, are we asking a company to ask permission before it rolls out a new good or service? And her answer was the essentially negative. But do you agree with that answer that she gave?

Mr. Wright. I agree that most of the time our consents don't

necessarily ask the firms to get prior permission from the agency, but sometimes they do. The Apple consent, the line of consents that comes from those inapt purchase cases do exactly that. Those are product design cases that say, if you want to change your product in a particular way, either you can't or you must get permission. That is precisely what those do.

And I think something for the committee to consider is those types of cases I think are going to be an important and increasing part of the agency's portfolio over time. If you go back 20 years, most of what the agency did was fraud, and frauds are relatively easy cases. Fraud is bad. You don't need a PhD economist to write you a 20-page memo on fraud, right? You need them to write it once and, then, copy it every time.

But the types of activities where the agency is applying its enforcement authority are different. They are complicated. There are tradeoffs. There may well be harm in these inapt purchase cases with disclosures, but there may also be benefits to the 15-minute window. And that is precisely where you need some sort of calibration, where you need economic analysis to have a bigger seat at the table within the agency than it did 10 years ago, 20 years ago, or probably ever.

And I will say one small point, if I may, which is I have been following the FTC since I was intern in the Bureau of

Economics. I pay pretty close attention to what the Bureau of Economics does. In my view, since I have followed the agency, contrary to some of the remarks that I have heard, while they may perform an input into most of the cases, I can't bring myself to say "all," my own view is BE right now is less influential than it has been over the past three decades.

Mr. Burgess. Well, I just really want to thank all of our panelists for being here today.

Seeing no other members wishing to ask questions, we will conclude the second panel. And we take the briefest of brief recesses to set up for the third panel.

This panel is adjourned.

[Recess.]

Mr. Burgess. Well, welcome back, and thank you all for your patience and taking time to be here today.

We will move into the third panel for today's hearing. We are going to follow the same format as the first and second panel. Each witness will be given five minutes for an opening statement, followed by questions from members.

For our third panel we have the following witnesses: Mr. Richard Hendrickson, the president and CEO of Lifetime Products; Dr. Greg O'Shanick, president and medical director for the Center for Neurorehabilitation Services; Mr. Steven Shur, president of

Travel Technology Association; Mr. Robert Arrington, president of the National Funeral Directors Association; Mr. John Breyault, vice president of public policy, telecommunications, and fraud, the National Consumers League; Mr. Gil Genn, Maryland Sports and Entertainment Industry Coalition; Ms. Jamie Pena, vice president, revenue strategy and global distribution, Omni Hotels & Resorts, and Mr. Michael Best, senior policy advocate of Consumer Federation of America.

We appreciate you all being here today.

We will begin the panel with you, Mr. Hendrickson. You are recognized for five minutes to give a summary of your opening statement, please.

STATEMENTS OF RICHARD HENDRICKSON, PRESIDENT AND CEO, LIFETIME PRODUCTS; GREG O'SHANICK, PRESIDENT AND MEDICAL DIRECTOR, THE CENTER FOR NEUROREHABILITATION SERVICES; STEPHEN SHUR, PRESIDENT, TRAVEL TECHNOLOGY ASSOCIATION; ROBERT ARRINGTON, PRESIDENT, THE NATIONAL FUNERAL DIRECTORS ASSOCIATION; JOHN BREYAULT, VICE PRESIDENT OF PUBLIC POLICY, TELECOMMUNICATIONS, AND FRAUD, THE NATIONAL CONSUMERS LEAGUE; GIL GENN, MARYLAND SPORTS AND ENTERTAINMENT INDUSTRY COALITION; JAMIE PENA, VICE PRESIDENT, REVENUE STRATEGY AND GLOBAL DISTRIBUTION, OMNI HOTELS & RESORTS, AND MICHAEL BEST, SENIOR POLICY ADVOCATE OF CONSUMER FEDERATION OF AMERICA

STATEMENT OF RICHARD HENDRICKSON

Mr. Hendrickson. Thank you, Chairman Burgess and Ranking Member Schakowsky, committee members.

As CEO of Lifetime Products, it is an honor to appear before you today and address the Reinforcing Made-in-America Act of 2016, H.R. 5092.

Lifetime Products is a wonderful example of the American dream made in the USA. It was started 30 years ago by a father who wanted to build a better basketball hoop for his children. Today we employ over 1900 people in the U.S. and work hard every day to keep those jobs here in the United States of America.

It isn't easy, as you can imagine, when your key competitors are taking advantage of lower labor and material cost in other countries around the world. However, by investing large amounts of capital, vertically-integrating our factory, we have been able to keep the majority of our manufacturing jobs here in the U.S.

Data shows that 78 percent of Americans, if given the choice, prefer to purchase made-in-the-USA products. Consumers want to support American manufacturing and believe that American-made goods are generally of higher quality and supportive of American jobs.

Since 1997, the Federal Trade Commission has enforced a stringent national labeling standard that requires products marked "Made in the USA" to be all, or virtually all, manufactured in the U.S. While providing the necessary consumer protection, it is also gives companies a slight, but necessary amount of leeway, permitting them to import negligible or de minimis components for their products. However, the manufacturing process must always take place in the U.S., and vital components for the product's core function must also be domestically-produced.

Today, currently, one of a state's laws has upended really the FTC labeling system. A 50-year-old California State statute held that products bearing the "Made in USA" label had to be

composed of 100 percent domestic content. This really rendered the USA FTC label impossible for many companies like us to use.

Companies like Lifetime had no idea that we were in violation of the State's labeling law and were unexpectedly sued, which resulted in multimillion dollar settlements based on infractions as insignificant as a 50-cent net suspended from a $500 made-in-the-USA basketball system.

Now, as companies try to choose whether to follow the FTC's federal guidelines or the California State statute, many USA companies, like ourselves, have decided not to use the made-in-USA label mark at all on the majority of our products, even though they are, indeed, made in the USA. And this really leaves the consumer ill-informed with regard to a product's origin.

Despite continued efforts over the last three years to amend the California statute, it is now even more confusing, inviting more opportunities for the California State statute and the FTC rule to clash. The FTC made-in-the-USA standard is robust, it is meaningful, it is difficult to meet. It challenges manufacturers to source and manufacture domestically and it conveys a clear unified message to consumers in the United States and around the world.

The FTC's made-in-the-USA standard requires significant investment in American manufacturing and in American jobs. As

such, when consumers choose products marked "made in the USA," they can feel confident that they are supporting American manufacturing and American jobs.

About 15 years ago, our main competitor in the basketball industry decided to pack up and leave the U.S. They relocated to Asia, began lowering prices with less-expensive labor and materials. After a great deal -- and I mean a great deal -- of deliberation, we chose to stay. We stayed committed to made in the USA. Had we known then that the FTC standard did not create a unified standard and the potential of California lawsuits to follow, we may have made a different decision at that time. Why invest millions in capital to manufacture in the U.S. if you are not allowed to tell the consumer "made in the USA"?

Thank you for your time. Thank you for the time you give to serve our country, and thank you for your efforts in helping keep manufacturing alive in the United States of America.

[The prepared statement of Richard Hendrickson follows:]

**********INSERT 10**********

Mr. Burgess. The Chair thanks the gentleman.

Dr. O'Shanick, you are recognized for five minutes for your opening statement, please.

STATEMENT OF GREG O'SHANICK

Dr. O'Shanick. Thank you. Chairman Burgess, Ranking Member Schakowsky, and members of the subcommittee, good afternoon and thank you for the opportunity to provide testimony on the important issue of protecting our nation's youth from concussion. I commend Chairman Upton and Ranking Member Pallone and members of the committee for their ongoing investigation into concussion.

As stated, my name is Dr. Greg O'Shanick, and I am the president and medical director of the Center for Neurorehab Services in Richmond, Virginia. I am also the medical director emeritus of the Brain Injury Association of America, the nation's oldest and largest brain injury patient advocacy organization.

Today I am here to discuss the Youth Sports Concussion Act, H.R.4460, sponsored by Congressman Bill Pascrell, Jr., and Congressman Thomas J. Rooney, Co-Chairs of the Congressional Brain Injury Task Force.

The Brain Injury Association of America and 35 organizations submitted a letter to the committee in support of this legislation. I would like to submit this letter for the record.

[The information follows:]

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

**********COMMITTEE INSERT 11**********

Dr. O'Shanick. The Youth Sports Concussion Act would help ensure that safety standards for sports equipment are based on the latest science and curb false-advertising claims made by manufacturers to increase protective sports gear sales.

An extensive National Academy of Sciences report previously found a lack of scientific evidence that helmets and other protective devices designed for young athletes reduced concussion risk. Yet, some manufacturers continue to use false-advertising claims that prevent athletes, parents, and coaches from making informed safety decisions.

In 2012, the FTC warned nearly 20 sports equipment manufacturers that they might be making deceptive concussion prevention claims, but the FTC's actions thus far have not deterred companies from making these claims. The Youth Sports Concussion Act would empower the FTC to seek civil penalties in such cases.

As parents and grandparents, we want to do our best to educate ourselves to protect our children while they are competing in sports. Companies that claim they protect a child from a concussion with their sporting goods equipment when they cannot should be prevented from using this tactic while advertising their product to the American public.

In my clinical practice, every day I see children and

adolescents who have sustained a concussion whose parents are torn between wanting to encourage their child's physical activity in team sports, but simultaneously are fearful of what we are now recognizing as the immediate and long-term risk of concussive injury in the developing brain.

Effective coaching and adult supervision of these activities by individuals who understand and have been themselves trained in concussion protocols is one element of this prevention and awareness process. And while we have solid data, for example, regarding the benefits of helmets in the prevention of bicycle-related concussions, my patients' parents are being bombarded with a host of misleading and false claims that allow other manufacturers to financially capitalize on these fears.

My advice to these parents is typically, if it seems too good to be true, it most likely is. For the kids, education, awareness, proactive planning are the elements I encourage in both their return-to-learn and return-to-play activities.

The Brain Injury Association of America has a Concussion Information Center that is located at www.biausa.org. This information is designed to shed further light on concussion-related issues to help families, individuals, educators, healthcare professionals, and others to be more mindful of the signs of a concussion, how to respond accordingly,

and to identify resources to assist following a concussion, also known as a mild traumatic brain injury.

BIAA is launching a concussion certificate for professionals this fall. Awarding the concussion certificate demonstrates that the individual responsible for return-to-work, learn or play decisions has acquired the requisite knowledge base needed to make sound, informed decisions.

Prevention is important in reducing concussion in our youth, and safety equipment is a key component of prevention. States have enacted several measures designed to reduce fatalities and brain injuries, including seatbelt legislation, distracted driving laws, drunken driving laws, and return-to-play laws with regard to sports-related concussions.

Individuals can take several measures designed to reduce the risk of brain injury. These include wearing protective gear such as helmets when bicycling, motorcycling, snowboarding, riding a horse, skiing, riding, diving, ATVs, or playing sports; wearing seatbelts when driving or riding in vehicles; ensuring that living areas for seniors and young children are free of trip hazards and have sufficient barriers for stairs, and maintaining physical activity to improve lower body strength and balance.

Your efforts to prevent mild traumatic brain injury in our nation's youth are needed and welcomed. Thank you, and I look

forward for your questions.

[The prepared statement of Greg O'Shanick follows:]

**********INSERT 12**********

Mr. Burgess. The Chair thanks the gentleman for his testimony.

Mr. Shur, you are recognized for five minutes for your opening statement, please.

STATEMENT OF STEPHEN SHUR

Mr. Shur. Thank you, Chairman Burgess, Ranking Member Schakowsky, and all members of the subcommittee.

My name is Steve Shur. I am the president of Travel Tech. The association represents online travel agents, global distribution systems, and short-term rental platforms.

Our online travel agent members, OTAs as they are known, have created the marketplace where consumers can shop for all aspects of travel in a single platform. Travelers have benefitted immeasurably from the ability to search, compare, and book hotels through the technology created and operated by the members of Travel Tech.

When suppliers have to compete in a dynamic marketplace, consumers benefit in the form of lower prices and better service offerings. The scale and popularity of third-party online booking sites illustrates consumers' preferences and confidence. Last year Expedia helped travelers book over 200 million room nights. Trip Advisor reaches 340 million unique monthly visitors and hosts more than 350 million reviews. Priceline partners with over 370,000 hotels in 170 countries.

Integrity in the hotel booking marketplace is critical. Without it, companies that fail to deliver reliable customer

service and seamless transactions with their hotel partners will not survive. OTAs thrive on ensuring that customers have a positive experience every time they book. Each of our members has 24-hour customer service teams ready to assist travelers who choose to book on their platforms.

Travel Tech strongly opposes H.R. 4526 on all fronts. We categorically reject the premise of a need for such legislation. This bill would impose new, burdensome requirements on online travel sites without any justification for doing so. Online travel companies would needlessly have to provide additional notification to the consumer that they are, quote, "not affiliated with" the hotel with which the consumer is about to book his stay. However, online travel companies are absolutely affiliated with hotels. Hotels willingly sign contracts with OTAs to take advantage of this very effective marketing and distribution channel. Further, it is unclear why this heightened standard for intermediaries or distributors is needed for online hotel bookings, but not for the online purchase of any other goods.

H.R. 4526 would authorize the FTC to study whether the new disclosure requirements are necessary and if consumers are, indeed, confused about where they are booking their hotel rooms. It seems illogical to apply new, onerous regulations on American businesses without a demonstrable record of consumer harm, while

simultaneously acknowledging that a study is needed to confirm whether these regulations are necessary in the first place.

H.R. 4526 would amend the Restore Online Shoppers' Confidence Act, a bill that was passed several years ago to address a practice in which people were truly harmed by companies sharing credit card information with other entities without their knowledge or consent. Associating an entire reputable industry with this activity addressed in the Restore Online Shoppers' Confidence Act is a gross misappropriation of the facts and an assault on our industry's reputation and integrity.

There is no tangible record of consumer complaints justifying any part of this legislation, only unsubstantiated claims offered by the hotel industry in an effort to scare consumers into booking direct. We have all seen the book-direct advertising campaigns by the hotel chains. The motivations here are clear.

The hotel lobby claims that 15 million Americans are scammed every year by third-party booking sites. Fifteen million, that is 41,000 Americans every day showing up at a hotel, only to find that their reservation was lost and that they were scammed. Where are these numbers coming from? Where is the evidence?

The FTC has no record that such complaints have been lodged. The nation's leading consumer groups are not aware of fraud,

certainly not at this level. Bloggers and reporters who root out issues like this have no record of such activity taking place.

According to the hotel lobby, 41,000 people every day have been scammed by third-party booking sites, and the only place you have heard about this problem is from the trade association representing the largest hotel chains. The hotel lobby is fabricating a problem as a means to boost its members' margins by scaring consumers into thinking that booking anywhere other than direct is risky and riddled with fraud. It is just not true. It is insulting to consumers.

Any government action in this regard should be predicated on a tangible record of consumer harm, rather than anecdotes provided by a trade association that wants to dismantle the transparency of a marketplace where consumers can compare prices and services across brands.

I urge the members of the subcommittee not to wade into what is essentially a contractual battle between the hotel industry and their own distribution partners. OTAs are proud to offer consumers a safe, effective, and transparent marketplace where hotel properties compete on price and service.

Thank you for the opportunity to speak in opposition to H.R. 4526. I look forward to your questions.

[The prepared statement of Stephen Shur follows:]

**********INSERT 13**********

Mr. Burgess. The Chair thanks the gentleman for his testimony.

Mr. Arrington, you are recognized for five minutes for an opening statement, please.

STATEMENT OF ROBERT ARRINGTON

Mr. Arrington. Mr. Chairman and members of the subcommittee, thank you for the opportunity to testify this afternoon.

I am Bob Arrington, founder and president of Arrington Funeral Directors in Jackson, Tennessee. I am honored to be serving as the president of the National Funeral Directors Association, referred to as NFDA.

Over the years, I have served my community and my profession by taking on leadership roles with the Tennessee Funeral Directors Association. I was appointed to a four-year term by the governor of the State of Tennessee to serve on the Tennessee State Board of Funeral Directors and Embalmers, and I served the last year of my term as president of this State regulatory board.

I am testifying today on behalf of the nearly 20,000 funeral directors who are members of NFDA. Together, we represent more than 10,000 funeral homes in the United States and 39 countries worldwide.

NFDA is the world's leading and largest funeral service association, a trusted leader, a beacon for ethics, and the strongest advocate for the profession and the families we are called to serve.

I want to thank Congressman Rush for his efforts to protect consumers. Like the Congressman, NFDA members were horrified at the illegal activity that was discovered in 2009 at Burr Oak Cemetery in Illinois. In the findings section of this legislation, two other incidents involving a cemetery and a crematory are mentioned, Tri-State Crematory in Georgia and Menorah Gardens in Florida.

There is no doubt these were criminal and vile acts by a few bad apples, but I must state my profession, the profession that I love and have dedicated my life to, should not be cast in a disparaging light because of three incidents in the last 15 years which were handled appropriately by each state.

NFDA works closely with state associations to improve state laws governing the profession, ensuring they reflect the evolving needs of consumers and the funeral professionals that serve them. Over the last several years, states have continued to provide oversight and increased protections for the deceased, their families, and the providers of funeral services.

Therefore, it is the belief of the NFDA and its members that state regulation of the funeral profession is sufficient. There is no need for further regulation by the federal government at this time.

While we applaud Congressman Rush's concern for grieving

families, a concern that is equal to our own, we oppose H.R. 5212 because we believe it is not the best way to address the illegal and immoral activities I previously described.

Next year the FTC is scheduled to begin a comprehensive review of the funeral rule, something that happens on a regular basis. NFDA feels this review offers a better alternative to H.R. 5212, which would merely expand a rule that is already flawed. In NFDA's opinion, the funeral rule needs to be redesigned and redrafted, not simply expanded.

While the funeral rule offers important consumer protections, it is a not a one-stop-shop solution. When the FTC reviews the funeral rule next year, everyone who has a concern about the funeral rule will be able to make their voice heard. NFDA is confident that the review will produce an updated funeral rule that protects consumers in today's market. And in NFDA's opinion, the funeral rule is far too important to be expanded without a full exploration of the complex issues involved, something that may not happen in Congress.

NFDA is dedicated to ensuring this review process will result in positive changes for both families and funeral service. We wholeheartedly agree with Congressman Rush that changes need to be made, but we feel the funeral rule needs to be redesigned and clarified to address the realities of the funeral market in 2016.

It would be better to do this through a comprehensive rulemaking process where all interested parties can be heard rather than through a congressional mandate.

I am sure many of you know funeral directors in your community. You probably have been served by some. What we do is for the good of others, not for the good of us. We dedicate ourselves that families have one mother that is going to die one time and we are going to have one funeral. Our dedication is to do that one time because we have only one opportunity. The last thing is we want to do that wrong.

I thank you for the opportunity to be here, and I look forward to your questions.

[The prepared statement of Robert Arrington follows:]

**********INSERT 14**********

Mr. Burgess. The Chair thanks the gentleman for his testimony.

The Chair recognizes Mr. John Breyault for five minutes for your opening statement, please.

STATEMENT OF JOHN BREYAULT

Mr. Breyault. Good afternoon, Chairman Burgess, Ranking Member Schakowsky, and members of the subcommittee.

My name is John Breyault, and I am the vice president of public policy, telecommunications, and fraud at the National Consumers League.

Founded in 1899, NCL is the nation's pioneering consumer organization. Our nonprofit mission is to advocate for social and economic justice on behalf of consumers and workers in the United States and abroad.

Thank you for giving us the opportunity to speak today on the important issue of live event ticketing fairness. The modern ticket-buying experience is rigged and it is too often an exercise in frustration for millions of fans that simply want to see their favorite artist or sports teams at a fair price.

Consumers trying to buy tickets at general on sale to popular events are almost always competing without knowing it against secret insider sales and scalpers who use special software to electronically cut in line. This leads to considerable frustration when consumers are shut out of the box office and anger when resale markets immediately have hundreds of tickets available at inflated prices.

A little publicized fact about tickets is that artists, promoters, and venues often make only a small percentage of tickets available to the general public. For example, of the 750,000 tickets for Adele's 2016 North American Tour, fewer than 300,000 were made available to the general public.

According to the New York Attorney General, less than half, 46 percent, of tickets to the most popular events are ever made available to public on sale. Most tickets, 54 percent on average, are diverted to fan club and premium credit card presales and holds for industry insiders. These diverted tickets often make their way to the secondary market, where they typically fetch a price far above face value.

For example, at a January 2013 Justin Bieber show in Nashville, Tennessee, 90 percent of the tickets were set aside for presales and insiders. Many of the tickets allocated to Bieber's management company were later listed on ticket resale websites at hugely-inflated prices.

These examples are just the tip of the iceberg. Artists of every type from rap to rock, country to comedy, hold back tickets. We think the system is rigged against average consumers. We don't believe artists should have the right to hide how many tickets are to be made available to the general public, so they can trumpet quick saleouts that hype their events;

that they, then, often take advantage of their fans by anonymously reselling tickets, often for several multiples of face value, while blaming scalpers for their fans' inability to get tickets, is the height of Chutzpah.

Undisclosed ticket allocations are not the only way that consumers find themselves at a disadvantage at the box office. Fans must also compete against ticket brokers employing sophisticated ticket-buying software known as bots. Bots allow brokers to purchase tickets at lightning-fast speeds, helping them acquire hundreds or thousands of tickets in minutes or even seconds. These are, then, listed on resell websites, often at outrageous markups.

Evidence of rampant abuses by ticket bots abound. One bot was used to purchase 1,012 tickets in one minute to U2's July 2015 show at Madison Square Garden. That same day two bots were used to purchase more than 15,000 tickets in 24 hours for several performances on the same U2 tour.

Between 2002 and 2009, one bot operator, Wiseguys Tickets, Inc., bought more than 1.5 million tickets and netted more than $25 million in profit when tickets were resold to brokers who, then, resold them to fans.

Ticketmaster has stated that ticket bots can account for as much as 90 percent of the traffic to its website and 60 percent

of sales for the most desirable seats to some shows.

To address the broken ticket marketplace for popular concert tours and many sporting events nationwide, congressional action is sorely needed. Both the BOSS Act and the BOTS Act crack down on robotic ticket-buying software. However, only Congressman Pascrell's BOSS Act offers comprehensive solutions that collectively will significantly improve fans' ticket-buying experiences. By requiring greater transparency in the primary ticketing market, prohibiting egregious broker practices like undisclosed speculative selling, and limiting the ability of connected insiders to surreptitiously divert tickets to the secondary market, the BOSS Act would lead to beneficial reforms in the ticketing marketplace.

To conclude, it is clear to us, and to millions of fans, that the ticket-buying experience is rigged. All too often buying a ticket is an exercise in frustrations for fans that simply want to see their favorite artist or sports teams at a fair price. To this end, we urge the subcommittee to support Congressman Pascrell's common-sense pro-consumer bill.

Chairman Burgess and Ranking Member Schakowsky, thank you again for inviting NCL to speak today. I look forward to answering your questions.

[The prepared statement of John Breyault follows:]

**********INSERT 15**********

Mr. Burgess. The Chair thanks the gentleman for his testimony.

Mr. Genn, you are recognized for five minutes for your opening statement, please.

STATEMENT OF GIL GENN

Mr. Genn. Thank you, Chairman Burgess, Ranking Member Schakowsky, members of the subcommittee. Thank you for allowing me to testify in support of H.R. 5104, the BOTS Act.

I am testifying today on behalf of the Maryland Sports and Entertainment Industry Coalition, a coalition of diverse players in the live entertainment business, including professional sports teams, large and small musical and theatrical venues, and providers of live entertainment shows.

The sports and entertainment industry is a huge source of pride in Maryland, and hundreds of millions of dollars have been invested in venues, sporting events, concerts, and other live productions in the State, significantly contributing to the employment of thousands of Maryland residents.

Our coalition brings some experience to your debate, as we were instrumental in recently enacting legislation in Maryland similar to the BOTS Act. While we are grateful to our State legislatures for enacting that legislation, we recognize the limits of its effectiveness.

The underground industry that uses BOTS to hack ticketing websites is clearly an interstate business. Interstate commerce transactions require federal solutions, and H.R. 5104 is a

substantial solution to the problem of ticket bots.

As you know, for most live entertainment events, there is a restriction on the number of seats one purchaser can buy, usually in the four-to-eight-ticket range. It is often the case that during the opening minutes of the on sale for a championship game or a premier entertainment show the website of the ticketing agent is overwhelmed by hundreds or thousands of requests for tickets placed by computer programs pretending to be real fans.

These bots, as they are called, seize up substantial portions of the ticket inventory. Their software is sophisticated enough to recognize which tickets are the best tickets that wills fetch the highest resale price on the secondary market. Once the botsters have the tickets they want, they release the others back into the on-sale pool.

When people use bots to violate the terms and conditions of ticketing websites to buy up large blocks of tickets and resell them at a markup on the secondary market, they are effectively stealing that investment. H.R. 5104 at least provides a clear civil remedy for this abuse. The bipartisan, pro-consumer BOTS Act would create a dual enforcement mechanism to stop that theft. It would make it an unfair and deceptive practice to use a bot to hack a ticketing website and allow the FTC to enforce against people who do. It would also create a private right of action

by which any affected party, an artist team, an agent, a fan could sue a botster under a clear federal standard and recover damages.

Bruce Springsteen, Paul McCartney, Taylor Swift, and others don't come to Washington, D.C., every year or your congressional districts. It is unfair to the younger fans who have discovered these legends to have to pay exorbitant prices to secondary ticket sellers when they are also concerned about their first job salary, saving for college, even paying off student loans, and other life expenses.

We are hopeful that the dual threat of FTC enforcement and private litigation will serve as a deterrent against people who use bots and help restore the ability of real fans to get good tickets at face value.

This hearing is also examining legislation that more extensively regulates the primary ticketing market, requiring inventory disclosures of proprietary business information and prohibiting restrictions on resale of tickets. Many states have looked at adopting such policies, and nearly all of them have rejected them. Legislators realize that these bills, while well-intentioned, would only empower scalpers at the expense of real fans.

In recent years, Maryland considered and rejected legislation that would prohibit restrictions on the resale of

tickets from the primary ticket-seller. One of those restrictive provisions would have prohibited making tickets non-transferrable. This is similar to what is in Congressman Pascrell's draft on page 5, lines 12 through 15.

Think of all the times when you may have attended an event with the Speaker of the House, the Cabinet officials, or even the President. One of the reasons these tickets are non-transferrable is because of security. Taking away the right of the primary ticket-seller to restrict tickets could lead to anyone getting those tickets on the secondary market. In such a case, it would be a very bad policy for obvious security reasons.

I hope Congress will enact H.R. 5104, the BOTS Act, and refrain from adding controversial and burdensome measures to regulate the primary ticketing marketplace.

Once again, thank you, Congressmen Blackburn and Tonko for sponsoring and the cosponsors for introducing this legislation.

I look forward to your questions.

[The prepared statement of Gil Genn follows:]

**********INSERT 16**********

Mr. Burgess. The Chair thanks the gentleman for his testimony.

The Chair now takes great pleasure in recognizing a constituent, Ms. Pena, five minutes for your opening statement, please.

STATEMENT OF JAMIE PENA

Ms. Pena. Thank you. Chairman Burgess, Ranking Member Schakowsky, and members of the subcommittee, thank you for the opportunity to speak to you today about addressing deceptive hotel booking websites.

My name is Jamie Pena, the vice president of revenue strategy and global distribution for Omni Hotels, located in Dallas, Texas. As Mr. Burgess mentioned, I am also a proud constituent of Chairman Burgess.

I am here today representing the over 18,000 employees and associates of Omni Hotels. Omni Hotels is a proud member of the American Hotel and Lodging Association, which represents 2 million employees of the lodging industry.

It is an honor to appear here before your committee to discuss the need for Congress to pass the Stop On-Line Booking Scams Act, H.R. 4526. I would like to thank the 18 bipartisan cosponsors for their leadership on this issue as well.

I am here today to discuss the growing problem of deceptive hotel booking websites that are scamming customers and the need for legislation to address this issue. The ever-evolving online channels for booking hotel rooms from desktops to mobile phones and internet-enabled devices like tablets have transformed the

way guests book their hotel rooms and at the same time created new customer-facing business models.

Amid these transformations, the lodging industry continues to put guests and customers first. We are focused on educating consumers on how to avoid being victimized by these scam websites.

It is with that purpose that we can bring to the committee the growing problem of misleading scam websites that deceive customers into thinking they are making a legitimate booking directly with the hotel company. They use pictures and graphics and other unique images from the hotel. They even set up 800 number call centers where the guest calls and the agent answers in a way that leads the customer to believe they are talking directly to the hotel.

Further, as customers increasingly move to mobile booking, smaller screens make it even more difficult for them to discern between the hotel's website and the URL of these scammed websites. Customers are definitely harmed and the result is we get different complaints from lost reservations, incorrect accommodations, loss of hotel loyalty program benefits, and simply the customers are confused.

By AHLA's estimates, these scams are impacting 15 million online bookings a year in the U.S. Omni customers have certainly fallen victim to these scams. I have two specific examples that

I would like to share with you that are very recent.

One is a guest that was booking at the Omni Parker House in Boston. They called our call center to add an accompanying guest name to their reservation that she thought she booked on omnihotels.com. However, our agent was unable to assist her because, unknowingly, she had booked with a third party. She was very upset that her credit card information was in the hands of strangers since she thought she had booked directly with our hotel.

Another example comes from the Omni Houston Hotel. We had a similar scenario where the guest realized after the fact that they had clicked on a link and booked their reservation with one of these third-party rogue websites. To her surprise, it was not booked direct with us. I was able to get the 800 number from the website myself that the lady had spoken with, and the agent even continued to insist to me that he was an agent of Omni Hotels, which he was not.

These are not just problems for customers trying to book with Omni. No ordinary customer would be able to realize that these are fake websites. And make no mistakes, these websites are designed to deceive consumers.

Thankfully, the hotel industry is one of many voices concerned about this growing problem. The Federal Trade

Commission, AAA, and the Better Business Bureau have all issued formal alerts warning consumers of these scams, and the hotel industry is also working on better methods of tracking the expansive nature of this program.

Many times the instances where consumers are frauded are not formally reported because the front desk agents just take care of the customer and they just make it right for them at their expense.

Congress has a role. So, to better quantify this issue, we are beginning a pilot program in three states to better train the front desk personnel to report these instances of fraud directly to the states' attorney general office. But Congress has a role to play as well, and that is why I am here today to express our support for H.R. 4526.

This bill is narrowly tailored to address only the unscrupulous sites that purposely deceive the customers. The bill simply requires online travel websites who do not have direct contracts with hotels to clearly disclose that they are not the actual hotel property.

Because it is directed only at non-affiliated third-party websites, it excludes our partner OTAs. These OTAs we have direct relationships with design their websites in a manner that distinguishes their site from our hotels. In addition, our

partner OTAs are very quick to address instances of confusion and they are very transparent on their websites that they are not the actual hotel.

As you can see, H.R. 4526 is a targeted bill to address a serious problem for U.S. consumers.

Thank you for the opportunity to testify here, and I look forward to answering your questions.

[The prepared statement of Jamie Pena follows:]

**********INSERT 17**********

Mr. Burgess. The Chair thanks the gentlelady for her testimony.

Mr. Best, you are recognized for five minutes, please.

STATEMENT OF MICHAEL BEST

Mr. Best. Thank you, Chairman Burgess, Ranking Member Schakowsky, and other members of the Commerce, Manufacturing, and Trade Subcommittee.

I am Michael Best, senior policy advocate for the Consumer Federation of America. CFA is a nonprofit association of more than 250 pro-consumer, not-for-profit groups that was established in 1968 to advance the consumer interest through research, advocacy, and education.

The Funeral Consumers Alliance is a nonprofit organization with more than 70 local educational groups that was founded in 1963 to protect the consumer's right to choose a meaningful and affordable funeral. CFA and FCA appreciate this opportunity to provide testimony on H.R. 5212, the Bereaved Consumers Bill of Rights Act of 2016. I would like to outline our support of H.R. 5212 and, also, urge you to call on the Federal Trade Commission to modernize its funeral rule.

For consumers, funeral and cemetery services are not discretionary. Everyone will die and require performance of some kind of service, and it will be a large expense for many households. In 2014, the median cost of a funeral with viewing and burial was $7,181. Yet, according to a 2011 study, about

half of all households in the country would have difficulty paying an unexpected expense of $2,000. This expense is also often incurred at a time when we are all especially vulnerable and disinclined to undertake a careful search involving different types of services and service providers.

The bill would, among other things, extend the consumer benefits of the FTC funeral rule to all death-related businesses and codify that rule, establish minimum standards and a culture of accountability for the cemetery industry, and give the FTC and states attorneys general additional tools to ensure the marketplace for funeral and burial services is truly competitive.

We are aware of and not unsympathetic to the claims of some nonprofit providers of cemetery services, particularly individual churches, that they would have difficulty complying with some requirements of the bill. Therefore, we did not oppose the amendment that sought to ease requirements on some of the small nonprofits.

We also would not object to the FTC ensuring that any rules that were written were informed by an understanding of the different types of service providers, from large for-profits at one end of the continuum to individual churches operating nonprofit services at the other end.

Both CFA and FCA support H.R. 2212 because it would provide

stronger and broader protection to consumers of funeral and burial services. High cost, vulnerable consumers, and changing markets are also why the FTC needs to modernize its funeral rule to include online disclosures. The rule worked well for a long time and it was even supported by industry.

Randall L. Earl, in his capacity as an elected officer of the National Funeral Directors Association, testified before this committee about a previous version of H.R. 2212 stating, quote, "Many NFDA members have reported that the rule has made them better businessmen and women," end quote.

But the rule needs to reflect how consumers now shop. The rule requires written disclosures, but as far back as 2010, 97 percent of consumers used the internet when searching for local products or services. The FTC, in its consumer information web pages, also touts internet search as a way to get the best product and deal.

The cost to consumers of antiquated disclosure requirements of the funeral rule were evident in a survey of funeral home services undertaken and released last year by CFA and FCA. The price information we needed to accurately price services was found on the website of only about one-quarter, 38, of the 150 funeral homes we surveyed.

In the absence of a requirement to offer complete online

disclosures, some funeral businesses that do post prices online mislead consumers and directly contradict the intent of the funeral rule. Those businesses in our survey that did post prices online usually posted only all-inclusive packages and failed to alert consumers that they have the right to buy a la carte and to decline any unwanted goods or services.

If the same funeral home offered this incomplete information on a paper price list, that would be a violation of the federal rule. But, because the rule does not contemplate online transactions, these omissions are legal.

In our study, prices for the same funeral services within individual areas almost always varied by at least 100 percent, and often varied by more than 200 percent. For example, right here in D.C., prices among 15 funeral homes for a full-service funeral ranged from $3,770 to $13,800. That variation would be difficult to sustain at a market with easy-to-research prices.

Thank you for the opportunity to support H.R. 2212 and explain why the federal rule needs to be updated, and I look forward to your questions.

[The prepared statement of Michael Best follows:]

**********INSERT 18**********

Mr. Burgess. The Chair thanks the gentleman. The Chair thanks everyone for their testimony today, and we are going to move into the members' questions portion of the hearing.

I wish to yield five minutes to Ms. Schakowsky of Illinois, ranking member of the subcommittee, five minutes for questions, please.

Ms. Schakowsky. Thank you, Mr. Chairman.

Dr. O'Shanick, I have been involved in this issue of brain injury. I asked the question of the NFL about the connection between CTE and brain injury.

First of all, do you do research, also, on sub-concussive brain trauma?

Dr. O'Shanick. No, ma'am. My job is a clinical practice. I take care of sick folks on a daily basis. I was in academics for a decade. That was 20 years ago.

Ms. Schakowsky. Okay, but you are testifying today about brain trauma, no?

Dr. O'Shanick. Yes, ma'am.

Ms. Schakowsky. Yes. Okay.

Dr. O'Shanick. That is correct.

Ms. Schakowsky. Okay. So, studies have shown that children and teens are more likely than adults to get a concussion and that they take longer to recover. What explains the

difference in concussion risk and recovery between children and adults, and what can we do to guarantee children's brains are protected while they engage in youth contact sports?

Dr. O'Shanick. Thank you very much for the question and for your support in terms of this area.

Children are not just small adults. Unfortunately, for too long, the type of information we have been using to look at kids has been extracted from the adult literature, both in terms of the brain development -- frontal lobes of the brain start developing in utero, aren't fully developed until 25-26 years of age. In that situation, what you are doing fundamentally with any type of insult or injury is you are damaging a developing brain and you are slowing down and causing an ultimate loss of full attainment of what they can ultimately achieve. They never literally catch up with their age-mates.

So, the issue relates to one of being appropriate in terms of minimal types of issues of concussive tackling before a certain age. It relates to effective coaching. It requires, also, more vigilance in terms of the sideline staff.

Ms. Schakowsky. So, you were testifying in support of legislation that would prevent claims for protective gear that are false. Is that right?

Dr. O'Shanick. Correct. One of the issues that my patients

and their families have is how do you allow your kids to participate in activities and yet have them be safe. Quite honestly, much of the information that they read on the internet or the websites that they visit to try to protect their kids simply has misleading information, incomplete information, and at times, frankly, erroneous information. Many places are more concerned about the colors that they offer, and offer one size adult, one size child, as opposed to really looking at the science and investing in what is going to be protective.

Ms. Schakowsky. So, we had a hearing on this subject of brain injury, and Dr. Tom Talavage, a witness at that hearing, testified that current helmet designs prevent massive trauma, like skull fracture. They do not, however, according to him, prevent the brain from moving around inside the skull, which results in a concussion. Is that true?

Dr. O'Shanick. Absolutely correct, yes. What we are looking at is kind of the same concept as airbags. Airbags do not prevent concussion or do not prevent brain injury. They prevent catastrophic brain injury. The abbreviated injury scale for airbags is designed so you can still be rendered unconscious for 30 minutes and it meets the current federal standards.

So, what we are looking at is the prevention of a catastrophic injury. However, we know, especially in the developing brain,

that sub-concussive and other concussive injuries that would be relatively innocuous for an adult with a fully-developed brain are much differently managed --

Ms. Schakowsky. And over time?

Dr. O'Shanick. Exactly, the exposure over time.

Ms. Schakowsky. Right. Some have suggested narrowing the bill to only youth sporting equipment, but I am concerned that the bill would no longer cover sporting equipment used by all young athletes. Some younger players are wearing adult-sized helmets, for example.

So, I wondered, Dr. O'Shanick, if you share my concern and if you have seen young athletes who are grown out of the so-called youth sporting equipment.

Dr. O'Shanick. Absolutely. Very astute observation, especially when you get into high school and some of the middle school kids. I mean, I am not sure where these kids come from, but they look like full-grown adults. I want to check their driver's license.

But the issue is that, whenever it is going to be used by a child, whenever it is going to be used by somebody of an age where we are responsible for protecting them and their brain, I think this needs to be the policy that we exhibit.

Ms. Schakowsky. Thank you. I want to thank all of the

witnesses. There is so much richness here, that I could ask about all of these. So, thank you so much. I listened carefully to all your testimony. Thank you.,

Dr. O'Shanick. Thank you.

Mr. Burgess. The Chair thanks the gentlelady. The gentlelady yields back.

Unfortunately, we do have a vote on the Floor. So, the committee is going to take a recess while we vote, and we will reconvene immediately after the vote series concludes.

Ms. Schakowsky. Mr. Chairman, may I ask permission to insert these letters from the minority into the record?

Mr. Burgess. Without objection, so ordered.

[The information follows:]

**********COMMITTEE INSERT 19**********

Mr. Burgess. We stand in recess.

[Recess.]

Mr. Burgess. I call the subcommittee back to order.

We will resume where we were with member questions of the third panel. I would like to recognize Mr. Harper of Mississippi for five minutes for his questions, please.

Mr. Harper. Thank you, Mr. Chairman, and I appreciate the opportunity.

And thank you to each one of you for being here. This is some very important issues, obviously. And thanks for what each of you deals with in the arena of these important pieces of legislation.

Mr. Hendrickson, I would like to ask you a few questions, if I may. And specifically, we are discussing some things that are very important to us. One of those, of course, is the Reinforcing American-Made Products Act of 2016.

A nice tie, by the way.

Mr. Hendrickson. Thank you very much. I picked that out special today.

Mr. Harper. There you go.

If other states begin instituting their own made-in-America labeling standards, as California has done, how would that impact the manufacturing sector broadly and specifically?

Mr. Hendrickson. Thank you, Congressman Harper, and thank you for your work on this bill.

We have been very troubled with the addition of another state, and especially the potential of additional states after that, taking up their own definition of made-in-America. Our experience, and just a slight bit of background about us, we are a very, very vertically-integrated factory, meaning we don't just make the basketball hoops, but we actually make the tubing that goes into the basketball hoops. We manufacture the plastic bases for the portable portion of it. And beyond that, we have a tooling facility that manufactures the tools to make the parts and oftentimes even the automated equipment beyond that. So, extremely vertically-integrated.

Yet, with separate state laws and a separate approach and a different definition of made-in-USA, it leaves even a company like ours, as vertical as we are and as 100-percent made-in-America as we are, unable to make that claim because we don't have the ability to meet multiple litmus tests or multiple definitions of made-in-USA.

And so, the outcome of that is, frankly, we don't get to tell the consumer that it is made in America. Our people who work every day to make the products and keep them in the USA don't get to see "made in America" on the boxes that they know they

produced right here in America. And it takes away just one more element of manufacturing in the U.S., which is extremely important.

You know, the significance of manufacturers here in the United States of America has impacts all across the country. And so, confusion in this area is just one more detriment to those of us who are fighting so hard to keep those jobs in the U.S.

So, this Reinforcement Act allowing us to abide by what is a very, very strong test, a very demanding made-in-USA definition that the FTC holds, it allows us to meet that and, then, be able to properly and accurately communicate to the consumer where the product was made.

Mr. Harper. Right, and I think it is very appropriate, if you are manufacturing basketball equipment, that it be vertically-integrated.

[Laughter.]

Mr. Hendrickson. Thank you. I think you are absolutely correct.

Mr. Harper. So, those go very well together.

Do consumers prefer that products be made in the United States?

Mr. Hendrickson. You know, I referred to in my testimony 78 percent. That came from a Consumer Reports test that was

conducted in 2013. If given the opportunity and it is a similar product, there is an understanding and a belief that not only should it be a very respectable and, hopefully, even higher quality many of the times, but it also allows them to say, yes, I am spending my dollars in a way that supports the nation, that supports the jobs, my neighbor, my friends, my families. And so, the consumer does care, and they should be able to accurately be notified if it has been made in the U.S., and that has been very difficult for us to have to remove "made in the USA" from products that we have fought for decades to keep in the USA.

Mr. Harper. So, obviously, consumers would prefer to buy it with that label and it would benefit manufacturers if you can display that. How would a uniform national standard, as we are discussing, for made-in-America labels help strengthen the manufacturing sector in the United States?

Mr. Hendrickson. Well, there are certain national retailers that are actually pushing marketing campaigns of made in USA. If those of us who are manufacturers in the U.S. can't communicate that to the consumer nor to the retailer, then we miss out on those opportunities for growth. So, this unified standard by the FTC allows manufacturers to benefit from the increased demand and from the consumer desire to seek out and purchase made-in-the-USA products.

Mr. Harper. Regrettably, my time has expired. I am going to yield back.

But thank you so much for your testimony, what your company is doing, and we hope for resolution that will help you and many others. Thank you.

Mr. Hendrickson. Thank you very much, Congressman.

Mr. Burgess. The Chair thanks the gentleman. The gentleman yields back.

The Chair recognizes Mr. Rush of Illinois, five minutes for your questions, please.

Mr. Rush. Again, I want to thank you, Mr. Chairman, for this panel.

I want to welcome the witnesses.

The funeral industry, Mr. Chairman, is a mystery to most people. The vast majority of consumers arrange only one or at most two funerals during their lifetime. And, generally, they do this at a time of much grief and duress.

In the eighties, the FTC recognized the opportunity for consumer abuse and issued a, quote, "funeral rule" containing disclosures to consumers at the funeral homes.

Mr. Best, I want to ask you how have prices at funeral homes evolved since the rule was enacted back in the early eighties? Have you seen any improvements in the transparency of this kind

of business arrangement with consumers?

Mr. Best. Thank you, Mr. Rush.

I mean, I think our research showed that, while there is good enforcement of the current rule, it is very much, as you said, in the eighties and nineties, it is about written price lists and doesn't reflect how consumers now shop, which is through the internet, and they want to quickly compare prices across a broad variety of businesses in their area, especially when they are under this duress.

We see a huge a variation in the price within localities, and we think that that is in no small part because it is very hard for consumers now with the way they shop to find out what the prices are because there is no requirement to disclose funeral home prices on the web, sir.

Mr. Rush. So, you would agree that very fine sellers of funeral services such as caskets and monuments and cemeteries that do not have an onsite funeral home are not covered by the funeral rule? Is that right?

Mr. Best. That is correct, sir, and we agree that more and more the entities not covered by the funeral rule are interacting with the public as part of the funeral services industry and should be covered by the same disclosure requirements, absolutely.

Mr. Rush. Would you also agree that consumers seeking any

type of funeral goods or services would stand to benefit from the FTC's protection from unfair and deceptive acts?

Mr. Best. Absolutely, sir, and we feel that your bill was very well-drafted and it is a really good, balanced approach to that.

Mr. Rush. You mentioned the use of the internet when researching local products and services. Can you provide any information on how consumers use the internet to purchase products and services from outside of their local area?

Mr. Best. From outside their local area, I am not sure. In preparation for this testimony, I looked up statistics for within your local area because I imagine that is generally how people procure funeral services. I mean, within the local area, it is over 96 percent of consumers use the internet to do that kind of research and price comparison. I don't have exact numbers, but I imagine it is quite high, no matter what. I mean, I know I certainly use the internet to price everything at this point.

Mr. Rush. The funeral rule also covers some aspects of pre-need contracts which allow complete payment for all their own funeral needs, including caskets and burial plots and funeral services. It seems that most people would buy these prepaid services to provide a sense of peace of mind and ease the burden

on their family members without an instance of fraud and financial mismanagement surrounding premium contracts that led to services in this area maybe being misguided. Do you think that H.R. 5212 would give some sense of relief and safety and give a sense of comfort to some of these consumers?

Mr. Best. I absolutely do, sir. I mean, I think this is going to go a long way to setting a good, solid floor of requirements that are easy to understand for consumers and businesses both.

Mr. Rush. Mr. Chairman, I see that my time has expired.

Mr. Burgess. Indeed, it has. The gentleman yields back. The Chair thanks the gentleman.

Mr. Rush. You didn't have to say it like that, Mr. Chairman.

[Laughter.]

Mr. Burgess. The Chair thanks the gentleman.

I am going to recognize myself, finally, for five minutes for questions. I have deferred and let all members go first. So, I am not taking extra time.

It occurs to me that my first term on this subcommittee some 10 years ago Mr. Rush was the chairman of the subcommittee, sat here. I sat way down there on the minority side.

And we had a hearing on some problem with toys that were coming in from China and the yellow paint on the toys apparently

had more lead in it than the law allowed. And we had an executive from one of the major manufacturers sitting here at the desk. And I remember when it finally came my time to question, I said, "I just simply do not understand. I think if you marketed your toys with made in the USA, had a little American flag on the bottom of that truck or duck," or whatever it was, "that those things would fly off the shelves. And if you even went one step further and said made in Ft. Worth, Texas, and had a little Texas flag on the bottom, those things, you know, they would be collectors' items the day they went on the shelves." He didn't agree with me.

But, Mr. Hendrickson, I feel the same way you do. I think there is value to being made in America. And I just want to ask you a question because most things that I buy -- and I am not even sure what the rules are governing this -- will have "made in China," "made in Mexico," not that I buy things made in China, but, I mean, you look at packages and there is a country of origin.

So, if you are not allowed to put "made in the USA" on your basketball hoop, what does it say, "made nowhere"?

Mr. Hendrickson. Now previous to our incident and lawsuit in California, we had "made in the USA," obviously, on there. Today we don't claim where it is made. However, products that do come from other countries, some of our products that come from

another country will represent that country. Today -- and it is very unfortunate -- the products that we have fought the hardest to keep in the U.S., we are unable to claim where they are made, for fear of additional negative impact lawsuits.

And we are very pleased to see H.R. 5092 come through because I think the U.S. manufacturing needs it, and it is going to help us. I think it is at the same time protecting the consumer because today they don't get to see that it was made in the U.S. and they deserve to know that.

Mr. Burgess. I couldn't agree more.

Ms. Pena, how do people fall into the trap that you have laid out for us that they think they are booking on a reputable site and they are actually booking -- they have gone through the looking glass and they are booking in a different dimension? How does that happen?

Ms. Pena. Typically, in my experience, it happens when the customer uses a search engine and types in the name of the hotel. And the top few listings, they appear to be genuine Omni hotels, and in some cases they actually use our name in their URL to trick the customer. And then, they go to that website, assuming that they clicked on our website, and make the reservation.

Mr. Burgess. But the transaction does not go through the hotel's registry? It is going through something else?

Ms. Pena. Sometimes we receive it and that they had onward from somebody we are partners with. And sometimes we don't receive the reservation at all. Most of the time, we receive it through another party that we are contracted with.

Mr. Burgess. And then, what is the bottom line for the consumer when they go to check in?

Ms. Pena. Well, there are times where we don't have -- if we have the reservation, sometimes we don't have the right request from them. Maybe they need two beds, and we didn't know. Or maybe they wanted to get their loyalty benefit rewards and they can't now. Maybe their payment information, they need to change payment, and we weren't the ones that took their money, so it is we are unable to assist them. So, it causes a lot of frustration.

Mr. Burgess. I see.

And, Mr. Genn, let me just ask you briefly, the ticket sales issue, a lot of states have state laws around this. Why wouldn't this just remain a state issue? Why is it necessary to do something at a federal level?

Mr. Genn. Mr. Chairman, thank you for the question.

Because of interstate issues. Or I will give you a good example. I contacted the Consumer Affairs Division of our attorney general in Maryland yesterday and I said, "What

complaints have you received since we passed the BOTS Act?" And they said, "We have received a raft of complaints about the Bruce Springsteen concert being held at Nats Park September 1st, and we cannot do anything because the people complained." They said they went online, just all the testimony you heard. It wasn't accessible. A couple of hours later, it was on the secondary market.

The Maryland attorney general said, "Well, I can take the complaint, but it is jurisdictional issues. This is out of D.C. I don't have jurisdiction to act." And that is exactly why H.R. 5104 is a necessary remedy to deal with this at the federal level.

Mr. Burgess. Very well.

Well, once again, I want to thank all of you for your testimony today. It has been a long day, but I think it has been very, very informative.

And seeing there are no further members wishing to ask questions of this panel, I want to say before we conclude I do have the following documents that I want to submit for the record by unanimous consent:

A letter from the American Society of Association Executives; a letter from the National Sporting Groups Association; a letter from the Joint Association of H.R. 4460; a letter from Ashford, Incorporated; a letter from Delta Airlines;

a letter from the United States Chamber of Commerce; a letter from the American Academy of Pediatrics; a letter from the Consumer Review on H.R. 5111; a letter from Consumer Review on FTC process; a letter from the Brain Injury Association of America; a letter from the Retail Industry Leaders Association; a letter from Safe Kids Worldwide; a letter from the National Association of State Head Injury Administration; a blog posting from the Sunlight Foundation; a letter from the medical stakeholders on the Youth Sports Concussion Act; a letter from the California Hotel and Lodging Association.

[The information follows:]

**********COMMITTEE INSERT 20**********

Mr. Burgess. Pursuant to committee rules, I will remind the members that they have 10 business days to submit additional questions for the record, and I ask that our witnesses submit their responses in a timely fashion.

[The information follows:]

**********COMMITTEE INSERT 21**********

Mr. Best. With that, the subcommittee again thanks the panel for their forbearance today. Again, it has been a long day, but I think we have gotten a lot of information.

And the subcommittee now stands adjourned.

[Whereupon, at 3:09 p.m., the subcommittee was adjourned.]